

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

**Presentation to the Joint Legislative Council's Special  
Committee**

**on Placement of Sex Offenders**

**“Chapter 980, Supervised Release, and the Placement of  
‘Sexually Violent Persons’ in the Community”**

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# PRESENTATION OVERVIEW

1. Chapter 980 Overview
  - Statutes
  - Numbers
  - Perspectives
  
2. Supervised Release
  - Criteria
  - Process
  - History
  
3. Conclusions

# **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 or commitment.
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 makes it more likely than not that he or she will engage in acts of sexual violence.

# CHAPTER 980 PATIENT POPULATION

<b>Placement</b>	<b>Committed</b>	<b>Detained</b>	<b>Total</b>
SRSTC	260	23	283
WRC	18	37	55
Supervised Release	17	N.A.	17
<b>TOTAL</b>	<b>295</b>	<b>60</b>	<b>355</b>

# CHAPTER 980 “RELEASES”

## Two versions of release:

1. **Supervised Release (SR)**-person is still considered to be a Sexually Violent Person but the Court has determined that placement in the community is appropriate.
  - At present 17 individuals are in the community on SR.
  - During history of program, there have been a total of 55 community placements.
  - Criteria for SR were substantially changed by 2006 legislation.
  
2. **Discharge**-person released from the commitment because of Court determination that criteria no longer met; no conditions attached to person.
  - A total of 26 individuals have been discharged (not counting deaths).
  - Of total discharges, 11 were on SR and 15 were discharged from the institution.

# 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.
- All commitment and release decisions are made by the Courts.

## **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.

# PERSPECTIVES CONTINUED

## **Statistical:**

- WI has approximately 13,300 registered sex offenders living in the community. Of this total, 5,000 are on some type of community supervision, while 8,300 have completed their supervision. (Approximately 5,500 sex offenders are incarcerated or institutionalized.)
- The 17 Supervised Releases presently in the community represent only a small percentage of sex offenders already in the community. Specifically, of the 13,300 registered sex offenders living in the community, Supervised Release placements represent slightly more than 0.1% of this total.

## **Programmatic:**

- Chapter 980 is intended to address the highest risk for re-offense sex offenders in the State. (In a given year, approximately 5-8% of sex offenders being released from prison are referred into the Chapter 980 system.)
- 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.

# **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: OVERALL POLICY FRAMEWORK**

- There is a sound, evidence-based policy rationale for a Supervised Release option in the Chapter 980 program.
  - Studies indicate that the long-term success (i.e., non-offending lifestyle) of offenders is positively influenced by the completion of a comprehensive sex offender treatment program and the placement of the individual in a closely monitored community setting that gradually becomes less restrictive prior to unrestricted release.
- Supervised Release is viewed as the final phase of the Chapter 980 program.
  - Phase One: improving self-management skills and addressing treatment interfering factors.
  - Phase Two: developing a comprehensive list of the factors that contributed to past offending.
  - Phase Three: managing the expression of the factors identified in Phase Two and replacing them with healthy alternative behavior.
  - Phase Four: sustaining the achievements of Phase Three in the community as supervision is progressively decreased.

# **SUPERVISED RELEASE: STATUTORY FRAMEWORK**

- 2005 WI Act 434 made substantial changes in the process and criteria for Supervised Release (SR). These changes became effective on August 1, 2006.
- Under the new law, a patient may petition for SR within 30 days of DHFS's annual report being submitted to the Court.
- SR petitions are considered by the committing Court. 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.
- Important to note that it is not uncommon for there to be stipulations to SR. Stipulations may occur in a variety of circumstances:
  - At the time of initial commitment because of prosecutor's concern that commitment may be lost.
  - During a discharge hearing because of prosecutor's concern that discharge may be granted.
  - Decision not to contest SR because of expert consensus.

# **SUPERVISED RELEASE: STATUTORY CRITERIA**

- 2005 WI Act 434 establishes a bifurcated review process for SR requests. Initially, the Court applies five general criteria to assess an individual's readiness for SR:
  1. Significant progress in treatment.
  2. Substantially probable that the person won't re-offend while on SR.
  3. Treatment is available in the community.
  4. Expectation of rule compliance.
  5. A "reasonable level of resources" can provide for the safe management of the person.
- The second phase of the bifurcated review process is the review by the Court of a specific Supervised Release plan. The plan must meet the treatment needs of the individual and the safety needs of the community.
  - If the Court does not approve the plan: (1) the Court may conclude that SR is not appropriate; or (2) direct the preparation of another plan.

