

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1097 Sexually Violent Predators

SPONSOR(S): Criminal Justice Subcommittee; Kreegel

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 2052; SB 7162

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	13 Y, 0 N	Mathieson	Schoolfield
2) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cunningham	Cunningham
3) Appropriations Committee		Jones Darity	Leznoff
4) Health & Human Services Committee			

SUMMARY ANALYSIS

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. To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act (Act), which creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).

The bill amends the Involuntary Civil Commitment of Sexually Violent Predators Act. Specifically, the bill:

- Amends the definition of “sexually violent offense” to include only *felony* criminal acts that have been determined beyond a reasonable doubt to have been sexually motivated.
- Requires the Department of Children and Families (DCF) to prioritize the assessments of persons convicted of a sexually violent offense who are at least 365 from release from confinement and who have not had an assessment or recommendation. The prioritization must be based upon the person’s release date.
- Clarifies the timeframe for completing assessments and recommendations by the multidisciplinary team and the filing of civil commitment petitions by the state attorney.
- Amends s. 394.917, F.S., to allow sexually violent predators with deportation detainees who are released from confinement to be taken into custody by the federal government rather than be immediately committed to the custody of DCF.
- Makes it a third degree felony for a person to knowingly and intentionally bring, send, take, or attempt to take specified items into any facility providing confinement and treatment under the Act.

The Criminal Justice Impact Conference met January 17, 2012 and determined the bill will have an insignificant impact on state prison beds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Jimmy Ryce Act - Background

Sexually violent predators are persons who have been convicted of a sexually violent offense¹ 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.²

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,³ also known as the Ryce Act.⁴ The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).⁵ Under the Ryce Act, offenders with specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment by a multidisciplinary team as to whether they meet the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.⁶

Following receipt of the recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the person is a sexually violent predator. If the judge determines probable cause exists, the offender is detained at the Florida Civil Commitment Center, the case proceeds through the commitment process, and in many instances a civil trial is held.⁷

Those civilly committed as a sexually violent predator pursuant to the Ryce Act are housed for treatment at the Florida Civil Commitment Center.⁸ The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete.⁹ Section 394.918, F.S., provides that persons committed to the state under the Ryce Act be confined until the court determines that they are no longer a threat to public safety.

A person committed under the Ryce Act has an examination of his or her mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for him or her to be released. If the court believes there is probable cause, a trial is held at which the state attorney bears the burden of proving that the person's mental condition remains such that, if released, he or she is likely to engage in acts of sexual violence.¹⁰

Since the program's inception, over 42,777 offenders have been referred to DCF for screening and assessment.¹¹ As of September 2011, there were 677 detained and committed individuals at the Florida Civil Commitment Center.¹²

¹ The term "sexually violent offense" is defined in s. 394.912, F.S.

² Section 394.912, F.S.

³ Sections 934.910-932, F.S.

⁴ *Conditional Release of Sexually Violent Predators Through Stipulated Agreements*, Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, October 21, 2011. On file with Criminal Justice Subcommittee staff.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ The Florida Civil Commitment Center is a 720-bed, physically secure facility located in Arcadia, FL, and operated by The GEO Group. *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, Sexually Violent Predator Program Reports. <http://edr.state.fl.us/Content/resource-demand/criminal-justice/reports/sexually-violent-predators/index.cfm> (last visited January 26, 2012).

¹² *Supra*, note 4.

Sexually Violent Predator - Definition

As noted above, sexually violent predators are defined as persons who have been convicted of a sexually violent offense and suffer from a mental abnormality or personality disorder that makes them likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. Section 934.912(9), F.S., defines a “sexually violent offense” to include offenses such as murder while engaged in sexual battery; sexual battery; and lewd, lascivious, or indecent assault or act upon or in the presence of a child. The definition also includes:

- (h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings, has been determined beyond a reasonable doubt to have been sexually motivated.

