



Legislation Committee
Agenda
Kenosha County Administration Building
2nd Floor Committee Room
September 21, Tuesday, 6:30 p.m.

NOTE: UNDER THE KENOSHA COUNTY BOARD RULES OF PROCEDURE ANY REPORT, RESOLUTION, ORDINANCE OR MOTION APPEARING ON THIS AGENDA MAY BE AMENDED, WITHDRAWN, REMOVED FROM THE TABLE, RECONSIDERED OR RESCINDED IN WHOLE OR IN PART AT THIS OR AT FUTURE MEETINGS. NOTICE OF SUCH MOTIONS TO RECONSIDER OR RESCIND AT FUTURE MEETINGS SHALL BE GIVEN IN ACCORDANCE WITH SECTION 2 C OF THE COUNTY BOARD RULES. FURTHERMORE, ANY MATTER DEEMED BY A MAJORITY OF THE BOARD TO BE GERMANE TO AN AGENDA ITEM MAY BE DISCUSSED AND ACTED UPON DURING THE COURSE OF THIS MEETING AND ANY NEW MATTER NOT GERMANE TO AN AGENDA ITEM MAY BE REFERRED TO THE PROPER COMMITTEE. ANY PERSON WHO DESIRES THE PRIVILEGE OF THE FLOOR PRIOR TO AN AGENDA ITEM BEING DISCUSSED SHOULD REQUEST A COUNTY BOARD SUPERVISOR TO CALL SUCH REQUEST TO THE ATTENTION OF THE BOARD CHAIRMAN

1. Call To Order
2. Citizen Comments
3. Reports From Chairperson
4. Reports From Committee Members
5. Communications
6. Approval Of Minutes
 - a. Minutes 8-17-21

Documents:

[LC MINUTES AUGUST 17, 2021.PDF](#)

7. Resolution Pertaining To Placement Location Process Of Chapter 980 Sexually Violent Persons In Kenosha County

Documents:

[980OFFENDERRESOLUTION \(002\).PDF](#)

8. Other Matters As May Be Appropriately Brought Before The Committee
9. Adjourn

There may be a quorum of other Committees of the County Board.

MINUTES
LEGISLATIVE COMMITTEE
August 17, 2021

Members Present: Berg, Frederick, Beth, Kubicki, Lewis, Mauer, Nordigian

Excused:

YIG: Present: Benjamin Rothove

Others Present: Supervisor Decker, Supervisor Gentz, Supervisor Gulley, Supervisor Nudo, Supervisor Pomaville, Patricia Merrill

6:00 PM

1. Call to Order: The meeting was called to order by Chair Andy Berg

6:00 PM

2. Citizen comments: None

6:00 PM

3. Reports from Chairperson: Advised about a veterans' event scheduled for September 19 from 11-4 at the Moose Lodge, 3003 30th Avenue

6:01 PM

4. Reports from Committee Members: Supervisor Frederick reported that YIG members Cao and Rothove met with Representative McGuire

6:02 PM

5. Communications: None

6:02 PM

6. Approval of July 20, 2021 minutes: **Supervisor Kubicki made a motion to approve. Seconded by Supervisor Frederick. All aye. Motion passes. YIG All Aye. Motion passes.**

6:03 PM

7. Presentation by Dan Bahr, Wisconsin Counties Association. Mr. Bahr reviewed the recently passed state budget, focusing on those areas of interest to the Wisconsin Counties Association, and noting that there wasn't much which directly impacted counties. He additionally noted that there were few policy changes made by this budget. He noted that there was no change to shared revenue. He was asked about the dark store loophole and noted that there has not been any legislative action on it as of yet.

6:33

8. Ordinance to Amend MCKC 2.05 (3) on Committee assignments. The Committee discussed the proposed ordinance at some length. **No motion to approve the ordinance was made.**

6:57 PM

9. Resolution Pertaining to Placement Location Process of Chapter 980 Sexually Violent Persons in Kenosha County. Supervisor Kubicki had to leave at 6:58 to attend another meeting. Supervisor Decker presented her resolution. Questions were posed of Corporation Counsel Cardamone relating to the

legal procedures involved. Historical context was also provided. **Supervisor Nordigian made a motion to approve the resolution as written. Seconded by Supervisor Maurer.** Supervisor Lewis expressed some issues with the language possibly being in conflict with state statutes. Supervisor Kubicki returned and indicated he was not ready to vote on the resolution having missed much of the discussion. **Supervisor Lewis moved to postpone the resolution until the September meeting. Seconded by Supervisor Kubicki. Aye – Beth, Berg, Frederick, Kubicki, Lewis. Nay – Maurer, Nordigian. Motion passes.**

