CHAPTER 980

SEXUALLY VIOLENT PERSON COMMITMENTS

980.01 Definitions. In this chapter:

(1) "Department" means the department of health and family services.

(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.

(4) "Secretary" means the secretary of health and family 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) or 948.025 (1) 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.

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

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

(b) Any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 or 943.10 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) or (b).

(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 acts of sexual violence.

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1997 a. 284, 295; 2003 a. 187.

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).

Under 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 person diagnosed with "antisocial personality disorder" coupled with another disorder may be found to be sexually violent. State v. Adams, 223 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998).

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).

That the state's expert's 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).

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).

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.

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).

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. (1) In this section, "agency with jurisdiction" means the agency with the authority or duty to release or discharge the person.

(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 3 months prior to the applicable date of the following:

(a) The anticipated discharge from a sentence, anticipated release on parole or extended supervision or anticipated release from imprisonment of a person who has been convicted of a sexually violent offense.

(b) The anticipated release from a secured correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), of a person adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense.

(c) The termination or discharge of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect under s. 971.17.

(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.

(4) Any agency or officer, employee or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with this section.

History: 1993 a. 479; 1995 a. 77; 1997 a. 205, 283; 1999 a. 9.

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, as defined in s. 980.015 (1), over the person. If the department of justice decides to file a petition under this paragraph, it shall file the petition before the date of the release or discharge of the person.

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

1. The county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect or illness.

2. The county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision, or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(2) A petition filed under this section shall allege that all of the following apply to the person alleged to be a sexually violent person:

(a) The person satisfies any of the following criteria:

1. The person has been convicted of a sexually violent offense.

2. The person has been found delinquent for a sexually violent offense.

3. The person has been found not guilty of a sexually violent offense by reason of mental disease or defect.

(ag) The person is within 90 days of discharge or release, on parole, extended supervision or otherwise, from a sentence that was imposed for a conviction for a sexually violent offense, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), or from a secured group home, as defined in s. 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent under s. 938.183 or 938.34 on the basis of a sexually violent offense or from a commitment order that was entered as a result of a sexually violent offense.

(b) The person has a mental disorder.

(c) The person is dangerous to others because the person's mental disorder makes it likely that he or she will engage in acts of sexual violence.

(3) A petition filed under this section shall state with particularity essential facts to establish probable cause to believe the person is a sexually violent person. If the petition alleges that a sexually violent offense or act that is a basis for the allegation under sub. (2) (a) was an act that was sexually motivated as provided under s. 980.01 (6) (b), the petition shall state the grounds on which the offense or act is alleged to be sexually motivated.

(4) A petition under this section shall be filed in any of the following:

(a) The circuit court for the county in which the person was convicted of a sexually violent offense, adjudicated delinquent for a sexually violent offense or found not guilty of a sexually violent offense by reason of mental disease or defect.

(am) The circuit court for the county in which the person will reside or be placed upon his or her discharge from a sentence, release on parole or extended supervision or release from imprisonment, from a secured correctional facility, as defined in s. 938.02 (15m), from a secured child caring institution, as defined in s. 938.02 (15g), from a secured group home, as defined in s. 938.02 (15p), or from a commitment order.

(b) The circuit court for the county in which the person is in custody under a sentence, a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or a commitment order.

(5) Notwithstanding sub. (4), if the department of justice decides to file a petition under sub. (1) (a), it may file the petition in the circuit court for Dane County.

History: 1993 a. 479; 1995 a. 77, 225; 1997 a. 27, 205, 283; 1999 a. 9; 2003 a. 187.

A ch. 980 commitment is not an extension of a commitment under ch. 975, and s. 975.12 does not limit the state's ability to seek a separate commitment under ch. 980 of a person originally committed under ch. 975. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94−2356.

For purposes of determining the proper time to file a ch. 980 petition under sub. (2) (ag), a sentence imposed for a sexually violent offense includes a sentence imposed consecutively to any sentence for a sexually violent offense. State v. Keith, 216 Wis. 2d 61, 573 N.W.2d 888 (Ct. App. 1997).

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).

In deciding whether there is a substantial probability that the subject will commit future acts of sexual violence, the trier of fact is free to weigh expert testimony that conflicts and decide which is more reliable, to accept or reject an expert's testimony, including accepting only parts of the testimony, and to consider all non−expert testimony. State v. Kienitz, 227 Wis. 2d 423, 597 N.W.2d 712 (1999).

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688, 605 N.W.2d 598 (Ct. App. 1999)

In a trial on a petition filed under sub. (2), the state has the burden to prove beyond a reasonable doubt that the petition was filed within 90 days of the subject's release or discharge based on a sexually violent offense. State v. Thiel, 2000 WI 67, 235 Wis. 2d 823, 612 N.W.2d 94. See also State v. Thiel, 2001 WI App 52, 241 Wis. 2d 439, 625 N.W.2d 321.

