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February 2, 2017

ATTORNEY GENERAL OPINION NO. 2017- 4

Sheriff Laurie Dunn  
Osage County Sheriff's Office  
131 W. 14<sup>th</sup>  
P.O. Box 639  
Lyndon, Kansas 66451

Re: Probate Code—Commitment of Sexually Violent Predators—  
Commitment of Sexually Violent Predators; County Reimbursed for  
Costs; Responsibility for Costs of Medical Care and Treatment

Legislature—Claims Against the State—Submission of Certain Claims to  
Joint Committee on Special Claims Against the State; County  
Reimbursed for Costs Relating to Determination of a Civil Commitment  
Proceeding Pursuant to the Kansas Sexually Violent Predator Act

Synopsis: A county responsible for costs relating to the custody of a person awaiting  
determination of a civil commitment proceeding pursuant to the Kansas  
Sexually Violent Predator Act may seek reimbursement for such costs  
and expenses from the sexually violent predator expense fund or by  
presenting a claim against the state pursuant to K.S.A. 2016 Supp.59-  
29a04(e). Such county may not seek reimbursement for medical costs  
from the sexually violent predator expense fund or by presenting a claim  
against the state. K.S.A. 2016 Supp.59-29a04(f) requires the  
governmental entity having custody to seek reimbursement of medical  
costs only from the person against whom a petition has been filed for  
such costs. Cited herein: K.S.A. 46-907; K.S.A. 2016 Supp. 59-29a02;  
59-29a03; 59-29a04; 59-29a04a; 59-29a05.

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Dear Sheriff Dunn:

As Sheriff for Osage County, Kansas, you request our opinion on whether a county may request reimbursement for costs and expenses, including medical costs, relating to the custody of a person<sup>1</sup> awaiting determination of a civil commitment pursuant to the Kansas Sexually Violent Predator Act (Act).<sup>2</sup>

It may be helpful to briefly discuss the civil commitment process under the Act in order to understand the potential custody costs for which a county may seek reimbursement.

If a determination is made that a person may be a sexually violent predator (SVP),<sup>3</sup> the Attorney General may file a petition in the county where the person was convicted of or charged with a sexually violent offense.<sup>4</sup> If the judge determines there is probable cause to believe that the person named in the petition is an SVP,<sup>5</sup> the judge shall direct that the person be taken into custody and detained in such county's jail until a determination is made that the person is an SVP subject to commitment under the Act.<sup>6</sup> Within 72 hours after a person is taken into custody, or as soon as reasonably practicable or agreed upon by the parties, such person will be given notice of and an opportunity to contest probable cause at a hearing in person.<sup>7</sup> If the probable cause determination is made, the court shall order the person to be transferred to Larned State Security Hospital (LSSH) for an SVP evaluation.<sup>8</sup> If the LSSH evaluation determines the person may be an SVP, the person is transported by the sheriff to the county jail where the petition was filed to await the trial.<sup>9</sup>

Thus, under the civil commitment process pursuant the Act, the sheriff may have custody costs that include transportation costs, security and control over the person, food, housing and potentially medical costs from the time a judge determines there is probable cause to believe that the person named in the petition is an SVP through the trial or other disposition of the petition.

With this background information, we now will discuss your question. The county where the person was convicted of or charged with a sexually violent offense is the county responsible for the costs and expenses incurred related to determining whether a person may be an SVP.<sup>10</sup> That county shall be reimbursed for certain costs and

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<sup>1</sup> "'Person' means an individual who is a potential or actual subject of proceedings under [the Kansas Sexually Violent Predator Act]." K.S.A. 2016 Supp. 59-29a02(g).

<sup>2</sup> K.S.A. 2016 Supp. 59-29a01 *et seq.*

<sup>3</sup> See K.S.A. 2016 Supp. 59-29a03(a), (b), (f), and (g).

<sup>4</sup> K.S.A. 2016 Supp. 59-29a04(a).

<sup>5</sup> K.S.A. 2016 Supp. 59-29a05(a).

<sup>6</sup> K.S.A. 2016 Supp. 59-29a05(a)(1).

<sup>7</sup> K.S.A. 2016 Supp. 59-29a05(b).

<sup>8</sup> K.S.A. 2016 Supp. 59-29a05(d).

<sup>9</sup> K.S.A. 2016 Supp. 59-29a05(a) and (d).

<sup>10</sup> See generally, *Matter of Raborn*, 259 Kan. 813, 818 (1996).

expenses pursuant to subsections (e) and (f) of K.S.A. 2016 Supp. 59-29a04. Those provisions state:

(e) Whenever a determination is made regarding whether a person may be a sexually violent predator, the county responsible for the costs incurred, including, but not limited to, costs of investigation, prosecution, defense, juries, witness fees and expenses, expert fees and expenses and other expenses related to determining whether a person may be a sexually violent predator, shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.

