



WISCONSIN LEGISLATIVE COUNCIL
PROPOSED REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
SEXUALLY VIOLENT PERSON
COMMITMENTS

March 24, 2005

PRL 2005-08

Special Committee on Sexually Violent Person Commitments

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on Sexually Violent Person Commitments recommends the following proposal to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

WLC: 0083/2, Relating to the Definition of Sexually Violent Person, Sexually Violent Person Commitment Proceedings, Criteria for Supervised Release, Battery by Certain Committed Persons, Escape from Custody by a Person Who is Subject to a Sexually Violent Person Commitment Proceeding, and Providing Penalties

WLC: 0083/2, relating to sexually violent person commitments and providing penalties, does the following:

- Revises the definition of “sexually violent person” (SVP) for purposes of ch. 980, Stats. (SVP commitments chapter), to define the term “act of sexual violence” that appears in the definition, add certain criminal offenses, and revise the meaning of the term “sexually motivated” in the definition.
- Revises and creates, in general, various provisions relating to the commencement of, and general proceedings in, ch. 980 proceedings, including filing the petition, the probable cause hearing, experts appointed for examinations, jury requirements, and use of presentence reports by specified persons.
- Creates a change of venue procedure specific to SVP proceedings.
- Creates specific discovery provisions applicable to ch. 980 proceedings and provides that the general discovery process applicable in other civil actions does not apply in these proceedings.
- Allows certain records (currently confidential), including juvenile, pupil, mental health commitment and patient health care records, to be open for inspection by specified state agencies or a district attorney for use in the evaluation or prosecution of any SVP proceeding, if the records relate to a person who is subject to or who is being evaluated for an SVP proceeding.
- Makes a person’s juvenile delinquency dispositions admissible for a hearing, trial, or other SVP proceeding relating to the person.
- Creates an additional exception to a patient’s privileged communications with a health care provider for communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP.
- Revises the period for periodic reexamination of the mental condition of a committed SVP to within 12 months after the date of the initial commitment order and every 12 months thereafter.
- Creates a new process for granting supervised release, including: (1) a requirement for a court order that a county prepare a report on the SVP’s prospective residential options and for the

county to report within 30 days of the order; and (2) a requirement that a court may order supervised release only if it finds that all of the specified conditions in the draft have been met.

- Modifies provisions relating to the revocation of supervised release to specify the conditions and procedures for petitioning for revocation, detaining the person on release, and court revocation of the release order.
- Modifies provisions relating to petitions for discharge from custody or supervision without the approval of the Secretary of the Department of Health and Family Services (DHFS).
- Modifies the current criminal escape statute to include: (1) persons who are in actual custody in a facility used for the detention of persons committed as SVPs; and (2) the constructive custody of a person placed on supervised release.
- Creates a special battery statute relating to a battery caused by an SVP committed to an institution.

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Sexually Violent Person Commitments and appointed the chair by a May 21, 2004 mail ballot. The committee was directed to study current law relating to the commitment, periodic reexamination, supervised release, and discharge of SVPs.

Membership of the Special Committee, appointed by a July 21, 2004 mail ballot, consisted of three Senators, three Representatives and four public members. A list of committee members is included as **Appendix 3** to this report.

Summary of Meetings

The Special Committee held three meetings in Madison. The meetings of the Special Committee were held on the following dates:

September 28, 2004
November 16, 2004
January 31, 2005

September 28, 2004: At the first meeting of the Special Committee, the committee heard testimony from several persons familiar with issues relating to ch. 980, Stats. (the sexually violent offender law):

- **Steven Watters, Director of the Sand Ridge Secure Treatment Center (SRSTC)** for persons committed under ch. 980, gave the committee an overview of ch. 980 commitments, including the legal bases for these commitments, a description of the facilities and the process used at Sand Ridge, a brief comparison of the Wisconsin law with laws in other states, a description of supervised release and discharge of persons under ch. 980, and several suggested changes in the law that the DHFS consider to be important.
- **Thomas Fallon, Assistant Attorney General, Wisconsin Department of Justice (DOJ)**, provided information on the impact of the new standard of commitment in ch. 980, comments on Substitute Amendment 2 to 2003 Assembly Bill 861 relating to revisions in ch. 980, and a brief review of how ch. 980 cases are prosecuted..

