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Civil Commitment of Sexually Violent Persons

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1993 Wisconsin Act 479 established procedures for the involuntary civil commitment of individuals found to be sexually violent persons (SVPs). These procedures, which are described in Chapter 980 of the statutes, became effective in June, 1994. In the years that have followed, the Wisconsin Supreme Court, in cases such as State v. Post, 197 Wisconsin Reports 2d 279 (1995), State v. Carpenter, 197 Wisconsin Reports 2d 252 (1995), and State v. Laxton, 254 Wisconsin Reports 2d 185 (2002), has consistently rejected legal challenges to the constitutionality of Chapter 980's civil commitment process. As of June 30, 2008, more than 380 people were actively committed as SVPs in Wisconsin. Most were inpatient commitments at the Sand Ridge Secure Treatment Center (SRSTC) in Mauston or the Wisconsin Resource Center (WRC) near Oshkosh, while a much smaller number (16) were in community supervised release.

This paper provides an overview of the process by which individuals are committed as SVPs, placed on supervised release, and discharged. In addition, the paper describes the responsibilities the Department of Health Services (DHS) has relating to this program, including the services DHS provides to SVPs. Finally, the paper provides information on SVP populations and the costs of providing services to individuals who have been committed as SVPs.

Statutory Commitment Process

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 they will engage in one or more acts of sexual violence.

An "act of sexual violence" is conduct that constitutes the commission of a sexually violent offense. Chapter 980 lists the crimes that are deemed to be sexually violent offenses. The list includes first, second, and third degree sexual assault, first degree sexual assault of a child under age 13, second degree sexual assault of a child under age 16, engaging in repeated acts of sexual assault of the same child, incest with a child, child enticement, and sexual assault of a child placed in substitute care. The statute also provides that any offense that prior to June 2, 1994, was a crime under Wisconsin law, and that is comparable to any of these crimes, is also a sexually violent offense.

In addition, the statutory definition of a sexually violent offense includes a number of other crimes if the crime is determined to have been "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 first degree intentional homicide, first degree reckless homicide, felony murder, second degree intentional homicide, second degree reckless homicide, battery, substantial battery or aggravated battery (including to an unborn child), false imprisonment, taking hostages, kidnapping, stalking, burglary, robbery, and the physical abuse of a child, as well as any offense that prior to June 2, 1994, was a crime under Wisconsin law, is comparable to any crime listed directly above, and

is determined to have been sexually motivated.

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

Notice to DOJ and DAs Regarding Persons Who May Be SVPs. The first step in the SVP civil commitment process is initiated by the state agency with jurisdiction over the person in question. For these purposes, the "agency with jurisdiction" means the agency with authority or duty to release or discharge the person. In most cases, this is the Department of Corrections (DOC).

Chapter 980 states that if an agency with jurisdiction has control or custody of a person who may meet the criteria for commitment as an SVP, it must inform each appropriate district attorney (DA) and the Department of Justice (DOJ) regarding the person as soon as possible beginning 90 days before the person's: (a) anticipated discharge or release, on parole, extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for a sexually violent offense, from a continuous term of incarceration, any part of which was imposed for a sexually violent offense, or from a placement in a prison, any part of which was required as a result of conviction for a sexually violent offense; (b) anticipated release from a juvenile correctional facility or a secured residential care center for children and youth, if the person was placed in the facility as a result of being adjudicated delinquent on the basis of a sexually violent offense; (c) anticipated release from conditional release, anticipated termination of a commitment order, or anticipated 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) anticipated release on parole or discharge if the person was committed under ch. 975 (a commitment process for certain sex offenders that was used prior to July 1, 1980) for a sexually violent offense.

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

Petitions for Commitment. If the agency requests that a petition to commit a person as an SVP be filed, either DOJ or the DA may file the petition. The petition may be filed in the circuit court for one of the following: (a) the county in which the person was convicted, adjudicated delinquent for, or found not guilty by reason of mental disease or defect of a sexually violent offense; (b) the county in which the person will reside or be placed following the person's discharge or release; or (c) the county in which the person is in custody under a sentence, a placement to a secured correctional facility, a placement to a juvenile correctional facility, a residential care center for children and youth, or a commitment order. Notwithstanding the above, if DOJ files the petition, it may do so in the Circuit Court for Dane County.

Any petition for SVP commitment must be filed before the person is released or discharged, and must allege that all of the following apply:

- The person has been convicted, found delinquent, or found not guilty because of mental disease or defect of a sexually violent offense.

- 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.

