



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

Memo No. 1

TO: MEMBERS OF THE SPECIAL COMMITTEE ON PLACEMENT OF SEX OFFENDERS

FROM: Anne Sappenfield and Don Salm, Senior Staff Attorneys

RE: Current Statutes Relating to Placement of Sex Offenders and Persons Committed Under ch. 980, Stats., in Residential Settings

DATE: September 5, 2006

This Memo describes current statutes relating to: (1) placement of sex offenders released to probation, parole, or extended supervision; and (2) release of sexually violent persons to the community on supervised release.

PLACEMENT OF SEX OFFENDERS RELEASED TO PROBATION, PAROLE, OR EXTENDED SUPERVISION

This section of the Memo describes current statutes relating to placement of sex offenders who are paroled or placed on extended supervision following a term in prison or who are placed on probation for a sex offense.

Residential Population Density and Approved Residence

Under current law, the Department of Corrections (DOC) must work to minimize, to the greatest extent possible, the residential population density of sex offenders who are placed on *probation, parole, or extended supervision* or who are sexually violent persons placed on supervised release. [s. 301.03 (19), Stats.]

A sex offender who is released on *parole* may not be placed in any county where there is a correctional institution that has a specialized sex offender treatment program, unless that county is also the person's county of residence. [s. 304.06 (2m) (b) and (c), Stats.]

Current law also provides that, as a condition of *extended supervision*, a sex offender must live in a residence that DOC has approved. [s. 302.116, Stats.]

For purposes of these provisions, a sex offender is a person who has been convicted of first- or second-degree sexual assault, first- or second-degree sexual assault of a child, engaging in repeated acts of sexual assault of the same child, incest with a child, or child enticement or a solicitation, conspiracy, or attempt to commit one of those offenses.¹ [s. 304.06 (2m) (a), Stats.]

Placement in County of Residence or Conviction or in Treatment Facility

Effective July 1, 2007, DOC must place each person who has been convicted of a sex offense in one of the following locations when the person is released to *parole or extended supervision*:

- The county in which the person resided on the date of the sex offense.
- The county in which the person was convicted of the sex offense.
- A sex offender treatment facility.

This provision does not preclude DOC from placing a person in another location if DOC initially placed the person in one of the above locations. [s. 301.03 (20), Stats., as created by 2005 Wisconsin Act 431.]

For purposes of this provision, “sex offense” means a violation, or the solicitation, conspiracy, or attempt to commit a violation of, sexual exploitation by a therapist; first-, second-, or third-degree sexual assault; incest; first- or second-degree sexual assault of a child; engaging in repeated acts of sexual assault of the same child; sexual exploitation of a child; causing a child to view or listen to sexual activity; incest with a child; child enticement; use of a computer to facilitate a child sex offense; soliciting a child for prostitution; sexual assault of a child placed in substitute care; sexual assault of a student by a school instructional staff person; felony exposing a child to harmful material or harmful descriptions or narratives; possession of child pornography; child sex offender working with children; or abduction of another’s child or of false imprisonment or kidnapping if the victim was a minor and the person who committed the violation was not the child’s parent. These are the offenses for which sex offender registration is required. [s. 301.45 (1d) (b), Stats.]

The newly created provision does not affect current law relating to placement of a parolee in a county where there is a correctional institution that has a specialized sex offender treatment program. [s. 301.03 (20), Stats.] Also, the density provision remains in effect, but is subject to the new placement requirements. [s. 301.03 (19), Stats., as affected by 2005 Wisconsin Act 431.]

¹ It appears that this definition was intended to include sexual assault of a child placed in substitute care (e.g., foster care), as well; however, as drafted, 2005 Wisconsin Act 277 modified this definition to apply only to the solicitation, conspiracy, or attempt to commit this offense.

CHAPTER 980 SEXUALLY VIOLENT PERSON COMMITMENTS: PROVISIONS RELATING TO SUPERVISED RELEASE, AS AFFECTED BY 2005 WISCONSIN ACTS 431 AND 434

Chapter 980 of the statutes (entitled *Sexually Violent Person Commitments*) establishes standards and procedures for the involuntary civil commitment of certain persons who are found to be “sexually violent persons” and, among other things, supervised release of persons so committed.

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 not 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 one or more 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.

The law defines “sexually violent offense” to mean any of the following offenses:

- First- or second-degree sexual assault. 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, engaging in repeated acts of sexual assault of the same child, incest with a child, or enticement of a child.
- *If the offense was sexually motivated*, first- or second-degree intentional or reckless homicide, aggravated battery, great bodily harm to an unborn child, false imprisonment, hostage-taking, kidnapping, or burglary. 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.

