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Special Committee Staff Brief 04-3

**“SEXUAL PREDATOR LAW”: CIVIL
COMMITMENT OF SEXUALLY VIOLENT
PERSONS UNDER CH. 980, STATS.**

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STAFF BRIEF 04-3

**“SEXUAL PREDATOR LAW”: CIVIL COMMITMENT OF SEXUALLY VIOLENT
PERSONS UNDER CH. 980, STATS.**

INTRODUCTION

This Staff Brief describes the “Sexual Predator Law,” relating to civil commitment of sexually violent persons under ch. 980, Stats. The Act was created by 1993 Wisconsin Act 479 and signed into law on May 26, 1994, by Governor Tommy G. Thompson. The *effective date* of Act 479 was **June 2, 1994**. Chapter 980 has been amended several times since that date.

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PART I

BACKGROUND

CONSTITUTIONALITY OF SEXUAL PREDATOR LAWS

U.S. Supreme Court Decision: Kansas v. Hendricks

In *Kansas v. Hendricks*, 521 U.S. 346 (1997), the U.S. Supreme Court upheld a Kansas state law [s. 59.29a01 *et seq.*, Kansas Stats. (1994)] establishing civil commitment procedures for “sexually violent predators” who have completed their prison sentences. In a 5-4 decision, the Court held that sexually violent offenders who are found to have a “mental abnormality” and who pose a danger to others may be confined pursuant to a civil commitment process, even if they are not found to have a “mental illness.” The Kansas statute applies to “any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence.” A legislative intent provision in the statute acknowledges that the law is intended to apply to a “small but extremely dangerous group of sexually violent predators...who do not have a mental disease or defect that renders them appropriate for involuntary treatment,” pursuant to the state’s general involuntary civil commitment procedures.

The Court’s opinion, authored by Justice Clarence Thomas, addressed three specific challenges to the law:

Substantive due process. The Court reversed a Kansas Supreme Court ruling that the precommitment condition of a “mental abnormality” did not satisfy a “substantive” due process requirement that involuntary civil commitment must be predicated on a “mental illness” finding. Noting that the psychiatric community often disagrees on what constitutes mental illness, the Court said it has “traditionally left to legislators the task of defining terms of a medical nature that have legal significance.” Three of the Court’s four dissenters on the decision agreed with the majority on this point, noting that “[t]he law traditionally has considered this kind of abnormality akin to insanity for purposes of confinement.”

Double jeopardy. The Court rejected Hendricks’ claim that involuntary civil commitment for sexually violent predators violates the “double jeopardy” protections of the U.S. Constitution--that is, that the Kansas law constitutes a second prosecution and a second punishment for the same offense. The Court found that the Kansas statute is a civil rather than a criminal law and does not impose a “punishment” even if it follows expiration of a prison term.

Ex post facto law. The Court also rejected Hendricks’ claim that the Kansas statute violates constitutional protections against imposing additional punishment after the fact for a crime already committed (“*ex post facto*” lawmaking). Since the Kansas statute does not impose a punishment, the Court reasoned, and because commitment is based on concerns about a sexually violent predator’s future behavior (rather than past actions), the statute does not constitute *ex post facto* lawmaking. The dissent disagreed with the majority on this point, noting that Kansas’ failure to provide treatment to Hendricks prior to his release date from prison and its

provision of possibly inadequate treatment thereafter indicate that the purpose of the statute is to inflict further punishment.

Selected Key Wisconsin Supreme Court Cases

Prior to the U.S. Supreme Court's decision in the *Hendricks* case, the Wisconsin Supreme Court, in two separate decisions, determined that:

- The ch. 980, Stats., procedure for civil commitment of sexually violent persons does not violate equal protection or substantive due process. [*State v. Post*, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), *cert. den.*; *Post v. Wisconsin*, 138 L. Ed. 2d 1011 (1997).]
- Chapter 980, Stats., creates a civil commitment procedure that does not provide for a penalty and thus, does not violate *ex post facto* or double jeopardy principles of the constitution. [*State v. Carpenter*, 197 Wis. 2d 252, 541 N.W.2d 105 (1995), *cert. den.*; *Schmidt v. Wisconsin*, 138 L. Ed. 2d 1011 (1997).]

