



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4427/1
CMH:emw/ahe/jld

2017 ASSEMBLY BILL 539

October 16, 2017 - Introduced by Representatives KRUG, KULP, PETERSEN, KLEEFISCH, MURSAU, SWEARINGEN, EDMING, VANDERMEER, SKOWRONSKI and NYGREN, cosponsored by Senators TESTIN, L. TAYLOR, FEYEN, MARKLEIN and TIFFANY. Referred to Committee on Corrections.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 980.08 (4) (d), 980.08 (4) (em), 980.08 (4) (f) 1., 980.08 (5m) and
2 980.105 (2m); *to renumber and amend* 980.08 (4) (f) (intro.) and 980.08 (4)
3 (f) 2., 3. and 4.; *to consolidate, renumber and amend* 980.08 (4) (cm) and (e);
4 **to amend** 809.30 (2) (d), 967.06 (2) (b), 977.02 (2m), 977.02 (3) (intro.), 977.05
5 (4) (gm), 977.05 (4) (h), 977.06 (2) (a), 977.06 (2) (am), 977.07 (1) (a), 977.07 (1)
6 (c), 977.075 (4), 977.08 (1), 977.08 (2) (intro.), 977.085 (3), 980.03 (2) (a) and
7 980.08 (4) (g); and *to create* 20.435 (2) (gz), 51.61 (1) (z), 977.05 (4) (i) 9.,
8 980.0305, 980.08 (4) (dm) 3. and 980.105 (2) of the statutes; **relating to:** plans
9 for supervised release of sexually violent persons, representation of sexually
10 violent persons by the state public defender, and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, a person who has been found to be a sexually violent person may be involuntarily committed to the Department of Health Services for control, care, and treatment. If a person is committed and placed in institutional care, the person may periodically petition the court for supervised release. If a court determines that supervised release is appropriate, the court must select a county to

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prepare a report that includes prospective residential options for the person. Unless good cause exists, the court must select the person's county of residence, and the county must prepare the report within 60 days. DHS must then prepare for the court a supervised release plan for the person that identifies the residential option for the court to approve. Under current law, the plan must be submitted to the court within 90 days of the finding that supervised release is appropriate.

Under this bill, if a court determines that supervised release is appropriate, the court must order the person's county of residence to prepare a report that identifies one appropriate residence for the person. The county must create a temporary committee to prepare the report for the county and, under this bill, the county must prepare the report within 120 days of the order. A county that does not comply violates the person's rights as a patient and the county is subject to enforcement and damages for each violation, and each day beyond the 120 days constitutes a separate violation. Once DHS receives the report, DHS must submit to the court a supervised release plan within 30 days.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.435 (2) (gz) of the statutes is created to read:

2 20.435 (2) (gz) *Costs of housing persons on supervised release.* All moneys
3 received under s. 980.08 (4) (dm) 4. for payment of costs associated with housing
4 persons on supervised release.

5 **SECTION 2.** 51.61 (1) (z) of the statutes is created to read:

6 51.61 (1) (z) In the case of a patient committed under ch. 980, have the right
7 to have a county department submit a report under s. 980.08 (4) (dm) within the time
8 frame specified under that paragraph.

9 **SECTION 3.** 809.30 (2) (d) of the statutes is amended to read:

10 809.30 (2) (d) *Indigency redetermination.* Except as provided in this
11 paragraph, whenever a person whose trial counsel is appointed by the state public
12 defender files a notice under par. (b) requesting public defender representation for
13 purposes of postconviction or postdisposition relief, the prosecutor may, within 5

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1 days after the notice is served and filed, file in the circuit court and serve upon the
2 state public defender a request that the person's indigency be redetermined before
3 counsel is appointed or transcripts are requested. This paragraph does not apply to
4 a person who is entitled to be represented by counsel under s. 48.23, 51.60 (1), 55.105,
5 ~~or 938.23, or 980.03 (2) (a).~~

6 **SECTION 4.** 967.06 (2) (b) of the statutes is amended to read:

7 967.06 (2) (b) If the person indicating that he or she wants to be represented
8 by a lawyer is detained under ch. 48, 51, 55, ~~or 938, or 980,~~ the person shall be
9 referred for appointment of counsel as provided under s. 48.23 (4), 51.60, 55.105, ~~or~~
10 938.23 (4), or 980.03 (2) (a), whichever is applicable.

