SENATE JUDICIARY COMMITTEE

February 18, 2015

Good day:

My name is Eldon Dillingham. I live in Wamego, Kansas. Today, I speak to you regarding Senate Bill 149 dated February 4, 2015.

My wife and I have a son who was placed in the Sexual Predator Treatment Program at Larned, Kansas nearly two years ago. He committed his crimes when he was 18 and 19 years old. He served approximately seven years at Lansing, Kansas and then, upon completion of that sentence, was detained under the Kansas Civil Commitment Law, through which he was sent to Larned.

I want to make it absolutely clear today that I am here not only on behalf of my son, but also others in this program. Last year my son was placed in the transitional phase of the treatment program located at Parsons, Kansas. As I understand Senate Bill 149, he would not be significantly impacted by the concerns I am here to address. That being said, I am pleased that my son is not here to hear my testimony today. If it were not for him being placed into this program, I would have not had the opportunity to learn about or even be aware of it. So, today, I speak with you about the impact the proposed changes this bill would have on the residents located at the Larned treatment facility. I also am a member of a small and growing group of individuals who are concerned about Kansas's Sexual Predator Treatment Program, certainly the administration of it. I solicited comments from several members of that group. I also heard comments from program residents and others who have had experiences with the treatment program.

Senate Bill 149 removes the public court system from access by residents housed at the Larned facility. It does not remove public court hearings for those residents housed at Osawatomie and Parsons, known as the "transitional" phase of the program. By removing the courts from access for those housed at Larned, those residents lose their right to be heard by a jury. In the Matter of Care and Treatment of Jimmy Miles, 2009, the Kansas Supreme Court held that the essential element of Due Process was guaranteed by the Kansas Sexual Violent Predator Act by providing for basic protections including a jury trial. There are multiple court decisions, State and Federal that can be reviewed that state individuals held under civil commitment are constitutionally protected of their right to a jury trial.

The rights guaranteed by the statutory scheme to the committed person are critical to the constitutionality of the entire statutory scheme. Our Supreme Court has held that the essential elements of due process were guaranteed by the Kansas Sexually Violent Predator Act, K.S.A. 59-29a01 et seq., noting:

"These requirements are clearly satisfied by this Act, which provides for all necessary basic protections, including appointed counsel, a probable cause hearing, appointment of qualified experts for examinations, a jury trial requiring a unanimous decision, appeals, annual examinations, discharge petitions, hearings, and the strictest possible burden of proof on the State." (Emphasis added.) In re Care & Treatment of Hay, 263 Kan. 822, 831, 953 P.2d 666 (1998).

Proposed changes to Senate Bill 149 potentially impact the time period that a person shall be provided with a notice of an opportunity to appear in person at a probable cause hearing. It adds verbiage to that section stating, in addition to the 72 hour timeframe, the timeframe "or as soon as reasonably practicable." Who defines "reasonably practicable," of note is an individual who was confined in a Sedgwick County jail in excess of four years? He was held only to determine if he met statutory requirements to be designated as a sexual predator, and then finally released as he was determined to not be a sexual predator.

Senate Bill 149 reads that a hearing officer of the Office of Administrative Hearings, prior to allowing an independent evaluation of the resident, must have evidence to show that significant demonstrable improvement in the mental abnormality or personality disorder for which the person was committed has occurred. It further requires documentation that a significant demonstrable change in the person's ability to manage the condition from which the person suffers has occurred. At my son's court hearing this past July, a program director from Larned testified that no one will ever be recommended to bypass a phase or move to transitional placement until they complete everyone of the phases the Kansas treatment program offers. When asked if all annual review recommendations for residents are always "no" when documenting if the resident is ready for the transitional or conditional phase, she testified "yes," it is always "no," again, as their policy is that no one is ever ready for transitional or conditional placement until they have completed every phase of the program. An interesting fact here is that this treatment program states that it promotes individualized treatment. The real fact is there is no individualized treatment being provided, certainly as most understand "individualized treatment." In individualized treatment; it would be reasonable to expect that not everyone would require the same level of treatment; therefore not required to participate in all of the treatment phases. However, all residents follow the same treatment plan in this program. Based upon the program administrators' testimony at my son's trial, if Senate Bill 149 is passed, the Office of Administrative Hearings will never be allowed to approve an independent evaluation. My son was provided the independent evaluation, has been placed in transitional and continues to progress well, without issues. This single issue has the potential to end resident's participation in the treatment program. Many have stated if this Bill becomes law, they will simply give up and quit the treatment program. There are convinced they will never return to open society if they lose the opportunity to have their case heard before a court, which can approve independent evaluations, regardless of the fact that program staff adheres to their current policy of always saying "no" on annual reviews.