There have been similar results in other states with similar sexual predator laws [e.g., *In re Liveham*, 594 N.W.2d 867 (Minn. 1999); *Grosinger v. M.D.*, 1999 ND 160, 598 N.W.2d 799 (1999); *Martin v. Reinstein*, 987 P. 2d 779 (Ariz. App. (1999)].

PART II

DESCRIPTION OF SEXUAL PREDATOR LAW

Wisconsin's Sexual Predator Law (hereafter, the "Sexual Predator Law" or "the law") creates a procedure for the involuntary civil commitment of certain persons who are found to be "sexually violent persons," as set forth in ch. 980, Stats., entitled *Sexually Violent Person Commitments*.

DEFINITION OF "SEXUALLY VIOLENT PERSON" AND "SEXUALLY VIOLENT OFFENSE" [s. 980.01, STATS.]

"Sexually Violent Person"

The law defines "sexually violent person" to mean a person who meets both of the following criteria:

- The person has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness.
- The person is dangerous because he or she suffers from a mental disorder that makes it "**likely**" that the person will engage in acts of sexual violence. "**Mental disorder**" is defined to mean a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence. "**Likely**" is defined to mean more likely than not.

"Sexually Violent Offense"

The law defines "**sexually violent offense**" to mean any of the following offenses:

- First- or second-degree sexual assault. [s. 940.225 (1) or (2), Stats.] In general, these offenses involve sexual assault that causes great bodily harm or other injury or that involve the use or threat of use of a dangerous weapon or of force or violence.
- First- or second-degree sexual assault of a child [s. 948.02 (1) or (2), Stats.], engaging in repeated acts of sexual assault of the same child [s. 948.025, Stats.], incest with a child [s. 948.06, Stats.], or enticement of a child [s. 948.07, Stats.].
- **If the offense was sexually motivated**, first- or second-degree intentional or reckless homicide [s. 940.01, 940.02, 940.05 or 940.06, Stats.], aggravated battery [s. 940.19 (4) or (5), Stats.], great bodily harm to an unborn child [s. 940.195 (4) or (5), Stats.], false imprisonment [s. 940.30, Stats.], hostage-taking [s. 940.305, Stats.], kidnapping [s. 940.31, Stats.], or burglary [s. 943.10, Stats.]. The law defines "**sexually motivated**" to mean that one of the purposes for an act is for the actor's sexual arousal or gratification.

- Any solicitation, conspiracy or attempt to commit a crime described above.

NOTICE TO THE DEPARTMENT OF JUSTICE (DOJ) AND DISTRICT ATTORNEY [S. 980.015, STATS.]

If an “agency with jurisdiction” (defined to mean the agency with the authority or duty to release or discharge the person; in general, the Department of Corrections (DOC) or the Department of Health and Family Services (DHFS)) has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction is required to inform each appropriate district attorney and the DOJ regarding the person as soon as possible beginning *three months prior* to the applicable date of the following:

Discharge of convicted person. The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment of a person who has been convicted of a sexually violent offense.

Release of adjudicated delinquent. The anticipated release from a juvenile secured correctional facility (e.g., Ethan Allen), or a secured child caring institution, or a secured group home, of a person adjudicated delinquent under s. 938.183 or 938.34, Stats., on the basis of a sexually violent offense.

Discharge of person not guilty by a reason of mental disease or defect. The termination of discharge of a person who has been found not guilty of a sexually violent offense by a reason of mental disease or defect.

The agency with jurisdiction must provide the district attorney and DOJ with ***all of the following***:

- The person’s name, identifying factors, anticipated future residence, and offense history.
- If applicable, documentation of any treatment and the person’s adjustment to any institutional placement.

