

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 102

As Recommended by Senate Committee on
Judiciary

Brief*

SB 102 would amend the Kansas Sexually Violent Predator Act (SVPA) regarding the notice of release or anticipated release of sexually violent predators (SVPs).

Notice of Release or Anticipated Release

Under current law, when it appears a person meets the criteria of an SVP, the agency with jurisdiction is required give written notice to the Attorney General and a multidisciplinary team (as defined in the statute) 90 days prior to the release or anticipated release of such person. The bill would provide that on and after July 1, 2022, and prior to July 1, 2023, such notice would be required to be given 90 days to two years prior to such release or anticipated release. On and after July 1, 2023, notice would be required to be given two years prior to such release or anticipated release.

The bill would add the following non-exclusive list of situations in which such notice must be given:

- Anticipated release from total confinement of a person convicted of a sexually violent offense, except as soon as practicable following readmission to prison of a person returned for less than 90 days for revocation of postrelease supervision;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Release of a person charged with a sexually violent offense who has been determined to be incompetent to stand trial;
- Release of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect; or
- Release of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect, and the jury answers in the affirmative to a special question regarding criminal intent.

Detention and Secure Confinement of SVPs

The bill would amend a statute governing the process for a court to determine probable cause that a person is a SVP to provide an exception to the current rule that upon a probable cause finding, the court must direct that the person be taken into custody and detained in county jail until such time a determination is made whether the person is subject to confinement under the SVPA. The bill would provide this transport and detention to county jail would not occur when the person is subject to secure confinement at a facility operated by the Secretary of Corrections until such confinement ends. In addition, the bill would add a provision to this section that would allow the court to secure such confined person's attendance at the proceeding by directing the sheriff of the county where the proceeding will be held to take the person into physical custody and detain in county jail for such time reasonable to secure the person's attendance at the proceeding. The bill would specify that nothing in the statute creates rights regarding appearance at proceedings or the amount of time detained in county jail for the person alleged to be a SVP.

The bill also would change a notice requirement for the probable cause hearing to replace timing based upon when

the person is taken into custody with timing based upon the filing of a petition under the SVPA, remove references to “detainer” or “detained,” adjust the definition of “agency with jurisdiction” to reflect the other amendments made by the bill, and make clarifying amendments.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of the Office of the Attorney General (OAG).

Senate Committee on Judiciary

In the Senate Committee hearing on February 17, 2021, representatives of the OAG and the Kansas Sheriffs Association testified as **proponents** of the bill, stating the bill would reduce burdens on county jails by reducing the time possible SVPs spend in county jails during the commitment process and allowing the commitment process to begin earlier while the possible SVP is still in the custody of the Kansas Department of Corrections (KDOC).

A representative of KDOC provided neutral testimony providing information on the current process and the additional resources KDOC would need under the provisions of the bill.

A representative of the Kansas Association of Criminal Defense Lawyers provided written-only **opponent** testimony, stating concerns regarding hearing rights, the amount of time a person may be detained under the bill, and funding.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, KDOC indicates enactment of the bill would require additional resources because of the new

timeframe for processing SVPs. KDOC states that it would require \$1,132,216 in FY 2022 from the State General Fund to review additional cases in which the SVPA may apply and to provide additional sex offender treatment. Of that amount, \$229,216 would be for two contract Clinical Services Report Writers, \$75,000 would be for 1.00 Administrative FTE position, \$660,000 would be for 8.00 Program/Treatment Provider FTE positions, \$93,000 would be for 1.00 Program/Treatment Supervisor FTE position, and \$75,000 would be for travel and equipment for the additional positions.

The Office of Judicial Administration states enactment of the bill could require a judge to enter more orders in a sexually violent predator case. The additional expenditures cannot be estimated but are anticipated to be negligible.

The OAG could incur some additional costs during the transition of reporting periods because it would receive an increase in the number of notices from KDOC. OAG could also have an increase in cases to litigate to determine the SVP status. However, a precise fiscal effect cannot be estimated because the number of additional cases is unknown.

The Kansas Association of Counties states that because the county sheriff with jurisdiction would be responsible for transporting, housing, and monitoring the sexually violent predators, the bill could increase expenditures. However, it is not possible to estimate the fiscal effect. The League of Kansas Municipalities states that passage of the bill would have a negligible effect on cities that could be absorbed within existing budgets.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Sexually Violent Predator Treatment Program; sexually violent predators; notice of release or anticipated release; Attorney General; multidisciplinary team; Kansas Department of Corrections