

State of Wisconsin



2013 Assembly Bill 28

Date of enactment: **December 12, 2013**
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2013 WISCONSIN ACT 84

AN ACT *to repeal* 980.075 (title), (1), (1m) (b) and (2); *to renumber* 980.07 (6); *to renumber and amend* 980.075 (1m) (a), 980.075 (3), 980.075 (5), 980.075 (6) and 980.08 (3); *to consolidate, renumber and amend* 980.075 (4) (a) and (b); *to amend* 980.01 (3), 980.01 (8), 980.065 (1r), 980.07 (1), 980.07 (4) (b), 980.07 (6m), 980.08 (1), 980.08 (4) (a), 980.08 (4) (cg) 1., 980.08 (9) (a), 980.09 (1), 980.09 (2) and (3), 980.09 (4) and 980.095 (1) (a); and *to create* 980.08 (2m), 980.08 (4) (cj), 980.09 (1m) (d) and 980.09 (5) of the statutes; **relating to:** criteria for supervised release from commitment as sexually violent persons, placement of females committed as sexually violent persons, permitted outings under direct supervision for individuals on supervised release, and supervised release and discharge of individuals committed as sexually violent persons.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 980.01 (3) of the statutes is amended to read:

980.01 (3) ~~Except in ss. 980.075, 980.09, and 980.095, “petitioner”~~ “Petitioner” means the agency or person that filed a petition under s. 980.02.

SECTION 2. 980.01 (8) of the statutes is amended to read:

980.01 (8) “Significant progress in treatment” means that the person ~~has done~~ is doing all of the following:

(a) Meaningfully participated participating in the treatment program specifically designed to reduce his or her risk to reoffend offered at a facility described under s. 980.065.

(b) ~~Participated~~ Participating in the treatment program at a level that ~~was~~ is sufficient to allow the identification of his or her specific treatment needs and ~~then demonstrated demonstrating~~, through overt behavior, a willingness to work on addressing the specific treatment needs.

(c) ~~Demonstrated~~ Demonstrating 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.

(d) ~~Demonstrated~~ Demonstrating 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.

SECTION 3. 980.065 (1r) of the statutes is amended to read:

980.065 (1r) Notwithstanding sub. (1m), the department may place a female person committed under s. 980.06 at Mendota Mental Health Institute, Wisconsin Women’s Resource Center, Winnebago Mental Health Institute, or a privately operated residential facility under contract with the department of health services.

SECTION 4. 980.07 (1) of the statutes is amended to read:

980.07 (1) If a person is committed under s. 980.06 and has not been discharged under s. 980.09 (4), the

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

department shall appoint an examiner to conduct a reexamination of the person's mental condition within 12 months after the date of the initial commitment order under s. 980.06 and again thereafter at least once each 12 months 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 shall apply the criteria under s. 980.08 (4) (cg) when considering if the person should be placed on supervised release and shall apply the criteria under s. 980.09 (3) when considering if the person should be discharged. At the time of a reexamination under this section, ~~the person who has been committed may retain or have the court~~ shall appoint an examiner as provided under s. 980.031 (3) upon request of the committed person or the person may retain an examiner. The county shall pay the costs of an examiner appointed by the court as provided under s. 51.20 (18) (a).

SECTION 5. 980.07 (4) (b) of the statutes is amended to read:

980.07 (4) (b) Whether the person ~~has made~~ is making significant progress in treatment or has refused treatment.

SECTION 6. 980.07 (6) of the statutes is renumbered 980.07 (6) (a).

SECTION 7. 980.07 (6m) of the statutes is amended to read:

980.07 (6m) If a person committed under s. 980.06 is incarcerated at a county jail, state correctional institution, or federal correction institution for a new criminal charge or conviction or because his or her parole was revoked, any reporting requirement under sub. (1), (4), or (6) (a) does not apply during the incarceration period. A court may order a reexamination of the person under sub. (3) if the courts finds reexamination to be necessary. The schedule for reporting established under sub. (1) shall resume upon the release of the person.

SECTION 8. 980.075 (title), (1), (1m) (b) and (2) of the statutes are repealed.

SECTION 9. 980.075 (1m) (a) of the statutes is renumbered 980.07 (6) (b) and amended to read:

980.07 (6) (b) When the department provides a copy of the report under ~~s. 980.07 (6) par. (a)~~ to the person who has been committed under s. 980.06, the department shall provide to the person a standardized petition form for supervised release under s. 980.08 and a standardized petition form for discharge under s. 980.09.