SEXUALLY VIOLENT PERSON PETITION; CONTENTS; FILING [S. 980.02, STATS.]

Who May File the Petition

A petition alleging that a person is a sexually violent person may be filed by one of the following:

- The ***DOJ***, at the request of the agency with jurisdiction over the person. If ***DOJ*** decides to file a petition, it is required to file the petition before the date of the release or discharge of the person.
- If ***DOJ*** does not file a petition, the ***district attorney*** for one of the following:
 - The county in which the person was convicted.
 - The county in which the person ***will reside or be placed***.

Allegation That a Person is a Sexually Violent Person

Under the law, the petition must allege that ***all of the following*** apply to the person alleged to be a sexually violent person:

- The person satisfies ***any*** of the following criteria:
 - The person has been convicted of a sexually violent offense.
 - The person has been found delinquent under ch. 938, Stats. (the Juvenile Code), for a sexually violent offense.
 - The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.
- 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.

Other Requirements in Petition

The petition must also:

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

Filing Petition

The petition must be filed in any of the following:

- The circuit court for the county in which the person was ***convicted***.
- The circuit court for the county in which the person ***will reside or be placed***.
- The circuit court for the county in which the person ***is in custody*** under a sentence, a placement to a juvenile secured correctional facility, secured child caring institution, or secured group home, or a commitment order.

Notwithstanding the above, if DOJ decides to file a petition, it may file the petition in the circuit court for Dane County.

RIGHTS OF PERSONS SUBJECT TO SEXUALLY VIOLENT PERSON PETITION [S. 980.03, STATS.]

Rights in General

The circuit court in which a sexually violent person petition is filed must conduct all of the hearings relevant to that petition (i.e., all the hearings under ch. 980, Stats.).

Except as provided below (relating to petitions for discharge), at any such hearing the person who is 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 State Public Defender, the authority for indigency determinations under s. 977.07 (1), Stats., and, if applicable, the appointment of counsel.
- Remain silent.
- Present and cross-examine witnesses.
- Have the hearing recorded by a court reporter.

Right to Jury Trial; Unanimous Verdict Required

The person who is the subject of the petition, the person's attorney, the DOJ or the district attorney may request that a trial be to a jury of 12. If a jury trial is not requested, the court may on its own motion require that the trial be to a jury of 12. A verdict of a jury in a "sexually violent person" case is ***not valid unless it is unanimous***.

Right to Retain Experts to Perform Examination Under Ch. 980, Stats.

Whenever the person who is the subject of the petition is required to submit to an examination under ch. 980, Stats., he or she may retain expert or professional persons to perform an examination. If the person is ***indigent***, the court is required, upon the person's request, to appoint a qualified and available expert or professional person to perform an examination and participate in a trial on the person's behalf. Upon the order of the circuit court, the county must pay, as part of the costs of the action, the costs of a court-appointed expert or professional person to perform an examination and participate in a trial or other proceeding on behalf of an indigent person.

DETENTION; PROBABLE CAUSE HEARING; TRANSFER FOR EXAMINATION [S. 980.04, STATS.]

Detention

Upon the filing of the petition, the court must review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person must be detained only if there is cause to believe that the person is eligible for commitment. A person detained must be held in a facility approved by DHFS. A detention order under this provision remains in effect until the person is discharged after a trial or until the effective date of a commitment order, whichever is applicable.

Probable Cause Hearing; Time Limits

Whenever a “sexually violent person” petition is filed, the court must hold a hearing to determine whether there is a probable cause to believe that the person named in the petition is a sexually violent person.

Probable Cause Determination; Evaluation

If the court determines after a hearing that there ***is probable cause*** to believe that the person named in the petition is a sexually violent person, the court must: (a) order that the person be taken into custody if he or she is not in custody; and (b) must order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person.

