

Updated
SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2128**

As Agreed to April 5, 2017

Brief*

HB 2128 would amend law regarding procedures for annual review, transitional release, and conditional release for persons civilly committed under the Kansas Sexually Violent Predator Act (Act), as follows.

[**Note:** Following House approval of the conference committee report on HB 2128, this brief was updated to correct two typographical errors on page 7 (references to HB 2301 were changed to HB 2306). No substantive change was made to the brief.]

Annual Review of Committed Persons

The bill would amend provisions related to the annual review of committed persons to require the court to file the notice to the person and annual report required under current statute upon receiving the notice and report. The bill would require the person to file a request for an annual review hearing within 45 days of the court filing the notice, and failure to make such a request would waive the person's right to a hearing until the next annual report is filed. A contested annual review hearing for transitional release would consist of consideration about whether the person is entitled to transitional release. Only a person in transitional release would be permitted to petition for conditional release, 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>

only a person in conditional release would be permitted to petition for final discharge. The bill would remove a provision in current law stating that nothing in the Act shall prohibit a person in conditional release from otherwise petitioning the court for discharge at the annual review hearing.

The bill would replace the current provision allowing a person to retain a qualified professional person to examine the person with a provision allowing a person to retain an examiner pursuant to the statute governing physical and mental examinations in the Kansas Rules of Civil Procedure. The examiner would have access to all available records concerning the person. If an indigent person requests an examiner, the court would determine whether the services are necessary and the reasonable compensation for such services. The appointment of an examiner would be discretionary and, before appointing an examiner, the court would be required to consider factors including the person's compliance with institutional requirements and participation in treatment to determine whether the person's progress justifies the costs of an examination.

At the annual review hearing, the burden of proof would be on the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in transitional release. The report (or a copy) of the findings of a qualified expert would be admissible as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person would be presumed to be unable to show probable cause to believe the person is safe to be released.

If the person does not file a petition requesting a hearing, the court that committed the person under the Act would be required to conduct an *in camera* annual review of the status of the person's mental condition and determine whether the person's mental abnormality or personality disorder has significantly changed so that an annual review

hearing is warranted. The court would be required to enter an order reflecting its determination.

A provision providing the person with the benefit of the same constitutional protections afforded during the determination of whether the person is a sexually violent predator would be changed to entitle the person to the assistance of counsel. The bill would provide that if the person is indigent and without counsel, the court would be required to appoint counsel to assist the person.

Provisions in current law would be removed or modified to conform to the new procedures, including the addition of the “significantly changed” standard. The term “committed person” would be changed to “person” throughout the annual review section.

Petitions for Transitional Release and Conditional Release

The statute setting forth the procedure for petition for transitional release would be amended to reflect the “significantly changed” standard and to add a nearly-identical procedure for petition for conditional release. This procedure would allow the Secretary for Aging and Disability Services (Secretary), if the Secretary determines the person’s mental abnormality or personality disorder has significantly changed so that the person is not likely to engage in repeat acts of sexual violence if placed in conditional release, to authorize the person to petition the court for conditional release. After specified service, the court would be required to set a hearing within 30 days. The Attorney General would represent the State, have the right to have the petitioner examined by an expert or professional person, and have the burden of proof to show beyond a reasonable doubt that the petitioner’s mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and if placed in conditional release is likely to engage in repeat acts of sexual violence.

If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not sufficiently safe to warrant conditional release, the court would be required to order that the person remain either in secure commitment or in transitional release. Otherwise, the person would be placed in conditional release. The bill would specify other statutory provisions regarding conditional release that would apply to a conditional release under this section.

Annual Review of Persons in Transitional Release

The current procedure for court review of reports regarding persons in transitional release would be replaced with a procedure substantially similar to the annual review procedure the bill would provide for committed persons, as follows.

The bill would require the Secretary to provide the person with a written notice of the person's right to petition the court for release over the Secretary's objection. The bill would require the notice contain a waiver of rights. The Secretary would be required to forward the report and notice to the court that committed the person under the Act, and the court would be required to file the notice and report. The bill would require the person to file a request for an annual review hearing within 45 days of the court filing the notice, and failure to make such a request would waive the person's right to a hearing until the next annual report is filed. A contested annual review hearing for conditional release would consist of a consideration of whether the person is entitled to conditional release from transitional release. Only a person in transitional release would be permitted to petition for conditional release, and no person in transitional release would be permitted to petition for final discharge.

The person would be allowed to retain an examiner pursuant to the statute governing physical and mental examinations in the Kansas Rules of Civil Procedure. The examiner would have access to all available records

concerning the person. If an indigent person requests an examiner, the court would determine whether the services are necessary and the reasonable compensation for such services. The appointment of an examiner would be discretionary and, before appointing an examiner, the court would be required to consider factors, including the person's compliance with institutional requirements and participation in treatment, to determine whether the person's progress justifies the costs of an examination.

At the annual review hearing, the burden of proof would be on the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in conditional release. The report (or a copy) of the findings of a qualified expert would be admissible as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person would be presumed to be unable to show probable cause to believe the person is safe to be released.

The person would have the right to have an attorney represent the person at the annual review hearing to determine probable cause, but the person would not be entitled to be present at the hearing.

If the person does not file a petition requesting a hearing, the court that committed the person under the Act would be required to conduct an *in camera* annual review of the status of the person's mental condition and determine whether the person's mental abnormality or personality disorder has significantly changed so that an annual review hearing is warranted. The court would be required to enter an order reflecting its determination.

If the court at the annual review hearing determines that probable cause exists to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in conditional release, the court would be required to set a hearing for conditional

release. The person would be entitled to be present and to have the assistance of counsel. The Attorney General would represent the State, have the right to have the petitioner examined by an expert or professional person, and have the burden of proof to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be placed in conditional release and, if conditionally released, is likely to engage in repeat acts of sexual violence. The person would have the right to have experts evaluate the person, and the court would be required to appoint an expert if the person is indigent and requests an appointment.

Subsequent to either a court review or hearing, the court would be required to issue an appropriate order with findings of fact, and the order would be provided to the Attorney General, the person, and the Secretary.

For purposes of this section, if the person is indigent and without counsel, the court would be required to appoint counsel to assist the person.

Provisions in current law would be removed or modified to conform to the new procedures, including the addition of the "significantly changed" standard.

Conference Committee Action

As it entered conference, HB 2128 contained provisions amending the Kansas Open Meetings Act (KOMA). The Conference Committee agreed to add these provisions to the conference committee report on HB 2301. The Conference Committee then agreed to replace the contents of HB 2128 with the contents of HB 2306, amending the Kansas Sexually Violent Predator Act.

Background

Background regarding the contents of HB 2128 as it entered conference, amending KOMA, may be found in the conference committee report brief on HB 2301.

HB 2306—Sexually Violent Predator Act

HB 2306 was introduced by the House Committee on Judiciary at the request of the Attorney General. In the House Committee hearing, representatives of the Attorney General and Kansas Department for Aging and Disability Services (KDADS) testified in support of the bill. A citizen testified in opposition to the bill. No other testimony was provided.

The House Committee amended the bill by adding provisions requiring the court to appoint counsel for indigent persons. [*Note:* The Conference Committee retained these amendments.]

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, enactment of the bill would have no fiscal effect on the Office of the Attorney General or KDADS because it codifies the review process that is already in place.

Kansas Sexually Violent Predator Act; annual review; transitional release; conditional release

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