

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1097 Sexually Violent Predators

SPONSOR(S): Kreegel

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Mathieson	Schoolfield
2) Criminal Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends part V of chapter 394, F.S., relating to involuntary civil commitment of sexually violent predators. The bill:

- Amends the definition of sexually violent predator, to include only felony offenses for referral to the program;
- Amends the referral process, to allow prioritization by release date from incarceration, rather than by date of referral;
- Clarifies timeframes for the review of referrals by the multidisciplinary team at the Department of Children and Families (DCF), and for the filing of a petition by the state attorney;
- Removes language related to deportation detainees by U.S. Bureau of Citizenship and Immigration Services which will allow these detainees to be addressed if possible prior to commitment to the Sexually Violent Predator Program; and
- Criminalizes the introduction or removal of certain articles (e.g. firearms, controlled substances) to a facility which confines or treats persons in the sexually violent predator program (SVPP).

The bill appears to have no fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

As defined by Florida Statute, sexually violent predators are persons who have been convicted of a sexually violent offense, and have a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.¹

The Legislature has addressed this issue by creating a civil commitment process for sexually violent predators, to involuntarily commit and treat mentally ill people, and a treatment program called the Sexually Violent Predator Program (SVPP).² Offenders with specified sex offenses are referred to the Department of Children and Families (DCF) by either the Department of Corrections (DOC) or the Department of Juvenile Justice (DJJ), for an assessment as to whether they meet the definition of a sexually violent predator. The Office of Economic and Demographic Research (EDR) of the Florida Legislature report that as of December 31, 2011, there had been 42,777 referrals since the program's inception.³

The screening is done by a multidisciplinary team within DCF,⁴ and then a recommendation is made to the State Attorney. Following the recommendation and supporting information, the State Attorney determines whether to file a petition with the circuit court. If the judge finds probable cause, then the person is to be held at a secure facility which is the Florida Civil Commitment Center (FCCC).⁵

Subsection 394.912(9), F.S., defines "sexually violent offense" for the purpose of determining what crimes may subject a person to civil commitment as a sexually violent predator. The determination that the crime was sexually motivated must be done at either the time of sentencing of the crime or at the civil commitment trial.⁶

After a probable cause determination by a judge, a trial is held within 30 days to ascertain whether the person is a sexually violent predator.⁷ If a judge or jury finds by a standard of clear and convincing evidence, that the person is a sexually violent predator, then they will be civilly committed to the custody of DCF for control, care and treatment upon completion of their criminal sentence.⁸

The SVPP was the subject of a 2008 report by the Office of Program and Policy Analysis and Government Accountability (OPPAGA), which addressed issues around the waiting time for detainees at the facility during the civil commitment process and implementation of the contract with the private vendor.⁹

¹ S. 394.912, F.S.

² See, ss. 394.910-932, F.S.

³ See, <http://edr.state.fl.us/Content/resource-demand/criminal-justice/reports/sexually-violent-predators/index.cfm>, site last visited January 1, 2012.

⁴ The multidisciplinary team is to include at least two licensed psychiatrists or psychologists, or a licensed psychiatrist and psychologist. S. 394.913(3)(b), F.S.

⁵ The Florida Civil Commitment Center is a 720 bed secure facility in Acadia, FL, operated by the GEO group.

⁶ S. 394.912(9), F.S.

⁷ S. 394.916(1), F.S.

⁸ S. 394.917(2), F.S.

⁹ The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced, Office of Program Policy Analysis and Government Accountability, February 2008, Report 08-10.

Effect of proposed changes

House bill 1097 amends the definition of “sexually violent predator,” so that it only allows for referral of felony criminal acts that are sexually motivated. Currently, misdemeanor crimes that are sexually motivated could trigger a referral to DCF for review.

The bill amends the referral process for civil commitment to allow DCF to prioritize referrals for screening based on the release date of the person. Currently, the law directs DCF to prioritize based on referral date from DOC and DJJ. DOC is directed to provide 545 days written notice of a person to be assessed for civil commitment, and DJJ 180 days to the SVPP. DCF has 180 days before the anticipated release date to make a recommendation to the State Attorney. In the 2008 OPPAGA report, it was noted that approximately one third of the people referred for the SVPP had sentences of less than 545 days.¹⁰ This can cause delays in processing referrals, and the changes in this bill will give DCF sufficient time to process referrals prior to release dates.

The bill amends s. 394.9135, F.S., to clarify the timeframe for completing assessments and recommendations by the multidisciplinary team and the filing of civil commitment petitions by the state attorney. The bill specifies that if the timeframes for completing assessments, recommendations or petitions falls after 5 PM, then the document may be filed on the next working day. Currently, the law does not make a distinction if the statutory timeframe falls after 5 PM. Failure to complete these documents within statutory timeframes could result in an unintended release of a person under consideration for the SVP program.

The bill amends s. 394.917, F.S., to remove language related to deportation detainers by the US Bureau of Citizenship and Immigration Services.¹¹ Current law does not allow the court to consider these detainers upon completion of a person’s criminal sentence and prior to commitment to the SVP program. The bill would allow DCF and the state attorney to work with the federal government in deportation actions on undocumented aliens prior to them being committed to DCF custody.

The bill creates s. 394.9265, F.S., which criminalizes the introduction, or the attempt to introduce, the following contraband to any facility providing confinement and treatment under Part V of ch. 394, F.S.:

- any intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- any controlled substance defined in ch. 893, F.S.;¹² or
- Any firearm or weapon;

This ban would prohibit introduction of contraband to the SVP civil commitment facility. A violation of this section is a third degree felony.¹³

B. SECTION DIRECTORY:

- Section 1:** Amends s. 394.912, F.S., relating to definitions.
- Section 2:** Amends s. 394.913, F.S., relating to notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams.
- Section 3:** Amends s. 394.9135, F.S., relating to immediate releases from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold custody; filing petition after release.
- Section 4:** Amends s. 394.917, F.S., relating to determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellant cases.
- Section 5:** Creates s. 394.9265, F.S., relating to introduction or removal of certain articles unlawful; penalty.

¹⁰ *Id.*

¹¹ A detainer is the action of detaining, withholding or keeping something in one’s custody. Black’s Law Dictionary (8th Ed. 2006).

¹² Chapter 893, F.S., is the Drug Abuse and Control Act.

¹³ A third degree felony is punishable by a fine not exceeding \$5,000 or a term of imprisonment not to exceed 5 years. If the offender is determined to be an habitual offender, the term of imprisonment is not to exceed 10 years. ss. 775.082, 775.083, 775.084, F.S.

Section 6: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 84 would be more clear if "pursuant to 394.9135(2)" was inserted after the word recommendation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES