



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 184
[2017 Assembly Bill 539]

**Supervised Release of
Sexually Violent Persons**

2017 Wisconsin Act 184 relates to supervised release of sexually violent persons (SVPs) and to representation of SVPs by the State Public Defender's (SPD) Office.

BACKGROUND

State law provides a civil commitment process under ch. 980, Stats., for sex offenders who meet certain criteria and have completed their criminal sentences. Offenders determined to be "sexually violent persons" after a court process are committed to a civil treatment facility for an indeterminate amount of time. SVPs may petition for supervised release from commitment, which a court may grant if the SVP meets specified statutory criteria.

If a court finds that an SVP meets the criteria for supervised release, the court chooses a county to prepare a report identifying prospective residential options for the SVP. This report may be prepared in cooperation with the Department of Health Services (DHS), which is the agency responsible for supervising an SVP on supervised release.

2017 WISCONSIN ACT 184

Act 184 makes changes related to placement of an SVP determined eligible for supervised release by a court. The changes concern the ability of a court to place an SVP outside his 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 DHS's supervised release plan for an SVP. The Act also requires the SPD to automatically appoint counsel for an SVP without making a determination of indigency, but allows the state to recoup its costs from an SVP who is able to pay.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

Placement of SVP in Home County or Home Municipality

Act 184 eliminates the ability of a court to place an SVP outside his or her home county. A court must select a county to prepare a report identifying prospective residential options for an SVP after the court authorizes supervised release for that SVP. Under prior law, a court was required to select the SVP's county of residence unless the court had "good cause" to select another county. Prior law also prohibited a court from selecting a county in which there was a facility for SVPs committed to institutional care (Juneau County), unless that county was also the SVP's county of residence.

The Act eliminates the provision allowing a court to select a county other than an SVP's county of residence for "good cause," and the provision prohibiting selection of a county within which there is an SVP facility. Under Act 184, the court must order the SVP's county of residence to prepare a report identifying an appropriate residential option within that county. This means any residence for an SVP on supervised release must be within the SVP's county of residence.

If an SVP's county of residence has a population of 750,000 or more (Milwaukee County), then Act 184 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.

Determining County of Residence

Act 184 directs DHS to determine an SVP's county of residence according to where the SVP would have been a resident for Social Security disability insurance, if other factors are insufficient to make a determination. DHS must consider residence as the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation and must consider physical presence as prima facie evidence of intent to remain. DHS applies these criteria to facts that existed on the date the SVP committed the sexually violent offenses that resulted in the sentence, placement, or commitment in effect when a petition was filed to civilly commit the SVP under ch. 980, Stats.

Act 184 maintains the same criteria for DHS to consider in determining an SVP's county of residence, but dictates how DHS must determine the county of residence if the criteria are inadequate. Specifically, if initial considerations are insufficient to determine the county of residence, DHS must find that the county of residence is the county in which, on the date that the SVP committed the sexually violent offenses, the SVP would have been a resident for the purposes of Social Security disability insurance eligibility.

County Report Identifying SVP Housing

An SVP's county of residence must prepare a report identifying an appropriate residential option for the SVP. Act 184 imposes requirements relating to preparation of the county report and the deadline for submission of the report to DHS.

County Committee

Act 184 requires an SVP's county of residence to form a temporary committee for identifying prospective housing for the SVP in that county. 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.

County Report Requirements

Act 184 requires that a county's report must demonstrate that the county contacted the landlord for a residential option identified for an SVP, and that the landlord committed to enter into a lease. The Act further requires that if a law enforcement agency submits a report to the county providing information relating to the identified residence, then the county must include that law enforcement report when submitting the county's report to DHS.

Report Deadline and Penalties

The Act extends the time period for a county to submit its report to DHS from 60 days to 120 days. However, the Act includes a grace period for counties during the first year that Act 184 is effective. Beginning on March 30, 2018, and ending on April 1, 2019, a county must submit its report to DHS within 180 days, rather than 120 days.

