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## WISCONSIN LEGISLATIVE COUNCIL

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### **SUPERVISED RELEASE AND DISCHARGE OF SEXUALLY VIOLENT PERSONS**

Legislative Council Conference Room  
1 East Main Street, Suite 401  
State Capitol

November 14, 2012  
10:00 a.m. – 12:00 p.m.

[The following is a summary of the November 14, 2012 meeting of the Special Committee on Supervised Release and Discharge of Sexually Violent Persons. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

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#### **Call to Order and Roll Call**

Chair Strachota called the committee to order. The roll was called and a quorum was present. Senator Darling appeared via conference call.

COMMITTEE MEMBERS PRESENT: Rep. Pat Strachota, Chair; Rep. Louis Molepske, Jr.; Sens. Tim Cullen, and Mary Lazich; and Public Members Mark Bensen, Michael Bohren, Rebecca Dallet, Shari Hanneman, Ian Henderson, Frank Liska, Rick Oliva, and Anthony Rios.

COMMITTEE MEMBERS EXCUSED: Sen. Alberta Darling, Vice Chair; and Public Member Ron Cramer.

COUNCIL STAFF PRESENT: Katie Bender-Olson and Michael Queensland, Staff Attorneys.

APPEARANCES Lloyd Sinclair and Deb McCulloch, Department of Health Services (DHS); and Michael Schaefer, Department of Justice (DOJ).

<p><b>*ATTENTION:</b> This was the final meeting of the Special Committee on Supervised Release and Discharge of Sexually Violent Persons. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.</p>
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## **Approval of the Minutes of the Committee's October 4, 2012 Meeting**

*Rep. Molepske moved, seconded by Sen. Darling, that the minutes of the committee's October 4, 2012 meeting be approved. Following discussion, the motion was approved by unanimous consent.*

### **Discussion of Committee Bill Drafts**

#### ***WLC: 0032/1, relating to supervised release and discharge proceedings; and WLC: 0035/1, relating to petitions for supervised release***

Katie Bender-Olson, Legislative Council staff, provided a summary of each SECTION of bill draft WLC: 0032/1. The draft makes various changes to the discharge and supervised release provisions of ch. 980, including the following:

- Assigning the burden of proof regarding supervised release criteria to the petitioner.
- Extending the timelines within which a court must hold a supervised release hearing or discharge trial.
- Altering the pleading requirement a petitioner must meet before receiving a discharge trial.
- Repealing s. 980.075, Stats., relating to the supervised release and discharge petition process, and relocating certain provisions to the statutory sections specifically relating to supervised release and discharge.
- Requiring a court to make a supervised release determination after denying discharge at a discharge trial.
- Requiring a 15-day delay in the execution of a court order granting discharge or supervised release to a committed individual.

The committee members had no comments in regards to SECTIONS 1-3, 5-8, 10, and 13 of WLC: 0032/1.

Ms. Bender-Olson noted that **SECTION 4 of WLC: 0032/1** contains an omission. This SECTION prohibits a committed individual from filing a supervised release petition for at least 12 months after the initial commitment order was entered, at least 12 months since supervised release was denied at a discharge hearing, or since the most recent order for supervised release was revoked. The committee agreed that the draft should also prohibit a committed individual from filing a supervised release petition for at least 12 months after the most recent release petition was denied.

Mike Queensland, Legislative Council staff, described WLC: 0035/1, relating to petitions for discharge, which is an alternative to **SECTION 9 of WLC: 0032/1**. Under current law, a committed person may petition the committing court for discharge at any time. In order to receive a discharge trial, the person must allege facts from which a jury *may* conclude that his condition has changed since the date of his initial commitment order such that he no longer qualifies as a sexually violent person (SVP).

WLC: 0032/1 requires that the petitioner allege facts which *would likely* lead a court or jury to determine he no longer qualifies as an SVP, rather than alleging facts which *may* lead a fact finder to this determination. In addition, WLC: 0032/1 attempts to alter the time period during which a petitioner must show his “condition has changed” in order to merit a discharge trial. This draft requires that a petitioner allege a change occurring since the last discharge trial at which a fact finder determined that he remains an SVP.

In contrast, WLC: 0035/1 retains the current pleading standard that the petitioner must allege facts from which a jury *may* conclude that his condition has changed. However, like WLC: 0032/1, WLC: 0035/1 provides that a committed person must show his condition has changed since the most recent order denying a petition for discharge after a hearing on the merits.

Mr. Queensland noted that the language in WLC: 0032/1 likely fails to meet its objective of requiring the petitioner to allege a change that has occurred since the last hearing on the merits, rather than alleging any change occurring since the initial commitment. Mr. Schaefer representing DOJ agreed that the language in SECTION 9 of WLC: 0032/1 would need to be changed in order to focus the court’s inquiry on the period of time between discharge hearings.

Ms. Dallet stated that the changes recommended by the Department of Justice (DOJ) are welcome. She noted that many ch. 980 cases are relitigated on a regular basis without any change shown since the last discharge hearing by the committed person.

Mr. Rios indicated that creating a higher pleading standard for committed persons may raise due process concerns. He expressed concern that a higher pleading standard would force litigants to litigate a case before a trial is set.