November 16, 2004: At this meeting, the committee heard testimony from invited speakers relating to evaluation and treatment of persons committed under ch. 980. **Steven Watters, Director, SRSTC**, described the general philosophy of the SRSTC's program relative to assessment and evaluation of patients. **Dennis Doren, Director, SRSTC Evaluation Unit**, described the statutory evaluation and court testimony requirements and the evaluation process for determining "mental disorder" and the patient's recidivism risk. **Lloyd Sinclair, Associate Treatment Director, SRSTC**, discussed the concept of "significant progress in treatment," described treatment progress reports and the effect of treatment on recidivism, reviewed four treatment targets to reduce recidivism, and discussed methods of assessing a patient's treatment progress. The committee then discussed its charge and directed the staff to prepare Assembly Substitute Amendment 2 to 2003 Assembly Bill 861, including an amendment to create a crime of battery by a patient on any person at an SRSTC-type institution, in Legislative Council draft form. The chair requested committee members to submit any additional amendments to the substitute amendment.

January 31, 2005: At the last meeting of the committee, the committee reviewed the redraft (WLC: 0083/1) of the substitute amendment, which included new criminal escape and battery provisions. The committee then discussed a number of amendments to the draft suggested by Thomas Fallon, relating to polygraph results, factors in treatment evaluations, and factors and conditions for supervised release. After discussing WLC: 0083/1, there was a general consensus that WLC: 0083/1, along with the amendments presented at the meeting, should be placed in a mail ballot for a committee vote.

PART III

RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the draft as recommended by the Special Committee on Sexually Violent Person Commitments.

Background

Chapter 980, Stats., relating to civil commitment of sexually violent persons, was created by 1993 Wisconsin Act 479 and took effect on June 2, 1994.

Description

The draft makes various changes to current law (particularly ch. 980, Stats.), relating to the commitment, periodic reexamination, supervised release, and discharge of SVPs. General descriptions of the major provisions of the draft are set forth below. A more detailed description of each provision is set forth in the Joint Legislative Council prefatory note and notes following specific provisions in the draft.

Definitions

The **draft** revises the definition of "**sexually violent person**" (**SVP**), and related definitions, for purposes of ch. 980 as follows:

1. Defines "act of sexual violence" (a term found in the definition of "sexually violent person") to mean conduct that constitutes the commission of a **sexually violent offense (SVO)**, and adds third-degree sexual assault to the list of SVOs covered by the definition.
2. Adds felony murder, administering a dangerous or stupefying drug, robbery, and physical abuse of a child to the list of SVOs if such an offense is determined to be sexually motivated; expands the list of SVOs to include comparable crimes committed prior to June 2, 1994; and revises the term "sexually motivated" to mean that one of the purposes for an act is for the actor's sexual arousal or gratification (current law) or **for the sexual humiliation or degradation of the victim**. [SECS. 56 to 63.]

Commencement of Commitment Proceedings

Under **current law**, if an agency with jurisdiction (i.e., the agency with the authority or duty to release or discharge the person) has control or custody over a person who may meet the criteria for commitment as an SVP, the agency must inform each appropriate district attorney (DA) and DOJ regarding the person as soon as possible beginning three months prior to the applicable date of the following: (1) 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 an SVO; (2) the anticipated release from a secure juvenile facility of a person adjudicated delinquent on the basis of an SVO; or (3) the termination or discharge of a person who has been found not guilty of an SVO by reason of mental disease or defect.