Effect of the Bill

The bill amends paragraph (9)(h) of the definition of “sexually violent offense” to include only *felony* criminal acts that have been determined beyond a reasonable doubt to have been sexually motivated. The term will no longer include misdemeanor sexually motivated criminal acts.

Notice of Release

Section 394.913, F.S., requires agencies with jurisdiction over a person who has been convicted of a sexually violent offense to give written notice to the multidisciplinary team and to the state attorney of the person’s upcoming release from confinement. The statute requires this notice to be given within a certain time period prior to the person’s release. For example, written notice must be given:

- At least 545 days prior to the anticipated release of a person serving a sentence in the custody of the Department of Corrections.
- At least 180 days prior to the anticipated release from residential commitment of a person committed to the custody of the Department of Juvenile Justice.
- At least 180 days prior to the anticipated hearing regarding possible release of a person committed to the custody of DCF who has been found not guilty by reason of insanity or mental incapacity.¹³

Within 180 days after receiving notice, the multidisciplinary team must assess the offender to determine whether he or she meets the clinical definition of a sexually violent predator.¹⁴ After assessment, DCF provides a recommendation to the state attorney.

Effect of the Bill

The bill requires DCF to prioritize the assessments of persons who are at least 365 from release from confinement and who have not had an assessment or recommendation. The prioritization must be based upon the person’s release date.

Immediate Release – Assessment and Petition Timeframes

On occasion, a person convicted of a sexually violent offense may unexpectedly be ordered to be released from confinement. In such instances, the agency with jurisdiction over the person must immediately transfer such person to the custody of DCF upon release. Within 72 hours of this transfer, the multidisciplinary team must assess the person to determine whether he or she meets the definition of a sexually violent predator and if so, make a recommendation to the state attorney. However, if the 72-hour period ends on a weekend or holiday, the assessment and recommendation must be provided within the next working day thereafter.

Within 48 hours after receiving the assessment and recommendation, the state attorney may petition the court alleging that the person is a sexually violent predator. If the petition is not filed within 48 hours, the person must be released.

¹³ Section 394.913(1), F.S.

¹⁴ Section 394.913(3)(e), F.S.

Currently, the law does not address what happens if the statutory timeframes described above end after 5 PM. This could be problematic, because failure to abide by the statutory timeframes could result in an unintended release of a person under consideration for civil commitment.

Effect of the Bill

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 on a work day, then the document may be filed on the next working day.

Commitment

Section 394.917, F.S., provides that if a court or jury determines that a person is a sexually violent predator, the person must be committed to DCF's custody. This occurs upon the expiration of the incarcerative portion of the person's criminal sentence and disposition of any detainers, *other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services*. This exception for deportation detainers requires that a person be committed to DCF's custody, even where a person has a deportation detainer.

Effect of the Bill

The bill amends s. 394.917, F.S., to remove the deportation detainer exception. As a result, sexually violent predators with deportation detainers will not be required to be committed to the custody of DCF upon release from confinement but could instead be taken into custody by the federal government.

Contraband

The bill creates s. 394.9265, F.S., which provides that except as authorized by law or by the person in charge of a secure facility providing confinement and treatment under the Ryce Act, it is a third degree felony for a person to knowingly and intentionally bring, send, take, or attempt to take the following into such facility:

- Any intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- Any controlled substance defined in chapter 893, F.S.;¹⁵ or
- Any firearm or weapon.

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.

Section 6: Provides an effective date of July 1, 2012.

¹⁵Chapter 893, F.S., is the Drug Abuse and Control Act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met January 17, 2012 and determined the bill will have an insignificant impact on state prison beds.

DCF reports that this bill will not have a fiscal impact on the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted two amendments to the bill and reported the bill favorably as a committee substitute. The amendments provide exceptions to the contraband provision and move the provision requiring DCF to prioritize the assessments of persons who are at least 365 from release to a more appropriate subsection of s. 394.913, F.S.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.