

**IN THE UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

RONALD BAKER, DAVID E. BENTON )  
SR., RICHARD L. COCHRAN, MICHAEL )  
P. GALLAGHER, HARVEY HICKMAN, )  
BILLY INGRAM, EDWARD C. )  
JOHNSON ROBERT H. KINZER, )  
ALAN KIRK, MICHAEL D. MELLON, )  
JUSTIN MILLER, ROY NALLEY, DALE )  
PATTERSON, ERIC PATTERSON, )  
RAMON CRUZ PEREZ, JAMES E. )  
ROBERTS JR., BILLY J. STANLEY, )  
DANNY STANLEY, DAVID THAYER, )  
MICHAEL UNRUH, WILLIAM EUGENE )  
WALD, VANCE WALTERS, TRAVIS )  
WILLIAMS, AND LARRY WRIGHT, )  
on behalf of themselves and all others, )  
similarly situated )

Case No.: 6:14-cv-1356-JTM-KGG

Plaintiffs, )

v. )

TIM KECK, Interim Secretary of Kansas )  
Department for Aging and Disability )  
Services, and MIKE DIXON, Clinical )  
Program Director of the Kansas Sexual )  
Predator Treatment Program, )

Defendants. )

**FIRST AMENDED COMPLAINT**

Plaintiffs Ronald A. Baker, David E. Benton Sr., Richard L. Cochran, Michael P. Gallagher, Harvey Hickman, Billy Ingram, Edward C. Johnson, Robert H. Kinzer, Alan Kirk, Michael D. Mellon, Justin Miller, Roy Nalley, Dale Patterson, Eric Patterson, Ramon Cruz Perez, James E. Roberts Jr., Billy J. Stanley, Danny Stanley, David Thayer, Michael Unruh, William Eugene Wald, Vance Walters, Travis Williams, and Larry Wright, individually and on behalf of

all others similarly situated, through undersigned counsel of record, state and allege for their cause of action against Defendants Tim Keck and Mike Dixon, as follows:

### **Introduction**

1. The Sexual Predator Treatment Program (“SPTP” or the “Program”) was established in 1994 by the Kansas Sexually Violent Predator Act (“KSVPA” or the “Act”), K.S.A. 59-29a01 et seq. The Program has been provided primarily through the Larned State Hospital (“LSH”). The Program provides control, care and treatment for convicted sex offenders who have completed their prison sentences but have been determined by a judge or jury to be sexually violent predators and involuntarily committed to the custody of the Secretary of Kansas Department for Aging and Disability Services (“KDADS”). As a matter of state law, KDADS is obligated to provide treatment to each detainee until such “person’s mental abnormality or personality disorder has so changed that the person is safe to be at large.” K.S.A. 59-29a07(a).

2. The SPTP has failed its statutory and Constitutional mandates by detaining the Plaintiffs and similarly situated “sexually violent predators” (“SVP”), without providing minimally adequate treatment, and by denying less restrictive alternative means of confinement. The SPTP is, in practice, an unlawful punishment. Detainees in the Program die at a much greater rate than they complete the Program. Many have given up because there is no realistic chance of completion. Plaintiffs seek declaratory and injunctive relief, including Court-supervised reforms over SPTP.

### **Parties**

3. Plaintiff Ronald A. Baker was involuntarily committed to the SPTP on or about April 15, 2003. He remains in the care and custody of KDADS for an indeterminate period of time.

4. Plaintiff David E Benton, Sr. was involuntarily committed to the SPTP on or about June 10, 2009. He remains in the care and custody of KDADS for an indeterminate period of time.

5. Plaintiff Richard L. Cochran was involuntarily committed to the SPTP on or about February 19, 2003. He remains in the care and custody of KDADS for an indeterminate period of time.

6. Plaintiff Michael P. Gallagher was involuntarily committed to the SPTP on or about January 12, 2011. He remains in the care and custody of KDADS for an indeterminate period of time.