11 **SECTION 5.** 977.02 (2m) of the statutes is amended to read:

12 977.02 (2m) Promulgate rules regarding eligibility for legal services under this
13 chapter, including legal services for persons who are entitled to be represented by
14 counsel without a determination of indigency, as provided in s. 48.23 (4), 51.60,
15 55.105, ~~or 938.23 (4), or 980.03 (2) (a).~~

16 **SECTION 6.** 977.02 (3) (intro.) of the statutes is amended to read:

17 977.02 (3) (intro.) Promulgate rules regarding the determination of indigency
18 of persons entitled to be represented by counsel, other than persons who are entitled
19 to be represented by counsel under s. 48.23, 51.60, 55.105, ~~or 938.23, or 980.03 (2)~~
20 (a) including the time period in which the determination must be made and the
21 criteria to be used to determine indigency and partial indigency. The rules shall
22 specify that, in determining indigency, the representative of the state public
23 defender shall do all of the following:

24 **SECTION 7.** 977.05 (4) (gm) of the statutes is amended to read:

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1 977.05 (4) (gm) In accordance with the standards under pars. (h) and (i), accept
2 referrals from judges and courts for the provision of legal services without a
3 determination of indigency of persons who are entitled to be represented by counsel
4 under s. 48.23, 51.60, 55.105, ~~or 938.23~~, or 980.03 (2) (a), appoint counsel in
5 accordance with contracts and policies of the board, and inform the referring judge
6 or court of the name and address of the specific attorney who has been assigned to
7 the case.

8 **SECTION 8.** 977.05 (4) (h) of the statutes is amended to read:

9 977.05 (4) (h) Accept requests for legal services from persons who are entitled
10 to be represented by counsel under s. 48.23, 51.60, 55.105, ~~or 938.23~~, or 980.03 (2)
11 (a) and from indigent persons who are entitled to be represented by counsel under
12 s. 967.06 or who are otherwise so entitled under the constitution or laws of the United
13 States or this state and provide such persons with legal services when, in the
14 discretion of the state public defender, such provision of legal services is appropriate.

15 **SECTION 9.** 977.05 (4) (i) 9. of the statutes is created to read:

16 977.05 (4) (i) 9. Cases involving persons who are subject to petitions under ch.
17 980.

18 **SECTION 10.** 977.06 (2) (a) of the statutes is amended to read:

19 977.06 (2) (a) A person seeking to have counsel assigned for him or her under
20 s. 977.08, other than a person who is entitled to be represented by counsel under s.
21 48.23, 51.60, 55.105, ~~or 938.23~~, or 980.03 (2) (a), shall sign a statement declaring that
22 he or she has not disposed of any assets for the purpose of qualifying for that
23 assignment of counsel. If the representative or authority making the indigency
24 determination finds that any asset was disposed of for less than its fair market value
25 for the purpose of obtaining that assignment of counsel, the asset shall be counted

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1 under rules promulgated under s. 977.02 (3) at its fair market value at the time it
2 was disposed of, minus the amount of compensation received for the asset.

3 **SECTION 11.** 977.06 (2) (am) of the statutes is amended to read:

4 977.06 (2) (am) A person seeking to have counsel assigned for him or her under
5 s. 977.08, other than a person who is entitled to be represented by counsel under s.
6 48.23, 51.60, 55.105, ~~or 938.23~~, or 980.03 (2) (a), shall sign a statement declaring that
7 the information that he or she has given to determine eligibility for assignment of
8 counsel he or she believes to be true and that he or she is informed that he or she is
9 subject to the penalty under par. (b).

