



# Civil Commitment of Sexually Violent Persons

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Prepared by

Charles Morgan

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



# Civil Commitment of Sexually Violent Persons

1993 Wisconsin Act 479 established a procedure for the involuntary civil commitment of certain individuals who are found to be sexually violent persons (SVPs). These procedures, which are described in Chapter 980 of the statutes, became effective on June 2, 1994. However, individuals who engaged in acts of sexual violence before that date may be committed as SVPs under these provisions.

This paper describes the process under which individuals are committed as SVPs, placed on supervised release, and discharged, and how the Department of Health and Family Services (DHFS) administers the program. In addition, the paper provides information on SVP-related populations and the costs of providing services to individuals who have been committed as SVPs.

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## Statutory Commitment Process

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**Commitment Criteria.** An SVP is defined in statute 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 the person will engage in acts of sexual violence. A "sexually violent offense" is defined as:

- First degree sexual assault
- Second 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 under age 16
- Incest with a child
- Child enticement

A "sexually violent offense" may also include any of the following offenses if the offense is determined to be sexually motivated, which means that one of the purposes for the act is for the offender's sexual arousal or gratification:

- First degree intentional homicide
- First degree reckless homicide
- Second degree intentional homicide
- Second degree reckless homicide
- Battery, substantial battery or aggravated battery
- Battery, substantial battery or aggravated battery to an unborn child
- False imprisonment
- Taking hostages
- Kidnapping
- Burglary

Finally, a sexually violent offense may include any solicitation, conspiracy, or attempt to commit any of the previously listed offenses.

**Notification to DOJ and DAs.** A person may be committed as an SVP immediately: (a) after the person has completed serving a sentence for a sexually violent offense in the state's adult correctional system; (b) after the person has completed serving a disposition for a sexually violent offense in the juvenile correctional system; or (c) after the person is no longer under the custody of DHFS after having been found not guilty of a sexually violent offense by reason of insanity, or mental disease or defect.

A state agency that has control or custody over a person who may meet the criteria for commitment as an SVP must inform the appropriate district attorney (DA) and the Department of Justice (DOJ) regarding the person as soon as possible beginning three months before: (a) the individual's discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment for a person convicted of a sexually violent offense; (b) the anticipated release from a secured correctional facility, a secured child caring institution, or secured group home of a person adjudicated delinquent on the basis of a sexually violent offense; or (c) the termination or discharge of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect. The agency must provide the person's name, identifying factors, anticipated future residence and offense history and, if applicable, documentation of any treatment and the person's adjustment to any institutional placement.

**Petitions for Commitment.** If the agency with jurisdiction over the person requests that a petition for commitment as a sexually violent person be filed on the person, either DOJ or the DA may file the petition. DOJ and local DAs have established agreements, which vary from county to county, concerning whether Chapter 980 cases in a county will be handled by an Assistant Attorney General or the DA's Office. The petition may be filed in any of the following: (a) the circuit court for the county in which the person was convicted, adjudicated, or found not guilty by reason of mental disease or defect of a sexually violent offense; (b) the circuit court for the county in which the person will reside following the person's discharge or release; or (c) the circuit court for the county in which the person is in custody under a sentence, a placement to a secured correctional facility, a secured child caring institution or a secured group home, or a commitment order. DOJ may file a petition in the Circuit Court for Dane County.

Any petition filed by DOJ or a DA must allege that all of the following apply to the person alleged

to be an SVP.

- The person has been convicted, found delinquent, or found not guilty because of mental disease or defect of a sexually violent offense.
- The person is within 90 days of discharge or release.
- The person has a mental disorder.
- The person is dangerous to others because the person's mental disorder makes it likely that he or she will engage in acts of sexual violence.

Any petition must state with particularity essential facts to establish probable cause to believe the person is an SVP. If the petition alleges that a sexually violent offense or act that is the basis for the allegation was an act that was sexually motivated, the petition must state the grounds on which the offense or act is alleged to be sexually motivated.

**Rights of Persons Named in a Petition.** The circuit court must give the person who is the subject of a petition reasonable notice of the time and place of each hearing, and may designate additional persons to receive these notices. At any hearing, the subject of the petition has the right to:

- Counsel. 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.
- Remain silent.
- Present and cross-examine witnesses.
- Have the hearing recorded by a court reporter.