While a commitment under ch. 980 is civil, a court does not lose subject matter jurisdiction because a petition is filed under a criminal case number. State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The mandatory release date is not excluded in determining whether under sub. (2) (ag) a petition is filed within "90 days of discharge or release." State v. Pharm, 2000 WI App 167, 238 Wis. 2d 97, 617 N.W.2d 163.

The time limit in sub. (2) (ag) is mandatory. There is no authority for the state to hold a person beyond the discharge date of a criminal sentence in order to file a ch. 980 petition. State v. Thomas, 2000 WI App 162, 238 Wis. 2d 216, 617 N.W.2d 230.

Although sub. (2) (ag) refers to the current juvenile code, ch. 938, and makes no reference to the 1993−94 juvenile code, ch. 48, the circuit court has authority to proceed under ch. 980 against a person adjudicated delinquent under the former ch. 48. State v. Gibbs, 2001 WI App 83, 242 Wis. 2d 640, 625 N.W.2d 666.

Keith is inapplicable to juveniles. The concept of consecutive sentences is foreign in the context of juvenile adjudications and dispositions. It was proper under sub. (2) (ag) to file a ch. 980 petition two days prior to the defendant's discharge from the sexual offense disposition although the defendant was subject to another adjudication that did not expire. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

When a ch. 980 petition was filed within 90 days of release from a sentence for an offense that was not a sexually violent offense, which was being served concurrently with a shorter sentence imposed for a sexually violent offense, the petition was timely. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334.

The state was not precluded from seeking a ch. 980 commitment following the defendant's parole revocation, even though the state had failed to prove that the defendant was a sexually violent person in need of commitment in a previous ch. 980 trial that took place prior to the defendant's parole. State v. Parrish, 2002 WI App 263, 258 Wis. 2d 521, 654 N.W.2d 273.

Under sub. (2) (ag), the petition must be filed within 90 days of the actual discharge from prison. A subsequent sentence modification to allow sentence credit has no effect if the state filed the petition within 90 days of the actual release from prison. State v. Virlee, 2003 WI App 4, 259 Wis. 2d 718, 657 N.W.2d 106, 02−0046.

The circuit court had jurisdiction to conduct ch. 980 proceedings involving an enrolled tribal member who committed the underlying sexual offense on an Indian reservation. State v. Burgess, 2003 WI 71, 262 Wis. 2d 354, 665 N.W.2d 124, 00−3074.

Under sub. (1), a request from the agency with jurisdiction and a subsequent decision by the department of justice not to file are prerequisites to a district attorney's authority to file a ch. 980 petition. State v. Byers, 2003 WI 86, 263 Wis. 2d 113, 665 N.W.2d 729.

980.03 Rights of persons subject to petition. (1) The circuit court in which a petition under s. 980.02 is filed shall con-

duct all hearings under this chapter. The court shall give the person who is the subject of the petition reasonable notice of the time and place of each such hearing. The court may designate additional persons to receive these notices.

(2) Except as provided in ss. 980.09 (2) (a) and 980.10 and without limitation by enumeration, at any hearing under this chapter, the person who is the subject of the petition has the right to:

(a) Counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

(b) Remain silent.

(c) Present and cross−examine witnesses.

(d) Have the hearing recorded by a court reporter.

(3) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under s. 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under s. 980.05. Notwithstanding s. 980.05 (2), if the person, the person's attorney, the department of justice or the district attorney does not request a jury trial, the court may on its own motion require that the trial be to a jury of 12. A verdict of a jury under this chapter is not valid unless it is unanimous.

(4) Whenever a person who is the subject of a petition filed under s. 980.02 or who has been committed under s. 980.06 is required to submit to an examination under this chapter, he or she may retain experts or professional persons to perform an examination. If the person retains a qualified expert or professional person of his or her own choice to conduct an examination, the examiner shall have reasonable access to the person for the purpose of the examination, as well as to the person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient health care records as provided under s. 146.82 (2) (c). If the person is indigent, the court shall, upon the person's request, appoint a qualified and available expert or professional person to perform an examination and participate in the trial or other proceeding on the person's behalf. Upon the order of the circuit court, the county shall pay, as part of the costs of the action, the costs of an expert or professional person appointed by a court under this subsection to perform an examination and participate in the trial or other proceeding on behalf of an indigent person. An expert or professional person appointed to assist an indigent person who is subject to a petition may not be subject to any order by the court for the sequestration of witnesses at any proceeding under this chapter.

(5) Upon a showing by the proponent of good cause under s. 807.13 (2) (c), testimony may be received into the record of a hearing under this section by telephone or live audiovisual means.

History: 1993 a. 479; 1997 a. 252; 1999 a. 9.

There are circumstances when comment on the defendant's silence is permitted. If a defendant refuses to be interviewed by the state's psychologist and the defense attorney challenges the psychologist's findings based on the lack of an interview, it is appropriate for the psychologist to testify about the refusal. State v. Adams, 223 Wis. 2d 60, 588 N.W.2d 336 (Ct. App. 1998).

