

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 74**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 74 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 the action or appeal is frivolous or malicious; the petition fails to state a claim on which relief can be granted; or the petition 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 specify that the 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

*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>

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

Background

SB 74 was introduced in 2011 as a bill adding electronic solicitation and sexual exploitation of a child to the list of forfeiture offenses.

In the 2011 Senate Judiciary Committee, representatives of the Attorney General's Office and the Office of the Securities Commissioner spoke in support of the bill. The Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association, and Kansas County and District Attorneys Association submitted written testimony supporting the bill. The Committee amended the bill to add additional offenses to the forfeiture statute and recommended the bill be passed as amended.

In the 2011 House Judiciary Committee, a representative of the Attorney General's Office testified in support of the bill, and the Kansas County and District Attorneys Association submitted written testimony in support.

The 2012 House Judiciary Committee recommended a substitute bill be passed replacing the text of SB 74 with the text of HB 2313.

There is no fiscal note available for the substitute bill. Information regarding the fiscal note for HB 2313 is provided below.

Background of HB 2313

In the House Committee on Judiciary, Representative Mitch Holmes, representatives of the Larned State Hospital,

and 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.