KANSAS

DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

Don Jordan, Secretary

Senate Ways & Means Committee
January 27, 2009

Overview of Sexual Predator Treatment Program and Expansion

Disability & Behavioral Health Services
Ray Dalton, Deputy Secretary

For Additional Information Contact:
Patrick Woods , Director of Governmental Affairs
Docking State Office Building, 6th Floor North
(785) 296-3271

KANSAS
DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

Overview of Sexual Predator Treatment Program and Expansion

Senate Ways & Means Committee
January 27, 2009

Chairman Emler and members of the Committee, I am Ray Dalton, Deputy Secretary of Social and Rehabilitation Services. Thank you for the opportunity to talk with you today about the Sexual Predator Treatment Program (SPTP).

Overview

The Sexual Predator Treatment Program (SPTP) was established in 1994 by the Sexual Predator Act (K.S.A. 59-29A01) to provide treatment for convicted sex offenders who have finished their prison sentences, and who have been civilly committed by the courts to the SPTP inpatient treatment program at Larned State Hospital (LSH). The SPTP was given a dual mission. First, SPTP's goal is to protect the public from any further victimization by sexual offenders committed to the program. Second, SPTP is required to provide a program of treatment which would assist motivated offenders to reduce their risk for re-offense to the point that they could safely live in open society and become contributing citizens.

The SPTP is comprised of 7 phases of treatment: 1) orientation and preliminary identification of issues; 2) academic learning of principles; 3) application of principles; 4) completion of inpatient issues and development of a relapse prevention plan; 5) reintroduction to open society and preparation of transition; 6) demonstration of ability to perform transition tasks (getting a job, paying bills, outpatient therapy, etc.) and 7) formal transition (ordered by the Court). Phases 1 through 5 are located at LSH; phases 6 and 7 are located at Osawatomie State Hospital.

Treatment Standards

States have an obligation to provide a minimally acceptable and appropriate level of professional treatment to those who are forcibly detained. It is a requirement of due process to provide available health treatment to a convicted individual with a mental condition. The Supreme Court has recited ten specific standards, know as the **Turay Standards,** by which an institutional based sexually violent predator program must be judged in order to meet due process constitutional muster (Turay v. Seling, 1999 Wash. LEXIS 74 (2000)). The standards consist of:

- Adequate, competent staff that is supervised by a mental health professional.
- Appropriate training of staff in order to ensure a consistency of treatment between all staff.

- Individualized treatment plans for patients. This includes providing the resident with a "roadmap" in a manner understandable to the resident as to what it takes to complete the treatment and show the progress of the resident.
- Appropriate behavioral management policies and procedures.
- Inclusion of the resident's family in the rehabilitation effort, including visitation, telephone, and mail.
- A treatment oriented "flavor" to the facility that is lacking a Department of Corrections "flavor".
- Separation of participating residents from non-participating residents, in order to avoid harassment of the participating residents.
- Educational, vocational, religious, and recreational opportunities.
- Availability of a grievance procedure.
- External oversight, either in the form of licensing, certification, or a consultation agreement.

Overarching Principle

The overarching principle of the program is "no more victims," which we believe is consistent with the legislative intent to protect the citizens of Kansas. Philosophically, we believe this goal allows for the possibility of positive, therapeutic change by the SPTP residents while also maintaining increased responsibility to protect the citizens of Kansas, especially its children. In that sense, the program views itself as part of the child protection network within SRS. The program is also structured to meet the Constitutional requirements set out by the United States Supreme Court.

Growth of the Program

The program has been steadily growing from its inception in 1994. We currently have 175 residents in the program at Larned and 8 residents in the transition program at Osawatomie State Hospital. It is difficult to predict the actual number of offenders who will enter the program from year to year. To illustrate this challenge, let me describe what the process is for a person to be committed to the program.

Within 90 days of release from prison or a state mental health hospital, an individual who has been convicted of a violent sex offense and has a mental abnormality, or has been found not guilty by reason of insanity for a violent sex offense, will be reviewed by the Multidisciplinary Team (MDT) to assess the level of risk to sexually reoffend upon release. The MDT is a group of five representatives from state agencies, mental health professionals, and sex offender treatment professionals, who are appointed by the Secretary of Corrections. Once assessed by the MDT, the case is reviewed by the Prosecutor's Review Committee within the Attorney General's (AG) office to determine if there is enough probable cause to detain the individual.

If so, there is a hearing in the county of the original conviction. If the probable cause of the AG's office is upheld, the individual is ordered to Larned State Security Program (LSSP) for an inpatient sexually violent predator evaluation. If the person is found by LSSP to meet the definition of sexually violent predator (SVP), he is returned to the county jail and awaits trial. He may stipulate to being a SVP and be immediately committed to the SPTP on the grounds of Larned State Hospital, or he may wait for a jury trial, which will determine if he is a sexually violent predator. At any time after the assessment by the MDT, if there is a determination made that the individual does not meet the criteria for SVP, he may be released.