Under the **draft**, for persons under a sentence, the agency must inform the DA and DOJ regarding the person as soon as possible beginning 90 days before the date of the anticipated discharge or release on parole or extended supervision, or otherwise, from a sentence of imprisonment or term of

confinement in prison that was imposed for a conviction for an SVO, from a continuous term of incarceration, any part of which was imposed for an SVO, or from a prison placement under the intensive sanctions program, any part of which was imposed for an SVO. ["Continuous term of incarceration, any part of which was imposed for a sexually violent offense" is defined to include confinement in a juvenile facility if the person was placed in the facility for being adjudicated delinquent on the basis of an SVO.] The DA and DOJ must also be notified of the anticipated release on parole or discharge of a person committed under ch. 975, Stats. (the sex crimes chapter in effect prior to the creation of ch. 980.), for an SVO. [SECS. 65, 66, 67, and 70.]

Filing a Commitment Petition

Under **current law**, DOJ may file a petition to commit a person as an SVP at the request of the agency with the authority or duty to release or discharge the person. If DOJ does not file a petition, the DA for the county in which the person was convicted, adjudicated delinquent, or found not guilty by reason of insanity or mental disease, defect, or illness, or the county in which the person will reside, may file the petition. The **draft** specifies that the DA of the county in which the person is in custody may also file the petition; a juvenile court does not have jurisdiction over a petition involving a child; and filing fees are eliminated. [SECS. 31, 73, and 77.]

Probable Cause Hearing

Under **current law**, whenever a commitment petition is filed, the court must hold a hearing to determine whether there is probable cause to believe that the person named in the petition is an SVP. If the person is in custody, the court must hold the probable cause hearing **within 72 hours** after the petition is filed, excluding Saturdays, Sundays, and legal holidays. If the person is not in custody, the court must hold the hearing within a reasonable time after the filing of the petition.

Under the **draft**, generally, the court must hold the probable cause hearing **within 30 days**, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown. If the person named in the petition is in custody and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, the hearing must be held **no later than 10 days** after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause. [SEC. 89.]

Commencement of Trial on Commitment Petition

Current law specifies that a trial to determine whether the person who is the subject of a commitment petition is an SVP must commence **no later than 45 days** after the date of the probable cause hearing. The court may grant a **continuance** of the trial date for good cause.

The **draft** specifies that the trial must commence **no later than 90 days** after the probable cause hearing; and the court may grant **one or more** continuances for good cause. [SEC. 91.]

Change of Venue

The draft creates a change of venue procedure specific to SVP proceedings. The person who is the subject of a commitment petition or who has been committed as an SVP may move for a change of the place of a jury trial on the ground that an impartial jury cannot be had in the county in which the trial is set to be held. If the court determines that there exists in the county such prejudice that a fair trial cannot be had, it must, with one exception, order that the trial be held in any county where an impartial trial can be had. Only one change may be granted and the judge who orders the change in the place of trial must preside over the trial.

Alternatively, the draft provides that instead of changing the place of the trial, the court may order that the jury be selected in another county if all of the following apply: (1) the court has decided

to sequester jurors after the commencement of the trial; (2) there are grounds for changing the place of the trial; and (3) the estimated costs to the county appear to be less using an alternate jury rather than changing the place of the trial. [SEC. 84.]

Experts for Examinations

Under **current law**, whenever a person who is the subject of a commitment petition or who has been committed as an SVP is required to submit to an examination, he or she may retain experts or professional persons to perform an examination. The **draft** provides that, in addition to current law, if a person who is the subject of a commitment petition denies the facts alleged in the petition, the court may appoint at least one qualified physician, psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial. The state may retain a physician, psychologist, or other mental health professional to examine the mental condition of a person who is the subject of a petition or who has been committed and to testify at the trial or any other SVP proceeding at which testimony is authorized. [SEC. 83.]

Comment on Person's Refusal to Participate in Examination

The **draft** provides that the state may present evidence or comment on evidence that a person who is the subject of a commitment petition or a person who has been committed refused to participate in an examination of his or her mental condition that was being conducted as part of an SVP proceeding or that was conducted before the commitment petition was filed for the purpose of evaluating whether to file a petition. [SEC. 86.]

