

**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.)

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

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**BILL:** CS/SB 522

**INTRODUCER:** Children, Families, and Elder Affairs Committee; and Senators Grimsley and Detert

**SUBJECT:** Involuntary Civil Commitment of Sexually Violent Predators

**DATE:** January 14, 2014      **REVISED:** \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	<b>Fav/CS</b>
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 522 aims to better protect children and other citizens from sexually violent predators. The current Sexually Violent Predator Program was found to have weaknesses that allowed some sexually violent predators to avoid evaluation and civil commitment. Some of these predators went on to commit new sexual crimes. These weaknesses were raised in the Sun Sentinel series on August 20, 2013, entitled “Sex Predators Unleashed,” a joint meeting of the Senate Judiciary and Children, Families, and Elder Affairs committee held September 24, 2013, and an internal review by the Department of Children and Families dated September 23, 2013.

The bill addresses problems with the sexually violent predator program by making major policy changes. First, the bill expands the criteria for civil commitment consideration to include offenders who are serving a sentence in county jail and who have a history of committing a sexually violent offense. Second, in certain circumstances the bill will allow placement of persons who have been inadvertently released from custody without evaluation into civil detention for evaluation. Third, the multidisciplinary teams within the Department of Children and Families will be expanded to include assistant state attorneys, law enforcement officers, and victim advocates. This is intended to help the evaluation teams make better decisions as to whether the person is a sexually violent predator who is likely to commit new sexual crimes unless kept in secure confinement. Finally, the bill requires better notification to communities and victims when violent sexual predators complete their treatment and are released into the community. The bill is expected to have a significant fiscal impact and is effective July 1, 2014.

## II. Present Situation:

### Trends in Sex Offenses, Prison Sentences, and Recidivism

Over the last decade or so the prevalence of sexual violence in Florida, as measured by new prison admissions, has declined. This declining trend, however, reversed in the last couple of years. The largest increase in prison admissions for sex crimes is attributed to the offense of traveling to meet a minor met on the Internet for the purposes of sex. The steep rise for this particular crime (14 in FY 2010-11 to 154 in FY 2012-13) may be due to sting operations conducted by law enforcement officials.

Less than six percent of annual prison admissions are for a sex offense. The two most common sex crimes resulting in incarceration include: lewd and lascivious battery with the victim between 12 and 15 years of age; and sexual battery by an adult when the victim is under 12 years of age.

Criminal laws governing sex offenders are predominantly found in Chapters 794 (Sexual battery), 796 (Prostitution), 800 (Lewd offenses) and 847 (Obscenity and pornography), F.S. The criminal penalties for sex acts with children range widely from a capital felony with a mandatory term of life for sexual battery with a victim under 12 years of age to a third degree felony punishable up to 5 years in prison for lewd or lascivious molestation of a victim 12 to 15 years of age and the offender is less than 18 years of age. The average prison sentence for sex offenders is longer than in the past and is currently at 12.7 years.

The Department of Corrections' current three-year recidivism rate for sex offenders is 34 percent. In other words, 34 percent of the sex offenders released from prison returned to prison for another offense (not necessarily a new sex crime) within 3 years of their release.

According to 2012 research conducted by Jill S. Levenson, Ph.D., the 5-year sexual recidivism rate for sex offenders in Florida is 5.2 percent. In other words, after 5 years, 5.2 percent were re-arrested for a new sexual crime. This calculation was based on a sample of 500 convicted sex offenders.

### Factors Relating to Prosecution, Conviction, and Sentencing of Sex Offenses

On March 1, 2006, the Legislature's Office of Economic and Demographic Research (EDR) released a report entitled *Factors Relating to the Sentencing of Sex Offenders*. In that report EDR found that a variety of factors influence prosecution, conviction, and sentencing of sex offenses:

- Sex offenses share some characteristics with other serious offenses such as murder and robbery. The defendants face potentially lengthy prison terms. Therefore, defendants are motivated to fight the charges with whatever resources are at their disposal. Trial rates are highest for these three offenses.
- Law enforcement and prosecutorial resources gravitate towards these most serious cases. With the attention and time devoted to these cases, any problems with the evidence or proceedings associated with the case are more likely to be revealed and utilized by the defense.

