



THE STATE OF KANSAS

24th Judicial District

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Pawnee County Courthouse

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House Judiciary Committee

Honorable Representative Lance Kinzer, Chair

Written Testimony in Support of House Bill 2313

Exhaustion of Administrative Remedies for Patients in SRS Custody

Chief Judge, Bruce T. Gatterman, 24th Judicial District

January 25, 2012

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to provide written testimony in support of House Bill 2313. This bill would assist in the resolution of regular civil actions filed by individuals in the custody of the Kansas Secretary of Social and Rehabilitation Services pursuant to K.S.A. 59-29a01, et. seq. (Commitment of Sexually Violent Predators). Residents of the Kansas Sexual Predator Treatment Program (SPTP) routinely file suit in actions seeking declaratory judgment, replevin, damages, and other relief. This bill would provide for an orderly grievance procedure requiring exhaustion of administrative remedies prior to the filing of a civil action in the District Court by a resident of SPTP.

HB2313 would also amend K.S.A. 60-1501, Habeas Corpus. A habeas action is generally filed in the District Court of the county where the alleged restraint is taking place. In 2011, 116 K.S.A. 60-1501 actions were filed in the District Court of Pawnee County, Kansas by residents of SPTP. Each habeas Petition must be reviewed by a District Judge. If the Petition is not subject to summary dismissal, the judge must issue a Writ of Habeas Corpus requiring response from Kansas Department of Social and Rehabilitation Services.

Senate Judiciary
3-15-12
Attachment 3



Kansas

Department of Social and
Rehabilitation Services

Senate Judiciary Committee
March 15, 2012

Testimony in Support of HB 2313 – Exhaustion of
administrative remedies for patients in the custody of
SRS

Presented by:

Austin DesLauriers, Ph.D. Larned State Hospital
Clinical Program Director, Sexual Predator Treatment
Program

Kansas Department of Social and Rehabilitation Services

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Chairman Owens and members of the Committee I appreciate the opportunity to speak with you today from the point of view of the sexual predator program and its use of resources. It will become clear why we support HB 2313.

For a variety of reasons since its inception, SPTP has been constantly challenged in the courts. Beginning with the Hendricks case heard by the Supreme Court, and continuing to the present. There are obvious reasons why, since the Sexual Predator Law did open new legal ground. The greatest reason for the storm of litigation which consistently surrounds the program is that the residents, particularly a certain group of residents, see considerable advantage in suing the program. Legal services are afforded to them at no cost. The legal services are viewed as a benefit of placement in the program and are seen as a way to play the system. Residents should be able to appeal to the courts if their rights are violated. I support this bill as a step toward a way of identifying which cases may not merit a significant amount of the Court's time or that of our staff.

Currently, our staffs take residents to court for approximately 65 appearances during a fiscal year. Escorting a resident to court requires at least two staff to be with them during travel and in the court proceedings. Preparation time for a hearing may involve a significant amount of staff time. Just last month, our records management staff spent an entire week with a resident going over his record for one of the numerous cases this resident has before the court. Staff, who may testify, must spend time reviewing the record, in addition to time spent traveling and testifying. There is also the cost of locating and copying documents. Typically each time I go to court, a copy of the resident's entire record is made, in case the Court needs copies. Depositions can also take significant amounts of time. All of this is time taken away from that which could be spent on the mission of the program, which is to provide quality treatment. We are also being sued for that, i.e., not providing adequate treatment. At last count, SRS had approximately 50 cases, in various stages of litigation, before the court. Additionally, the Attorney General's office had 15 post-commitment cases on its agenda. The hospital's capable attorney, Brenda Hagerman, recently asked us to consider committing a staff position to fund a secretary in her office solely to help handle the legal paperwork generated by our program. The need is certainly there and yet it would require us to give up a staff position dedicated elsewhere. The loss of this staff would be significant to the program.

This is not an isolated issue for Kansas. The Seattle Times recently ran a story on Washington's civil-commitment program, which devoted an entire section to the "hidden legal costs" which are associated with its program. Controlling legal, and medical, costs are major issues for civil commitment programs across the country. SPTP currently has 216 residents on its Larned campus, and we are expecting one more this week. Currently we are staffed for 176 residents, 50 less than we currently have. I state this fact simply to emphasize that it is incumbent on us to use the time and energy of our staff wisely for the mission of our program. We are committed to meeting the legal needs of our residents and the program. We believe that HB 2313 helps us to be good stewards of the resources available to us. This concludes my testimony and I would be glad to stand for questions.