

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security:

To ensure the safety of employees and persons in the state's civil commitment center for sexually violent predators, the bill allows use of physical force under specified circumstances. To identify persons who should be evaluated for referral to the sexually violent predator program the bill requires judgments of guilt for a felony offense to identify when the record demonstrates the offense involved sexual motivation.

B. EFFECT OF PROPOSED CHANGES:

For the purpose of evaluation for the Sexually Violent Predator Program, the bill amends s. 394.913, F.S., to require the agency with jurisdiction over an individual convicted of a sexually violent offense, to document in the criminal history whether the felony acts were sexually motivated or included a sexual component. The bill also amends s. 921.245, F.S., to require that every judgment of guilt for a felony offense indicate it involved sexual motivation when demonstrated by the record.

The bill creates a new section in ch. 394, part V, F. S., that authorizes employees of the Florida Civil Commitment Center to use non-lethal force under certain limited circumstances to ensure the safety of residents and staff. The use of force includes physical force and nonlethal devices such as chemical agents and hand-held electronic immobilization devices such as Tasers. The bill requires training and specific authorization in use of such nonlethal devices. The bill describes procedures for medical examination, documentation of use of force, and incident reporting. It provides for criminal penalties when force is used with malicious intent.

The bill creates s. 394.9221, F.S., and amends s. 916.106, F.S., to specify that the department is an "employing agency" within the meaning of section 943.10(4), F.S., which authorizes the department to hire certified correctional officers. These provisions addresses an issue identified by the Florida Department of Law Enforcement that the Department of Children and Families and its contractors were not recognized in statute to hire certified correctional officers as institutional security personnel at forensic and sexually violent predator facilities.

The effective date of the bill is upon becoming law.

PRESENT SITUATION

In 1998, the Legislature enacted Part V of Chapter 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 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 convicted of a sexually violent offense 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.

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. Section 394.912(9) (h), F.S., includes “any criminal act” that may be determined “beyond a reasonable doubt” to have been sexually motivated. According to the statute, a determination that a crime was sexually motivated must be done at the time of sentencing for the crime in question, or subsequently during the civil commitment trial.

The Sexually Violent Predator Program must screen referrals for potential commitment under s. 394.913, F.S., and this screening occurs as an eligible offender approaches the end of his incarceration. Screening may be triggered by any past conviction, not just the conviction that resulted in the current incarceration. The program staff often have difficulty identifying sexually motivated offenses in the criminal histories of referred individuals. The records that are available, particularly for older offenses, often do not provide much detail. It has also proven difficult in many cases to wait until the actual civil commitment proceeding to identify a past offense as sexually motivated “beyond a reasonable doubt,” because without a determination as to sexual motivation in the assessment phase, the case does not result in a petition being filed. According to DCF, in eight years of program operation and over 24,000 referrals, program staff has never seen a “sexually motivated” determination on sentencing or in other court dispositional documents. Therefore, while the statute requires that “sexually motivated” offenses be considered during the screening and evaluation process, no current mechanism exists to systematically label or flag such offenses for consideration. Without such a mechanism, some sexually violent predators may go undetected.

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, 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 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 to regain control of the facility and assure the safety of residents and staff.

In late February 2007, the Florida Department of Law Enforcement (FDLE) notified DCF that it had determined the department was not an “employing agency” within the meaning of section 943.10(4), F.S., and that the institutional security personnel at the department’s forensic facilities could no longer be certified correctional officers.

The department’s new contract for the operation of the Florida Civil Commitment Center for sexually violent predators requires that security personnel be certified law enforcement officers.

FDLE sent DCF a letter dated March 6, stating that the department’s certified correctional officer employees will be decertified as correctional officers unless the department obtains appropriate statutory authority in the current legislative session. According to the department, FDLE supports the concept that the security personnel at Department forensic facilities and at the Florida Civil Commitment Center perform work that merits correctional officer certification. FDLE simply believes that the express statutory authorization is required.

The department has determined that decertification will have a significant adverse impact on these employees, many of whom have been certified for many years. The employees will lose the ability be

employed in the correctional system, access to continuing education training, and membership in the correctional officer's collective bargaining unit. They could also lose special risk retirement benefits.

According to the department the positions were moved out of the correctional officer, career service classification in 1981, but certification as a correctional officer remained a minimum job requirement and the positions retained benefits associated with correctional officer certification, including special risk retirement and membership in the correctional officer bargaining unit. Over the past 30 years, the institutional security staff at forensic facilities have been trained and certified by the FDLE Criminal Justice Standards and Training Commission as correctional officers.

Section 916.106(12), F.S., was enacted in 1985, and provides that "institutional security personnel" at forensic facilities must "meet or exceed the requirements of s. 943.13, F.S." related to certified correctional officers.

C. SECTION DIRECTORY:

Section 1. Amends s. 394.913, F.S., relating to sexually violent predators, to require information concerning sexual motivation be included in the criminal record.

Section 2. Creates s. 394.9221, F.S., to authorize the department to hire certified correctional officers as security personnel in its civil commitment facility for sexually violent predators.

Section 3. Creates s. 394.9223, F.S., providing for use of physical force against a person confined in a secure, civil commitment facility for sexually violent predators.

Section 4. Amends s. 916.106, F.S., to authorize the department and its contractors to hire certified correctional officers as security personnel in its forensic facilities.

Section 5. Creates s. 921.245, F.S., to require judgments to identify felony offenses as sexually motivates when demonstrated by the record.

Section 6. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The creation of a new criminal penalty that will apply to the very limited circumstances of use of force with malicious intent in the state facility for sexually violent predators may have a potential impact on the criminal justice system. The fiscal impact is expected to be minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 27, 2007, the Healthcare Council adopted two amendments to the bill and reported it favorably as amended.

Amendment 1 creates s. 394.9221, F.S., to authorize the department to hire certified correctional officers as security personnel in its civil commitment facility for sexually violent predators.

Amendment 2 amends s. 916.106, F.S., to authorize the department and its contractors to hire certified correctional officers as security personnel in its forensic facilities.