

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 12**

As Agreed to May 26, 2015

Brief*

House Sub. for SB 12 would create and amend law governing the civil commitment of sexually violent predators and the Sexual Predator Treatment Program (SPTP), as follows.

The bill would provide that existing and new law governing such civil commitment shall be known as the Kansas Sexually Violent Predator Act (Act).

Provisions would be added to the statute governing the initial identification of a person who may meet the criteria of a sexually violent predator (SVP) to require that notice be given to persons evaluated of the nature and purpose of the evaluation, that the evaluation would not be confidential, and that the person's statements and evaluator's conclusions could be disclosed to certain parties in proceedings under the Act. Disclosures to the Attorney General under the section would be deemed to be in response to the Attorney General's civil demand for information to determine whether a petition shall be filed, and such information would have to be specific to the purposes of the Act and as limited in scope as reasonably practicable.

This statute also would be amended to include certain mental health professionals on the multidisciplinary team and

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

to remove a 30-day deadline for assessment by the team of whether a person is a SVP.

The statute governing the filing of a petition alleging a person is a SVP would be amended to provide that the venue for a petition involving a person convicted of or charged with a federal or other state offense that would be a sexually violent offense in Kansas may be in the county where the person resides, was charged or convicted of any offense, or was released. Provisions would be added to this statute to permit service of the petition on the attorney representing the person, to assess costs to the person for medical care and treatment provided for the person by the governmental entity having custody of the person and allow the governmental entity to obtain reimbursement for such costs from the person, and to clarify that court proceedings are civil in nature.

The statute establishing the Sexually Violent Predator Expense Fund would be amended to broaden its use to include costs related to any civil action relating to commitment under the Act.

The statute governing the probable cause hearing would be amended to specify that the person named in the petition shall be detained in the county jail until the SVP determination is made and to require the judge to file a protective order permitting disclosures of protected health information to parties, counsel, evaluators, experts, and others necessary to the SVP litigation proceedings. The 72-hour time requirement for the hearing would be amended to also allow a hearing as soon as reasonably practicable or agreed upon by the parties.

The statute governing trial on the petition would be amended to change a 60-day deadline from a deadline for trial to a deadline to set the matter for pretrial conference to establish a mutually agreeable date for trial. A right-to-counsel provision would be narrowed to apply only to this statute, rather than to all proceedings under the Act, and provisions

regarding retention of experts or professional persons for examination would be modified to instead allow an independent exam under the Rules of Civil Procedure. The bill would clarify the jury trial provisions of this section would not apply to proceedings for annual review or proceedings on petitions for transitional release, conditional release, or final discharge.

The statute governing appellate and commitment procedure following the SVP determination would be amended to clarify that appeals would be taken as civil appeals and that persons committed for control, care, and treatment by the Kansas Department for Aging and Disability Services (KDADS) would be required to be segregated in different units than other patients under KDADS supervision.

The statute governing annual examinations of SVPs' mental conditions would be amended to reflect changes made elsewhere in the bill.

The bill would amend the statute governing petitions for transitional release authorized by the Secretary for Aging and Disability Services (Secretary) to adjust the timing requirement for the hearing, remove a provision allowing a jury upon demand, and clarify the standard for transitional release.

The statute governing subsequent petitions for transitional release, conditional release, and final discharge and placement restrictions for transitional or conditional release would be amended to adjust the standard for such release or discharge and expand the limit on SVPs that may be placed by the Secretary in any one county on transitional or conditional release from 8 to 16. This expansion would be effective July 1, 2015.

The bill would amend the statute setting forth rights and rules of conduct for SVPs as follows:

- Change the term “patient” to “person” in the definitions and throughout the section;
- Add definitions for “emergency lockdown” and “individual person management plan”;
- Clarify that rights under the section are statutory rights;
- Adjust the provision related to therapeutic labor, including requiring evaluation of the labor by staff every 180 days, instead of every 120 days;
- Adjust provisions related to treatment and medication, including adding more specific directions for administering medication over a person’s objection;
- Adjust provisions related to restraint and seclusion, including increasing the required monitoring interval from 15 to 30 minutes;
- Add provisions allowing for the use of individual person management plans;
- Specify that individual religious worship must comply with applicable law and facility rules and policies;
- Require persons to pay reasonable costs to receive copies of records, and allow the head of a treatment facility or designee to refuse disclosure if it will likely be injurious to the welfare of the person;
- Specify that the right to send and receive mail is subject to reasonable limitations and mail is subject to examination and inspection for contraband per facility rules and policies;
- Specify that contraband may be confiscated;