7. Plaintiff Harvey Hickman was involuntarily committed to the SPTP on or about March 15, 2003. He remains in the care and custody of KDADS for an indeterminate period of time.

8. Plaintiff Billy Ingram was involuntarily committed to the SPTP on or about October 2, 2007. He remains in the care and custody of KDADS for an indeterminate period of time.

9. Plaintiff Edward C. Johnson was involuntarily committed to the SPTP on or about June 19, 2001. He remains in the care and custody of KDADS for an indeterminate period of time.

10. Plaintiff Robert H. Kinzer was involuntarily committed to the SPTP on or about May 30, 2007. He remains in the care and custody of KDADS for an indeterminate period of time.

11. Plaintiff Alan Kirk was involuntarily committed to the SPTP on or about January 23, 2002. He remains in the care and custody of KDADS for an indeterminate period of time.

12. Plaintiff Michael D. Mellon was involuntarily committed to the SPTP on or about June 17, 2003. He remains in the care and custody of KDADS for an indeterminate period of time.

13. Plaintiff Justin Miller was involuntarily committed to the SPTP on or about October 9, 2007. He remains in the care and custody of KDADS for an indeterminate period of time.

14. Plaintiff Roy Nalley was involuntarily committed to the SPTP on or about October 16, 2002. He remains in the care and custody of KDADS for an indeterminate period of time.

15. Plaintiff Dale Patterson was involuntarily committed to the SPTP on or about November 21, 2011. He remains in the care and custody of KDADS for an indeterminate period of time.

16. Plaintiff Eric Patterson was involuntarily committed to the SPTP on or about December 20, 2004. He remains in the care and custody of KDADS for an indeterminate period of time.

17. Plaintiff Ramon Cruz Perez was involuntarily committed to the SPTP on or about March 24, 1999. He remains in the care and custody of KDADS for an indeterminate period of time.

18. Plaintiff James E Roberts, Jr. was involuntarily committed to the SPTP on or about November 2, 2005. He remains in the care and custody of KDADS for an indeterminate period of time.

19. Plaintiff Billy J. Stanley was involuntarily committed to the SPTP on or about August 26, 1999. He remains in the care and custody of KDADS for an indeterminate period of time.

20. Plaintiff Danny Stanley was involuntarily committed to the SPTP on or about January 29, 2008. He remains in the care and custody of KDADS for an indeterminate period of time.

21. Plaintiff David Thayer was involuntarily committed to the SPTP on or about January 16, 2001. He remains in the care and custody of KDADS for an indeterminate period of time.

22. Plaintiff Michael Unruh was involuntarily committed to the SPTP on or about November 23, 2009. He remains in the care and custody of KDADS for an indeterminate period of time.

23. Plaintiff William Eugene Wald was involuntarily committed to the SPTP on or about August 7, 2008. He remains in the care and custody of KDADS for an indeterminate period of time.

24. Plaintiff Vance Walters was involuntarily committed to the SPTP on or about June 22, 2002. He remains in the care and custody of KDADS for an indeterminate period of time.

25. Plaintiff Travis Williams was involuntarily committed to the SPTP on or about August 26, 2003. He remains in the care and custody of KDADS for an indeterminate period of time.

26. Plaintiff Larry E. Wright was involuntarily committed to the SPTP on or about August 8, 2013. He remains in the care and custody of KDADS for an indeterminate period of time.

27. The Class is defined as all persons who are civilly committed or confined pending commitment to the Kansas Sexual Predator Treatment Program.

28. There are approximately 240 members in the Class.

29. Defendant Tim Keck is the Interim Secretary of KDADS, and has the responsibility for the control, care, and treatment of Plaintiffs and the Class. *See* K.S.A. 59-29a07. Defendant Keck is substituted for Defendant Kari Bruffet pursuant to Fed. R. Civ. P. 25(d).

