



Criminal Justice Subcommittee

September 24, 2013

12:00 PM

404 HOB

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, September 24, 2013 12:00 pm
End Date and Time: Tuesday, September 24, 2013 03:00 pm
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs

Discussion on the Criminal Justice Subcommittee's 2014 Workplan.
Discussion on potential reforms to the Sexually Violent Predator Program.

NOTICE FINALIZED on 09/17/2013 16:14 by hudson.jessica

CRIMINAL JUSTICE SUBCOMMITTEE 2014 WORK PLAN

1. Stand Your Ground

Since Trayvon Martin's death, many have questioned whether Florida's "Stand Your Ground" law should be repealed. In March 2012, Governor Scott created the "Task Force on Citizen Safety and Protection" whose mission was to review Chapter 776, F.S., and its implementation, listen to the concerns and ideas from Floridians, and make recommendations to the Governor and Florida Legislature to ensure the rights of all Floridians and visitors are protected. The Task Force released its final report in December, 2012. The Criminal Justice Subcommittee will determine whether any of Florida's self-defense statutes should be repealed.

2. *Graham* and *Miller* – Juvenile Sentencing

Graham Decision

In 2010, the United States Supreme Court held in *Graham v. Florida* that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile non-homicide offenders to life imprisonment without providing a meaningful opportunity to obtain release. The court requested states "to explore the means and mechanisms for compliance" with the decision.

Miller Decision

On June 25, 2012, the U.S. Supreme Court held in *Miller v. Alabama* that the 8th Amendment forbids a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders. The Eighth Amendment "guarantees individuals the right not to be subjected to excessive sanctions" and requires that punishments be proportionate to the crime committed. In this case the Court determined that proportionality must take into account "the mitigating qualities of youth."

The Criminal Justice Subcommittee will be sponsoring legislation filed that addresses these decisions.

3. Sexually Violent Predator Reforms

Currently, the Jimmy Ryce Act only permits the Department of Corrections, the Department of Juvenile Justice, and the Department of Children and Families (DCF) to refer a person who has been convicted of a sexually violent offense to DCF for Ryce Act proceedings. Jails cannot refer a person, nor can a judge make such a referral in conjunction with sentencing proceedings. The Criminal Justice Subcommittee will review whether the Legislature should allow jails and/or courts to refer persons for Ryce Act proceedings. The Subcommittee will also thoroughly review the Ryce Act process to determine if any additional reforms are warranted.

4. Sentencing Reform

In recent years, it has been argued that some of Florida's criminal penalties are too severe (e.g., Florida's controlled substance statutes). Similarly, many believe that the criminal penalties for certain crimes are too lenient (e.g., penalties relating to crimes against the children and the elderly). The Criminal Justice Subcommittee will be reviewing Florida's criminal code to determine whether the penalties for offenses should be increased or decreased.

5. Department of Juvenile Justice – Rewrite of Chapter 985, F.S.

Over the past year, DJJ has worked with stakeholders to draft comprehensive revisions to Chapter 985, F.S., to incorporate into law best practices for the juvenile justice system. The Criminal Justice Subcommittee has been monitoring this process and will vet the ideas proposed by the Department.

6. Timely Justice Act Compliance

During the 2013 Legislative Session, two bills were filed with the goal of more effectively and efficiently managing the capital postconviction process. As originally filed, the bills made changes to various statutes and removed capital postconviction rulemaking authority from the courts, thereby allowing the Legislature to amend or create statutes relating to court procedures in capital postconviction cases. After discussions with the Office of the State Courts Administrator (OSCA), efforts to pass the bill removing capital postconviction rulemaking authority from the courts were halted, but only with the understanding that the courts would review their capital postconviction rules, and make changes if necessary.

On March 22, 2013, the Florida Supreme Court issued an Administrative Order creating the Capital Postconviction Proceedings Subcommittee, directing them to comprehensively review capital postconviction proceedings, and to make recommendations to the Court whether that rule, or any other rule, should be amended to improve the overall efficiency of the capital postconviction process.

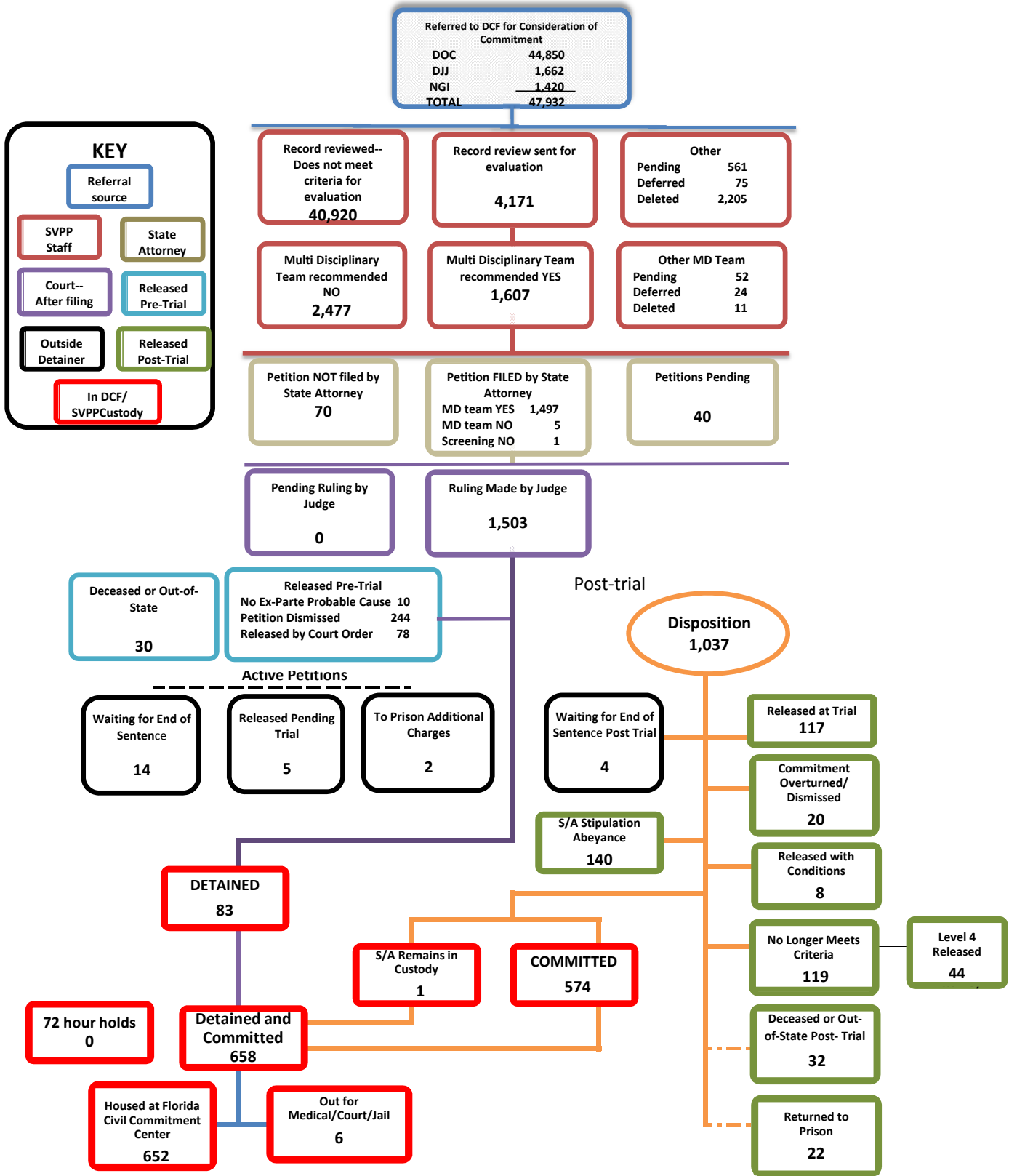
The Criminal Justice Subcommittee will be monitoring the activities of the Capital Postconviction Proceedings Subcommittee.

7. Pretrial / Bond Clarification

Based on stakeholder feedback, there are circumstances in which judges are unable to revoke bond in matters that were not originally before them. The CJ will review bond practices, bond amounts, and will clarify any conflict in existing statutes.

STATE OF FLORIDA

STATUS OF ADULTS REFERRED FOR COMMITMENT TO SVPP THROUGH August 31, 2013



Source: This flowchart was prepared by the Florida Legislature, Office of Economic and Demographic Research using a flowchart prepared monthly by the Department of Children and Families (DCF). Release reasons were changed on June 12, 2009 by DCF for twelve committed individuals.

SEXUALLY VIOLENT PREDATOR PROGRAM (SVPP)

- 47,932 referrals to DCF since the program's inception in 1999.
- 1,607 recommended for commitment by the multidisciplinary team.
- Florida has the lowest ratio of civil commitment recommendations to referrals among the 17 states with similar civil commitment laws.*
- 1,503 commitment petitions filed by the state attorneys.
- 862 commitments since the program's inception.
- Only half of the persons recommended for commitment by the multidisciplinary team are civilly committed.
- Reasons for non-commitment or release after commitment:
 - Pretrial stipulated agreement, petition dismissed pretrial, released by court order, person deceased or out-of-state, released at trial, commitment overturned, person no longer meets criteria, returned to prison, etc.
- Currently, there are 574 persons committed at the Florida Civil Commitment Facility. 83 persons are detained at the facility and are awaiting a trial.
- Despite an increase in the state population, the rate of forcible sex offenses has decreased by almost half since 2003 (from 101.1 reported offenses per 100,000 residents in 1993 to 53.2 in 2012).
- Less than 2% of those referred to the SVPP (regardless of commitment) have been convicted of a new sexual offense.

*As reported by the Florida Sun Sentinel.

SEXUALLY VIOLENT PREDATOR PROGRAM

REFORM CONCEPTS

1. Close referral loopholes

Status Quo: Currently, an offender can only be referred for civil commitment by one of three agencies: the Department of Corrections (DOC), the Department of Children and Families (DCF), and the Department of Juvenile Justice (DJJ). DOC makes over 90% of these referrals.

The Problem: Persons convicted of a criminal offense who are sentenced to jail never get referred for civil commitment. For example, the man who murdered Cherish Periwinkle spent two years in county jail prior to release. Because he was not in the custody of one the three referring agencies, he was not referred for civil commitment, despite meeting the referral criteria.

Possible Reform: Allow additional entities to make referrals to DCF:

- State Attorneys
- Arresting Law Enforcement Agencies
- County Jails
- Sentencing Judges
- Surviving victims

2. Plea Deals

Status Quo: Only persons who have been convicted of a sexually violent offense get referred to DCF for civil commitment.

The Problem: When evidence is less than perfect in a case involving a sexually violent offense, prosecutors may plea the case down to a lower charge. If an offender pleads to an offense that is not a "sexually violent offense," the offender will not be referred to DCF for civil commitment upon release.

Possible Reform: Create a mechanism by which referring agencies can discern the true nature of a person's offense, and authorize agencies to refer offenders to DCF for civil commitment in such instances. Alternatively, prevent state attorneys from agreeing to a plea deal that would allow a person to avoid a civil commitment referral.

3. Expand the Definition of "Sexually Violent Offense"

Status Quo: Section 394.912(9), F.S., defines "sexually violent offense." Section 394.912(9)(h), F.S., defines the term to include "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." This provision was

designed to be a “catch all” so that those who committed sexually motivated offenses could be referred for civil commitment, even if such person was not convicted of one of the specifically listed offenses.

The Problem: “Beyond a reasonable doubt” is a criminal legal standard that requires a judge or jury to find that an offense is sexually motivated - referring agencies cannot make this determination. This leads to fewer referrals to the civil commitment process.

Possible Reform: Strike the criminal standard of “beyond a reasonable doubt” from s. 394.912(9)(h), F.S.

4. Change the Composition of DCF’s Multi-Disciplinary Team

Status Quo: When an offender is referred to DCF for civil commitment, a multi-disciplinary team (MDT) must evaluate the offender and decide whether the person meets the definition of a sexually violent predator (SVP). The MDT then makes a written recommendation to the state attorney. Currently, each MDT is required to include, but is not limited to, two licensed psychiatrists or psychologists, or one licensed psychiatrist and one licensed psychologist.

Since 1999, 47,932 inmates have been referred to the MDT for review. The MDT recommended civil commitment in 1,607 cases.

The Problem: A frightening number of inmates have been deemed by the MDT to not meet the criteria for civil commitment – some of these individuals have reoffended.

Possible Reform: Continue to allow the final decision regarding commitment to be made by the current members of the MDT, but require some mix of people meeting the following criteria to advise the MDT regarding recidivism likelihoods after reviewing the inmate’s file:

- A sworn law enforcement officer with at least 10 years of law enforcement experience and at least 3 years of experience dealing with sex crimes;
- A current or former state prosecutor with either the attorney general’s office or a state attorney’s office with at least 5 years experience prosecuting sex crimes;
- A current or former victims’ advocate with at least 3 years experience at a Florida Children’s Advocacy Center or similar victims advocacy organization.