- Clarify what items a person may not receive through the mail;
- Clarify that use of clothing and toilet articles must comply with facility rules and policies;
- Clarify the right to possess personal property;
- Clarify the right to see visitors;
- Narrow the right to present grievances;
- Establish that reasonable limitations may be set on spending money;
- Remove a provision for an informal hearing regarding the denial of any rights under the decision, and clarify that notice of decision is all that is required when the facility makes an administrative decision of general applicability;
- Establish that proceedings concerning an action by KDADS shall be governed under the Kansas Administrative Procedure Act (KAPA) and the Kansas Judicial Review Act (KJRA), and that a person appealing any alleged violation or any other agency determination must exhaust all available administrative remedies before requesting a hearing under KAPA;
- Provide requirements for notice of right to appeal, request for hearing, and review of such request to the Office of Administrative Hearings (OAH);
- Allow any hearing before OAH, or any proceeding under KJRA, to be conducted by telephone or other electronic means, unless the presiding officer or court determines the interests of justice require an in-person hearing. An in-person proceeding shall occur at the place where the person is committed; and

- Establish venue in Pawnee County, Kansas, for all proceedings brought pursuant to KJRA, unless otherwise provided in the Act.

The bill would amend the statute governing *habeas corpus* for persons committed under the Act to make the section's provisions applicable to any civil action filed by such person, would add the filing fee as a cost to be taxed, and would tax the costs to the person bringing the action. Provisions would be added with certain requirements for affidavits, and trust fund and other account statements for persons committed under the Act who seek to file civil actions without prepayment of fees. If the court determines the person is indigent, costs would be taxed to the county responsible for the costs, and a district court receiving a statement of costs from another district court would be required to approve payment, unless it is not the county responsible for the costs. A claimant county could maintain an action against the debtor county if costs are not paid within 120 days. Requirements for payment of the filing fee, for filing *in forma pauperis*, and for payment of an initial partial filing fee would be added. The bill would specify that no person committed under the Act would be prohibited from bringing a civil action or pursuing an appeal for the reason that such person has no assets and no means by which to pay the initial partial filing fee. A provision for judgment of costs would be added. Finally, existing provisions related to dismissal and a "three-strikes-and-you're-out" frivolous filing prohibition would be moved to this section from the subsequent statutory section, and would be deleted from the subsequent section.

The statute governing appealable orders under Chapter 59 would be amended to except appeals under the KJRA from those appeals over which appeals under this section have priority.

The KJRA would be amended to allow it to apply to the Act.

An existing provision regarding the release of a person who has undergone an identified physiological change rendering the person unable to commit a sexually violent offense would be moved to a new section and amended to change the burden of proof from the State to the person. The person would be required to demonstrate such change by clear and convincing evidence.

The bill would establish that the cost of post-commitment hearings, annual review hearings, evaluations, or other expenses provided for in the Act, as well as any SPTP administrative hearings involving the statutory rights of a SVP, or other program decisions appealed to OAH, shall be paid by the county responsible for the costs, which would be defined as the county where the person was determined to be a SVP. OAH would be required to provide a statement to such county at the conclusion of any of these proceedings, and the county would be required to pay within the earlier of 60 days after receipt of the bill or prior to the expiration of the fiscal year in which the costs were incurred.

The bill would establish that the costs incurred for the care and custody of a person committed pursuant to the Act while such person is in the custody of a county law enforcement agency for a pending criminal proceeding shall be paid by the county with custody of the person, and the Secretary would be required to reimburse the county from the SPTP New Crimes Reimbursement Account (Account) for all costs that would have been paid from the account if the person had remained in the custody of the Secretary. Similarly, if a person committed pursuant to the Act commits a crime while committed and is prosecuted for such crime, the prosecution costs would be paid by the county where the prosecution occurs, and the Secretary would be required to reimburse the county from the Account. If no funds are available in the Account, the county could file a claim against the State. The Secretary would be directed to develop and implement a procedure for such reimbursements by January 1, 2016.

A statute governing conditional release would be repealed.

Conference Committee Action

The Conference Committee agreed to replace the contents of House Sub. for SB 12, as it entered conference, with the contents of SB 149, as amended by the House Committee on Judiciary, with the following modifications: clarify language related to applicability of a jury trial provision, make conforming amendments to the statute governing annual examinations, remove transitional release provisions involving the OAH that remained after the House Committee amendments, add a provision related to the cost of prosecution for crimes by committed persons, and make technical amendments.

Background

SB 12, as introduced, would have expanded the crimes of battery and aggravated battery against law enforcement officers to include judges, attorneys, and court services offices while performing their duties. The bill was amended in the Senate Committee on Corrections and Juvenile Justice, and passed the Senate. It was assigned to the House Committee on Corrections and Juvenile Justice, but did not pass out of that Committee and, subsequently, was referred to the House Committee on Veterans, Military and Homeland Security.