The 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 for the county in which the SVP petition is filed must give the person who is the subject of the petition reasonable notice of the time and place of each hearing, and may designate additional persons to receive these notices. At any hearing conducted under Chapter 980, unless otherwise stated, 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), the right to remain silent, the right to present and cross-examine witnesses, and the right to have the hearing recorded by a court reporter.

Examinations. If the person subject to the SVP petition denies the facts alleged 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 at any other proceeding under Chapter 980 at which testimony is authorized. Any such professional who is expected to be called as a witness by any party or by the court at any Chapter 980 proceeding must submit a written report of their examination to all parties and the court at least ten days before the proceeding.

Whenever the subject of an SVP petition, or a person who has been committed as an SVP is required to submit to an examination of his or her mental condition, he or she may retain a licensed physician, licensed psychologist, or other mental health professional to perform an examination. In such event, 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, patient health care records, past and present juvenile records, and correctional records, including presentence investigation reports. If the person is indigent, the court must, at the request of the person, appoint a qualified and available licensed physician, licensed psychologist, or other mental health professional to perform an examination and participate in the trial or other proceeding on the person's behalf. Upon the order of the court, the cost of providing a court-appointed expert or professional for an indigent person must be paid by the county.

Detention and Probable Cause Hearings. Once a petition for commitment is filed, the court reviews the petition to determine whether the alleged SVP should be detained in advance of the hearing. The court can order the person detained only if it determines there is probable cause to believe the person is eligible for commitment as an SVP. Any detention order remains in effect until the petition is dismissed 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 the person named in the petition is an SVP within 30 days after the filing of the petition, unless the court extends that time. If the person named in the petition is in custody under a sentence, disposition order, or commitment and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, the probable cause hearing must be held no later than 10 days after the person's scheduled release or discharge date, unless that time is extended by the court. 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.

If, after the hearing, the court determines there is probable cause to believe the person is an SVP, 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 by DHS as to whether the person is an SVP. These evaluations are typically performed by the

SRSTC Evaluation Unit, a group of DHS psychologists housed on the grounds of the Mendota Mental Health Institute in the City of Madison.

If the court determines after a hearing that probable cause does not exist to believe the person is an SVP, the court must dismiss the petition.

Trials. A trial to determine whether a person is an SVP must begin no later than 90 days after the date of the probable cause hearing, unless the court grants a continuance. The person who is the subject of the SVP petition, their attorney, or the petitioner may request that a trial under this section be to a jury of 12. If no such request is made, the trial must be to the court, unless the court on its own motion requires the trial be to a jury of 12. A jury verdict under this section is not valid unless it is unanimous.

A person subject to a Chapter 980 proceeding may submit a written motion, supported by affidavit, to change the place of a jury trial on grounds an impartial trial cannot be had in the county where the trial is set to be held. If the court agrees, it must order that the trial be held in any county where an impartial trial can be held. The judge who orders the change in place of the trial must preside at the trial. Alternatively, a court that determines a fair trial cannot be had in the original county can, in some instances, proceed with a trial in the original county with a jury selected in a county where an impartial jury can be found.

At the trial, the state has the burden of proving beyond a reasonable doubt that the person who is the subject of the petition is an SVP. If the state alleges that the sexually violent offense or act that forms the basis for the petition was sexually motivated, the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

Discovery, Inspection, and Other Procedural Matters. Effective August 1, 2006, 2005 Wisconsin Act 434 amended Chapter 980 by adding a number of provisions regarding the discovery and use of evidence in Chapter 980 proceedings. For example, the prosecuting attorney, upon demand, must permit the person subject to Chapter 980 proceedings, or his or her attorney, to inspect and copy all of the following material if it is within the possession, custody, or control of the state:

a. Any written or recorded statement made by the person subject to a Chapter 980 proceeding concerning the allegations in the SVP commitment petition, or concerning any other matters at issue in the trial or proceeding, and the names of witnesses to the written statements of the person subject to this chapter;

b. A written summary of all oral statements of the person subject to a Chapter 980 proceeding that the prosecuting attorney plans to use at the trial or proceeding and the names of witnesses to those oral statements;

c. Evidence obtained by a person acting under the color of law to intercept a wire, electronic or oral communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception;

d. A copy of the criminal record of the person subject to a Chapter 980 proceeding;

e. A list of all witnesses, except rebuttal witnesses or witnesses called for impeachment only, whom the prosecuting attorney intends to call at the trial or proceeding, together with their addresses, their criminal records, and any relevant written or recorded statement of all such witnesses, including any videotaped oral statement of a child as provided in s. 908.08, and any reports of an examination prepared by a licensed physician, licensed psychologist, or other mental health professional, as provided in Chapter 980;

f. The results of any physical or mental examination or any scientific or psychological test,

instrument, experiment, or comparison that the prosecuting attorney intends to offer in evidence at the trial or proceeding, and any raw data that were collected, used, or considered in any manner as part of the examination, test, instrument, experiment, or comparison;

g. Any physical or documentary evidence the prosecuting attorney intends to offer in evidence at the trial or proceeding; and

h Any exculpatory evidence.

