To: House Judiciary Committee and honorable representative Barker

From: Concerned Citizens, Friends and Family and Opponents

Date: March 12, 2015

Subject: S.B. 149- The Kansas Sexually Violent Predator Act (KSVPA)

Position: Opponent

Representative Barker and Members of the Committee:

I am a clinical Psychologist and former therapist for the Sexual Predator Treatment Program. I am quite concerned about the complacency of the administration specifically in regards to the absence of care and treatment for the patients who are civilly committed to the program. We know the honorable Justice Kennedy, in the original Hendricks case cautioned that we provide treatment according to the constitution and not violate the rights of those needing treatment. I believe SB 149 will further inhibit the rights of those who are civilly committed and create a situation that will decrease treatment even further.

On behalf of the 256 current individuals presently committed in the Sexual Predator Treatment Program and upon behalf of the more than 24 men who have died while in the program, we respectfully ask for your time in considering the following questions and concerns regarding SB 149.

The overall false assumption is that all of the residents are, "predators," that all of the residents are, "violent," and that all of the residents are, "candidates for mental health treatment." In fact, some of the residents have not been incarcerated, there are little to no acts of violence documented over the past 20 years; this is especially astounding since the residents are largely in charge of their day-to-day living and are slated to be, "violent," and have, "lack of volitional impairment." Many of the residents (as many as 100 or more) are challenged with multiple health issues: congestive heart failure, cancer, diabetes, high blood pressure, dementia, lower intellectual functioning, illiteracy and learning disabilities, hearing and sight disabilities, chronic disease, can not ambulate without assistive devices and are elderly. Many of the residents have multiple and more of the above. We know in mental health before providing sound mental treatment the above needs must be met.

Therefore, it is not as the proponents would have the committee believe that, "these people are unmotivated for treatment." It is largely due to the multitude of issues they currently have that impede treatment. A 88 year old man with dementia a host of medical issues who uses a walker and has to be fed is not nor will be a candidate for mental health treatment for a sexual crime he has committed. A man who has internal bleeding for days upon end without medical intervention until he dies in his

room is not a candidate for mental health treatment. The real life accounts are too numerous to site in this document.

The people who have died while in the program suffered great and horrendous deaths that no one person should endure. What has happened over the last 20 years is negligible, unethical and a violation of human rights… the very rights our constitution provides all of us.

In careful review of the correlation of SB 149 and the Legislative Post Audit Committee Scope Statement it indeed appears upon both questions: "How does Kansas' Sexual Predator Treatment Program compare to similar programs in other states and best practice?" and, "What actions could be taken to reduce the number of offenders committed to Kansas' Sexual Predator Treatment Program?" and sub-questions as written, are in exact marriage with one another. This is contrary to what the Proponents would have you believe.

Points to consider:

First, K.S.A. 59-29a03(f) This section strips the validity of a, "multidisciplinary team, making an independent decision based upon impartial subjective data. What this looks like currently:
Each quarter each man is assessed by the individual therapist and all of the activity and vocational department members using the, "treatment needs assessment tool," a non-standardized independently created tool. The weight of the form is given one credit per the therapist and the remaining to the non- licensed vocational and activity employees. The form is used to assess perspective advancement to the next phase. Should a resident be absent from one walking class, for example, their request to advance will be denied. Known testing instruments tested for inner-rater reliability, validity and overall reliability are not used. Since many residents are rarely seen as they remain on the units and most therapist and administrators do not visit the units, little information is documented about each resident.

Second, K.S.A. is invalid as written. This amendment says the State can only prosecute an SVP case against someone who has been held pending release from a State Facility. Fact- there are multiple men currently in the program who have never been incarcerated.

Third, K.S.A. 59-29a04(f) is strictly punitive. Point one: Since only a limited number of individuals 30 or less have a job cleaning the facility and working in the kitchen or painting and the remainder are indigent or elderly and infirmed it is not feasible that if even written into law any monies will be recovered for services rendered. Unless of course, each resident applies for Medicaid/ Medicare and/or SSI/ SSDI and VA benefits.

Point two: by reason of admission, the civilly committed individual is rendered incapable of making sound decisions upon their behalf, therefore, it is unlikely that in this scenario the man would fully comprehend the nature of their treatment.
Point three: reimbursement for mental and medical health services is based upon the careful matching of diagnosis and treatment modality. Presently mental health services are based only upon a sexual diagnosis, in other words, therapeutic treatment for concurrent diagnosis such as: depression, bipolar, anxiety, post traumatic stress disorder, adjustment disorder and personality disorders are not provided.

