

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 2052

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Sexually Violent Predators

DATE: January 24, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Farmer	Farmer	CF	Pre-meeting
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends Florida law related to the Involuntary Civil Commitment of Sexually Violent Predators (“Jimmy Ryce Act”) by:

- Excluding sexually motivated misdemeanor acts from the definition of “sexually violent offense”;
- Requiring the Department of Children and Families (department) to prioritize written assessments and recommendations of persons convicted of a sexually violent offense who will be released from total confinement within one year;
- Extending the deadline in which the department’s multidisciplinary team is required to complete its assessment to the state attorney;
- Extending the deadline for the state attorney to file a petition to the circuit court alleging that a person is a sexually violent predator;
- Removing language related to the deportation of a sexually violent predator;
- Prohibiting the introduction, attempted introduction, or removal of certain items classified as contraband into any Jimmy Ryce facility;
- Subjecting an individual or vehicle entering the grounds of any Jimmy Ryce facility under these provisions to reasonable search and seizure of any contraband materials introduced into or upon the grounds of such facility for purposes of enforcement;
- Creating a third-degree felony for the commission of such acts.

The bill also creates the Statewide Task Force (task force) on the Conditional Release of Sexually Violent Predators. The purpose of the task force is to assess the appropriateness of

placing sexually violent predators on conditional release and, based upon its assessment, make policy recommendations to the Governor and the Legislature. Duties of the task force include: collecting and organizing data concerning the practice of placing sexually violent predators on conditional release in Florida; identifying issues related to the use of conditional release in this state; and identifying procedures, if any, used by other states to release sexually violent predators into the community and the issue of supervising such persons while in the community.

This bill provides an effective date of July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 394.912, 394.913, 394.9135, and 394.917. The bill creates section 394.933, Florida Statutes and creates an unnumbered section of the Florida Statute.

II. Present Situation:

Sexually Violent Predators¹

A sexually violent predator is a person who has been convicted of a sexually violent offense and who also suffers from a mental abnormality or personality disorder that makes him or her likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.² The Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act (Act), was enacted in 1998 to address the treatment needs of these offenders.³ The Act creates a civil commitment process for sexually violent predators that is similar to Baker Act procedures for involuntary commitment and treatment of mentally ill persons.

Referring agencies identify offenders who have been convicted of specified sexually violent offenses and notify the department's Sexually Violent Predator Program and the state attorney who prosecuted the offender. The Department of Corrections (DOC) makes the majority of these referrals, with others coming from the Department of Juvenile Justice (DJJ) and the department itself.

After a referral is made, a clinical specialist reviews information provided by the referring agency and gathers any additional information that is needed to complete the case file. Two licensed psychologists employed by the department independently screen the case file to determine if the offender meets the statutory sexually violent predator criteria. If the department psychologists find that the offender meets the criteria, an independent, contracted evaluator also reviews the case file and provides a recommendation to the department.

A multidisciplinary team that includes at a minimum two persons who are either a licensed psychiatrist or a licensed psychologist reviews the evaluation reports. From this review, they

¹ Much of the information in this section was derived from the Office of Program Policy Analysis & Government Accountability, Florida Legislature, *The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced*, Report No. 08-10, p.2. (Feb. 2008)

² Section 394.912, F.S.

³ Sections 394.910-394.932, F.S.

render an opinion as to whether the offender meets the sexually violent predator criteria. The department must then provide a written assessment and written recommendation to the state attorney within 180 days of receiving notice from the referring agency. The recommendation must include the multidisciplinary team's report.⁴

The timeframes for this process are drastically accelerated when a person who has been convicted of a sexually violent offense is to be immediately released for some reason. A person who has been released ahead of scheduled release is transferred to the custody of the department by the referring agency. The multidisciplinary team has 72 hours after the transfer to provide its written assessment and recommendation to the state attorney. In turn, the state attorney has 48 hours to petition the court for a determination that the person is a sexually violent predator.⁵

