

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SPB 7162

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Sexually Violent Predators

DATE: January 18, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Farmer	Farmer		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill amends the Florida law related to the Involuntary Civil Commitment of Sexually Violent Predators (“Jimmy Ryce Act”) by:

- Revising the definition of the term “sexually violent offense” to include only felony offenses;
- Requiring the Department of Children and Families (department) to prioritize written assessments and recommendations of offenders who will be released from total confinement within one year;
- Extending the deadline in which the department’s multidisciplinary team is required to complete its assessment to the state attorney; and for the state attorney to file a petition to the circuit court alleging that a person is a sexually violent predator;
- Removing language related to deportation of a sexually violent predator; and
- Prohibiting the introduction, attempted introduction, or removal of certain items classified as contraband into any Jimmy Ryce facility;
- Subjecting an individual or vehicle entering the grounds of any Jimmy Ryce facility under these provisions to reasonable search and seizure of any contraband materials introduced into or upon the grounds of such facility for purposes of enforcement; and
- Creating a third-degree felony for the commission of such acts.

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

This bill substantially amends the following sections of the Florida Statutes: 394.912, 394.913, 394.9135, and 394.917. The bill creates 394.933, Florida Statutes.

II. Present Situation:

Sexually Violent Predators¹

A sexually violent predator is a person who has been convicted of a sexually violent offense and who also suffers from a mental abnormality or personality disorder that makes him or her likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.² The Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act (Act), was enacted in 1998 to address the treatment needs of these offenders.³ The Act creates a civil commitment process for sexually violent predators that is similar to Baker Act procedures for involuntary commitment and treatment of mentally ill persons.

Referring agencies identify offenders who have been convicted of specified sexually violent offenses and notify the department's Sexually Violent Predator Program and the state attorney who prosecuted the offender. The Department of Corrections (DOC) makes the majority of these referrals, with others coming from the Department of Juvenile Justice (DJJ) and the department itself.

After a referral is made, a clinical specialist reviews information provided by the referring agency and gathers any additional information that is needed to complete the case file. Two licensed psychologists employed by the department independently screen the case file to determine if the offender meets the statutory sexually violent predator criteria. If the department psychologists find that the offender meets the criteria, an independent, contracted evaluator also reviews the case file and provides a recommendation to the department.

A multidisciplinary team that includes at a minimum two persons who are either a licensed psychiatrist or a licensed psychologist reviews the evaluation reports. From this review, they render an opinion as to whether the offender meets the sexually violent predator criteria. The department must then provide a written assessment and written recommendation to the state attorney within 180 days of receiving notice from the referring agency. The recommendation must include the multidisciplinary team's report.⁴

The timeframes for this process are drastically accelerated when a person who has been convicted of a sexually violent offense is to be immediately released for some reason. A person who has been released ahead of scheduled release is transferred to the custody of the department by the referring agency. The multidisciplinary team has 72 hours after the transfer to provide its

¹ Much of the information in this section was derived from the professional staff analysis for CS/SB 1314 by the Senate Committee on Criminal Justice (April 14, 2010), available at <http://archive.flSenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s1314.ju.pdf>

² Section 394.912, F.S.

³ Sections 394.910-394.932, F.S.

⁴ Section 394.913(3), F.S.

written assessment and recommendation to the state attorney. In turn, the state attorney has 48 hours to petition the court for a determination that the person is a sexually violent predator.⁵

After receiving the department's assessment and recommendation, the state attorney can initiate commitment proceedings by filing a probable cause petition seeking a determination that the offender meets statutory criteria to be a sexually violent predator.⁶ There is no prescribed time limit for filing other than in an immediate release situation. If the judge finds that the petition sets forth probable cause, a civil trial must be conducted within 30 days. A decision that an offender is a sexually violent predator must be made by the judge or a unanimous jury based upon clear and convincing evidence.⁷

