



WISCONSIN LEGISLATIVE COUNCIL

SEXUALLY VIOLENT PERSON COMMITMENTS

Legislative Council Conference Room, One East Main Street, Suite 401
Madison, Wisconsin

September 28, 2004
1:00 p.m. - 3:40 p.m.

[The following is a summary of the September 28, 2004 meeting of the Special Committee on Sexually Violent Person Commitments. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

Call to Order and Roll Call

Chair Lazich called the meeting to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Sen. Mary Lazich, Chair; Sen. Jeff Plale; Reps. Mark Gundrum, Jeff Stone, and Tony Staskunas; and Public Members Rebecca Dallet, Mike Nofzinger, Richard Sankovitz, and Sally Tess.

COMMITTEE MEMBERS EXCUSED: Sen. Alberta Darling.

COUNCIL STAFF PRESENT: Ron Sklansky and Don Salm, Senior Staff Attorneys; and Julie Learned, Support Staff.

APPEARANCES: Terry C. Anderson, Director, Legislative Council; Steven Watters, Director, Sand Ridge Secure Treatment Center; and Thomas Fallon, Assistant Attorney General, Wisconsin Department of Justice.

Opening Remarks

Terry C. Anderson, Director of the Legislative Council, welcomed the committee and introduced the Legislative Council staff members assigned to work with the committee. He noted that the committee's meetings are recorded and available on the Internet.

Introduction of Committee Members

Chair Lazich welcomed all members of the committee and thanked them for their commitment to serve on the committee. She then asked the members of the committee to briefly introduce themselves.

Description of Materials Distributed

Ron Sklansky briefly reviewed Staff Brief 04-3, "*Sexual Predator Law*": *Civil Commitment of Sexually Violent Persons Under Ch. 980, Stats.*, Memo No. 1, *Assembly Substitute Amendment 2 to 2003 Assembly Bill 861, Relating to Sexually Violent Persons*, and the other materials that had been previously mailed to the committee members.

Invited Speakers

Steven Watters, Director of the Sand Ridge Secure Treatment Center, gave the committee an overview of ch. 980, Stats., including a discussion of:

- Conditions that have to be proven for a ch. 980 commitment.
- Chapter 980 patient populations at Sand Ridge, the Wisconsin Resource Center, and under supervised release.
- The two types of release under ch. 980, supervised release into the community and discharge of the person from a ch. 980 commitment.
- The legal underpinnings of ch. 980 commitments and a brief comparison of the Wisconsin system for these commitments with what is being done in other states.
- The four major roles the Department of Health and Family Services (DHFS) plays under ch. 980, namely: (1) the evaluation and assessment of potential and continuing ch. 980 patients; (2) the operation of secure institutions for the ch. 980 program; (3) providing treatment for ch. 980 patients; and (4) operation of a community placement program for patients determined by the courts to be appropriate for the community. He discussed at length the treatment and supervised release functions of DHFS, including the supervised release process, the supervised release plan, the process for residence selection, and the criteria for residence selection.

He then described three specific law changes that DHFS considers to be very important for the ch. 980 program:

1. Creation of a crime of escape, noting that, in general, escape from a ch. 980 secure commitment or supervised release is not considered to be a crime under current law.
2. Creation of a crime of battery of ch. 980 staff or other ch. 980 patients by a ch. 980 patient.
3. Creating statutory authority for the videotaping of treatment groups in a ch. 980 setting. He noted that a court has ruled that such videotaping is a violation of the patient's rights under ch. 51, Stats., which prohibits such videotaping.

In response to a question from Judge Richard Sankovitz regarding the effect of the new “likely” commitment standard, Mr. Watters indicated that DHFS anticipates the first indications of increased workload beginning later this year or in early 2005.

Representative Gundrum asked whether a patient has to have successfully completed treatment prior to release. Mr. Watters responded that under ch. 980, the patient does not have to have completed treatment to be released, explaining that the patient’s risk level may be reduced below the level necessary to retain the patient. Mr. Watters noted that the cost of treatment, detention, and security under ch. 980 is about \$110,000 to \$115,000 annually per person at present, but that figure should plateau at about \$100,000 in the future--this compares to the \$25,000 to \$35,000 annual cost of keeping a person in prison.