If one or more members of the MDT “advisory group” disagreed with the final decision of the MDT, he or she would be required to submit the objection to the state attorney in writing.

5. Strengthen MDT Standards for Review

Status Quo: For the MDT to recommend civil commitment, the following elements must be met: (1) the person must have been convicted of a sexually violent offense as set forth in s. 394.912(9), F.S.; (2) the person must have a “mental abnormality or personality disorder;” and (3) the mental abnormality or personality disorder must make the person “likely” to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

The Problem: For roughly each inmate that the MDT recommends for civil commitment, almost 30 are not recommended for commitment. This is the largest “loophole” providing offenders the opportunity to reoffend. Moreover, since the Ryce Act was initially enacted and constitutionally tested, additional research has been conducted on the minds of sexual predators. More than ever before, scientific evidence suggests that many sexual predators, by their very nature, cannot be cured.

Possible reform: If a person has been convicted of a sexually violent offense as defined in s. 394.912(9), F.S., or perhaps some subset of those offenses, create a legal rebuttable presumption that the inmate: (1) has a mental abnormality or personality disorder; and (2) is likely to commit additional sexual offenses if released. This reform will dramatically increase the number of persons who will be civilly committed.

6. Requirements for State Attorneys

Status Quo: State Attorneys who receive recommendations from the MDT in favor of civil commitment may choose to either file a petition for commitment or not. They almost never seek civil commitment when the MDT does not issue a commitment recommendation.

Possible Reform: (1) Require state attorneys to file a petition in every case where the MDT recommends civil commitment. This makes less likely an outcome where a petition is not filed merely because the case is difficult; (2) the sole exception to (1) is a secured plea bargain deal which must be approved by the Attorney General with highly strict treatment outcome requirements and electronic monitoring.

7. Stronger Sentencing Guidelines

Status Quo: Currently, most sexually violent offenses are first degree felonies, which carry sentences up to 30 years in prison (and sometimes life).

The Problem: Only persons who qualify as dangerous sexual felony offenders receive mandatory minimum sentences, thus some persons convicted of a sexually violent offense serve their sentence and are released while still physically able to reoffend. Since 1999, around 600 persons referred to the SVPP have been convicted of new sex offenses after being let out of prison.

Possible Reform: During the initial sentencing phase of a trial, require judges to make a finding of fact regarding whether the defendant meets specified criteria. If those criteria are met, the mandatory minimum sentence could be set at 50 years, or some comparable length.

8. FDLE Monitoring

Status Quo: SVP's and other sex offenders are – for a variety of reasons – ultimately released to life among the general public. Currently, FDLE is not required to monitor this population.

The Problem: As has been set forth above, nearly 600 persons referred to the SVPP have been convicted of new sex offenses after being let out of prison.

Possible Reform: Establish a new division of FDLE solely tasked to manage and monitor any and all who have been convicted of sexually violent offenses. This reform could accompany requirements that any plea deals include compliance with the FDLE monitoring program.

9. No Releases Prior to "Maximum Possible Benefit"

Status Quo: SVP's civilly committed to confinement undergo a series of treatments and behavioral therapies. If an SVP responds as favorably as possible, the SVP is deemed to have achieved "maximum possible benefit." There are no requirements for a SVP to have achieved "maximum possible benefit" prior to release.

The Problem: Each year roughly 2-3 SVP's are released as a result of achieving "maximum possible benefit." However, 40-50 inmates are released each year *without* having achieved "maximum possible benefit." They are released most often as a result of a plea bargain deal between state attorneys and defense attorneys.

Possible Reform: Mandate that no SVP be released prior to that SVP achieving "maximum possible benefit" of treatment.

10. Close Loophole for Foreign Visitors

Status Quo: Currently, it is the policy of the state to deport (rather than sentence and confine) those with tourist visas which would expire prior to the conclusion of a probation period.

The Problem: Florida's system of punishing those who commit sexual assaults is rendered meaningless if plea deals are struck which contain as their essential element some period of probation when the accused is promptly deported.

Possible Reform: Ban the execution of any plea bargain deal which would result in the evasion of Florida's jurisdiction for those in Florida as a result of a visa.

11. Gain-Time Eligibility

Status Quo: Currently, only those who are convicted of sexual battery are ineligible to earn gain-time.

The Problem: Persons convicted of other sexually violent offenses are eligible to earn gain-time.

Possible Reform: Prohibit any person convicted of a sexually violent offense from earning gain-time.

12. Tolling the Probationary Period

Status Quo: Currently, if a person who has been sentenced to prison with a term of probation to follow is civilly committed, his or her term of probation runs concurrently with his or her civil commitment.

The Problem: Serving one's probation term while civilly confined serves no public safety purpose.

Possible Reform: Specify that an offender's probationary period is tolled while that person is subject to civil commitment proceedings.

13. Shorten Contracts with Private-Sector Psychiatrists and Psychologists

Status Quo: DCF Secretary Esther Jacobo has recently instituted a policy to shorten the standard contracts with MDT reviewers from three years to one year.

The Problem: Without a statutory one-year review, DCF could slide back to its practice of not administering timely reviews of the performance of its contractors.

Possible Reform: Codify Secretary Jacobo's recently-instituted policy.

Florida House of Representatives

Representative Irving Slosberg

District 91

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The Honorable Matt Gaetz, Chairman
417 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chairman Gaetz,

Thank you for bringing to my attention the recent unacceptable and disappointing results of the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act. I thoroughly agree we need to examine the way Florida deals with sexual predators. The law is intended to protect Floridians from sex offenders by sending dangerous predators to a treatment center after they finish their prison sentences. However, since the law was enacted fourteen years ago, 594 sex offenders have been released only to re-commit a sex crime. These repeat offenders have molested 460 children, raped 121 women, and murdered 14 innocent victims. An eight-month investigation conducted by the Sun-Sentinel newspaper has found some shocking discoveries and possible solutions to Florida's prevalent sex offender problem.

It is my request that the Criminal Justice Subcommittee conduct a thorough, bipartisan review of the Jimmy Ryce law. This hearing should be inclusive of all relevant actors and organizations, and provide a fair and productive examination into our current problem. After reviewing the presented information, the Criminal Justice Subcommittee as a whole should prepare a conclusive diagnosis and work plan to resolve this issue.

Below is a tentative outline for the proposed committee hearing. As Chairman of the Criminal Justice Subcommittee, I respect your final authority on this matter. I believe this is truly a non-partisan issue and hope all members of our Subcommittee can work together on this very serious subject.

Problems to Discuss:

The Sun-Sentinel article made several allegations regarding the implementation of the Jimmy Ryce law. I would like our Subcommittee to have a hearing with the Sun-Sentinel reporters and other participants in order to determine if the following allegations are true.

- 1) Failure to properly evaluate and identify dangerous predators that should be sent to the treatment center during the DCF's three step process
 - a. 84 percent of sex offenders who re-commit these crimes are released during the first stage of the screening process, and do not even go through a psychological evaluation
- 2) Narrowing of the predator profile used by department screeners
 - a. Influence by the lack of financial resources and bed capacity
- 3) Inexact tools to evaluate offenders' risk of continued sexual violence
- 4) Ineffective/unsatisfactory conditions of the treatment program
 - a. Poor quality in mental health treatment and facility's conditions/security

Attendees:

- 1) Representatives from the Department of Children & Families
 - a. Presentation on how the law is implemented and how the program works
- 2) Reporters from the Sun-Sentinel investigations
 - a. Summary of findings and problems with the program
- 3) Presentations from relevant actors on problems and proposed solutions for the program
 - a. Director of the DCF's sexually violent predators program
 - b. Director of the Arcadia treatment center
 - c. State psychologists used in DCF's evaluations
 - d. Members of the DCF sex offenders review board
 - e. State attorneys and other legal experts on the commitment court cases
 - f. Representatives from the Department of Corrections
 - g. Experts – professors who have researched sex offenders, psychologists who have evaluated them, and those who have worked at sex offender treatment centers
- 4) Testimony from victims and their families
- 5) Public Testimony

Solutions:

The Sun-Sentinel article provided five possible solutions at its conclusion. I believe the Subcommittee should discuss these solutions as well as provide our own.

- 1) Track rearrests & failures
- 2) Assess costs & benefits
- 3) Monitor released offenders
- 4) Understand effective treatments
- 5) Create an oversight system

Thank you for your time and consideration. I appreciate any input or suggestions that you may have pertaining to this subject. I look forward to discussing this matter with you in the future.

Sincerely,

Irv Slosberg, State Representative
Democrat Ranking Member
Criminal Justice Subcommittee



Rick Scott, Governor
Esther Jacobo, Interim Secretary



An Overview of Florida's Sexually Violent Predator Program

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families,
and Advance Personal and Family Recovery and Resiliency.

Legislative History

- The Involuntary Civil Commitment of Sexually Violent Predators Act was passed unanimously by the Florida Legislature and signed by the Governor on May 19, 1998 (Chapter 98-64, Laws of Florida).
- The Act went into effect on January 1, 1999.

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Section 394 F.S., Part V

“**Sexually violent predator**” means any person who:

- has been convicted of a sexually violent offense; and
- suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.”

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Sexually Violent Predator Program Process



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Referral Process

Referral Sources:

- Florida Department of Corrections (97%)
- Florida Department of Juvenile Justice (2%)
- Florida Department of Children and Families (for Persons found Not Guilty by Reason of Insanity or NGI) (1%)

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Referral Process

- Referred individuals have at least one sex offense conviction and are within 545 days of release from prison.
- The DOC cover letter on all files received by DCF indicates the person "appears to be a sexually violent predator."
- This means the inmate meets the first criterion for commitment (a sex offense conviction).
- SVPP assesses mental abnormality or personality disorder and likelihood of engaging in acts of sexual violence if not confined.

6

File Review

- Clinical reviewers collect additional records from outside agencies.
- Reviewers summarize criminal and clinical information. They do not conduct assessments or make clinical decisions.
- Reviewers complete a Clinical Face Sheet.
- Reviewers send completed files to first level evaluators (licensed psychologists).

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First Evaluation (Screening)

- At least two licensed psychologists independently assess each case.
- Each psychologist determines whether the person has a possible significant chance of meeting commitment criteria (or if there is a question).
- Files are sent for a second ("face to face") evaluation if either psychologist selects the file for a second evaluation.
- If not, the state attorney is notified that the person is not recommended for commitment.

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Second Evaluation (Face to Face)

- A private practice licensed psychologist on contract with DCF attempts a clinical interview in person at the facility where the person is confined.
- The evaluation is conducted even if the person declines interview per s. 394.913(3)(c), F.S. The evaluation is based on information in the file.
- The contract psychologist provides a written report to the Multidisciplinary Team (MDT) with an opinion about commitment eligibility and supporting rationale.

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Multidisciplinary Team

- The MDT reviews evaluation reports and makes final determinations about commitment eligibility.
- The Team is comprised of six licensed psychologists.
- Team members provide independent opinions on each case. Cases are discussed at a team meeting and members work toward consensus or majority opinion on a final determination.
- Based on consensus or majority vote, the MDT sends a letter to the state attorney recommending that a commitment petition be filed or not filed.

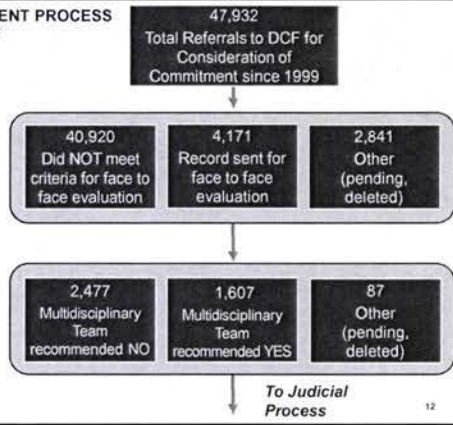
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Commitment Process

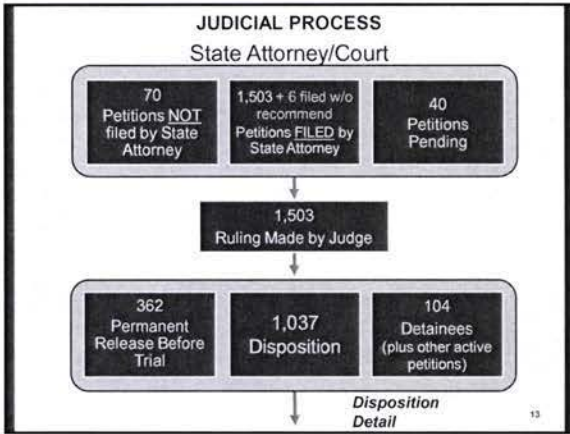
- DCF is not involved in the commitment process past the point of recommendation.
- State Attorneys file commitment petitions on 95 percent of DCF's recommendations to file. Filing requires a recommendation to file.
- If the court finds probable cause to believe the person meets commitment criteria, a detention order is entered for transfer to the Florida Civil Commitment Center (FCCC) on release from incarceration.
- At the end of the sentence, the person is transported from detention to FCCC where the individual becomes a pre-trial detainee.