Fourth, K.S.A. 59-29a05(a)(2) is a deficient codification of law to which the State of Kansas is already subject: HIPPA. Numerous day-to-day examples apply.
Point one: Each resident's clothes are sent to the main Larned Campus Laundry (as they are not allowed to wash their own clothes). Each garment including socks contains: the full given birth name, birth date, identification number and unit in which they reside. Inmates from the department of corrections as well as non-SPTP employees work in the laundry facility.
Point two: Inmates from the department of corrections have jobs that include working on the direct units of the SPTP. They mow and weed eat the grass, fix maintenance issues on individual units and deliver supplies to the units.
Point three: vendors such as a Pepsi deliveryman enter the premises.
Point four: all employees have access to medical and therapeutic charting beyond essential need to provide treatment.
Point five: the residents of SPTP are listed on numerous websites on the Internet.

Fifth, K.S.A. 59-29a06(b) takes away the right of SVP candidates to be examined by, "a qualified expert or professional person of such a person's own choosing." Point one: Combined with the third concern, the governing bodies of mental and medical health provide that the consumer is the sole entity that chooses their treatment provider.
Point two: Presently, the annual reviewer may or may not know the individual resident when writing the report. The resident is sometimes asked if they would like to participate in their annual review, which consists of an approximate 10 – 15 minute visit. The annual reviewer does not utilize any standardized instruments to gage process in said, "treatment." The annual reviewer largely cuts and pastes the last years report. The present annual reviewer, one singular individual, has testified in court, that no one will be recommended to leave the program.

Sixth, K.S.A. 59-29a22 as amended, is constitutionally unsound. It removes the patient's rights and privileges. Currently residents are refused the right to have access to PRN's- as needed medications such as: (aspirin, Tylenol, rescue inhalers, ibuprofen and the like). Inmates in the department of corrections carry and have their own PRN's.) Point two: residents are refused the right to see their files without legal intervention.
Point three: residents are refused advancement to the next phase if they miss or skip all medications a doctor has prescribed even if this is an as needed medication

such as bars of soap or an order for example, pain medication for an injury occurring over a year ago that the patient no longer needs yet the order remains.
Point four: Residents are refused advancement to the next phase and refused or terminated employment if they miss above said medications.
Point five: Residents are restricted from general phone use: what this looks like is that they can't call their bank, their lawyer or government agencies.
Point six: Residents do not have access to email as inmates in the department of corrections do.

Additional points that should be acknowledged by this Committee as well as the Legislature as a whole:

1. The program is ineffective and has a shortage of staff and lack of qualified personnel.
    a. If a man would like to sign up for a shower, which are locked, or use the toilet if they live in a reconstructed office or storage room, they must ask staff to assist them. Staffing ratios have remained largely unchanged since the time when there were around 100 less men living in confinement. For this reason it is very likely that any given time during a 24 hour day that only one staff is on the unit for 30 men at a time. This staff member is charged with many duties including caring for the elderly and infirmed and those who may be bed or wheel chair ridden.
    b. Unit staff are not trained in any mental health area nor any medical health area. This is unprecedented for any inpatient behavioral health facility.
2. There are approximately 256 residents of the program: at last count (therapeutic staff turnover is an abomination: upwards of 14 therapist can come and go in a year and a half time.)

        One annual reviewer
        2 -2 year postdoctoral fellows (the last 4 have left within the first 6-9 months of their appointment.)
        1- 1 year intern
        1- Psychologist II
        1- Masters level social worker
        1- Bachelors level social worker
        1- Licensed professional counselor
        1- Physicians assistant direct medical care provider
        7- vocational and educational staff total

This means that 7 people are responsible for all of the educational classes and activities per 256 residents. This means that 7 approximate therapist (3 who are students) are responsible for 256 residents. Because there are 8 units on the Larned campus this creates caseloads for each therapist entity at 35-45 patients. There have been more than 50 people on one therapist caseload. This means that 1 Physician's assistant is responsible for medical care for the residents. Psychiatric care is provided by alternative LSH program Psychiatrist's and/or temporary and part-time providers.

This is significant, as other states in-patient sex offender program patients have challenged the quantum and quality of therapy offered. For example:

See United States District Court District of New Jersey
Civil Action No. 01-789 (DMC) Opinion for:
Raymond Alves, et al., plaintiffs, v. Merrill Main, Ph.D., et all. Defendants.
In this case the courts awarded attorney's fees as well as approval of the settlement. The Plaintiff's complaints siting inadequacy with respect to treatment were found to be true. Many of the findings parallel the exact nature of the present lack of treatment found in Kansas SPTP program.

