

Journal of the Senate

SEVENTIETH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Wednesday, May 17, 2017, 10:00 a.m.

The Senate was called to order by Vice President Jeff Longbine.

The roll was called with 39 senators present.

Senator Bowers was excused.

Invocation by Reverend Cecil T. Washington:

Heavenly Father, it is with great appreciation that we are blessed to come into these halls again. We're here to serve at Your behest. And so to have favor with You, and a good standing with the people, help us apply the ideals and wisdom of Proverbs 3.

In that passage, You call us to trust Your teachings and follow Your commands. And even though doing so, can sometimes be terrifying, clarify for us the need to put our total trust in You.

Lord, we often find that our calculators malfunction. So, it's good to know we don't have to figure out everything for ourselves. It's good to know that You are worthy of our trust and we can rely on You. All of Your promises are Amen and Amen. So, when we come to the forks in our roads, we can know that the Divine Calculator already has things figured out. And, we can trust You to reveal the way to take...the right from the wrong...the good from the better...if and when to compromise.

And when we follow Your lead, You've promised that our lives will enjoy both quantity of years and quality of years.

So, as this legislative process moves forward, guide each participant to do as the hymn writer, John Sammis, suggested all the way back in 1887, to "trust and obey...for there's no other way." In Jesus' name, Amen.

The Pledge of Allegiance was led by Vice President Longbine.

On motion of Senator Denning, the Senate recessed until the sound of the gavel.

The Senate met pursuant to recess with President Susan Wagle in the Chair.

ORIGINAL MOTION

Senator Denning moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bill: **HB 2128**.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on

Senate amendments to **HB 2128** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 7 through 36;

By striking all on page 2;

On page 3, by striking all in lines 1 through 18; following line 18, by inserting:

"Section 1. K.S.A. 2016 Supp. 59-29a08 is hereby amended to read as follows: 59-29a08. (a) Each person committed under the Kansas sexually violent predator act shall have a current examination of the person's mental condition made once every year. The secretary shall provide the ~~committed~~ person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person under the Kansas sexually violent predator act. The court shall file the notice and the report upon receipt.

(b) The person must file a request for an annual review hearing within 45 days after the date the court files the annual written notice. Failure to request a hearing within 45 days pursuant to this subsection waives the person's right to a hearing until the next annual report is filed by the court. 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 shall be permitted to petition for conditional release. Only a person in conditional release shall be permitted to petition for final discharge.

(c) The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, an examiner pursuant to K.S.A. 60-235, and amendments thereto, and such expert or professional person the examiner shall have access to all available records concerning the person. The court that committed the person under the Kansas sexually violent predator act shall then conduct an annual review of the status of the committed person's mental condition. If the person is indigent and makes a request for an examiner, the court shall determine whether the services are necessary and shall determine the reasonable compensation for such services. The court, before appointing an examiner, shall consider factors including the person's compliance with institutional requirements and the person's participation in treatment to determine whether the person's progress justifies the costs of an examination. The appointment of an examiner is discretionary.

(d) At the annual review hearing, the burden of proof shall be upon the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in transitional release. The report, or a copy thereof, of the findings of a qualified expert shall be admissible into evidence in the annual review hearing in the same manner and with the same force and effect as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person is presumed to be unable to show probable cause to believe the person is safe to be released.

(e) The ~~committed~~ person shall have a 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.

~~(b)~~ Nothing contained in the Kansas sexually violent predator act shall prohibit the person in conditional release from otherwise petitioning the court for discharge at the annual review hearing.

(f) If the person does not file a petition requesting a hearing pursuant to subsection (b), the court that committed the person under the Kansas sexually violent predator act shall then 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 that an annual review hearing is warranted. The court shall enter an order reflecting its determination.

~~(e)(g)~~ If the court at the annual review hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has ~~so~~ significantly changed so that the person is safe to be placed in transitional release, then the court shall set a hearing for transitional release on the issue. The ~~committed~~ person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person pursuant to K.S.A. 59-29a06, and amendments thereto ~~assistance of counsel~~. The attorney general shall represent the state and shall have a right to have the ~~committed~~ person evaluated by experts chosen by the state. The ~~committed~~ person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing for transitional release shall be upon the state to prove beyond a reasonable doubt that the ~~committed~~ person's mental abnormality or personality disorder remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in repeat acts of sexual violence.

