

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 Committee on Judiciary

BILL: CS/SB 522

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

SUBJECT: Involuntary Civil Commitment of Sexually Violent Predators

DATE: February 3, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 522 makes various changes to laws relating to the assessment of sexual offenders for civil commitment as a sexually violent predator. Under the bill:

- More individuals, including those in local detention facilities, who have a current or prior conviction for a sexually violent offense may be assessed for civil commitment as a sexually violent predator.
- Multidisciplinary teams that assess individuals for civil commitment, in addition to the existing clinical members, will include an assistant state attorney, a law enforcement officer, and a victim advocate.
- Multidisciplinary teams must treat a sexual offender whose offense was an attempt, criminal solicitation, or conspiracy to commit a sexually violent offense as having completed the offense.
- The monitoring of sexual offenders may be facilitated by requiring notice to a sheriff when a person in the custody of the sexually violent predator program is released.
- Victims must be notified of the release of sexual offenders who are detained by the sexually violent predator program, based on a finding of probable cause, but who were not committed.
- The Department of Corrections must annually assess the performance of the sexually violent predator program by examining the recidivism rate of persons released from the program.

II. Present Situation:

Trends in Sex Offenses, Prison Sentences, and Recidivism

Although the prevalence of sexual violence in Florida as measured by new prison admissions has decreased in the last decade, recent trends show an increase. Researchers attribute the largest increase in prison admissions for sex crimes to one offense—traveling to meet a minor met on the Internet for the purpose of sex. The steep rise for this particular crime (14 convictions in FY 2010-11 to 154 convictions in FY 2012-13) represented a 1,100 percent increase which may, in part, be due to additional sting operations conducted by law enforcement officials.

Sex offenses account for fewer than 6 percent of annual prison admissions. Lewd and lascivious battery with a victim between 12 and 15 years of age¹ and sexual battery by an adult with a victim under 12 years of age represent the two most common sex crimes resulting in incarceration.²

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 (s. 794.011(2)(a), F.S.) 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 (s. 800.04(5)(d), F.S.).

The average prison sentence of 12.7 years for sex offenders is longer than in the past. The Department of Corrections indicates a 3-year recidivism rate for sex offenders at 34 percent. The new offense, however, may not be a new sex crime.

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

In a 2006 report by the Legislature's Office of Economic and Demographic Research (EDR), the EDR noted:

- Sex offenses share some characteristics with other serious offenses such as murder and robbery. Facing potentially lengthy prison terms, defendants tend to fight charges with all resources available. Trial rates are highest for these three offenses.
- Sex offenses are also different from other offenses. The type of sanction and the length of sentence is often mitigated. A high percentage of cases involved dismissal of some counts.
- Eighty-five percent of victims of a sex crime know the offender.
- Victims of sexual offenses, at an average age of 13.4 years old, tend to be much younger than victims of other crimes. Economic and Demographic Research (EDR) reports that 83 percent of victims in these cases are 15 years old or younger. Successful prosecution usually requires the victim to testify in court. Because many victims are children, and many know the offender, victim's families often consider the trauma of revisiting the crimes in a public forum too difficult. Many children do not possess the intellectual and emotional skills necessary for adversarial confrontation with the defense. Faced with these challenges, the

¹ Section 800.04(4)(a), F.S.

² Section 800.04(5)(b), F.S.

prosecution often determines that the best outcome can be achieved by a plea bargain including a reduced charge or lesser sentence. Although mitigation may result in a reduced sanction, a conviction may require the offender to register as a sex offender.³

Designation of a Sexual Predator or Sexual Offender

A person is designated a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Is subject to civil commitment.⁴

A person is designated as a sexual offender by the FDLE if the person:

- Has been convicted of a qualifying sex offense and released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Is a Florida resident and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the victim was 14 years of age or older.⁵

Sex Offenders under Community Supervision

A court may place a convicted felon on community supervision, either immediately upon sentencing or after serving a sentence. Convicted felons on community supervision report to and are monitored by Department of Corrections' (DOC) probation officers. Data on sex offenders released from prison to community supervision include the following:

- In Fiscal Year 2012-13, 66.1 percent of sex offenders released from prison began supervision upon release.
- As of July 31, 2013, 5.3 percent of the total population on community supervision were required to register as sexual offenders. Of offenders on community supervision for a sexual offense, the DOC tracked 34.5 percent by electronic monitoring.
- Supervised offenders must comply with statutory terms and conditions as well as special terms and conditions imposed by the sentencing court or by the Parole Commission.
- Offenders on community supervision for a sex offense are more likely to have supervision revoked for a technical violation than other offenders on supervision. For FY 2011-12 the DOC revoked supervision of 427 sex offenders for misconduct. A technical violation was the basis of 74 percent of revocations. Supervision was revoked for 26 percent of the offenders

³ Office of Economic and Demographic Research, *Factors Relating to the Sentencing of Sex Offenders*, p. 1-2 (March 1, 2006) (on file with the Senate Committee on Judiciary).