7:30

10. Other matters as may be appropriately brought before the committee: None.

7:30

11. Adjourn: **Supervisor Maurer made a motion to adjourn, seconded by Supervisor Nordigian. All Aye. Motion Carried**

Respectfully submitted,
Joseph Cardamone
Corporation Counsel



KENOSHA COUNTY

BOARD OF SUPERVISORS

Resolution No. _____

Subject: Pertaining to Placement Location Process of Chapter 980 Sexually Violent Persons in Kenosha County			
Original <input checked="" type="checkbox"/>	Corrected <input type="checkbox"/>	2nd Correction <input type="checkbox"/>	Resubmitted <input type="checkbox"/>
Date Submitted: Date Submitted: 6/14/2021			Date Resubmitted:
Submitted by: Supervisor Decker			
Fiscal Note Attached <input type="checkbox"/>			Legal Note Attached <input type="checkbox"/> Agreement
Prepared by: Supervisor Erin Decker			Signature:

WHEREAS, the State of Wisconsin enacted Chapter 980 of the Wisconsin Criminal Code, “Sexually Violent Person Commitments” in 1994; and

WHEREAS, amendments were made to Wisconsin State Statute Chapter 980 in 2009, 2013, 2015, and 2017; and

WHEREAS, 2017 Act 184 provided for local oversight of sexually violent person placements by requiring counties be responsible for creating a temporary committee to prepare a report to identify an appropriate residential option for a sexually violent person on supervised release; and

WHEREAS, Wisconsin State Statute 980.08(4)(dm)(2) requires the county consult with a local law enforcement agency having jurisdiction over the residential placement option; and

WHEREAS, Wisconsin State Statute 980.08(4)(dm) does not require communication between the county and the local municipality where the proposed residential placement is located; and

WHEREAS, the term “adjacent property” is not clear in Wisconsin State Statutes in regards to properties that have only one location point in common; and

WHEREAS, the definition of “public park” is broad in Wisconsin State Statutes and may be open to differing court opinions; and

WHEREAS, the definition of “youth center” is silent on whether a private residence or boys or girls campground is considered a youth center; and

WHEREAS, government meetings must be open to the public and noticed so the public may attend;

NOW, THEREFORE, BE IT RESOLVED, the Kenosha County Board of Supervisors shall name the temporary committee created to prepare the report to identify an appropriate residential option for a sexually violent person on supervised release the “Chapter 980 Sexually Violent Persons Placement Review Committee”; and

BE IT FURTHER RESOLVED, the Chapter 980 Sexually Violent Persons Placement Review Committee's agenda shall be specific on the items it will discuss or act upon, and shall not be broad or vague on items it will discuss or act upon; and

BE IT FURTHER RESOLVED, the Chapter 980 Sexually Violent Persons Placement Review Committee's agenda and minutes shall be posted on the Kenosha County website in the "agenda center" in the same manner and location as other committee meetings are noticed; and

BE IT FURTHER RESOLVED, Kenosha County shall notify the municipal administrator and village president/town chairman within three business days after any employee, agency, or department is contacted by the State of Wisconsin about a potential placement location for a person under Chapter 980; and

BE IT FURTHER RESOLVED, the Chapter 980 Sexually Violent Persons Placement Review Committee shall notify the municipal administrator and village president/town chairman of the potential residence within three business days after a judge orders the county to find a residence for a Chapter 980 placement; and

BE IT FURTHER RESOLVED, the employee, agency, or department researching the appropriateness of a residence shall collaborate with the municipal administrator and village president/town chairman in which the potential residence is located; and

BE IT FURTHER RESOLVED, Kenosha County shall enact a policy enabling municipalities to notify the county to add/modify municipal parks denoted on Kenosha County Interactive Mapping; and

BE IT FURTHER RESOLVED, Kenosha County shall enact a policy to enable municipalities to correct the zoning and Kenosha County Comprehensive Plan to denote municipal parks at no cost to the municipality; and

BE IT FURTHER RESOLVED, the Kenosha County Board of Supervisors requests the Wisconsin State Legislature to add an additional notice requirement to Chapter 980, requiring the State fund and provide written notice to any and all households within 1500 feet of the property in which a court places a Chapter 980 offender in, with said notice including the name, address and recent headshot of the offender, the sex-related crimes for which the offender being released has been convicted of, the restrictions placed on the offender, and how to report a violation of the restrictions placed on the offender; and

BE IT FURTHER RESOLVED, the Kenosha County Board of Supervisors requests the Wisconsin State Legislature clarify whether two properties that have only one location point in common are considered "adjacent property" in Wisconsin State Statutes; and

BE IT FURTHER RESOLVED, the Kenosha County Board of Supervisors requests the Wisconsin State Legislature clarify the definition of a "public park" in Wisconsin State Statutes; and

BE IT FURTHER RESOLVED, the Kenosha County Board of Supervisors requests the Wisconsin State Legislature revise the definition of a "Youth Center" to specify whether the definition of a "Youth Center" may include a private residence and boys and girls youth campgrounds or only includes licensed centers and facilities, such as a Boys & Girls Club, or a YMCA or YWCA; and

BE IT FURTHER RESOLVED, a copy of this resolution shall be forwarded to all municipalities located within Kenosha County, Kenosha County's Madison legislative delegation, all other Wisconsin counties, and the Wisconsin Counties Association.

