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Testimony in Support of Senate Bill 416

**Presented to the Senate Committee on the Judiciary
By Kansas Attorney General Derek Schmidt**

March 5, 2020

Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to offer this testimony in support of Senate Bill 416. This bill would modify the notification process that identifies when an individual may meet the criteria of a sexually violent predator to be civilly committed for long-term custody and treatment in the sexual predator treatment program (SPTP) within the Kansas Department of Aging and Disability Services (KDADS).

My office has been working with the Kansas Sheriffs' Association (KSA) for many years on ways to reduce the burden that the process of commitment places on our county jails. The bill before you today is an attempt to address some of these concerns, and we believe it will be good public policy to more smoothly transition individuals serving their sentences in the Kansas Department of Corrections (KDOC) to undergo the legal process of commitment during their sentence and be transported to jail only if their sentence expires before an adjudication is final.

Under current law, the agency with jurisdiction, usually KDOC, is to notify the attorney general when an individual in their custody may meet the criteria of an SVP 90 days prior to their release. DOC determines what individuals may meet the criteria using an internal process that includes programming and evaluation. After notice is received by the attorney general's office, a Prosecutor's Review Committee (PRC) reviews the notices and makes a determination about whether the person is an SVP. The commitment process involves additional evaluation and judicial hearings, which can take many months. The individual is also entitled to demand a jury trial to determine whether the person is a sexually violent predator, which must be proven by the state beyond a reasonable doubt.

The current process envisions all the litigation after a petition is filed to be conducted while the person is being held in the county jail. This places a significant cost on our counties. The Kansas Sheriffs Association has estimated this cost at more than \$600,000 per year, based on an estimated 20 persons being held in county jail at any given time.

The SVP Act does create a fund within the attorney general's office to reimburse the counties for the costs of persons being held in county jails awaiting determination. However, the appropriations made to this fund fall far short of the costs. For FY 2021, the Governor has recommended appropriating only \$50,000 to the fund. Counties expenses submitted to our office for reimbursement will quickly deplete those funds. Once the fund is depleted, the only recourse for counties to seek reimbursement is through the claims against the state process.

That brings us to the bill before you today. This bill would seek to significantly reduce the amount of time individuals spend in county jails awaiting determination. Beginning July 1, 2022, DOC would notify the attorney general's office of the anticipated release of a potential SVP up to two years in advance of the potential release. This would allow the civil commitment process to begin sooner – while the individual is still in DOC custody. Ideally, this will allow some persons who are civilly committed to transition directly from DOC custody to the SPTP. We understand that this will not entirely eliminate the role of the county sheriffs and jails in this process. Some individuals will have sentences shorter than two years and likely will still spend some time in the county jail awaiting determination. In addition, judges may require the individual to appear in-person for hearings and almost certainly for trial. However, we believe this is a good step for greater efficiency and allows for the possibility of treatment closer to the individual's release from KDOC.

Thank you for your attention to this matter.

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