After receiving the department's assessment and recommendation, the state attorney can initiate commitment proceedings by filing a probable cause petition seeking a determination that the offender meets statutory criteria to be a sexually violent predator.⁶ There is no prescribed time limit for filing other than in an immediate release situation. If the judge finds that the petition sets forth probable cause, a civil trial must be conducted within 30 days. A decision that an offender is a sexually violent predator must be made by the judge or a unanimous jury based upon clear and convincing evidence.⁷

An offender who is found to be a sexually violent predator is committed to the department's custody upon completion of his or her criminal sentence and transferred to the Florida Civil Commitment Center in Arcadia. If the commitment process is not completed prior to the end of an offender's prison sentence, the offender is detained by court order and transferred to the commitment center to await the outcome of commitment proceedings. On June 30, 2011, the commitment center housed 677 civilly committed predators and 147 detainees awaiting completion of commitment procedures.⁸

Sexually violent predators who are committed to the state under the Jimmy Ryce Act are detained at the commitment center until the court determines that they are no longer a threat to public safety. The department currently contracts with GEO Group, Inc., to operate the center and provide all treatment and security services. The treatment program consists of four levels of cognitive behavior modification and takes a minimum of six years to complete, with progress assessed annually by program staff.⁹

⁴ Section 394.913(3), F.S.

⁵ Section 394.9135, F.S.

⁶ Section 394.914, F.S.

⁷ Sections 394.916 and 394.917, F.S.

⁸ Criminal Justice Estimating Conference, *Involuntary Civil Commitment of Sexually Violent Predators – History and Forecast*, (Dec. 14, 2011), available at <http://edr.state.fl.us/Content/conferences/criminaljustice/workpapers.pdf> (last visited Jan. 17, 2012)

⁹ Office of Program Policy Analysis & Government Accountability, Florida Legislature, *The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced*, Report No. 08-10, p.2.(Feb. 2008), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0810rpt.pdf> (last visited Jan. 18, 2012)

Federal Deportation Detainers

According to the department, Florida law does not permit the courts to allow disposition of federal deportation detainers before proceeding with commitment. This situation creates the possibility that the state must bear the expense of providing long-term care and treatment to undocumented persons who can be safely deported.¹⁰

Contraband

According to the department, part V of ch. 394, F.S., does not currently criminalize the unauthorized introduction or removal of dangerous contraband from the Florida Civil Commitment Center. The facility has instituted its own operating procedures to prohibit such activities, but these policies do not have the same deterrent effect achieved by the possibility of criminal sanction. Statutes governing correctional and state hospital settings already include contraband provisions.¹¹

Conditional Release and Stipulated Agreements¹²

In October 2011, a review was conducted, at the request of the Legislature, by the Office of Program Policy Analysis and Government Accountability (OPPAGA) regarding the practice of stipulated agreements for the conditional diversion or release of offenders from the Sexually Violent Predator Program.

Stipulated agreements are negotiated civil contracts between a state attorney and an offender that allow the offender to be released into the community under specified terms and conditions. State attorneys' offices use these agreements in an effort to maintain public safety by providing some measure of accountability when an offender meets sexually violent predator criteria but it is unlikely that the state will prevail at the commitment trial or annual hearing.

As of September 2011, OPPAGA identified 153 stipulated agreements approved by Florida state courts. State attorneys' offices that use these agreements cite their broad prosecutorial discretion and authority to negotiate civil contracts as the legal basis for these agreements.

Sometimes state attorneys' offices use the agreements to require conditions for release from the Sexually Violent Predator Program because there is no re-entry phase to provide community-based treatment and supervision. Preempting trials also reduces court costs. However, some stakeholders question the legal basis and enforceability of the agreements. State attorneys' offices are typically responsible for providing supervision to sexually violent predators released

¹⁰ Department of Children and Families, *Staff Analysis and Economic Impact for HB 1097* (Jan. 4, 2012), p. 2, (on file with the Senate Committee on Children, Families, and Elder Affairs). A department analysis was not available for this SPB at the time the Senate Committee analysis was completed.

¹¹ *Id.*

¹² Information contained in this portion of this bill analysis is replicated from the Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Conditional Release of Sexually Violent Predators Through Stipulated Agreements*, Research Memorandum (Oct. 21, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs)

into the community under stipulated agreements; however, they do not have the ability to enforce many of the provisions of the agreements.

