



State of Wisconsin
2003 - 2004 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 270**

January 20, 2004 – Offered by Representative JOHNSRUD.

1 **AN ACT** *to renumber* 980.01 (1); *to renumber and amend* 980.08 (4), 980.08
2 (5) and 980.08 (6m); *to amend* 46.10 (2), 51.42 (3) (aw) 1. d., 975.10 (1), 980.08
3 (3), 980.09 (1) (c) and 980.09 (2) (c); and *to create* 975.10 (1m), 980.01 (1g),
4 980.08 (4) (a) 1. b., 980.08 (5) (b) and 980.08 (5) (d) of the statutes; **relating to:**
5 the residence of certain sex predators.

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

6 **SECTION 1.** 46.10 (2) of the statutes is amended to read:
7 46.10 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person,
8 including but not limited to a person admitted, committed, or placed under s. 975.01,
9 1977 stats., s. 975.02, 1977 stats., and s. 975.17, 1977 stats., and ss. 51.10, 51.13,
10 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12), and (13), 55.05, 55.06, 971.14
11 (2) and (5), 971.17 (1), 975.06, and 980.06, receiving care, maintenance, services, and
12 supplies provided by any institution in this state including University of Wisconsin

1 Hospitals and Clinics, in which the state is chargeable with all or part of the person's
2 care, maintenance, services, and supplies, any person receiving care and services
3 from a county department established under s. 51.42 or 51.437 or from a facility
4 established under s. 49.73, and any person receiving treatment and services from a
5 public or private agency under s. 980.06 (2) (c), 1997 stats., or s. 971.17 (3) (d) or (4)
6 (e) or 980.08 ~~(5)~~ (6m) (a) and the person's property and estate, including the
7 homestead, and the spouse of the person, and the spouse's property and estate,
8 including the homestead, and, in the case of a minor child, the parents of the person,
9 and their property and estates, including their homestead, and, in the case of a
10 foreign child described in s. 48.839 (1) who became dependent on public funds for his
11 or her primary support before an order granting his or her adoption, the resident of
12 this state appointed guardian of the child by a foreign court who brought the child
13 into this state for the purpose of adoption, and his or her property and estate,
14 including his or her homestead, shall be liable for the cost of the care, maintenance,
15 services, and supplies in accordance with the fee schedule established by the
16 department under s. 46.03 (18). If a spouse, widow, or minor, or an incapacitated
17 person may be lawfully dependent upon the property for their support, the court
18 shall release all or such part of the property and estate from the charges that may
19 be necessary to provide for those persons. The department shall make every
20 reasonable effort to notify the liable persons as soon as possible after the beginning
21 of the maintenance, but the notice or the receipt thereof is not a condition of liability.

22 **SECTION 2.** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

23 51.42 **(3)** (aw) 1. d. Provide treatment and services that are specified in a
24 conditional release plan approved by a court for a person who is a county resident and
25 is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised

1 release plan approved by a court under s. 980.06 (2) (c), 1997 stats., or s. 980.08 (5)
2 (d). If the county department provides treatment and services under this
3 subdivision, the department of health and family services shall, from the
4 appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the
5 treatment and services.

6 **SECTION 3.** 975.10 (1) of the statutes is amended to read:

7 975.10 (1) ~~Any~~ Except as provided in sub. (1m), any person committed as
8 provided in this chapter may be paroled if it appears to the satisfaction of the
9 department of health and family services after recommendation by a special review
10 board, appointed by the department, a majority of whose members shall not be
11 connected with the department, that the person is capable of making an acceptable
12 adjustment in society. Before a person is released on parole under this section, the
13 department of health and family services shall so notify the municipal police
14 department and county sheriff for the area where the person will be residing. The
15 notification requirement does not apply if a municipal department or county sheriff
16 submits to the department of health and family services a written statement waiving
17 the right to be notified. Probation, extended supervision and parole agents of the
18 department of corrections shall supervise persons paroled under this section.

19 **SECTION 4.** 975.10 (1m) of the statutes is created to read:

20 975.10 (1m) A child sex offender, as defined in s. 980.01 (1g), may not be
21 released on parole under sub. (1) unless he or she agrees, as a condition of parole, not
22 to reside within 1,000 feet of any private or public school premises, as defined in s.
23 948.61 (1) (c).

24 **SECTION 5.** 980.01 (1) of the statutes is renumbered 980.01 (1m).

25 **SECTION 6.** 980.01 (1g) of the statutes is created to read:

1 980.01 (1g) “Child sex offender” means a person who has been convicted,
2 adjudicated delinquent, or found not guilty or not responsible by reason of insanity
3 or mental disease, defect, or illness for committing an offense specified in s. 940.225
4 (1) or (2), if the victim or the intended victim was under 18 years of age at the time
5 of the offense, or a crime specified in s. 948.02 (1) or (2), 948.025, 948.06, or 948.07.