The person who is the subject of the petition, the person's attorney, DOJ, or the DA may request that any trial be to a jury of 12. If no such request is made, the circuit court may, on its own motion, require that the trial be to a jury of 12. Any verdict

rendered by a jury must be unanimous.

Whenever a person who is the subject of a petition or has been committed as an SVP is required to submit to an examination, he or she may retain experts or professional persons to perform an examination. If the person retains experts or professional persons for this purpose, the examiner must have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records and patient health care records. If the person is indigent, the court must, at the request of the person, appoint a qualified and available expert or professional person to perform an examination and participate in the trial or other proceeding on the person's behalf. The cost of providing a court-appointed expert or professional for an indigent person must be paid by the county. A court-appointed expert or professional may not be subject to any order by the court for the sequestration of witnesses at any SVP proceeding.

Upon a showing of good cause, testimony may be received into the record of an SVP hearing by telephone or live audiovisual means.

**Detention, Probable Cause Hearings, and Transfers for Evaluations.** Once a petition for commitment is filed, the circuit court must review the petition to determine whether to issue an order for detention for the person who is subject to the petition. The person may be detained only if the court determines that there is cause to believe that the person is eligible for commitment as an SVP. Any person detained must be held in a facility approved by DHFS. Most detainees are housed at the Wisconsin Resource Center (WRC), a state-operated mental health institute near the City of Oshkosh. However, a small number of detainees, who have chosen to participate in treatment in advance of commitment, are housed at the Sand Ridge Secure Treatment Center (SRSTC) in the City of Mauston. Any detention order remains in effect until the person is discharged after an SVP trial or until the effective date of a commitment order, whichever is applicable.

The court must hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court must hold a probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays, and legal holidays. If the person named in the petition is not in custody, the court must hold the probable cause hearing within a reasonable time after the filing of the petition.

If the court determines that there is probable cause to believe that the person named in the petition is an SVP, the court must order that the person be taken into custody, and order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is an SVP. If not, the court must dismiss the petition. These evaluations are typically performed by the SRSTC Evaluation Unit, a group of DHFS psychologists housed on the grounds of the Mendota Mental Health Institute in the City of Madison.

DHFS is required to promulgate rules that provide the qualifications for persons who conduct these evaluations. Currently, these rules require that the person conducting an evaluation be either: (a) a licensed psychologist; or (b) a psychiatrist, which is defined as a physician licensed to practice medicine and surgery who has completed three years of residency training in psychiatry in a program approved by the Accreditation Council for Graduate Medical Education and is either certified or eligible for certification by the American Board of Psychiatry and Neurology.

If the subject of a petition claims or appears to be indigent, the court must, prior to a probable cause hearing, refer the person to the authority for indigency determinations and, if applicable, the appointment of counsel.

**Trials.** A trial to determine whether a person is an SVP must begin no later than 45 days after the

date of the probable cause hearing. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party, or the stipulation of the parties. In practice, continuances are almost always requested and granted to provide sufficient time for trial preparation.

At the trial, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person. The person who is subject to the petition, the person's attorney, DOJ, or the DA may request that the trial be to a jury of 12, and must make this request within 10 days after the probable cause hearing. If no request is made, the trial is to the court. A request for a jury trial may be withdrawn if the two persons who did not make the request consent to the withdrawal.

At the trial, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt. If the state alleges that the sexually violent offense or act was sexually motivated, the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

Evidence that the person was convicted for, or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

If a court or jury determines that the person is an SVP, the court must enter a judgment on the finding and commit the individual as an SVP. If the court or jury is not satisfied beyond a reasonable doubt that the person is an SVP, the court must dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

**Commitment.** If, after a trial, a person is determined to be an SVP, the court must order the person to be committed to the custody of DHFS for

control, care and treatment, until the person is no longer an SVP. Any commitment order must specify that the person be placed in institutional care.

**DNA Specimens.** The court must require each person who is committed as an SVP to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid (DNA) analysis for use in criminal and delinquency actions and proceedings.