If all jurors agree that the defendant suffers from a mental disease, unanimity requirements are met even if the jurors disagree on the disease that predisposes the defendant to reoffend. State v. Pletz, 2000 WI App 221, 239 Wis. 2d 49, 619 N.W.2d 97.

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

As sub. (3) provides that the court shall appoint a professional to furnish a written report providing guidance for the court's consideration of the ultimate issue, it would be absurd to conclude that admissibility was not provided under s. 908.02. That the report was not timely filed with the court did not render it inadmissible hearsay. State v. Brown, 2004 WI App 33, 269 Wis. 2d 750, 676 N.W.2d 555, 03−1419.

980.04 Detention; probable cause hearing; transfer for examination. (1) Upon the filing of a petition under s. 980.02, the court shall review the petition to determine whether to issue an order for detention of the person who is the subject of the petition. The person shall be detained only if there is cause to believe that the person is eligible for commitment under s. 980.05 (5). A person detained under this subsection shall be held in a facility approved by the department. If the person is serving a sentence of imprisonment, is in a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), or is committed to institutional care, and the court orders detention under this subsection, the court shall order that the person be transferred to a detention facility approved by the department. A detention order under this subsection remains in effect until the person is discharged after a trial under s. 980.05 or until the effective date of a commitment order under s. 980.06, whichever is applicable.

(2) Whenever a petition is filed under s. 980.02, the court shall hold a hearing to determine whether there is probable cause to believe that the person named in the petition is a sexually violent person. If the person named in the petition is in custody, the court shall hold the probable cause hearing within 72 hours after the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person named in the petition is not in custody, the court shall hold the probable cause hearing within a reasonable time after the filing of the petition.

(3) If the court determines after a hearing that there is probable cause to believe that the person named in the petition is a sexually violent person, the court shall order that the person be taken into custody if he or she is not in custody and shall order the person to be transferred within a reasonable time to an appropriate facility for an evaluation as to whether the person is a sexually violent person. If the court determines that probable cause does not exist to believe that the person is a sexually violent person, the court shall dismiss the petition.

(4) The department shall promulgate rules that provide the qualifications for persons conducting evaluations under sub. (3).

(5) If the person named in the petition claims or appears to be indigent, the court shall, prior to the probable cause hearing under sub. (2), refer the person to the authority for indigency determinations under s. 977.07 (1) and, if applicable, the appointment of counsel.

History: 1993 a. 479; 1995 a. 77; 1999 a. 9.

Cross Reference: See also ch. HFS 99, Wis. adm. code.

The rules of evidence apply to probable cause hearings under ch. 980. The exceptions to the rules for preliminary examinations also apply. Although s. 907.03 allows an expert to base an opinion on hearsay, an expert's opinion based solely on hearsay cannot constitute probable cause. State v. Watson, 227 Wis. 2d 167, 595 N.W.2d 403 (1999).

In sub. (2), "in custody" means in custody pursuant to ch. 980 and does not apply to custody under a previously imposed sentence. State v. Brissette, 230 Wis. 2d 82, 601 N.W.2d 678 (Ct. App. 1999).

Chapter 980 provides its own procedures for commencing actions, and, as such, chs. 801 and 802 are inapplicable to the commencement of ch. 980 actions. State v. Wolfe, 2001 WI App 136, 246 Wis. 2d 233, 631 N.W.2d 240.

The 72−hour time limit in sub. (2) is directory rather than mandatory. However, the individual's due process rights prevent the state from indefinitely delaying the probable cause hearing when the subject of the petition is in custody awaiting the hearing and has made a request for judicial substitution. State v. Beyer, 2001 WI App 184, 247 Wis. 2d 1, 632 N.W.2d 872.

Sub. (3) is not a rule regarding the admissibility of expert testimony. It provides the procedure for determining probable cause to believe a person is a sexually violent offender. The general rule for determining the qualification of an expert applies. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213.

980.05 Trial. (1) A trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person shall commence no later than 45 days after the date of the probable cause hearing under s. 980.04. The court may grant a continuance of the trial date for good cause upon its own motion, the motion of any party or the stipulation of the parties.

(1m) At the trial to determine whether the person who is the subject of a petition under s. 980.02 is a sexually violent person, all rules of evidence in criminal actions apply. All constitutional rights available to a defendant in a criminal proceeding are available to the person.

(2) The person who is the subject of the petition, the person's attorney, the department of justice or the district attorney may request that a trial under this section be to a jury of 12. A request for a jury trial under this subsection shall be made within 10 days after the probable cause hearing under s. 980.04. If no request is made, the trial shall be to the court. The person, the person's attor-

ney or the district attorney or department of justice, whichever is applicable, may withdraw his, her or its request for a jury trial if the 2 persons who did not make the request consent to the withdrawal.

(3) (a) At a trial on a petition under this chapter, the petitioner has the burden of proving the allegations in the petition beyond a reasonable doubt.

(b) If the state alleges that the sexually violent offense or act that forms the basis for the petition was an act that was sexually motivated as provided in s. 980.01 (6) (b), the state is required to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated.

