



MEMORANDUM

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TO: Members, Joint Committee on Corrections and Juvenile Justice Oversight
FROM: Lynn Retz, Senior Auditor
DATE: November 15, 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 Joint Committee on Corrections and Juvenile Justice Oversight today. 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 the time of our work in 2015.

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

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

Please let me know if you have any additional questions.