An offender who is found to be a sexually violent predator is committed to the department's custody upon completion of his or her criminal sentence and transferred to the Florida Civil Commitment Center in Arcadia. If the commitment process is not completed prior to the end of an offender's prison sentence, the offender is detained by court order and transferred to the commitment center to await the outcome of commitment proceedings. On June 30, 2011, the commitment center housed 677 civilly committed predators and 147 detainees awaiting completion of commitment procedures.⁸

Sexually violent predators who are committed to the state under the Jimmy Ryce Act are detained at the commitment center until the court determines that they are no longer a threat to public safety. The department currently contracts with GEO Group, Inc., to operate the center and provide all treatment and security services. The treatment program consists of four levels of cognitive behavior modification and takes a minimum of six years to complete, with progress assessed annually by program staff.⁹

Federal Deportation Detainers

According to the department, Florida law does not permit the courts to allow disposition of federal deportation detainers before proceeding with commitment. This situation creates the possibility that the state must bear the expense of providing long-term care and treatment to undocumented persons who can be safely deported.¹⁰

⁵ Section 394.9135, F.S.

⁶ Section 394.914, F.S.

⁷ Section 394.916 and 394.917, F.S.

⁸ Criminal Justice Estimating Conference, *Involuntary Civil Commitment of Sexually Violent Predators – History and Forecast*, (December 14, 2011), available at <http://edr.state.fl.us/Content/conferences/criminaljustice/workpapers.pdf> (last visited January 17, 2012)

⁹ Office of Program Policy Analysis & Government Accountability, Florida Legislature, *The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced*, Report No. 08-10, p.2.(February 2008), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0810rpt.pdf> (last visited Jan. 18, 2012)

¹⁰ Department of Children and Families, *Staff Analysis and Economic Impact for HB 1097* (January 4, 2012), p. 2, (on file with the Senate Committee on Children, Families, and Elder Affairs). A department analysis was not available for this SPB at the time the Senate Committee analysis was completed.

Contraband

According to the department, chapter 394, Part V., does not currently criminalize the unauthorized introduction or removal of dangerous contraband from the Florida Civil Commitment Center. The facility has instituted its own operating procedures to prohibit such activities, but these policies do not have the same deterrent effect achieved by the possibility of criminal sanction. Statutes governing correctional and state hospital settings already include contraband provisions.¹¹

III. Effect of Proposed Changes:

SPB 7162 amends s. 394.912, F.S., relating to definitions. The term “sexually violent offense”, for purposes of the Jimmy Ryce Act, is limited to felony offenses only.

The bill amends s. 394.913, F.S., to allow the Department of Children and Families more flexibility in prioritizing its cases. These cases will be prioritized based upon receipt of a notification. This will allow the department to give priority to evaluation of the cases of persons who are within 365 days of release and for whom the written assessment and recommendation has not been completed.

The bill amends s. 394.9135, F.S. to provide for an extension of the deadlines for the department to provide its written assessment and recommendation to the state attorney and for the state attorney to file a commitment petition. The bill provides that if the 72-hour deadline for providing the recommendation to the state attorney falls after 5 p.m. on a work day or during a weekend or holiday, the recommendation may be provided during the next work day. Similarly, if the state attorney’s 48-hour petition filing deadline falls on after 5 p.m. or on a weekend or holiday, the commitment petition may be filed during the next work day.¹²

Use of the term “work day” could create some confusion in the application of the timeframes. Although it appears that the intent is to suggest after 5 p.m. on a weekday, some individuals “work” on Saturday or Sunday. The Legislature may wish to use another term such as “weekday.”¹³

The bill creates s. 394.933, F.S. to prohibit the introduction or removal of certain articles to or from a Jimmy Ryce facility; and to impose penalties for the commission of such acts. Specifically, the bill provides that, unless authorized by law or as specifically authorized by the person in charge of a Jimmy Ryce facility, a person is prohibited from introducing into, or take or attempt to take or send any of the following articles which are declared to be contraband:

- An intoxicating beverage or beverage that causes or may cause an intoxicating effect;
- A controlled substance as defined by chapter 893, F.S.;¹⁴
- A firearm or deadly weapon; or

¹¹ *id.*

¹² CS/SB 1314, (2010 Reg. Session)

¹³ *id.*

¹⁴ Chapter 893, F.S., includes numerous controlled substances that are listed in Schedules I, II, III, IV, and V.