30. Defendant Mike Dixon is the Clinical Program Director of the SPTP. In this role, Dr. Dixon is responsible for developing and administering the SPTP. Defendant Dixon is substituted for Defendant Austin DesLauriers pursuant to Fed. R. Civ. P. 25(d).

31. Defendants are sued in their official capacities.

### **Jurisdiction and Venue**

32. Subject matter jurisdiction arises under 28 U.S.C. § 1331.

33. The Court may exercise personal jurisdiction over the Defendants.

34. Venue is proper in the Wichita Division of this Court.

### **Factual Allegations**

35. The KSVPA was passed in 1994 and it created a separate civil commitment scheme for the long-term control, care, and treatment of sexual predators.

36. Selection and commitment to the SPTP is achieved as follows:

- a. When an individual appears to meet the criteria of a sexually violent predator, notice is provided to the Kansas Attorney General (“AG”) and Kansas Department of Corrections (“KDOC”) multi-disciplinary team.
- b. If it is determined the individual meets the definition of a sexually violent predator, the AG may file a petition for commitment.
- c. Once that happens, LSH completes an evaluation of the individual.

- d. There is a civil trial to determine whether the individual charged or convicted of a sexually violent offense suffers from a mental abnormality or personality disorder that will make that person likely to engage in repeat acts of sexual violence if not treated.
- e. If the judge or jury finds beyond a reasonable doubt this is the case, the individual is committed to the program.

37. The SPTP has a seven-phase treatment program. The first five phases are provided at LSH. The last two phases, known as reintegration, are provided at transition houses at Osawatomi State Hospital (“OSH”) and Parsons State Hospital (“PSH”). Residents on phase seven are considered to be on transitional release status. Residents who complete all seven phases are conditionally released from the program. District courts monitor residents who are conditionally released into the community for at least five years. After that period, a resident is eligible for final discharge from the program by the court.

38. As of December, 2014, there were 243 individuals committed in the SPTP. That number is anticipated to increase to 300-330 in the next ten years.

39. Only three individuals have successfully completed the Program. Approximately 30 individuals have died during their confinement in the Program.

40. There are a number of systematic obstacles and impediments to completion of the SPTP.

41. The SPTP fails to create sufficiently individualized treatment plans for detainees. Instead, the SPTP utilizes a “one size fits all” approach to treating Program participants. The treatment has been the same for each resident regardless of individual’s specific issues such as schizophrenia, alcoholism, borderline personality disorder, or trauma.

42. The “one size fits all” approach of the Program applies to individuals with developmental or intellectual disabilities as well as individuals who, due to physical conditions, are incapable of reoffending.

43. SPTP treatment plans fail to offer concrete information concerning Plaintiffs’ and the Class members’ expectations and progress towards promotion and eventual release.

44. The State of Kansas represented to the United States Supreme Court in 1997 that persons committed under the KSVPA were receiving 31.5 hours of treatment per week.

45. Now, detainees in the SPTP receive significantly less treatment. Many Plaintiffs and Class members report receiving three hours of group therapy per week and one hour of individual therapy per quarter.

46. The SPTP generates evaluative documents regarding Plaintiffs and the Class members. These documents, which purport to be tailored to the individual detainee, contain canned language that is repeated for numerous detainees.

47. Group therapy at LSH is overcrowded, which results in Plaintiffs and Class members receiving insufficient opportunities to present their work, receive feedback, and improve sufficiently to advance within the Program.

48. For example, although the Resident Handbook promises Plaintiffs and Class members that they will receive Comprehensive Integrated Treatment Plan (CITP) reviews every thirty (30) days, used to “communicate a plan of treatment for each individual resident,” and “to measure progress toward personal improvement,” these “reviews” only take place every ninety (90) days, and are perfunctory and fail to provide accurate feedback concerning their treatment progress, their goals for future treatment, and their prognosis for future advancement through the program.



49. Employee turnover at LSH is extraordinarily high. Forced overtime at LSH accounts for the largest percentage of overtime among State employees. Some employees report falling asleep while driving home from work due to the incredibly long work shifts.