10 **SECTION 12.** 977.07 (1) (a) of the statutes is amended to read:

11 977.07 (1) (a) Determination of indigency for persons entitled to counsel shall
12 be made as soon as possible and shall be in accordance with the rules promulgated
13 by the board under s. 977.02 (3) and the system established under s. 977.06. No
14 determination of indigency is required for a person who is entitled to be represented
15 by counsel under s. 48.23, 51.60, 55.105, ~~or 938.23~~, or 980.03 (2) (a).

16 **SECTION 13.** 977.07 (1) (c) of the statutes is amended to read:

17 977.07 (1) (c) For all referrals made under ss. 809.107, 809.30, 974.06 (3) (b)
18 and 974.07 (11), except a referral of a person who is entitled to be represented by
19 counsel under s. 48.23, 51.60, 55.105, ~~or 938.23~~, or 980.03 (2) (a), a representative of
20 the state public defender shall determine indigency. For referrals made under ss.
21 809.107, 809.30 and 974.06 (3) (b), except a referral of a person who is entitled to be
22 represented by counsel under s. 48.23, 51.60, 55.105, ~~or 938.23~~, or 980.03 (2) (a), the
23 representative of the state public defender may, unless a request for redetermination
24 has been filed under s. 809.30 (2) (d) or the person's request for representation states
25 that his or her financial circumstances have materially improved, rely upon a

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1 determination of indigency made for purposes of trial representation under this
2 section.

3 **SECTION 14.** 977.075 (4) of the statutes is amended to read:

4 977.075 (4) The board shall establish by rule a fee schedule that sets the
5 maximum amount that a parent subject to s. 48.275 (2) (b) or 938.275 (2) (b) shall pay
6 as reimbursement for legal services and sets the maximum amount that a person
7 subject to s. 51.605 ~~or~~, 55.107, or 980.0305 shall pay as reimbursement for legal
8 services. The maximum amounts under this subsection shall be based on the
9 average cost, as determined by the board, for each applicable type of case.

10 **SECTION 15.** 977.08 (1) of the statutes is amended to read:

11 977.08 (1) If the representative or the authority for indigency determinations
12 specified under s. 977.07 (1) refers a case to or within the office of the state public
13 defender or if a case is referred under s. 48.23 (4), 51.60, 55.105, ~~or~~ 938.23 (4), or
14 980.03 (2) (a), the state public defender shall assign counsel according to subs. (3) and
15 (4). If a defendant makes a request for change of attorney assignment, the change
16 of attorney must be approved by the circuit court.

17 **SECTION 16.** 977.08 (2) (intro.) of the statutes is amended to read:

18 977.08 (2) (intro.) All attorneys in a county shall be notified in writing by the
19 state public defender that a set of lists is being prepared of attorneys willing to
20 represent persons referred under s. 48.23 (4), 51.60, 55.105, ~~or~~ 938.23 (4), or 980.03
21 (2) (a) and indigent clients in the following:

22 **SECTION 17.** 977.085 (3) of the statutes is amended to read:

23 977.085 (3) The board shall provide quarterly reports to the joint committee
24 on finance on the status of reimbursement for or recoupment of payments under ss.
25 48.275, 51.605, 55.107, 757.66, 938.275, 977.06, 977.075 ~~and~~, 977.076, and 980.0305,

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1 including the amount of revenue generated by reimbursement and recoupment. The
2 quarterly reports shall include any alternative means suggested by the board to
3 improve reimbursement and recoupment procedures and to increase the amount of
4 revenue generated. The department of justice, district attorneys, circuit courts and
5 applicable county agencies shall cooperate by providing any necessary information
6 to the state public defender.