[s. 980.01 (6) and (7), Stats., as affected by 2005 Wisconsin Act 434.]

When Petition for Supervised Release May Be Filed; Service of Petition

Any person who is committed for institutional care in a secure mental health facility or other facility as a sexually violent person may petition the committing court to authorize that the person be placed in the community on supervised release if: (a) *at least 12 months* have elapsed since the initial commitment order was entered; or (b) *at least 12 months* have elapsed since the most recent release petition was denied, or the most recent order for supervised release was revoked. The director of the facility at which the person is placed also may file a petition for supervised release on the person’s behalf at any time. [s. 980.08 (1), Stats., as affected by 2005 Wisconsin Act 434.]

Appointment of Examiners by Court; Written Report

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. The examiner or examiners 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. [s. 980.08 (3), Stats., as affected by 2005 Wisconsin Act 434.]

Court Hearing on Petition; Factors Court May Consider in Decision on Supervised Release

The court, without a jury, must hear the petition within 30 days after the report of the court-appointed examiner is filed with the court, unless the court for good cause extends this time limit. In making the decision on release, 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 (i.e., a person found to have committed first- or second-degree sexual assault of a child or to have engaged in repeated acts of sexual assault of a child under 13 years of age) 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. [s. 980.08 (4) (a) and (c), Stats., as affected by 2005 Wisconsin Act 434.]

Findings Necessary to Permit Court to Authorize Supervised Release

The court may not authorize supervised release *unless*, based on all of the reports, trial records, and evidence presented, the court finds that *all of the following five criteria are met*:

- The person has made *significant progress in treatment*² and the person’s progress can be sustained while on supervised release.

² Under current statutes, “significant progress in treatment” means that the person has done all of the following:

- Meaningfully participated in the treatment program specifically designed to reduce his or her risk to reoffend offered at a treatment facility (e.g., Sand Ridge Secure Treatment Center).
- Participated in the treatment program at a level that was sufficient to allow the identification of his or her specific treatment needs and then demonstrated, through overt behavior, a willingness to work on addressing the specific treatment needs.
- Demonstrated an understanding of the thoughts, attitudes, emotions, behaviors, and sexual arousal linked to his or her sexual offending and an ability to identify when the thoughts, emotions, behaviors, or sexual arousal occur.

- It is *substantially probable* (i.e., much more likely than not) that the person will not engage in an act of sexual violence while on supervised release. An “act of sexual violence” is conduct that constitutes the commission of a sexually violent offense.
- Treatment that meets the person’s needs and a qualified provider of the treatment are *reasonably available*.
- The person *can be reasonably expected* to comply with his or her treatment requirements and with all of his or her conditions or rules of supervised release that are imposed by the court or by DHFS.
- A *reasonable level of resources* can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

[s. 980.08 (4) (cg), Stats., as created by 2005 Wisconsin Act 434.]

Court Required to Select County to Prepare Report; Prospective Residential Options

If the court finds that all of these criteria are met, the court must select a county to prepare a placement report as described below. Unless the court has good cause to select another county, the court must select the person’s county of residence as determined by DHFS. The court may not select a county where there is a facility in which persons committed to institutional care under ch. 980 are placed unless that county is also that person’s county of residence.

A person’s county of residence is determined by: (1) considering residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation; and (2) considering physical presence as a prima facie evidence of intent to remain. DHFS must apply these criteria to the facts that existed on the date that the person committed the sexually violent offense. [s. 983.105, Stats.]

The court is required to authorize the petitioner, the person’s attorney, the district attorney, any law enforcement agency in the county of intended placement, and any local governmental unit in the county of intended placement to submit *prospective residential options for community placement* to DHFS within 60 days following the selection of the county as described above. [s. 980.08 (4) (cm) and (d), Stats., as created by 2005 Wisconsin Act 434.]

2005 Wisconsin Act 431 would have modified the statutes relating to where a sexually violent person released to supervised release could reside, effective July 1, 2007. However, the subsection in which several of these changes were made (s. 980.08 (5), Stats.) was repealed by 2005 Wisconsin Act 434, so these provisions of Act 431 are also repealed and will not go into effect. Under the portion of

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- Demonstrated sufficiently sustained change in the thoughts, attitudes, emotions, and behaviors and sufficient management of sexual arousal such that one could reasonably assume that, with continued treatment, the change could be maintained.