6 **SECTION 7.** 980.08 (3) of the statutes is amended to read:

7 980.08 (3) Within 20 days after receipt of the petition, the court shall appoint
8 one or more examiners having the specialized knowledge determined by the court to
9 be appropriate, who shall examine the person and furnish a written report of the
10 examination to the court within 30 days after appointment. The examiners shall
11 have reasonable access to the person for purposes of examination and to the person’s
12 past and present treatment records, as defined in s. 51.30 (1) (b), and patient health
13 care records, as provided under s. 146.82 (2) (c). If any such examiner believes that
14 the person is appropriate for supervised release under the ~~criterion~~ criteria specified
15 in sub. (4) (a) 1., the examiner shall report on the type of treatment and services that
16 the person may need while in the community on supervised release. The county shall
17 pay the costs of an examiner appointed under this subsection as provided under s.
18 51.20 (18) (a).

19 **SECTION 8.** 980.08 (4) of the statutes is renumbered 980.08 (4) (a) 1. (intro.) and
20 amended to read:

21 980.08 (4) (a) 1. (intro.) The court, without a jury, shall hear the petition within
22 30 days after the report of the court-appointed examiner is filed with the court,
23 unless the petitioner waives this time limit. Expenses of proceedings under this
24 subsection shall be paid as provided under s. 51.20 (18) (b), (c) and (d). The court shall

1 grant the petition unless the state proves one of the following by clear and convincing
2 evidence ~~that~~:

3 a. That the person is still a sexually violent person and that it is still
4 substantially probable that the person will engage in acts of sexual violence if the
5 person is not continued in institutional care. ~~In making a decision under this~~
6 ~~subsection~~

7 2. In deciding whether to make a finding under subd. 1. a., the court may
8 consider, without limitation because of enumeration, the nature and circumstances
9 of the behavior that was the basis of the allegation in the petition under s. 980.02 (2)
10 (a), the person's mental history and present mental condition, where the person will
11 live, how the person will support himself or herself and what arrangements are
12 available to ensure that the person has access to and will participate in necessary
13 treatment, including pharmacological treatment using an antiandrogen or the
14 chemical equivalent of an antiandrogen if the person is a serious child sex offender.
15 A decision under ~~this subsection~~ subd. 1. a. on a petition filed by a person who is a
16 serious child sex offender may not be made based on the fact that the person is a
17 proper subject for pharmacological treatment using an antiandrogen or the chemical
18 equivalent of an antiandrogen or on the fact that the person is willing to participate
19 in pharmacological treatment using an antiandrogen or the chemical equivalent of
20 an antiandrogen.

21 **SECTION 9.** 980.08 (4) (a) 1. b. of the statutes is created to read:

22 980.08 (4) (a) 1. b. That the person who is the subject of the petition is a child
23 sex offender who refuses to comply with the residency requirement in sub. (6m) (a).

24 **SECTION 10.** 980.08 (5) of the statutes is renumbered 980.08 (5) (a) and
25 amended to read:

1 980.08 (5) (a) If the court finds that the person is appropriate for supervised
2 release, the court shall notify the department. ~~The department shall make its best~~
3 ~~effort to arrange for placement of the person in a residential facility or dwelling that~~
4 ~~is in the person's county of residence, as determined by the department under s.~~
5 ~~980.105. The department and, except as provided in par. (c), the county department~~
6 ~~under s. 51.42 in the person's county of residence of the person shall prepare a~~
7 supervised release plan that identifies for the person that does all of the following:

8 1. Identifies the treatment and services, if any, that the person will receive in
9 the community. ~~The plan shall address~~

10 2. Addresses the person's need, if any, for supervision, counseling, medication,
11 community support services, residential services, vocational services, and alcohol or
12 other drug abuse treatment. ~~In developing a plan for where the person may reside~~
13 ~~while on supervised release, the department shall consider the proximity of any~~
14 ~~potential placement to the residence of other persons on supervised release and to~~
15 ~~the residence of persons who are in the custody of the department of corrections and~~
16 ~~regarding whom a sex offender notification bulletin has been issued to law~~
17 ~~enforcement agencies under s. 301.46 (2m) (a) or (am). If the person is a serious child~~
18 ~~sex offender, the plan shall address~~

19 3. Addresses the person's need for pharmacological treatment using an
20 antiandrogen or the chemical equivalent of an antiandrogen. ~~The department may~~
21 ~~contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public~~
22 ~~agency or with a private agency to provide the treatment and services identified in~~
23 ~~the plan. The plan shall specify if the person is a serious child sex offender.~~

24 4. Specifies who will be responsible for providing the treatment and services
25 identified in the plan. ~~The plan shall be presented to the court for its approval within~~

1 ~~60 days after the court finding that the person is appropriate for supervised release,~~
2 ~~unless the department, county department and person to be released request~~
3 ~~additional time to develop the plan. If~~

4 (c) The department shall make its best effort to arrange for placement of the
5 person in a residential facility or dwelling that is in the person's county of residence.
6 If the county department of the person's county of residence declines to prepare a
7 plan, the department may arrange for another county to prepare the plan if that
8 county agrees to prepare the plan and if the person will be living in that county. If
9 the department is unable to arrange for another county to prepare a plan, the court
10 shall designate a county department to prepare the plan, order the county
11 department to prepare the plan and place the person on supervised release in that
12 county, except that the court may not so designate the county department in any
13 county where there is a facility in which persons committed to institutional care
14 under this chapter are placed unless that county is also the person's county of
15 residence.