(4) Evidence that the person who is the subject of a petition under s. 980.02 was convicted for or committed sexually violent offenses before committing the offense or act on which the petition is based is not sufficient to establish beyond a reasonable doubt that the person has a mental disorder.

(5) If the court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall enter a judgment on that finding and shall commit the person as provided under s. 980.06. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent person, the court shall dismiss the petition and direct that the person be released unless he or she is under some other lawful restriction.

History: 1993 a. 479; 1999 a. 9.

Sub. (1m) extends the rule protecting prearrest silence under the right against self−incrimination to the refusal of a commitment subject to participate in a formal evaluation prior to the filing of the commitment petition. State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301(Ct. App. 1997).

Sub. (1m) does not require a sworn petition. There is no constitutional right to a sworn complaint in a criminal case. State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997).

This section does not confine expert testimony to any specific standard nor mandate the type or character of relevant evidence that the state may choose to meet its burden of proof. State v. Zanelli, 223 Wis. 2d 545, 589 N.W.2d 687 (Ct. App. 1998).

The standard of review for commitments under ch. 980 is the standard applicable to the review of criminal cases−−whether the evidence could have led the trier of fact to find beyond a reasonable doubt that the person subject to commitment is a sexually violent person. State v. Curiel, 227 Wis. 2d 389, 597 N.W.2d (1999).

Sub. (1m) provides a respondent with a statutory right to be competent at trial. The procedure to effect that right should adhere to ss. 971.13 and 971.14. State v. Smith, 229 Wis. 2d 720, 600 N.W.2d 258 (Ct. App. 1999).

The right to a jury trial under ch. 980 is governed by sub. (2) rather than case law governing the right to a jury trial in criminal proceedings. State v. Bernstein, 231 Wis. 2d 392, 605 N.W.2d 555 (1999).

The sub. (2) requirement that the 2 persons who did not request the withdrawal of a request for a jury trial consent to the withdrawal does not require a personal statement from the person subject to the commitment proceeding. Consent may be granted by defense counsel. State v. Bernstein, 231 Wis. 2d 392, 605 N.W.2d 555 (1999).

To the extent that s. 938.35 (1) prohibits the admission of delinquency adjudications in ch. 980 proceedings, it is repealed by implication. State v. Matthew A.B. 231 Wis. 2d 688, 605 N.W.2d 598 (Ct. App. 1999)

Sub. (2) does not require that a respondent be advised by the court that a jury verdict must be unanimous in order for the withdrawal of a request for a jury trial to be valid. State v. Denman, 2001 WI App 96, 243 Wis. 2d 14, 626 N.W.2d 296.

Chapter 980 respondents are afforded the same constitutional protections as criminal defendants. Although the doctrine of issue preclusion may generally apply in ch. 980 cases, application of the doctrine may be fundamentally unfair. When new evidence of victim recantation was offered at the ch. 980 trial, the defendant had a due process interest in gaining admission of the evidence to ensure accurate expert opinions on his mental disorder and future dangerousness when the experts' opinions presented were based heavily on the fact that the defendants committed the underlying crime. State v. Sorenson, 2002 WI 78, 254 Wis. 2d 54, 646 N.W.2d 354.

A sexually violent person committed under ch. 980 preserves the right to appeal, as a matter of right, by filing postverdict motions within 20 days of the commitment order. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334.

A parole and probation agent who had been employed full−time in a specialized sex−offender unit for 3 years during which he had supervised hundreds of sex offenders was prepared by both training and experience to assess a sex offender, and was qualified to render an opinion on whether he would reoffend. That the agent did not provide the nexus to any mental disorder did not render his testimony inadmissible. State v. Treadway, 2002 WI App 195, 257 Wis. 2d. 467, 651 N.W.2d 334.

Neither ch. 980 nor ch. 51 grants persons being committed under ch. 980 the right to request confidential proceedings. That ch. 51 hearings are closed while ch. 980 hearings are not does not violate equal protection. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81. Affirmed. 2003 WI 71, 262 WI 2d 354, 665 NW2d 124.

Article I, section 7 does not prohibit the legislature from enacting statutes requiring that trials be held in certain counties. The legislature could properly provide in sub. (2) that ch. 980 proceedings be held in a county other than the one in which the predicate offense was committed. State v. Tainter, 2002 WI App 296, 259 Wis. 2d 387, 655 N.W.2d 538, 01−2644.

During a commitment proceeding under ch. 980, s. 904.04 (2), relating to other crimes evidence, does not apply to evidence offered to prove that the respondent has a mental disorder that makes it substantially probable that the respondent will commit acts of sexual violence in the future. State v. Franklin, 2004 WI 38, 270 Wis. 2d 271, 677 N.W.2d 276, 00−2426.

No error was found in giving a jury a general verdict form in a ch. 980 hearing when the defendant failed to establish that ch. 980 respondents are routinely deprived of special verdicts and that general verdicts are more likely to result in commitments. State v. Madison, 2004 WI App 46, 271 Wis. 2d 218, 678 N.W.2d 607, 02−3099.