A handwritten signature in black ink, reading "Erin Decker". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Supervisor Erin Decker

Kenosha



County

BOARD OF SUPERVISORS

WEEKLY MEETING SCHEDULE

NOTE: UNDER THE KENOSHA COUNTY BOARD OF RULES OF PROCEDURE ANY REPORT, RESOLUTION, ORDINANCE OR MOTION APPEARING ON THIS AGENDA MAY BE AMENDED, WITHDRAWN, REMOVED FROM THE TABLE, RECONSIDERED OR RESCINDED IN WHOLE OR IN PART AT THIS OR AT FUTURE MEETINGS. NOTICE OF SUCH MOTIONS TO RECONSIDER OR RESCIND AT FUTURE MEETINGS SHALL BE GIVEN IN ACCORDANCE WITH SEC. 210(2) OF THE COUNTY BOARD RULES. FURTHERMORE, ANY MATTER DEEMED BY A MAJORITY OF THE BOARD TO BE GERMANE TO AN AGENDA ITEM MAY BE REFERRED TO THE PROPER COMMITTEE. ANY PERSON WHO DESIRES THE PRIVILEGE OF THE FLOOR PRIOR TO AN AGENDA ITEM BEING DISCUSSED SHOULD REQUEST A COUNTY BOARD SUPERVISOR TO CALL SUCH REQUEST TO THE ATTENTION OF THE BOARD CHAIRMAN.

7/19/2021 THROUGH 7/23/2021

MONDAY, 7/19/2021

CIVIL SERVICE COMMISSION

1:30 PM, PSB, SHERIFF'S CONF RM

OPEN SESSION

Call to Order

CLOSED SESSION per Section 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility – approx. 2 hours

Interviews of Deputy Sheriff Candidates

NOTE: Any requests for closed session must contain a cite as to statute and approximate time the session will be closed. Closed sessions scheduled at the conclusion of the meeting when possible.

CIVIL SERVICE COMMISSION

3:45 PM, KCAB, CO BD COMM RM

OPEN SESSION

Citizens and Commissioners Comments

Approval of Minutes

Report from Chairman

Report from Chief Deputy Sheriff

Report from Human Resources Director

Determination of Testing/Selection Procedure, Detective

CLOSED SESSION per Section 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility – approx. 1.5 hours

Disqualification of Deputy Sheriff Candidates
(after oral interview)

Disqualification of Deputy Sheriff Candidate
(after job trait assessment)

Reconsideration of Deputy Sheriff Candidates

NOTE: Any requests for closed session must contain a cite as to statute and approximate time the session will be closed. Closed sessions scheduled at the conclusion of the meeting when possible.

COURT ORDERED

PLACEMENT REVIEW COMMITTEE

4:00 PM, KCJC, OFFICE OF DIR CONF RM

(Must Enter through Entrance D)

1. Call to Order
2. Review of minutes of June 28, 2021 meeting
3. Review/discussion of information related to subject
4. Discussion on potential placement and search partners
5. Adjourn

There may be a motion to go into closed session pursuant to Section 19.85(1)(f), for consideration of medical, social, or personal historical information which, if discussed in public, would be likely to have substantially adverse effect upon the reputation of any person referred to in such histories.

TUESDAY, 7/20/2021

CIVIL SERVICE COMMISSION

1:30 PM, PSB, SHERIFF'S CONF RM

OPEN SESSION

Call to Order

CLOSED SESSION per Section 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility – approx. 2 hours

Interviews of Deputy Sheriff Candidates

NOTE: Any requests for closed session must contain a cite as to statute and approximate time the session will be closed. Closed sessions scheduled at the conclusion of the meeting when possible.

CIVIL SERVICE COMMISSION

3:45 PM, KCAB, CO BD COMM RM

OPEN SESSION

Citizens and Commissioners Comments

Approval of Minutes

Report from Chairman

Report from Chief Deputy Sheriff

Report from Human Resources Director

CLOSED SESSION per Section 19.85(1)(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility – approx. 3/4 hour

Disqualification of Deputy Sheriff Candidates
(after oral interview)

NOTE: Any requests for closed session must contain a cite as to statute and approximate time the session will be closed. Closed sessions scheduled at the conclusion of the meeting when possible.