~~(d)(h)~~ If, after the hearing for transitional release, the court is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

~~(e)(i)~~ If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the transitional release program. The secretary may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

~~(f)(j)~~ At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written, facsimile or electronic form delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

~~(g)(k)~~ Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice

of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

(1) For the purposes of this section, if the person is indigent and without counsel, the court shall appoint counsel to assist such person.

Sec. 2. K.S.A. 2016 Supp. 59-29a10 is hereby amended to read as follows: 59-29a10. (a) (1) If the secretary determines that the person's mental abnormality or personality disorder has ~~so~~ significantly changed ~~so~~ that the person is not likely to engage in repeat acts of sexual violence if placed in transitional release, the secretary shall authorize the person to petition the court for transitional release. The petition shall be served upon the court and the attorney general. The court, upon service of the petition for transitional release, shall issue notice of a hearing to be scheduled within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of ~~such attorney's~~ the attorney general's choice. The burden of proof shall be upon the attorney general 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 at large and that if placed in transitional release is likely to engage in repeat acts of sexual violence.

(b)(2) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not sufficiently safe to warrant transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(c)(3) The provisions of K.S.A. 59-29a08(e), ~~(f)~~ and ~~(g)~~ (i), (j) and (k), and amendments thereto, shall apply to a transitional release pursuant to this section.

(b) (1) If the secretary determines that the person's mental abnormality or personality disorder has significantly changed so that the person is not likely to engage in repeat acts of sexual violence if placed in conditional release, the secretary shall authorize the person to petition the court for conditional release. The petition shall be served upon the court and the attorney general. The court, upon service of the petition for conditional release, shall issue notice of a hearing to be scheduled within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The burden of proof shall be upon the attorney general 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 at large and that if placed in conditional release is likely to engage in repeat acts of sexual violence.

(2) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not sufficiently safe to warrant conditional release, the court shall order that the person remain either in secure commitment or in transitional release. Otherwise, the court shall order that the person be placed in conditional release.

(3) The provisions of K.S.A. 59-29a18(h) and 59-29a19(a), (d) and (e), and amendments thereto, shall apply to a conditional release pursuant to this section.

Sec. 3. K.S.A. 2016 Supp. 59-29a18 is hereby amended to read as follows: 59-29a18. (a) During any period the person is in transitional release, the person committed under this act at least annually, and at any other time deemed appropriate by the treatment staff, shall be examined by the treatment staff to determine if the person's mental abnormality or personality disorder has ~~so~~ significantly changed so as to warrant such person being considered for conditional release. ~~The treatment staff shall forward a report of its examination to the court. The court shall review the same. If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in conditional release, the court shall then set a hearing on the issue. The attorney general shall have the burden of proof to show beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that the person is not safe to be at large and that if placed on conditional release is likely to engage in repeat acts of sexual violence. The person shall have the same rights as enumerated in K.S.A. 59-29a06, and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary. The secretary shall provide the person with a written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the report, as well as the notice and waiver form, to the court that committed the person under the Kansas sexually violent predator act. The court shall file the notice and the report upon receipt.~~

(b) The person must file a request for an annual review hearing within 45 days after the date the court files the annual written notice pursuant to subsection (a). Failure to request a hearing within 45 days pursuant to this subsection shall waive the person's right to a hearing until the next annual report is filed by the court. A contested annual review hearing for conditional release shall consist of consideration about whether the person is entitled to conditional release from transitional release. Only a person in transitional release shall be permitted to petition for conditional release. No person in transitional release shall be permitted to petition for final discharge.

(c) The person may retain, or if the person is indigent and so requests, the court may appoint, an examiner pursuant to K.S.A. 60-235, and amendments thereto, and the examiner shall have access to all available records concerning the person. If the person is indigent and makes a request for an examiner, the court shall determine whether the services are necessary and shall determine the reasonable compensation for such services. The court, before appointing an examiner, shall consider factors including the person's compliance with institutional requirements and the person's participation in treatment to determine whether the person's progress justifies the costs of an examination. The appointment of an examiner is discretionary.

(d) At the annual review hearing, the burden of proof shall be upon the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in conditional release. The report, or a copy thereof, of the findings of a qualified expert shall be admissible into evidence in the annual review hearing in the same manner and with the same force and effect as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person is presumed to be unable to show probable cause to believe the person is safe to be released.

(e) The person shall have a 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.