- Sex offenses are also different from other offenses. The type of sanction and the length of sentence is often mitigated, and high proportions of defendants have at least some counts dismissed.
- One difficulty unique to the prosecution and conviction of sexual offenses is the young age of most of the victims. Data reviewed by EDR indicated that the average age of the victims was 13.4 years old and that 83 percent were 15 or younger.
- EDR found that 85 percent of the victims knew the offender, which creates another difficulty in prosecuting many sexual offense cases, as victims may not cooperate in the prosecution of a loved one or family member. Successful prosecution usually requires the victim to testify in court. Since many of the victims are children, many of whom know the offender, victim's families often consider the trauma of repeatedly revisiting the crimes in a public forum too difficult. Also, many children do not possess the intellectual and emotional skills necessary for adversarial confrontation with the defense. Faced with these challenges, the prosecution often determines that the best outcome can be achieved by a plea bargain including a reduced charge or lesser sentence.
- Even though mitigation may result in a lower sanction than desired by the prosecution, the conviction may require the offender to register as a sex offender.

### **Legal Basis for Civil Commitment of Sexually Violent Predators**

- Florida's Sexually Violent Predator Program (SVPP) was modeled after the Kansas civil commitment statute that was found constitutional by the United States Supreme Court in *Kansas v. Hendricks*, 521 U.S. 346 (1997). The legislation authorizing civil commitment of sexually violent predators (ss. 394.910 – 394.932, F.S.) became effective on January 1, 1999.
- A sexually violent predator is an offender who has been convicted of an offense that is statutorily designated as a sexually violent offense and who 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.
- In *Kansas v. Hendricks*, 521 U.S. 346 (1997), the United States Supreme Court held that the Kansas commitment statute was civil in nature, not criminal. Therefore, civil commitment of a sexually violent predator after the completion of criminal incarceration was not double jeopardy.
- The Court recognized that states may provide for forcible civil detention of people who have a mental illness or mental abnormality that makes them unable to control their behavior, and who thereby pose a danger to the public health and safety.
- The Court noted that the Kansas Legislature took great care to confine only a narrow class of particularly dangerous individuals after meeting the strictest procedural standards.
- In *Kansas v. Crane*, 534 U.S. 407 (2002), the Court held that the Constitution requires proof that a sexual offender has serious difficulty in controlling behavior, and that the proof must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.
- In *Westerheide v. State*, 831 So.2d 93 (Fla. 2002), the Florida Supreme Court relied upon *Kansas v. Hendricks* in finding that Florida's civil commitment statute meets both federal

and state constitutional requirements for involuntary civil commitment of sexually violent predators.

### **History of the Sexually Violent Predator Program and the Civil Confinement of Predators**

- The Sexually Violent Predator Program (SVPP) was created by legislation passed in 1998 that became effective on January 1, 1999.
- The SVPP was originally housed in the Martin Treatment Center and operated by Liberty Behavioral Health Care under contract with the Department of Children and Families (DCF). Some detainees who were awaiting commitment proceedings were housed at the South Bay Sexually Violent Predator Detainee Unit, a unit of South Bay Correctional Facility operated by Geo Group, Inc.
- In late 2000, the program moved to the Florida Civil Commitment Center (FCCC) in Arcadia, Florida, a larger facility at which both detainees and committed Sexually Violent Predators (SVPs) were housed.
- During early years, the number of detainees significantly outnumbered the number of committed sexually violent predators. This caused problems because many detainees would not participate in sex offender treatment programs for fear of making incriminatory statements about their sexually violent activities that could be used against them during their commitment trial.
- There were reports of lax security resulting in violence, introduction of contraband, and general disorder within the facility. In late 2004, a number of inmates moved into the prison yard in protest of a fire marshal's directive that they have fewer personal items in their rooms. These inmates lived in the yard for months until they were forcibly removed by several hundred law enforcement and correctional officers.
- DCF terminated its contract with Liberty Healthcare Group in 2006 and selected Geo Group, Inc. as the new provider. In addition to operating the program, Geo Group was awarded a design and build contract to construct a new facility to replace the aging existing facility. The new FCCC, opened in April 2009, is a modern facility designed specifically for the SVPP. It has a population capacity of 720.
- There are currently 658 persons in the FCCC, including 577 sexually violent predators and 81 persons who are detained while awaiting their commitment trial.
- The current treatment program is a sequential program with four stages of treatment, each of which builds on the prior stages. Completion of the entire program takes at least 6 years.
- From 2004 to 2009, DCF was a defendant in a federal class action lawsuit alleging unconstitutional conditions of confinement, violations of the ADA, and a lack of opportunities for treatment. The lawsuit was settled and voluntarily dismissed by the plaintiffs in 2009 because of the improvements in conditions and treatment opportunities since it was filed in 2004.

