

**WISCONSIN'S SEXUALLY VIOLENT
PERSONS LAW
CHAPTER 980**

**Presentation to the Special Committee
on Sexually Violent Commitments**

“Chapter 980: The Law, Implementation and Issues”

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PRESENTATION OVERVIEW

- Chapter 980 Overview
- DHFS Roles
 - Evaluation
 - Institution Operations
 - Treatment
 - Supervised Release
- Community Placement Process and Criteria
- Potential Legislative Issues

Conditions That Have To Be Proven For A Chapter 980 Commitment

1. Person was convicted, adjudicated delinquent or found not guilty by reason of mental disease for a sexually violent offense.
2. At the time of the petition for probable cause, the person was within 90 days of discharge or release from a facility.
3. Person has a mental disorder, which is defined as a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.
4. Person is dangerous to others because the person's mental disorder creates a probability (more likely than not) that he or she will engage in acts of sexual violence.

Chapter 980 Patient Population

Placement	Committed	Detained	Total
SRSTC	220	6	226
WRC	18	39	57
Supervised Release	11	N.A.	11
TOTAL	249	45	294

Chapter 980 “Releases”

Two versions of release:

1. **Supervised Release**-person placed in community because of Court determination that the individual’s risk can be managed in the community and there is a determination that the person has made significant progress in treatment.
 - At present 11 individuals are in the community on SR (6 have been approved and awaiting placement).
 - During history of program, there have been 15 revocations (3 potential revocations are pending).
2. **Discharge**-person released from the commitment because of Court determination that criteria no longer met; no conditions attached to person.
 - A total of 16 individuals have been discharged (not counting deaths).
 - Of total discharges, 9 were on SR and 7 were not on SR.

Perspectives on Chapter 980

Legal:

- Chapter 980 is a civil commitment.
- Purpose of civil commitment is not punishment, but rather the protection of society from the individual's potential dangerousness.
- Applies to individuals only after they have completed their institutional time.
- Significant constitutional issues need to be considered in any legislative changes.

Interstate:

- Two-thirds of the States do not have the option of civil commitment at end of sentence.
- In those states, high risk sex offenders are released at the end of sentence.
- WI has higher number of SVP community releases than the other civil commitment states, but that needs to be considered in a more complete context.

Perspectives Continued

Statistical:

- WI has approximately 11,800 registered sex offenders living in the community. Of this total, 4,600 are on some type of community supervision, while 7,200 have completed their supervision.
- The 11 Supervised Releases presently in the community represent only a small percentage of sex offenders already in the community. Specifically, of the 11,800 registered sex offenders living in the community, Supervised Release placements represent less than 0.1% of this total.

Programmatic:

- Chapter 980 is intended to address the highest risk for re-offense sex offenders in the State.
- State has targeted an array of specialized resources toward this very significant problem--extensive treatment programming, release process based on individualized decision by Courts, substantial resources for community supervision and treatment, etc.

Conclusion:

- Important to review and understand Chapter 980 within the overall context that the program exists.

DHFS Roles

The Department of Health and Family Services plays four major roles under Chapter 980:

- 1. Evaluation/Assessment Function:** DHFS is responsible for providing reports to the Courts that address the issue as to whether a person is appropriate for commitment. The Department also provides regular reports to the Courts concerning the person's progress.
- 2. Operation of a Safe/Secure Institution:** DHFS operates secure institutions for the Chapter 980 program. In addition to providing an environment where treatment can occur, the institutional setting virtually eliminates the possibility that they can commit a sexually violent offense.
- 3. Treatment Programming:** DHFS is responsible for providing treatment to individuals committed under Chapter 980. Courts have sent the clear message that treatment needs to be at the center of the commitment.
- 4. Supervised Release:** DHFS operates the community placement program for individuals determined by the Courts to be appropriate for the community.