16 **SECTION 11.** 980.08 (5) (b) of the statutes is created to read:

17 980.08 (5) (b) In developing a supervised release plan for a person under par.
18 (a), the department shall do all of the following:

19 1. Consider the proximity of any potential placement to the residence of other
20 persons on supervised release and to the residence of persons who are in the custody
21 of the department of corrections and regarding whom a sex offender notification
22 bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am).

23 2. Ensure that the potential placement is not within 1,000 feet of any public or
24 private school premises, as defined in s. 948.61 (1) (c), if the person is a child sex
25 offender.

1 **SECTION 12.** 980.08 (5) (d) of the statutes is created to read:

2 980.08 (5) (d) The department and the county department shall present the
3 plan for supervised release to the court within 60 days after the court finding that
4 the person is appropriate for supervised release, unless the department, county
5 department, and person to be released request additional time to develop the plan.

6 **SECTION 13.** 980.08 (6m) of the statutes is renumbered 980.08 (6m) (a) and
7 amended to read:

8 980.08 (6m) (a) An order for supervised release places the person in the custody
9 and control of the department. The department shall arrange for control, care and
10 treatment of the person in the least restrictive manner consistent with the
11 requirements of the person and in accordance with the plan for supervised release
12 approved by the court under sub. (5) (d). The department may contract with a county
13 department under s. 51.42 (3) (aw) 1. d., with another public agency, or with a private
14 agency to provide the treatment and services identified in the plan. A person on
15 supervised release is subject to the conditions set by the court and to the rules of the
16 department. The court shall require, as a condition of supervised release, that the
17 person not reside within 1,000 feet of any public or private school premises, as
18 defined in s. 948.61 (1) (c), if the person is a child sex offender.

19 (b) Before a person is placed on supervised release by the court under this
20 section, the court shall so notify the municipal police department and county sheriff
21 for the municipality and county in which the person will be residing. The notification
22 requirement under this subsection does not apply if a municipal police department
23 or county sheriff submits to the court a written statement waiving the right to be
24 notified.

1 (c) If the department alleges that a released person has violated any condition
2 or rule, or that the safety of others requires that supervised release be revoked, he
3 or she may be taken into custody under the rules of the department. The department
4 shall submit a statement showing probable cause of the detention and a petition to
5 revoke the order for supervised release to the committing court and the regional
6 office of the state public defender responsible for handling cases in the county where
7 the committing court is located within 72 hours after the detention, excluding
8 Saturdays, Sundays and legal holidays. The court shall hear the petition within 30
9 days, unless the hearing or time deadline is waived by the detained person. Pending
10 the revocation hearing, the department may detain the person in a jail or in a
11 hospital, center or facility specified by s. 51.15 (2). The state has the burden of
12 proving by clear and convincing evidence that any rule or condition of release has
13 been violated, or that the safety of others requires that supervised release be
14 revoked. If the court determines after hearing that any rule or condition of release
15 has been violated, or that the safety of others requires that supervised release be
16 revoked, it may revoke the order for supervised release and order that the released
17 person be placed in an appropriate institution until the person is discharged from the
18 commitment under s. 980.09 or until again placed on supervised release under this
19 section.

20 **SECTION 14.** 980.09 (1) (c) of the statutes is amended to read:

21 980.09 (1) (c) If the court is satisfied that the state has not met its burden of
22 proof under par. (b), the petitioner shall be discharged from the custody or
23 supervision of the department. If the court is satisfied that the state has met its
24 burden of proof under par. (b), the court may proceed to determine, using the ~~criteria~~

1 criteria specified in s. 980.08 (4) (a) 1., whether to modify the petitioner’s existing
2 commitment order by authorizing supervised release.

3 **SECTION 15.** 980.09 (2) (c) of the statutes is amended to read:

4 980.09 (2) (c) If the court is satisfied that the state has not met its burden of
5 proof under par. (b), the person shall be discharged from the custody or supervision
6 of the department. If the court is satisfied that the state has met its burden of proof
7 under par. (b), the court may proceed to determine, using the ~~eriterion~~ criteria
8 specified in s. 980.08 (4) (a) 1., whether to modify the person’s existing commitment
9 order by authorizing supervised release.

10 **SECTION 16. Initial applicability.**

11 (1) The treatment of section 975.10 (1) and (1m) of the statutes first applies to
12 persons whom the department of health and family services releases on parole under
13 section 975.10 of the statutes on the effective date of this subsection.

14 (2) The treatment of sections 980.08 (3) and (6m) of the statutes, the
15 renumbering and amendment of section 980.08 (4) and (5) of the statutes, and the
16 creation of section 980.08 (4) (a) 1. b. and (5) (b) and (d) of the statutes first apply to
17 persons whom the court finds are appropriate for supervised release under section
18 980.08 of the statutes on the effective date of this subsection.

19 (3) The treatment of section 980.09 (1) (c) and (2) (c) of the statutes first applies
20 to petitions for discharge under section 980.09 of the statutes pending on the effective
21 date of this subsection.

22 (END)