If the court determines that ***probable cause does not exist*** to believe that the person is a sexually violent person, the court must dismiss the petition.

Indigency Determination and Appointment of Counsel

If the person named in the petition claims or appears to be indigent, the court must, prior to the probable cause hearing, refer the person to the State Public Defender to determine indigency and the need for appointment of counsel.

TRIAL [S. 980.05, STATS.]

Time Limit for Commencement; Continuance

A trial to determine whether the person who is the subject of the petition is a sexually violent person must commence ***no later than 45 days*** after the date of the probable cause hearing, unless a continuance is granted.

Rules of Evidence; Constitutional Rights

At the trial, all rules of evidence in criminal actions apply and all constitutional rights available to a defendant in criminal proceedings are available to the person.

Burden of Proof at Trial

At the trial, the petitioner (i.e., the state) has the burden of proving the allegations in the petition ***beyond a reasonable doubt***.

Evidence of Prior Convictions or Commitments

Evidence that the person who is the subject of the petition 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.

Determination That a Person is or is Not a Sexually Violent Person

If the court or jury determines that the person who is the subject of the petition is a sexually violent person, the court must enter a judgment on that finding and must commit the person. If the court or jury ***is not*** satisfied beyond a reasonable doubt that the person is a sexually violent person, the court must dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

DEOXYRIBONUCLEIC ACID ANALYSIS (DNA) REQUIREMENTS [S. 980.063, STATS.]

If a person is found to be a sexually violent person under ch. 980, Stats., the court must require the person to provide a biological specimen to the state crime laboratories for DNA analysis. The results from DNA analysis of a specimen may be used only as authorized under s. 165.77 (3), Stats., and the state crime laboratories must destroy any such specimen in accordance with that provision.

ORDER FOR AND LENGTH OF COMMITMENT [S. 980.06, STATS.]

If a court or jury determines that the person is a sexually violent person, the court must order the person to be committed to the custody of DHFS for control, care, and treatment ***until such time as the person is no longer a sexually violent person***. The commitment order must specify that the person be placed in institutional care.

SECURED MENTAL HEALTH UNIT OR FACILITY FOR SEXUALLY VIOLENT PERSONS [S. 980.065, STATS.]

The law specifies that:

- The DHFS must place a person committed to a secure mental health unit or facility ***at one of the following***:
 - The secure mental health facility established under s. 46.055, Stats.
 - The Wisconsin Resource Center established under s. 46.056, Stats.
 - A secure mental health unit or facility provided by DOC.
- Notwithstanding the above, DHFS may place a female person at Mendota Mental Health Institute, Winnebago Mental Health Institute, or a privately operated residential facility under contract with DHFS.
- The DHFS may contract with DOC for the provision of a secure mental health unit or facility for persons committed. The law requires DHFS to operate the secure mental health unit or facility provided by DOC and to promulgate rules governing the custody and discipline of persons placed in the unit or facility provided by DOC.

ACTIVITIES OFF GROUNDS [S. 980.067, STATS.]

The superintendent of the facility at which a person is placed may allow the person to leave the grounds of the facility under escort. The DHFS must promulgate rules for the administration of this provision.

PERIODIC REEXAMINATION; REPORT; USE OF EXPERTS [S. 980.07, STATS.]

If a person has been committed and has not been discharged, DHFS **must** conduct an examination of his or her mental condition: (a) **within six months** after an initial commitment; and (b) again thereafter at least **once each 12 months**. The examination is for the purpose of determining whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged.

Notwithstanding this provision, the court that committed a person may order a reexamination of the person **at any time** during the period in which the person is subject to the commitment order.

PETITION, HEARING, AND ORDER FOR SUPERVISED RELEASE [S. 980.08, STATS.]