### **Referral and Commitment Process for Sexually Violent Predators**

#### ***Step 1 - Referral:***

Referring agency gives notice to appropriate state attorney and DCF multidisciplinary team (MDT) of upcoming release of a person in total confinement who has been convicted,

adjudicated delinquent, or found not guilty by reason of insanity of at least one of the sexually violent offenses listed in s. 394.912(9), F.S., at any time. The referring agency provides MDT with information and documentation about the referred person as required by s. 394.913, F.S.

- The Department of Corrections notice at least 545 days before release from incarceration; the Department of Juvenile Justice notice at least 180 days before release from residential commitment; DCF notice at least 180 days before hearing regarding release of person found not guilty by reason of insanity. Notice must be given as soon as practicable if confinement is shorter than these time frames.

***Step 2 – MDT Review:***

- DCF staff reviews documents provided by referring agency to ensure that information is complete, and obtains any missing or otherwise relevant information.
- Completed packets are reviewed by at least two persons, each of whom is a licensed psychiatrist or a licensed psychologist, to assess whether the referred person may meet the statutory commitment criteria of “suffer(ing) 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.”
- MDT reviews initial assessment. If MDT finds that the person may meet commitment criteria, a clinical evaluation is conducted by at least one licensed psychiatrist or licensed psychologist. The evaluation must include a records review, a personal interview if consented to by the subject, and a risk assessment using the Static 99 instrument.
- MDT makes recommendation to state attorney within 180 days after referral. Recommendation that person meets commitment criteria can be made only if majority of MDT, including at least one clinical evaluator, determines that person meets commitment criteria.

***Step 3 – Commitment Trial:***

- State attorney receives MDT recommendation and decides whether to file a commitment petition with the court.
- If petition is filed, court determines whether there is probable cause for commitment.
- If court finds probable cause, commitment trial must be held within 30 days. One continuance of no more than 120 days may be allowed by the court.
- If probable cause is found, person will be transferred to DCF secure custody in detainee status if trial is not held before release from current sentence or other confinement.
- Person is entitled to representation by counsel (public defender if indigent), and either party may elect trial by a six-person jury.
- Judge or jury determines whether there is clear and convincing evidence that the person meets sexually violent predator (SVP) criteria. Jury finding that person is an SVP must be unanimous.

***Step 4 – After Commitment Trial:***

- Person who is found to be an SVP is committed to the custody of DCF upon expiration of sentence or, if detained by DCF, is moved to commitment status.
- Once in DCF custody, SVP is transferred to Florida Civil Commitment Center for secure custody and treatment. The SVP's status is reviewed by the court at least annually. SVP may be discharged at any time if the court determines at a non-jury trial that his condition has so changed that it is safe for him to be at large and that he will not engage in acts of sexual violence if discharged.
- Person who is not found to be an SVP remains in custody of referring agency until expiration of sentence, or is released immediately if in detainee status. Any requirements for community supervision or sex offender/sex predator registration must be satisfied.

**Number and Flow of SVPP Cases as of August 31, 2013**

Since the beginning of the SVPP, 47,932 cases have been screened by DCF:

- Multidisciplinary team (MDT) screened out 40,920 cases as not meeting commitment criteria.
- MDT determined that 4,171 cases required a clinical evaluation.

Of the 4,171 cases that required a clinical evaluation:

- MDT recommended that 1,607 cases met commitment criteria.
- MDT recommended that 2,477 cases did not meet commitment criteria.
- 87 cases are pending or were deferred or deleted.

Of the 1,607 cases for which the MDT recommended commitment:

- The State Attorney filed a petition in 1,509 cases.
  - The State Attorney also filed petitions in 6 cases in which the MDT recommended that commitment criteria was not met.
  - The State Attorney did not file a petition in 70 cases.
  - A decision as to whether a petition will be filed is pending in 40 cases.

Of the 1,509 cases in which petitions were filed by the State Attorney:

- 466 cases were disposed of before the commitment trial, or are pending trial:
  - 332 persons were released (no probable cause, petition dismissed, or released by court order).
  - 83 persons are detained in the Florida Civil Commitment Center pending trial.
  - 21 petitions are otherwise pending trial.
  - 30 persons are dead or out-of-state.

