

SESSION OF 2007

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 52**

As Agreed to April 2, 2007

Brief*

SB 52 would outline the rights and rules of conduct for sexually violent predators while committed to a treatment facility and would clarify the allocation of cost for a procedure to determine whether a person is a sexually violent predator.

Rights and Rules of Conduct

The bill would statutorily, instead of by rules and regulations, outline the rights of patients defined in the bill as mentally ill or a sexually violent predator.

Each patient would have the following rights:

- Upon admission or commitment, be informed orally and in writing of the their rights. Copies of patient's rights would be required to be posted conspicuously in each patient area, and would be available to the patient's guardian and immediate family.
- The right to refuse to perform labor which is of financial benefit to the facility in which the patient is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this subsection. Tasks of a personal housekeeping nature are not considered compensable

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/klrd>

labor. Patients could engage voluntarily in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the Department of Social and Rehabilitation Services (SRS) and if:

- The specific labor is an integrated part of the patient's treatment plan approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;
 - The labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;
 - The patient has given written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and
 - The labor involved is evaluated for its appropriateness by the staff of the facility at least once every 120 days.
- A right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for such patient's condition, within the limits of available state and federal funds.
 - A right to be informed of treatment and care and to participate in the planning of treatment and care.
 - Have the following rights, under the following procedures, to refuse medication and treatment:
 - Have the right to refuse all medication and treatment except as ordered by a court or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others or attempt or threaten to do such harm. A patient may refuse medications and medical treatment if the

patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment.

- Medication could not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program.
 - Patients would have the right to have explained the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered.
- A right to be free from physical restraint and seclusion, except as provided otherwise herein.
 - Restraints or seclusion could not be applied to a patient unless it is determined by the superintendent of the treatment facility or a physician or licensed psychologist to be necessary to prevent immediate substantial bodily injury to the patient or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. Restraint or seclusion could never be used as a punishment or for the convenience of staff. The extent of the restraint or seclusion applied to the patient would be the least restrictive measure necessary to prevent such injury to the patient or others, and the use of restraint or seclusion in a treatment facility would not exceed three hours without medical reevaluation. When restraints or seclusion are applied, there would be monitoring of the patient's condition at a frequency determined by the treating physician or licensed psychologist, which would be no less than once per each 15 minutes. The superintendent of the treatment facility or a physician or licensed psychologist would be required to sign a statement explaining the treatment necessity for the use of any restraint or seclusion and would make such

statement a part of the permanent treatment record of the patient.

- The provisions enumerated above would not prevent:
 - The use of seclusion as part of a treatment methodology that calls for time out when the patient is refusing to participate in a treatment or has become disruptive of a treatment process.
 - Patients could be restrained for security reasons during transport to or from the patient's building, including transport to another treatment facility. Any patient committed or transferred to a hospital or other health care facility for medical care could be isolated for security reasons within locked facilities in the hospital.
 - Patients could be locked or restricted in such patient's room during the night shift, if such patient resides in a unit in which each room is equipped with a toilet and sink or if the patients who do not have toilets in the rooms would be required to use a toilet at least once every hour, or more frequently if medically indicated.
 - Patients could be locked in such patient's room for a period of time no longer than one hour during each change of shift by staff to permit staff review of patient needs.
 - Patients also could be locked in such patient's room on a unit-wide or facility-wide basis as an emergency measure as needed for security purposes to deal with an escape or attempted escape, the discovery of a dangerous weapon in the unit or facility or the receipt of reliable information that a dangerous weapon is in the unit or facility, or to prevent or control a riot or the taking of a hostage. A unit-wide or facility-wide emergency

isolation order could only be authorized by the superintendent, or the superintendent's designee, of the facility where the order is applicable. A unit-wide or facility-wide emergency isolation order would be approved within one hour after it is authorized by the superintendent or the superintendent's designee. An emergency order for unit-wide or facility-wide isolation could only be in effect for the period of time needed to preserve order while dealing with the situation and could not be used as a substitute for adequate staffing. During a period of unit-wide or facility-wide isolation, the status of each patient would be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet would be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. The facility would be required to have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required.

- Individual patients who are referred by the court or correctional facilities for criminal evaluations could be placed in administrative confinement for security reasons and to maintain proper institutional management when treatment cannot be addressed through routine psychiatric methods. Administrative confinement of individuals would be limited to only patients that demonstrate or threaten substantial injury to other patients or staff and when there are no clinical interventions available that will be effective to maintain a safe and therapeutic environment for both patients and staff. Administrative confinement would not be used for any patient who is actively psychotic or likely to be psychologically harmed. The status of each patient

would be reviewed every 15 minutes to ensure the safety and comfort of the patient. The patient would be afforded all patient rights including being offered a minimum of one hour of supervised opportunity for personal hygiene, exercise and to meet other personal needs.

- The right not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient or the written consent of a parent or legal guardian, if such patient is a minor or has a legal guardian provided that the guardian has obtained authority to consent to such from the court which has venue over the guardianship following a hearing held for that purpose.
- The right to individual religious worship within the facility if the patient desires such an opportunity. The provisions for worship would be available to all patients on a nondiscriminatory basis. No individual could be coerced into engaging in any religious activities.
- A right to a humane psychological and physical environment within the hospital facilities. All facilities would be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities also would be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.
- The right to confidentiality of all treatment records, and as permitted by other applicable state or federal laws, have the right to inspect and to receive a copy of such records.
- Except as otherwise provided, have a right to not be filmed or taped, unless the patient signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient could

specify in such consent periods during which, or situations in which, the patient could not be filmed or taped. If a patient is legally incompetent, such consent would be granted on behalf of the patient by the patient's guardian. A patient could be filmed or taped for security purposes without the patient's consent.