50. The turnover is due, in part, to the nature and commitment of the therapists themselves. Most therapists are temporary trainees, interns, or post-docs.

51. As a result of high turnover, Plaintiffs and the Class Members have to continually start over with new therapists. This further delays the progress of Plaintiffs and the Class members. For example, Plaintiff Baker has had at least seven different therapists during his confinement. Plaintiff Anderson has had at least nine different therapists during his confinement.

52. Plaintiffs and Class members who are permitted to transition to phases six and seven of the SPTP are blocked from doing so based on an insufficient number of beds available in the Program's reintegration facilities.

53. Plaintiffs and Class members who do advance to the Program's reintegration phase are destined to fail because they have received inadequate treatment and instruction. Many offenders arrive at reintegration without knowing how to search for or apply for jobs, how to use a computer, how to engage in activities of daily living like cooking, and more importantly, without any realistic plan for how to react to community circumstances that could put them at risk of reoffending.

54. The majority of Plaintiffs and the Class members occupy phase two and three of the Program.

55. Plaintiffs and the Class members are regularly demoted from one phase of the program to the preceding phase, arbitrarily. Reasons for such demotions vary from bad behavior to missing a therapy session to failing a polygraph after having passed it.

56. Kansas law provides that KDADS perform an annual review to determine whether continued detention is warranted.

57. However, the SPTP assesses detainees' risk of reoffending with a test that was not designed to assess the risk of reoffending.

58. The de facto lifelong confinement of Plaintiffs and the Class members ignores the effect of aging on recidivism.

59. The SPTP fails to maintain adequate records about treatment and progression through the Program. Without adequate records, the SPTP is unable to effectively manage several aspects of the Program like staffing levels, trends in cancellations, staff performance, the availability of program services, resident participation, and the rate of progression.

60. Defendants run LSH like a prison:

- a. LHS has adopted and enforces numerous Internal Management Policies and Procedures or IMPP's created by KDOC.
- b. Detainees in the Program who violate rules are subject to being locked in their rooms, injected with tranquilizers, placed in restraints, and/or placed in solitary confinement at the direction of Defendants.
- c. Detainees in the Program are greatly restricted in what they can possess and/or purchase during their confinement. These policies restrict the ownership of computers, furniture, personal bedding, religious items, personal recording devices, and hobby or craft items.
- d. Cell doors at LHS are metal and have only a small viewing window. There is no privacy when toileting. Detainees are prohibited from covering the window.

- e. Detainees are prohibited from moving freely around LHS, within the secure facility.
- f. When detainees leave the secure facility at LHS, they are placed in wrist restraints, leg restraints, and a waist restraint.
- g. Program staff regularly conduct random, unreasonable, and excessive searches of the detainees' cells.
- h. SPTP monitors the phone calls and communications of the detainees.
- i. SPTP has rejected detainees' proposals to have and use cell phones and the internet, even though such use would be highly regulated and not subject to abuse.
- j. Vocational opportunities are highly limited to more or less janitorial work. Detainees are only allowed to work up to nine hours in a two week pay period. Detainees' wages are garnished by the Program to pay for their commitments.

61. Approximately 40% of the people confined in SPTP have given up and stopped participating in the Program because of the reality that they will never receive adequate treatment and because they have no realistic possibility of progressing through the Program.

62. The State and the Defendants have been aware of the numerous deficiencies in the Program for some time and have failed to correct the problems.

### **Class Action Allegations**

- 63. Plaintiffs pursue class certification under Fed. R. Civ. P. 23(a), (b)(1), and (b)(2).
- 64. The Class is so numerous that joinder of class members is impracticable.