CHAPTER 980

SEXUALLY VIOLENT PERSON COMMITMENTS

980.01	Definitions.	980.067	Activities off grounds.
980.015	Notice to the department of justice and district attorney.	980.07	Periodic reexamination and treatment progress; report from the department.
980.02	Sexually violent person petition; contents; filing.	980.08	Supervised release; procedures, implementation, revocation.
980.03	Rights of persons subject to petition.	980.09	Petition for discharge.
980.0305	Reimbursement for counsel provided by the state.	980.095	Procedures for discharge hearings.
980.031	Examinations.	980.101	Reversal, vacation or setting aside of judgment relating to a sexually violent offense; effect.
980.034	Change of place of trial or jury from another county.	980.105	Determination of county and city, village, or town of residence.
980.036	Discovery and inspection.	980.11	Notice concerning supervised release or discharge.
980.038	Miscellaneous procedural provisions.	980.12	Department duties; costs.
980.04	Detention; probable cause hearing; transfer for examination.	980.13	Applicability.
980.05	Trial.	980.135	Local restrictions; limited exemption.
980.06	Commitment.	980.14	Immunity.
980.063	Deoxyribonucleic acid analysis requirements.		
980.065	Institutional care for sexually violent persons.		

980.01 Definitions. In this chapter:

(1b) “Act of sexual violence” means conduct that constitutes the commission of a sexually violent offense.

(1d) “Agency with jurisdiction” means the agency with the authority or duty to release or discharge the person.

(1e) “Assisted living facility” has the meaning given in s. 101.123 (1) (ab).

(1g) “Child care facility” means a child care facility that is operated by a person licensed under s. 48.65 or certified under s. 48.651 or that is established or contracted for under s. 120.13 (14).

(1h) “Department” means the department of health services.

(1j) “Incarceration” includes confinement in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), if the person was placed in the facility for being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(1m) “Likely” means more likely than not.

(2) “Mental disorder” means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

(2m) “Nursing home” has the meaning given in s. 50.01 (3).

(3) “Petitioner” means the agency or person that filed a petition under s. 980.02.

(3d) “Place of worship” means a church building where religious services are held.

(3g) “Public park” means a park or playground that is owned or maintained by the state or by a city, village, town, or county.

(3m) “School premises” has the meaning given in s. 948.61 (1) (c).

(4) “Secretary” means the secretary of health services.

(4m) “Serious child sex offender” means a person who has been convicted, adjudicated delinquent or found not guilty or not responsible by reason of insanity or mental disease, defect or illness for committing a violation of a crime specified in s. 948.02 (1) or (2), 948.025 (1), or 948.085 against a child who had not attained the age of 13 years.

(5) “Sexually motivated” means that one of the purposes for an act is for the actor’s sexual arousal or gratification or for the sexual humiliation or degradation of the victim.

(6) “Sexually violent offense” means any of the following:

(a) Any crime specified in s. 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085.

(am) An offense that, prior to June 2, 1994, was a crime under the law of this state and that is comparable to any crime specified in par. (a).

(b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19 (2), (4), (5), or (6), 940.195 (4) or (5), 940.30, 940.305, 940.31, 941.32, 943.10, 943.32, or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

(bm) An offense that, prior to June 2, 1994, was a crime under the law of this state, that is comparable to any crime specified in par. (b) and that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

(c) Any solicitation, conspiracy, or attempt to commit a crime under par. (a), (am), (b), or (bm).

(7) “Sexually violent person” means a person who 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, and who 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.

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

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

(c) 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) 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.

(9) “Substantially probable” means much more likely than not.

(10) “Treating professional” means a licensed physician, licensed psychologist, licensed social worker, or other mental health professional who provides, or supervises the provision of, sex offender treatment at a facility described under s. 980.065.

(11) “Youth center” means any center that provides, on a regular basis, recreational, vocational, academic, or social services

activities for persons younger than 18 years old or for those persons and their families.

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1997 a. 284, 295; 2003 a. 187; 2005 a. 277, 2005 a. 434 ss. 60 to 73; 2007 a. 20 s. 9121 (6) (a); 2007 a. 96, 97; 2013 a. 84; 2015 a. 156.

Chapter 980 creates a civil commitment procedure primarily intended to provide treatment and protect the public, not to punish the offender. As such the chapter does not provide for “punishment” in violation of the constitutional prohibitions against double jeopardy or *ex post facto* laws. *State v. Carpenter*, 197 Wis. 2d 252, 541 N.W.2d 105 (1995), 94–1898.

Chapter 980 does not violate substantive due process guarantees. The definitions of “mental disorder” and “dangerous” are not overbroad. The treatment obligations under ch. 980 are consistent with the nature and duration of commitments under the chapter. The lack of a precommitment finding of treatability is not offensive to due process requirements. *State v. Post*, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94–2356.

Chapter 980 does not violate equal protection guarantees. The state’s compelling interest in protecting the public justifies the differential treatment of the sexually violent persons subject to the chapter. *State v. Post*, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94–2356.

A child enticement conviction under a statute that had been repealed and recreated under a new statute number was a sexually violent offense under sub. (6), although the former number was not listed in the new statute. *State v. Irish*, 210 Wis. 2d 107, 565 N.W.2d 161 (Ct. App. 1997), 96–2303.