A prisoner was not entitled to *Miranda* warnings prior to his pre−petition evaluation with the state's psychologist in regard to whether a ch. 980 petition should be filed. The guaranty of constitutional rights under sub. (1m) applies at the ch. 980 trial. State v. Lombard, 2004 WI 95, ___ Wis. 2d ___, ___ N.W.2d ___, 00−3318.

980.06 Commitment. If a court or jury determines that the person who is the subject of a petition under s. 980.02 is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person. A commitment order under this section shall specify that the person be placed in institutional care.

History: 1993 a. 479; 1995 a. 276; 1997 a. 27, 275, 284; 1999 a. 9.

In the event that there is a failure to develop an appropriate treatment program, the remedy is to obtain appropriate treatment and not supervised release. State v. Seibert, 220 Wis. 2d 308, 582 N.W.2d 745 (Ct. App. 1998).

Chapter 980 and s. 51.61 provide the statutory basis for a court to issue an involuntary medication order for individuals who suffer from a chronic mental illness and are committed under ch. 980. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435.

The incremental infringement by s. 980.06 on the liberty interests of those who have a sexually−violent, predatory past and are currently suffering from a mental disorder that makes them dangerous sexual predators does not violate constitutional guarantees of due process. State v. Ransdell, 2001 WI App 202, 247 Wis. 2d 613, 634 N.W.2d 871.

Although ch. 51 is more "lenient" with those who are subject to its provisions than is ch. 980, the significant differences between the degree of danger posed by each of the two classes of persons subject to commitment under the two chapters, as well as the differences in what must be proven in order to commit under each, does not result in a violation of equal protection. State v. Williams, 2001 WI App 263, 249 Wis. 2d 1, 637 N.W.2d 791.

Chapter 980, as amended, is not a punitive criminal statute. Because whether a statute is punitive is a threshold question for both double jeopardy and ex post facto analysis, neither of those clauses is violated by ch. 980. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 646 N.W.2d 375.

The mere limitation of a committed person's access to supervised release does not impose a restraint to the point that it violates due process. As amended, ch. 980 serves the legitimate and compelling state interests of providing treatment to, and protecting the public from, the dangerously mentally ill. The statute and is narrowly tailored to meet those interests, and, as such, it does not violate substantive due process. State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 646 N.W.2d 375.

Commitment under ch. 980 does not require a separate factual finding that an individual's mental disorder involves serious difficulty for the person in controlling his or her behavior. Proof that the person's mental disorder predisposes the individual to engage in acts of sexual violence and establishes a substantial probability that the person will again commit those acts necessarily and implicitly includes proof that the person's mental disorder involves serious difficulty in controlling his or her behavior. State v. Laxton, 2002 WI 82, 254 Wis. 2d 185, 647 N.W.2d 784.

Chapter 980 does not preclude finding that a person with a sexually−related mental disorder has difficulty in controlling his or her behavior even if that person is able to conform his conduct to the requirements of the law. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81. Affirmed. 2003 WI 71, 262 WI 2d 354, 665 NW2d 354.

To the extent that plaintiffs are uncontrollably violent and pose a danger to others, the state is entitled to hold them in segregation for that reason alone. Preserving the safety of the staff and other detainees takes precedence over medical goals. West v. Schwebke, 333 F. 3d 745 (2003).

980.063 Deoxyribonucleic acid analysis requirements. (1) (a) If a person is found to be a sexually violent person under this chapter, the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) The results from deoxyribonucleic acid analysis of a specimen under par. (a) may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

(2) The department of justice shall promulgate rules providing for procedures for defendants to provide specimens under sub. (1) and for the transportation of those specimens to the state crime laboratories for analysis under s. 165.77.

History: 1995 a. 440.

980.065 Institutional care for sexually violent persons. (1m) The department shall place a person committed under s. 980.06 at the secure mental health facility established under s. 46.055, the Wisconsin resource center established under s. 46.056 or a secure mental health unit or facility provided by the department of corrections under sub. (2).

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

(2) The department may contract with the department of corrections for the provision of a secure mental health unit or facility for persons committed under s. 980.06. The department shall operate a secure mental health unit or facility provided by the department of corrections under this subsection and shall promulgate rules governing the custody and discipline of persons placed by the department in the secure mental health unit or facility provided by the department of corrections under this subsection.

History: 1993 a. 479; 1997 a. 27; 1999 a. 9; 2001 a. 16.

980.067 Activities off grounds. The superintendent of the facility at which a person is placed under s. 980.065 may allow the person to leave the grounds of the facility under escort. The department of health and family services shall promulgate rules for the administration of this section.

History: 2001 a. 16.

Cross Reference: See also s. HFS 95.10, Wis. adm. code.

980.07 Periodic reexamination; report. (1) If a person has been committed under s. 980.06 and has not been discharged under s. 980.09, the department shall conduct an examination of his or her mental condition within 6 months after an initial commitment under s. 980.06 and again thereafter at least once each 12 months for the purpose of determining whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. At the time of a reexamination under this section, the person who has been committed may retain or seek to have the court appoint an examiner as provided under s. 980.03 (4).