SECTION 10. 980.075 (3) of the statutes is renumbered 980.09 (1m) (a) and amended to read:

980.09 (1m) (a) If the person files a petition for discharge under ~~s. 980.09 sub. (1)~~ without counsel, the court shall serve a copy of the petition and any supporting documents on the district attorney or department of justice, whichever is applicable. If the person petitions for discharge under ~~s. 980.09 sub. (1)~~ through counsel, his or her

attorney shall serve the district attorney or department of justice, whichever is applicable.

SECTION 11. 980.075 (4) (a) and (b) of the statutes are consolidated, renumbered 980.09 (1m) (c) and amended to read:

980.09 (1m) (c) ~~The petitioner~~ If a person files a petition for discharge under sub. (1), the person may use experts or professional persons to support his or her petition. ~~(b)~~ The district attorney or the department of justice may use experts or professional persons to support or oppose any petition filed under sub. (1).

SECTION 12. 980.075 (5) of the statutes is renumbered 980.09 (1m) (b) and amended to read:

980.09 (1m) (b) ~~Subject to s. 980.03 (2) (a), before proceeding under s. 980.08 or 980.09 but~~ If the person files a petition for a discharge under sub. (1) without counsel, as soon as circumstances permit, the court shall refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j) ~~if the person is not represented by counsel.~~

SECTION 13. 980.075 (6) of the statutes is renumbered 980.07 (7) and amended to read:

980.07 (7) At any time before a hearing under s. 980.08 or 980.09, the department may file a supplemental report if the department determines that court should have additional information. The court shall accept the supplemental report and permit testimony from the department regarding the report or any relevant portion of the report.

SECTION 14. 980.08 (1) of the statutes is amended to read:

980.08 (1) Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 12 months have elapsed since the initial commitment order was entered or at least 12 months have elapsed since the most recent release petition was denied, since supervised release was denied under s. 980.09 (4), or since the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

SECTION 15. 980.08 (2m) of the statutes is created to read:

980.08 (2m) The person submitting the petition may use experts or professional persons to support his or her petition. The district attorney or the department of justice may use experts or professional persons to support or oppose any petition.

SECTION 16. 980.08 (3) of the statutes is renumbered 980.08 (3) (a) and amended to read:

980.08 (3) (a) Within 20 days after receipt of the petition, the court shall appoint one or more examiners ~~having~~ for the court who have the specialized knowledge

determined by the court to be appropriate, who shall examine the person and furnish a written report of the examination to the court within 30 60 days after appointment, unless the court for good cause extends this time limit. If the person requests appointment of an examiner within 20 days after the filing of the petition, the court shall appoint an examiner for the person, unless the court appointed an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period. If a report filed by an examiner appointed under s. 980.07 (1) to conduct a reexamination of the person's mental condition within the 6 months preceding the filing of the petition supports supervised release, the court may appoint that examiner as the examiner for the person under this subsection.

(b) The examiners appointed under par. (a) shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided under s. 146.82 (2) (c). If any such examiner believes that the person is appropriate for supervised release under the criteria specified in sub. (4) (cg), the examiner shall report on the type of treatment and services that the person may need while in the community on supervised release. The county shall pay the costs of an examiner appointed under ~~this subsection~~ par. (a) as provided under s. 51.20 (18) (a).

SECTION 17. 980.08 (4) (a) of the statutes is amended to read:

980.08 (4) (a) The court, without a jury, shall hear the petition within 30 120 days after the report of the court-appointed examiner appointed under sub. (3) (a) is filed with the court, unless the court for good cause extends this time limit. Expenses of proceedings under this subsection shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

SECTION 18. 980.08 (4) (cg) 1. of the statutes is amended to read:

980.08 (4) (cg) 1. The person ~~has made~~ is making significant progress in treatment and the person's progress can be sustained while on supervised release.

SECTION 19. 980.08 (4) (cj) of the statutes is created to read:

980.08 (4) (cj) The person has the burden of proving by clear and convincing evidence that the person meets the criteria in par. (cg).

SECTION 20. 980.08 (9) (a) of the statutes is amended to read:

980.08 (9) (a) As a condition of supervised release granted under this chapter, for the first year of supervised release, the court shall restrict the person on supervised release to the person's ~~home~~ residence except for outings approved by the department of health services that are under the direct supervision of a department of corrections escort and that are for employment or volunteer purposes, ~~for~~ religious purposes, educational purposes, treatment and exercise purposes, supervision purposes,

or residence maintenance, or for caring for the person's basic living needs.