Under [former] sub. (7), a “mental disorder that makes it substantially probable that the person will engage in acts of sexual violence” is a disorder that predisposes the affected person to sexual violence. A diagnosis of “antisocial personality disorder,” uncoupled with any other diagnosis but coupled with sufficient evidence establishing that a defendant is a “sexually violent person,” may constitute a mental disorder that makes it substantially probable that the person will engage in acts of sexual violence under [former] sub. (7). *State v. Adams*, 223 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998), 96–3136.

Definitions in ch. 980 serve a legal, and not medical, function. The court will not adopt a definition of pedophilia for ch. 980 purposes. *State v. Zanelli*, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998), 98–0733.

That the state’s expert opined that pedophilia is a lifelong disorder did not mean that commitment was based solely on prior bad acts rather than a present condition. Jury instructions are discussed. *State v. Matek*, 223 Wis. 2d 611, 589 N.W.2d 441 (Ct. App. 1998), 96–3524.

As used in this chapter, “substantial probability” and “substantially probable” both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. *State v. Curiel*, 227 Wis. 2d 389, 597 N.W.2d 697 (1999), 97–1337.

The definition of “sexually violent person” includes conduct prohibited by a previous version of a statute enumerated in sub. (6) as long as the conduct prohibited under the predecessor statute remains prohibited under the current statute. *State v. Pharm*, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163, 98–1542.

Chapter 980 is not facially unconstitutional. Due process does not require proof of a recent overt act in evaluating the dangerousness of the offender when there has been a break in the offender’s incarceration and the offender is reincarcerated for non-sexual behavior. Substantive due process allows for a ch. 980 commitment when there is sufficient evidence of current dangerousness. There is no bright-line rule that requires current dangerousness to be proven by a particular type of evidence. *State v. Bush*, 2005 WI 103, 283 Wis. 2d 90, 699 N.W.2d 80, 03–2306.

Exclusion of the conditions of a person’s probation supervision from his ch. 980 trial was proper as under sub. (7) as such evidence was irrelevant in determining whether he was a sexually violent person. *State v. Mark*, 2006 WI 78, 292 Wis. 2d 1, 718 N.W.2d 90, 03–2068.

The legislature’s replacement of “substantially probable” in sub. (7) with “likely,” lowered the level of dangerousness required to commit a person under ch. 980 but did not violate the constitution on either due process or equal protection grounds. *State v. Nelson*, 2007 WI App 2, 298 Wis. 2d 453, 727 N.W.2d 364, 05–0810.

A ch. 980 commitment did not violate equal protection or due process guarantees when the person was released to the community upon a finding that he was ineligible for commitment and subsequently committed after parole violations that did not involve overt acts of sexual violence. *State v. Feldmann*, 2007 WI App 35, 300 Wis. 2d 474, 730 N.W.2d 440, 05–2347.

“More likely than not,” as used in sub. (1m), is not an obscure or specialized term of art, but a commonly-used expression. An expert witness’s ambiguous and confusing misstatement regarding the meaning of “more likely than not” could not have convinced a reasonable person the phrase meant other than more likely to happen than not to happen. *State v. Smalley*, 2007 WI App 219, 305 Wis. 2d 709, 741 N.W.2d 286, 06–1475.

Under sub. (7), a sexually violent person is one who 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. Actuarial instruments that measure dangerousness without regard to the defendant’s mental illness were relevant to determining whether the defendant was a sexually violent person. Dangerousness was a fact of consequence to the proceedings although not the only fact that needed to be shown. Evidence need not go to every facet of a party’s case in order to be relevant. *State v. Smalley*, 2007 WI App 219, 305 Wis. 2d 709, 741 N.W.2d 286, 06–1475.

Under the reasoning of *Mark* that conditions of supervision that a person will be subject to if released are irrelevant to the determination of whether the person is a sexually violent person under sub. (7), that a person will be subject to supervision if released is also irrelevant to whether the person is a sexually violent person. *State v. Budd*, 2007 WI App 245, 306 Wis. 2d 167, 742 N.W.2d 887, 07–0011.

Evidence of the department of correction’s screening process for potential ch. 980 cases was irrelevant as to the determination of whether a defendant was a sexually violent person under sub. (7) when the evidence did not establish why the defendant was selected for ch. 980 proceedings. *State v. Budd*, 2007 WI App 245, 306 Wis. 2d 167, 742 N.W.2d 887, 07–0011.

Postcommitment annual reviews do not, generally, bear on the factual issues the jury must resolve in order to determine whether a person is a sexually violent person, but there is not a blanket exclusion for all testimony of annual reviews. Rather, the

question of relevancy of such evidence needs to be examined in the particular context in which the evidence is offered. *State v. Sugden*, 2010 WI App 166, 330 Wis. 2d 628, 795 N.W.2d 456, 09–2445.