The House Committee on Veterans, Military and Homeland Security removed the contents of SB 12, inserted provisions related to veterans, and passed House Sub. for SB 12.

The contents of House Sub. for SB 12, as it entered conference, were included in the conference committee

report for HB 2154, which has been adopted by both chambers as of the date of this brief.

The Conference Committee on House Sub. for SB 12 subsequently agreed to replace the contents of the bill with the modified contents of SB 149, regarding the civil commitment of sexually violent predators.

Background of SB 149

SB 149 was introduced by the Senate Committee on Judiciary at the request of the Kansas Attorney General. As introduced, the bill also contained provisions amending the procedure for annual examinations for SVPs not in transitional or conditional release and petitions for release by such persons over the Secretary's objection. Among other changes, the amended procedure would have moved the hearings on such petitions from the court to OAH.

In the Senate Committee, representatives of the Attorney General's Office, the Kansas Association of Counties, and KDADS testified in support of the bill. The Director of OAH and a representative of the Kansas Sheriffs' Association submitted written testimony supporting the bill. Two citizens, an attorney, and a former therapist for the SPTP testified in opposition to the bill. The Legislative Post Auditor provided written neutral testimony and an update of an ongoing audit of the SPTP.

The Senate Committee amended the bill to add the provisions of SB 185, regarding costs incurred for the care and custody of a person committed pursuant to the Act while such person is in the custody of a county law enforcement agency.

The Senate Committee of the Whole amended the bill to clarify the provision related to costs incurred for the care and custody of a committed person while in the custody of a county law enforcement agency covers only reasonable costs

when the person is in custody for a pending criminal proceeding. The amendment also clarified the reimbursement account and changed the date by which the Secretary must implement a reimbursement procedure from July 1, 2015, to January 1, 2016.

In the House Committee on Judiciary, an Assistant Attorney General, the Director of OAH, and representatives of the Kansas Association of Counties and KDADS testified in support of the bill. The Johnson County Sheriff submitted written testimony supporting the bill on behalf of the Kansas Sheriffs' Association. A citizen, an attorney, and a former therapist for the SPTP testified in opposition to the bill. The Legislative Post Auditor provided written neutral testimony and an update of an ongoing audit of the SPTP.

The House Committee amended the bill to remove the changes to the procedures for annual examinations of SVPs not in transitional or conditional release and petitions for release by such persons over the Secretary's objection.

According to the fiscal note prepared by the Division of the Budget on SB 149, as introduced, KDADS indicates the bill would have no immediate fiscal effect on the agency or the state hospitals. However, should the SPTP need to be expanded, there would be associated costs. OAH estimates the bill's provisions would increase its expenditures by approximately \$160,000 annually, beginning in FY 2016, for an additional 1,500 hours spent by administrative law judges conducting hearings. Administrative law judges are compensated \$100 per hour, plus specified court costs, which per the bill would be reimbursed by the county in which the case was filed. However, the Kansas Association of Counties indicates counties would realize savings from transportation expenses that would offset any costs.

The Attorney General's Office indicates it would realize savings in travel costs and more efficient review hearings, but any savings would be negligible. The Office of Judicial Administration indicates shifting cases to OAH could produce

savings for district courts. Shifting the responsibility for costs from counties to civilly committed persons could create a delay in receiving payments. However, the precise savings or delay in revenues cannot be provided until the courts have operated under the bill's provisions. Any fiscal effect is not reflected in *The FY 2016 Governor's Budget Report*.

Background of SB 185

SB 185 was introduced by the Senate Committee on Judiciary at the request of Senator Holmes. In the Senate Committee, Senator Holmes and representatives of the Kansas Sheriffs' Association and the Kansas Association of Counties testified in support of the bill. A representative of KDADS testified in opposition to the bill.

According to the fiscal note prepared by the Division of the Budget on SB 185, KDADS indicates the bill would increase expenditures for Larned State Hospital, but a precise estimate cannot be provided, as the number of SPTP residents who may enter the custody of a county law enforcement agency cannot be predicted. Any reimbursements would need to be covered by increases to the Hospital's State General Fund appropriation.

The Kansas Association of Counties indicates SB 185 would increase revenues to counties, but cannot provide a precise estimate. Any fiscal effect associated with SB 185 is not reflected in *The FY 2016 Governor's Budget Report*.

sexually violent predators; civil commitment; Kansas Sexually Violent Predator Act; detention; protective orders; costs; proceedings; trials; rights; filing fees

ccrb_sb12_01_0001.odt