Hearings to Juries; Commitment and Discharge

Under **current law**, the person who is the subject of a **commitment petition**, the person's attorney, DOJ, or the DA may request that the trial be to a jury of 12 in order to determine whether the person who is the subject of the petition is an SVP. The court may also, on its own motion, require that the trial be to a jury of 12. A verdict of a jury is not valid unless it is unanimous. The **draft**: (1) provides for a jury of 12, but the parties may stipulate to a smaller number of jurors [SEC. 94]; and (2) specifies that juries must be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that each party is entitled to four peremptory challenges (instead of three, as for other civil actions), unless fewer jurors are to serve on the jury. [SEC. 93.]

The **draft** also provides a separate jury requirement for **discharge hearings**. The DA or DOJ, whichever filed the original petition, or the petitioner may request that the discharge hearing be to a jury of six. A jury trial is deemed waived unless it is demanded within 10 days after the filing of the petition for discharge. No verdict is valid unless it is agreed to by at least five of the jurors. [SEC. 111.]

Discovery in Ch. 980 Proceedings

The **draft** creates provisions that are specific to discovery in proceedings relating to SVPs and specifically provides that the general discovery process does not apply in ch. 980 proceedings. The court must exclude any witness not listed or evidence not presented for inspection unless good cause is shown for failure to comply; and may advise the jury of the nonresponsiveness of a party. [SEC. 85.]

Confidential Juvenile, Pupil, Mental Health Commitment, and Patient Health Care Records

Under **current law**, certain records are confidential and may be disclosed only to persons and entities specified in the statutes: juvenile court records; law enforcement records relating to juveniles; pupil records; and reports of child abuse and neglect. In addition, the files and records of mental health court proceedings are closed but are accessible to any person who is the subject of a petition for involuntary commitment or other petition under ch. 51, Stats. (the Mental Health Act). Patient health care records are confidential and may be released upon request without informed consent only under specified conditions.

Under the **draft**, such records are open for inspection by and production to authorized representatives of the Department of Corrections (DOC), DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding. [See, for example, SECS. 3, 4, 5, 8, 15, 17, 36, 38, and 80.]

Mental Health Registration and Treatment Records

Under **current law**, treatment records of an individual may be released without informed consent under specified circumstances. Regarding SVP proceedings, such records may be released to appropriate examiners and facilities for the examination of an individual who is the subject of a petition for commitment or for supervised release. The recipient of any information from the records must keep the information confidential except as necessary to comply with the provisions of the chapter relating to SVP commitments. In addition, such records may be released to DOJ or a DA for a commitment petition if the treatment records are maintained by the agency that has custody or control over the person who is the subject of the petition.

Under the **draft**, treatment records may be disclosed to a physician, psychologist, or other mental health professional retained by a party or appointed by the court to examine a person under the chapter relating to SVP commitments or to authorized representatives of DOC, DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, with the same limitations as provided for other confidential records, as described above. [SEC. 10.]

Admissibility of Juvenile Delinquency Dispositions

Under **current law**, the disposition of a juvenile, and any record of evidence given in a hearing in juvenile court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except as specified under the statutes. The **draft** creates an exception [i.e., such dispositions are admissible] for a hearing, trial, or other SVP proceeding relating to a person. [SEC. 34.]

Privileged Communications With Health Care Providers

Under **current law**, generally, a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, between the patient and a health care provider. However, there is **no privilege** as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian, for court-ordered protective services, or for protective placement if the health care provider in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement.

The **draft** includes, in the exception to the privilege, communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP. [SEC. 32.]

Presentence Reports

Under **current law**, after a conviction, the court may order a presentence investigation, which must be disclosed to the defendant's attorney (or the defendant, if unrepresented) and the DA prior to sentencing. The **draft** specifies that the presentence investigation report and any information contained in it or upon which it is based may be used by any of the following persons in any evaluation, examination, referral, hearing, trial, post commitment relief proceeding, appeal, or other SVP proceeding: DOC and DHFS; the person who is the subject of the report and his or her attorney; the attorney representing the state or an agent or employee of the attorney; a physician, psychologist, or

other mental health professional who is examining the subject of the report; and the court and, if applicable, the jury hearing the case. [SEC. 45.]