65. There are questions of law or fact common to the Class, including: whether Defendants in their individual capacity violated Plaintiffs' and Class members' clearly established Due Process rights protected by the Fourteenth Amendment to the United States Constitution in the following ways:

- a. by violating Plaintiffs' and Class members' rights to treatment such that they fail to have a realistic opportunity for progression through the SPTP;
- b. by failing to provide a less restrictive confinement option; and
- c. by creating an unnecessarily punitive environment.

66. The claims or defenses of the named Plaintiffs are typical of those of the Class.

67. The named Plaintiffs will fairly and adequately protect the interests of the Class.

68. The prosecution of separate actions risks either inconsistent adjudications which would establish incompatible standards of conduct for the Defendants or would as a practical matter be dispositive of the interests of others.

69. Defendants have acted or refused to act on grounds generally applicable to the Class.

### **Count I—Failure to Provide Minimally Adequate Treatment**

70. Fourteenth Amendment Due Process requires that the conditions and duration of confinement have some reasonable relation to the purpose for which persons are committed. Civilly committed persons may be subjected to liberty restrictions reasonably related to legitimate government objectives and that are not tantamount to punishment. Civilly committed persons are entitled under Due Process to a basic level of treatment based on the exercise of professional

judgment of the defendants. Confinement that continues after the person no longer meets the statutory requirements for commitment violates Due Process.

71. Based on the policy and procedures created and implemented by Defendants, the Plaintiffs and Class members have no realistic chance of progressing through the SPTP and instead remain in state custody for life. The Defendants' failure or refusal to provide adequate treatment to the Plaintiffs and Class Members has resulted in the latter's indefinite confinement and substantially contributes to conditions of confinement so restrictive and indefinite as to be punitive.

72. The Defendants have the power, authority, and responsibility to set and implement policies regarding the confinement and treatment of Plaintiffs and the Class Members. Despite having such ability, the Defendants have failed to offer minimally adequate treatment to Plaintiffs and the Class Members. The Defendants have failed to exercise professional judgment in setting and implementing treatment policies and in administering treatment to the Plaintiffs and the Class Members, or, alternatively, have exercised judgment that constitutes a substantial departure from accepted professional judgment, practice, or standards such that defendants effectively have failed to exercise the required professional judgment in making treatment decisions

73. Defendants' treatment program, either alone or together with the other conditions of the Plaintiffs' and Class Members' confinement, is so arbitrary and egregious as to shock the conscience. Plaintiffs and the Class Members have been injured by the Defendants' unlawful actions and omissions. Unless relief is granted, Plaintiffs and the Class Members will continue to be injured by Defendants' unlawful actions and omissions.

**Count II—Denial of Less Restrictive Alternative Confinement**

74. Fourteenth Amendment Due Process requires that the conditions and duration of confinement have some reasonable relation to the purpose for which persons are committed.

75. Civilly committed persons may be subjected to liberty restrictions reasonably related to legitimate government objectives and that are not tantamount to punishment. Confinement that continues after the person no longer meets the statutory requirements for commitment violates Due Process

76. The Defendants have the power, authority, and responsibility to set and implement policies regarding the confinement and treatment of Plaintiffs and the Class Members. Despite having such ability, the Defendants ignore less restrictive facility and program options. As such, the SPTP fails to satisfy the legitimate government objective of treating detainees housed in the SPTP by imposing unjustified and unreasonable means of confinement. As a result of the defendants' acts and omissions, the conditions of Plaintiffs' and Class Members civil confinement bear no rational relationship to the legitimate objectives of the SPTP.

77. Defendants' acts and omissions deprive Plaintiffs and the Class Members of their right to a less restrictive alternative means of confinement in violation of the Due Process clause of the Fourteenth Amendment. The restrictions on the Plaintiffs' and Class Members' liberty interests are unjustifiably severe, constitute inhumane treatment, and have a punitive effect.

78. Defendants' denial of less restrictive alternative confinement to the Plaintiffs' and Class Members', either alone or together with the other conditions of confinement, shocks the conscience.