With some exceptions, the person subject to the Chapter 980 petition, or his or her attorney, must permit the prosecuting attorney to inspect and copy a comparable list of materials. If either the prosecuting attorney or the person subject to the Chapter 980 proceeding 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 things, ask the court to order the testing or analysis of any item of evidence or raw data that is intended to be introduced at trial, and may seek a protective order that denies, restricts, or defers the listing of witnesses otherwise required under Chapter 980. If the prosecuting attorney or the attorney for the person subject to the Chapter 980 proceeding 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, in which event 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 subject to a Chapter 980 proceeding refused to participate in an examination of his or her mental condition that was being conducted for purposes of determining whether to file a petition under the statute. In addition, any licensed physician, licensed psychologist, or other mental health professional may indicate in any written report prepared in conjunction with an examination under Chapter 980 that the person he or she examined refused to participate in the examination.

Commitment. If, after a trial, the court or jury determines the person is an SVP, the court must enter a judgment on the finding and commit the person as an SVP. In that event, the court must order the person committed to the custody of DHS 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.

If, after a trial, 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.

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. 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 the Department of Corrections (DOC). To date, all SVPs have been committed either to SRSTC or WRC. In addition, DHS may place a female 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 DHS. To date, no female has been committed under Chapter 980.

Periodic Reexaminations. Unless a person committed as an SVP has been discharged, DHS

must appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after an initial commitment and at least once each 12 months thereafter to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. These reexaminations are completed by psychologists in the SRSTC Evaluation Unit. At the time of this reexamination, the person who has been committed may also retain or seek to have the court appoint an examiner, but the court is not required to appoint such an examiner if supervised release or discharge is supported by the examination conducted by the examiner appointed by DHS. Examiners are required to 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.

At the time of reexamination, the treating professional must also prepare a treatment report that considers the following:

- The specific factors associated with the person's risk for committing another sexually violent offense;

- Whether the person has made significant progress in treatment or has refused treatment;

- The ongoing treatment needs of the person;

- Any specialized needs or conditions associated with the person that must be considered in future treatments.

DHS must submit an annual report, comprised of 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 DA, if applicable, and to the committed person's attorney.

Patient Petition Process. When DHS provides a copy of the annual report to the committed person, it must also provide the person a standardized petition form for supervised release and a standardized petition form for discharge. Within 30 days after DHS submits its annual report to the court, the committed person, or their attorney, may submit one of the completed petition forms to the court. If a completed petition form is not filed within a timely manner, the person will remain committed without further review by the court.

If the committed person files a timely petition for supervised release or discharge, he or she may use experts or professional persons to support their petition. The DA or DOJ, whichever is applicable, may also use experts or professional persons to support or oppose any such petition.

Supervised Release. A person committed as an SVP may petition the committing court to modify its order by authorizing supervised release if at least 12 months have elapsed since the initial commitment order was entered or at least 12 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 such 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 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

the person may need while in the community on supervised release.

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 court for good cause extends this time limit. The court may not authorize supervised release unless it finds that all the following criteria are met: (1) the person has made significant progress in treatment and the person's progress can be sustained while on supervised release; (2) it is substantially probable that the person will not engage in an act of sexual violence while on supervised release; (3) treatment that meets the person's needs and a qualified provider of the treatment are reasonably available; (4) the person can be reasonably expected to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release imposed by the court or by DHS; and (5) a reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

In making its 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. A decision whether or not to authorize supervised release for a serious child sex offender cannot be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen, or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

If the court finds that all the criteria for supervised release are met, the court must select a county to prepare and submit to DHS, within 60 days, a report identifying prospective residential options for community placement that, among other things, considers the proximity of the potential placement option to the residences of other persons on supervised release and to the residences of persons who are in custody of the DOC and regarding whom a sex offender notification has been issued to law enforcement agencies. The county selected must be the person's county of residence, unless the court has good cause to select a different county. For these purposes, DHS must consider the county of residence to be the county in which the person was physically present with intent to remain in a place of fixed habitation (physical presence being prima facie evidence of such intent) as of the date the person committed the sexually violent offense that is the basis for their commitment. The court must also authorize the petitioner, his or her attorney, the DA, any law enforcement agency in the county of intended placement, and any local governmental unit in that county, to submit prospective residential options for community placement to DHS within 60 days. The court must then authorize DHS to use these reports, or any other residential options identified by DHS, to prepare a supervised release plan that identifies the proposed residence. The plan must address the person's need, if any, 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, as well as the safety needs of the community, it must approve the plan

and determine that supervised release is appropriate. If, however, the court determines the plan does not adequately meet the person's treatment needs or the safety needs of the community, 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 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.

