



MEMORANDUM

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TO: Members, House Health and Human Services Committee
FROM: Lynn Retz, Senior Auditor
DATE: February 4, 2016
SUBJECT: Other states' criteria for final discharge from sexual predator treatment programs

I presented the audit *Larned State Hospital: Reviewing the Operations of the Sexual Predator Treatment Program, Part 2* to the House Health and Human Services Committee on February 2. After my presentation, Representative Ward asked for additional information about other states' criteria related to discharging residents from sexual predator treatment programs.

During the course of our audit work, we contacted three other states about their sexual predator programs. The following is a summary of Kansas' and other states' laws related to final discharge from the programs, as of 2015.

- Kansas' program had seven treatment phases. Treatment staff or other professionals at the direction of the court may examine the person to determine if the person's mental abnormality or personality disorder has changed to warrant final discharge, and forward any such report to the court. (However, nothing prohibits the person from petitioning the court at any time during treatment.) If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be entitled to final discharge, the court shall set a formal hearing on the issue. At the hearing, if the court determines beyond a reasonable doubt that the person is not appropriate for final discharge, the court shall continue custody of the person with the secretary for placement in a secure facility, transitional release program or conditional release program. Otherwise, the court shall order the person finally discharged.
- Iowa's program had five treatment phases. If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to engage in predatory acts that constitute sexually violent offenses if discharged, the director shall authorize the person to petition the court for discharge. (However, nothing prohibits the person from petitioning the court without the director's approval.) At the hearing, the state must show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is likely to engage in predatory acts that constitute sexually violent offenses if discharged. Upon the court finding that the state has failed to meet its burden of proof, the court shall authorize the committed person to be discharged.

- Wisconsin's program had four treatment phases. A committed person may petition the court for discharge at any time. If a court determines that the person's condition has sufficiently changes such that a court or jury would likely conclude that the person no longer meets the criteria for commitment as a sexually violent person, the court shall hold a trial. At trial, the state must prove by clear and convincing evidence the person meets the criteria for commitment as a sexually violent person. If the court or jury finds the state failed to meet its burden of proof, the person shall be discharged.
- Washington's program had seven treatment phases. If the secretary determines that the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, the secretary shall authorize the person to petition the court for unconditional discharge. (However, nothing prohibits the person from petitioning the court without the secretary's approval.) At the hearing, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator.

Please let me know if you have any additional questions.