When Petition May Be Filed

Any person who is committed for institutional care in a secure mental health facility or other facility, may petition the committing court to modify its order by authorizing supervised release if: (a) **at least 18 months** have elapsed since the initial commitment order was entered; or (b) **at least six months** have elapsed since the most recent such petition was denied, or the most recent order for supervised release was revoked. The **director of the facility** at which the person is placed may file the petition for supervised release on the person's behalf **at any time**.

Service of Petition on District Attorney or DOJ

If the person files a timely petition without counsel, the court must serve a copy of the petition on the district attorney or DOJ, whichever is applicable, and refer the matter to the State Public Defender for an indigency determination and the possible appointment of counsel. If the person petitions through counsel, his or her attorney must serve the district attorney or DOJ, whichever is applicable.

Appointment of Examiners by Court

Within 20 days after receipt of the petition, the court must appoint one or more examiners having the specialized knowledge determined by the court to be appropriate, who must examine the person and furnish a written report of the examination to the court **within 30 days** after appointment. If an examiner believes that the person is appropriate for supervised release, the examiner must report on the type of treatment and services that the person may need while in the community on supervised release. The county must pay the costs of an examiner appointed under this provision.

Court Hearing on Petition; Finding Relating to Dangerousness

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 court must grant the petition unless the state proves ***by clear and convincing evidence one of the following***:

- That it is ***still likely*** that the person will engage in acts of sexual violence if the person is not continued in institutional care.
- That the person has not demonstrated significant progress in his or her treatment or the person has refused treatment. [s. 948.08 (4) (b), Stats.]

In making this decision, the court ***may consider***: (a) the nature and circumstances of the behavior that was alleged in the petition; (b) the person's mental history and present mental condition; (c) where the person will live; (d) how the person will support himself or herself; and (e) what arrangements are available to ensure that the person has access to and will participate in necessary treatment. A decision on a petition filed by a person who is a serious child sex offender ***may not be made based on***: (a) the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen; or (b) the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

ROLE OF DHFS IN SUPERVISED RELEASE

If the court finds that the person is appropriate for supervised release, the court must notify DHFS. The 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, as determined by DHFS.

The DHFS and the county department under s. 51.42, Stats., in the county of residence of the person, must ***prepare a plan*** that identifies the treatment and services, if any, that the person will receive in the community. The plan must address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol and other drug abuse treatment services.

In developing a plan for where the person may reside while on supervised release, 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 whom a sex offender notification bulletin has been issued to law enforcement agencies. 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.

The DHFS may contract with a county department under s. 51.42, Stats., with another public agency or with a 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.

- Be presented to the court for its approval ***within 60 days after the court finding*** that the person is appropriate for supervised release, unless DHFS, the county department, and the person to be released request additional time to develop the plan.

If the county department of the person's county of residence declines to prepare a plan, DHFS may arrange for another county to prepare the plan if that county agrees to prepare the plan and if 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 the county department to prepare the plan, and place the person on supervised release in that county. However, the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under ch. 980, Stats., are placed unless that county is also the person's county of residence.

Order for Supervised Release

An order for supervised release places the person in the custody and control of DHFS. The DHFS must arrange for 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 for supervised release approved by the court. Before a person is placed on supervised release by the court, the court must so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified.

Revocation of Order for 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 the rules of DHFS. The DHFS must submit a statement showing probable cause for the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases in the county where the committing court is located ***within 72 hours*** after the detention, excluding Saturdays, Sundays, and legal holidays. The court must hear the petition ***within 30 days***, unless the hearing or time deadline is waived by the detained person. Pending the revocation hearing, the DHFS may detain the person in a jail or in a hospital, center, or facility specified by s. 51.15 (2), Stats. The state has the burden of providing ***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 determines after hearing that any rule or condition of release has been violated, or that the safety of others requires that supervised release be revoked, 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 commitment under s. 980.09, Stats., or until placed on supervised release under this provision.

PETITION FOR DISCHARGE; PROCEDURE [S. 980.09, STATS.]