- The right to be informed in writing upon or within seven days after admission, of any liability that the patient or any of the patient's relatives could have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.
- The right to be treated with respect and recognition of the patient's dignity and individuality would be required by all employees of the treatment facility.
- Patients would have an unrestricted right to send sealed mail and receive sealed mail to or from legal counsel, the courts, SRS, the superintendent of the treatment facility, the agency designated as the developmental disabilities protection and advocacy agency, private physicians, licensed psychologists, and have reasonable access to letter-writing materials.
 - A patient also would have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients or staff. The officers and staff of a facility could not read any mail covered by this clause.
 - The above rights to send and receive sealed and confidential mail would be subject to the following limitations:
 - An officer or employee of the facility at which the patient is placed could delay delivery of the mail to the patient for a reasonable period of time to verify

whether the person named as the sender actually sent the mail; could open the mail and inspect it for contraband outside the presence of the patient; or could, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy.

- The superintendent of the facility or the superintendent's designee could, in accordance with the standards and the procedure in place for denying a right for cause, authorize a member of the facility treatment staff to read the mail, if the superintendent or the superintendent's designee would have reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of the patient or others.
 - Residents could be restricted in receiving in the mail items deemed to be pornographic, offensive or which are deemed to jeopardize their individual treatment or that of others.
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- A right to reasonable access to a telephone to make and receive telephone calls within reasonable limits.
 - A right to be permitted to use and wear such patient's own clothing and personal possessions, including toilet articles, or be furnished with an adequate allowance of clothes if none are available. Provision would be made to launder the patient's clothing.
 - A right to be provided a reasonable amount of individual secure storage space for private use.
 - A right to reasonable protection of privacy in matters as toileting and bathing.

- A right to be permitted to see a reasonable number of visitors who do not pose a threat to the security or therapeutic climate of other patients or the facility.
- A right to present grievances under the procedures established by each facility on the patient's own behalf or that of others to the staff or superintendent of the treatment facility without justifiable fear of reprisal and to communicate, subject to restrictions enumerated earlier, with public officials or with any other person without justifiable fear of reprisal.
- A right to spend money as the patient chooses, except to the extent that authority over the money is held by another, including the parent of a minor, a court-appointed guardian of the patient's estate or a representative payee. A treatment facility could, as a part of its security procedures, use a patient trust account in lieu of currency that is held by a patient and could establish reasonable policies governing patient account transactions.

A patient's rights guaranteed under the bill could be denied for cause after review by the superintendent of the facility or the superintendent's designee, and could be denied when medically or therapeutically contraindicated as documented by the patient's physician or licensed psychologist in the patient's treatment record. The individual would be informed in writing of the grounds for withdrawal of the right and would have the opportunity for a review of the withdrawal of the right in an informal hearing before the superintendent of the facility or the superintendent's designee. There would be documentation of the grounds for withdrawal of rights in the patient's treatment record. After an informal hearing is held, a patient or such patient's representative could petition for review of the denial of any right under this bill through the use of the grievance procedure provided.

The Department of SRS would be required to establish procedures to assure protection of patients' rights guaranteed under the bill.

No person could intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any state official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized in the bill.

Other provisions in the bill include the following:

- A court could order a hearing when there is a physiological change to the committed person such as paralysis, stroke or dementia that renders the person unable to commit a sexually violent offense and the change is permanent;
- Payment for maintenance, care, and treatment of a committed person would be paid by the person, the persons estate, or by any persons estate, or by any person bound by law to support the patient;
- Counties where a court is located would be responsible for the transportation, security, and control of the patient and all costs involved. SRS would not be required to provide an employee to travel with the patient; and
- When a court proceeding is initiated by the committed person, that person would be responsible for making all arrangements and all costs involved. The Secretary of SRS would review all arrangements and could deny the arrangements. Rules and regulations would be adopted for these provisions.

Allocation of Cost

The bill also would create the Sexually Violent Predator Expense Fund and require the Office of the Attorney General

to pay counties for costs incurred in determining whether a person is a sexually violent predator. The bill would clarify that a county who initially pays for the procedure may seek reimbursement from this Fund through the Attorney General's Office. The Attorney General is required to pay, subject to appropriation. If there is no appropriation, the county has the option to file a claim against the state.

Conference Committee Action

The Conference Committee agreed to:

- Insert the original provisions of SB 52 (moving traffic violations) into SB 35;
- Add the provisions of HB 2001 (sexually violent predator rights and rules of conduct while committed to a treatment facility) as it passed the House Committee of the Whole, with the deletion of the provision relating to a battery against a mental health worker; and
- Add the provisions of SB 184 (allocation of cost for a procedure to determine whether a person is a sexually violent predator) as it passed the Senate Committee of the Whole. The Conference Committee agreed to create the Sexually Violent Predator Expense Fund and clarify the provisions of the bill to provide that the county who initially pays for the procedure may seek reimbursement from the Attorney General's Office. The Attorney General is required to pay, subject to appropriation. If there is no appropriation, the county has the option to file a claim against the state.

Background

The bill, as amended by the Senate Committee, would have clarified that a violation for speeding not more than 10

miles per hour in excess of the maximum speed limit would not be reported by the Division of Motor Vehicles.

The bill, as amended by the House Committee, would have incorporated the Senate Committee amendment and also would provide a violation of a speed of 30 miles per hour up to 54 miles per hour, by not more than 6 miles per hour would not be a moving traffic violation.

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sexually violent predators