Representative Lazich noted that she had considered possible legislation to make the crimes under ch. 980 Class A felonies so that the court would have the option of placing these persons in prison for life, thus keeping them in the lower-cost prison facilities. Mr. Watters noted that there are still a lot of defendants “in the chute” who are ready to be released and possibly be subject to ch. 980 commitments and that this would be the case for many years to come. He added that one problem with making these crimes all Class “A” is that children refuse to cooperate with the initial prosecution of a parent, relative, or friend if they know the person could be sent to prison for life.

Thomas Fallon, Assistant Attorney General, Wisconsin Department of Justice, provided information on four major points: (1) the impact of the new standard in ch. 980; (2) the time and effort required to try a ch. 980 case; (3) comments on Substitute Amendment 2 to 2003 Assembly Bill 861, in which Mr. Fallon had a substantial role (conceptualizing, drafting); and (4) responses to some of the significant points and suggestions made by Mr. Watters.

He noted that about 6% of sex offenders released after serving their sentences are referred to the Department of Justice for possible ch. 980 commitment (about four referrals per month). He added that the impact of the new lower standard for ch. 980 commitments is hard to determine, but that the major impact is probably one to two-and-a-half years away. He stated that ch. 980 is asking courts to make a risk assessment (the person’s risk of re-offending), not a prediction of whether the person will reoffend.

With reference to Assembly Bill 861, he noted that the substitute amendment can be divided into three parts:

1. Provisions relating to the problem of exchange of, and access to, information needed by the courts, parole agents, and others, so that the system can make a better assessment of the person. He noted that it is now difficult to get access to certain court records, especially victims’ records. He explained that victims’ records are significant because defendants do not always tell the truth and victim accounts help greatly in seeing patterns in defendants’ behaviors. He noted that the current law has not been amended since 1994.
2. Provisions on how ch. 980 cases are conducted, including what rules of discovery apply, when a change of venue should occur, and whether the state has the right to an expert in the initial commitment stage.
3. Provisions to streamline and improve the current cumbersome post-commitment scheme. He emphasized that whatever changes the committee and the Legislature recommend, it must

always be kept in mind that, because of significant constitutional concerns, the ch. 980 law is built on the concept of nonpunitive treatment and not punishment. He explained that the courts will be viewing any post-commitment changes very closely to see if ch. 980, with those changes, is still constitutionally viable.

With reference to the issues of new escape and battery crimes relating to ch. 980 patients, he agreed with Mr. Watters' suggestions. He also noted that there is a serious issue relating to persons who are not competent under the law (e.g., mentally retarded) and cannot be proceeded against under ch. 980, adding that these are persons who cannot be committed even though they are dangerous. If they are kept under a ch. 980 commitment, they are extremely difficult to manage and to treat and the facility basically ends up warehousing them. He noted that there might be some way to create a separate procedure under ch. 51 or ch. 55 to deal with this group.

In response to a question from Representative Lazich regarding the viability of her concept to make ch. 980 crimes Class A felonies, Mr. Fallon noted that persons who have committed substantial crimes and meet the applicable standard deserve lifetime supervision of some kind. He noted that one concept might be lifetime extended supervision for applicable crimes, with a person being brought back into the system at any time he or she violates certain rules. Judge Sankovitz noted that perhaps this could be applied as a penalty enhancer for certain crimes.

Discussion of Committee Assignment

Rebecca Dallet suggested that the committee hear from someone who is knowledgeable about the specifics of how risk assessments are done for ch. 980 commitments.

The staff requested committee members and others to review Substitute Amendment 2 to 2003 Assembly Bill 861 and, no later than two weeks prior to the next meeting, submit in writing suggestions for additions or deletions to the language in the substitute amendment. The staff will provide working drafts on these amendments, if necessary, and a draft of a battery statute as discussed at this meeting.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held at the call of the Chair.

Adjournment

The meeting was adjourned at 3:40 p.m.

DLS:jal