(2) Any examiner conducting an examination under this section shall prepare a written report of the examination no later than 30 days after the date of the examination. The examiner shall place a copy of the report in the person's medical records and shall provide a copy of the report to the court that committed the person under s. 980.06.

(3) Notwithstanding sub. (1), the court that committed a person under s. 980.06 may order a reexamination of the person at any time during the period in which the person is subject to the commitment order.

History: 1993 a. 479; 1999 a. 9.

The 6−month period under sub. (1) for the 1st reexamination does not begin to run until the court conducts the dispositional hearing and issues an initial commitment order under s. 980.06 (2). State v. Marberry, 231 Wis. 2d 581, 605 N.W.2d 512 (Ct. App. 1999).

As part of an annual review, an involuntary medication order must be reviewed following the same procedure used to obtain the initial order. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435.

It is within the committed person's discretion to ask for an independent examination. The trial court does not have discretion to refuse the request. State v. Thiel, 2001 WI App 52, 241 Wis. 2d 465, 626 N.W.2d 26.

The 6−month time period in sub. (1) for an initial reexamination is mandatory. State ex rel. Marberry v. Macht, 2003 WI 79, 262 Wis. 2d 720, 665 N.W.2d 155, 99−2446.

980.08 Petition for supervised release. (1) Any person who is committed under s. 980.06 may petition the committing court to modify its order by authorizing supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may file a petition under this subsection on the person's behalf at any time.

(2) If the person files a timely petition without counsel, the court shall serve a copy of the petition on the district attorney or department of justice, whichever is applicable and, subject to s. 980.03 (2) (a), refer the matter to the authority for indigency determinations under s. 977.07 (1) and appointment of counsel under s. 977.05 (4) (j). If the person petitions through counsel, his or her attorney shall serve the district attorney or department of justice, whichever is applicable.

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

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

(b) The court shall grant the petition unless the state proves by clear and convincing evidence one of the following:

1. That it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care.

2. That the person has not demonstrated significant progress in his or her treatment or the person has refused treatment.

(c) In making a decision under par. (b), 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. (b) 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.

(5) If the court finds that the person is appropriate for supervised release, the court shall notify the department. The department shall make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence, as determined by the department under s. 980.105. The department and the county department under s. 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community. The plan shall 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. In developing a plan for where the person may reside while on supervised release, the department shall consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the department of corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am). If the person is a serious child sex offender, the plan shall address the person's need for pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen. The department may contract with a county department, under s. 51.42 (3) (aw) 1. d., with another public agency or with a private agency to provide the treatment and

services identified in the plan. The plan shall specify who will be responsible for providing the treatment and services identified in the plan. The plan shall be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless the department, county department and person to be released request additional time to develop the plan. If the county department of the person's county of residence declines to prepare a plan, the department may arrange for another county to prepare the plan if that county agrees to prepare the plan and if the person will be living in that county. If the department is unable to arrange for another county to prepare a plan, the court shall designate a county department to prepare the plan, order the county department to prepare the plan and place the person on supervised release in that county, except that the court may not so designate the county department in any county where there is a facility in which persons committed to institutional care under this chapter are placed unless that county is also the person's county of residence.

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

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.

Cross Reference: See also ch. HFS 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).

There is no exception under sub. (5) for a court to refuse to order release after it determines under sub. (4) that release is appropriate. If treatment programs are unavailable, the court shall order a county, through DHFS, to prepare a plan and place the person on supervised release in that county The court may order the county to create whatever programs or facilities are necessary to accommodate the supervised release. State v. Sprosty, 227 Wis. 2d 316, 595 N.W.2d 692 (1999).

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).

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.

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.

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.

A sexual assault need not occur and the person's behavior need not be criminal before the court can conclude that there is a substantial probability that a person will reoffend if institutional care is not continued. The relevant inquiry under sub. (4) is whether the behavior indicates a likelihood to reoffend. State v. Sprosty, 2001 WI App 231, 248 Wis. 2d 480, 636 N.W.2d 213.

A trial court's decision whether to grant a request for conditional release is subject to a discretionary standard of review of whether the trial court properly exercised its discretion in making its decision. State v. Wenk, 2001 WI App 268, 248 Wis. 2d 714, 637 N.W.2d 417.

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. Schulpius, 2004 WI App 39, 270 Wis. 2d 427, 678 N.W.2d 369, 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, ___ Wis. 2d ___, ___ N.W.2d ___, 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, ___ Wis. 2d ___, ___ N.W.2d ___, 00−1425.

980.09 Petition for discharge; procedure.

(1) PETITION WITH SECRETARY'S APPROVAL. (a) If the secretary determines at any time that a person committed under this chapter is no longer a sexually violent person, the secretary shall authorize the person to petition the committing court for discharge. The person shall file the petition with the court and serve a copy upon the department of justice or the district attorney's office that filed the petition under s. 980.02 (1), whichever is applicable. The court, upon receipt of the petition for discharge, shall order a hearing to be held within 45 days after the date of receipt of the petition.