DHFS Evaluation Role

DHFS provides evaluation/assessment services under Chapter 980:

- 1. Pre-Commitment Evaluations:** After probable cause is found, an individual is detained under Chapter 980 at a DHFS facility. At the Chapter 980 commitment trial, an evaluator (psychologist) appointed by DHFS submits a report to the Court addressing the issue as to whether the person is appropriate for commitment. Individual evaluator then testifies to the Court regarding his/her professional opinion.
- 2. Post-Commitment Evaluations:** Once an individual is committed, DHFS is charged with the responsibility of submitting regularly scheduled reports to the Court on the patient's status and progress. Those reports are required 6 months after commitment and annually thereafter. In addition, special reports may be ordered by the Court.

Several items to note:

- During the mid-to-late 1990's, the Department became delinquent in completing the statutorily required re-exams. This backlog was addressed over several years, and since October of 2002 the Department has remained current.
- Starting in January of 2004, the Department has been submitting a treatment progress report to the Court in addition to the re-exam. Accordingly, the Courts are now fully informed about the patient's progress in treatment.

Secure Institutional Operations

The Chapter 980 program is housed at two DHFS institutions:

1. The Sand Ridge Secure Treatment Center (located in Mauston) has the lead responsibility in the program. SRSTC operates the State's treatment program and also oversees the Supervised Release program.
2. The Wisconsin Resource Center (located in Oshkosh) focuses on individuals being detained but not yet committed and those individuals refusing to participate in treatment.

The primary motivation behind Chapter 980 is to protect society from the State's highest risk for re-offense sex offenders.

- One measure of the success of Chapter 980 is to look at the amount of sexually violent recidivism prevented by holding persons in an institutional setting.
- Using the latest research, it is estimated that if Chapter 980 had not existed for the last ten years, 115 of the persons committed under Chapter 980 would have been convicted of new sex crimes. Further, the number of known victims would have totaled 425.
- This “incapacitation” effect is one of the most visible impacts of Chapter 980. However, constitutionality of Chapter 980 is dependent on the other components of the program.

Sex Offender Treatment

“Does sex offender treatment reduce recidivism?”

This is a very complex and controversial question. However, attempting to distill lots of studies and opinions down to clear points:

1. Modern treatment seems to nearly halve the rate of sexual recidivism.
2. Offenders who begin but don't complete treatment show no benefits and their risk may increase.
3. Older methods of sexual offender treatment were ineffective or even increased sexual recidivism.

Modern sexual offender treatment:

1. Uses well established cognitive-behavioral treatment methods in conjunction with medication.
2. Seeks to treat problems that research has shown to be linked to risk of re-offense:
 - A. Inappropriate sexual interests.
 - B. Beliefs and attitudes that support offending.
 - C. Difficulty with adult relationships.
 - D. Poor self-management.

Key Point: Treatment reduces risk, but it does not eliminate it.

Chapter 980 Treatment Program

Characteristics of treatment program:

- Cognitive-behavioral focus: programming that targets thoughts and beliefs that make it seem permissible to offend.
- Different treatment tracks targeted at characteristics of patient groupings:
 1. Conventional Program.
 2. Corrective Thinking Program.
 3. Adapted Program.
- Major use of physiological testing--polygraph and PPG--to assist in disclosure about past offending and to assess deviant arousal patterns.
- Patients move from treatment module to module as they progress.
- Medications are integrated into the program as appropriate.
- Preferred therapeutic style of firm, supportive and challenging.

SUPERVISED RELEASE: CHAPTER 980's COMMUNITY PLACEMENT OPTION

- Chapter 980 establishes Supervised Release (SR)--community placement for an individual committed under the law--as an option for the courts to consider.
- In its decisions on Chapter 980, the WI Supreme Court has stated its view that the SR option is a critical component of establishing the constitutionality of the law:
 - “Respondents rely heavily on the fact that those committed under Ch. 980 face an indefinite period of confinement in a secure facility as evidence that the true intent of the statute is punishment. However, Ch. 980 expressly provides for supervised release ... Further, the person is entitled to discharge as soon as his or her dangerousness or mental disorder abates. We conclude that these provisions significantly detract from respondents’ argument that the statute’s primary purpose is punishment.” (State v. Carpenter)
 - “Chapter 980 cannot continue to survive constitutional scrutiny if the predicates for its constitutionality prove to be false. The State must take steps to ensure that proper placement and treatment actually happen. When an individual committed under Ch. 980 cannot be appropriately placed, ...the viability and feasibility of treatment are called into question.” (State v. Rachel, Bradley concurring opinion.)