7 **SECTION 18.** 980.03 (2) (a) of the statutes is amended to read:

8 980.03 (2) (a) Counsel. If In any situation under this chapter in which the
9 person claims or appears to be indigent has a right to be represented by council, the
10 court shall refer the person to the authority for indigency determinations under s.
11 977.07 (1) and, if applicable, the appointment of as soon as practicable to the state
12 public defender, who shall appoint counsel for the person under s. 977.08 without a
13 determination of indigency.

14 **SECTION 19.** 980.0305 of the statutes is created to read:

15 **980.0305 Reimbursement for counsel provided by the state. (1) INQUIRY.**
16 At or after the conclusion of a proceeding under this chapter in which the state public
17 defender has provided counsel for a person, the court may inquire as to the person's
18 ability to reimburse the state for the costs of representation. If the court determines
19 that the person is able to make reimbursement for all or part of the costs of
20 representation, the court may order the person to reimburse the state an amount not
21 to exceed the maximum amount established by the public defender board under s.
22 977.075 (4). Upon the court's request, the state public defender shall conduct a
23 determination of indigency under s. 977.07 and report the results of the
24 determination to the court.

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1 **(2) PAYMENT.** Reimbursement ordered under this section shall be made to the
2 clerk of courts of the county where the proceedings took place. The clerk of courts
3 shall transmit payments under this section to the county treasurer, who shall deposit
4 25 percent of the payment amount in the county treasury and transmit the
5 remainder to the secretary of administration. Payments transmitted to the
6 secretary of administration shall be deposited in the general fund and credited to the
7 appropriation account under s. 20.550 (1) (L).

8 **(3) REPORT.** By January 31st of each year, the clerk of courts for each county
9 shall report to the state public defender the total amount of reimbursements ordered
10 under sub. (1) in the previous calendar year and the total amount of reimbursements
11 paid to the clerk under sub. (2) in the previous year.

12 **SECTION 20.** 980.08 (4) (cm) and (e) of the statutes are consolidated,
13 renumbered 980.08 (4) (dm) 1. (intro.) and amended to read:

14 980.08 **(4)** (dm) 1. (intro.) If the court finds that all of the criteria in par. (cg)
15 are met, the court shall select a county to prepare a report under par. (e). Unless the
16 court has good cause to select another county, the court shall select order the county
17 of the person's county of residence, as determined by the department of health
18 services under s. 980.105. ~~An actual or alleged lack of available housing for the~~
19 ~~person within a county because of an ordinance or resolution in effect or proposed by~~
20 ~~the county or by a city, town, or village within the county may not constitute good~~
21 ~~cause to select another county under this paragraph. The court may not select a~~
22 ~~county where there is a facility in which persons committed to institutional care~~
23 ~~under this chapter are placed unless that county is also that person's county of~~
24 ~~residence. (e) The court shall order the county department under s. 51.42 in the~~
25 ~~county of intended placement to prepare a report, either independently or with the~~

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1 ~~department of health services, identifying prospective residential options for~~
2 ~~community placement. In identifying prospective residential options, the county~~
3 ~~department shall consider the proximity of any potential placement to the residence~~
4 ~~of other persons on supervised release and to the residence of persons who are in the~~
5 ~~custody of the department of corrections and regarding whom a sex offender~~
6 ~~notification bulletin has been issued to law enforcement agencies under s. 301.46~~
7 ~~(2m) (a) or (am). The, to prepare a report. The county shall create a temporary~~
8 ~~committee to prepare the report for the county. The committee shall consist of the~~
9 ~~county department under s. 51.42, a representative of the department of health~~
10 ~~services, a local probation or parole officer, the county corporation counsel or his or~~
11 ~~her designee, and a representative of the county that is responsible for land use~~
12 ~~planning or the department of the county that is responsible for land information.~~
13 In the report, the county shall identify an appropriate residential option in that
14 county while the person is on supervised release and shall demonstrate that the
15 county has contacted the landlord for that residential option and that the landlord
16 has committed to enter into a lease. The county shall consider the following factors
17 when identifying an appropriate residential option:

18 2. When preparing the report, the county department shall consult with a local
19 law enforcement agency having jurisdiction over the residential option. The law
20 enforcement agency may submit a written report that provides information relating
21 to the residential option, and, if the law enforcement agency submits a report, the
22 county department shall include the agency's report when the county department
23 submits its report to the department of health services.