**Institutional Care.** DHFS must place a person committed as an SVP at a secure mental health facility (SRSTC), WRC, or a secure mental health unit or facility provided by the Department of Corrections (DOC). The provision authorizing DHFS to contract with DOC for the provision of a secure mental health unit or facility was created in the original Chapter 980 legislation, and was intended to establish a potential alternative transitional housing option until DHFS had its own facility space for the program. However, this option was never used.

In addition, DHFS may place a female who is committed as an SVP at Mendota Mental Health Institute, the Winnebago Mental Health Institute near the City of Oshkosh, or a privately operated residential facility that is under contract with DHFS.

**Periodic Reexaminations.** Unless a person committed as an SVP has been discharged, DHFS must conduct an examination of his or her mental condition within six months after an initial commitment and again thereafter at least once each 12 months to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or be discharged. These reexaminations are completed by psychologists in the SRSTC Evaluation Unit. The person who has been committed may retain or seek to have the court appoint an examiner for this purpose. The examiner is required to prepare a written report of the examination no later than 30 days after the date



of the examination, and must place a copy of the report in the person's medical records and provide a copy of the report to the court that committed the person. The court that committed the person may, at any time, order a reexamination of the individual during the commitment period.

In addition to the reexamination, DHFS annually submits to the court a treatment progress report on each patient. This report documents the treatment issues associated with the patient, details the patient's status in treatment, and discusses future treatment needs.

**Supervised Release.** A person committed as an SVP may petition the committing court to modify its order by authorizing supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least six months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The Director of the facility in which the individual is placed may file a petition for supervised release on the person's behalf at any time.

Within 20 days after receiving a petition, the court must appoint one or more examiners with specialized knowledge determined by the court to be appropriate to examine the person and furnish a written report of the examination to the court within 30 days after appointment. The examiners must have reasonable access to the person to conduct the examinations, and to the person's patient health records. If an examiner believes the person is appropriate for supervised release, the examiner must report on the type of treatment and service that the person may need while in the community on supervised release. Counties are responsible for the costs of court-appointed examiners.

The court, without a jury, must hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the petitioner waives this time limit. The costs of these proceedings are paid in the same manner as

costs for other involuntary commitment proceedings.

The court must grant the petition unless the state proves by clear and convincing evidence one of the following: (a) that it is still more likely than not that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) that the person has not demonstrated significant progress in his or her treatment or the person has refused treatment. In making the decision, the court may consider, among other things:

- The nature and circumstances of the behavior that was the basis of the allegation in the original commitment petition;
- The person's mental history and present mental condition;
- Where the person will live;
- How the person will support himself or herself; and
- What arrangements are available to ensure that the person has access to, and will participate in, necessary treatment, including pharmacological treatment using an antiandrogen if the person is a serious child sex offender.

If the court finds that the person is appropriate for supervised release, DHFS must make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence. DHFS and that county must prepare a plan that identifies the treatment services, if any, that the person will receive in the community, and that addresses the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment.

In developing a plan for the person's residency,

DHFS must consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of DOC, and regarding to whom a sex offender notification bulletin has been issued. If the person is a serious child sex offender, the plan must address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

DHFS may contract with a county, a public agency, or private agency to provide the treatment and services identified in the plan. The plan must specify who will be responsible for providing the treatment and services identified in the plan. The plan must be presented to the court for its approval within 60 days after the court's finding that the person is appropriate for supervised release, unless DHFS, the county department and person to be released request additional time to develop the plan. If the county department declines to prepare a plan, DHFS may arrange for another county to prepare the plan if the county agrees to prepare the plan and the person will be living in that county. If DHFS is unable to arrange for another county to prepare a plan, the court must designate a county department to prepare the plan, order that county to prepare the plan, and place that person on supervised release in the county. However, a court may not so designate a county department in any county where there is a facility in which persons committed to institutional care as SVPs are placed unless that county is also the person's county of residence.

An order for supervised release places the person in the custody and control of DHFS. DHFS must arrange for the control, 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. A person on supervised release is subject to the conditions set by the court and to DHFS rules.

Before the court places a person on supervised release, the court must notify the municipal police

department and county sheriff for the municipality and county in which the person will be residing, unless these law enforcement agencies submit to the court a written statement waiving the right to be notified. In addition, further detailed notice to local law enforcement is provided by DHFS through the Special Bulletin Notice requirements under s. 301.46(2m) of the statutes.