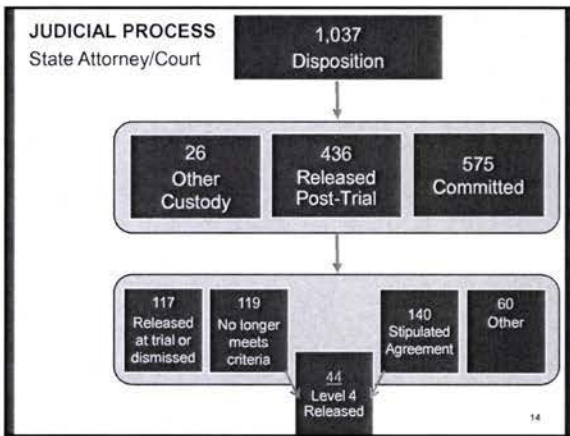
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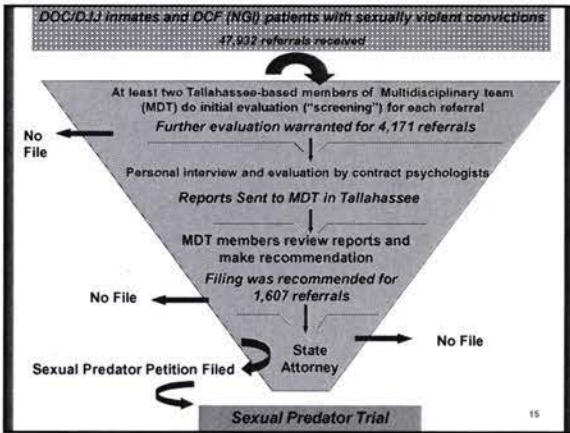
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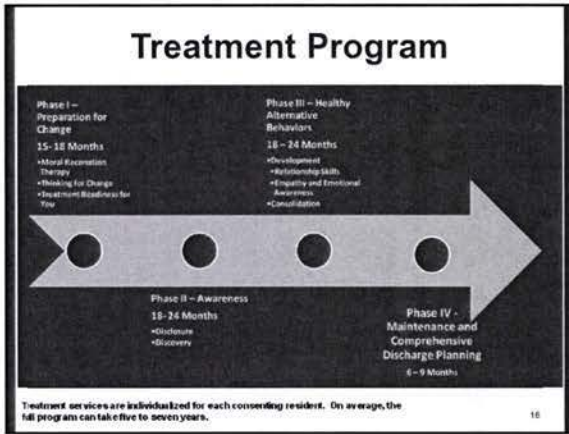


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Sexually Violent Predator Program Review

- On July 19, DCF called for comprehensive review of the Sexually Violent Predator Program within DCF by team of mental health experts.
- Review Panel:
 - Chris Carr, Ph.D.
 - Anita Schlank, Ph.D., ABPP
 - Karen C. Parker, Ph.D.
- Final report of the Review of Florida's Sexually Violent Predator Program Office received September 23

Sexually Violent Predator Program Review

- Policies and procedures for the evaluation process should be reviewed and evaluated by a team of expert stakeholders.
- Screeners should be fully trained to understand the role of the courts in the civil commitment process.
- When two evaluators agree that an offender meets the criteria for commitment, the MDT should not be allowed to overturn that decision.

Sexually Violent Predator Program Review

- Cases that include "attempted" kidnapping and "attempted" murder should be automatically sent for evaluation.
- Contracts with forensic evaluators should be limited to one year with the option of renewal.
- A system for evaluating the evaluators and providing feedback about their reasoning should be implemented as standard practice.

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Sexually Violent Predator Program Review

- Where possible, additional on-site visits for face to face interviews with offenders should be conducted.
- Actions to ensure more effective oversight and accountability of programs and fiscal practices

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State of Florida
Department of Children and Families

Rick Scott
Governor

Esther Jacobo
Interim Secretary

MEMORANDUM

DATE: Sept. 23, 2013
FROM: Esther Jacobo, Interim Secretary
SUBJECT: Sexually Violent Predator Program Review

Within days after assuming my position as Interim Secretary of the Department of Children and Families, I called for a review of the Sexually Violent Predator Program in an effort to ensure the program is making commitment recommendations that keep the public safe. I have thoroughly examined and analyzed the findings and recommendations in the attached report. Based on this review, I am directing the Division of Substance Abuse and Mental Health to immediately implement the following recommendations contained in the report:

1. The policies and procedures for the evaluation process should be reviewed and evaluated by a team of expert stakeholders before being finalized and implemented.
2. Screeners will be trained to understand they are not solely responsible for screening out offenders who do not meet civil commitment criteria. They must refer cases for face-to-face evaluation when there is any doubt or ambiguity as to whether an offender will meet criteria.
3. When two evaluators believe an offender meets commitment criteria, the multidisciplinary team should be required to recommend a commitment petition be filed. Implementation of this recommendation will require rulemaking.
4. In addition to automatically sending cases that include kidnapping and murder convictions for evaluation, cases that include "attempted" kidnapping and "attempted" murder should automatically be sent for evaluation.
5. Contracts with forensic evaluators should be limited to one year with the option of renewal instead of the current three year policy.
6. A system for evaluating the evaluators and providing them with feedback about the clarity of their reasoning should be implemented as a standard practice.

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

I have further determined that in order to effectively administer the program, the administrator must be able to oversee the program with an unbiased objectivity. The administrator must have a thorough understanding and appreciation of the laws governing the Sexually Violent Predator Program and its potential impact on public safety. This is extremely important work with large public safety implications and the program must be implemented strictly as the law requires. Therefore, the program is best administered by an objective manager rather than a clinical psychologist. This change will ensure the administrator of the program is not involved in evaluating offenders, and can implement the Act in an unbiased manner.

To that end, I have named Greg Venz, an attorney and expert on the Jimmy Ryce Act, as Interim Administrator of the Program. Greg's extensive knowledge of the statutes, case law and history around this program is unmatched, and I am confident he will provide informed insight and leadership.

After evaluating the organizational structure within the Division of Substance Abuse and Mental Health, I have also restructured the management team to ensure more effective oversight and accountability of our programs and fiscal practices. This change will ensure the program receives closer oversight and guidance.

The attached report provides a great deal of information and several recommendations I hope will be helpful to our legislative leaders as they consider what changes to the law are needed to ensure Floridians are protected from sexually violent predators. The Department is committed to supporting the Legislature as we work together to tackle this challenging issue on behalf of the Floridians we are charged with protecting.

Review of Florida's Sexually Violent Predator Program Office

September 23, 2013

The Florida Department of Children and Families, Substance Abuse and Mental Health (SAMH) Program Office requested a comprehensive review of the Sexually Violent Predator Program Office (SVPP) by forensic mental health experts.

Review Panel:

Chris Carr, Ph.D.

Anita Schlank, Ph.D., ABPP

Karen C. Parker, Ph.D.

Chris J. Carr, Ph.D., is a Licensed Psychologist in Florida. He was previously the Chief Psychologist of the Vermont DC and the Clinical Supervisor of inpatient and outpatient mental health programs in prisons in Region II of the Florida DC. He has conducted program evaluations since 1995. He began treating sex offenders in 1991 and has worked at the FCCC. He has presented on Sex Offender Evaluation and Treatment including conferences sponsored by the National Commission on Correctional Health Care and the Florida Council on Crime and Delinquency. He has been conducting SVP evaluations - and other forensic evaluations - and testifying as an expert since 2003.

Anita Schlank, Ph.D., ABPP is a Licensed Clinical Psychologist, board certified in forensic psychology, and a Certified Sex Offender Treatment Provider in the Commonwealth of Virginia. She was previously the clinical director of the civil commitment program for sexual offenders in Minnesota, and is currently the clinical director of the SVP program in Virginia. In addition, she has consulted with and/or been an expert witness for eight of the SVP programs throughout the country. Dr. Schlank is the editor of the book series entitled *The Sexual Predator*, which is focused on issues related to the civil commitment of sexual offenders, and was previously the President of MnATSA.

Karen C Parker, Ph.D. is a licensed Psychologist in Florida. She was the first Clinical Director of the Sexually Violent Predator Program (1999-2003) and currently conducts risk-assessment evaluations for that Program. She was a Senior Psychologist in Florida's Department of Corrections, serving both men and women in four correctional institutions. She served as a psychologist in both the civil and forensic units at the Florida State Hospital in Chattahoochee, Florida. Dr. Parker was a Medical Psychologist at the Veteran's Hospital in Loma Linda, California and developed the first inpatient Pain Treatment Center at that hospital. Dr. Parker was part of an administrative team that implemented three additional inpatient pain treatment centers in hospitals located in the greater Los Angeles (California) area. Dr. Parker also has a BSN in Nursing and worked in both prisons and jails in North Florida.

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Florida's Civil Commitment of Sexual Predators: An Overview

Nearly half of these United States have enacted sexual offender civil commitment laws. On May 19, 1998 the Florida Legislature passed the Involuntary Civil Commitment of Sexually Violent Predators Act, Florida Statute 394, Part V. The law went into effect on January 1, 1999. The Sexually Violent Predator Program (SVPP) is included within the Mental Health Program Office of the Florida Department of Children and Families (DCF). The Act defines "Sexually Violent Predators" as 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 in a secure facility for long-term control, care, and treatment. Further, this likelihood to reoffend means that the propensity to commit acts of sexual violence is of such a degree as to pose a menace to the community (394.912, Florida Statutes).

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act. The act creates a civil commitment process for sexually violent predators. It is similar to the Baker Act provisions for the involuntary civil commitment of mentally ill persons who pose a danger to themselves or others.

Offenders are referred to the Sexually Violent Predator Program when their release from the Department of Juvenile Justice (DJJ), the Department of Corrections (DOC), or the state hospital system (DCF) is being considered. The Sexually Violent Predator Program then gathers all of the information available concerning the offender's sexual, criminal, and personal history. Then the SVPP Office begins the process of determining whether this individual meets the clinical definition as a sexually violent predator under the Act. After the evaluation is conducted, the Department then makes a recommendation to the State Attorney regarding commitment or release.

Following the receipt of the recommendation and the supporting documentation, the State Attorney determines whether to file a petition in court that alleges that the offender is a sexually violent predator in need of residential treatment. If the judge determines that probable cause exists, the offender is detained at the Florida Civil Commitment Center. The commitment process often ends with a civil trial, during which a jury (or judge) is able to hear the evidence and decide whether residential treatment is appropriate for that individual.

Treatment: The Florida Civil Commitment Center

Those committed to the Sexually Violent Predator Program are housed for treatment at the Florida Civil Commitment Center. The program consists of multiple levels of cognitive-behavioral treatment that is specifically designed for sexual offenders. Under its current design, the program has four treatment levels ("Phases") and takes approximately six years to complete. The law (Section 394.918, FS) provides that persons committed under the Involuntary Civil Commitment of Sexually Violent Predators Act are to be confined until the court determines that they are no longer a threat to public safety. After an offender is committed, he has the right to a yearly examination of his mental condition. This is called the "Annual Review." The evaluators complete an Annual Review Report and, if necessary, the court will hold a hearing to determine whether there is probable cause to believe that the person's condition has so changed that he is safe to be released. This determination can be made by a jury or a judge (bench trial).

Florida Civil Commitment Center (FCCC): The Florida Civil Commitment Center is a state-of-the-art secured civil commitment facility with a 720-bed capacity. It is located in Arcadia, Florida and is operated by GEO Care, LLC. It houses both committed residents and pre-trial detainees. Most residents and detainees live in open-bay dorms with multiple beds in a shared living space. Persons housed in Secure Management for disciplinary reasons, have single rooms to maximize security. For those residents who are in treatment and have a long track-record of good behavior, can choose to live in the Honor Dorm where special privileges are granted. These rooms have doors and two beds (not bunk beds).

FCCC Comprehensive Treatment Program: The treatment programming at FCCC is grounded in two complementary models: (1) The Risk-Needs Responsivity Model and (2) The Good Lives Model. The treatment design is guided by research under both the treatment and the risk management methodologies. As part of its practice, FCCC actively contributes to the research in this growing body of literature.