24 4. The county shall submit its report to the department of health services
25 within 60 120 days following the court order. A county that does not submit its report

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1 within 120 days violates the person's rights under s. 51.61, and each day that the
2 county does not submit the report after the 120 days have expired constitutes a
3 separate violation under s. 51.61. Notwithstanding s. 51.61 (7), any damages beyond
4 costs and reasonable actual attorney fees recovered by the person for a violation shall
5 be deposited into the appropriation account under s. 20.435 (2) (gz).

6 **SECTION 21.** 980.08 (4) (d) of the statutes is repealed.

7 **SECTION 22.** 980.08 (4) (dm) 3. of the statutes is created to read:

8 980.08 (4) (dm) 3. To assist the county in identifying appropriate residential
9 options for the report, within 30 days after the court orders the county to prepare the
10 report, the department of health services shall determine the identity and location
11 of known and registered victims of the person's acts by searching its victim database
12 and consulting with the office of victim services in the department of corrections, the
13 department of justice, and the county coordinator of victims and witnesses services
14 in the county of intended placement, the county where the person was convicted, and
15 the county of commitment. The county may consult with the department of health
16 services on other matters while preparing the report and the department of health
17 services shall respond within 10 days.

18 **SECTION 23.** 980.08 (4) (em) of the statutes is repealed.

19 **SECTION 24.** 980.08 (4) (f) (intro.) of the statutes is renumbered 980.08 (4) (f)
20 and amended to read:

21 980.08 (4) (f) The court shall direct the department to use ~~any submissions~~
22 ~~under par. (d), the report submitted under par. (e), any report submitted under par.~~
23 ~~(em), and other residential options identified by the department (dm)~~ to prepare a
24 supervised release plan for the person. ~~The department shall search its victim~~
25 ~~database, and consult with the office of victim services in the department of~~

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1 ~~corrections, the department of justice, and the county coordinator of victims and~~
2 ~~witnesses services in the county of intended placement, the county where the person~~
3 ~~was convicted, and the county of commitment to determine the identity and location~~
4 ~~of known and registered victims of the person's acts. The department shall prepare~~
5 ~~a supervised release plan that identifies the proposed residence~~ residential option
6 the county identified in its report. The plan shall also address the person's need, if
7 any, for supervision, counseling, medication, community support services,
8 residential services, vocational services, and alcohol or other drug abuse treatment.

9 The supervised release plan shall be submitted to the court within ~~90~~ 30 days of the
10 ~~finding under par. (eg)~~ after the county submitted its report under par. (dm). The
11 court may grant ~~extensions~~ one extension of up to 30 days of this time period for good
12 cause. The plan shall do all of the following:

13 **SECTION 25.** 980.08 (4) (f) 1. of the statutes is repealed.

14 **SECTION 26.** 980.08 (4) (f) 2., 3. and 4. of the statutes are renumbered 980.08
15 (4) (dm) 1. a., b. and c. and amended to read:

16 980.08 (4) (dm) 1. a. ~~Ensure that~~ The distance between the person's placement
17 ~~is into a residence that is not less than 1,500 feet from~~ and any school premises, child
18 care facility, public park, place of worship, or youth center. A person is not in violation
19 of a condition or rule of supervised release under sub. (7) (a) if any school premises,
20 child care facility, public park, place of worship, or youth center is established ~~within~~
21 ~~1,500 feet from~~ near the person's residence after he or she is placed in the residence
22 under this section.