Almost half of sexually violent predators also had some type of Department of Corrections supervision at the time of their release. Of the 140 offenders released via stipulated agreement and in the community for at least one year, 31 have been convicted of new criminal charges, including 5 that were convicted of a felony sex offense and 3 others that were convicted of violent felonies. The remaining 23 were convicted of various misdemeanors and non-violent felonies.¹³

In addition, 18 offenders had been returned to the Florida Civil Commitment Center due to contract revocation. In 7 of these cases this was due to a new criminal conviction; in the other 11 cases it was due to a new criminal charge or a material violation of the stipulated agreement, such as non-compliance with the treatment plan or having unsupervised visitation with a minor.¹⁴

III. Effect of Proposed Changes:

SB 2052 revises the Jimmy Ryce Act as described below.

Definition of Sexually Violent Offense

The bill amends s. 394.912, F.S., to exclude sexually motivated misdemeanor acts from the definition of “sexually violent offense”.

Prioritization of Assessment of Persons Convicted of a Sexually Violent Offense

The proposed bill amends s. 394.913, F.S., to require the Department of Children and Family Services (department) to prioritize the assessment of persons convicted of a sexually violent offense for a recommendation as to whether the person meets the definition of a sexually violent predator based on when such persons will be released. Specifically, of the persons convicted of a sexually violent offense and who have less than 365 days until their anticipated release, the department must give priority to the completion of the assessment and recommendation for the person having the earliest release date.

Extension of Deadlines

The bill amends s. 394.9135, F.S. to extend the deadlines for the department to provide its written assessment and recommendation to the state attorney and for the state attorney to file a commitment petition. The bill provides that if the 72-hour deadline for providing the recommendation to the state attorney falls after 5 p.m. on a work day or during a weekend or holiday, the recommendation may be provided by 5 p.m. the next work day. Similarly, if the state attorney’s 48-hour petition filing deadline falls on after 5 p.m. or on a weekend or holiday, the commitment petition may be filed by 5 p.m. the next work day.

¹³ *Id.*

¹⁴ *Id.*

Use of the term “work day” could create some confusion in the application of the timeframes. Although it appears that the intent is to suggest after 5 p.m. on a weekday, some individuals “work” on Saturday or Sunday. The Legislature may wish to use another term such as “weekday.”¹⁵

Detainers for Deportation

The bill amends s. 394.917, F.S., to delete a requirement that a sexually violent predator be committed to the department for treatment before the person may be deported.

Contraband

The bill creates s. 394.933, F.S. to prohibit the introduction or removal of certain articles to or from a Jimmy Ryce facility; and to impose penalties for the commission of such acts. Specifically, the bill provides that, unless authorized by law or as specifically authorized by the person in charge of a Jimmy Ryce facility, a person is prohibited from introducing into, or take or attempt to take or send any of the following articles, which are declared to be contraband:

- An intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- A controlled substance as defined by chapter 893, F.S.;¹⁶
- A firearm or deadly weapon; or
- Any other item designated by written facility policy to be hazardous to the welfare of clients or staff or to the operation of the facility.

This section also prohibits a person from transmitting to, attempting to transmit to, or attempting to cause to be transmitted to or received by any client of any facility under the supervision or control of the department or agency, any item declared to be contraband at any place that is outside the grounds of the facility. An exception is made if the action is authorized by law or specifically authorized by the person in charge of the facility.

In addition, the bill subjects an individual or vehicle entering the grounds of any Jimmy Ryce facility to reasonable search and seizure of any contraband materials introduced into or upon the grounds of a facility. Under the bill, reasonable search and seizure may be enforced by institutional security personnel or by a law enforcement officer.

A person who introduces or attempts to introduce contraband into a facility or transmits or attempts to transmit contraband to a client of a facility is subject to punishment of a third-degree felony.¹⁷

¹⁵ CS/SB 1314 (2010 Regular Session).

¹⁶ Chapter 893, F.S., includes numerous controlled substances that are listed in Schedules I, II, III, IV, and V.

¹⁷ A felony of the third-degree is punishable by a fine not to exceed \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined to be an habitual offender, the term of imprisonment is not to exceed 10 years.