The statutes prohibit DHS from arranging the placement of 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. Within 10 days of imposing a rule, DHS must file with the court any additional rule of supervision not inconsistent with the rules or conditions imposed by the court. If DHS wants to change a rule or condition of supervision imposed by the court, it must obtain the court's approval.

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 DHS through the special bulletin notice requirements under s. 301.46(2m) of the statutes.

Revocation of Supervised Release. If DHS 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, DHS may petition for the revocation of the order granting supervised release or may detain the person. If DHS believes a person on supervised release or awaiting placement on supervised release is 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. If DHS has detained the person, it must file the statement and the petition and provide them to the applicable Office of the State Public Defender within 72 hours after the detention. Pending the revocation hearing, DHS may detain the person in jail or in a secure mental health facility.

The court must hear the petition to revoke supervised release within 30 days, unless the hearing or time deadline is waived by the detained person. The court must make a final decision on the petition within 90 days of the petition. If the court finds, by clear and convincing evidence, that any rule or condition of release has been violated, and the court finds 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, where they must remain until discharged from commitment or placed again under supervised release.

If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked, 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.

Discharge. A committed person can petition the court for discharge at any time. The court must review the petition within 30 days and 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. In so doing, the court must consider current or past reports submitted by DHS, relevant facts in the petition and in the state's written responses, arguments of counsel, and any supporting documentation. If the court determines the petition does not contain facts from which a court or jury may conclude the person does not meet 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 DA or DOJ, whichever filed the original petition, or the petitioner or his or her attorney, may request a trial be to a jury of six. In such case, no verdict is valid or received unless at least five of the jurors agree to it. If the court or jury is satisfied the state has not met its burden of proof, the petitioner must be discharged from the custody of DHS. If the court or jury is satisfied the state has met its burden of proof, the court may proceed to modify the petitioner's existing commitment order by authorizing supervised release.

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 a basis for the allegation made in the original commitment petition, the committed person may bring a motion for post commitment relief in the court that committed the person. If the sexually violent offense in question was the sole basis for the allegation under the original commitment petition and there are no other judgments relating to a sexually violent offense 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 of DHS. 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, DHS 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; or (c) the victim's parent or legal guardian, if the victim is younger than 18 years old. In addition, DHS must notify DOC. The notice must include the name of the SVP and the date the person is placed on supervised release or discharged. DHS must also prepare cards for the individuals described above to send to DHS. 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 DHS determines is necessary. DHS 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 DHS. All records or portions of records of DHS 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.

Program Implementation

The preceding section of this paper outlined the

statutory provisions related to the commitment, release, and discharge of SVPs. The following sections provide additional information concerning the implementation of the SVP statute, including a discussion of the treatment provided to SVPs at SRSTC and WRC, patient population trends, and program cost information.

In determining whether to recommend that DOJ petition for SVP commitment of a person nearing his release date, DOC uses a three-stage review process. 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, 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. 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 DOC psychologist, employed as a member of the forensic evaluation unit, conducts a special purpose evaluation (SPE). 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. DHS uses a similar review process in determining whether to recommend to DOJ individuals who are in DHS custody.

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, most patients are transferred to SRSTC, although for some patients, the early phases of treatment may take place at WRC. Patients who do not agree to participate in treatment typically remain at WRC and are considered to have "pre-treatment" status. DHS staff continues 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.

Residential Units at SRSTC. Currently, there are three different types of residential units at SRSTC: (1) an initial treatment unit that serves patients in the earliest stages of treatment and that has the highest level of security and places the most restrictions on patient behavior; (2) an intermediate treatment unit that offers patients somewhat more opportunities and fewer restrictions on behavior; and (3) an advanced treatment unit that contains patients in the later stages of treatment and that offers more opportunities and fewer restrictions than the intermediate treatment unit. Each unit has a number of housing wings and patients on a particular wing will typically be in the same treatment track and taking part in the same or closely- related phases of treatment. SRSTC also has a skilled care unit that serves patients who require closer observation and nursing care for physical or mental health issues.

