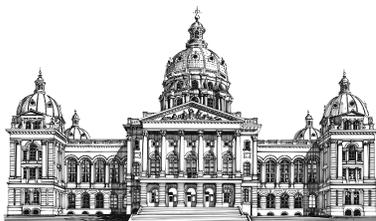

Iowa Legislative Services Agency

Fiscal Services

Dennis Prouty
(515) 281-5279
FAX 281-8027



State Capitol
Des Moines, IA 50319
December 18, 2006

Sexual Predator Commitment Program

ISSUE

This *Issue Review* provides a history of the Sexual Predator Commitment Program operated by the Department of Human Services.

AFFECTED AGENCIES

Department of Human Services
Iowa Court System

CODE AUTHORITY

Chapter 229A, Code of Iowa

BACKGROUND

Commitment: The General Assembly enacted the Sexually Violent Predator Act in 1998, providing for the civil commitment of certain sexually violent criminals after the criminal's sentence has been completed. The number of individuals committed is dependent on court action and the number of petitions filed by agencies with jurisdiction. An agency with jurisdiction is defined as the agency that has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority. These agencies include the Department of Corrections, the Department of Human Services, a Judicial District Department of Correctional Services, and the Iowa Board of Parole (definition from Section 229A.2, Code of Iowa). There have been 125 petitions filed by the Office of the Attorney General on behalf of agencies. From the petitions acted upon by the court, 76 have resulted in the civil commitment of the individual. Nine of the 76 have been released by the court for legal reasons and one died during the time of commitment. There is an average of 1.5 petitions filed per month and patients have been committed at the rate of nine per year. The average length of time between petition and commitment is four to five months.

The Iowa statute was based on a similar Kansas statute that was constitutionally upheld by the U.S. Supreme Court. The Iowa Supreme Court issued a decision that Iowa's Sexually Violent Predator Act does not deny due process under the Constitution.

Location: The General Assembly originally provided for the Program within the Iowa Medical Classification Center in Oakdale which is part of the Department of Corrections. In 2003 the Program was relocated to the Mental Health Institute at Cherokee. Although the issue of commitment is typically related to the Department of Corrections, the provision of treatment services by the Department of Human Services is required, and is part of the State and Federal Court decisions to uphold the statute of extending the civil commitment after completion of the original sentence.

The Department of Human Services provides services to those persons committed by the court to the residential setting Program, providing treatment and behavioral change plans. As with other sentence-related settings, there are multiple issues that coincide with the commitment, such as health care. The Department of Human Services indicates that the patients often have prescriptions, and may suffer from obesity, diabetes, and heart disease. Patients are transported to the University of Iowa Hospitals and Clinics for various health care needs. Approximately one-half of the patients are 50 years of age or older. The patients range from 22 to 84 years of age.

Financial: Table 1 indicates the historical State expenditures and the average daily census.

Table 1

Fiscal Year	Expenditures	Average Daily	
		Census	Cost Per Patient
1999	\$ 332,114	1	\$ 332,114
2000	1,010,649	12	84,221
2001	1,109,439	14	79,246
2002	1,457,898	28	52,068
2003	2,180,590	35	62,303
2004	3,780,179	33	114,551
2005	3,605,326	47	76,709
2006	4,772,634	55	86,775
2007	4,971,523	67	74,202
2008 Est.	6,611,837	77	85,868
Average			\$ 104,806

FY 2007 includes estimated Average Daily Census and appropriation.
FY 2008 includes estimated Average Daily Census and requested appropriation.

The first year of any new program typically results in a greater per person cost. In FY 1999, the majority of the cost was for staffing, training, and infrastructure. In FY 2004, the first year of the transition to the Cherokee location, resulted in providing services at two locations and the cost of moving. As of December 8, 2006, there were 67 patients in the Sexual Predator Program, making FY 2007 the first year to meet or exceed the estimated average daily census. This increase further necessitates the use of the second "stack" which will begin in FY 2008. (See explanation of "stack"

in the next paragraph.) Opening additional space may cause an increase in the per patient cost due to the 24-7 staffing needs required, whether there is one patient or 20 assigned to the additional space. Since FY 1999, there has been \$1.5 million appropriated from the Rebuild Iowa Infrastructure Fund (RIIF) and \$2.6 million from Tobacco Settlement funds for completion of Phase 1 and Phase 2 of the renovation and security needs. As stated previously, the courts decide the number of commitments and the timing of those, although the Department of Human Services indicates that 150 is the estimated cap for the Program.