23 b. If the person committed a sexually violent offense against an adult at risk,
24 as defined in s. 55.01 (1e), or an elder adult at risk, as defined in s. 46.90 (1) (br),
25 ~~ensure that~~ the distance between the person's placement ~~is into a residence that is~~

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1 ~~not less than 1,500 feet from~~ and a nursing home or an assisted living facility. A
2 person is not in violation of a condition or rule of supervised release under sub. (7)
3 (a) if a nursing home or an assisted living facility is established ~~within 1,500 feet from~~
4 near the person's residence after he or she is placed in the residence under this
5 section.

6 c. If the person is a serious child sex offender, ~~ensure that~~ the distance between
7 the person's placement is ~~into a residence that is not on a property adjacent to~~ and
8 a property where a child's primary residence exists. ~~For the purpose of this~~
9 ~~subdivision, adjacent properties are properties that share a property line without~~
10 ~~regard to a public or private road if the living quarters on each property are not more~~
11 ~~than 1,500 feet apart.~~ A person is not in violation of a condition or rule of supervised
12 release under sub. (7) (a) if a child establishes primary residence in a property
13 ~~adjacent to~~ near the person's residence after the person is placed in the residence
14 under this section.

15 **SECTION 27.** 980.08 (4) (g) of the statutes is amended to read:

16 980.08 (4) (g) The court shall review the plan submitted by the department
17 under par. ~~(em)~~ (f). If the details of the plan adequately meet the treatment needs
18 of the individual and the safety needs of the community, then the court shall approve
19 the plan and determine that supervised release is appropriate. If the details of the
20 plan do not adequately meet the treatment needs of the individual or the safety needs
21 of the community, then the court shall determine that supervised release is not
22 appropriate or direct the preparation of another supervised release plan to be
23 considered by the court under this paragraph. If the plan is inadequate under this
24 paragraph due to the residential option, the court shall order the county to identify
25 and arrange to lease another residential option and to prepare a new report under

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1 par. (dm). If the plan is inadequate under this paragraph due to the treatment
2 options, the court shall order the department to prepare another plan under par. (f).

3 **SECTION 28.** 980.08 (5m) of the statutes is repealed.

4 **SECTION 29.** 980.105 (2) of the statutes is created to read:

5 980.105 (2) If sub. (1m) is insufficient to determine the county of residence, the
6 department shall find that the county of residence is the county in which, on the date
7 that the person committed the sexually violent offense that resulted in the sentence,
8 placement, or commitment that was in effect when the petition was filed under s.
9 980.02, the person would have been a resident for the purposes of social security
10 disability insurance eligibility.

11 **SECTION 30.** 980.105 (2m) of the statutes is repealed.

12 **SECTION 9120. Nonstatutory provisions; Health Services.**

13 (1) GRACE PERIOD FOR COUNTY REPORTS. Notwithstanding sections 51.61 (1) (z)
14 and 980.08 (4) (dm) 4. of the statutes, beginning on the effective date of this
15 subsection and ending on the first day of the 13th month beginning after the effective
16 date of this subsection, the county shall submit a report required under section
17 980.08 (4) (dm) of the statutes to the department of health services within 180 days,
18 rather than 120 days, following the court order or be subject to action as provided in
19 sections 51.61 (1) (z) and 980.08 (4) (dm) 4. of the statutes.

20 **SECTION 9320. Initial applicability; Health Services.**

21 (1) SUPERVISED RELEASE. The treatment of sections 20.435 (2) (gz), 51.61 (1) (z),
22 980.08 (4) (cm), (d), (dm) 3., (e), (em), (f) (intro.), 1., 2., 3., and 4., and (g) and (5m),
23 and 980.105 (2) and (2m) of the statutes and SECTION 9120 (1) of this act first apply

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1 to petitions pending under section 980.08 of the statutes on the effective date of this
2 subsection.

3 (END)