(f) The person against whom a petition is filed shall be responsible for the costs of the medical care and treatment provided or made accessible by the governmental entity having custody, and the governmental entity having custody may seek reimbursement from the person against whom a petition has been filed for such costs.

In determining whether custody costs are *other* expenses related to determining whether a person may be a sexually violent predator pursuant to K.S.A. 2016 Supp. 59-29a04(e), we turn to the rules of statutory construction.

[T]he fundamental rule to which all other rules are subordinate is that the intent of the legislature governs if that intent can be ascertained. When language is plain and unambiguous, there is no need to resort to statutory construction. An appellate court merely interprets the language as it appears; it is not free to speculate and cannot read into the statute language not readily found there.<sup>11</sup>

In subsection (e), the phrase “including, but not limited to,” is plainly unrestrictive language intended to illustrate examples of costs for which a county may seek reimbursement. That conclusion is bolstered by the Legislature’s use of the catchall phrase at the end of the list that provides that “*other* expenses related to determining whether a person may be a sexually violent predator” are also authorized for reimbursement.<sup>12</sup> In other words, K.S.A. 2016 Supp. 59-29a04(e) provides a nonexclusive list of costs and expenses that shall be paid by the Attorney General to

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<sup>11</sup> *Neighbor v. Westar Energy, Inc.*, 301 Kan. 916, 918-19 (2015) (internal quotation marks and citations omitted).

<sup>12</sup> K.S.A. 2016 Supp. 59-29a04(e) (emphasis added).

the county responsible for the costs from the sexually violent predator expense fund,<sup>13</sup> if there is money in the fund. If there is no money in the sexually violent predator expense fund, the county responsible for the costs may present a claim against the state pursuant to K.S.A. 46-907.<sup>14</sup>

The costs and expenses relating to the custody of the person while awaiting determination of a civil commitment proceeding pursuant to the Sexually Violent Predator Act is not listed in K.S.A. 2016 Supp. 59-29a04(e) and may be added to this nonexclusive list if custody costs were determined to be included within the term “other expense.” Thus, we must apply the rules of statutory interpretation. The term “other” in the term “other expenses” is not defined in the statute, so we ascertain its meaning from its ordinary definition.<sup>15</sup> “Other” is commonly understood to mean “a different or additional one”<sup>16</sup> or “further; additional.”<sup>17</sup> Additionally, the term “other expenses” is modified by the phrase that follows it – “related to determining whether a person may be a sexually violent predator.” Because the Attorney General is responsible for authorizing payments made from the sexually violent predator expense fund,<sup>18</sup> the County, or in this case the Sheriff, must articulate to the Attorney General how the costs and expenses being sought for reimbursement are related to the determination of whether the person is an SVP.<sup>19</sup>

Because custody costs and expenses are incurred by the Sheriff’s Office as a result of the filing and trial on the petition to determine whether the person is an SVP, we conclude these costs and expenses may be “other” expenses within the meaning of K.S.A. 2016 Supp. 59-29a04(e), and the county responsible for the costs may be reimbursed from the sexually violent predator expense fund or file a claim against the state.

However, that general rule does not control your question of whether medical costs may be reimbursed from the sexually violent predator expense fund or by presenting a claim against the state, because a more specific statutory provision governs reimbursement of medical costs. We note that the language in subsection (f) of K.S.A. 2016 Supp. 59-29a04 is plain and unambiguous; it does not require interpretation. This provision does not authorize recovery of medical costs from the sexually violent predator expense fund or by presenting a claim against the state. Rather, K.S.A. 2016

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<sup>13</sup> K.S.A. 2016 Supp. 59-29a04a.

<sup>14</sup> See K.S.A. 46-907 which states, “[a]ll claims proposed to be paid from the state treasury or any special fund of the state of Kansas, which cannot be lawfully paid by the state or any agency thereof except by an appropriation of the legislature shall be submitted to the joint committee on special claims against the state before final action thereon is taken by either house of the legislature.” See *also* K.S.A. 2016 Supp. 59-29a04a(b) (“[a]ll expenditures from the sexually violent predator expense fund shall be made in accordance with appropriation acts . . .”).

<sup>15</sup> *State v. Raschke*, 289 Kan. 911, 914 (2009).

<sup>16</sup> <https://www.merriam-webster.com/dictionary/other>, accessed January 24, 2017.

<sup>17</sup> <https://en.oxforddictionaries.com/definition/other>, accessed January 24, 2017.

<sup>18</sup> K.S.A. 2016 Supp. 59-29a04a.

<sup>19</sup> K.S.A. 2016 Supp. 59-29a04(e).

Supp.59-29a04(f) requires the governmental entity having custody to seek reimbursement of medical costs only from the person against whom a petition has been filed for such costs.

Sincerely,

/s/Derek Schmidt

Derek Schmidt  
Kansas Attorney General

/s/Athena E. Andaya

Athena E. Andaya  
Deputy Attorney General

DS:AA:sb