1,037 cases have been disposed of by a commitment trial:

- 575 sexually violent predators are committed to the SVPP Center.
- 1 person is in the SVPP Center by stipulated agreement.
- 4 sexually violent predators are awaiting the end of their prison sentence before commitment.
- 140 sexually violent predators were committed but have been released by stipulated agreement.

- 117 persons were completely released at trial.
- 8 persons were released at trial with conditions.
- 20 persons had their commitment overturned or dismissed.
- 119 persons were committed but later determined to no longer meet criteria.
- 32 persons are deceased or out of state.
- 22 persons were returned to prison for other reasons.

Current status of the respondents in the 1,509 petitions that were filed:

- 700 are in some form of secure custody in Florida.
- 741 have been released.
- 62 are deceased or out of state.

### III. Effect of Proposed Changes:

**Section 1:** Section 394.913, F.S., currently describes the referral process for agencies (DOC, DJJ, and DCF) to notify DCF's Sexually Violent Predator Program (SVPP) of the upcoming release of a person who has been convicted of a sexually violent offense. This includes the time frames for referral as well as the information that must be provided to the SVPP. It also describes the SVPP's multidisciplinary team (MDT), including the composition of the team and the evaluation and assessment process that is used. The bill substantively amends s. 394.913, F.S., in five ways:

- Provides that local detention facilities must notify the SVPP as soon as practicable after it receives a person who has committed a sexually violent offense into custody. This recognizes that persons are confined in jail for short lengths of time. The addition of a time frame for jails is necessary because referral of sexually violent offenders from jails is added to the law in Section 5 of the bill.
- Designates the current members of the MDT (at least two members, each of whom is a licensed psychiatrist or a licensed psychologist) as primary members, and requires the addition of three advisory members with the following qualifications: (1) an assistant state attorney with at least 5 years of sexual offense prosecution experience; (2) a law enforcement officer with at least 10 years of sexual offense investigation experience; and (3) a victim advocate with a master's or doctoral degree in social work, psychology, sociology, or a related field and at least 5 years of experience representing sexual violence victims.
- Requires a victim impact statement prepared by the victim advocate to be provided to the state attorney along with the evaluation and assessment that is prepared by the primary members of the MDT.
- Requires the MDT to give equal weight to attempts, criminal solicitations, and conspiracies to commit a sexually violent offense as it does to completed sexually violent offenses. This was included because the SVPP had in the past screened out attempted sexually violent offenses from full evaluation. The department has now changed their practices to include such offenses.
- Provides that the victim advocate can veto the decision of the MDT when the team finds the person does not meet the definition of a sexually violent predator. If this occurs, the

department will submit the team's recommendation and that of the victim advocate to the state attorney for consideration for filing of civil commitment of the person.

**Section 2:** Section 394.9135, F.S., currently describes the procedure and timeframes if the immediate release of a sexually violent offender is ordered before the commitment consideration process is initiated. The process only applies to offenders who are released from one of the referring agencies (DOC, DJJ, and DCF).

The bill amends s. 394.9135, F.S., to add a process to allow referral of a person who is released from a local detention facility even though the person is in DOC or DJJ custody. This could occur, for example, if a DOC inmate is temporarily confined in a county jail to attend a resentencing hearing and the judge orders his or her release. Normally, the jail would transfer custody back to DOC or DJJ for out processing and the agency would initiate immediate release civil commitment proceedings under s. 394.3195, F.S. However, the agencies do not have jurisdiction to do so if the person is released directly from the jail.

The new process requires the state attorney to file a petition within 120 hours of the erroneous release stating either: (1) that the person is statutorily required to be referred for commitment consideration, but was not referred because of mistake, oversight, or intentional act; or (2) that the person had previously been referred for commitment consideration, but was released through mistake, oversight, or intentional act rather than being transferred to DCF custody. If the judge finds probable cause to believe that the person was required to be considered for civil commitment, the judge must order that the person be taken into the custody of DCF. When the person is in DCF custody, the evaluation and assessment process is conducted as required by the existing immediate release procedures.