Treatment Programs. The SVP treatment program at SRSTC currently consists of four primary treatment tracks: (1) the Conventional Program; (2) the Corrective Thinking Program; (3) the Choices and Opportunities for Meaningful Personal Achievement in a Supportive Setting Program (COMPASS); and (4) the Adapted Corrective Thinking Program. Within each of these primary treatment tracks are defined phases through which patients advance if and when they demonstrate satisfactory progress in the earlier phases. Each patient is assigned to the primary treatment track staff believes matches that patient's treatment needs, capabilities, and limitations. For example, the Conventional Program employs techniques commonly used in modern sex offender treatment that apply to the majority of sexual offenders. The Corrective Thinking Program, on the other hand,

applies to patients that display a relatively high level of anti-social personality traits that make it hard for them to benefit from conventional treatment interventions. The COMPASS Program is targeted at developmentally delayed patients who have difficulty with the pace of concepts taught in the Conventional Program. The Adapted Corrective Thinking Program is similar to the regular Corrective Thinking Program, but adapted to be more accessible to lower functioning patients, a significant number of whom may also have severe mental illnesses.

In addition to these four primary treatment tracks, specialized treatment provisions are made for patients with active psychotic symptoms or other mental illnesses that impair their participation in conventional treatment as well as for patients who refuse the polygraph or other required assessments.

The progressive nature of the SVP treatment tracks employed at SRSTC is illustrated by the structure of the Conventional Program. The Conventional Program has three phases. The first phase, called Responsible Thinking Skills, is divided into three parts: (1) a smarter thinking group; (2) a thinking errors group; and (3) a concurrent applications group. In order to advance from this first phase of the Conventional Program, patients must make clear progress in the following areas: (1) acceptable group behavior; (2) managing criminal thinking errors; (3) use of pro-social problem-solving skills; (4) emotion regulation; (5) interpersonal skills; (6) productive and responsible use of time; (7) openness to change; (8) self-monitoring skills; and (9) expectation of change. If patients successfully demonstrate the necessary progress in these areas, they can progress to the second phase of treatment in the Conventional Program. That second phase consists of two primary treatment groups, Disclosure and Discovery. The Disclosure group focuses on assisting patients to make a full and honest disclosure of their life history and the range and nature of their sexual offending. The Discovery group, which follows the Disclosure group, focuses on using a more detailed examination of the particular offense to discover the main risk factors that contributed to the patient's past offending. The third phase of the Conventional Program also consists of two primary treatment groups, the Development group and the Individualized Release Preparation group. The primary focus of the Development group is on patients identifying the personal changes they wish to make that would enable them to manage the psychological risk factors and barriers that have been problems for them in the past. They also work on conceptualizing positive, healthy forms of functioning they could use in the circumstances in which psychological risk factors and barriers have previously been operative. Once they have conceptualized these goals, patients work on building up the skills and attitudes that would let them live in this healthier way, and on practicing this new way of living in a wider range of circumstances. The Individualized Release Preparation group builds on the work done in the Development group but seeks to provide more highly individualized treatment. Although like earlier parts of the program, it includes group therapy, it also has a major individual therapy component that makes it easier to respond to needs factors that may not have been fully addressed by the standard group therapy program. The Individualized Release Preparation group also involves patients preparing themselves for independent living in the modern world. Polygraph and penile plethysmograph examination, as well as participation in other assessment procedures and careful observations by staff are all parts of the Development and Individualized Release Preparation groups.

With the continued expansion of the SVP population at WRC, there are also two early stage treatment programs offered at this facility: (1) Motivation Assessment Program (MAP) and (2) Moral Reconation Therapy (MRT). MRT, which has been adopted as the first treatment activity in the Chapter 980 program, is a cognitive-behavioral program designed to help individuals reach a more mature level of moral reasoning by developing a positive

and constructive identity. In particular, this program is designed to prepare individuals for addressing the phase one tasks described above and eventually transition into the smarter thinking and thinking error groups. Alternatively, the MRT program also includes two introductory groups designed to maximize an individual's successful participation in SVP treatment programs. The first group, known as the introductory group, is designed to address patients' initial concerns and discuss common behaviors and thought patterns that prevent meaningful participation in SVP treatment programs. The second group, the individualized treatment group, addresses specific attitudes and behaviors that interfere with a patient's participation in treatment and commitment to change.