Judge Bohren noted that discharge hearings are unique from other hearings because they involve a matter that has already been litigated - the initial commitment. In addition, because these matters have already been litigated, requiring a committed person to make the necessary preparations to meet the proposed pleading standard is unlikely to be an undue burden.

Mr. Schaefer stated that DOJ had considered whether creating a higher pleading standard would raise due process concerns and concluded that the changes recommended would be defensible. In DOJ’s opinion, the committed person would retain a reasonable and legitimate opportunity to obtain discharge under the proposal.

The committee agreed to recommend the alternative set forth in WLC: 0032/1, but requested that the draft clearly indicate that the committed person is required to show that his “condition has changed” since the last hearing at which a court or jury determined that he remained an SVP.

**SECTION 11 of WLC: 0032/1** specifies that an initial hearing to determine whether or not a discharge trial is warranted is to be a non-evidentiary hearing. The committee members raised concerns that using the phrase “non-evidentiary hearing” would create a new kind of hearing. As a result, the committee recommended excluding the phrase.

Among other changes, this SECTION also specifies that a court “shall” review the entire record in determining whether the petitioner’s condition has sufficiently changed to warrant a discharge trial. The committee recommended changing the word “shall” to “may.”

**SECTION 12 of WLC: 0032/1** requires the court to consider supervised release for a petitioner after denying discharge at a discharge trial. The petitioner may waive the court's consideration of supervised release, but such a waiver is treated as a denial of supervised release for calculating when a committed person may file a petition for supervised release (once every 12 months).

Mr. Rios expressed concern that some SVPs may have their ability to petition for supervised release unnecessarily postponed due to this change. However, the committee recommended the change as drafted.

**SECTION 14 of WLC: 0032/1** specifies a 15-day delay before execution of a court's order discharging a person from commitment or placing the person on supervised release. Under current law, the court's order for discharge or supervised release may be executed immediately.

Mr. Sinclair and Ms. McCulloch, representing DHS, indicated that a 15-day delay would not be necessary to prepare for a committed person's release in every case.

Mr. Henderson noted that, from the victim's perspective, this change is important. This added time frame would allow DHS to notify victims of a committed person's discharge.

Representative Molepske asked DHS if a 10-day window, excluding holidays and weekends, would provide them enough time to fulfill their statutory duties to notify victims. DHS staff believed that such a time frame would be sufficient.

The committee agreed in principle to language provided by Ms. Hanneman. Generally, the language would specify that the court must stay the execution of a discharge order for as short a period as practicable, not to exceed 10 working days, during which time DHS must execute all statutory requirements related to discharge.

***WLC: 0034/1, relating to supervised release***

Mr. Queensland described WLC: 0034/1 by providing a summary of each SECTION of the draft. This draft makes several changes to ch. 980, including the following:

- Revises one of the criteria for supervised release. Under current law a committed person must show that he "has made significant progress in treatment." The draft would require the SVP to show that he "is making significant progress in treatment."
- Revises the definition of "significant progress in treatment" to specify that the individual must be participating in treatment programs at a sufficient level and demonstrating the requisite behavior, understanding, and changes, rather than specifying that the individual has already participated in the treatment and has already demonstrated these behaviors, understandings, and changes.
- Expands the list of facilities at which DHS may place a female SVP to include the Wisconsin Women's Resource Center.
- Requires that all outings by an SVP during his first year on supervised release be preapproved by DHS.

- Expands the list of activities for which an SVP on supervised release may leave his residence during his first year on supervised release.

Mr. Bohren stated that he liked each of the changes proposed in the draft, but also noted that the committee should recognize that the changes are substantial. He noted that the changes proposed in the draft will result in more SVPs being granted supervised release.

Senator Lazich expressed concern that the issue of placing SVPs is unresolved. Specifically, she expressed concern about the placement of SVPs in Milwaukee County.

Ms. McCulloch noted that the problems regarding placement have mostly been resolved, but will never go away completely. The biggest obstacle that DHS faces in placing SVPs is local ordinances that restrict placement. Ms. McCulloch expects that the changes proposed in WLC: 0034/1 will result in 10 additional SVPs each year being placed on supervised release and that the vast majority of these SVPs would be discharged under current law.

Chair Strachota stated that the committee's final report will indicate that the placement of SVPs on supervised release is an ongoing problem that should be explored by the Legislature.

### **Other Business**

Ms. Bender-Olson summarized the changes that the committee asked to be made to the drafts.

*Chair Strachota moved, seconded by Rep. Molepske, that the changes suggested by the committee be drafted and submitted to the committee by a mail ballot. The measure was approved on a vote of Ayes, 11 (Reps. Strachota and Molepske, Jr.; Sen. Lazich; and Public Members Bensen, Bohren, Dallet, Hanneman, Henderson, Liska, Oliva, and Rios); Noes, 0; and Absent, 3 (Sens. Darling and Cullen; and Public Member Cramer).*

Chair Strachota thanked the committee members and the Legislative Council Staff for their hard work.

Senator Darling and Representative Molepske thanked Chair Strachota for her leadership on the Special Committee.

### **Adjournment**

The meeting was adjourned at 12:00 p.m.

KBO:MQ:ksm