Treatment Phases: Following the initial evaluation and treatment planning process, committed residents enter the four phases of treatment:

- **Phase I: Preparation for Change** (Range for completion is 15-18 months). Pre-trial detainees may participate in some programs associated with this Phase. The goal for Phase I is the strengthening of the resident's self-regulation skills and the reduction of those behaviors that could potentially interfere with the treatment process. A portion of Phase I specifically targets the antisocial lifestyle and the thought patterns associated with it. This course is called Moral Reconciliation Therapy (MRT) and it has been shown to make a positive impact upon those with persistent antisocial lifestyles (Little, 2005 and Ferguson & Wormith, 2012).
- **Phase II: Awareness-Disclosure and Discovery** (Range for completion is 18-24 months). This phase involves residents working with clinical staff to develop a treatment plan with individualized targets for intervention. Residents must complete polygraph-assisted life and sexual history disclosures. This information facilitates identification of personal risk factors, offense patterns, and the life-barriers that exist for each resident.
- **Phase III: Healthy Alternative Behaviors – Development and Consolidation** (Range for completion is 18-24 months). This phase of treatment gives concentrated attention to the offense-specific elements of a resident's history, with emphasis upon his current personality and behavioral patterns. Residents work on making improvements across four domains: self-management; socio-affective functioning; distorted attitudes/beliefs; and sexual interests.
- **Phase IV: Maintenance and Comprehensive Discharge Planning** (Range for completion is 6-9 months). Residents in this advanced phase of treatment further develop their life-skills and their offense-prevention strategies. They demonstrate and refine behavioral skills they have learned but, also, identify areas that need more attention. At this stage, the residents present a detailed plan for their release. The resident documents each step in his plan and how it affects his ability to succeed in the community.
- The FCCC has competency restoration programming for detainees found Incompetent to Proceed.

A Description of the Sexually Violent Predator Program

The Sexually Violent Predator Program Office: The SVPP Office has the following responsibilities:

- (1) Reviewing and screening the sexual offenders who are approaching release. The files are referred by the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and those mental health treatment facilities managed by the Department of Children and Families (DCF);
- (2) Selecting offenders in need of a full risk-assessment evaluation;
- (3) Arranging for the offenders to be evaluated by licensed mental health professionals on contract with the SVPP;
- (4) Reviewing the evaluation reports for overall quality and cogency;
- (5) Making recommendations to Assistant State Attorneys about commitment;
- (6) Managing the contract that the Sexually Violent Predator Program has with GEO Care, LLC. This contract provides for the operation of the Florida Civil Commitment Center (FCCC) and the treatment that is provided to its residents. The SVPP Office is located in Tallahassee and the FCCC facility is located in Arcadia, Florida. The Annual Funding for the treatment component of the Program was \$35 million (FY 2010 – 2011).

The Sexually Violent Predator Program Procedures: Approximately 200-400 files are referred to the SVPP Office each month. Over 40,000 have been reviewed since the inception of the program. A File Review Team of Behavioral Health Specialists (Master's level professionals) examines each file to determine if the offender has a qualifying offense under the statute. This Team also contacts law enforcement and related agencies to ensure that all of the available criminal data is included for review. The records are gathered from Florida, other states, and, sometimes, other countries. The goal is to accumulate as much information as reasonably possible about the offender's criminal, social, and mental health history. After the Review Team has prepared the file, members of the Screening Team (licensed psychologists) examine the file in order to determine whether or not the individual should receive a full evaluation that includes a face-to-face interview with the offender. The Screeners also check

files for accuracy and completeness. When an offender has been selected for evaluation, the SVPP staff arrange for a licensed psychologist (on contract) to travel to the facility where the offender is currently being housed. The Sexually Violent Predator Program has active contracts with 25 independent practitioners.

The SVPP Multidisciplinary Team: The Multidisciplinary Team (MDT) consists of the two psychologists from the Screening Team, the SVPP Director, the Assistant Director, the independent evaluators, and two additional contracted psychologists from the community. The latter have consulted with the SVPP since its inception and are uniquely able to discern issues that affect quality control and the process of making commitment determinations. The MDT also reviews evaluations for overall quality of work product, clarity, and cogency in clinical reasoning. On the basis of the evaluation reports, as well as other information from an offender's file, the MDT determines whether or not the offender meets the criteria for status as a sexually violent predator under the Act. The Team then makes a recommendation to the designee at the State Attorney's Office to proceed with commitment or not.

The Systemic Role of the Sexually Violent Predator Program Office in the Civil Commitment Process

The MDT is the executive branch of the Sexually Violent Predator Program referral process. It exists at the front end of the process where screenings and evaluations take place. At this point, the MDT decides which offenders are in need of an in-depth evaluation and which are not. After the evaluations have been submitted, the MDT decides which offenders to recommend for civil commitment. While the MDT has executive power in the referral process, it is the role of the independent psychologist to conduct these evaluations. Obviously, the MDT controls the flow of referrals to these independent evaluators, and the number of evaluations requested has varied over time. Since the program began the SVPP has screened over 30,000 offenders.

Members of this review panel interviewed the MDT members as part of the program review. One question that was important to the review panel, was whether independent decisions by the MDT existed or was there a form of "group think" that was fostered among the members. Independent thinking by the MDT members appears to be both encouraged and celebrated. But as expected, the Team is cohesive and there is an overall similarity in how they view issues and the Team's decisions. The Team meets regularly to discuss cases and new research findings. The evaluators, however, function independently from the Team and from one another. This design of pulling the evaluation role away from the MDT builds independence into the process. The Team has the benefit of reviewing and considering the independent evaluations, but still makes the final decision whether to recommend involuntary civil commitment or not.

When evaluators are brought into the process, one or two independent evaluations are requested. The Team initially requests one evaluation. If that evaluation indicates that the offender does meet commitment criteria then a request for a second independent evaluation is made. Occasionally the Team will request a second evaluation even if the first evaluation results in the opinion that the offender does not meet criteria. This may occur when the Team concludes the first evaluation did not sufficiently answer an important question or perhaps when new information surfaces. As mentioned above where there is a reasonable assumption of meeting commitment criteria, two independent opinions are routinely sought. If the MDT ultimately makes the recommendation to pursue commitment, these evaluators are called upon to testify as expert witnesses in civil commitment trials. They are typically experienced forensic

psychologists who, like the MDT members, have extensive expertise in this area. In fact, the team and these independent psychologists meet together for a yearly conference where new research is presented and other issues that affect the evaluation process are discussed. In addition to this conference, contracted evaluators are required to obtain continuing education training that is relevant to the assessment of sex offenders.

As designed, the SVPP system appears to balance the power in the decision making process between the MDT members and the independent forensic psychologists. The MDT has executive power, but the in-depth evaluation process has been separated from the MDT. *To the extent that the MDT requests these independent evaluations*, the infusion of disparate opinions into the process is fostered. This is especially true when considering a case that may go to trial and where commitment is a possibility.

As indicated by the SVPP Rules, a face-to-face evaluation must be conducted in each case where the offender is recommended for commitment. However, the MDT controls the number of cases that are referred for independent evaluations. The decision to refer an individual for indefinite civil commitment is an important and complex one. It is based upon the opinion that a mental abnormality exists, and that abnormality makes that individual likely to engage in future acts of sexual violence. Further, the law requires that the sexual acts must pose a menace to the community at large. What makes this decision progressively more difficult, is that there are moderating and aggravating factors that affect each case. How the evaluator interprets these variables and how they are mixed into the totality of the criminal behavior and the mental illness is a result of interpretation and the assignment of relative weights. No one of the many thousands of sexual offenders is like the other.

When the MDT recommends indefinite commitment, the case is placed into the hands of the State Attorney. It is the State Attorney who decides whether or not to file a petition seeking commitment. In some cases when the MDT recommended commitment, the State Attorney chose not to proceed with the recommendation. Most of the time, however, the MDT and the prosecutors agree on the cases that pursued. Obviously, the ultimate commitment decision is up to the jury or the judge (in case of a bench trial). In either case, it is a lengthy and involved process commensurate with the seriousness of the decision to involuntarily commit an offender for an indefinite period of time.

In order to preserve the integrity in the management of these referrals, it is imperative that the role of the MDT is well-defined at each stage of the process. If, for example, the MDT begins to move beyond the screening and into the

evaluation process, then the decision making will become more centralized than originally intended. The system would not function as it was originally designed. If, on the other hand, the MDT referred all cases for evaluation, then the process would become overly decentralized. It is in the interest of the Program that the MDT preserves the delicate balance that does not jeopardize its position by taking on roles that were not assigned to it or, conversely, out-sourcing the jobs that were.

The initial screening consists of a file review. Evaluations by independent contractors consist of a file review, an extensive interview, and the submission of a comprehensive report. The report concludes with an opinion as to whether or not the offender meets the criteria for involuntary civil commitment as a sexually violent predator. However, it must be emphasized that the MDT is assigned to make the final recommendation decision. The SVPP has no statutory authority to become involved in commitment proceedings after it makes this recommendation. The contract evaluators may be subpoenaed to testify at trial or at other commitment-related proceedings.

The Core Issue: The Problem of Selectivity

Since the Sexually Violent Predator Program's inception, over 40,000 referrals have been made to the Department of Children and Families for screening and assessment. This evaluation process results in a MDT recommendation to the State Attorney. The Program must recommend whether or not the State Attorney should file a petition seeking the involuntary civil commitment of a sexual offender who meets the criteria under the Act. As noted above, the Sexually Violent Predator Program utilizes a sophisticated process in order to arrive at this decision. For the purposes of the current review, it is useful to look at the Sexually Violent Predator Program as a *selection* program. Its mission is to select offenders who are considered to meet the criteria as sexually violent predators under the Act – and to identify offenders who do not meet criteria.

Error is always present in any selection process. This applies to the process that the Central Intelligence Agency uses to identify potential terrorists who require detention. It also applies to the process that physicians use to select those at a high risk of developing cancer and who should be given extensive medical procedures. It would also apply to a program that is delegated to identify those who have problems with alcohol consumption and who may need to have their driver's licenses revoked.

When making this selection, how many incidents of intoxication should be allowed before one is classified as a "high-risk" drunk driver? Some might say that two alcohol-related arrests should qualify someone as being "high risk." Others may want to investigate the nature of the incidents and other related factors. For one person, maybe the two incidents occurred within one year and were related to a divorce, a job loss, or some other traumatic, yet transient, life event. This person had no other alcohol-related arrests and did not usually drink alcohol. For another, however, the two incidents were imbedded in several years of other alcohol-related arrests, such as Domestic Violence and Disorderly Conduct. For this person, there was a pattern of dysfunction related to alcohol abuse. In this case, the "high-risk" was related to the context of the individual's life experience and can be identified by looking at a number of variables that suggest what might happen in the future.

Which of these two individuals is the high-risk drunk driver? The problem is that human behavior is not easy to predict, even when extensive background checks are completed. Humans are complex, and sometimes unpredictable. It is difficult to know the motivations of others; sometimes it is difficult to know one's own

motivation. We are sometimes surprised by our own behavior in certain situations. Given this, any selection process is subject to error.

The SVPP selection process is imperfect. Some people will be judged to meet the criteria as a Sexually Violent Predator when in reality they do not. Conversely, others will be judged as not meeting the criteria as a Sexually Violent Predator when, in reality, they do. The central question for this review is how much error exists in the SVPP selection process and what kind of error is most prevalent. When these facts are discovered, the follow-up question should be: Is there anything about the way the program makes decisions (from the initial screening to the final recommendation) that can be changed to reduce the type of error that exists?

While error is a fact of life, it is not something to simply accept. With public safety at risk, the Program, since its inception, has conducted its own research and allowed others access to data to investigate the use of actuarials, the existence of evaluator bias, and the types of offenders being considered for commitment. In addition, in the early years of the Program, the first OPPAGA review of the treatment program was conducted. With the consultation of information technologists, Florida's SVPP created the most inclusive database of any program throughout the United States. This data has been offered to scientists for use to further our knowledge about the assessment of Sexually Violent Predators. In fact, Dr. Jill Levenson, who is now a recognized expert in the field, conducted her first study using Florida's SVPP data.

The science of identifying dangerous offenders has grown exponentially in the last twenty years and new research replaces the old at an astonishing rate. In fact, the foundation for this review was an analysis of the recent research literature, as listed in the Appendix. Statistics specific to the Sexually Violent Predator Program were reviewed and individual referral cases were examined. The results of the studies recently conducted by OPPAGA and the Sexually Violent Predator Program were supplied to the review panel for inspection.

When making a selection, there are two types of error ("bad" selections) and two types of correct ("good") selections. In this case, a false-positive error occurs when an individual is believed to meet the criteria as a Sexually Violent Predator when he, in fact, does not. This is saying a condition is present when it is not, and is also called a "false alarm." A false-negative error occurs when an individual is believed not to meet the criteria as a Sexually Violent Predator when, in reality, he does. This occurs when the Team says the condition is not present when it is. This is when the team fails to raise an alarm when it should. The two "correct" decisions are noted below: when a real predator is selected ("true positive") and one who is not a predator is deselected ("true negative").

SVPP DECISION	Truly Meets Criteria	Truly Does Not Meet Criteria
Does Not Meet Criteria (Recommended to the State Attorney to Not File a Petition Seeking Involuntary Commitment)	Incorrect Outcome False Negative	Correct Outcome True Negative
Meets Criteria (Recommendation to the State Attorney to File a Petition Seeking Involuntary Commitment)	Correct Outcome True Positive	Incorrect Outcome False positive

It is important to understand that it is impossible to completely eliminate error because this is an imperfect world and the evaluation process, itself, is imperfect. It is possible to balance each type of error, but there are inevitable trade-offs in this endeavor. For example, if we decide we must *never* allow a potentially dangerous sex offender to be mistakenly released into the community, then we must never release any sex offender – ever. Even low-risk sex offenders sometimes go on to commit heinous sex crimes. So to catch that low-risk offender who may commit that heinous act, all sex offenders would need to be committed.