The MAP program is designed for individuals that have already been in a treatment program, but do not appear motivated to use treatment to achieve meaningful change. In particular, the MAP program tries to provide individuals with specific tasks to stabilize behavior, primarily focusing on the nine tasks discussed earlier as part of phase one of the Conventional Program. The program itself is divided into two parts. The first part works with individualized assignments and modification of behaviors that promote effective treatment participation. The second part involves integrating the individual with other MAP participants to process issues that interfere with treatment. The length of time an individual participates in MAP depends on their effort and development of basic skills that will contribute to future treatment success. However, upon successful completion of MAP individuals are then returned to one of the other primary treatment tracts.

In addition to the primary treatment programs mentioned above, a number of other treatment services are generally available to patients in the SVP treatment program at SRSTC, including individualized treatment, education, therapeutic recreation, vocational and occupational activities, pharmacological treatment, alcohol and other drug abuse assessment and treatment, and polygraph evaluation.

Security. DHS has promulgated administrative rules 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 DHS 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 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.

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 associated with the Chapter 980 population, the state 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 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 DHS may not film a patient in a bedroom or bathroom without the patient's consent unless they are engaged in dangerous or disruptive behavior). 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 significantly more secure than Mendota Mental Health Institute and the Winnebago Mental Health Institute. 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.

Implementation of the Supervised Release Program. As described above, 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, which is submitted to the court for its approval. These plans are developed by "community teams" that include the patient, a DHS 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, DHS contracts with DOC to provide supervision through DOC probation and parole agents. As of July 1, 2007, DOC is required to maintain lifetime tracking, through a global positioning system, of all individuals who are on supervised release and all individuals a court discharges under Chapter 980 (unless the person was on supervised release before being discharged) 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.

Under current law, during the first year of supervised release an individual placed in the community is restricted to their personal residence. Further, these individuals are only permitted to leave their residence for the purpose of employment, religion, or for caring for the individual's basic living needs. All other outings are prohibited during the first year following release. Any time an individual is outside of their personal residence, they are required to be monitored by a DOC escort at all times.

DHS also 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.

Program Data

This section provides information regarding SVP populations and the costs of providing services to those individuals.

Recent Trends in SVP Populations 2003 Wisconsin Act 187 amended Chapter 980's definition of an SVP, effective April 22, 2004, to include persons whose mental disorder makes them "more likely than not" to engage in an act of sexual violence. Prior to that date, Chapter 980 defined an SVP as a person whose mental disorder made them "substantially probable" to engage in acts of sexual violence. In general, the effect of this statutory change has been to increase the rate at which people are referred to DOJ for civil commitment as SVPs and to increase the rate at which people are being committed as SVPs in Wisconsin.

During the first three years following this statutory change (2003-04 through 2005-06), the rate at which DOC referred cases to DOJ increased significantly from an average of 2.9 referrals per month in 2003-04 to 4.3 referrals per month in 2005-06, resulting in a total increase in the SVP population of 77 individuals during this same three year period. While this trend has slowed slightly during the last two fiscal years, the number of referred cases remains high, resulting in continued growth in the state's SVP population. These trends are reflected in Tables 1 and 2. Table 1 summarizes the number of cases DOC referred to DOJ for civil commitment as SVPs during the three-year period, 2005-06 through 2007-08. As Table 1 indicates, the rate at which DOC referred cases to DOJ has decreased from an average of 4.3 referrals per month in 2005-06, to 2.5 referrals per month in 2007-08.

Table 2 summarizes the total SVP populations at WRC and SRSTC during this same three-year period. Table 2 includes individuals who are located in these facilities on a "pre-commitment" basis (meaning people who have had their probable cause hearing or who have waived the timelines for that hearing and who are being detained, but who have not yet been committed as SVPs) as well as those who have been committed

Table 1: Monthly SVP Referrals from DOC to DOJ (Fiscal Years 2005-06 thru 2007-08)

Month	No. of Cases Referred to DOJ from DOC	Month	No. of Cases Referred to DOJ from DOC	Month	No. of Cases Referred to DOJ from DOC
July, 2005	5	July, 2006	2	July, 2007	4
August	6	August	6	August	1
September	4	September	4	September	5
October	7	October	1	October	4
November	7	November	5	November	4
December	5	December	2	December	1
January, 2006	5	January, 2007	7	January, 2008	2
February	7	February	6	February	1
March	1	March	5	March	2
April	0	April	5	April	2
May	0	May	1	May	2
June	5	June	3	June	2
Total FY 2005-06:	52	Total FY 2006-07	47	Total FY 2007-08	30
Avg. referrals / month:	4.3	Avg. referrals / month	3.9	Avg. referrals / month	2.5

as SVPs. As Table 2 indicates, the total SVP population at WRC and SRSTC has increased by 84 patients between July 1, 2005 and July 1, 2008.