**Section 3:** Section 394.926, F.S., currently requires DCF to notify the victim, or the family of a deceased victim, of the release of a sexually violent predator. It also requires DCF to notify DOC and the Parole Commission if appropriate of the release of a sexually violent predator who has an active or pending term of community supervision. The bill amends the release notification requirement to improve public safety in two ways:

- It expands the category of persons for whom notification of release must be given to include any person who is detained in DCF custody to be considered for commitment as a sexually violent predator, but who has not been found to be a sexually violent predator.
- It requires DCF to give notice of the release of a committed sexually violent predator or of a person who is detained for SVP commitment consideration to the sheriff of the county in which the person intends to reside. If the intended residence is not known, the notice must be given to the sheriff of the county in which the person was last convicted.

**Section 4:** Section 394.931, F.S., requires DOC to produce quarterly reports that provide information about inmates who were referred to DCF for civil commitment consideration. The required information is related to the circumstances of the sexual offense and the inmate's history of committing sexual offenses. The bill creates a new requirement for DOC to prepare an annual report regarding recidivism of persons referred to and released from the civil commitment facility. For purposes of the report, recidivism is defined as return to prison or community supervision for a new sexual offense. The first report will be due by July 1, 2015, and must



include: (1) a separate report of recidivism of detained and committed persons; and (2) an analysis of technical violations.

**Section 5:** Section 394.912, F.S., provides the following definitions for the Sexually Violent Predator Act:

- Subsection (1) of s. 394.912 defines “agency with jurisdiction” to include DOC, DJJ, or DCF when the agency releases a person from its custody.
- Subsection (9) defines “sexually violent offense” to include designated sexual offenses, similar offenses in other jurisdictions, and sexually motivated offenses.
- Subsection (11) defines “total confinement” to mean that the person is being held in a physically secure facility operated or contractually operated by DOC, DJJ, or DCF. The term also includes persons who are serving a sentence of incarceration in DOC or DJJ custody but who are being held in another secure facility for any reason.

The Sexually Violent Predator Act requires the agency with jurisdiction to refer a person who has been convicted of a sexually violent offense and who is being released from total confinement for any offense to DCF for civil commitment proceedings. Because “agency with jurisdiction” currently can only apply to DOC, DJJ, or DCF, the Act does not require or permit referral of persons who are being released from serving a sentence in a local detention facility.

The bill amends the definition of “agency with jurisdiction” to include local detention facilities that release a person who:

- Is serving a sentence for any offense other than DUI (s. 316.193, F.S.) or worthless checks (s. 832.05, F.S.) and is a designated sexual predator or sexual offender as the result of being convicted of a sexually violent offense; or
- Is serving a sentence for any offense for which the state attorney has given the detention facility notice that, in its opinion, the offense was a sexually motivated offense.

The process for referral is the same for local detention facilities as for DOC, DJJ, and DCF, except that notification to the SVPP must be made as soon as practicable as required by the amendment to s. 394.913, F.S. in the bill.

The bill also amends the definition of “total confinement” in two ways:

- It includes confinement in a local detention facility.
- It includes situations in which the agency or a court determines that a person should have been released at an earlier date, such as when DOC or a court recalculates an inmate’s award of gain time. This provision will apply only if the person would have been subject to the Sexually Violent Predator Act at the time he should have been released. This change is needed due to the Florida Supreme Court’s opinion in *Larimore v. State*, 3 So.3d 101 (Fla. 2009). DOC referred Larimore to DCF for civil commitment consideration after he was scheduled for release as a result of reinstatement of gain time that had previously been deemed forfeited. The court found that Larimore was not in lawful custody at the time of his release because he should have been released at an earlier date. Because Larimore was not in

lawful custody at the time of his release, the Court found that he was not subject to civil commitment under the Act.

**Section 6** is a savings clause to ensure that a finding that one portion of the bill is invalid will not result in invalidation of the other portions.

**Section 7** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If additional persons are detained and civilly committed at the Florida Civil Commitment Center, the private vendor operating center could see increased revenues.

C. Government Sector Impact:

##### **State Government**

The bill would increase the number of persons evaluated. A renewed emphasis on public safety required by the bill along with the expansion of the program to selected persons serving sentences in county jails would increase the number of persons evaluated and committed over time. To the extent that the bill increases the number of persons evaluated to be sexually violent predators, the bill would increase costs to the state. The Department of Children and Families would see increased costs for the multidisciplinary evaluation teams and the detaining and treating of sexually violent predators. The judicial system, including the state court system, the state attorneys, the public defenders, and the Justice Administrative Commission would also see increased costs.