**Revocation of Supervised Release.** If DHFS alleges that a released person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under rules promulgated by DHFS. DHFS must submit, within 72 hours of the detention (excluding Saturdays, Sundays and legal holidays), a statement showing probable cause of the detention and petition to revoke the order for supervised release to the committing court and the regional office of the State Public Defender responsible for the county where the committing court is located. The court must hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person.

The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked. If the court makes that determination, it may revoke the order for supervised release and order that the released person be placed in an appropriate institution until the person is discharged from the commitment, or until the person is again placed on supervised release.

**Discharges.** There are two procedures under which an individual who has been committed as an SVP may be discharged -- one that is used if the DHFS Secretary determines an individual is no longer an SVP, and one that is used if the committed individual petitions the court without the DHFS Secretary's approval.

If the DHFS Secretary determines at any time

that a person committed under these procedures is no longer an SVP, the Secretary must authorize the person to petition the committing court for discharge. The person may then file the petition and serve a copy of the petition upon DOJ or the DA's office that filed the commitment petition, whichever is applicable. The court must order a hearing to be held within 45 days after the date the court receives the petition.

At the hearing, the DOJ or DA, whichever filed the original petition, represents the state and has the right to have the petitioner examined by an expert or professional person of the DOJ's or DA's choice. The hearing is held before the court without a jury. The state has the burden of providing by clear and convincing evidence that the petitioner is still an SVP. The court may then either discharge the individual from the custody of DHFS or, if the court is satisfied that the state has met its burden of proof that the individual is still an SVP, it may determine whether to modify the petitioner's existing commitment order by authorizing supervised release.

If the individual petitions the court for discharge without the DHFS Secretary's approval, the court sets a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still an SVP. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer an SVP, the court then sets a hearing on the issue. At the hearing, the committed person is entitled to be present and to all the rights of someone who is subject to a commitment petition, as described previously in this paper. At the hearing, the DOJ or DA, whichever filed the original petition, represents the state. The state has the burden of proving, by clear and convincing evidence, that the committed person is

still an SVP. The court may then either discharge the individual from the custody of DHFS or, if the court is satisfied that the state has met its burden of proof that the individual is still an SVP, it may determine whether to modify the petitioner's existing commitment order by authorizing supervised release.

In addition to the procedures relating to petitions for discharges described above, a committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition for discharge without the DHFS Secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still an SVP, then the court must deny any subsequent petition without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court must set a probable cause hearing and a discharge hearing, if appropriate.

#### **Reversal, Vacation or Setting Aside of Judgment Relating to a Sexually Violent Offense.**

If, at any time after a person is committed as an SVP, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was the basis for the allegation made in the original commitment petition, the committed person may bring a motion for post commitment relief in that court that committed the person. The court must proceed on the motion for post commitment relief in one of two ways.

If the sexually violent offense was the sole basis for the allegation under the original commitment petition and there are no other judgments relating to a sexually violent offense committed by the person, the court must reverse, set aside, or vacate the judgment that the individual was an SVP, vacate the commitment order, and discharge the person from the custody or supervision of DHFS.

If the sexually violent offense was the sole basis for the allegation under the original commitment petition, but there are other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation in the original commitment petition, the court must determine whether to grant the person a new commitment trial because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

**Notice Concerning Supervised Release or Discharge.** If a court places a person under supervised release or discharges the person, DHFS must make a reasonable attempt to notify: (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; and (c) the victim's parent or legal guardian, if the victim is younger than 18 years old. In addition, DHFS must notify DOC. The notice must include the name of the SVP and the date the person is placed on supervised release or discharged. DHFS must also prepare cards for the individuals described above to send to DHFS. These cards have space for individuals to provide their names and addresses, the name of the person committed as an SVP, and any other information DHFS determines is necessary. DHFS must distribute these cards, without charge, to DOJ or DAs, which must provide the cards, without cost, to the specified individuals. Individuals may then send completed cards to DHFS. All records or portions of records of DHFS that relate to mailing addresses of these individuals are not subject to inspection or copying, except as needed to comply with a request by DOC for victim notification purposes.