These increasing SVP populations have led to capacity issues at SRSTC and WRC. This is also reflected in Table 2, which compares the total number of Chapter 980 patients housed at WRC and SRSTC to the "total operational capacity" of those two facilities. For these purposes, DHS defines "total operational capacity" as 96% of total absolute capacity (total number of physical beds). For example, in July, 2008, the total absolute SVP capacity of WRC and SRSTC was 421 beds, and the total operational SVP capacity of those two facilities on that date was 96% of that total, or 404 beds. As of July 1, 2008 the total SVP population of the two facilities was at 95% of total operating capacity.

As Table 2 indicates, the total SVP population exceeded 100% of the then-existing total operational SVP capacity at WRC and SRSTC on several occasions in calendar year 2005. That capacity issue was temporarily addressed when the last two 25-bed units were opened at SRSTC, the first in October, 2005, and the second in January, 2006. With the opening of those units, SRSTC reached its total absolute capacity of 300 beds and its total operating capacity of 288.

Table 2: Total SVP Populations at SRSTC and WRC (Fiscal Years 2005-06 thru 2007-08)

	Total SVPs at WRC	Total SVPs at SRSTC	Total SVP Population	Total Op. Cap.	Total SVP Population as % of Total Op. Cap
Fiscal Year 2005-06					
July 2005	57	248	305	298	102%
August 2005	58	251	309	298	104
September 2005	58	258	316	298	106
October 2005	56	261	317	322	98
November 2005	56	264	320	322	99
December 2005	56	268	324	322	101
January 2006	57	269	326	347	94
February 2006	58	273	331	347	95
March 2006	55	277	332	347	96
April 2006	54	278	332	347	96
May 2006	51	282	333	347	96
June 2006	54	280	334	347	96
Total Change	0	33	33	49	
Fiscal Year 2006-07					
July 2006	55	281	336	347	97%
August 2006	56	282	338	347	97
September 2006	56	286	342	347	99
October 2006	68	279	347	375	93
November 2006	73	274	347	375	93
December 2006	76	276	352	375	94
January 2007	78	276	354	375	94
February 2007	81	278	359	375	96
March 2007	84	282	366	375	98
April 2007	84	280	364	375	97
May 2007	85	281	366	404	91
June 2007	88	282	370	404	92
Total Change	34	2	36	57	
Fiscal Year 2007-08					
July 2007	92	278	370	404	92%
August 2007	93	277	370	404	92
September 2007	95	273	368	404	91
October 2007	103	274	377	404	93
November 2007	107	271	378	404	94
December 2007	106	269	375	404	93
January 2008	110	270	380	404	94
February 2008	111	272	383	404	95
March 2008	109	270	379	404	94
April 2008	104	276	380	404	94
May 2008	108	274	382	404	95
June 2008	111	274	385	404	95
Total Change	23	-8	15	0	

In April, 2006, following an emergency funding request to the Joint Committee on Finance, two additional 30-bed SVP units were opened at WRC. The Department based its request on its projections that SVP populations would again soon exceed the total operational capacities of WRC and SRSTC. In response, the Joint Committee on Finance responded by appropriating an additional $1,969,900 to DHS in 2006-07 to open these two additional SVP units at WRC. The first additional SVP unit, a non-treatment unit, opened in October, 2006. The second additional unit opened in April, 2007, and was the first SVP treatment unit at WRC. As of January 1, 2009, WRC had a total absolute capacity of 120 and an operating capacity of 116 beds for SVPs.

At its March, 2006, meeting, the state Building Commission approved $650,000 in Building Trust Funds for the preparation of preliminary plans for a 300-bed housing unit addition and associated program space at SRSTC. In the 2007-09 state capi-

tal budget a total of $34 million was enumerated for construction. These funds were to be used for Phase I construction activities as well as some initial design costs for Phase II. Phase I of the expansion project includes construction of two 100 bed housing units along with an expansion of the treatment mall and other treatment space modifications. The timeline for the project calls for the completion of 100 of the new beds in February, 2009 and another 100 new beds by October, 2009. Total construction costs for Phase I are $21.5 million. Phase II includes plans for construction of another 100 bed housing unit as well as other support space modifications. Enumeration of the funds needed for Phase II are expected to be included in the 2009-11 biennium capital budget. It is not clear when construction of Phase II will begin due to the recent decrease in the growth of the SVP population.