⁴ Section 775.21(4), F.S.

⁵ Section 943.0435(1), F.S.

due to a new crime. In contrast, the DOC revoked supervision of 34,095 felons for misconduct during the same time period, with 39 percent revoked for a technical violation and 61 percent revoked for a new crime.

- Offenders on community supervision for certain sex offenses committed against a child have conditions restricting them from living near schools or working or volunteering in places where children regularly congregate or having unsupervised contact with a minor. Residency and employment restrictions apply to certain offenders after completion of sentence and community supervision. Local ordinances may impose additional residence restrictions, including wider exclusion zones.
- In recent years, mandatory conditions of supervision for sex offenders were expanded to prohibit certain activities such as distributing candy at Halloween and visiting schools without prior approval of the probation officer.

Legal Basis for Civil Commitment of Sexually Violent Predators

Florida enacted the Sexually Violent Predator Program (SVPP) in 1998 and modeled it after the Kansas Sexually Violent Predator Act, which provided for involuntary civil commitment of sexually violent predators. Challenged on due process, double jeopardy, and ex post facto grounds, in *Kansas v. Hendricks*, the U.S. Supreme Court upheld the Kansas' civil commitment program.⁶ The Court based its ruling on the following:

- The Act requires a finding of dangerousness to self or others, through evidence of an inability to control behavior and a finding that the person suffers from a mental abnormality or personality disorder.⁷
- The Act is non-punitive in nature, requires treatment during commitment, and bases commitment on mental deficiency rather than criminal intent.⁸
- A court must review commitment annually and determine whether a detainee continues to be mentally infirm.⁹
- The Act provides due process based on numerous procedural and evidentiary protections.¹⁰
- Because the commitment is civil in nature, not criminal, the Act does not violate constitutional protections against double jeopardy.¹¹
- Because the Act is not a criminal law, the Act does not violate the ex post facto clause of the U.S. Constitution.¹²

In *Kansas v. Crane*, the U.S. Supreme Court refined the *Hendricks* requirement that the offender possess a lack of behavioral control.¹³ *Crane* requires a stronger showing of a lack of control, namely, that the offender's inability to control behavior constitutes a serious public danger.¹⁴

⁶ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

⁷ *Id.* at 357-358.

⁸ *Id.* at 363 and 367.

⁹ *Id.* at 364.

¹⁰ *Id.*

¹¹ *Id.* at 369.

¹² *Id.* at 371.

¹³ 534 U.S. 407 (2002).

¹⁴ *Id.* at 413.

The Florida Supreme Court upheld Florida's civil commitment program in 2002.¹⁵ As Florida's law is heavily based on the Kansas program, the Court cited *Kansas v. Hendricks* in support:

Florida's Ryce Act shares many of the hallmarks of the Kansas statute which the Supreme Court found significant in *Hendricks* While only individuals convicted of a sexually violent offense are *eligible* for commitment under the Ryce Act, the previous conviction must be coupled with a current "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"¹⁶

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

The 1998 Florida Legislature established the Sexually Violent Predator Program (SVPP).¹⁷ The Martin Treatment Center, operated by Liberty Behavioral Health Care, originally housed the majority of sexually violent predators. Some detainees awaiting commitment proceedings were housed at the South Bay Sexually Violent Predator Detainee Unit, a unit of the South Bay Correctional Facility. In late 2000, the program moved to the Florida Civil Commitment Center (FCCC) in Arcadia, Florida, a larger facility which housed both detainees and committed Sexually Violent Predators (SVPs).

Early on, the number of detainees significantly outnumbered the number of committed sexually violent predators. Additionally, reports of lax security resulted in violence, introduction of contraband, and general disorder within the facility. DCF terminated its contract with Liberty Healthcare Group in 2006 and contracted with 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. The new FCCC, having a population capacity of 720, opened in April 2009 and is a modern facility built specifically for the SVPP.¹⁸

The FCCC currently houses 647 persons, 567 sexually violent predators and 80 persons awaiting a commitment trial. The program provides four progressive stages of treatment. 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, ADA violations, and a lack of access to treatment. Parties to the lawsuit agreed to settle and the plaintiffs voluntarily dismissed the lawsuit in 2009, based on improved conditions and treatment opportunities.

