

## **Kansas Sexually Violent Predator Act; House Sub. for SB 12**

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

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

Provisions are 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 will 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 are 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 must be specific to the purposes of the Act and as limited in scope as reasonably practicable.

This statute also is amended to include certain mental health professionals on the multidisciplinary team and 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 is 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 are 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 is 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 is 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 is amended to also allow a hearing as soon as reasonably practicable or agreed upon by the parties.

The statute governing trial on the petition is 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 is 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 are modified to instead allow an independent exam under the Rules of Civil Procedure. The bill clarifies the jury trial provisions of this section do 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 is 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) are required to be segregated in different units than other patients under KDADS supervision.

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

The bill amends 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 is 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.

The bill amends the statute setting forth rights and rules of conduct for SVPs to:

- 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 amends 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, adds the filing fee as a cost to be taxed, and taxes the costs to the person bringing the action. Provisions are 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 shall be taxed to the county responsible for

the costs, and a district court receiving a statement of costs from another district court is required to approve payment, unless it is not the county responsible for the costs. A claimant county may 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 are added. The bill specifies that no person committed under the Act is 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 is added. Finally, continuing provisions related to dismissal and a “three-strikes-and-you’re-out” frivolous filing prohibition are moved to this section from the subsequent statutory section, and are deleted from the subsequent section.

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

The KJRA is amended to allow it to apply to the Act.

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

The bill establishes 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 is defined as the county where the person was determined to be a SVP. OAH is required to provide a statement to such county at the conclusion of any of these proceedings, and the county is 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 establishes 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 will 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 shall be paid by the county where the prosecution occurs, and the Secretary will be required to reimburse the county from the Account. If no funds are available in the Account, the county may file a claim against the State. The Secretary is directed to develop and implement a procedure for such reimbursements by January 1, 2016.

A statute governing conditional release is repealed.