

Kansas Department of

Social and Rehabilitation Services

Don Jordan, Secretary

Senate Judiciary Committee
March 14, 2007

**HB 2001 - Rights and Rules
of Sexual Predator Treatment Program
Residents**

Health Care Policy
Dr. Mark Schutter, Superintendent
Larned State Hospital

For additional information contact:
Public and Governmental Services Division
Kyle Kessler, Deputy Secretary

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.0141
fax: 785.296.4685
www.srskansas.org

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Chairman Vratil and members of the Committee I am Dr. Mark Schutter, Superintendent of Larned State Hospital. Thank you for allowing me to speak with you today.

In carefully considering House Bill 2001, I think it is critical to remember that patients receiving services in the various programs at the different state hospitals are very different from one another. We ought to think about each patient group separately when making decisions impacting community safety, the safety of our hospital employees, the safeguarding of patient rights, and the responsible use of the state's resources. This bill preserves the rights of patients with a serious mental illness or a developmental disability, gives professionals the means to better ensure the safety of children in our communities and employees at our state hospitals, and permits better clinical and fiscal management of certain patient situations.

Please join me in looking at some of the changes that HB 2001 proposes. Section 1 outlines the rights for the Sexual Predator Treatment Program (SPTP) residents. This is in recognition of the fact that compared to individuals with severe and persistent mental illness in LSH and OSH's other programs, or individuals with developmental disabilities at KNI or Parsons, the vast majority of SPTP residents function at a high cognitive level and are not mentally ill outside the area of their sexual offending. These are individuals who do not need the same safeguards with respect to patient rights that other patients do. The legislature recognized that sexually violent predators are different in important ways from most with a mental illness or developmental disability when the Violent Sexual Predator Act was created in 1994. The vast majority of SPTP residents are diagnosed as pedophiles and over 50% are also diagnosed with anti-social personality disorder. Only about 2% of residents are diagnosed with a serious mental illness. The Bill of Rights for Mentally Ill Patients does not fit the treatment and security needs of the Sexually Violent Predator (SVP) population. Other states have recognized this fact and have adopted a separate bill of rights for SVP's. Looking at two examples, we find that Wisconsin's bill of rights is very detailed, while New Jersey's simply acknowledges the differences in populations and directs their Secretary to design rules and regulations based on the needs and characteristics of that population.

While Section 2 (c) has been expanded to include all SRS employees working at any

state hospital, it will not infringe on the rights of mentally ill or developmentally disabled patients. Patients whose actions are substantially driven by their mental illness or developmental disability are unlikely to be found competent to stand trial. Each battery and each patient will be considered on a case by case basis, with a focus only on those patients who are clinically considered to be responsible for their actions. In Larned, the County Attorney often inquires about the severity of a patient's illness before filing charges. While civilly committed patients in the Psychiatric Services Program at Larned (which treats patients with mental illness) commit substantially more assaults and batteries than individuals in the Sexual Predator Treatment or State Security Programs, only a subset of them would be seen as potentially competent and/or criminally responsible.

Section 3 (d) states clearly that the rights afforded residents of the SPTP program need to be considered separately from those patients whose low functioning calls for special protection of their rights. SVP's, due to their personality structure and tendencies toward criminal thinking and behavior, need to be managed differently. For example, while it is important to preserve the confidentiality of mail for mentally ill and developmentally disabled individuals, SVP's have at times abused this right. In one LSH example, SPTP residents sent phone cards to developmentally disabled females in the community who they then attempted to coerce into engaging in phone sex with them. Some SPTP residents at LSH have also been able to use their right to confidential use of the mail to contact and harass prior victims. Under current guidelines, LSH was powerless to stop these acts. In yet another example, SPTP residents at LSH who pose an extremely high risk to the community are also protesting the use of handcuffs when taking them into town for medical appointments – though that measure is necessary to assure the safety of children.

Section 4 (2) offers a safe and more cost effective approach for dealing with SPTP residents who have become so irreversibly infirm that they can neither complete the program nor offend against another person. We currently have at least two such individuals who could be cared for in a nursing home at significantly reduced cost to the state. As the SPTP resident population continues to age, keeping such individuals in the SPTP program will result in increasing demands on scarce clinical and financial resources, and will achieve no practical security benefit over other options.

Section 5 (a) (b) clarifies roles and responsibilities with respect to costs incurred in providing care and treatment for committed persons, and for providing transportation and security for patients going to court hearings. Several SPTP residents are contesting the practice of requiring them to share the burden of the cost of treatment. This past year, LSH paid approximately \$101,000 in SPTP resident wages and recouped roughly \$32,000 to pay their bills. Section 5 (c) helps the state avoid an unreasonable drain on state resources due to patient-initiated court involvement. These changes are

particularly important with respect to the residents in the SPTP program who are more litigious than any other patient population. There are now several court petitions or lawsuits filed by SPTP residents who consistently see themselves as victims of the State of Kansas and further proclaim that their rights have been violated because they are not allowed sufficient freedom to do as they like, or that their accommodations are not adequate.

In closing, HB 2001 does not detract from the preservation of the rights of individuals with a mental illness or a developmental disability whose level of functioning calls for special sensitivity to and protection of those rights. It does allow for a more appropriate balance between patient rights and the rights of community members and state employees to be protected from harm, and it helps ensure wise use of scarce resources.

I will be happy to answer any questions from the Committee.