Statewide Task Force on the Conditional Release of Sexually Violent Predators

The bill creates the Statewide Task Force on the Conditional Release of Sexually Violent Predators for the purpose of assessing the appropriateness of placing sexually violent predators on conditional release. Based upon the task force assessment, it will make policy recommendations to the Governor and the Legislature. The task force will be required to:

- Collect and organize data concerning the practice of placing sexually violent predators on conditional release in this state;
- Identify issues related to the use of conditional release in this state;
- Identify the procedures, if any, used by other states to release sexually violent predators into the community and the attendant issue of supervising sexually violent predators while in the community;
- Ascertain the costs of monitoring sexually violent predators in the community;
- Prepare policy recommendations for presentation to the Governor and the Legislature regarding the conditional release of sexually violent predators; and
- Complete its work by July 1, 2013 and submit its report and recommendations by January 1, 2014 to the Governor and the Legislature.

The task force will be comprised of the following members:

- A representative from the Department of Children and Families who shall be appointed by the Secretary of the department;
- A representative from the Department of Corrections who shall be appointed by the secretary of the department; and
- A representative from the Florida Prosecuting Attorneys Association, one from the Florida Public Defender Association, and one from the Florida Association for the Treatment of Sexual Abusers.

Under the bill, members of the task force will serve without compensation but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S, for their actual and necessary expenses incurred in the performance of their duties. The Department of Children and Families will provide the task force with staff support necessary to assist the task force in the performance of its duties.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Children and Families (department), the proposed changes in this bill will protect vulnerable citizens by helping to lower the chance that extremely dangerous sexual predators will “slip through the cracks” and avoid commitment because of technical violations of the statute as currently written. The revisions in this bill will also help prevent the introduction of dangerous contraband onto the grounds of any facility designated by the department to house and treat persons detained or committed. The prohibition of dangerous contraband and possible prosecution of persons violating these provisions will help safeguard staff members, visitors, and residents of such facilities.¹⁸

The following comments were provided by the department in its staff analysis for a similar measure (HB 1097, dated January 4, 2012) filed for this legislative session.¹⁹ A department analysis for this SPB was not available at the time the committee staff analysis was prepared:

Limiting sexually violent offenses to felony criminal acts will make statutory definitions consistent with legislative intent by improving efficiency in identifying only those offenders who are extremely dangerous sexual predators.

¹⁸ Department of Children and Families, *2012 Agency Proposal* (received via email on August 24, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs)

¹⁹ Department of Children and Families, *Staff Analysis and Economic Impact for HB 1097* (January 4, 2012), p.2, (on file with the Senate Committee on Children, Families, and Elder Affairs). A department analysis was not available for this bill at the time the Senate Committee Analysis was completed.

Allowing the department to prioritize assessments by release date for persons within one year of release ensures adequate time for processing referrals and filing commitment petitions.

Extending deadlines to the next working day when statutory time limits related to immediate release referrals end past business hours on a work day or on weekends or holidays would ensure there is sufficient time for making recommendations and filing commitment petitions. This prevents sexual predators from being released for technical reasons unrelated to public safety.

Facilitating deportation of committed sexually violent predators that are in the country illegally saves the state the expense of providing long-term care and treatment to undocumented persons who can be safely deported. Courts would still be permitted to proceed with commitment if deportation is unlikely to be successful.

An argument against the deletion of provisions allowing for the commitment of a person before the person may be deported is that the change may create a weakness in the custody safety net. Prosecutors handling sexually violent predator civil commitments have sometimes been reluctant to consider allowing individuals to be deported, rather than civilly committed, because of the potential for an individual to unlawfully and secretly return to the United States and to Florida after being deported. Additionally, some prosecutors have expressed reluctance to facilitate what may amount to the unsupervised release of a sexually violent predator in his country of origin.

Providing criminal sanctions for the unauthorized introduction or removal of dangerous contraband items to or from the sexually violent predator civil commitment facility enhances the safety and security of residents and staff members at those facilities.

According to the department, there are no apparent opposition arguments to proposed modifications related to technical revisions and contraband rules.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.