Every person ultimately committed to the SVP program has been screened several times and determined to present an extremely high level of risk of repeating their prior sex offending behaviors. Currently, approximately 3.9% of those persons who are being released from DOC custody with a history of sexual offending behavior are committed under the law. Attached is a chart depicting the last five years of DOC and SPTP commitments. (*Attachment A)*

Also attached (*Attachment B*) is a chart which shows the number of possible SVPs assessed by the MDT and the final number who are committed to the SPTP. As you can see the number of inmates assessed fluctuates through the years as well as the number committed to the SPTP.

2006 House Bill 2576 (*Jessica's Law*) which was enacted on July 1, 2006, is another complicating factor in determining the growth of the program. With the passing of this law it was estimated that each year 77 sex offenders would be sentenced to 25 + years or more. Logically, this would suggest that commitments to the SPTP will decline at some future time due to these longer prison sentences. However, the exact impact on the number of new commitments into the SPTP is uncertain and will not be known for several years. According to Helen Pedigo, Executive Director of the Kansas Sentencing Commission, the FY08 report will include some early predications on the impact of Jessica's law on the system; however, it is too early to accurately report on the long term impact.

The Kansas Sentencing Commission's August 2007, *Fiscal Year 2008 Adult Inmate Prison Population Projections report,* reported there were 5 sex offenders sentenced under the new law and only two of those were sentenced under the "Hard 40 and Hard 25". The other three were sentenced with a downward departure from the guidelines to 20, 66, and 180 months.

For FY 2008, Helen Pedigo has estimated that there will be 50 sentenced under Jessica's Law. As of May 15, 2008, about half had been sentenced with the "Hard 25" and two with the "Hard 40". The others were sentenced with a downward departure including one probation sentence and a minimum incarceration sentence starting at 55 months.

Because of the large percentage of those sentenced with a downward departure under Jessica's Law the impact on admissions to the SPTP may be small. However, because this data is from only two years it is too early to identify any real effect.

The best estimates of growth at this time are the historical averages which are approximately 16 persons per year to the SPTP at LSH and approximately two persons per year moving from the inpatient program at Larned to the Transitional Housing Services at OSH.

Release Rates

The attached chart, (*Attachment C*) taken from an August 2007 comparison study of state laws authorizing involuntary commitment, by the Washington State Institute for Public Policy, compares 2006 discharge and release rates from the states with civil commitment laws. The numbers of persons released from similar programs around the country appear in general to be higher than in Kansas. This is due, in part, to the mechanism of release in some states, in which release is determined by an independent panel of persons and the courts with no direct input from the program. It is also due, in part, to the structure of the laws in some states which either require a periodic re-commitment of the individual or which have no provision for transition

and take an "all or nothing" approach to offender release. In its 14-year history, Kansas has had 2 persons who have been granted final release by the courts. There are two residents currently on conditional release, and 10 persons in the transitional facility of the program at Osawatomie State Hospital.

Because of public concerns about locating sexual predators in the community, SRS has experienced difficulty in finding suitable placements for residents who have been determined to no longer be a threat due to their age and health condition. In addition, SB 506 which passed during the 2006 legislative session, included residency restrictions for sex predator transitional release and conditional release facilities. These restrictions, (facilities can't be within 2,000 feet of churches, schools, homes with children residing in them etc.) will make it more difficult to place these individuals in the community.

One aspect of the Kansas program which is widely admired around the country is the systematic structure of our transition programming. Few states, with the exception of Arizona, have been able to approach our 3-phase system with its separate facility for transitioning. This is a strong advantage of the Kansas approach but also adds to time required for a resident to complete the program. Given the focus of "no more victims" for the Kansas program, this additional time has the value of giving program staff the opportunity to observe the real-world behavior of the resident before any recommendation for conditional release is made.

Future Costs Estimates

For several years now SRS has requested funding for the increase in census at the SPTP based on a just in time funding process, because of the unpredictability of the actual number of offenders who will enter the program from year to year. When possible we have requested funding through the normal budget process, but have also had to ask for a Governor's Budget Amendment when the census unexpectedly spiked during a year. We base our request for additional funding and staff on whether we have to open an entirely new ward or just another section to a ward. When a new ward is opened this takes more staffing then just opening another section to the ward, because there is a minimum base staffing needed, to include direct care staff as well as administrative staff, just to open the ward. Once opened there is a smaller incremental increase in staffing needed as patients are added. There is a wide range of staff needed; from direct care staff, such as MHDD Technicians, nurses, activity therapists, psychologists; support staff such as, safety and security officers, food service workers, administrative specialists custodial workers, general maintenance and repair workers, just to name a few. The staffing ratio of total staff to residents for the SPTP is 1.55 staff per resident, as compared to a staff to patient ratio of 2.57 staff per patient for the other programs provided at LSH.