For example, the Civil Action named above states in part among many other issues:

1. "That Defendants offer Class Members a maximum of two- 90 minute process groups per week, and that the groups are often overcrowded, start late, or end early, further reducing therapy time (SAC 32-33)"
2. "That Defendants prevent many Class Members from enrolling in the modules they need in order to progress in treatment by failing to offer those modules at all or offering them too infrequently (SAC 34-35)"
3. "That Defendants arbitrarily restrict certain Class Members (particularly those housed in the South Unit) from enrolling in therapy sessions that meet elsewhere in the STU, thus preventing them from completing modules prescribed for them and necessary for advancement (SAC 36-37)"
4. "That these deficiencies are caused in part by Defendants' failure to hire and retain sufficient qualified mental health professionals with training in sex offender specific treatment (SAC 33)"
5. "That as a result of these deficiencies, few Class Members have been able to regain their liberty, even conditionally, and few are now sufficiently advanced in the treatment program to have a reasonable hope of discharge in the foreseeable future (SAC 39-41)"

The findings of this case are astounding (and far to lengthy to mention here) and are the very requirements needed in Kansas to provide for an actual in-patient behavioral health center designed to promote positive change in mental health.

In addition to these concerns we would like to share with you, "a day in the life of men living under the SPTP today."
Why is the, "day in a life important?"
Reason one: an exorbitant amount of money: $78,000 per year per resident plus medical expenses plus legal fees within the system are spent with no return.
Reason two: little to no treatment is being provided; an approximate 5%- 7% of time per year is given to therapy treatment.

Each man is signed up for 11 hours of activities each 5-day week. The 11 hours include such groups as: walking, social time like board games and cards, walking and gym and swim (a two hour block). Each man is signed up for 1 therapy group

totaling 3 hours maximum each week. This totals 8 hours of physical and social time and 3 hours of therapy group per 40-hour week.

The present quarter system allows for 1 – 2 weeks of, "break," at the end of each quarter in which no structured activities or therapy are offered. Therefore, an approximate 48 weeks of programming are offered each year.

Each man is asked if they would like a 20 to 30 minute individual therapy session per quarter totaling 2 hours per year.

The annual reviewer may or may not know the individual resident when writing the report. The resident is sometimes asked if they would like to participate in their annual review, which consists of an approximate 10 – 15 minute visit.

On Phase II each resident must take 15 psycho-educational classes taught by non-licensed employees. The courses are constructed to fit individuals with no learning disabilities and no mental retardation. Not all courses are offered each quarter; therefore it is customary for a resident to wait for over a year for a particular class to be offered. Because literacy in the English language at a high school or college level is required, most i.e. 80% or higher, of residents struggle. In fact, the vast majorities of residents (200 +) remain on phase III or lower.

Each man is provided for a yearly physical routine examination, although due to staffing shortages it is more realistic the exams occur once per each 18 months or longer.

The remaining time is spent on the individuals locked unit. A resident on an elevated privilege level may be escorted to another unit to visit a friend if both residents live in the Dillon Building. Residents on the other 4 units may not visit other units.

Some of the men (30 or less) have vocational training time i.e. a job either in the kitchen preparing and serving food or washing dishes or working cleaning their units and the hallways and floors of the buildings they reside. A handful of residents are employed to paint discolorations on unit and building walls.

Three meals are provided each day for those men able to go to the cafeteria. For various reasons meals are missed. If after 3 meals are missed, the cafeteria provides for a boxed fourth meal for the particular man.

Many of the men are elderly or infirmed. These men stay on their units almost exclusively 24 hours a day 7 days a week 362 days a year.

There is no open yard time like they have in the prison setting so the only time a man can go outside is during the scheduled hour of walking or yard time. If there is not enough staff for activities they are cancelled. If the weather is subject the outside activities are cancelled. If a man has difficulty ambulating or is frail or

infirmed, they may quite likely not go outside for months and in fact I am aware of people who have not been outside in years.

The men who reside on the Larned campus are sleep deprived as overhead lights in both their rooms and unit areas stay on 24 hours a day.

Cancellations are rampant and numerous. It is common that upwards of 5 groups or activities are cancelled per day. Since residents are signed up for 11 hours per week total it is possible the man may have over 50 % of his activities cancelled in one week.

If a man takes medication he will be escorted to the medication window at assigned set times each day. If a man is not feeling well he can submit a request to medical to be seen and depending upon the nature of his request and staff availability it may be days to weeks before he is seen.

So in summation of, "A day in the life of men living under SPTP today," There are 168 hours in a 7-day week. 11 hours may be used for, "programming," the remaining time 157 hours are spent: sleeping, watching television and visiting with unit mates. Very little to no hobbies, crafts, activities or property are allowed so the men have very little things to do to occupy their time.

On behalf of the 256 current individuals presently committed in the Sexual Predator Treatment Program and upon behalf of the more than 24 men who have died while in the program as well as the growing waiting list of individuals scheduled for a forensic evaluation for possible admittance in the program, we thank the House Judiciary Committee for your careful considerations of all of the probable negative ramifications of SB 149 in violation of The Constitution of The United States.

Sincerely,
Concerned Citizens, Friends and Family and Opponents
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