The existence of treatment for committed persons is a consequence of commitment and, generally, is not relevant in determining whether a person is a sexually violent person. *State v. Sugden*, 2010 WI App 166, 330 Wis. 2d 628, 795 N.W.2d 456, 09–2445.

The proportion of about-to-be released sex offenders who are referred for a special purpose evaluation to determine whether they meet the requirements of ch. 980 is not, in itself, relevant to whether a particular person referred meets the requirements of being a sexually violent person. This is true whether that proportion is expressed in terms of a specific percentage or a more general description of the relative size of the group. *State v. Sugden*, 2010 WI App 166, 330 Wis. 2d 628, 795 N.W.2d 456, 09–2445.

The Kansas Sexually Violent Predator Act comports with due process requirements, does not run afoul of double jeopardy principles, and is not an *ex post facto* law. *Kansas v. Hendricks*, 521 U.S. 346, 138 L. Ed. 2d 501 (1997).

Civil commitment upon a finding of a “mental disorder” does not violate due process when the predicate diagnosis is not found within the four corners of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. A factfinder may have stronger confidence in his or her conclusions when the examining mental health professionals rely upon authoritative, consensus materials in the field, and a particular diagnosis may be so devoid of content, or so near-universal in its rejection by mental health professionals, that a court’s reliance on it to satisfy the “mental disorder” prong of the statutory requirements for commitment would violate due process. *McGee v. Bartow*, 594 F.3d 555 (2010).

The constitutionality of Wisconsin’s Sexual Predator Law. *Straub & Kachelski*. Wis. Law. July, 1995.

980.015 Notice to the department of justice and district attorney. (2) If an agency with jurisdiction has control or custody over a person who may meet the criteria for commitment as a sexually violent person, the agency with jurisdiction shall inform each appropriate district attorney and the department of justice regarding the person as soon as possible beginning 90 days prior to the applicable date of the following:

(a) The anticipated discharge or release, on parole, extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for a sexually violent offense, from a continuous term of incarceration, any part of which was imposed for a sexually violent offense, or from a placement in a Type 1 prison under s. 301.048 (3) (a) 1., any part of which was required as a result of a conviction for a sexually violent offense.

(b) The anticipated release from a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), if the person was placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(c) The anticipated release of a person on conditional release under s. 971.17, the anticipated termination of a commitment order under s. 971.17, or the anticipated discharge of a person from a commitment order under s. 971.17, if the person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(d) The anticipated release on parole or discharge of a person committed under ch. 975 for a sexually violent offense.

(3) The agency with jurisdiction shall provide the district attorney and department of justice with all of the following:

(a) The person’s name, identifying factors, anticipated future residence and offense history.

(b) If applicable, documentation of any treatment and the person’s adjustment to any institutional placement.

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283; 1999 a. 9; 2005 a. 344, 434; 2007 a. 97; 2015 a. 197 s. 51.

The “appropriate district attorney” under sub. (2) is the district attorney in the county of conviction or the county to which prison officials propose to release the person. In re Commitment of Goodson, 199 Wis. 2d 426, 544 N.W.2d 611 (Ct. App. 1996), 95–0664.

980.02 Sexually violent person petition; contents; filing. (1) A petition alleging that a person is a sexually violent person may be filed by one of the following:

(a) The department of justice at the request of the agency with jurisdiction over the person.

(b) If the department of justice does not file a petition under par. (a), the district attorney for one of the following:

supervised release. The county shall pay the costs of an examiner appointed under par. (a) as provided under s. 51.20 (18) (a).

(4) (a) The court, without a jury, shall hear the petition within 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).

(c) In making a decision under par. (cg), the court may consider, without limitation because of enumeration, the nature and circumstances of the behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a), the person's mental history and present mental condition, where the person will live, how the person will support himself or herself, and what arrangements are available to ensure that the person has access to and will participate in necessary treatment, including pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen if the person is a serious child sex offender. A decision under par. (cg) on a petition filed by a person who is a serious child sex offender may not be made based on the fact that the person is a proper subject for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen or on the fact that the person is willing to participate in pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen.

(cg) 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 criteria are met:

1. The person is making significant progress in treatment and the person's progress can be sustained while on supervised release.

2. It is substantially probable that the person will not engage in an act of sexual violence while on supervised release.

3. Treatment that meets the person's needs and a qualified provider of the treatment are reasonably available.

4. 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 the department.

5. 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.