SPTP - LSH

As the program grows, additional resources are needed. The chart below shows the estimated cost to staff the growth in the SPTP over the next few years, until the physical capacity at LSH is reached.

Larned State Hospital
Sexual Predator Treatment Program

Fiscal Year	SPTP Expenditures	SPTP Staff	Residents (ADC)
2009 Requested	$ 12,325,282	249	160
Estimated Total FY 2009	$ 13,257,174	272	170
Estimated Total FY 2010	$ 15,048,296	286	180
Estimated Total FY 2011	$ 16,180,853	310	200
Estimated Total FY 2012	$17,439,541	332	214

We are requesting $535,294 from the State General Fund as an FY 09 supplemental request for the SPTP at Larned. The SPTP has surpassed its budgeted capacity. This supplemental request will fund treatment and care for the additional residents beyond the budgeted program capacity for six months in FY 09.

Transitional House Services - OSH

The Governor's budget recommendation in FY 09 and FY 10 provides $332,947 through a shift from other agency resources for an additional six staff for the growth of the Transitional House Services (THS) at OSH . The THS has been funded to care for six residents and the program currently has 8 residents. The maximum capacity of the TSH facilities at OSH is 12 residents. The funding is for twelve months and reflects current staffing.

Comparison to Other Programs

The Kansas SPTP compares well with other programs across the country. I have already mentioned the study by the Washington State Institute for Public Policy when I talked about the release rates, this same study compared the cost of the programs in different states as well. (*Attachment D*) As you can see Kansas' program costs are about in the middle of all of the states reviewed.

In addition to this study, the SPTP was reviewed in July of 2008, by Robert J. McGrath, a nationally known consultant on Sexually Violent Treatment Programs. His review of the Kansas SPTP found that overall the program was sound, followed best practices and that administrators and staff were knowledgeable and committed. He also observed that the amount of treatment was average or slightly above average compared to other programs and that the rate of placement in the transitional release phase of the program (about 6% of the committed population) is similar to or slightly higher than other programs.

Physical Capacity Needs

In addition to the need to fund staffing and Other Operating Expenses (OOE) for the growth of these programs, as you have already heard from my testimony we are running out of physical space to treat the SPTP and THS residents. If the current growth rate is maintained we will be out of space for the SPTP at LSH sometime during FY2012, and we will be out of space at the THS at OSH by 2010.

To remedy this, we have requested funding for the following capital improvements :

SPTP-LSH

In our Five Year Capital Improvement Plan in FY 2010 we are requesting $2,538,800 from the State Institutions Building Fund (SIBF) for planning funds for a 90 bed expansion at LSH, and $40,082,060 over FY 2011 and FY 2012 for the construction of the 90 bed expansion. Several different construction options were considered and the expansion onto the current SPTP site was the most economical and functional option.

In FY 2010 we are requesting $263,350 from the SIBF to renovate an area adjacent to the existing THS program in the Biddle Building to add four additional beds. This can be done relatively quickly and will be a short term solution. We are also requesting in FY 2010 $318,202 for planning money for the construction of a 28 bed expansion, which would consist of an apartment building with 14 two bedroom apartments. We are requesting in FY 2011 $5,073,143 for construction of the 28 bed facility.

A proviso to last year's Appropriations Bill directed SRS to conduct a study to consider the feasibility of transferring the Sexual Predator Treatment Program (SPTP) from Larned State Hospital and relocating it to a new location within the state.

Attached (*Attachment E*) is an estimate of what it would cost to build a new 300 bed SPTP at another location in the state. The estimate for a 300 bed facility is based on the current 214 beds available, and the need for an additional 90 beds to accommodate the growth. This estimate does not include the cost of land, or any additional cost of bringing roads and utilities to the site selected, as these costs can vary considerably based on how close utilities and roads are to the selected site. This scenario would also require an increase in staffing to operate the facility, as currently on the LSH campus the administrative and support functions (maintenance, dietary, personnel etc.) are centralized and supports not only the SPTP, but also the Adult Treatment Center and the State Security Hospital.

Summary

In closing I would like to reemphasize this program has been built on the overarching principle that there will be "no more victims," as well as a treatment program focused on reducing the risk of reoffending and meeting constitutionality requirements of the program.

While admission rates to the SPTP may be difficult to predict with certainty, it is certain the program will continue to grow. With this increased growth will come the need for increased resources. These resources will be critical to ensure the continued success of this program.

I will be glad to answer any questions.