

Habeas Corpus Motions and Notice of Release of Sexually Violent Predators; HB 2607

HB 2607 amends time limitations for *habeas corpus* motions under KSA 60-1507 and amends the Kansas Sexually Violent Predator Act (SVPA) regarding the notice of release or anticipated release of sexually violent predators (SVPs).

Time Limitations for Habeas Corpus Motions

Under continuing law, such motions must be filed within one year of:

- The final order of the last Kansas appellate court to exercise jurisdiction on a direct appeal or the termination of such appellate jurisdiction; or
- The denial of a petition for *writ of certiorari* to the U.S. Supreme Court or issuance of such court's final order following granting such petition.

The bill adds that such motions have to be filed within one year of the decision of the district court denying a prior motion under the section, the opinion of the last appellate court in this state to exercise jurisdiction on such prior motion, or the denial of the petition for review on such prior motion, whichever is later.

The bill provides that this amendment would not bar actions under this section that are brought within one year of the bill's effective date.

Notice of Release or Anticipated Release of Sexually Violent Predators

Under current law, when it appears a person meets the criteria to be determined a SVP, the agency with jurisdiction is required to 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 requires that on and after July 1, 2023, and prior to July 1, 2024, such notice be given 90 days to two years prior to such release or anticipated release. On and after July 1, 2024, the bill requires notice to be given two years prior to such release or anticipated release.

The bill adds 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;
- 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 Sexually Violent Predators

The bill amends 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 the person to be taken into custody and detained in county jail until such time a determination is made on whether the person is subject to confinement under the SVPA. The bill provides the 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 adds a provision to this section to 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 the county jail for such time reasonable to secure the person's attendance at the proceeding. The bill specifies 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 changes 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, removes references to "detainer" or "detained," adjusts the definition of "agency with jurisdiction" to reflect the other amendments made by the bill, and makes clarifying amendments.