Act 184 imposes penalties on a county that fails to submit a report within the specified time period. Under the Act, a county that must submit a report identifying a residential option for the SVP, but fails to do so by the deadline, violates the SVP's patient rights under s. 51.61, Stats. The county may then be subject to statutory penalties for each day the county fails to submit the report after the 120 days have expired.

An SVP may receive costs and reasonable actual attorney fees from a county that fails to submit a report to DHS within 120 days, but may not directly receive any damages. Instead, any damages recovered by the SVP are given to the state and deposited into an appropriation for DHS to use to fund payments of costs associated with housing SVPs on supervised release.

DHS Supervised Release Plan

DHS must prepare a supervised release plan for an SVP identifying a proposed residence and addressing the SVP's need for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol and other drug abuse treatment. DHS must submit this supervised release plan to the court.

Act 184 requires that the DHS supervised release plan must identify the residential option for the SVP that the county proposed in its report. This eliminates any discretion for DHS to propose alternative housing.

Under the Act, DHS must determine the identity and location of known and registered victims of the SVP within 30 days after the court orders the county to prepare its report. DHS must identify victims and their locations by searching its victim database and consulting with the Office of Victim Services in the Department of Corrections, the Department of Justice, and the relevant County Coordinators of Victims and Witness Services. The Act further provides that a county may consult with DHS when preparing its report, and requires DHS to respond to the county within 10 days.

Act 184 requires DHS to submit its plan to the court within 30 days after receiving the county's report. Because the county has 120 days to submit its report, this means DHS must submit its plan within 150 days after the court's order, unlike the 90-day deadline under prior law. The Act permits the court to grant only one extension of up to 30 days for good cause, unlike the unlimited extensions allowed under prior law.

Finally, the Act deletes a prior law provision prohibiting DHS from placing an SVP in a facility that did not exist before January 1, 2006.

Court Approval of Supervised Release Plan

Act 184 imposes additional requirements on a county or DHS if a court determines that the SVP's supervised release plan is inadequate. In reviewing and approving a DHS supervised release plan, a court must consider whether the plan adequately meets the safety needs of the community or the treatment needs of the SVP. If the plan does not adequately meet these needs, then the court determines that supervised release is not appropriate or directs DHS to prepare another supervised release plan.

Under the Act, if a court finds that a 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. If the court finds a plan inadequate due to the treatment options, then the court must order DHS to prepare another supervised release plan.

State Public Defender Representation of SVPs

Act 184 requires the SPD to appoint counsel for a person subject to a petition for civil commitment as an SVP, or an SVP who petitions for supervised release or discharge from commitment, without first determining whether the SVP is indigent. However, the state may later recoup its costs from an SVP who can afford to pay. The Act makes the following specific changes with regard to a person's right to representation by counsel under ch. 980, Stats.:

- Requires a court to refer a person who has a right to be represented by counsel to the SPD as soon as practicable.
- Requires the SPD to accept referrals and appoint counsel for an SVP without a determination of indigency.
- Allows a court to inquire into a person's ability to reimburse the state for the costs of representation by the SPD at or after the conclusion of a proceeding.
- Allows a court to order a person to reimburse the state for the costs of the representation if the person is able to make reimbursement for all or part of the costs.
- Upon the court's request, requires the SPD to conduct a determination of indigency and report the results to the court.
- Requires reimbursement ordered to be made to the clerk of courts in the county where the proceedings took place (25% of the payment must be allocated to the county and the remaining 75% must be allocated to the state).

- Requires the clerk of courts for each county to report annually to the SPD the total amount of reimbursements ordered and the total amount of reimbursements paid.
- Requires the SPD to update its administrative rules regarding eligibility for representation and reimbursement for legal services provided.

Effective date: March 30, 2018. Changes to supervised release first apply to petitions pending under s. 980.08, Stats., *Supervised release*, on March 30, 2018.

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