Unlike the overall SVP population, the number of SVPs placed on supervised release has not increased in recent years. For example, as of January, 2005, there were 16 SVPs on community supervised release, with four more SVPs awaiting placement. In June, 2008, despite several new placements and revocations, the total number of SVPs on community supervised release had decreased to 15, with only one individual awaiting placement.

As explained above, Chapter 980 allows DHS, in some circumstances, to seek the revocation of an SVP's supervised release. From April, 1994, through June, 2008, 27 SVPs have had their supervised release revoked under those statutory provisions.

DHS also tracks the number of SVPs whose civil commitment terminated. Between April, 1994 and July 1, 2008, 16 patients who were on supervised release were subsequently granted a discharge from their commitment, and 20 persons had been discharged from inpatient commitment.

Program Costs

Total State Institutional Costs. Table 3 summarizes the total costs of care for individuals committed as SVPs and served at SRSTC and WRC during the six-year period 2002-03 through 2007-08. Operations costs shown for SRSTC include expenditures relating to debt service payments. The annual cost information for WRC is an estimate derived by multiplying the total cost of operating WRC by the percentage of total patient days in the fiscal year that are attributable to the SVP population (most of the population of WRC are DOC inmates rather than SVPs). The growth in expenditures at both institutions reflects the growing SVP population and facility expansions that have occurred.

While it is useful to illustrate the costs incurred by each institution separately, it is also important to recognize important differences that may explain differences in the average costs of providing care at SRSTC and WRC. In particular, the costs shown for SRSTC include the entire cost of implementing the evaluation program and all administrative costs associated with the supervised release program. Additionally, many of the services pro-

Table 3: Expenditures for State Institutional Costs of Services to SVPs (Fiscal Years 2002-03 thru 2007-08)

	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
Sand Ridge Secure Treatment Center Operations	$24,457,200	$27,235,500	$30,445,800	$33,527,900	$36,604,400	$37,738,000
Fuel and Repair and Maintenance	650,000	635,700	649,400	696,600	745,000	786,200
Subtotal	$25,107,200	$27,871,200	$31,095,200	$34,224,500	$37,349,400	$38,524,200
Wisconsin Resource Center*	$4,589,600	$5,520,800	$5,594,500	$5,783,300	$7,622,900	$10,415,000
Total	$29,696,800	$33,392,000	$36,689,700	$40,007,800	$44,972,300	$48,939,200

*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. The average in 2007-08 was approximately 24%.

vided at SRSTC include a greater proportion of higher cost patients due to the more intensive treatment provided at this facility.

Supervised Release Costs. Table 4 summarizes the cost of providing services to individuals who are on supervised release, by vendor, during that same six-year period. The table shows that in these years, these costs were primarily paid through contracts with ATTIC Correctional Services and Lutheran Social Services, both of which provide 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 DHS because they have been found by a court to be not guilty by reason of mental disease or defect). Starting in 2005-06, DHS began recording costs associated with supervising SVPs on supervised release and individuals who were on conditional release separately. In 2007-08, it cost approximately $84,000 per person per year to provide services to individuals that were on supervised release. The average monthly supervised release population during this period was 18 individuals.

Table 4: Expenditures for Supervised Release Services, by Vendor (Fiscal Years 2002-03 thru 2007-08)

Vendor	Type of Service	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
ATTIC Correctional Services	Comprehensive Services (Housing Monitoring, Transportation, Case Management and Other Services)	$453,600	$516,500	$431,800	$417,700	$476,100	$578,800
Lutheran Social Services	Case Management Services	0	0	619,000	694,000	821,700	748,100
Rock Valley Community Corrections	Residential Facility	87,000	75,600	3,800	0	0	0
Abilities, Incorporated	Residential Facility	65,400	60,300	10,000	0	0	0
Other Private Vendors	Various	59,300	95,200	30,500	12,100	131,200	700
Subtotal--Supervised Release Only		$665,300	$747,600	$1,095,100	$1,123,800	$1,429,000	$1,327,600
Department of Corrections*	Supervision-SVP				30,400	130,600	216,000
	Supervision-Conditional Release	425,700	550,500	498,300	526,100	473,400	539,500
Subtotal		$425,700	$550,500	$498,300	$556,500	$604,000	$755,500
Total		$1,091,000	$1,298,100	$1,593,400	$1,154,200	$1,559,600	$1,680,300

*For 2002-03 thru 2004-05, the costs of providing supervision services to SVPs and individuals on conditional release were not separately identified.