79. Plaintiffs and the Class Members have been injured by the Defendants' unlawful actions and omissions. Unless relief is granted, Plaintiffs and the Class Members will continue to be injured by Defendants' unlawful actions and omissions.

### **Count III—Denial of Right to be Free from Punishment**

80. Fourteenth Amendment Due Process requires that the conditions and duration of confinement have some reasonable relation to the purpose for which persons are committed. Civilly committed persons may be subjected to liberty restrictions reasonably related to legitimate government objectives and that are not tantamount to punishment as determined by reasonable professional judgment.

81. Defendants have the power, authority, and responsibility to set and implement policies regarding the confinement and treatment of Plaintiffs and the Class Members. Despite having such ability, the Defendants' acts and omissions render the confinements of Plaintiffs and the Class members an unlawful punishment. LSH is effectively a prison and the detainees are effectively prisoners serving life sentences. There is no legitimate therapeutic purpose. As such, the SPTP violates the Fourteenth Amendment.

82. The Defendants' confinement and treatment of the Plaintiffs and the Class Members shocks the conscience.

83. Plaintiffs and the Class Members have been injured by the Defendants' unlawful actions and omissions. Unless relief is granted, Plaintiffs and the Class Members will continue to be injured by Defendants' unlawful actions and omissions.

**Count IV—As Applied Challenge**

84. The KSVPA, as applied to Plaintiffs and the Class members, is unconstitutional for all the foregoing reasons.

85. Plaintiffs and the Class Members have been injured by the Defendants' unlawful actions and omissions. Unless relief is granted, Plaintiffs and the Class Members will continue to be injured by Defendants' unlawful actions and omissions.

**Prayer for Relief**

Wherefore, Plaintiffs pray for relief as follows:

- A. That the Court determine this action may be maintained as a class action under Rules 23(a), (b)(1), and (b)(2) of the Federal Rules of Civil Procedure, and that Plaintiffs be certified as class representatives, and that Plaintiffs' counsel be appointed as counsel for the Class;
- B. That the unlawful conduct alleged herein be declared to be illegal and in violation of the United States Constitution;
- C. That the Court enjoin Defendants from violating the federal civil rights of Plaintiffs and the Class Members;
- D. That the Court order supervised, programmatic relief over the Kansas Sexually Violent Predator Program to ensure compliance with the United States Constitution;
- E. That the Court order the recovery of attorneys fees, expert witness fees, and expenses as allowed by law; and
- F. That the Court award all other relief that it deems just and equitable.

DATED: December 5, 2016



SUBMITTED BY:

<p>DEPEW GILLEN RATHBUN &amp; McINTEER, LC</p> <p><u>s/ Randall K. Rathbun</u>  Randall K. Rathbun #09765  Joseph A. Schremmer, #25968  8301 E. 21st Street N., Suite 450  Wichita, KS 67206-2936  Telephone: (316) 262-4000  Fax: (316) 265-3819  Randy@depewgillen.com  Joe@depewgillen.com</p>	<p>GRAYBILL &amp; HAZLEWOOD, LLC</p> <p><u>s/ Donald N. Peterson, II</u>  Jacob S. Graybill, #06595  Donald N. Peterson, II, #13805  N. Russell Hazlewood, #18664  Mark D. Kiefer, #20653  Sean McGivern, #22932  Nathan R. Elliott, #24657  218 N. Mosley St.  Wichita, KS 67202  (316) 266-4058 (phone)  (316) 462-5566 (facsimile)  Don@graybillhazlewood.com  Russ@graybillhazlewood.com  Mark@graybillhazlewood.com  Sean@graybillhazlewood.com  Nathan@graybillhazlewood.com</p>
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**CERTIFICATE OF SERVICE**

On December 5, 2016, a copy of the above and foregoing was filed with the Court's ECF system, with service electronically thereby on counsel of record.

Defendants Tim Keck and Mike Dixon will be served by traditional means.

s/ Donald N. Peterson, II  
Donald N. Peterson, II, #13805