

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2313

As Amended by House Committee on Judiciary

Brief*

HB 2313, as amended, would create a new section requiring sexually violent predators civilly committed to the custody of the Secretary of Social and Rehabilitation Services (SRS) to exhaust all administrative remedies prior to filing any civil action that names as the defendant the State of Kansas, any political subdivision of the state, any public official, the Secretary of SRS, or any SRS employee, and to include proof of exhaustion with the petition. Courts would be required to dismiss the case if it is determined that an allegation of poverty is untrue or if the action or appeal is frivolous or malicious; fails to state a claim on which relief can be granted; or seeks monetary relief against a defendant who is immune from such relief.

Further, the bill would provide that a patient so committed cannot bring a civil action or appeal if on three or more prior occasions the patient, while in the custody of SRS, brought an action or appeal that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted. An exception would exist if the patient was under imminent danger of serious physical injury.

The bill would state that provisions of this new section do not apply to a writ of *habeas corpus*. However, it would amend existing law that generally defines the right to petition for *habeas corpus* to require a sexually violent predator civilly committed to the custody of SRS to file a petition for writ of *habeas corpus* within 30 days of the date the action was final.

*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>

Such time would be extended during the pendency of timely attempts to exhaust administrative remedies.

Background

In the House Committee on Judiciary, Representative Mitch Holmes, representatives of the Larned State Hospital, and the Kansas Department of Social and Rehabilitation Services (SRS) appeared in support of the bill. The Chief Judge of the 24th Judicial District, which includes Pawnee County where Larned State Hospital is located, submitted written testimony in support of the bill. The Committee amended the bill to clarify that the new section would not apply to a writ of *habeas corpus*, and moved the language added to the existing statute on writs of *habeas corpus* to its own subsection.

The fiscal note for HB 2313, as introduced, states the precise fiscal impact of passage on the courts cannot be determined as it could prevent the filing of cases in some circumstances, but could also create additional issues to litigate. Regardless, it indicates the fiscal effect would be able to be accommodated within existing resources.