SUPERVISED RELEASE: STATUTORY FRAMEWORK

- Supervised Release (SR) petitions are considered by Courts. In that process, Courts are advised by experts and reports. Also, the petitioning patient almost always testifies. SR proceedings are conducted before a Judge without a jury.
- In order to grant a SR, the court first has to conclude that the individual meets the commitment criteria for a Sexually Violent Person.
 - This means that the person's mental disorder still makes it likely that the person will commit an act of sexual violence, if the person is discharged from the Chapter 980 commitment.
 - If that conclusion is not reached, the statutes specify that the person should be discharged from the Ch. 980 commitment.

SUPERVISED RELEASE: STATUTORY CRITERIA

- The Statutes establish two basic criteria for Supervised Release. Specifically, the law states that the court must grant the SR petition unless it is proven by clear and convincing evidence that one of the following exists:
 1. That it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care.
 2. That the person has not demonstrated significant progress in his or her treatment or the person has refused treatment.
- The statutes list a number of factors that a court may consider when reviewing an SR petition: (A) nature and circumstances of the sex offending history; (B) mental history and present mental condition; (C) where the person will live; (D) how the person will support himself; and (E) access to and participation in community treatment.

History of Supervised Release

SR Placements	40
Current on SR	11
SR Revocations	15
SR Discharges	9
Pending Revocations	2
Alt. to Revocation at SRSTC	2
Death	1

- High proportion of revocations reflects on one of the major strengths of the SR program--the intensity of the supervision.
- Offense history of patients while on SR:
 - No patient has been convicted of a “contact” sexual offense.
 - One patient was convicted of attempting to flee a police officer, and another patient is facing federal child pornography charges.
 - Three patients either committed or attempted to commit new offenses that were not charged.
- Offense history of persons after discharge from Chapter 980:
 - One person was convicted of a new sexual assault and one person is facing child pornography charges.
 - Four other persons have been convicted of or are currently facing charges for non-sexual offenses .

Supervised Release Process

The following steps outline the Supervised Release process:

- Patient petitions Court for Supervised Release.
- Court conducts hearing to collect and consider evidence.
- Court either grants or denies the patient's request based on the Court's conclusion whether the patient's risk is appropriate for a community placement.
- If granted, Court orders DHFS to prepare a comprehensive Supervised Release plan.
- DHFS prepares plan in consultation with other involved parties--e.g., Probation and Parole, law enforcement, prosecutor, treatment staff, local officials, etc.
- Plan submitted to the Court for its review and approval.
- Final plan approved by the Court.
- DHFS provides Special Bulletin Notice to local law enforcement.
- Core team meeting to discuss the nature and process for community notification.
- Community notification is completed by local law enforcement, with participation by DHFS and DOC.
- Placement occurs and the plan is implemented.
- The individual placement and plan is monitored for compliance.

Supervised Release Plan

- Each plan is individualized to reflect the individual's needs and risks, as well as the characteristics of the community setting.
- Plan includes the following components:
 - Location of residence**--almost always the most difficult part of the plan to complete.
 - Ongoing sex offender treatment services**--sometimes difficult to identify treatment commensurate with the patient's treatment status/needs.
 - Community supervision and monitoring**--consists of electronic monitoring, at least weekly Probation and Parole visits, usually twice daily monitoring visits, and chaperoned transportation.
 - Any other treatment issues**--plan addresses any other treatment (physical or mental) that the patient requires.
 - Maintenance polygraph exams**--periodic exams to assess individual's adherence to plan.
 - Review and approval for any major changes**--if patient wants to make significant change in his circumstance (such as getting a job, participating in some activity, etc.), his request is reviewed and decided by his treatment team.
 - Standard rules for sex offenders**--comprehensive list of rules applied to all sex offenders on supervision.

