

Shawn Sullivan, Secretary

Sam Brownback, Governor

To: Senate Judiciary Committee

From: Shawn Sullivan  
Secretary

Date: February 20, 2014

Subject: SB 400, Sexually violent predators; reimbursement for costs incurred by counties

Chairman King and members of the Committee:

I appreciate the opportunity to present testimony about the proposed legislation SB 400 and the impact it would have on the Kansas Department for Aging and Disability Services (KDADS) and Larned State Hospital (LSH).

Having a strong working relationship between KDADS, LSH, Pawnee County law enforcement, and the Pawnee County Judicial system is vital to the success of the state hospital system. KDADS recognizes the unique role that Pawnee County plays in serving the state and the residents of LSH, therefore, we strive to be a good partner with the local community and the county as a whole. For example, KDADS recently purchased a replacement fire truck, which assists with fire calls in the community of Larned. LSH has also been paying approximately \$130,000 per year towards the city of Larned's wastewater treatment plant upgrades. We value and depend upon these relationships to help keep our residents and employees safe and secure.

In July of 2012, KDADS took over the management of the state hospital system, including the Sexual Predator Treatment Program (SPTP), which is housed within LSH. During this transition, it was quickly discovered that criminal activity was taking place within the SPTP so KDADS worked closely with local authorities to remove three individuals from the program. This decision led to de-escalation of tensions within the SPTP unit and created a safer environment for both residents and staff.

Given the immediacy of the situation, KDADS felt it was appropriate to reimburse Pawnee County for the jail costs associated with removing these residents. However, this reimbursement was characterized as a "one-time money" appropriation. KDADS informed Pawnee County that any additional action would require legislative efforts.

KDADS has been working with both the legislative branch and local officials to try to help craft appropriate legislation to address these concerns. While KDADS position is officially "neutral" on SB 400, we have a number of concerns and considerations about this legislation that we ask the Committee to examine:

- KDADS is responsible for providing medical care and treatment to sexual predators involuntarily committed to LSH for treatment purposes. KDADS is not a criminal justice agency. Co-mingling those roles is inappropriate.

- This legislation would require that KDADS pay the full jail costs for every SPTP resident who commits a crime while in the hospital. However, KDADS would have no control over where residents are confined and the amount of costs which would be thereafter incurred. SPTP is a civil hospital. It would be inappropriate for a state hospital to choose where a criminal defendant is held in jail. At the same time, it would be inappropriate for a state hospital to pay jail costs over which it has no control. Both the place of confinement and the costs of confinement are functions of county government.
- KDADS would be required to bear the financial burden of paying for jail costs resulting from the commission of crimes by SPTP residents. However, it would have no ability to monitor and ensure that criminal prosecutions were being pursued as forcefully and efficiently as possible. This is not a criticism of current prosecutorial action in Pawnee County. Yet, it recognizes the factual consequences resulting from a requirement that one type of governmental entity (state hospital) pay for the costs of another type of governmental entity (county law enforcement).
- Some terms in the bill are vague and ambiguous, including the following, which need to be qualified:
  - “costs incurred”
  - “costs of medical care and treatment” – KDADS should not be responsible for new medical issues that arise while an individual is in the county jail. (i.e., if the individual gets into a fight and sustains new injuries or becomes ill).
  - “housing, food, and transportation” – There are no cost control mechanisms built into this legislation, which could increase overhead costs.
- While the fiscal note does not offer a specific price tag, this legislation could dramatically impact the budget of KDADS and LSH. SB 400 would require that the reimbursement for SPTP residents in the custody of county law enforcement come from the SPTP state general fund account at LSH. Currently, the entire appropriation to that account is allocated in the budget for treatment and operating costs of the SPTP. There would not be any funding available from which to pay these reimbursements.
- Should KDADS be required to pay costs, a separate account or fund should be created with money allocated as part of the annual budget. If the account or fund is depleted, then the county would have to file a claim with the Kansas Special Claims Committee, under article 9 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto

I am pleased that the Judiciary Committee is examining this issue and I look forward to working with you to address the concerns that I have mentioned. However, with the above noted, KDADS is neutral on this legislation.