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

(dm) 1. If the court finds that all of the criteria in par. (cg) are met, the court shall order the county of the person's residence, as determined by the department of health services under s. 980.105, to prepare a report. The county shall create a temporary committee to prepare the report for the county. The committee shall consist of the county department under s. 51.42, a representative of the department of health services, a local probation or parole officer, the county corporation counsel or his or her designee, and a representative of the county that is responsible for land use planning or the department of the county that is responsible for land information. In the report, the county shall identify an appropriate residential option in that county while the person is on supervised release. In counties with a population of 750,000 or more, the committee shall select a residence in the person's city, village, or town of residence, as determined by the department of health services under s. 980.105 (2m). The report shall demonstrate that the county has contacted the landlord for that residential option and that the landlord has committed to enter into a lease. The county shall when identifying an appropriate residential option:

a. Ensure that the person's placement is into a residence that is not less than 1,500 feet from any school premises, child care facility, public park, place of worship, or youth center. A person is not in violation of a condition or rule of supervised release under sub. (7) (a) if any school premises, child care facility, public park,

place of worship, or youth center is established within 1,500 feet from the person's residence after he or she is placed in the residence under this section.

b. If the person committed a sexually violent offense against an adult at risk, as defined in s. 55.01 (1e), or an elder adult at risk, as defined in s. 46.90 (1) (br), ensure that the person's placement is into a residence that is not less than 1,500 feet from a nursing home or an assisted living facility. A person is not in violation of a condition or rule of supervised release under sub. (7) (a) if a nursing home or an assisted living facility is established within 1,500 feet from the person's residence after he or she is placed in the residence under this section.

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

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

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

4. The county shall submit its report to the department of health services within 120 days following the court order. A county that does not submit its report within 120 days violates the person's rights under s. 51.61, and each day that the county does not submit the report after the 120 days have expired constitutes a separate violation under s. 51.61. Notwithstanding s. 51.61 (7), any damages beyond costs and reasonable actual attorney fees recovered by the person for a violation shall be deposited into the appropriation account under s. 20.435 (2) (gz).

(f) The court shall direct the department to use the report submitted under par. (dm) to prepare a supervised release plan for the person that identifies the residential option the county identified in its report. The plan shall also 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 shall be submitted to the court within 30 days after the county submitted its report under par. (dm). The court may grant one extension of up to 30 days of this time period for good cause.

(g) The court shall review the plan submitted by the department under par. (f). If the details of the plan adequately meet the treatment needs of the individual and the safety needs of the community, then the court shall 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, then the court shall determine that supervised release is not appropriate or direct the preparation of another supervised release plan to be considered by the court under this paragraph. If the plan is inadequate under this paragraph due to

the residential option, the court shall order the county to identify and arrange to lease another residential option and to prepare a new report under par. (dm). If the plan is inadequate under this paragraph due to the treatment options, the court shall order the department to prepare another plan under par. (f).

(6m) An order for supervised release places the person in the custody and control of the department. The department shall 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 under sub. (4) (g). A person on supervised release is subject to the conditions set by the court and to the rules of the department. Within 10 days of imposing a rule, the department shall file with the court any additional rule of supervision not inconsistent with the rules or conditions imposed by the court. If the department wants to change a rule or condition of supervision imposed by the court, the department must obtain the court's approval. Before a person is placed on supervised release by the court under this section, the court shall so notify the municipal police department and county sheriff for the municipality and county in which the person will be residing. The notification requirement under this subsection does not apply if a municipal police department or county sheriff submits to the court a written statement waiving the right to be notified.

(7) (a) If the department 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, the department may petition for revocation of the order granting supervised release as described in par. (c) or may detain the person.

(b) If the department believes that a person on supervised release, or awaiting placement on supervised release, is a threat to the safety of others, the department shall detain the person and petition for revocation of the order granting supervised release as described in par. (c).

(c) If the department concludes that the order granting supervised release should be revoked, it shall file with the committing court a statement alleging the violation and or threat of a violation and a petition to revoke the order for supervised release and provide a copy of each to the regional office of the state public defender responsible for handling cases in the county where the committing court is located. If the department has detained the person under par. (a) or (b), the department shall file the statement and the petition and provide them to the regional office of the state public defender within 72 hours after the detention, excluding Saturdays, Sundays and legal holidays. Pending the revocation hearing, the department may detain the person in a jail or a facility described under s. 980.065. 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). The determination of indigency and the appointment of counsel shall be done as soon as circumstances permit.

(d) The court shall 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 shall be made within 90 days of the filing. Pending the revocation hearing, the department may detain the person in the county jail or return him or her to institutional care.

(8) (a) 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 shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed again on supervised release under sub. (4) (g).

(b) If the court finds after a hearing, by clear and convincing evidence, that the safety of others requires that supervised release be revoked the court shall revoke the order for supervised release

and order that the person be placed in institutional care. The person shall remain in institutional care until the person is discharged from the commitment under s. 980.09 or is placed on supervised release under sub. (4) (g).

(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 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, religious purposes, educational purposes, treatment and exercise purposes, supervision purposes, or residence maintenance, or for caring for the person's basic living needs.

(b) The department of corrections may contract for the escort services under par. (a).