But the decision to *never* allow a potentially dangerous sex offender to be released would result in the loss of liberty for thousands of individuals who truly are at a low risk to re-offend. In addition, this level of detention would obviously become a fiscal nightmare to the taxpayers. If the thousands of sex offenders who have been screened since the Program's inception were committed, 39 additional compounds would need to be constructed to house them. The current annual budget of approximately \$30 million would consume over one billion dollars of tax revenue. However, at the other extreme, if we *never* want to indefinitely commit an individual who is not actually dangerous, then we would need to release all sex offenders. This other type of extreme decision would

result in the release of many dangerous individuals. Neither extreme is desirable.

Let us examine the current error rates to see the current balance in the selection process. There are two major sources of these statistics: the 2011 OPPAGA Study and the preliminary results of the 2013 Sexually Violent Predator Program Recidivism Study. Relevant findings from these studies will be summarized below. Data from the investigation conducted by the Sun Sentinel will also be reviewed.

Research Conducted by the Office of Program Policy Analysis And Government Accountability (OPPAGA)

On October 21, 2011 the Office of Program Policy Analysis and Government Accountability (OPPAGA) completed a review of the practice of “stipulated agreements” by the Sexually Violent Predator Program. These agreements were entered into between the offenders who were recommended for commitment and the prosecutors who were going to submit them to commitment trials. Rather than have a trial, an agreement was made that the offender enter outpatient treatment, break no laws, and meet other requirements as indicated in the written agreement. When signed, the agreement allowed for the conditional diversion (release) of offenders from the Florida Civil Commitment Center (FCCC). At this time, a commitment order was signed by the judge, but that order was held in abeyance pending the behavior of that offender while living in the community. The bottom line was that if an offender did not comply with any of the provisions, the commitment order would be activated and he would be automatically committed to the residential treatment program in Arcadia.

With regard to this current review, the most important finding in the OPPAGA study was how these ostensibly “committed” and dangerous offenders fared when released back to the community within a relatively short time. This study was unique because usually offenders who are committed do not get released until many years have passed. In this OPPAGA study it was possible to gauge the rate of recidivism by offenders recently determined to be committable and dangerous. For the Sexually Violent Predator Program, follow up data is the “acid test” of the efficiency of the civil commitment process. This is because it allows those involved to see if they are under-referring or over-referring individuals for commitment. This study provided an opportunity to see if offenders who were recommended for commitment as sexually violent predators, actually behaved as expected when they were placed back into the community.

The findings were that out of the 140 offenders living in the community, 5 were convicted of a new felony sex offense after release. The re-offense rate for these 5 is 3.6%. To put it another way, 96.4% of the offenders who were found to have a mental abnormality that made them likely to re-offend, did not re-offend. This finding indicates that many individuals who were thought to be at high risk, were not. When released into the community, these offenders who were considered to be extremely dangerous predators with disorders that undermined their capacity to control themselves, rarely re-offended.

It is important to note that there were some limitations to this study. The offenders studied were in the community for varying periods of time. These 140 offenders were in the community between 1 and 10 years. Thus, their recidivism rates could not be compared to an actuarial rate (e.g., 5 or 10-year rates). Though the risk of re-offense tends to be the highest within the first two years of release, the longer that offenders are in the community, the more time they have to re-offend. Another factor to consider when evaluating this study is that almost half of the sample had some form of probation. In general, being on probation is expected to lower recidivism rates. These limitations to the study are considered moderate and the results should still be considered meaningful.

Research Conducted by the Sexually Violent Predator Program Office (Preliminary Results)

As part of the review process, members of the panel were provided with a presentation entitled "Sexually Violent Predator Program Recidivism Study (Preliminary Results)". The study is authored by the following SVP Program Office staff: Daniel F. Montaldi, Ph.D., Administrator; Sandi Lewis, Ph.D., Senior Psychologist; and Janis Heffron, Ed.D., Senior Psychologist. Following the lead of the OPPAGA study, this one also investigated the behavior of those who were released from the Sexually Violent Predator Program at different stages. The question was whether the OPPAGA findings were consistent with other SVPP offenders who were released to the community; or whether the OPPAGA findings were an anomaly.

The OPPAGA study certainly suggested the need for further outcome research. To this end the SVPP examined the following groups:

- Offenders released from prison (most without a petition filed or with the petition dropped before a probable cause finding by the court);
- Offenders released from the FCCC while still detainees (never committed, with petitions dropped before the trial, or released after a win at trial);
- Offenders released as no longer meeting commitment criteria (which includes those reaching Phase IV in treatment and/or determined by the courts as having achieved the Maximum Therapeutic Benefit at a different Phase of treatment);
- Offenders released on stipulated agreements.

Since the SVP Program began, the Multidisciplinary Team has recommended 1,498 individuals for civil commitment (as of 2/28/13). The SVP research sample consisted of 47% of this group, or 710 offenders who were recommended for commitment by the SVPP program, but were later released.

The study revealed that 71 of the 710 individuals released were, at least, charged (versus convicted) with a sexually motivated offense that involved a victim. This is a 10% recidivism rate. To put it another way, 90% of the offenders considered extremely dangerous due to a mental abnormality and deficits in volitional control, did not re-offend.

It is worth noting the details of the 71 offenses. Thirty-two (32) offenders had charges that resulted in felony sex offense convictions: which is 4.5% of the total group. Nine (9) of the 71 had sexually *motivated* felony convictions. Totaling the felony sex offense convictions and the sexually *motivated* felony convictions (totaling 41), results in a 5.7% recidivism rate. Nineteen of this group had felony

charges that were pending, acquitted, or dropped. This would make a total of 60 (8.45%) with, at least, a felony charge. In addition there were six (6) misdemeanor charges and six (6) misdemeanor convictions.

As noted above, one way to examine the success of the SVPP selection process is to examine how many offenders who were found to be extremely dangerous, actually re-offended after being released. Another way to look at the selection process is to compare offenders who were not recommended for commitment after a face-to-face evaluation and compare them to those offenders who were recommended for commitment. Numbering about 1200, the non-recommended group is much larger than the 710 who were recommended for commitment. In the non-recommended group the percentages of offenders with new felony sex offense convictions was low: 3% for offenders released for a period between 5 and 10 years and 4% for offenders released more than 10 years (up to 14 years). In the recommended group, the percentages of offenders with new felony sex offenses was higher, but not much: 6.8% for offenders released for a period between 5 and 10 years and 6.5% for offenders released more than 10 years (up to 14 years).

The recommended and the non-recommended groups differed by less than 2% in the percentage of offenders obtaining a new felony sex offense conviction after release. Such a minor difference is surprising and indicates that the traditional approach to determining SVP status needs to be improved. There are too many false positives (someone determined to fit the SVP definition when he does not, or someone determined to be likely to re-offend but he is not). The re-offense rates of those who were recommended for commitment were hardly different from those who were not recommended. Obviously, the re-offense rates of a group thought to be extremely dangerous sexual predators would be expected to be much higher than the others.

The overestimation of risk is especially prevalent when age is considered. Very few recommended offenders over 50 re-offended. Only 8 out of 149 (5.4%) offenders age 50-59 had a new sex offense *charge* and only 4 had a new charge (2.7%) for a sexual offense involving physical contact. Only 1 out of 94 (1.1%) offenders past the age of 60 had a new sex offense charge. The one charge by a male over 60 was dropped. For offenders aged 40-49, 13% had a new charge. For offenders aged 30-39, 17% had a new sex charge (misdemeanors included).

This study, as did the former, has limitations when considering the results. There may be factors that have affected the outcome independent of the measured variables. For one, the offenders who were released were living in the community for varied lengths of time. There is also incomplete data on the not-recommended for treatment group as the data on charges only are not yet

available. Also, no data has been collected on the offenders who were not selected for full evaluation and were not recommended.

Florida Sun Sentinel Investigation

The investigation reported in the Sun Sentinel article (8/18/13) entitled, "Sex Predators Unleashed," also shed light on offenders who were referred to the Program. The SVPP, through a public records request, provided the journalists from the Sun Sentinel with data on 31,626 referrals. Recidivism data on the sample was obtained by the journalists from the Florida Department of Law Enforcement through computer searches. Out of the 31,626 men, approximately 1500 or so were recommended for commitment by the SVPP. Thus, since the Florida law went into effect in 1999, approximately 30,000 of these referrals were not recommended for commitment.

The total number of offenders from the 31,626 who obtained a sexual charge or conviction was 1,384 offenders. That would be calculated as a 4.61% sexual recidivism rate. Actually the number of re-offenders among those who were not recommended is slightly lower. The reason for this is that within that 1,384 there are included a number of re-offenders who were recommended (i.e. 31,626). The SVPP program identified 71 of that group of re-offenders, which actually left 1,311 offenders in the "not recommended but re-offended" group. Using the correct figures, this actually amounts to a 4.4% recidivism rate. Another way to say this is: Out of the 30,000 offenders not recommended for commitment, 95.6% did not re-offend.

The article further indicated that 594 of the 30,000 offenders who were not recommended for commitment, obtained new sex offense convictions. This amounts to a 1.98% conviction rate ($594/30,000 \times 100\% = 1.98\%$). This is to say that less than 2% of the 30,000 obtained new convictions for a sexual offense. Another way to say this is that 98% of the individuals not recommended for commitment, were not convicted of additional sexual offenses.

The article also indicated that 130 offenders among the 594 with new convictions had rape convictions. This amounts to a 0.43% rape conviction rate ($130/30,000 \times 100\% = 0.43\%$). Less than 1% of the 30,000 offenders who were not recommended for commitment obtained new rape convictions. Another way to say this is that over 99% of the offenders not recommended for commitment did not go on to be convicted of rape.

The article also indicated that 14 of the 594 men, who had new convictions, were sexual murderers. This amounts to a 0.047 sex related murder rate ($14/30,000 \times$

100% =0.047%). In other words, less than five one-hundredths of 1% of those not referred for commitment were convicted of a sexual murder. Obviously, one of the limitations of these findings is that some offenders commit sexual offenses without getting detected by law enforcement authorities.

Summaries of Sexually Violent Predator Program Recidivism Data

Summary of OPPAGA Findings: On October 21, 2011 the Office of Program Policy Analysis and Government Accountability (OPPAGA) completed a review of the practice of stipulated agreements for the conditional release of offenders from the Sexually Violent Predator Program. The study identified offenders who were recommended for commitment by the SVPP but were later released by the courts on these conditional release agreements, called "stipulated" or "settlement" agreements.

The findings were that out of the 140 individuals in the community on a stipulated release, 5 were convicted of a new felony sex offense after release. The re-offense rate of 5 out of 140 is 3.6%. To put it another way, 96.4% of the offenders that were found to have a mental abnormality that made them likely to re-offend, did not re-offend. This finding indicates that many individuals who were thought to be at a high risk to re-offend were not. When released into the community, this group of offenders, who were determined to be extremely dangerous predators with disorders that undermined their capacity to control themselves, rarely re-offended.

Summary of SVPP Findings: Since the SVP Program began, the Multidisciplinary Team has recommended 1,498 individuals for civil commitment (as of 2/28/13). The SVPP sample consists of 47% (710) of those 1,498 individuals. These are individuals who were recommended for commitment by the SVPP program, but were released by various mechanisms. The results of the study indicated that 71 of the 710 individuals in the sample were, at the least, charged (versus convicted) with a sexually motivated offense involving a victim. This is a 10% recidivism rate. To put it another way, 90% of those offenders considered to be extremely dangerous due to a mental abnormality and deficits in their volitional control that made them likely to re-offend - did not re-offend.

Summary of Sun Sentinel Findings: The data reflected in the Sun Sentinel article (8/18/13), "Sex Predators Unleashed," indicated that of approximately 30,000 sexual offenders who were not recommended for commitment by the SVPP, 1,311 obtained a new sex charge or new sex conviction. This is a 4.4% recidivism rate. Another way to say that is: Out of the 30,000 offenders not recommended for commitment by the Sexually Violent Predator Program, 95.6% did not re-offend.

Integrating the Recidivism Data from The Florida SVPP Studies

When analyzing the recidivism data associated with the Sexually Violent Predator Program, it appears that the most prevalent type of error made was that of identifying "false positives." This can also be viewed as the Program not correctly identifying the low-risk offenders often enough. These are the 96.4% of offenders observed in the OPPAGA study who were deemed to be dangerous but did not re-offend and the 90% of offenders in the SVPP study that were deemed to be dangerous, but did not re-offend. For those deemed to be so dangerous that they may be committed indefinitely, and cared for at great expense to the state, this false-positive rate appears high. These results suggest that individuals are being over-selected for commitment.