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### **Program Implementation**

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In determining whether to recommend that

DOJ petition for commitment on a sex offender nearing his release date, DOC uses a two-stage review process. The first review is completed by the End of Confinement Review Board, which is composed of DOC employees who have received training on risk assessment for sex offenders. The Board reviews the case of each sex offender scheduled for release from DOC (usually 12 months prior to the release date). If the Board determines the case does not meet the criteria for commitment under Chapter 980, the case is cleared and commitment is no longer pursued. If a case is referred for further review, a special purpose evaluation (SPE) is completed by a DOC psychologist. This evaluation helps officials determine whether the case should be referred for commitment. If commitment is sought, the SPE is typically used by the prosecution to show probable cause, and is often used during the commitment trial by the prosecution.

Initially, all individuals who are committed as SVPs are admitted as patients to the WRC for assessment and orientation. As part of the assessment, staff attempt to determine a mental health diagnosis and measure the patient's cognitive function level (intelligence) and psychopathy. After the patient completes this phase and consents to treatment, the patient is transferred to the SRSTC.

Patients who do not agree to participate in treatment typically remain at WRC and are considered to have "pre-treatment" status. DHFS staff continue to encourage these patients to engage in treatment. Individuals who initially agree to treatment but later refuse to sign consent for treatment, or behave in a way that is incompatible with treatment, may revert to pre-treatment status. There are currently 59 staffed beds that are available for individuals who are detained or committed as SVPs at WRC.

**Treatment Programs.** There are four treatment units at SRSTC: (1) an initial unit, which serves patients in the earliest stages of treatment (including pre-treatment), and has the highest level of security of all the treatment units and places the most

restrictions on patient behaviors; (2) an intermediate treatment unit, which offers patients more opportunities and fewer restrictions than the initial unit; (3) an advanced treatment unit, which offers more opportunities and fewer restrictions than the intermediate treatment unit; and (4) a skilled care unit, which serves patients who require nursing care.

SRSTC currently offers five separate treatment programs -- the conventional program, the corrective thinking program, the COMPASS program, treatment for mentally ill patients, and treatment for patients who refuse polygraph or other required assessments.

The conventional treatment program employs common sex offender treatment interventions. This treatment begins with the development and improvement of responsible thinking skills. This includes improving patients' abilities to solve problems, accept responsibility, control impulses, and develop interpersonal skills. The conventional program encourages patients to disclose their histories, including offenses, in group settings, as well as to submit to polygraph tests. The principal focus of the conventional program is intended to enable patients to avoid re-offending by: (a) undermining the patient's attitudes and beliefs that, to the patient, justified the offense; (b) identifying how much the patient has lost due to the offending behavior; (c) enhancing empathy for the victims; (d) increasing the patient's awareness of risk factors that underlie offending; and (e) developing skills to enable the patient to avoid offending in the future.

The conventional program requires patients to participate in polygraph testing, penile plethysmograph testing, and to complete assigned homework. Later conventional program treatment provides patients with opportunities for further work in several areas and to apply attitudes, skills and strategies they learned in the previous treatment. An extended program is available for patients who have completed the other components of the conventional program. The extended program focuses

on distorted thinking, attitudes and skills necessary to develop and maintain emotionally intimate relationships, management of emotions, and management of offense-related sexual fantasies.

Patients who have significant psychopathic traits are placed in the corrective thinking program. Psychopathy is characterized by several traits, including manipulative, impulsive, and anti-social behavior by individuals who lack remorse, empathy, and do not accept responsibility for their actions. These traits present treatment challenges that require different approaches. The corrective thinking program has two components -- the first focuses on irresponsible thinking patterns and behaviors, the second on sexual deviance and sex-offending histories and behaviors.

The COMPASS (choices and opportunities for meaningful personal achievement in a supportive setting) program is targeted for cognitively impaired patients and others who cannot function adequately in the conventional treatment program. This program uses simplified methods that are intended to improve patients' problem solving skills, interpersonal skills, ability to manage emotions, and motivation to avoid re-offending.

A fourth program provides treatment specifically targeted to patients with psychotic disorders. Patients in this program may participate in the other treatment tracks, or receive individual treatment, which may include additional psychiatric services and topics such as medication management.