[s. 980.01 (8), Stats., as created by 2005 Wisconsin Act 434.]

the statutes affected by Act 431 that was repealed, DHFS was required to make its best effort to arrange for placement in a residential facility or dwelling that is in the person's county of residence. If that county contained a first class city (currently, only Milwaukee County), DHFS was required to arrange for placement in the person's city, village, or town of residence. A person could have been placed in another city, village, or town if DHFS approved placement of the person with the person's spouse, parent, or adult sibling. Act 431 also provided that, if the person's county of residence declined to prepare a plan, DHFS could arrange for the county in which the person was convicted or a county in which a sex offender treatment facility is located to prepare the plan if that county agreed to do so.

County Department Report on Prospective Residential Options for Community Placement

The court must order the county department of community programs under s. 51.42, Stats. (commonly referred to as the "51.42 board"), in the county of intended placement to prepare a report, either independently or with DHFS, identifying prospective residential options for community placement. In identifying prospective residential 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*** to law enforcement agencies under s. 301.46 (2m) (a) or (am), Stats.³ The county department is required to submit its report to DHFS within 60 days following the court order. [s. 980.08 (4) (e), Stats., as created by 2005 Wisconsin Act 434.]

Effective July 1, 2007, DHFS may not arrange placement in a facility that did not exist before January 1, 2006. [s. 980.08 (5m), Stats., as created by 2005 Wisconsin Act 431.]

Supervised Release Plan

The court must direct DHFS to use any submissions, the report submitted above, or other residential options identified by DHFS to prepare a supervised release plan for the person. The DHFS must prepare a supervised release plan ***that identifies the proposed residence***. The plan must address the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment. The supervised release plan must be submitted to the court within 90 days of the court findings relating to supervised release, above. The court may grant extensions of this time period for good cause.

The court must review the plan submitted by DHFS. If the details of the plan ***adequately meet*** the treatment needs of the individual and the safety needs of the community, the court must approve the plan and determine that supervised release is appropriate. If the details of the plan ***do not adequately meet*** the treatment needs of the individual or the safety needs of the community, the court must: (1) determine that supervised release is not appropriate; or (2) direct the preparation of another supervised release plan to be considered by the court. [s. 980.08 (4) (f) and (g), Stats.]

³ A sex offender notification bulletin must be issued by the agency with jurisdiction over a person (i.e., DOC or DHFS) if the person has been found to be a sexually violent person or has been found to have committed (e.g., has been convicted) of a sex offense on two or more occasions. DOC or DHFS may also issue a bulletin regarding an offender who does not meet these conditions if the agency determines that this notification is necessary to protect the public.

Order for Supervised Release; Conditions; Notification Requirement

An order for supervised release places the person in the custody and control of DHFS. 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.*** A person placed on supervised release is subject to the conditions set by the court and to the rules of DHFS. Within 10 days of imposing a rule, DHFS must file with the court any additional rule of supervision not inconsistent with the rules or conditions imposed by the court. If DHFS wants to change a rule or condition of supervision imposed by the court, DHFS must obtain the court's approval. 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. [s. 980.08 (6m), Stats., as affected by 2005 Wisconsin Act 434.]

Revocation of Order for Supervised Release

If DHFS ***believes*** that a person on supervised release, or awaiting placement on supervised release, ***has violated, or threatened to violate, any condition or rule*** of supervised release, DHFS may petition for revocation of the order granting supervised release, as described above, or may detain the person.

If DHFS ***believes*** that a person on supervised release, or awaiting placement on supervised release, ***is a threat to the safety of others***, DHFS must detain the person and petition for revocation of the order granting supervised release as described above.

The court must hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person. A final decision on the petition to revoke the order for supervised release must be made within 90 days of the filing. Pending the revocation hearing, DHFS may detain the person in the county jail or return him or her to institutional care. [s. 980.08 (7), Stats., as affected by 2005 Wisconsin Act 434.]

If the court finds, after a hearing, by clear and convincing evidence:

- That any ***rule or condition of release has been violated*** and the court finds that the violation of the rule or condition merits the revocation of the order granting supervised release, the court ***may*** revoke the order for supervised release and order that the person be placed in institutional care. The court may consider alternatives to revocation. The person must remain in institutional care until the person is discharged from the commitment under s. 980.09, Stats., or is placed again on supervised release.
- That the ***safety of others*** requires that supervised release be revoked the court ***must*** revoke the order for supervised release and order that the person be placed in institutional care. The person must remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed again on supervised release.

[s. 980.08 (8), Stats., as affected by 2005 Wisconsin Act 434.]

Required Condition of Supervised Release for First Year of Release

Effective July 1, 2007, as a condition of supervised release, for the first year, the court must restrict the person on supervised release to the person's home except for outings that are under the direct supervision of a DOC escort and that are for employment purposes, for religious purposes, or for caring for the person's basic living needs. [s. 980.08 (9), Stats., as created by 2005 Wisconsin Act 431.]

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