**Estimate of Additional Sexually Violent Predators**

The bill will likely result in more persons entering the sexually violent predator program. An unknown number of additional persons required to be evaluated by the department due to other changes in the bill, such as increasing the size and composition of the multidisciplinary teams. The bill expands the sexually violent predator program to certain individuals in county jails. To estimate the number of persons in jails that would enter the program, the Legislature’s Office of Program Performance and Government Accountability (OPPAGA) reviewed data on persons in jail with selected offenses. OPPAGA identified 890 persons currently in county jails that were found to meet the criteria in the bill to be evaluated as a SVP.<sup>1</sup> County jail sentences are usually less than one year so the number of persons on an annual basis may be similar to the number meeting the new criteria found by OPPAGA. Some of these persons in county jail however could be sentenced to time served and therefore be released from custody before an evaluation.

The evaluation, filing and commitment rates for the jail population may be different from what the program has experienced to date. Most of the referrals to the department come from the state prison system. These persons would have primarily committed felonies, while the jail population is predominately guilty of misdemeanors. The rates for referring, filing, and commitment may be lower for the new population than the population in the program to date which would result in fewer program participants from county jails. A factor that could increase the number of new participants would be an increase in the rate of commitment recommendations due to changes in the multidisciplinary teams and department procedures.

Table 1 below shows the number of persons referred to the department for evaluation, the number that were recommended for commitment by the department, the number filed by the state attorney, and the number of commitments since the beginning of the program in 1999.<sup>2</sup> If new population from the jails experiences similar rates for commitment recommendation, filing, and civil commitments, Table 1 shows the estimated number for new program participants.

**Table 1. Estimated Number of New Evaluations, Filings and Commitments**

	History of SVP (1999-2013)	Percent	Jail Population Estimate
Persons evaluated by DCF	47,932	100%	890
Recommended for commitment by DCF	1,607	3.4%	30

<sup>1</sup> Office of Program Policy analysis and Gov’t Accountability, Florida Legislature, Research Memorandum, *Potential Number of Referrals from Jails to the Department of Children and Families’ Sexually Violent Predator Program*. (Dec. 30, 2013).

<sup>2</sup> Presentation to the Senate Committee on Children, Families and Elder Affairs and the Senate Judiciary Committee, (Sept. 24, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

	History of SVP (1999-2013)	Percent	Jail Population Estimate
Filed by state attorneys	1,509	3.1%	28
Civil commitments	575	1.2%	11

**Department of Children and Families**

The department will see increased costs for the evaluations of additional persons required to be assessed under the bill and the cost of housing additional sexually violent predators. The department spent \$30.9 million on the sexually violent predator program to evaluate and house SVPs. The department will experience increased costs in the evaluations, detention, and commitment of sexually violent predators.

The costs associated with evaluations involve staff time, contracted evaluators, travel expenses, and office space. Currently, the department evaluates approximately 3,500 individuals per year.<sup>3</sup> The department estimates that each evaluation costs an average of \$910.<sup>4</sup> Evaluations that include face to face interviews with the individual cost more than those without face to face interviews. At a unit cost of \$910, the 890 estimated new participants from county jail would cost the state \$809,900.

The costs associated with the detention and commitment of sexually violent predators would be for housing, security and treatment. The department contracts with a private vendor to operate the Florida Civil Commitment Center. The cost per day for both detainees and committed persons is \$99.86 per day or \$36,449 each year.

It cannot be determined how long the new program participants will be detained in the Florida Civil Commitment Center awaiting evaluations and hearings. Of the estimated new 890 participants, many will likely be released after evaluation. If evaluations took an average of two weeks and the estimated 890 new participants were held and evaluated evenly throughout the year, then 34 additional participants would be screened at the center every two weeks (890/26). The cost of these estimated 34 additional detainees would be \$1.2 million on an annual basis.

If the new program participants are evaluated and adjudicated at similar rates to historical program participants, 11 new commitments would be made each year. At the current annual cost, these new commitments would cost the state \$400,939. The current capacity of the Florida Civil Commitment Center is 720 and the current census is 647.<sup>5</sup> If the program needs to house more than the capacity of the current center, additional resources will be needed. The amount cannot be determined at this point because the state could

<sup>3</sup> Correspondence from the Department of Children and Families, (Dec. 6, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>4</sup> *Id.*

<sup>5</sup> Correspondence with the Senate Appropriations Committee on Health and Human Services, (Jan. 10, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

build a new facility, use of an existing state facility not in use, or contract with a private vendor to build or convert a private facility.