The fifth program is targeted to patients who refuse to take polygraph or other required assessments. Under this program, patients receive primarily individual treatment, and are encouraged to comply with assessment requirements. Patients in this program may be expected to participate in certain groups from other treatment programs.

Each of these programs uses several types of treatment methods, including individual treat-

ment, education, therapeutic recreation, vocational and occupational therapy, pharmacological treatment, and substance abuse treatment.

**Security.** As its name implies, security is a key feature of SRSTC. DHFS has developed administrative rules (HFS 95) that define the Department's authority regarding the custody and control of persons committed as SVPs. Under these rules, the stated primary security objectives of DHFS are to protect the public, staff and patients and to afford patients the opportunity to participate in treatment and activities in a safe setting. These rules apply to the WRC, as well as to SRSTC.

Generally, the rules require the directors of these facilities to adopt written policies and procedures to prevent escapes, and establish a systematic progression of force based on a perceived level of threat to guide staff in the use of force in a disturbance or emergency, to prevent escapes, and to pursue and capture escapees. These rules describe circumstances where staff at these facilities may use lethal force and less than lethal force, and limitations on staff's use of firearms and other incapacitating devices. In addition, the directors of these facilities are required to adopt written policies and procedures to ensure that staff who may be called upon to use force are properly trained.

Finally, the rules provide the directors discretion to allow a patient to leave the grounds of a facility under staff escort for a purpose that is consistent with the therapeutic interests of the patient and the security interests of the community, including: (a) to visit a dying or deceased relative under security conditions imposed by the facility director; (b) to receive medically necessary health services that are not available at the facility; and (c) to engage in pre-placement activities when the patient has a proposed or approved supervised release plan.

In addition, due to security issues, the statutes

make several distinctions between the rights of individuals who are detained or committed as SVPs and other patients who are admitted to treatment facilities, either on a voluntary or involuntary basis. For example, an officer or staff member at a facility where an SVP is detained or committed may delay delivery of the mail to the patient for a reasonable period of time to verify whether the person named as the sender actually sent the mail, may open the mail and inspect it for contraband, or may, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender, along with notice of the facility mail policy. The director may authorize a member of the facility's treatment staff to read the mail if the director or the director's designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights or safety of others. 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 (although DHFS may not film a patient in a bedroom or bathroom without the patient's consent). Individuals committed as SVPs do not have the same rights as patients as other civilly committed patients at the two state mental health institutes.

SRSTC is more secure than Mendota Mental Health Institute and the Winnebago Mental Health Institute. The facility's outer perimeter is secured in a manner that is consistent with a maximum security prison. The facility is completely surrounded with an electrified, razor ribbon fence, and officers monitor activities near the fence 24 hours per day, both by armed perimeter patrol and video surveillance.

**Supervised Release.** If DHFS wishes the committing court to consider supervised release for a patient, the agency submits a report to the court. As part of the court proceeding, SRSTC Evaluation

Unit psychologists regularly and treatment staff occasionally provide testimony regarding the individual's treatment progress and other factors the court may consider.

As previously indicated, a court must approve the petition unless the state proves, by clear and convincing evidence, either that: (a) it is likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) the person has not demonstrated significant progress in his or her treatment or the person has refused treatment. Consequently, the court cannot deny a petition for supervised release solely due to the Department's inability to find an appropriate placement for the individual, although the court may consider where the person will live and support himself or herself in making this decision.

If the court approves the petition, it orders DHFS and the individual's county of residence to develop a supervised release plan within 60 days, which is submitted to the court for its approval. These plans are developed by "community teams" that include the patient, a DHFS staff person who specializes in the supervised release program, a probation and parole agent, a case manager, treatment providers, program monitors, and transporters. The teams may also include law enforcement officials, family members, employers, landlords, sponsors and other parties. The program's oversight is provided by the Director and Deputy Director of SRSTC, and the directors of SRSTC's community support, treatment and security programs.

Each plan describes services the individual will receive from contracted entities. Currently, DHFS contracts with DOC to provide supervision through DOC probation and parole agents. DOC staff may use electronic monitoring, global positioning systems and sobriety services to provide this supervision. As part of this supervision, DOC agents conduct scheduled and unscheduled monitoring checks, polygraph examinations, and escorted transportation for supervised activities.