One of the reasons that the false-alarm rate is higher is because discriminating dangerous offenders from non-dangerous offenders has become more difficult due to a lowering of the overall rates of sexual offending. Termed "base rates," their decrease has been noted since the early 1990's and has come to affect the SVPP program directly. For example, in Florida in 1993 the total forcible sex offense rate (to include rape, forcible sodomy and forcible fondling) was 101.1 offenses per 100,000 people in the community. In 2012, the rate was 53.2 offenses per 100,000 (Florida Statistical Analysis Center; Florida Department of Law Enforcement).

It is important to point out that as the criminal rates fall it becomes increasingly more difficult to distinguish between those who are dangerous and those who are not. The concept of "base rates" is fundamental to understanding why this is so. The base rate is the overall rate of recidivism of a group of sexual offenders. If the base rate for a group is known to be, for example, 40 percent then evaluators would predict that any individual in that group would have about a 40-percent chance of sexually re-offending. When empirically grounded static and dynamic risk factors related to sexual recidivism are also identified, then even more accurate risk assessments can be made.

However, if the base rate is extremely low, then additional information may not significantly improve the accuracy of evaluations. For example, if the base rate is 10 percent, then practitioners would predict that 90 percent of the individuals in the group will not be arrested for a new sexual offense. The error rate would be difficult to improve even with individualized information about risk factors present

in certain offenders. It is difficult to conduct accurate evaluations when base rates are extremely low. The problem of low base rates has been a particular issue in sexual recidivism studies. This occurs, in part, because the underreporting of sexually violent crimes is higher than in crimes of general violence. It has also resulted from a general decline in sexual crimes. Many factors have contributed to this decline, such as:

- longer prison sentences;
- increased public awareness;
- more advanced sex offender probation monitoring and surveillance (GPS monitoring);
- more effective sex offender treatment techniques and strategies;
- And sex offender registration laws.

Yet a major source for this high false-alarm rate is the manner in which the actuarial, the Static-99 and its revision (Static-99R) have been used in the Sexually Violent Predator evaluation process. Because this actuarial has been used widely (literally globally) in the same way, this could be considered a systemic error related to the risk assessment process.

Assessing the Risk of Sexual Recidivism

In the early days of risk assessment, clinicians based their decisions on factors that appeared to be logically related to the risk being analyzed. At that time, there was a paucity of scientific research data to indicate what factors were truly related to risk being assessed. As the field developed, researchers (e.g., Meehl, Monahan) pointed out that clinicians were actually basing their decisions on factors that appeared to be relevant but were, in fact, grossly inaccurate. It was out of this context that the Static-99 and other risk assessment instruments were developed.

The Static-99, followed by its revision (Static-99R), is the most popular actuarial instrument in use today. It has been translated into many languages and is used in many countries around the world. The basis for this popularity was that initially, the Static-99, like other actuarial tools, did not rely on “clinical judgment” to select items associated with risk. Each item was chosen statistically and was based upon factors that were found to relate to sexual recidivism. The Static-99 consists of 10 items (see below) and there are extensive rules to follow when scoring each item. The Static-99 results in a total score based on the number of risk factors present for the individual being assessed; and this score can be interpreted in various ways. It can be interpreted in a relative manner. That is, you can see how your offender compares to the risk that groups of offenders with similar characteristics pose. You can also take the score and associate it with an absolute risk rate. That is, you can look at the recidivism rates of offenders with similar characteristics as the person you are evaluating.

The Static-99 has become a staple in risk assessment evaluations conducted within the domain of civil commitment. Since the beginning of the Florida SVPP the Static-99 has been considered to be the foundation of risk assessment. In fact, in the Rules that were promulgated by the Program, the use of the Static-99 was mandated, unless it was inappropriate (e.g., woman offender or juvenile offender). Initially, it appeared that the rates compared favorably with the countries and states using it. Also, with one group to compare recidivism rates, there was no “clinical judgment” about which group the offender should be compared to. It was fairly direct, easy to score, and gave one-group for establishing your recidivism rates.

However, in 2009 this changed and questions were subsequently raised concerning the Static-99. A landmark study by Dr. Leslie Helmus revealed that the Static-99 was over predicting risk. Further, this occurred more frequently

among the high-risk groups – which are the groups that were most relevant to civil commitment evaluations. A second problem was also discovered. There was significant variability in the recidivism rates among different groups unaccounted for by the Static-99. This causes problems in the ability to compare groups of offenders which is fundamental to actuarial instruments.

Age was found to be one of the factors that led to the over prediction of risk. It was found that risk drops as one ages and after the age of 60, it drops precipitously. As a result, the age item on the Static-99 was modified. This modification resulted in fairly dramatic changes in risk assessments. The impact of the research on the impact of age on sexual recidivism is ongoing and important. In 2009, the revised Static-99R, replaced the original Static-99.

The other new problem that developed in 2009 was the revelation that different groups of offenders had markedly different recidivism risk rates. Due to this variability in group recidivism rates, instead of one group for comparison, there were now four. Further, based on the written descriptions of these groups, the evaluator was asked to choose which group was most like the offender being assessed. The four groups are:

- The Routine Sample with the lowest rate of recidivism, consisted of offenders with characteristics similar to the average prison inmate;
- The Preselected for Treatment Need Sample had the next highest absolute risk rate. It consisted of men who were treated in prison and community-based sex offender treatment programs in the United States, Canada, and New Zealand;
- The High Risk/Needs Sample was associated with the highest rate of recidivism. These men were designated by the courts as “dangerous offenders;” had a forensic/psychiatric background; were evaluated or treated within a civil commitment setting; or were retained in prison for the complete length of their sentence. These samples came from the United States, Canada, and Denmark;
- The Non-routine Sample was composed of the combined Preselected for Treatment Need and the High Risk/Needs Sample. The associated risk rates were higher than the Preselected Sample and lower than the High Risk Sample.

Predicted levels of recidivism vary dramatically by sample group. However, the method of selecting which group to use in the final comparison is poorly defined and controversial. There is no standardized procedure for making this assignment and the sample that is chosen can significantly alter the level of risk that is applied to the offender being evaluated. Actuarial risk assessment has

become more complicated. The precision once thought to be present in using the Static-99 has diminished (at least when estimated recidivism rates are utilized). Since 2009, the science of risk assessment has become increasingly controversial in civil commitment trials.

Although subsequent data has brought the traditional use of the Static-99R into question, the overall effect of that body of research is unquestionably positive. Because more information is available about scientifically validated risk factors, clinical judgment is no longer based on what *appears* to be logical or related to risk. As a result, what is commonly referred to as "guided clinical judgment" - clinical judgment based on the consideration of risk factors that have been empirically validated - has significantly improved and deserves a place at the risk-assessment table.

Use of the Static-99R in Florida's Sexually Violent Predator Program Evaluations

The absolute recidivism rates provided by the Static-99R have typically been thought of as the "anchor" of a sexual violence risk assessment. This is no longer the case. The above data on the re-offense rates of individuals in Florida recommended for indefinite civil commitment as sexually violent predators reveals a high false-alarm rate. Research by the SVPP indicates that the Static-99/Static-99R has played a large role in this type of error in overestimating risk. The estimated recidivism rates associated with the Static-99R contributed mightily to that overestimation. It has been common practice among evaluators to use reference groups with the highest estimated rates (High Risk/Need, Preselected for Treatment/Need) when conducting a Sexually Violent Predator Evaluation. Below is a Table listing the estimated recidivism rates associated with various scores. This information can be found in the Static-99R Evaluators' Workbook dated July 26, 2012.

Static-99R Reference Group	Estimated 5 Year Recidivism Rate	Estimated 10 Year Recidivism Rate
High Risk/Need	Score 4: 20.1% Score 5: 25.2% Score 6: 31.2%	Score 4: 29.6% Score 5: 35.5% Score 6: 41.9%
Preselected for Treatment	Score 4: 12.3% Score 5: 15.9% Score 6: 20.2%	Score 4: 18.2% Score 5: 22.6% Score 6: 27.6%
Non-Routine	Score 4: 15.4% Score 5: 19.6% Score 6: 24.7%	Score 4: 22.6% Score 5: 27.7% Score 6: 33.4%
Routine	Score 4: 8.7% Score 5: 11.4% Score 6: 14.7%	No data on 10 year rates in Routine Group

The OPPAGA study consisted of offenders who were recommended for commitment and the Static-99R scores of those offenders were generally high.

The average Static-99 score when they were placed on their agreements was "5.91" Using the High Risk/Need sample for reference, the estimated Static-99R 5-year recidivism rate was 25.2%. However, the actual recidivism rate for new felony convictions among the OPPAGA offenders was 3.6%. As discussed earlier, it is of note that 46% of the OPPAGA sample was on some form of probation during their agreement period – but more than half were not. Probation may have reduced the recidivism rate somewhat but the difference is so large, that it begs further discussion.

Given that the offenders in the OPPAGA study were found to have mental abnormalities that made them likely to re-offend, the actual rate of reconviction appears considerably lower than would be expected. Given that the release time in the OPPAGA sample varied from 1-10 years, the 5-year estimated rates for the Static-99R would likely be the closest comparison. The 25.2% recidivism rate, as noted above, appears to be several times higher than the actual recidivism rate of offenders in the OPAGGA study.

The average Static-99R score in the SVPP study was about "5." Again, the 5-year estimated recidivism rate indicated by the Static-99R using the High Risk/Need group was 25.2%. However, the actual sexual recidivism rate *for any sex related charge* (felony or misdemeanor) in the SVPP research was 10%. The actual overall sexual recidivism rate based on felony sex convictions in the SVPP sample was 4.5%. Again it appears that the rates indicated by the Static-99R overestimate risk. In both the OPAGGA study and the SVPP study, the Static-99R estimated rates appear to be significantly higher than the observed rates in our Florida samples.

Since the beginning of the Florida Sexually Violent Predator Program, 1,498 individuals were recommended for civil commitment (as of February 28, 2013). Of those who were recommended for commitment, 710 (47%) were released for various reasons. Seventy-one of those offenders later obtained a charge (at least) for a sexually motivated offense. This corresponds to a 10% recidivism rate for any sexually motivated charge and a 4.5% recidivism rate for those who received felony sex offense convictions. Twenty-six individuals (37%) re-offended with children and 40 individuals (56%) re-offended with adults.

Of the 710 offenders in the SVPP study, 366 were recommended for commitment, but were released as FCCC detainees without commitment. Eighty-three offenders were recommended for commitment but were released from prison. Four of these 83 offenders were given settlement agreements. Of those 710 men recommended, 100 were released from the Florida Civil Commitment Center as no longer meeting criteria. Of these 710 offenders, a total of 161 were

released from the Florida Civil Commitment Center as a result of settlement agreements.

**SVPP Study: Comparison of Offenders Recommended for Commitment
But Released**

	Offenders No Longer Meeting Criteria (N=100)	Offenders Released from Phase IV of FCCC Treatment (N=39)	Offenders Given Settlement Agreements (N=161)	Offenders Released as Detainees (N=366)	Offenders Released from Prison (N=83)
Any Sex Related Charge	7%	5.1%	6.8%	10.7%	16.9%
Felony Charge for Sexually Motivated Offense	4%	5.1%	6.8%	8.7%	15.7%

Data from research projects conducted outside of Florida, have also observed that the Static-99 has overestimated recidivism rates among high-risk offenders (e.g., Fazel, Singh, Doll and Grann, 2012; Singh, Fazel, Gueorguieva, and Buchanan, 2012). The Adam Walsh Study was a multi-state recidivism project that included 500 offenders from Florida: 250 were released in 1999-2000 and 250 were released in 2004-2005. The recidivism rate for this group, based on charges or convictions for sexually motivated offenses, was 5.2% (over 5 years) and 13.7% (over 10 years).

It was appropriate to use actuarial instruments such as the Static-99 when they were believed to improve the accuracy of risk assessments. In fact, during the early years of the SVPP, the data suggested that using these tools resulted in more accurate risk assessments. At that time, it was superior to using unsubstantiated factors when trying to evaluate the recidivism risk of an offender who would soon be released from prison. It now appears that clinical judgment, guided by the broad and ever-expanding base of empirical data, may be superior to simply quoting "rates," which may lack sufficient application to the offenders being evaluated.

It seems apparent that less weight needs to be given to the Static-99R in sexually violent predator evaluations. The Static-99R may be most useful when viewed as one source of data rather than the "anchor" that it used to be. The ongoing research on sexual recidivism and risk assessment needs to guide considerations in screenings and evaluations. The research is developing and inferences are changing over time. Thus, it is important for the SVPP to engage in regular training to ensure that evaluators are aware of recent developments in the dynamic field of sex offender risk assessment.

Expanding the Guidelines for Face-to-Face Evaluations

Attention has been focused on the Static-99R, and how to react to recent research regarding its predictive ability, and this is important. However this review panel believed a more significant issue relates to the screening team's efforts to perhaps narrow the focus too much when identifying offenders referred for possible civil commitment.