# SUPERVISED RELEASE: RESIDENCE SEARCH

- Chapter 980 specifies that Supervised Release placements should be made in the person's county of residence, unless the Court has "good cause to select another county."
  - Note: 2005 WI Act 431 specifies that in Milwaukee County the placement should be made in the person's municipality of residence.
- New law authorizes a variety of entities to submit prospective residences for inclusion in the SR plan: petitioner and attorney, D.A., law enforcement officials in the county, and any local government in the county.
- Law also specifies that the County (of residence) social service agency must prepare a report - - independent of or with DHFS - - that identifies prospective residential options.
- DHFS then incorporates a prospective residence in the SR plan for the Court's consideration.

# 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:** The Department works 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.

# CRITERIA CONTINUED

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.

# **SUPERVISED RELEASE: SUPERVISION AND OTHER SERVICES**

- WI uses a very active “containment model” for the management of SVP’s placed on Supervised Release in the community.
  - Major emphasis on community safety.
  - Intensive supervision and monitoring.
  - Multi-agency cooperation.
  - Individualized case management.
  - Ongoing sex offender treatment.
  - Holding individuals responsible for their behavior.
  - Significant role of polygraph exams.
- Components of Supervised Release Supervision and Other Services:
  1. Supervision and monitoring services of DOC’s Division of Community Corrections.
    - GPS tracking and electronic monitoring.
    - Regular agent contacts.
    - Law enforcement and custody orders.

# **SUPERVISION AND OTHER SERVICES**

2. Additional monitoring/transportation/chaperone.
  - Contract with ATTIC for regular residence visits.
  - Provide chaperoned activities and transportation.
  - SRSTC pilot on video monitoring of residences.
  
3. Case Management.
  - Coordination of services.
  - Gathering of information for centralized staffings.
  
4. Sex Offender Treatment
  - Providers associated with SRSTC.
  
5. Regular polygraph exams.
  - Maintenance Exams - - rule compliance.
  - Treatment exams - - fantasies, PPG, etc.

Note: Effective July 1, 2007 persons on SR must not leave their residence for the first year except for “outings that are under the direct supervision of the Department of Corrections escort and that are for employment purposes, for religious purposes, or for caring for the person’s basic living needs.”



# HISTORY OF SUPERVISED RELEASE

SR Placements	55
Current on SR	17
SR Revocations	23
SR Discharges	11
Pending Revocations	2
Alt. to Revocation at SRSTC	1
Death	1

- High proportion of revocations reflects the major strengths of the SR program--the intensity of the supervision, holding persons responsible for behavior, the coordination of the process, the value of polygraph exams.
- Offense history of patients while on SR:
  - No patient has been convicted of a “contact” sexual offense.
  - One patient was convicted of fleeing a police officer, and another patient was convicted of federal child pornography charges. (Note: unique circumstances of these cases.)
- Important to note that this revocation experience (i.e., over 40% revocation) occurred based on SR’s granted under previous law. No patient who is viewed as having made “significant progress” in treatment has been revoked.

# OBSERVATIONS/CONCLUSIONS

1. Major legislation enacted earlier this year has substantially changed the criteria for Supervised Release and the process for making community placements.
  - These changes have yet to be applied to any case, so it would be premature to draw any conclusions.
  - Changes in the process were specifically designed to address the concern that local governments were not given the opportunity to participate in the placement process.
  
2. Supervised Release is an essential component of Chapter 980 from both a policy and legal perspective.
  - Last phase of the treatment program - - permits real world application of treatment lessons while still under supervision.

# OBSERVATIONS/CONCLUSIONS

## CONTINUED

3. Supervised Release is a comprehensive approach to facilitating the measured re-integration of high-risk offenders back into the community in as safe a manner as possible.
  - It is likely that in most cases where SR is granted, SR is a transitional phase between the institution and unsupervised life in the community.
  
4. Chapter 980 addresses the individual's risk for sexual re-offense over the course of his lifetime. Thus, it is important that SR - - as the final phase of the treatment program - - allows the individual to develop skills and a lifestyle that can be sustained over the long-term while still exercising appropriate supervision and monitoring.
  - Issue of balancing short-term and long-term risk in the context of protecting the community is a very complex issue that SRSTC takes very seriously.