

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 266**

As Agreed to April 26, 2018

Brief*

SB 266 would amend various provisions within the Kansas Sexually Violent Predator Act (Act), as follows.

Definitions

The bill would amend the definition of “sexually violent predator” to specify such person “has serious difficulty in controlling such person’s dangerous behavior.”

The bill would define “conditional release” to mean approved placement in the community for a minimum of five years while under the supervision of the person’s court of original commitment and monitored by the Secretary for Aging and Disability Services (Secretary).

The bill would define “conditional release monitor” to mean an individual appointed by the court to monitor the person’s compliance with the treatment plan while placed on conditional release and who reports to the court. The bill would specify the monitor shall not be a court services officer.

The bill would define “progress review panel” to mean individuals appointed by the Secretary to evaluate a person’s progress in the sexually violent predator treatment program.

*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>

Secure Confinement

The bill would amend a provision requiring committed persons be kept in a secure facility to clarify the language of the provision and to specify it shall not apply to any reintegration, transitional release, or conditional release facility or building.

Annual Review and Petition for Final Discharge

The bill would amend provisions related to the annual examination of and report regarding each committed person to require the court to forward the file-stamped copy of the annual report, notice, and waiver form to the Attorney General, and to require the Attorney General to forward a file-stamped copy of the annual written notice and report to the Secretary upon receipt.

A provision regarding petition for final discharge would be amended to add a reference to a continuing, separate statutory provision requiring a minimum of five years pass in which the person petitioning has been free of violations of conditions of the person's treatment plan.

Conditional Release

The bill would remove a prohibition on placement of more than 16 sexually violent predators on conditional release in any one county.

A provision requiring the plan of treatment established by the court for conditional release be based upon the recommendation of the treatment staff would be amended to also include the recommendation of the progress review panel.

The non-exclusive list of provisions that may be included in the plan of treatment would be amended to add "any other

type of treatment,” travel restrictions, searches, home visits, substance abuse testing, and registration requirements. The list would also be amended to replace provisions prohibiting frequenting locations where children are likely to be present or engaging in activities in which contact with children is likely with a provision prohibiting “direct contact with individuals that match the person’s victim template.”

Provisions regarding procedures upon violation of a material condition of the conditional release treatment plan or for final discharge would be reorganized. [Note: The amendments to these provisions strike four entire subsections and add five new subsections. However, much of the substantive language remains the same and is only reorganized. Substantive changes to these provisions are discussed beginning in the next paragraph of this brief.]

Provisions related to monitoring by a professional person would be changed to monitoring by a conditional release monitor. Provisions regarding a request by such monitor to the court for an *ex parte* order directing law enforcement to take a person who has violated a material condition of the treatment plan into custody would be amended to replace provisions allowing for a verbal request followed by a written form with a requirement that such request be by sworn affidavit setting forth with specificity the grounds for the entry of such emergency *ex parte* order, provided to the court by personal delivery, telefacsimile communication, or electronic means prior to the entry of such order, with notice given to the person’s counsel or to the person, if unrepresented.

The provision for examination to determine whether the person should be considered for final discharge would be amended to adjust the applicable standard from the person’s mental abnormality or personality having “changed” to having “significantly changed.”

References to “transitional release program” would be changed to “transitional release.”

The bill would add a provision requiring a current examination of the person's mental condition be made and submitted to the court and the Secretary once each year.

Individual Person Management Plans and Appeals

The bill would amend the statute governing rights and rules of conduct for various persons in the custody of the Secretary, including sexually violent predators, to clarify that the existing provision allowing use of an individual person management plan as needed for safety and security purposes in various situations may be used for behavioral management in such situations and that the list of situations is non-exclusive. The wording of the list of situations would be amended to provide grammatical consistency and to add "disruption of the therapeutic environment on the unit" to the list of situations.

The provision in this statute governing appeals from a final agency determination would be amended to require all documentation submitted through Larned State Hospital and all agency responses accompany a request for hearing. The bill would require a request for hearing be dismissed if the appellant failed to demonstrate exhaustion.

Technical Changes

Finally, the bill would make non-substantive changes to statutory references to ensure statutory consistency.

Conference Committee Action

The Conference Committee agreed to remove the contents of SB 266, as it entered conference, regarding collateral sources for crime victims compensation. [*Note:* The Conference Committee on SB 261 agreed to add these provisions to the Conference Committee report on SB 261.]

The Conference Committee then agreed to insert the language of HB 2734, as amended by House Committee on Judiciary, and also add the provisions regarding individual person management plans and appeals from a final agency determination.

Background

HB 2734 (Kansas Sexually Violent Predator Act Amendments)

HB 2734 was introduced by the House Committee on Judiciary at the request of the Kansas Department for Aging and Disability Services (KDADS).

In the House Committee hearing, a representative of KDADS testified in support of the bill. A representative of the Attorney General's Office provided written-only proponent testimony. The chief judge of the 22nd Judicial District testified as a neutral conferee, requesting the Committee amend the bill to specify a court services officer may not be named as a monitor.

The House Committee:

- Adopted an agreed-upon amendment from KDADS and the Attorney General's Office changing the term "professional monitor" to "conditional release monitor," clarifying forwarding procedure and statutory references, striking a provision that would have given deference to the recommendation of the treatment staff and progress review panel regarding conditional release, providing notice of a request for an emergency *ex parte* order to take a person on conditional release into custody, and adjusting the standard for determination of consideration for final discharge;

- Adopted the amendment requested by the chief judge of the 22nd Judicial District specifying a court services officer may not be named as a monitor; and
- Adopted amendments requiring the monitor be appointed by the court, requiring a sworn affidavit be submitted to request an emergency *ex parte* order, and removing provisions that would have adjusted procedures for appeal of KDADS' actions pursuant to the Kansas Administrative Procedure Act.

[*Note:* All House Committee amendments were retained by the Conference Committee, except the Conference Committee agreed to restore provisions regarding independent person management plans and appeals from a final agency determination that the House Committee had removed.]

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDADS states enactment of the bill would not have a fiscal effect on the agency. The Office of Judicial Administration indicates there could be a fiscal effect on the operations of the court system, but it is not possible to predict the number of additional court cases or how complex and time-consuming they would be, so a fiscal effect cannot be determined. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

Kansas Sexually Violent Predator Act; conditional release; annual review; final discharge

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