Senate Bill 149 states the Office of Administrative Hearing officer's decision is final regarding independent examinations and cannot be appealed. In its Lynn versus Anstaett decision (September 27, 2013), the Kansas Court of Appeals, found that restrictions prohibiting a litigant from submitting any further filings, unless filed by an attorney, resulted in a blanket prohibition against access to the courts and was contrary to Kansas Supreme Court decisions.

Removing courts from the current process may result in residents spending the rest of their life in the treatment program. The authority of the Office of Administrative Hearings would be greatly diminished as the program staff at Larned, who, by their documentation submitted, dictates if a hearing can actually be held (must show probable cause). If an independent evaluation is to be allowed, the Larned staff, by documentation, also dictates that decision (must show significant documentable evidence and change, etc.). One of the residents currently at Larned was 18 years old when he telephoned a minor for sex. The call was reported to the police, he was arrested, sent to prison for just short of two years, then was held for civil commitment. He was told by his court appointed attorney it would be best for him to plea bargain, and go to the treatment program as he would be out in two years. It is now nine years later and he is still at Larned, once told by a staff member that he will never leave the place other than in a coffin. Here is an 18 year old male, never having had a physical sexual relationship with anyone and has now been confined for almost twelve years. There is no doubt that Larned program staff will abide by their policy of saying "no," to this individual's readiness for transitional or conditional placement simply because he has not completed each treatment phase. Again, under this bill, the Office of Administrative Hearings would not be permitted to allow an independent evaluation. This individual was planning, this year, to request an independent evaluation and have his case heard before a jury. At the current annual cost of approximately $87,000.00, this individual never having had a physical sexual relationship with anyone in his lifetime is now tagged a violent sexual predator. Program costs to confine this individual are approaching one million dollars. He is one example of many who likely should be returned to open society.

I do believe it is necessary to support the part of the proposed bill that increases the number of individuals from eight to 16 who can be housed in the two county transitional programs. As both locations are now at capacity, KDADS should have already made provisions to house more transitional individuals. It begs the question as to how many resident's program status is being postponed when they should be in transitional placement.

Legislators I have spoken with tell me they continue to be concerned about the treatment program, especially when they hear from individuals who are not program administrators. Before any changes to the sexual predator treatment program are made, I encourage everyone on this committee to become informed about current practices on this program. Review information beyond that which is provided by only program administrators. Every day, the group I am involved with strives to learn more about the Kansas treatment program and other States' programs as well as visiting with individuals and organizations throughout the United States who have for many years studied sex offending, treatment programs, recidivism rates, etc. Our group has visited with some of the thirty states who do not have civil commitment,

inquired how they deal with individuals charged with sex offences. We are not naive to the fact that some individuals should never leave state confinement. We accept that fact, while at the same time support fair and reasonable treatment of those individuals who should never be returned to open society.

The Division of Legislative Post Audit is conducting an audit of the Sexual Predator Treatment Program. LPA staff has stated they expect the report to be available during the month of March. Before Senate Bill 149 moves any further, it may be beneficial to study the LPA report. The House Ways and Means sub-committee will be holding a hearing sometime in March specifically to discuss concerns of the Sexual Predator Treatment Program. During budget hearings, members of the sub-committee voted unanimously to hold a hearing specifically to discuss the treatment program.

The residents of this treatment program, already suffering from a program that needs serious legislative attention should not be forced to endure the consequences of this bill. Before Senate Bill 149 advances, I encourage you to study the impact it would have on the treatment program and its purpose. My view is that the impact is significant and not positive.

Thank you for providing the opportunity to speak today.

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