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TO: Theodore Lipscomb, Sr., Chairman
Milwaukee County Board of Supervisors

CC: County Clerk George Christenson (c/o Janelle Jensen)
County Executive Chris Abele

FROM: Paul Kuglitsch, Deputy Corporation Counsel *PK*

DATE: October 9, 2018

RE: Implementation of 2017 Wisconsin Act 184

I request that this matter be referred to an appropriate standing committee(s) of the Milwaukee County Board of Supervisors for an informational report related to the implementation of 2017 Wisconsin Act 184 (“Act 184”).

Act 184 was adopted by the state legislature in March 2018 and made changes related to the placement of sexually violent persons (“SVPs”). The Act changed the ability of a court to place an SVP outside of his/her county of residence, how a court determines county of residence, the report of prospective housing prepared by a county, and what a court may order if it disapproves of Department of Health Services (“DHS’s) supervised release plan for an SVP.

Under the Act, the court is required to determine an SVP’s county of residence and to order the SVP’s county of residence to prepare a report identifying an appropriate residential option within that county. This means that any residence for an SVP on supervised release must be within the SVP’s county of residence. In Milwaukee County, the Act further requires that any residential option for the SVP identified by the county must also be in the SVP’s city, village, or town of residence.

Act 184 does impose certain restrictions on where the residential option can be located. It cannot be less than 1,500 feet from any school, child care, public park, place of worship, or youth center. Also, if the SVP committed a sexually violent offense against an adult at risk or elderly at risk, then the residence cannot be less than 1,500 feet from a nursing home or an assisted living facility. And, if the SVP committed a sexually violent offense against a child, then the residence cannot be adjacent to a property where a child’s primary residence exists.

These statutory imposed restrictions preempt any restrictions imposed by local governmental units.

To assist counties in preparing the report, Act 184 requires the SVP's county of residence to form a temporary committee for identifying prospective housing for the SVP in that county. Under the Act, the committee must consist of the following: (1) the county human services department; (2) a DHS representative; (3) a local probation or parole officer; (4) the county corporation counsel or his or her designee; and (5) a representative of the county that is responsible for land use planning or the county department that is responsible for land information. Act 184 further requires that if a local enforcement agency submits a report to the county providing information relating to the identified residence, then the county must include that report when submitting the county's report to DHS.

The county's report must "demonstrate that the county has contacted the landlord for that residential option and that the landlord has committed to enter into a lease" and be submitted to DHS within 120 days of the court order directing the SVP's county of residence to prepare the report. However, during the first year that the Act is effective (or until April 1, 2019), the deadline is 180 days.

Act 184 also imposes penalties on counties that fail to submit a report within the specified time-period. A failure to submit the report is deemed a violation of the SVP's patient rights under Wis. Stat. § 51.61, and the county may be subject to statutory penalties for each day the county fails to submit the report after the 120 (now, 180) days have expired. In addition, the SVP may receive costs and reasonable actual attorney fees from a county that fails to timely submit a report.

Once submitted to DHS, DHS has 30 days to prepare and submit its supervised release plan to the overseeing court. If the court determines that the supervised release plan is inadequate due to the residential option proposed by a county, then the court must order the county to identify and arrange to lease another residential option and prepare a new report.

Currently, in Milwaukee County, there are four (4) SVPs in need of placement and all but one are serious child sex offenders. In addition, the court has determined that all four SVPs are to be placed in the City of Milwaukee. The first report is due October 22, 2018, the second December 8, 2018, the third January 19, 2019, and the fourth February 4, 2019.

To date, the Chapter 980 Temporary Committee has met twice and is in the process of narrowing the location of possible residential options based on the statutory restrictions previously mentioned.¹

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¹ For purposes of these placements, the Chapter 980 Temporary Committee consists of (1) James Mathy, County DHHS; (2) Angela Serwa, State DHS; (3) Peter Marik, City of Milwaukee parole officer; (4) Paul Kuglitsch, Office of Corporation Counsel; and (5) Aaron Hertzberg, ECD. The local enforcement representative is MPD Office James Olson.