(b) At a hearing under this subsection, the district attorney or the department of justice, whichever filed the original petition, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person of his, her or its choice. The hearing shall be before the court without a jury. The state has the burden of proving by clear and convincing evidence that the petitioner is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the petitioner shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criteria specified in s. 980.08 (4) (b), whether to modify the petitioner's existing commitment order by authorizing supervised release.

(2) PETITION WITHOUT SECRETARY'S APPROVAL. (a) A person may petition the committing court for discharge from custody or supervision without the secretary's approval. At the time of an examination under s. 980.07 (1), the secretary shall provide the committed person with a written notice of the person's right to petition the court for discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the report of the department's examination under s. 980.07. If the person does not

affirmatively waive the right to petition, the court shall set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still a sexually violent person. The committed person has a right to have an attorney represent him or her at the probable cause hearing, but the person is not entitled to be present at the probable cause hearing.

(b) If the court determines at the probable cause hearing under par. (a) that probable cause exists to believe that the committed person is no longer a sexually violent person, then the court shall set a hearing on the issue. At a hearing under this paragraph, the committed person is entitled to be present and to the benefit of the protections afforded to the person under s. 980.03. The district attorney or the department of justice, whichever filed the original petition, shall represent the state at a hearing under this paragraph. The hearing under this paragraph shall be to the court. The state has the right to have the committed person evaluated by experts chosen by the state. At the hearing, the state has the burden of proving by clear and convincing evidence that the committed person is still a sexually violent person.

(c) If the court is satisfied that the state has not met its burden of proof under par. (b), the person shall be discharged from the custody or supervision of the department. If the court is satisfied that the state has met its burden of proof under par. (b), the court may proceed to determine, using the criteria specified in s. 980.08 (4) (b), whether to modify the person's existing commitment order by authorizing supervised release.

History: 1993 a. 479; 1999 a. 9; 2003 a. 187.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94−2356.

Sub. (2) (a) does not contemplate an evidentiary hearing as is provided under sub. (2) (b). Under sub. (2) (a), the hearing is a paper review of the reexamination reports that allows the committing court to weed out frivolous petitions. State v. Paulick, 213 Wis. 2d 432, 570 N.W.2d 626 (Ct. App. 1997).

The right to counsel under sub. (2) (a) is subject to the same standards and procedures for resolving right to counsel issues as in criminal cases. State v. Thiel, 2001 WI App 52, 241 Wis. 2d 465, 626 N.W.2d 26.

Sub. (2) (a) does not allow unlimited submission of evidence, but does allow the submission of a second medical examination report. State v. Thayer, 2001 WI App 51, 241 Wis. 2d 417, 626 N.W.2d 811.

Probable cause that a detainee is no longer a sexually violent person is not demonstrated by an expert's conclusion that the detainee has the ability to control his or her behavior. A court must not only consider whether the person has the ability to make choices, but the degree to which those choices are driven by a mental disorder. Pedophilia is a mental disorder that by definition includes a diagnosis of lack of control. State v. Schiller, 2003 WI App 195, 266 Wis. 2d 992, 669 N.W.2d 747, 02−2963.

Progress in treatment is one way of showing that a person is not still a sexually violent person under sub. (2) (a). A new diagnosis is another. A new diagnosis need not attack the original finding that an individual was sexually violent, but focuses on the present and is evidence of whether an individual is still a sexually violent person. State v. Pocan, 2003 WI App 233, 267 Wis. 2d 953, 671 N.W.2d 680, 02−3342.

The question at a sub. (2) (a) probable cause hearing is whether probable cause exists to establish that the individual seeking discharge is no longer a sexually violent person and is not whether the individual is substantially probable to engage in acts of sexual violence if placed on supervised release or even if discharged from commitment. Probable cause to believe a person is no longer a sexually violent person is not satisfied by a recommendation of supervised release without more. State v. Thiel, 2004 WI App 140, ___ Wis. 2d ___, ___ N.W.2d ___, 03−2098.

980.10 Additional discharge petitions. In addition to the procedures under s. 980.09, a committed person may petition the committing court for discharge at any time, but if a person has previously filed a petition for discharge without the secretary's approval and the court determined, either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person was still a sexually violent person, then the court shall deny any subsequent petition under this section without a hearing unless the petition contains facts upon which a court could find that the condition of the person had so changed that a hearing was warranted. If the court finds that a hearing is warranted, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate. If the person has not previously filed a petition for discharge without the secretary's approval, the court shall set a probable cause hearing in accordance with s. 980.09 (2) (a) and continue proceedings under s. 980.09 (2) (b), if appropriate.

History: 1993 a. 479.

Persons committed under ch. 980 must be afforded the right to request a jury for discharge hearings under this section. State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), 94−2356.

980.101 Reversal, vacation or setting aside of judgment relating to a sexually violent offense; effect. (1) In this section, "judgment relating to a sexually violent offense" means a judgment of conviction for a sexually violent offense, an adjudication of delinquency on the basis of a sexually violent offense, or a judgment of not guilty of a sexually violent offense by reason of mental disease or defect.