The space at Cherokee for the Sexual Predator Commitment Program is contained within three "stacks" or areas of a building, each of which has three floors or "wards." Since moving to Cherokee from Oakdale, the Program has utilized three of the wards in one stack. The typical stack would provide space for 50 to 60 individuals, depending on the amount of space and structure utilized for food service, recreation, therapy, medical services, seclusion, and offices. The third stack is not yet renovated and the Department of Human Services has requested RIIF money for FY 2008 for the renovation. With that additional stack, the Program should have adequate space to serve the estimated cap of 150 patients.

CURRENT SITUATION

Programming: The goal of the Program is for reentry of the patient into society, without a future offense and having safe communities at the same time. The Program has five phases including:

- Phase I, Orientation and Assessment. To progress to Phase II, the patient is required to admit to some sexual offense, have a "clean polygraph," and demonstrate good behavior for 30 days.
- Phase II, Core. The patient is required to complete four quarters of classes that help control sexual impulses and meet needs in pro-social ways. To progress to Phase III, the patient is required to pass polygraph exams, demonstrate good behavior for 90 days, and have ratings in each of the following ten treatment areas no lower than three out of a possible ten at the last review: Disclosure; insight; personal victimization; victim empathy; leisure skills/hygiene; cognitive coping skills; sexual behavior; relapse prevention; intimacy skills; and problem solving.
- Phase III, Advanced. The patient is required to apply principles and concepts from Phase II and work toward goals established in their individual treatment plan. To progress to Phase IV, patients are required to pass specific offense polygraphs, demonstrate good behavior for four months, have ratings no less than five out of a possible ten at the last review in the ten treatment areas, and complete activities relating to the victims including victim letters and victim sheets. These are to encourage the patient to develop empathy for their victims and to understand the impact their behaviors have on others.
- Phase IV, Honor. Patients are expected to demonstrate cooperation, insight, motivation, and application of principles, model appropriate behavior, and act as facilitation leader during group discussions. To progress to Phase V, patients are required to complete a relapse prevention plan, pass a polygraph exam relating to sexual behaviors, demonstrate good behavior for six months, and have ratings of eight out of possible eight on the last review for the ten treatment areas.
- Phase V, Transition. Promotion to Phase V requires a court order. Patients are required to live in the secure apartment setting within the facility at Cherokee, live in progressively less-restrictive settings, and undergo monitoring and clinical assessment of progress. After completion of those requirements, the patient must complete up to one year without violating rules or relapse prevention program, continuous employment, attendance at individual and group therapy, two years of release contract requirements, and passage of random physiological assessments are required for Phase V. To progress from Phase V, a court order is required.

There have been four patients transitionally released within Phase V. A violation of the transitional release contract occurred for one of those patients and that patient was returned to the Program. Four patients were discharged in FY 2003 due to legal technicalities related to their commitment process.

ALTERNATIVES

With the increasing average daily census, the Sexual Predator Commitment Program will require additional staff for the utilization of space beginning in FY 2008. To add the estimated 23 needed staff for the ward, an additional \$1.3 million is being requested. The majority of the staff, (73.9%) are for Psychiatric Security Specialists. This is the same proportion compared to current staffing. Although the expected average daily census of 77 for FY 2008 would not occur at the beginning of the Fiscal Year, staff would need to be added independent of the total number of patients for the ward. To confine Program patients to space within a facility operated by the Department of Corrections may decrease the per patient cost, but may result in court action without the treatment component of the Program. The therapist to patient ratio for FY 2007 for the Program is 1:15.

BUDGET IMPACT

Without the Program, the appropriation to the Department of Human Services would be \$5.0 million less in FY 2007, but without the treatment component of the Program, the State may not be able to confine these individuals upon completion of their sentences for their crime per the rulings of the U.S. Supreme Court and the Iowa Supreme Court. It is difficult to compare the estimated \$74,202 average cost per patient for FY 2007 to similar programs in other states, as a number of states' budgets illustrate substantial differences in the makeup of their populations, levels of treatment being provided, affiliations with forensic hospitals, separate State departments being responsible for security costs, and inclusion of attorney and commitment costs. Available data from 14 other states shows a per patient cost range from \$39,000 to \$313,000.

As of October 2006, there were 31 inmates within the Department of Corrections that are being considered for the Program. Of the 31, three are scheduled for release from prison during 2006 and 24 are scheduled for release during 2007. Historically, a third of the 31 would have a petition filed for commitment. Additional State and Federal enacted legislation impacting the criminal laws against sex offenders have increased, which will increase the number of individuals which an agency may file a petition for to commit into the Program.

STAFF CONTACT: Sue Lerdal (Ext. 17794)