Periodic Reexamination

Under **current law**, DHFS must conduct an examination of the mental condition of each person who has been committed as an SVP **within six months** of the initial commitment and every 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. The examiner conducting an examination must prepare a written report of the examination no later than 30 days after the date of the examination.

Under the **draft**, DHFS must conduct the examination **within 12 months** after the date of the initial commitment order and every 12 months thereafter. At the time of the examination, DHFS must prepare a treatment report based on its treating professionals' evaluation of: (1) the specific factors associated with the person's risk for committing another SVO; (2) whether the person has made significant progress in treatment or has refused treatment; (3) the ongoing treatment needs of the person; and (4) any specialized needs or conditions associated with the person that must be considered in future treatment planning. [SEC. 96.]

The draft specifies that the examiner's report must: (1) include an assessment of the risk that the person will reoffend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community; and (2) be prepared no later than 30 days after the date of the examination and must be provided to DHFS. DHFS must send the treatment and written examination reports, and a written statement from DHFS recommending either continued institutional care, supervised release, or discharge to the court. If the report concludes that the person does not meet the criteria for commitment as an SVP, DHFS must petition for discharge. [SEC. 100.]

Requests for Supervised Release

The draft creates a new process for granting supervised release:

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the commitment, the DA, or DOJ, may object to the recommendation by filing a written objection with the court. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner.

2. The court must determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person while on supervised release. In making this decision, the court may consider the same items as under current law, except that the person's progress in treatment or refusal to participate in treatment is added.

3. The court must select a county to prepare a report on the person's prospective residential options. Unless the court has good cause to select another county, the court must select the person's county of residence. The court must order the county department in the county of intended placement to prepare the report, either independently or with DHFS, identifying prospective residential options. In identifying options, the county department 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. If the court determines that the options identified in the report are inadequate, the court must select another county to prepare a report. The county must report within 30 days of the court order.

4. The court may order that a person be placed on supervised release if it finds that **all of the following apply**: (a) the person has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained and the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed; (b) there is treatment reasonably available in the community and the person will be treated by a provider who is qualified to provide the necessary treatment in this state; (c) the provider presents a specific course of treatment for the person, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court, DOJ, or the DA, as applicable; (d) the person has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and DOJ or the DA, as applicable, any unauthorized absence of the person from the housing arrangement; (e) the person will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court; (f) DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (g) the degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources. [SEC. 102.]

Supervision of Persons on Supervised Release

The draft modifies current law relating to revocation of supervised release as follows:

1. If DHFS concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release.

2. As under current law, DHFS may detain a person for a violation or threatened violation. In addition, under the draft, if DHFS concludes that such a person is a threat to the safety of others, it must detain the person and petition for revocation of the order granting supervised release.

3. If DHFS concludes that the order should be revoked, it must file a statement alleging the violation and a petition to revoke the order with the committing court and provide a copy of each to the regional office of the state public defender within 72 hours after the detention. The court must hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition must be made within 90 days of its filing.

4. If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and that the violation merits the revocation of the order granting supervised release, the court may revoke the order and order that the person be placed in institutional care. If the court finds by clear and convincing evidence that the safety of others requires that supervised release be revoked, the court must revoke the order granting supervised release and order that the person be placed in institutional care. [SEC. 103.]

Discharge From Commitment

The **draft** modifies provisions in current law that permit a person to petition the court for discharge from custody or supervision **without the approval** of the Secretary of DHFS. Under the draft, the court must deny the petition without a hearing unless the petition alleges facts from which the court may conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in

the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of six. A verdict must be agreed to by at least five of the six jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The general rules of evidence are inapplicable at such hearings. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release. [SECS. 110 and 111.]

Failure to Comply With Time Limits

The draft provides that failure to comply with any time limit specified in ch. 980 does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction; and is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered. Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance. [SEC. 86.]