The screening team has become extremely efficient in narrowing the numbers of offenders to be referred for further evaluation based solely on a record review. The screening team has noted the extensiveness of the records reviewed and the experience of team members in explaining this efficiency. However, in the opinion of one member of the panel (who has consulted with nine states regarding their SVP process and has witnessed available records), the records were quite consistent with the amount and quality of records reviewed in other states with SVP statutes. It is the belief of the panel that the initial screening process is meant to be broader, since in a few rare cases, some crucial information regarding dangerousness may be obtained during the clinical interview. The panel reviewed files of offenders screened out as not needing further evaluation and, in several cases, it was the opinion of the panel that the addition of a face-to-face interview could certainly be useful before a final decision was made as to whether to pursue civil commitment.

The screening team appears qualified and experienced. However, guidelines for screening files should be written for any team, not just the one currently on site. The Panel recognizes that there is no simple formula for referring individuals for face-to-face evaluations. The issue is to ensure that those who may appear at first glance to not meet criteria receive the scrutiny deserving of any individual who has engaged in sexually deviant acts directed towards other members of the community. Rates may change over time and depend upon such discrepant external factors as law suits that release a number of sexual offenders at one time, changes in general sentencing guidelines, or a lowering of recidivism rates. Experienced screeners are critical to the process of sifting through the multiple factors present in each case, and in determining which are significant in each case.

An increase in referrals for evaluation will aid in identifying offenders who may initially appear innocuous but are found, upon closer inspection, to be far more dangerous. For example, it is currently written in the Program's Guidelines that cases that include kidnapping and murder convictions be automatically sent for

further evaluation. This panel recommends that serious consideration be given to each case where there has been an "attempted" kidnapping or an "attempted" murder. The reasoning for this is that attempts that were thwarted, may suggest that these offenders have additional levels of dangerousness that more closely approximate those offenders who "succeeded" in their crimes. In addition, it is recommended that the Team give serious consideration to those men who engaged in acts that may suggest the existence of sexual sadism. This would include items on the Severe Sexual Sadism Scale, such as saving a trophy from a victim, keeping a record of an offense, inserting any object into an orifice, or mutilating any part of the victim's body. Additionally, signs of progression in severity from an earlier offense to a more recent offense (for example, from exposing to a 'hands on' offense) should be considered for special consideration under the new written screening Guidelines.

The Panel cannot foresee the long-term effect of certain recommendations to adjust screening guidelines, and thus wants the Team to assess the recommendations in view of the goal to improve the consistency in the manner in which the most dangerous and the highest risk offenders are identified and treated. Furthermore, the Panel does recognize that at this point in time the Team is already referring at a rate consistent with previous years, but the Panel would like to ensure consistency in the future.

As mentioned above, the Director of the SVP Program has trained his team to be highly efficient in narrowing the referrals for further evaluation, but this step in the process is actually meant to include a fair number of "false positives" that would later be ruled out by those conducting face-to-face interviews. It was the impression of the panel that one reason the screening team was anxious to become more efficient in narrowing the referrals for further evaluation was because there were concerns about certain evaluators. The MDT did not have the confidence that certain professionals could be discriminating enough in determining who truly needed to move on for possible civil commitment. The team appeared quite concerned about such evaluators making decisions, which would unnecessarily deprive individuals of their liberty when those individuals actually fell short of truly meeting commitment criteria.

To some degree the recent occurrence of this issue may be related to the fact that the SVP Program has the benefit of recidivism research that they have not yet had the opportunity to share with the evaluators. This issue may be solved by holding an SVPP conference for evaluators as soon as possible to share research results. In addition, there is always concern about the possibility of a forensic evaluator's opinion being influenced by an arrangement where they stand to obtain monetary gain depending on which opinion is expressed. There

are circumstances where case evaluators will be able to bill for additional contract hours if they find that the offender does meet commitment criteria, as they will need to bill for their time spent testifying in court. It is certainly hoped and expected that forensic evaluators will be ethical enough not to allow financial compensation to influence their opinion. However, recent research (Murrie et al., 2013) suggests that forensic evaluators may not be *consciously* aware of all the factors influencing their professional opinions.

The forensic evaluators in Florida have three-year contracts, and feedback about the quality of the reports is offered only once per year. The screening team seemed to fear that any concerns expressed at other times might be viewed as attempting to influence the opinions of the experts. However, there appears to be a few possible solutions that could address the screening team's concern regarding certain evaluators.

One solution would be to greatly decrease the length of the evaluators' contract periods: Perhaps the contract would last only one year at a time. The MDT could also increase the frequency with which evaluators receive feedback about the clarity of their reasoning for diagnoses and their final opinions. Then, when an evaluator fails to adequately explain and justify his/her opinion, regardless of the underlying cause for that failure, that evaluator's contract would not be renewed within a relatively short period of time.

A second possible solution would be to add an additional step in the process. The MDT could assign members of the screening team to go into the field to conduct brief face-to-face interviews. The results of these could be brought back to the screening team prior to them making a decision whether to refer the offender for the full evaluation. These interviewers would not stand to make any monetary gain dependent on the outcome of the evaluation, and would provide useful information that could likely support a more sound decision not to refer numerous cases for further evaluation.

Less Restrictive Alternatives

In Florida, an offender is either committed indefinitely or released. There is no middle ground. It would be useful if an option was available for there to be a less restrictive alternative to civil commitment, as is available in several other states. For example, in Virginia, a judge has an option at the time of the commitment hearing, to determine that although the offender does meet criteria, it appears possible to manage his risk in a community setting. In those cases, the offender is placed directly out in the community on conditional release. He has strict guidelines to follow, and any deviation from those guidelines could lead to quick revocation of his conditional release, and placement in the SVP facility. The Office of Sexually Violent Predator Services contracts with Probation and Parole staff to closely monitor (including using GPS) any resident out on conditional release, whether he is placed there directly from court in lieu of going to the facility, or whether he has earned conditional release through progress in the facility's treatment program. Such a contract ensures that those responsible for monitoring the offenders have the necessary training and experience to be successful. This type of contract arrangement for supervision appears preferable to Florida's provision for the Office of the State Attorney to monitor those offenders who stipulate to a commitment held in abeyance, as there is no reason to believe that the office has the time available, nor the training and experience to supervise and monitor sexual offenders in the community.

Having a "step-down" transition back to the community for those offenders who have earned release from the facility is also highly recommended for any state with an SVP population. Given the length of time these offenders have spent in prison prior to even being placed in the long-term residential setting of the SVP facility, a gradual integration back into the community is crucial. As noted in Schlank & Bidelman (2001), "Treatment programs and staff need opportunities to validate the sex offender's progress in a way that protects public safety, avoids re-victimization or new victims, and enhances the offender's ability to function without incident in less restrictive environments. Gradual, incremental, transitional experiences through work, recreation, and self-care for the offender are an effective process to those ends (p. 10-7)."

While the above-mentioned possible solutions may offer some benefit, the panel also believes it is important to emphasize that the screening team may be taking on too much responsibility for screening out offenders as not meeting commitment criteria, when actually some of that responsibility should fall to the courts. For example, the team reviewed a file where two evaluators had found an offender met commitment criteria, and yet the screening team overturned that

decision. It appeared that the team focused mainly on the fact that they disagreed with the evaluators' paraphilia diagnoses, and the fact that there was no physical violence involved in his offenses. However, the offender had targeted a variety of victims (including stranger victims, adolescents and adults), and also demonstrated poor self-regulation/lifestyle impulsivity, sexual preoccupation, and cognitive distortions supportive of sexual offending, all of which are dynamic risk factors that should be given considerable weight even if there was some question about how much weight to give his high score of 8 on the Static-99R.

In addition, this offender was sexually acting out even while in the secure setting of a prison, with public masturbation as recently as 2010. The panel recommends that when two evaluators believe an offender meets commitment criteria, the screening team should not overturn the decision, but should allow the courts to make that final determination. In addition, the screening team may benefit from additional training to emphasize that courts, throughout the country, have consistently determined that physical violence is not required in the offender's history to find that he meets SVP criteria, and any mental abnormality is sufficient, (not just paraphilia diagnoses), as long as it impairs the offender's volitional control and contributes to his high risk for reoffending.

Additional Note:

While clearly outside the scope of questions assigned to the panel, this panel could not help but notice an issue regarding the length of the treatment program. Florida's SVP Program has no clear minimum length of time during which the residents must show consistency of meeting behavioral goals to be promoted to the next phase and to eventually become eligible for release. It is estimated that it would be impossible to complete the program in less than five years. While no clear standards are set for SVP programs, Marques (2001) comes the closest to identifying standards, including the need for distinct phases of treatment with clear, obtainable phase goals. It is important for each resident to have a "way out", with clear goals identified for him from the time of his admission to the program. Program directors should identify the minimum length of time necessary during which they would want to see consistency in meeting identified behavioral phase goals before they would feel comfortable supporting the resident as having reached maximum benefit from the program. This consistency and transparency protects against appearing as if release criteria is made more difficult for high profile cases. While some might argue that standardized phase goals are not individualized enough, and each resident does need individualized treatment, the treatment interventions offered to help the

resident meet those identified phase goals are where the individualization takes place.

It should also be noted that there is some concern about a tendency in the United States to “over-prescribe” treatment for sexual offenders (Mailloux et al., 2003). For example, Wilson et al., (2012) compared Florida’s SVP program with a sex offender program in Ontario and found that the populations of both programs were quite similar. However, they noted that the “time frame in which treatment objectives are achieved is quite different between the two programs presented here. Time to completion for members of the RTC program is well less than half that of the FCCC participants (p. 390).” The authors later go on to note their belief that lengthy treatment periods in a residential program can lead to a greater degree of institutionalization, including narcissism and compulsiveness. In addition, comparisons could be made between Florida’s SVP program and the one in Virginia. Virginia’s SVP program currently has clearly identified phase goals where it is possible for a resident who is motivated to consistently meet the behavioral phase goals and progress through the phases to reach the final phase (Phase Three) in a period as short as fifteen months. This program currently has released seventy-seven residents from inpatient treatment. Forty-nine of those released were recommended by the Forensic Division as having made sufficient progress in the treatment program to have lowered their risk for reoffending. The Virginia program currently has the same recidivism rate (approximately 5%) as the Florida program, which supports the impression of the researchers in the Wilson et al., study, and suggests that additional years in treatment may not be crucial for safety of the community. However, it should be noted that most of those released from the Virginia program were released on Conditional Release, with strict conditions to follow. If such an option were available in Florida, it would likely contribute to everyone’s comfort in decreasing the amount of time residents must spend in the residential setting.

Conclusions and Recommendations

The overall conclusion as to how the program has performed over the years is reflected in error rates. A false positive error occurs when an individual is believed to meet criteria as a Sexually Violent Predator but in reality they do not. A false negative error occurs when an individual is believed not to meet criteria as an SVP and is not recommended for commitment, when in reality they do.

As reflected in the statistics, the salient issue is the “false alarm” rate. This is error related to failing to identify offenders who do *not* fall into the highly dangerous and predatory group. These are the 96.4% (135 out of 140) of offenders observed in the OPPAGA study who were deemed to be dangerous but did not reoffend and the 90% (639 out of 710) of offenders in the SVPP Study that were deemed to be dangerous but did not reoffend. For those deemed to be so dangerous that they may be committed indefinitely – and cared for at great expense to the state – this false positive rate appears high.

Perhaps the most important question is “Is the SVP Program successful at identifying sexual predators?” Based on the actual numbers (statistics) the Review Team finds the program to be successful in identifying high risk sexual offenders. Out of the 30,000 offenders not recommended for commitment by the SVPP 95.6% did not reoffend, but 4.4% did (as indicated by charge or conviction). This rate of 4.4% is lower than or consistent with the rates of re-offense of routine sex offenders released from prisons in Florida and other states. The Adam Walsh Study is a multi-state recidivism study that included 500 offenders from Florida (250 released in 1999-2000 and 250 released in 2004-2005). The 5 year recidivism rate based on charges or convictions for sexually motivated offenses was 5.2%. The 10 year rate was 13.7%.

It is apparent from the above numbers that the type of error that leaves the public at risk (failing to identify offenders who are sexual predators) is far lower than the other type of error (failing to identify offenders who are not sexual predators).

The next set of recommendations is best understood in context of the following. Some variation in opinions among screeners and among evaluators is expected given the general nature of the commitment criteria (that one suffers from a mental abnormality that makes one likely to engage in acts of sexual violence) and the unique and multiple risk factors present in cases. The more factors

involved in a decision, the more complex it is and the more variation in opinion is expected. Involuntary civil commitment decisions are very complex.