(2) If, at any time after a person is committed under s. 980.06, a judgment relating to a sexually violent offense committed by the person is reversed, set aside, or vacated and that sexually violent offense was a basis for the allegation made in the petition under s. 980.02 (2) (a), the person may bring a motion for postcommitment relief in the court that committed the person. The court shall proceed as follows on the motion for postcommitment relief:

(a) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense committed by the person, the court shall reverse, set aside, or vacate the judgment under s. 980.05 (5) that the person is a sexually violent person, vacate the commitment order, and discharge the person from the custody or supervision of the department.

(b) If the sexually violent offense was the sole basis for the allegation under s. 980.02 (2) (a) but there are other judgments relating to a sexually violent offense committed by the person that have not been reversed, set aside, or vacated, or if the sexually violent offense was not the sole basis for the allegation under s. 980.02 (2) (a), the court shall determine whether to grant the person a new trial under s. 980.05 because the reversal, setting aside, or vacating of the judgment for the sexually violent offense would probably change the result of the trial.

(3) An appeal may be taken from an an order entered under sub. (2) as from a final judgment.

History: 2001 a. 16.

980.105 Determination of county of residence. The department shall determine a person's county of residence for the purposes of this chapter by doing all of the following:

(1) The department shall consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and shall consider physical presence as prima facie evidence of intent to remain.

(2) The department shall apply the criteria for consideration of residence and physical presence under sub. (1) to the facts that existed on the date that the person committed the sexually violent offense that resulted in the sentence, placement or commitment that was in effect when the petition was filed under s. 980.02.

History: 1995 a. 276; 2001 a. 16.

A person's county of residence shall be determined based on the facts that existed on the date of the underlying offense. A court does not have jurisdiction merely because the defendant was in a Wisconsin prison at the time the petition was filed. State v. Burgess, 2002 WI App 264, 258 Wis. 2d 548, 654 N.W.2d 81, 00−3074. Affirmed on other grounds. 2003 WI 71, 262 WI 2d 354, 665 N.W.2d 124, 00−3074.

The circuit court had jurisdiction to conduct ch. 980 proceedings involving an enrolled tribal member who committed the underlying sexual offense on an Indian reservation. State v. Burgess, 2003 WI 71, 262 WI 2d 354, 665 N.W.2d 124, 00−3074.

980.11 Notice concerning supervised release or discharge. (1) In this section:

(a) "Act of sexual violence" means an act or attempted act that is a basis for an allegation made in a petition under s. 980.02 (2) (a).

(b) "Member of the family" means spouse, child, sibling, parent or legal guardian.

(c) "Victim" means a person against whom an act of sexual violence has been committed.

(2) If the court places a person on supervised release under s. 980.08 or discharges a person under s. 980.09 or 980.10, the department shall do all of the following:

(am) Make a reasonable attempt to notify whichever of the following persons is appropriate, if he or she can be found, in accordance with sub. (3):

1. The victim of the act of sexual violence.

2. An adult member of the victim's family, if the victim died as a result of the act of sexual violence.

3. The victim's parent or legal guardian, if the victim is younger than 18 years old.

(bm) Notify the department of corrections.

(3) The notice under sub. (2) shall inform the department of corrections and the person under sub. (2) (am) of the name of the person committed under this chapter and the date the person is placed on supervised release or discharged. The department shall send the notice, postmarked at least 7 days before the date the person committed under this chapter is placed on supervised release or discharged, to the department of corrections and to the last−known address of the person under sub. (2) (am).

(4) The department shall design and prepare cards for persons specified in sub. (2) (am) to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the person committed under this chapter and any other information the department determines is necessary. The department shall provide the cards, without charge, to the department of justice and district attorneys. The department of justice and district attorneys shall provide the cards, without charge, to persons specified in sub. (2) (am). These persons may send completed cards to the department of health and family services. All records or portions of records of the department of health and family services that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1), except as needed to comply with a request by the department of corrections under s. 301.46 (3) (d).

History: 1993 a. 479; 1995 a. 27 s. 9126 (19); 1995 a. 440; 1997 a. 181; 1999 a. 9.

980.12 Department duties; costs. (1) Except as provided in ss. 980.03 (4) and 980.08 (3), the department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all costs relating to the evaluation, treatment and care of persons evaluated or committed under this chapter.

(2) By February 1, 2002, the department shall submit a report to the legislature under s. 13.172 (2) concerning the extent to which pharmacological treatment using an antiandrogen or the chemical equivalent of an antiandrogen has been required as a condition of supervised release under s. 980.06, 1997 stats., or s. 980.08 and the effectiveness of the treatment in the cases in which its use has been required.

History: 1993 a. 479; 1997 a. 284; 1999 a. 9.

980.13 Applicability. This chapter applies to a sexually violent person regardless of whether the person engaged in acts of sexual violence before, on or after June 2, 1994.

History: 1993 a. 479.