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**Testimony in Support of Senate Bill 149
Amending the Kansas Sexually Violent Predator Act**

**Presented to the House Judiciary Committee
By Assistant Attorney General Derenda J. Mitchell
Director of the Sexually Violent Predator Unit**

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Chairman Barker and honorable members of the House Judiciary Committee:

The Kansas Sexually Violent Predator Act (KSVPA) is public safety legislation of the highest order. It provides for the care and treatment of extremely dangerous sexually violent predators found to have mental abnormalities or personality disorders so severe as to make them likely to engage in repeat acts of sexual violence. Senate Bill 149 amends the Kansas Sexually Violent Predator Act found in K.S.A. 59-29a01 *et seq.* of the Kansas Statutes Annotated.

Function of the KSVPA

The Sexually Violent Predator Act has been protecting Kansas citizens since 1994. The United States Supreme Court reviewed the Act and found it to be constitutionality sound in *Kansas v. Hendricks*¹ in 1997.

Under the Act, the Kansas Attorney General initiates civil commitment proceedings in the district courts of this State when the Secretary of Corrections' Multi-Disciplinary Team notifies the Attorney General that a sexually violent offender nearing his or her date of release meets the criteria of a sexually violent predator. After a second evaluation by Larned State Security Hospital and the opportunity for a jury trial, a person meeting the criteria is civilly committed to Larned State Security Hospital for care and treatment.

Once at Larned, the person who has been civilly committed under this Act is entitled to an annual review of his or her treatment. If the person progresses in treatment, the person whose condition has "so changed" so that he or she is no longer a public menace or unsafe to the community, may progress to transitional release and begin the transition to live on his or her own in the community without threat to public safety.

¹ 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997).

Proposed Amendments to the KSVPA

Senate Bill 149 simplifies and expedites the post-commitment process for persons committed to Larned as sexually violent predators. It reduces interruption to the person's treatment by making the post-commitment adjudicative process subject to the Office of Administrative Hearings' oversight. Senate Bill 149 also doubles the spaces available for persons that graduate to transitional release.

With simplification comes cost savings. The administrative review process in the proposed amendments promotes savings by eliminating each county sheriff's obligation to transport the person for various proceedings to and from the county in which the person was originally committed. Under current law, a hearing could occur each year under the annual review process unless waived. Those annual review hearings, transitional release hearings, and a myriad of other hearings filed by persons under current law require numerous trips to and from county courthouses. Senate Bill 149, however, requires the Office of Administrative Hearings to conduct proceedings where the person is located or to offer other cost saving appearances through electronic means including telephone, Skype or other virtual processes. This process eliminates shuttling persons back and forth. These savings are compounded in terms of the more efficient use of district court time and personnel and county personnel.

Senate Bill 149 also clarifies and updates the KSVPA. For example, sections 2(d), 5(a)(2), and 8(h) parrot language from the Code of Federal Regulations and mandate the issuance of protective orders for protected medical and mental health records disclosed pursuant to the Act. Disclosures to the Attorney General under the Act are mandatory and covered currently by HIPAA, but Senate Bill 149 gives mental health evaluators the comfort level that comes with using actual federal HIPAA language.

Another example of clarifying language is in section 3(b) of the bill. That section sets out the venue for filing civil commitment proceedings against a person who committed sexually violent offenses in another state, but who now resides in Kansas. This section clarifies in which county the action may be filed.

An additional example is the clarification of the standard required to be shown during hearings for transitional and conditional release and final discharge in post-commitment proceedings. The current standard requires a showing that the person's condition has "so changed." The proposed amendment requires that the person's mental abnormality or personality disorder has "significantly changed so that it is safe for the person" to be released. In short, the amendment clarifies that the change in the person's condition is a "significant" change and that the public's safety is the primary concern. This is not a change of the standard, but simply a clarification.

Senate Bill 149 also clarifies and emphasizes that the KSVPA is civil in nature and must follow the laws governing civil cases unless otherwise specified. Again, this is not a change in the KSVPA but a clarification directing that the laws governing civil proceedings should be followed in all respects in proceedings under KSVPA unless the KSVPA specifies another procedure or requirement.

Senate Bill 149 also provides for the Office of Administrative Hearings to hear grievance suits about Larned State Security Hospital and other matters currently heard by the district courts brought by sexually violent predators in treatment. Unlike the pre- and post- civil commitment proceedings handled by the Attorney General's Office, these actions are handled by the legal staff at the Kansas Department of Aging and Disabilities (KDADS). Under the amendments proposed by Senate Bill 149, matters heard by the Office of Administrative Hearings, whether they involve the Attorney General's Office or KDADS, are subject to the simplified proceedings offered by the Kansas Judicial Review Act.

Finally, it bears mention that the Kansas Court of Appeals issued an opinion on March 6, 2015, after the Senate approved Senate Bill 149, in *In re Zishka* that may address rights affected by this legislation. This office continues to review the proposed legislation in light of the recent case and is not prepared to make a recommendation at this time.

The Office of the Kansas Attorney General supports passage of Senate Bill 149.

I stand for questions.