In addition, DHFS contracts for case management services with Lutheran Social Services (which also subcontracts with other providers for individualized services), and ATTIC Correctional Services, Inc. for certain monitoring, chaperone and transportation services. Most individuals on supervised release live in apartments or homes -- very few live in group homes. Individuals on supervised release continue to participate in group or individual treatment and programming. They may also receive assistance in obtaining employment, activities of daily living, and furthering their education. Under the terms of the current contract, DHFS is responsible for reimbursing ATTIC Correctional Services, Inc. for the actual costs of services that firm provides to individuals on supervised release.

2001 Wisconsin Act 16 provided \$1,295,500 in general fund supported borrowing to construct a transitional housing facility in Milwaukee County that would serve SVPs who are on supervised release. To date, DHFS has expended approximately \$100,000 of these funds to support preliminary activities relating to this project, but, due to community opposition, DHFS has not found a suitable site for the facility.

2003 Wisconsin Act 187 included a provision that created a committee to assist the state in determining the location for the transitional housing facility. The act specified that the committee would consist of 15 members who are residents of Milwaukee County.

Act 187 required the committee to hold public hearings in Milwaukee County regarding the selection of a location of the facility. The committee is directed to consider all of the following factors when determining the criteria for the location of the facility or when determining specific locations for the facility: (a) community safety; (b) proximity to sensitive locations; (c) ability to make the facility secure; (d) accessibility to treatment for the persons living in the facility; (e) payments that may be made in lieu of property taxes; (f) availability of tax incentives to a community to locate the facility

within its jurisdiction; and (g) proximity to the residence of other persons on supervised release, to the residence of persons who are in the custody of DOC and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies, to any facility for children of whom the Committee is aware, and to any residential subdivision.

The committee is required to submit a report to DOC and DHFS recommending at least three specific locations that the committee determines are appropriate for the placement of the facility. Each of the locations must be suitable for the development of a facility that can house at least the number of persons DHFS estimates will be placed in Milwaukee County on supervised release at any one time between June 1, 2004, and February 1, 2009. (The DHFS report estimates that a transitional housing facility with 10 to 12 beds will be sufficient to meet the transitional housing needs of anticipated supervised release in Milwaukee County.) When considering locations, the committee is directed to make a reasonable effort to reach and to maximize consensus among its members.

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### **Program Data**

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This section provides annual information on client populations and the costs of providing services to the individuals who have been committed as SVPs.

#### **Client Data**

*DOC Review, Evaluations and Referrals.* In 2003-04, DOC staff screened 1,370 cases of individuals who could meet the statutory requirements for commitment under Chapter 980, based on the offenses they had committed. In that year, the End of Confinement Review Board reviewed 114 cases, the Board referred 60 cases for special purpose

evaluations, and 117 special purpose evaluations were completed. The Board referred 41 cases to DOJ to consider for commitment proceedings. It is important to note that the figures for DOC staff evaluations and referrals are not all derived from the cases that DOC staff screened in 2003-04 -- some of the evaluations and referrals were completed from cases screened before 2003-04. In other words, these data do not track the outcomes of the cases screened, reviewed or evaluated within the year.

Since the beginning of the program through August, 2004, DOC staff had screened 7,678 cases of individuals who could meet the statutory requirements for commitment under Chapter 980, based on the offenses they had committed. The End of Confinement Review Board had reviewed 2,487 cases, and had referred 1,175 cases for special purpose evaluations. DOC has referred 432 cases to DOJ to consider for commitment proceedings.

*Inpatient SVPs and SVPs on Supervised Release -- Average Monthly Populations.* Table 1 identifies the average monthly populations of inpatient SVPs at the WRC and SRSTC, as well as SVPs on supervised release in fiscal years 2000-01 (the year SRSTC began operations) thru 2003-04.

#### **Program Costs**

*Total State Institutional Costs.* Table 2 identifies, for the 2000-01 thru 2003-04 fiscal years, the total costs of care for individuals who are committed as SVPs and served at SRSTC and the care for the SVP-related populations at WRC. The annual cost information for WRC are estimates that are derived by multiplying the total cost of operating WRC with the percentage of total patient days in the fiscal year that are attributable to the SVP population.