Immunity for Noncompliance With SVP Provisions

Under **current law**, any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with the requirement that an agency notify the DA or DOJ of the anticipated release or discharge of a person who may be an SVP. The **draft** specifies that such a person is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with any provision of ch. 980. "Agency" means DOC, DHFS, DOJ, or a DA. [SECS. 71 and 117.]

Escape

Under **current law**, a person in custody who intentionally escapes from custody is guilty of a Class H felony, punishable by a fine not to exceed \$10,000 and a term of imprisonment and extended supervision not to exceed six years. "Custody" is defined as actual custody in an institution, including a secure juvenile facility. It does not include the custody of a probationer, parolee, or person on extended supervision unless the person is in actual custody.

The **draft** modifies the definition of "custody" to include: (1) actual custody in a facility used for the detention of persons committed as SVPs; and (2) without limitation, the constructive custody of a person placed on supervised release. The draft specifies that a person who intentionally escapes from custody under the following circumstances is guilty of a Class F felony, punishable by a fine not to exceed \$25,000 and a term of imprisonment and extended supervision not to exceed 12 years and six months: (1) while subject to a detention or custody order pending a petition to commit the person as an SVP; or (2) while subject to an order committing the person to custody of DHFS, regardless of whether the person is placed in institutional care or on supervised release. [SECS. 40 and 41.]

Battery

The draft creates a new criminal battery provision specifying that an SVP who has been committed under ch. 980 and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the institution, without his or her consent, is guilty of a Class H felony. The term "bodily harm" is defined in s. 939.22 (4), Stats., to mean physical pain or injury, illness, or any impairment of physical condition. A Class H felony is punishable by a fine not to exceed \$10,000 or a term of confinement and extended supervision not to exceed six years, or both. This provision is comparable to current crimes of battery by prisoners and battery to law enforcement officers and fire

fighters; probation, extended supervision and parole agents and aftercare agents; and emergency medical care providers. [SEC. 39.]

District Attorneys; Cost Reimbursement

Under **current law**, the DA in Brown County and the DA in Milwaukee County must each assign one assistant DA to be an SVP commitment prosecutor. Those assistant DAs may file and prosecute SVP commitment proceedings in any prosecutorial unit in the state. The **draft** specifies that if an assistant DA prosecutes or assists in the prosecution of an SVP case in another prosecutorial unit, the unit in which the case is heard must reimburse the assistant DA's own unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. [SEC. 49.]

Other Items

The draft also provides that:

1. Notwithstanding the normal process for gaining personal jurisdiction in a judicial proceeding, a court may exercise personal jurisdiction over the subject of an SVP petition even though the person is not served under the normal process with a verified petition and summons or served with an order for detention and the person has not had a probable cause hearing. [SEC. 86.]
2. A motion for post-commitment relief by an SVP or an appeal from a final order or from an order denying a motion for post-commitment relief will follow criminal appellate procedure. An appeal by the state from a final judgment or order will follow the procedure for civil appeals. [SEC. 86.]
3. Constitutional rights available to a defendant in a criminal proceeding are not necessarily available to the person who is the subject to a commitment petition. [SEC. 92.]

Appendix 1

Committee and Joint Legislative Council Votes

WLC: 0083/2, relating to the definition of sexually violent person, sexually violent person proceedings, criteria for supervised release, battery by certain committed persons, escape from custody by a person who is subject to a sexually violent person commitment proceeding, and providing penalties, was recommended by the Special Committee on Sexually Violent Persons to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

In a February 21, 2005 mail ballot, the Special Committee recommended WLC: 0083/2, on a vote of Ayes 9 (Sens. Darling, Lazich, and Plale; Reps. Gundrum, Stone, and Staskunas; and Public Members Dallet, Nofzinger, and Tess); Noes, 0; and Not Voting, 1 (Public Member Sankovitz).

