

## **Kansas Sexually Violent Predator Act—Annual Review of Committed Persons and Persons in Transitional Release; Petitions for Transitional Release and Conditional Release; HB 2128**

**HB 2128** amends 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.

### ***Annual Review of Committed Persons***

The bill amends 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 requires 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 waives the person's right to a hearing until the next annual report is filed. A contested annual review hearing for transitional release shall consist of consideration about whether the person is entitled to transitional release. Only a person in transitional release is permitted to petition for conditional release, and only a person in conditional release is permitted to petition for final discharge. The bill removes a provision in previous 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 replaces the previous 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 shall have access to all available records concerning the person. If an indigent person requests an examiner, the court shall determine whether the services are necessary and the reasonable compensation for such services. The appointment of an examiner is discretionary and, before appointing an examiner, the court is 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 is on the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so the person is safe to be placed in transitional release. The report (or a copy) of the findings of a qualified expert is admissible as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person shall 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 must 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 an annual review hearing is warranted. The court must 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 is

changed to entitle the person to the assistance of counsel. The bill provides that if the person is indigent and without counsel, the court shall appoint counsel to assist the person.

Provisions in previous law are removed or modified to conform to the new procedures, including the addition of the “significantly changed” standard. The term “committed person” is 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 is amended to reflect the “significantly changed” standard and to add a nearly identical procedure for petition for conditional release. This procedure allows the Secretary for Aging and Disability Services (Secretary), if the Secretary determines the person’s mental abnormality or personality disorder has significantly changed so 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 must set a hearing within 30 days. The Attorney General shall 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 petition’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 the person is not sufficiently safe to warrant conditional release, the court must order that the person remain either in secure commitment or in transitional release. Otherwise, the person shall be placed in conditional release. The bill specifies other statutory provisions regarding conditional release that apply to a conditional release under this section.

### ***Annual Review of Persons in Transitional Release***

The previous procedure for court review of reports regarding persons in transitional release is replaced with a procedure substantially similar to the annual review procedure the bill provides for committed persons, as follows.

The bill requires 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 requires the notice contain a waiver of rights. The Secretary must forward the report and notice to the court that committed the person under the Act, and the court must file the notice and report. The bill requires 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 waives the person’s right to a hearing until the next annual report is filed. A contested annual review hearing for conditional release shall consist of a consideration of whether the person is entitled to conditional release from transitional release. Only a person in transitional release is permitted to petition for conditional release, and no person in transitional release is permitted to petition for final discharge.

The person is allowed to retain an examiner pursuant to the statute governing physical and mental examinations in the Kansas Rules of Civil Procedure. The examiner shall have access to all available records concerning the person. If an indigent person requests an examiner, the court shall determine whether the services are necessary and the reasonable compensation for such services. The appointment of an examiner is discretionary and, before

appointing an examiner, the court must consider factors that include 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 is on the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so the person is safe to be placed in conditional release. The report (or a copy) of the findings of a qualified expert is admissible as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person shall be presumed to be unable to show probable cause to believe the person is safe to be released.

The person has the right to have an attorney represent the person at the annual review hearing to determine probable cause, but the person is not 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 must 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 an annual review hearing is warranted. The court must enter an order reflecting its determination.

If the court at the annual review hearing determines probable cause exists to believe the person's mental abnormality or personality disorder has significantly changed so the person is safe to be placed in conditional release, the court must set a hearing for conditional release. The person is entitled to be present and to have the assistance of counsel. The Attorney General shall 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 has the right to have experts evaluate the person, and the court must appoint an expert if the person is indigent and requests an appointment.

Subsequent to either a court review or hearing, the court must issue an appropriate order with findings of fact, and the order must 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 must appoint counsel to assist the person.

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