*Supervised Release Costs.* Table 3 identifies, for the 2001-02 thru 2003-04 fiscal years, the cost of providing services to individuals who are on super-



**Table 1: SVP-Related Clients -- Average Monthly Populations (Fiscal Years 2000-01 thru 2003-04)**

	2000-01	2001-02	2002-03	2003-04
<b>Inpatient Populations</b>				
<b>Wisconsin Resource Center</b>				
Pre-Commitment	49.7	27.3	28.9	36.3
Commitment	<u>178.1</u>	<u>45.8</u>	<u>26.5</u>	<u>21.5</u>
Subtotal	227.8	73.1	55.4	57.8
<b>Sand Ridge Secure Treatment Center</b>				
Pre-Commitment	0.0	9.3	10.8	7.9
Commitment	<u>6.0</u>	<u>161.0</u>	<u>187.9</u>	<u>203.6</u>
Subtotal	6.0	170.3	198.7	211.5
<b>Both Institutions</b>				
Pre-Commitment	49.7	36.6	39.7	44.2
Commitment	<u>184.1</u>	<u>206.8</u>	<u>214.4</u>	<u>225.1</u>
Subtotal	233.8	243.4	254.1	269.3
<b>Individuals on Supervised Release</b>				
Awaiting Placement	3.6	3.9	5.9	4.9
Community Supervised Release	<u>8.1</u>	<u>9.7</u>	<u>15.1</u>	<u>13.4</u>
Subtotal	11.7	13.6	21.0	18.3
<b>Supervised Released Clients in Custody</b>				
	0.4	0.6	0.8	2.7

vised release, by vendor. The table shows that, in these years, these costs were primarily paid through contracts with ATTIC Correctional Services, which provides a wide range of services to SVP clients, including housing, monitoring, and case management services, and DOC, which provides monitoring services to SVPs and individuals who are on conditional release (individuals who were committed to the custody of DHFS because they have been found by a court to be not guilty by reason of mental disease or defect). Consequently, the cost of monitoring activities provided by DOC for SVPs cannot be separately identified.

**SRSTC Organizational Chart**

The attachment to this paper shows the organizational chart for the Sand Ridge Secure Treatment Center as of July 1, 2004.

**Table 2: Expenditures for State Institutional Costs of Services to SVPs (2000-01 thru 2003-04)**

	2000-01	2001-02	2002-03	2003-04
Sand Ridge Secure Treatment Center Operations	\$3,617,000	\$20,465,000	\$24,457,200	\$25,168,300
Fuel and Repair and Maintenance	<u>210,400</u>	<u>545,200</u>	<u>650,000</u>	<u>635,700</u>
Subtotal	\$3,827,400	\$21,010,500	\$25,108,100	\$25,804,000
Wisconsin Resource Center*	\$17,626,400	\$5,925,200	\$4,589,600	\$4,567,600
Total	\$21,453,800	\$26,935,700	\$29,697,700	\$30,371,600

\*Estimated. Based on WRC's total costs, multiplied by the percentage of the facility's total population that are SVPs or detained prior to their commitment as SVPs.

**Table 3: Expenditures for Supervised Release Services, by Vendor (2000-01 thru 2003-04)**

Vendor	Type of Service	2000-01	2001-02	2002-03	2003-04
ATTIC Correctional Services	Comprehensive Services (Housing, Monitoring, Transportation, Case Management and Other Services)	\$70,600	\$208,700	\$453,600	\$516,500
Rock Valley Community Corrections Abilities, Incorporated	Residential Facility	0	25,800	87,000	75,600
Other Private Vendors	Residential Facility	69,000	92,100	65,400	60,300
	Various	<u>45,100</u>	<u>48,400</u>	<u>59,300</u>	<u>95,200</u>
Subtotal -- Supervised Release Only		\$184,700	\$375,000	\$665,300	\$747,600
Department of Corrections (Includes Services for Individuals on Supervised Release and Conditional Release)	Supervision	\$480,300	\$427,600	\$425,700	\$550,500
Total		\$665,000	\$802,600	\$1,091,000	\$1,298,100

**ATTACHMENT**

**Department of Health and Family Services -- Division of Disability and Elder Services  
Sand Ridge Secure Treatment Center --Clinical and Support Services**