Petition With Secretary's Approval

If the Secretary of DHFS determines at any time that a person committed under ch. 980, Stats., is no longer a sexually violent person, the Secretary must authorize the person to petition the committing court for discharge. The person must file the petition with the court and serve a copy upon DOJ or the district attorney's office that filed the petition for discharge, whichever is applicable. The court, upon receiving the petition for discharge, must order a hearing to be held ***within 45 days*** after the date of the receipt of the petition.

At the hearing, the district attorney or DOJ, whichever filed the original petition, must represent the state and has the right to have the petitioner examined by an expert or professional person of his, her, or its choice. The hearing must be before the court without a jury. The state has the burden of proving ***by clear and convincing evidence*** that the petitioner remains a sexually violent person.

If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody or supervision of DHFS. If the court is satisfied that the state has met its burden of proof, the court may proceed to determine whether to modify the petitioner's existing commitment order by authorizing supervised release.

Petition Without Secretary's Approval

A person may petition the committing court for discharge from custody or supervision without the Secretary's approval. At the time of a periodic examination, the Secretary of DHFS must provide the committed person with a written notice of the person's right to petition the court for discharge over the Secretary's objection. The notice must contain a waiver of rights. The Secretary must forward the notice and waiver form to the court with the report of DHFS's periodic examination. If the person does not affirmatively waive the right to petition, the court must set a ***probable cause hearing*** to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. 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 a sexually violent person, then the court must set a hearing on the issue. At the hearing, the committed person is entitled to be present and to the benefit of the protections afforded to the person under s. 980.03, Stats., described above. The district attorney or DOJ, whichever filed the original petition, must represent the state at the hearing and the hearing must be to the court. The state has the right to have the committed person evaluated by experts chosen by the state. At the hearing, the state has the burden of providing ***by clear and convincing evidence*** that the committed person is still a sexually violent person.

If the court is satisfied that the state has not met its burden of proof, the person must be discharged from the custody or supervision of DHFS. If the court is satisfied that the state has met its burden of proof, the court may proceed using the criteria specified in s. 980.08 (4) (b),

Stats., described above, to determine whether to modify the person's existing commitment order by authorizing supervised release.

ADDITIONAL DISCHARGE PETITIONS; DENIAL OF PETITION [S. 980.10, STATS.]

A committed person also may petition the committing court for discharge at any time. However, if a person has previously filed a petition 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 a sexually violent person, 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 continue proceedings as described above. If the person has not previously filed a petition for discharge without the Secretary's approval, the court must set a probable cause hearing and continue proceedings as described above.

REVERSAL, VACATION, OR SETTING ASIDE OF JUDGMENT RELATING TO A SEXUALLY VIOLENT OFFENSE; EFFECT [S. 980.101, STATS.]

If, at any time after a person is committed under s. 980.06, Stats., 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 petition for commitment, the person may bring a motion for postcommitment relief in the court that committed the person.

The court must proceed as follows on the motion for postcommitment relief:

- If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a), Stats., *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 under s. 980.05, Stats., that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody or supervision of the department.
- If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a), Stats., *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 under s. 980.02 (2) (a), Stats., the court must determine whether to grant the person a *new trial* under s. 980.05, Stats., because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

PERSON'S COUNTY OF RESIDENCE [S. 980.105, STATS.]

Current law provides that the court must determine a person's county of residence for the purposes of ch. 980, Stats., by doing all of the following:

- The DHFS must consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and must consider physical presence as prima facie evidence of intent to remain.
- The DHFS must apply the criteria for consideration of residence and physical presence to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement, or commitment that was in effect when the petition was filed under s. 980.02, Stats.

NOTICE OF SUPERVISED RELEASE OR DISCHARGE [S. 980.11, STATS.]