(f) If the person does not file a petition requesting a hearing pursuant to subsection (b), the court that committed the person under the Kansas sexually violent predator act shall then 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 that an annual review hearing is warranted. The court shall enter an order reflecting its determination.

(g) If the court at the annual review hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in conditional release, then the court shall set a hearing for conditional release on the issue. The person shall be entitled to be present and entitled to the assistance of counsel. The attorney general shall represent the state and shall have a right to have the person evaluated by experts chosen by the state. The person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing for conditional release shall be upon the state to prove beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that the person is not safe to be placed in conditional release and if conditionally released is likely to engage in repeat acts of sexual violence.

(h) If, after the hearing for conditional release, the court is convinced beyond a reasonable doubt that the person is not appropriate for conditional release, the court shall order that the person remain either in secure commitment or in transitional release. Otherwise, the court shall order that the person be placed on conditional release.

(i) Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(j) For the purposes of this section, if the person is indigent and without counsel, the court shall appoint counsel to assist such person.";

Also on page 3, in line 19, by striking "75-4319 is" and inserting "59-29a08, 59-29a10 and 59-29a18 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "Kansas"; in line 2, by striking all before the second semicolon and inserting "sexually violent predator act; relating to examinations; transitional release; conditional release"; in line 3, by striking "75-4319" and inserting "59-29a08, 59-29a10 and 59-29a18"; in line 4, by striking "section" and inserting "sections";

RICHARD WILBORN
MOLLY BAUMGARDNER
DAVID HALEY

Conferees on part of Senate

BLAINE FINCH
FRED PATTON
JOHN CARMICHAEL

Conferees on part of House

Senator Wilborn moved the Senate adopt the Conference Committee Report on **HB 2128**.

On roll call, the vote was: Yeas 39; Nays 0; Present and Passing 0; Absent or Not Voting 1.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Denning, Doll, Estes, Faust-Goudeau, Fitzgerald, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kelly, Kerschen, Longbine, Lynn, Masterson, McGinn, Olson, Petersen, Pettey, Pilcher-Cook, Pyle, Rogers, V. Schmidt, Skubal, Suellentrop, Sykes, Taylor, Tyson, Wagle, Wilborn.

Absent or Not Voting: Bowers.

The Conference Committee Report was adopted.

CONSIDERATION OF MOTIONS TO CONCUR AND NONCONCUR

Senator Wilborn moved the Senate concur in House amendments to **H Sub SB 120**.

H Sub SB 120, AN ACT concerning the code of civil procedure; amending K.S.A. 2016 Supp. 60-102, 60-206, 60-216, 60-226, 60-230, 60-231, 60-234, 60-237 and 60-255 and repealing the existing sections; also repealing K.S.A. 2016 Supp. 60-268.

On roll call, the vote was: Yeas 39; Nays 0; Present and Passing 0; Absent or Not Voting 1.

Yeas: Alley, Baumgardner, Berger, Billinger, Bollier, Denning, Doll, Estes, Faust-Goudeau, Fitzgerald, Francisco, Givens, Goddard, Haley, Hardy, Hawk, Hensley, Hilderbrand, Holland, Kelly, Kerschen, Longbine, Lynn, Masterson, McGinn, Olson, Petersen, Pettey, Pilcher-Cook, Pyle, Rogers, V. Schmidt, Skubal, Suellentrop, Sykes, Taylor, Tyson, Wagle, Wilborn.

Absent or Not Voting: Bowers.

The Senate concurred.

MESSAGE FROM THE HOUSE

The House nonconcur in Senate amendments to **S Sub HB 2132**, requests a conference and has appointed Representatives Barker, Highland and Ruiz as conferees on the part of the House.

CHANGE OF CONFERENCE

The President appointed Senators McGinn, Billinger and Kelly to replace Senators Kerschen, Estes and Francisco as members of the conference committee on **HB 2079**.

ORIGINAL MOTION

On motion of Senator Denning, the Senate acceded to the request of the House for a conference on **S Sub HB 2132**.

The President appointed Senators Estes, Olson and Faust-Goudeau as conferees on the part of the Senate.

On motion of Senator Denning, the Senate recessed until the sound of the gavel.

The Senate met pursuant to recess with President Wagle in the chair.

On motion of Senator Denning, the Senate adjourned until 10:00 a.m., Thursday,

MAY 17, 2017

717

May 18, 2017.

CHARLENE BAILEY, CINDY SHEPARD, *Journal Clerks*.

COREY CARNAHAN, *Secretary of the Senate*.