SECTION 21. 980.09 (1) of the statutes is amended to read:

980.09 (1) A committed person may petition the committing court for discharge at any time. The court shall deny the petition under this section without a hearing unless the petition alleges facts from which the court or jury ~~may~~ would likely conclude the person's condition has changed since ~~the date of his or her initial commitment order~~ the most recent order denying a petition for discharge after a hearing on the merits, or since the date of his or her initial commitment order if the person has never received a hearing on the merits of a discharge petition, so that the person ~~does not meet~~ no longer meets the criteria for commitment as a sexually violent person.

SECTION 22. 980.09 (1m) (d) of the statutes is created to read:

980.09 (1m) (d) After receiving a petition for discharge under sub. (1) and upon the request of the person filing the petition, unless the court previously appointed an examiner under s. 980.031 (3) or 980.07 (1) for the current reexamination period, the court shall appoint for the person an examiner having the specialized knowledge determined by the court to be appropriate. If an examination conducted under s. 980.07 (1) within the 6 months preceding the filing of the petition supports discharge, the court may appoint the examiner who conducted that examination as the examiner for the person. The examiner shall have reasonable access to the person for purposes of examination and to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as provided in s. 146.82 (2) (c). The county shall pay the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

SECTION 23. 980.09 (2) and (3) of the statutes are amended to read:

980.09 (2) ~~The court shall review the petition within 30 days and~~ In reviewing the petition, the court may hold a hearing to determine if ~~it contains facts from which the court or jury may conclude that the person does not meet~~ the person's condition has sufficiently changed such that a court or jury would likely conclude the person no longer meets the criteria for commitment as a sexually violent person. In determining under this subsection whether ~~facts exist that might warrant such a conclusion~~ the person's condition has sufficiently changed such that a court or jury would likely conclude that the person no longer meets the criteria for commitment, the court shall may consider the record, including evidence introduced at the initial commitment trial or the most recent trial on a petition for discharge, any current or past reports filed under s. 980.07, relevant facts in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

If the court determines that the ~~petition record~~ does not contain facts from which a court or jury ~~may~~ would likely conclude that the person ~~does not meet~~ no longer meets the criteria for commitment, the court shall deny the petition. If the court determines that ~~facts exist~~ the record contains facts from which a court or jury ~~could~~ would likely conclude the person ~~does not meet~~ no longer meets the criteria for commitment, the court shall set the matter for hearing trial.

(3) The court shall hold a hearing trial within 90 days of the determination that the ~~petition contains facts from which the court or jury may conclude that the person does not meet~~ person's condition has sufficiently changed such that a court or jury would likely conclude that the person no longer meets the criteria for commitment as a sexually violent person. ~~The~~ At trial, the state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment as a sexually violent person.

SECTION 24. 980.09 (4) of the statutes is amended to read:

980.09 (4) If the court or jury is satisfied that the state has not met its burden of proof under sub. (3), the ~~petitioner~~ person shall be discharged from the custody of the department. If the court or jury is satisfied that the state has met its burden of proof under sub. (3), the court ~~may~~ shall proceed under s. 980.08 (4) to determine whether to

modify the ~~petitioner's~~ person's existing commitment order by authorizing supervised release, unless the person waives consideration of the criteria in s. 980.08 (4) (cg). If the person waives consideration of these criteria, the waiver is a denial of supervised release for purposes of s. 980.08 (1).

SECTION 25. 980.09 (5) of the statutes is created to read:

980.09 (5) If a court orders discharge of a committed person under this section, the court shall stay the execution of the order so that the department may comply with its statutory duties under s. 980.11 (2) and (3). The stay of execution may not exceed 10 working days and shall be for as short a period as necessary to permit the department to comply with s. 980.11 (2) and (3).

SECTION 26. 980.095 (1) (a) of the statutes is amended to read:

980.095 (1) (a) The district attorney or the department of justice, whichever filed the original petition, or the ~~petitioner~~ person who filed the petition for discharge or his or her attorney may request that a hearing trial under s. 980.09 (3) be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days of the ~~filing of the petition for discharge~~ determination by the court that a court or jury would likely conclude under s. 980.09 (1) that the person's condition has sufficiently changed.