Furthermore, any shifts over time in the screening and evaluation process must be understood in the historical context in which they occurred. During the first 10 years (1999-2009) of the SVP risk assessment was largely based on Static-99 results. The decision making process was more simple. Static-99 rates were often pivotal in decisions. Since 2009, the place of Static-99 in SVP commitment cases has become increasingly uncertain. Courtroom discussions about the relevance of the Static-99 and risk assessment are often contentious. As a result risk assessment has become more complex. The other major historical factor to consider when comprehending potential shifts in the screening team is the remarkably relevant research that came out in 2011 (OPPAGA study). In addition the SVP Program research was emerging in 2012. The SVP Program Office screening decisions are understood within this historical context. Program decisions are understood as an attempt to respond professionally and ethically to significant historical factors - the greater uncertainty in the risk assessment process and the finding that risk appears to have been overestimated.

The system of the Sexually Violent Predator Program appears to be set up to distribute or decentralize the decision making power involved in sexually violent predator recommendations. The purpose of the screeners is to identify offenders with significant risk factors and refer them for an in depth face-to-face evaluation. The false positive rate at the front end of the process should be liberal. In other words, it is better to err on the side of over referring at this point in the process. In considering potential referrals it is recommended that the statutory criteria not be narrowly defined (for example, physical violence must be present or opportunistic offenses are not sufficient).

The screening team was not designed to attempt to conduct in depth evaluations based on file information, but rather to identify cases where significant risk factors are present. Evaluations take an average of approximately 17 hours to complete while screenings typically take from a half hour to 2 hours (but vary widely).

There is by design a balance of team decisions and independent opinions in the process. This balance is important and should be maintained. One reflection of this balance is general consistency over time in the number of cases referred by screeners for evaluations. Rises in the rates of screenings sent for evaluations reflects a decentralization of the process whereas decreases in the rates reflects a concentration of decision making power.

It is the belief of the panel that the initial screening process is meant to be broader, since in a few rare cases, some crucial information regarding dangerousness may be obtained during the clinical interview. It is recommended that some additions to the screening process be added to policy as discussed above. It is important to emphasize that the screening team may be taking on too much responsibility for screening out offenders as not meeting commitment criteria, when actually some of that responsibility should fall to the courts (for example, when two evaluators find that an offender meets commitment criteria, but the screening team overturns the decision). The screening team may benefit from additional training to emphasize that courts throughout the country have consistently determined that physical violence is not required in the offender's history to find that he meets SVP criteria, and any mental abnormality is sufficient, (not just paraphilia diagnoses), as long as it impairs the offender's volitional control and contributes to his high risk for reoffending.

It is recommended that clinically relevant feedback to evaluators is increased when evaluations do not provide sufficient rationales and that the team has the right to not renew contracts when there is a pattern of such difficulties. Contracts may be made shorter if useful.

It would be useful if an option was available for there to be a less restrictive alternative to civil commitment, as is available in several other states. In this option the offender is placed directly out in the community on conditional release monitored by probation officers. He has strict guidelines to follow, and any deviation from those guidelines could lead to quick revocation of his conditional release, and placement in the SVP facility. In addition, having a "step-down" transition back to the community for those offenders who have earned release from FCCC is also highly recommended.

The FCCC treatment program has no clear minimum length of time during which the residents must show consistency of meeting behavioral goals to be promoted to the next phase and to eventually become eligible for release. It is estimated that it would be impossible to complete the program in less than five years. It is important for each resident to have a "way out", with clear goals identified for him from the time of his admission to the program. It is recommended that the FCCC program directors identify the minimum length of time necessary during which they would want to see consistency in meeting identified behavioral phase goals before they would feel comfortable supporting the resident as having reached maximum benefit from the program.

The SVP Program is commended for conducting important recidivism research. This research is significant and appears to be the first study of this kind on this

scale. It is recommended that the Program Office conduct a training *as soon as possible* to share the results of the SVP Program Research (Preliminary Results) with evaluators. It is further recommended that the SVP Program Office continue to conduct regular conferences with evaluators (as has been the practice in the past).

Given the research discussed above on the Static-99R the following are recommended. The Static-99R should be removed from the first page of the template. The Static-99R is not as pivotal as it has been in the past. It is one source of data among other sources of data. Given the dynamic state of research on risk assessment the Review Team does not want to narrowly define how the Static-99R should be interpreted. There are already recommendations in the literature and this should be presented at SVP Program trainings/conferences.

As mentioned earlier in this report, the Sun Sentinel neglected to mention that 95.6% of sexual offenders not referred for civil commitment were not charged or convicted of another offense; suggesting that, overall, the commitment process appears to be working extremely well. However, there did not appear to be any harm in reviewing those cases in which offenders did reoffend by committing serious sexual offenses. Therefore, the panel reviewed a sample of those cases referenced by the Sun Sentinel to assess whether anything useful could be learned from them regarding the commitment process.

In three of the four cases sampled, there did appear to be some information worth considering. In one case (referred by the screening team for an evaluation and evaluated in February 2000), the evaluator chose not to recommend commitment based on the belief that he did not meet criteria for a diagnosis of a mental abnormality. However, evidence of a personality disorder appeared to be quite clear to this panel. In another case (referred by the screening team for an evaluation and evaluated in November 1999), commitment was not recommended with considerable weight given to him having committed only one offense; however, the fact that the Post-sentence Investigation noted that he had admitted committing a very similar offense just prior to the instant offense was never mentioned anywhere in the report. In another case (referred by the screening team for an evaluation and evaluated in 2006), commitment was not recommended despite the evaluator admitting that he met criteria for a mental abnormality and also appeared high risk for reoffending, because too much weight was apparently given to the fact that he was ultimately unsuccessful in his several efforts to sexually abuse teenagers. It is the belief of the panel that these findings could serve as a useful teaching tool for both the screening team and the evaluators, to further improve their already impressive success rate. Therefore,

the panel recommends that the remaining cases referenced by the Sun Sentinel also be reviewed by an objective psychologist(s) with expertise in SVP evaluation, with the findings presented to the team of evaluators as a teaching tool.

Finally, in response to a request from DCF, as part of the review process a sample of several Assistant State Attorneys involved in SVP cases were contacted in order to provide them with an opportunity to provide feedback, and especially to identify concerns about the SVP Program. Feedback varied somewhat and ranged from positive to negative. Positive feedback was that communication with SVP Program staff was good in that SVP staff were responsive to questions. Some Attorneys had no complaints. The most common concern was over variation in the number of recommendations for commitment throughout the history of the program, but especially the most recent drop in recommendations for commitment. Concern was expressed about the possibility that recommendations may fluctuate in response to potential external and internal factors such as variations in the budget/funding for the SVP Program or the coverage of high profile cases in the media. Another concern expressed was the potential impact of the Administrator of the SVP Program on recommendations. Particular concern was expressed that an Administrator's understanding of an SVP may be too narrow and have too broad of an impact on the program. Another general concern was the lack of some form of conditional release for individuals released from the FCCC. Also, there is no system in place to notify law enforcement/community members of the placement and movements of individuals who have been released. Given that input from Assistant State Attorney's was solicited it is recommended that the Offices of the State Attorney's be notified about the results of this review.

References

Members of the review panel reviewed the following literature:

Abbott, B. R. (2009). Applicability of the new Static-99R tables in sexually violent predator risk assessments. *Sexual Offender Treatment, Vol. 4(1)*. (Available online at Sexual-Offender-Treatment.org.)

Abbott, B. R. (2013). The utility of assessing "external risk factors" when selecting Static-99R reference groups. Open Access: *Journal of Forensic Psychology, 5*, pp. 89-118.

Department of Children and Families (2013). *Sexually Violent Predator Program: Guidelines for conducting multidisciplinary team review of face-to-face evaluation reports*. (Available from the Sexually Violent Predator Program, Department of Children and Families, 1317 Winewood Blvd, Tallahassee, Florida 32399).

Department of Children and Families (2013). *Sexually Violent Predator Program Guidelines for conducting multidisciplinary team review of face-to-face evaluation reports*. (Available from the Sexually Violent Predator Program, Department of Children and Families, 1317 Winewood Blvd, Tallahassee, Florida 32399).

Department of Children and Families (2013). *Sexually Violent Predator Program: Guidelines on evaluation selection*. (Available from the Sexually Violent Predator Program, Department of Children and Families, 1317 Winewood Blvd, Tallahassee, Florida 32399).

Department of Children and Families (2001). *Rules for the Sexually Violent Predator Program, 65E-25*, pp. 1-9. (Available from the Sexually Violent Predator Program, Department of Children and Families, 1317 Winewood Blvd, Tallahassee, Florida 32399)

Donaldson, T. S., and Abbott, B. R. (2011). Prediction in the individual case: An explanation and application of its use with the Static-99R in Sexually Violent Predator risk assessments. *American Journal of Forensic Psychology, Vol. 29(1)*, pp. 5-35.

Donaldson, T. S., Abbott, B. R., and Michie, C. (2012). Problems with the Static-99R prediction estimates and confidence intervals. Open Access: *Journal of Forensic Psychology, 4*, pp. 1-23.

Fazel, S., Singh, J. P., Doll, H., and Grann, M. (2012). Use of risk assessment instruments to predict violence and antisocial behavior in 73 samples involving

24,827 people: systematic review and meta-analysis. Open Access: *British Medical Journal (BMJ)*.

Florida Legislature: Office of Program Policy Analysis and Government Accountability (2011). *Research Memorandum: Conditional Release of Sexually Violent Predators through Stipulated Agreements*. (Copies may be obtained from the Sexually Violent Predator Program, Department of Children and Families, 1317 Winewood Blvd, Tallahassee, Florida 32399)

Helmus, L., Hanson, R. K., Thornton, D., Babchishin, K. M., and Harris, A. (2012). Absolute recidivism rates predicted by Static-99R and Static-2002R sex offender risk assessment tools vary across samples: A meta-analysis. *Criminal Justice and Behavior*, 39: 1148. Originally published online, May 21, 2012: <http://cjb.sagepub.com/content/39/9/1148>.

Kestin, S. & Williams, D. (August 2013, Four Part Series). Sex Predators Unleashed. *The SunSentinel*.

Little, G.L. (2005). Meta-analysis of Moral Reconciliation Therapy: Recidivism results from probation and parole implementations. *Cognitive-Behavioral Treatment Review*, 14 (1/2),

Mailloux, D.L., Abracen, J., Serin, R. Cousineau, C., Malcolm, B., & Looman, J. (2003). Dosage of treatment to sexual offenders: Are we overprescribing? *International Journal of Offender Therapy and Comparative Criminology*, 47(2), pp. 171-184.

Marques, J. K. (2001). Professional standards for civil commitment programs. In A. Schlink (Ed.), *The Sexual Predator, Volume II: Legal issues, clinical issues, special populations* (pp. 2-1–2-15). Kingston, NJ: Civic Research Institute.

Meehl, P. (1954). Clinical versus statistical prediction: A theoretical analysis and a review of the evidence. Minneapolis, MN: University of Minnesota.

Monahan, J. (2002). The scientific status of research on clinical and actuarial predictions of violence. In D. Faigman, D. Kaye, M. Saks, & J. Sanders (Eds.), *Modern scientific evidence: The law and science of expert testimony* (2nd ed., pp. 423-445). St Paul, MN: West Publishing.

Monahan, J. (2007). Clinical and actuarial predictions of violence. In D. Faigman, D. Kaye, M. Saks, J. Sanders, & E. Cheng (Eds.), *Modern scientific evidence: The law and science of expert testimony* (pp. 122-147). St Paul, MN: West Publishing.

Montaldi, D., Lewis, S., & Heffron, J. (2013). Sexually Violent Predator Program Recidivism Study: Preliminary results. Unpublished presentation. (Available from the Sexually Violent Predator Program, Department of Children and Families, 1317 Winewood Blvd, Tallahassee, Florida 32399)

Murrie, D.C., Boccaccini, M.T., Guarnera, L.A. & Rufino, K.A. (2013). Are forensic experts biased by the side that retains them? *Psychological Science OnlineFirst*, published on August 22, 2013 as doi: 10.1177/0956797613481812.

Schlank, A. & Bidelman, P. (2001). Transition: Challenges for the offender and the community. In Schlank, A. (Ed.) *The Sexual Predator, Volume II: Legal issues, clinical issues, special populations* (pp. 10-1 – 10-13). Kingston, NJ: Civic Research Institute.

Singh, J. P., Fazel, S., Gueorguieva, R., and Buchanan, A. (2012). Rates of sexual recidivism in high-risk sex offenders: A meta-analysis of 10,422 participants. *Sex Offender Treatment, 7*(2), pp.1-13.

Wilson, R.J., Looman, J., Abracen, J. & Pake, D.R. (2012). Comparing sexual offenders at the Regional Treatment Centre (Ontario) and the Florida Civil Commitment Center. *International Journal of Offender therapy and Comparative Criminology, 57*, pp. 377-395.

Zgoba, K. M., Miner, M., Knight, R., Letourneau, E., Levenson, J., and Thornton, D. (2012). *A multi-state recidivism study using Static-99R and Static-2002 risk scores and tier guidelines from the Adam Walsh Act*. National Institute of Justice. (Available online with key words: "Adam Walsh multi-state recidivism study.")