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

ALAN LASEE
Senate President
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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

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Appendix 3

Sexually Violent Person Commitments

Senator Alberta Darling, **Chair**
1325 West Dean Road
River Hills, WI 53217

Representative Mark Gundrum
5239 South Guerin Pass
New Berlin, WI 53151

Senator Mary Lazich
4405 South 129th Street
New Berlin, WI 53151

Senator Jeff Plale
1404 18th Avenue
South Milwaukee, WI 53172

Representative Tony Staskunas
2010 South 103rd Court
West Allis, WI 53227

Representative Jeff A. Stone
5535 Grandview Drive
Greendale, WI 53129

Rebecca Dallet
Milwaukee Co. District Atty. Office
949 North 9th Street, Room 110
Milwaukee, WI 53233

Mike Nofzinger
222 South Walnut Street
Appleton, WI 54911

Richard J. Sankovitz
901 North 9th Street, Room 403
Milwaukee, WI 53233

Sally Tess
Department of Corrections
3099 East Washington Avenue
P.O. Box 7925
Madison, WI 53707-7925

STUDY ASSIGNMENT: The committee is directed to study current law relating to the commitment, periodic reexamination, supervised release, and discharge of sexually violent persons.

10 MEMBERS: 3 Senators, 3 Representatives, and 4 Public Members.

LEGISLATIVE COUNCIL STAFF: Don Salm and Ronald Sklansky, Senior Staff Attorneys, and Julie Learned, Support Staff.

Appendix 4

Committee Materials List

(Copies of documents are available at www.legis.state.wi.us/lc)

February 10, 2005 Mail Ballot

- WLC: [0083/2](#), relating to the definition of sexually violent person, sexually violent person commitment proceedings, criteria for supervised release, battery by certain committed persons, escape from custody by a person who is subject to a sexually violent person commitment proceeding, and providing penalties

January 31, 2005 Meeting

- WLC: [0083/1](#), relating to the definition of sexually violent person, sexually violent person commitment proceedings, criteria for supervised release, battery by certain committed persons, escape from custody by a person who is subject to a sexually violent person commitment proceeding, and providing penalties
- [Memo No. 2, Clarifications to WLC: 0083/1 Proposed by Thomas Fallon, Department of Justice](#) (1-27-05)
 - [Enclosure 1](#)
 - [Enclosure 2](#)
 - [Enclosure 3](#)
 - [Enclosure 4](#)
 - [Enclosure 5](#)
 - [Enclosure 6](#)
- [Memo](#) from Krista Ginger, Legislative Liaison, Wisconsin Public Defender, **Written Testimony**/Comments regarding Assembly Substitute Amendment 2 to 2003 Assembly Bill 861
- [Memo](#) from Krista Ginger, Legislative Liaison, Wisconsin Public Defender, Proposed re-draft language for Assembly Substitute Amendment 2 to 2003 Assembly Bill 861

November 16, 2004 Meeting

- WLC: [0041/1](#), relating to battery to staff providing institutional care for sexually violent persons
- [Presentation to the Legislative Council Special Committee on Sexually Violent Person Commitments](#), by Steve Watters, SRSTC Director, Department of Health and Family Services (11-16-04)
 - [Rapid Risk Assessment for Sex Offender Recidivism \(RRASOR\)](#), included with above presentation
- Memo, [Review of AB 861 Substitute Amendment 2](#), from Sally Tess, Department of Corrections (11-15-04)

September 28, 2004 Meeting

- [Staff Brief 04-3](#), "**Sexual Predator Law**": **Civil Commitment of Sexually Violent Persons Under Ch. 980, Stats.** (9-17-04)
- [Chapter 980, Stats.](#), as amended by 2003 Wisconsin Act 187
- [Memo No. 1](#), **Assembly Substitute Amendment 2 to 2003 Assembly Bill 861, Relating to Sexually Violent Persons** (9-13-04)
- [Assembly Substitute Amendment 2](#) to 2003 Assembly Bill 861
- [Testimony](#), Steve Watters, Director, DHFS, Sand Ridge Secure Treatment Center
- [Testimony](#), Thomas Fallon, Assistant Attorney General, Wisconsin Department of Justice