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9 ss. 3223L, 3232p to 3238d; 1999 a. 32; 2001 a. 16; 2003 a. 187; 2005 a. 431, 434; 2007 a. 20 ss. 3929, 3930, 9121 (6) (a); 2007 a. 96, 97; 2013 a. 84; 2015 a. 156; 2017 a. 184.

Cross-reference: See also ch. DHS 98, Wis. adm. code.

Sub. (6m) [formerly s. 980.06 (2) (d)] requires post-hearing notice to the local law enforcement agencies. In re Commitment of Goodson, 199 Wis. 2d 426, 544 N.W.2d 611 (Ct. App. 1996), 95-0664.

Whether in a proceeding for an initial ch. 980 commitment or a later petition for supervised release, there is no requirement that the state prove the person is treatable. State v. Seibert, 220 Wis. 2d 308, 582 N.W.2d 745 (Ct. App. 1998), 97-2554.

As used in this chapter, "substantial probability" and "substantially probable" both mean much more likely than not. This standard for dangerousness does not violate equal protection nor is the term unconstitutionally vague. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d 697 (1999), 97-1337.

An institutionalized sex offender who agreed to a stipulation providing supervised release, giving up his right to a jury trial on his discharge petition in exchange, had a constitutional right to enforcement of the agreement. State v. Krueger, 2001 WI App 76, 242 Wis. 2d 793, 626 N.W.2d 83, 00-0152.

An indigent sexually violent person is constitutionally entitled to assistance of counsel in bringing a first appeal as of right from a denial of his or her petition for supervised release. State ex rel. Seibert v. Macht, 2001 WI 67, 244 Wis. 2d 378, 627 N.W.2d 881, 99-3354.

A person subject to a proceeding to revoke supervised release is entitled to the same due process protections as afforded persons in probation and parole revocation proceedings. Notice of the grounds that are the basis for the revocation must be given. A court can only base a revocation on the grounds of public safety under sub. (6m) when notice has been properly given. State v. VanBronkhorst, 2001 WI App 190, 247 Wis. 2d 247, 633 N.W.2d 236, 00-3075.

The relevant inquiry under sub. (4) is whether the person's behavior indicates a likelihood to reoffend. A sexual assault need not occur and the person's behavior need not be criminal. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213, 00-2404.

Sub. (6m), not s. 806.07 (1) (h), governs granting relief to the state from a ch. 980 committee's supervised release when the committee is confined in an institution awaiting placement on supervised release. Sub. (6m) provides no procedure for initiating revocation other than by the department of health and family services action, preventing courts or prosecutors from initiating revocations. State v. Morford, 2004 WI 5, 268 Wis. 2d 300, 674 N.W.2d 349, 01-2461.

Ch. 980 was not unconstitutionally applied to the defendant when an order for supervised release could not be carried out due to an inability to find an appropriate placement and the defendant remained in custody. Any judicial decision that puts the community at risk because of what agents of government may have done or not done must balance the potential injury to society's interests against the potential benefits that would flow from any rule designed to deter future conduct by those agents. State v. Schulpus, 2006 WI 2, 287 Wis. 2d 44, 707 N.W.2d 495, 02-1056.

A rule regulating the conduct of a sexually violent person on supervised release satisfies the procedural due process requirement of adequate notice if it is sufficiently precise for the probationer to know what conduct is required or prohibited. State v. Burris, 2004 WI 91, 273 Wis. 2d 294, 682 N.W.2d 812, 00-1425.

Under sub. (6m) [formerly s. 980.06 (2) (d)], a circuit court must determine whether any rule or condition of release has been violated or whether the safety of others requires revocation. A circuit court is not required to expressly consider alternatives to revocation before revoking a sexually violent person's supervised release when the court determines that the safety of the public requires the person's commitment to a secure facility. State v. Burris, 2004 WI 91, 273 Wis. 2d 294, 682 N.W.2d 812, 00-1425.

The sufficiency of evidence standard of review applies when reviewing a circuit court's order denying a petition for supervised release under sub. (4). The test for the sufficiency of the evidence to support the order is not whether a reviewing court is convinced by clear and convincing evidence that a person's petition for supervised release should be denied, but whether a circuit court, acting reasonably, could be so convinced by evidence it has a right to believe and accept as true. State v. Brown, 2005 WI 29, 279 Wis. 2d 102, 693 N.W.2d 715, 03-1419.

Sub. (4) (cg) unambiguously places the burden of proof with the committed individual. The appropriate burden of persuasion is clear and convincing evidence. This allocation does not violate the guarantees of due process and equal protection in the Wisconsin and United States Constitutions. State v. West, 2011 WI 83, 336 Wis. 2d 578, 800 N.W.2d 929, 09-1579.

Supervised Release Under Chapter 980: Alternatives to Protect Wisconsin While Upholding the Constitution. Hamrin. 2007 WLR 889.

980.09 Petition for discharge. (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