Persons to Be Notified

The law provides that if the court places a person on supervised release or discharges a person, DHFS must do all of the following:

- Make a reasonable attempt to notify whichever of the following persons is appropriate, if he or she can be found:
 - The **victim** of the act of sexual violence.
 - An **adult member of the victim’s family**, if the victim died as a result of the act of sexual violence. “Member of the family” is defined to mean a spouse, child, sibling, parent, or legal guardian.
 - The victim’s **parent or legal guardian**, if the victim is **younger than 18 years old**.
- Notify DOC.

Contents of Notice; When Notice is Sent

The notice must include the name of the person who was committed and the date the person is placed on supervised release or discharged. The DHFS must send the notice, postmarked at least seven days before the date the person committed is placed on supervised release or discharged.

Notification of Cards for Persons With Right to Notice

The DHFS must design and prepare cards for persons specified above to send to DHFS. The cards must have space for these persons to provide their names and addresses, the name of the person committed, and any other information DHFS determines is necessary. The DHFS must provide the cards, **without charge**, to DOJ and district attorneys. The DOJ and district attorneys must provide the cards, **without charge**, to victims and their representatives. These persons may send completed cards to DHFS. All DHFS records or portions of records that relate to mailing addresses of these persons **are not subject to inspection or copying** under the Open Records Law [s. 19.35 (1), Stats.], except as needed to comply with a written request by DOC for information regarding sex offenders.

DOC Notice Requirement

The law contains similar provisions for notification by DOC of the victim and any witness who testified against the prisoner in any court proceeding involving the offense ***before a prisoner*** who has been convicted of one of the crimes specified in the definition of “sexually violent offense” ***is***:

- Released from imprisonment because he or she has reached the expiration date of his or her sentence for the crime; or
- Released on leave under s. 303.068, Stats.

DHFS DUTIES; PAYMENT OF COSTS FOR EVALUATION, TREATMENT, AND CARE [S. 980.12, STATS.]

The law specifies that:

- Except as provided in ss. 980.03 (4) and 980.08 (3), Stats., ***DHFS*** must pay for all costs relating to the evaluation, treatment, and care of persons evaluated or committed under ch. 980, Stats.
- By February 1, 2002, DHFS must submit a ***report*** to the Legislature under s. 13.172 (2), Stats., concerning the extent to which pharmacological treatment using an antiandrogen or the chemical equivalent of ***an antiandrogen*** has been required as a condition of supervised release under s. 980.06, 1997 Stats., or s. 980.08, Stats., and the effectiveness of the treatment in the cases in which its use has been required.

APPLICABILITY OF “SEX PREDATOR” LAW

The law, as created by 1993 Act 479, applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on, or after the effective date of Act 479 (effective date: June 2, 1994).

COMMITTEE TO ASSIST STATE IN DETERMINING LOCATION FOR TRANSITIONAL FACILITY FOR SEX PREDATORS

2003 Wisconsin Act 187 (effective date: April 22, 2004) created a committee to assist the state in determining the location of a transitional facility for the housing of persons committed to the custody of DHFS under the statutes regarding the civil commitment of sexually violent persons. No later than June 1, 2004, DHFS was required to provide the committee an estimate of the maximum number of persons likely to be placed in Milwaukee County on supervised release at any one time between that date and February 1, 2009. The committee must hold public hearings in Milwaukee County regarding the selection of a location of the transitional facility. The committee must consider all of the following factors when determining the criteria for the location of the facility or when determining specific locations for the facility:

- Community safety.
- Proximity to sensitive locations.

- Ability to make the facility secure.
- Accessibility to treatment for the persons living in the facility.
- Payments that may be made in lieu of property taxes.
- Availability of tax incentives to a community to locate the facility within its jurisdiction.
- Proximity of the placement to all of the following:
 - The residence of other persons on supervised release.
 - 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 under s. 301.46 (2m) (a) or (am), Stats.
 - Any facility for children of which the committee is aware.
 - Any residential subdivision.

No later than December 31, 2004, the committee must 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 set forth in the estimate submitted to the committee. When considering locations, the committee must make a reasonable effort to reach and to maximize consensus among its members.