### **Judicial costs**

The judicial system would also see increased costs under the bill due to more cases filed for civil commitment by the state attorney. The increased judicial costs would include additional judge and staff time for the state courts system and staff time and case related costs for the state attorneys and public defenders.

The Florida Supreme Court uses a workload formula to estimate the need for new judges. The formula is based on the expected number of hours/minutes needed for a judge to adjudicate different case types. The court formula shows that sexually violent predator cases take an average of 16.9 hours.<sup>6</sup> Using historical rates of filing for civil commitment, the new jail population required to be evaluated under the bill would result in an estimated 28 additional filings each year. Using the standard of 2,080 hours per work year, one new judge would be able to preside over 123 additional sexually violent predator cases. When the legislature has established and funded additional circuit judges in the past, an estimated cost of \$250,000 per year per judge has been used. This includes the judge and a judicial assistant, and associated expenses. If one judge can preside over 123 sexually violent predator cases each year, the judicial cost per case would be \$2,032 (\$250,000/123). The estimated cost of 28 additional filings each year would be \$56,896. This need for judicial resources could be more if other changes in the bill or operational changes in the department result in more persons are referred for civil commitment.

Assistant state attorneys and their legal assistants must prepare the case and participate in the judicial hearing. The Florida Prosecuting Attorneys Association estimated the cost per sexually violent predator case using the number of cases per attorney and the costs per attorney is currently \$1,486. With an estimated 30 new cases due to expanding the program to the county jail population, the state attorneys would incur a cost of \$44,580.

Most persons determined to be sexually violent predators are indigent and are represented by the public defender's office. The Public Defenders Association provided information from the 2<sup>nd</sup> circuit. That circuit's cost per case was \$8,566. With an estimated 30 new cases due to expanding the program to the county jail population, the public defenders statewide would incur a cost of \$256,980. These costs are significantly higher than those of the state attorney even though the staff costs are similar between an assistant state attorney and an assistant public defender. The information from the 2<sup>nd</sup> circuit may not be representative of all public defender offices.

In addition to the attorney time, state attorney and public defender offices incur case related costs, such as expert witnesses, recording depositions, and transcripts. Such costs are paid by the Justice Administrative Commission. During state fiscal year 2011-2012,

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<sup>6</sup> Correspondence with the Office of State Courts Administrator, (Nov. 20, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

the state paid \$2,739,940 in case related costs for 575 sexually violent predator cases.<sup>7</sup> While the cases can continue more than one year, the annual cost per case is estimated to be \$4,765. If there are an additional 30 cases due to expanding the program to the county jail population, the state could incur an additional \$142,950.

Table 2 shows the total estimated costs to the state for evaluating an estimated 890 county jail inmates for the sexually violent predator program would be \$2.9 million per year.

**Table 2. Estimated Additional Costs**

Department of Children and Families Costs	
Evaluations	\$809,900
Cost of estimated 34 new detainees	\$1,239,266
Cost of estimated 11 new commitments	\$400,939
<b>DCF Subtotal</b>	<b>\$2,450,105</b>
State Courts System – additional judicial resources	\$56,896
State Attorney – staff and expenses	\$44,580
Public Defender – staff and expenses	\$256,980
Justice Administrative Commission – case related costs	\$142,950
<b>Total</b>	<b>\$2,951,511</b>

**Local Government**

The counties may experience an increase in costs as their county jails will be required to gather and transmit jail inmate information to the Department of Children and Families for sexually violent predator evaluations. The cost of this duty is indeterminate, but is not expected to be significant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.913, 394.9135, 394.926, 394.931, and 394.912.

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<sup>7</sup> Correspondence from the Justice Administrative Commission, (Dec.6, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

**IX. Additional Information:**

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

**CS by Children, Families, and Elder Affairs on January 14, 2014:**

- Provides that the victim advocate can veto the decision of the multidisciplinary team when the team finds the person does not meet the definition of a sexually violent predator. If this occurs, the department will submit the team's recommendation and that of the victim advocate to the state attorney for consideration for filing of civil commitment of the person.

- B. **Amendments:**

None.