Process for Residence Selection

- Residential searches start when the Court approves a Supervised Release.
- Typically, the search is performed by a private provider under contract with the Department--searching for residence that meets the criteria specified by DHFS.
- In some situations, DHFS staff also directly search for potential residences.
- Once a potential residence is identified, it is reviewed for appropriateness by DHFS Supervised Release program staff and Probation and Parole staff.
- If residence is determined to be appropriate, it is included in the Supervised Release plan for the Court's review and approval.
- If appropriate residence cannot be identified within the allotted time frame (60 days by statute), the Department requests an extension.
- Most residential SR placements are rented houses or apartment--landlord is fully informed about the individual and Chapter 980.
- Any involved parties who want to participate in the residential search process are welcomed to participate by the Department (specific contacts with law enforcement are also made).

Criteria for Residence Selection

- Residence selection is an individualized decision within the context of each Supervised Release case. Need to consider the characteristics of the individual (e.g., victim profile, physical limitations, etc.) as well as the characteristics of the community (e.g., range of available housing, law enforcement presence, etc.).
- The following criteria are utilized to identify, screen and review potential housing options:
 1. **Legal Criteria:** The logic of Chapter 980 is that individuals should be returned to their county of residence for placement. Out-of-county placements are possible under Chapter 980, but would generally be used only for extraordinary reasons. In addition, the law specifies that in developing placements the Department is directed to work to minimize to the greatest extent possible, the residential population density of sex offenders.
 2. **General Proximity Guidelines:** To the extent practicable, the Department attempts to rule out placements that are in close proximity to certain types of facilities: schools, licensed day cares, parks, other licensed child facilities, and other entities at which children may congregate. The Department does not have an absolute rule on minimum distances, but rather uses a rule of reasonableness that considers the specifics of the case. (It should be noted that there is no documented impact of proximity to certain facilities in re-offenses).

Criteria Cont.

3. **Proximity to Potential Victims:** If a potential residence does not provide reasonable physical distance away from vulnerable potential victims, the residence will be eliminated from consideration. For example, if children live in a multi-unit apartment building, and the individual has a history of offending against children, the apartment would be ruled out.
4. **Victim Proximity:** If the victims of an individual live in a concentrated area, the Department would attempt to locate the residence in an alternate location.
5. **Market Availability and Price:** Supervised Release clients are placed only in settings where the landlord understands the characteristics of the Chapter 980 population.
6. **Proximity to Services:** Specialized Probation and Parole Agents, specialized sex offender treatment providers, health care providers, and vocational opportunities.

CONCLUSION:

In reality, there is no such thing as an “ideal” residence for a high-risk sex offender. In virtually every case, the selection of a residence does not come down to a choice between multiple locations. Rather, the choice comes down to selecting the best available location, and then building supervision and other services around the best available site.

Potential Legislative Issues

Since its creation in 1994, there have been three significant statutory changes to the law:

1. In 1999, the law was modified to eliminate the option of direct court release to Supervised Release without the person first being in the institution.
2. In 2001, the law was modified relative to patient rights and Chapter 980 patients.
3. In 2004, the law was modified to establish a new commitment threshold and supplemental criteria for being granted Supervised Release.

There are three specific law changes that the Chapter 980 program would like to have reviewed:

1. Creation of a crime for escape.
2. Creation of a crime for battery by an SVP patient.
3. Establish statutory authority for the videotaping of treatment groups.

When considering other changes to Chapter 980, the Chapter 980 program would request that the Committee consider a number of specific concerns:

1. Competency to stand trial: current process is a very valuable tool for screening out of the program extremely low functioning persons. These individuals are a very bad fit in the program. Thus, if defendant rights are going to be modified, we believe that the issue of competency deserves separate consideration.
2. Carefully consider any criteria or process requirements associated with SR. Need to assess what the real world impact will be. Constitutionality of the law could be adversely impacted if placement ability is reduced.
3. Recognition that the discharge/SR processes are quite cumbersome and that changes may be appropriate. However, need to consider from a variety of perspectives--e.g., ability of court system to meet new demands, overall efficiency of the system, need to retain mental health basis for legal process, etc.