

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Criminal Justice Committee

BILL: CS/SB 2866

INTRODUCER: Criminal Justice Committee and Children, Families and Elder Affairs

SUBJECT: Sexually Violent Predators

DATE: April 10, 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	<b>Fav/2 amendments</b>
2.	Clodfelter	Cannon	CJ	<b>Fav/CS</b>
3.			JA	
4.				
5.				
6.				

**I. Summary:**

The bill authorizes employees of the state’s civil commitment center for sexually violent predators to use non-lethal force on persons committed to the program under certain circumstances. The bill describes procedures for documenting the use of force and incident reporting. The bill requires that information provided to a multidisciplinary team to evaluate a person for the Sexually Violent Predator Program (SVPP) include any documents indicating whether the person’s crimes included sexual acts or were sexually motivated. The bill also includes the Department of Children and Families, the Agency for Persons with Disabilities, and certain contracting entities within the meaning of the term “employing agencies” in relation to employing certified correctional officers.

The bill also creates a separate criminal offense when an employee acts with malicious intent in battering or cruelly or inhumanly treating a person who is confined in a secure facility.

This bill substantially amends sections 394.913 and 916.1091, Florida Statutes, and creates sections 394.9221 and 394.9223, Florida Statutes.

**II. Present Situation:**

In 1998, the Legislature enacted Part V of ch. 394, F.S., known as the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators Treatment and Care Act. The act provides that persons who are determined to be sexually violent predators may be civilly confined upon release from custody or expiration of a prison sentence. Persons who have been identified as sexually violent predators are committed to the Department of Children and Families (DCF) for

long-term residential treatment, care, and custody in the Florida Civil Commitment Center located in Arcadia.

As of January 30, 2007, the Florida Civil Commitment Center had 581 residents. Of those residents, 309 persons are detained (waiting for trial), and 272 persons are committed for treatment. Commitment procedures are civil in nature and relate to mental health treatment, not criminal punishment.

A sexually violent predator is any person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes it likely that the person will commit acts of sexual violence if not confined in a secure facility for long-term treatment and control.<sup>1</sup>

Subsection 394.912(9), F.S., defines “sexually violent offense” for the purposes of determining what crimes may subject an offender to civil commitment as a sexually violent predator. Paragraphs (a) through (g) include certain specified sexual offenses, and paragraph (h) is a catch-all provision to include other offenses that are determined to have been sexually motivated beyond a reasonable doubt. This determination must be made at the time of sentencing for the crime in question or subsequently during a civil commitment trial.<sup>2</sup>

The agency with custody of an offender is required to notify the SVPP of the approaching release of a person who has committed a sexually violent offense. Referral may be triggered by any past conviction, not just the conviction that resulted in the current incarceration. The SVPP screens these referred offenders to determine whether they appear to meet the criteria for commitment under s. 394.913, F.S. The appropriate state attorney’s office is advised of any offender who meets the criteria and must decide whether to begin civil commitment proceedings against the offender.

DCF has employed certified correctional officers as facility security personnel for the Florida Civil Commitment Center and as institutional security personnel for forensic facilities for many years. Although facility security personnel and institutional security personnel do not deal with inmates as a correctional officer does, the correctional officer training ensures that they have a baseline of skills that are appropriate for working with clients in forensic facilities and with people who are confined in secure facilities.

Section 944.35, F.S., provides express statutory authority for the use of force within a correctional facility. This section requires that all incidents involving use of force be documented in writing and a copy of the report sent to the Department of Corrections’ (DOC) Inspector General for review. This section also requires that the Criminal Justice Standards and Training Commission develop a course to teach appropriate methods for applying physical force on an inmate as part of the training program required for all correctional officers.

Section 916.1091, F.S., allows for the use of chemical weapons in state forensic treatment facilities when such use is authorized by the facility administrator and is necessary to protect

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<sup>1</sup> s. 394.912(10), F.S.

<sup>2</sup> s. 394.912 (9)(h), F.S.

clients, personnel, equipment, facilities, grounds, or the surrounding community. There is no similar statutory authorization for the Florida Civil Commitment Center to use force on persons committed as sexually violent predators. There have been several incidents at the Florida Civil Commitment Center that have necessitated intervention and outside assistance from local law enforcement or other state agencies (DOC) to regain control of the facility and assure the safety of residents and staff.

### **III. Effect of Proposed Changes:**

The bill amends s. 394.913, F.S., to require that the agency having jurisdiction over an individual who is convicted of a sexually violent offense and is being evaluated for the SVPP provide any documentation of whether felony criminal acts that are the basis of the referral included a sexual act or were sexually motivated.

The bill creates a new section in ch. 394, part V, F.S., which expressly provides statutory authorization for staff at the Florida Civil Commitment Center to use reasonable force to maintain order and ensure safety of residents and staff when it reasonably appears to be necessary. Use of non-lethal devices such as hand-held electronic immobilization devices and chemical agents is authorized, but only in certain circumstances and after appropriate training. The bill provides examples of circumstances in which use of force would be authorized, including defending against imminent use of unlawful force, preventing escape, quelling a disturbance, preventing damage to property, and overcoming physical resistance to a lawful command.

After a use of force incident, persons physically involved must be offered a medical examination by a qualified health care provider, who must prepare a report that includes a statement of whether further examination by a physician is necessary. Any visible injuries must be examined by a physician who must document his or her findings in a report that is completed and submitted to the facility superintendent within 5 working days after the incident. Persons who applied force or who were responsible for the decision to apply force are required to make a report to the facility superintendent within 3 working days.

The bill clarifies that the department, the Agency for Persons with Disabilities, and entities that contract to operate a forensic facility or secure facility are employing agencies for certified correctional officers within the meaning of ch. 943, F.S.

The bill creates a new battery offense when an employee acts with malicious intent against a person confined in a secure facility. Simple battery against such a person is punishable as a first degree misdemeanor. Battery or the infliction of cruel or inhuman treatment that results in bodily harm, permanent disability, or permanent disfigurement is punishable as a third degree felony. This provision mirrors the same provision relating to battery by a correctional officer on an inmate that is found in s. 944.35(3)(a)1. and 2., F.S.

The bill takes effect upon becoming a law.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

**Use of Force Against Persons Detained or Committed as Sexually Violent Predators**

Although courts have applied various standards to measure the appropriateness of force used against civil detainees, use of reasonable force against a civil detainee to maintain order and ensure resident compliance with lawful staff directives is constitutional. See, e.g., *Gibson v. County of Washoe*, 290 F.3d 1175 (9th Cir. 2002); *Davis v. Rennie*, 264 F.3d 86 (1st Cir. 2001); *Andrews v. Neer*, 253 F.3d 1052, 1060 (8th Cir. 2001); *Wright v. Whidden*, 951 F.2d 297, 300 (11th Cir. 1992); *Owens v. City of Ft. Lauderdale*, 174 F.Supp. 1282 (S.D. Fla. 2001).

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

There is no significant fiscal impact to the bill as a whole. The Criminal Justice Impact Conference has not yet analyzed the impact of the new criminal offense in the bill, but is expected to classify that impact as insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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