- Any other item designated by written facility policy to be hazardous to the welfare of clients or staff or to the operation of the facility.

This section also prohibits a person from transmitting to, attempting to transmit to, or attempting to cause to be transmitted to or received by any client of any facility under the supervision or control of the department or agency, any article or thing declared to be contraband at any place that is outside the grounds of such facility. An exception is made if the action is authorized by law or specifically authorized by the person in charge of the facility.

In addition, the bill subjects an individual or vehicle entering the grounds of any Jimmy Ryce facility under these provisions to reasonable search and seizure of any contraband materials introduced into or upon the grounds of such facility for purposes of enforcement. The bill authorizes reasonable search and seizure to be enforced by institutional security personnel or by a law enforcement officer as defined in s. 943.10, F.S.¹⁵ A 3rd degree felony is imposed for persons who violate these provisions.¹⁶

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

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁵ Section 943.10, F.S. provides for the statutory definition of “law enforcement officer”.

¹⁶ A felony of the 3rd degree is punishable by a fine not to exceed \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined to be an habitual offender, the term of imprisonment is not to exceed 10 years.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the department, the proposed changes in this bill will result in the protection of vulnerable citizens by helping to lower the chance that extremely dangerous sexual predators will “slip through the cracks” and avoid commitment because of technical violations of the statute as currently written. The revisions in this bill will also help prevent the introduction of dangerous contraband onto the grounds of any facility designated by DCF to house and treat persons detained or committed. Prohibition of dangerous contraband and possible prosecution of persons violating these provisions will help safeguard staff members, visitors, and residents of such facilities.¹⁷

The following comments were provided by the department in its staff analysis for a similar measure (HB 1097, dated January 4, 2012) filed for this legislative session.¹⁸ A department analysis for this SPB was not available at the time the committee staff analysis was conducted:

“Limiting sexually violent offenses to felony criminal acts will make statutory definitions consistent with legislative intent by improving efficiency in identifying only those offenders who are extremely dangerous sexual predators.

Allowing the Department to prioritize assessments by release date for persons within one year of release ensures adequate time for processing referrals and filing commitment petitions.

Extending deadlines to the next working day when statutory time limits related to immediate release referrals end past business hours on a work day or on weekends or holidays would ensure there is sufficient time for making recommendations and filing commitment petitions. This prevents sexual predators from being released for technical reasons unrelated to public safety.

Facilitating deportation of committed sexually violent predators that are in the country illegally saves the state the expense of providing long-term care and treatment to undocumented persons

¹⁷ Department of Children and Families, *2012 Agency Proposal* (received via email on August 24, 2011)(on file with the Senate Committee on Children, Families, and Elder Affairs)

¹⁸ Department of Children and Families, *Staff Analysis and Economic Impact for HB 1097* (January 4, 2012), p.2, (on file with the Senate Committee on Children, Families, and Elder Affairs). A department analysis was not available for this SPB at the time the Senate Committee Analysis was completed.

who can be safely deported. Courts would still be permitted to proceed with commitment if deportation is unlikely to be successful.

One argument against the modification related to federal deportation detainers may be that it does have a possible weakness in the custody safety net. Prosecutors handling sexually violent predator civil commitments have sometimes been reluctant to consider allowing individuals to be deported, rather than civilly committed, because of the potential for an individual to unlawfully and secretly return to the United States and to Florida after being deported. Additionally, some prosecutors have expressed reluctance to facilitate what may amount to the unsupervised release of a sexually violent predator in his country of origin.

Providing criminal sanctions for the unauthorized introduction or removal of dangerous contraband items to or from the sexually violent predator civil commitment facility enhances the safety and security of residents and staff members at those facilities.”

According to the department, there are no apparent opposition arguments to proposed modifications related to technical revisions and contraband rules.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.