¹⁵ *Westerheide v. State*, 831 So. 2d 93 (Fla. 2002).

¹⁶ *Id.* at 100.

¹⁷ Chapter 98-64, L.O.F. The 1998 Legislature created the "Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act."

¹⁸ Marti Harkness, Senate Committee on Criminal Justice Appropriations, *Overview of Sexually Violent Predator Program*, PowerPoint Presentation (September 24, 2013) (on file with the Senate Committee on Judiciary).

Referral and Commitment Process for Sexually Violent Predators

Referral:

A referring agency gives notice to the state attorney and the DCF multidisciplinary team (MDT) of the upcoming release of a person in confinement who has been convicted, adjudicated delinquent, or found not guilty by reason of insanity of a qualifying sexually violent offense.¹⁹

The timing of the notices to the MDT depends on which agency has jurisdiction over the person:

- The Department of Corrections must give notice at least 545 days before release from incarceration.
- The Department of Juvenile Justice must give notice at least 180 days before release from residential commitment.
- Department of Children and Families must give notice at least 180 days before the release hearing of a person found not guilty by reason of insanity.²⁰

Multidisciplinary Team Review (MDT):

By law, MDT members must be licensed psychologists or psychiatrists. Administrative rules further require MDT members to have at least 1 year of experience in the treatment or evaluation of sex offenders, have completed training in use and scoring of the risk assessment actuarial (known as the Static 99 form), and earn 24 hours of continuing education credits related to assessment or treatment of sex offenders.²¹

- After the referring agency provides notice to the proper entities, the referring agency also provides the MDT with a packet of relevant information. At least two MDT members make a threshold assessment of whether the referred person meets statutory commitment criteria of having a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined for treatment.²²
- If the MDT finds that the person meets 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 the person consents, and a risk assessment.²³
- The MDT recommends commitment to the state attorney within 180 days after referral, if a majority of the MDT, including at least one clinical evaluator, agree that the person meets commitment criteria.²⁴

¹⁹ Section 394.912(9), F.S.

²⁰ Section 394.913(1), F.S.

²¹ Rule 65E-25.002, F.A.C.

²² Section 394.913(2) and (3), F.S.

²³ Section 394.913(3)(c) and (e), F.S.

²⁴ Section 394.913(3)(e), F.S.

Step 3 – Commitment Trial:

- The state attorney receives the MDT recommendation and decides whether to file a commitment petition in circuit court.²⁵
- If a petition is filed, the court determines whether there is probable cause for commitment.²⁶
- If the court finds probable cause, a commitment trial must be held within 30 days, unless the court grants a continuance of up to 120 days.²⁷
- If the court finds probable cause, the person will be transferred to DCF secure custody in detainee status if the trial is not held before the person is released from his or her current sentence or other confinement.
- The detainee has the right to counsel, and either party may elect trial by a six-person jury.²⁸
- A judge or jury determines whether there is clear and convincing evidence that the person meets sexually violent predator (SVP) criteria. A jury must reach a unanimous verdict to designate an offender as a sexually violent predator.²⁹

Post-commitment Trial:

- The SVP is committed to the custody of the DCF upon expiration of sentence or, if detained by DCF, moved to commitment status.³⁰
- Once in DCF custody, the SVP is transferred to the FCCC for secure custody and treatment. The SVP's status is reviewed by the court at least annually. The SVP may be discharged at any time if the court determines at a bench trial that it is safe to release him or her.³¹

Number and Flow of SVPP Cases as of August 31, 2013³²

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

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

Of the 4,171 cases referred for a clinical evaluation:

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

²⁵ Sections 394.9135(3) and 394.914, F.S.

²⁶ Section 394.915, F.S.

²⁷ Section 394.916(1) and (2), F.S.

²⁸ Section 394.916(3), F.S.

²⁹ Section 394.917(1), F.S.

³⁰ Section 394.917(1) and (2), F.S.

³¹ Section 394.917(2), F.S.

³² Department of Children and Families, *An Overview of Florida's Sexually Violent Predator Program*, Presented at Joint Workshop of the Senate Children, Families, and Elder Affairs Committee and the Judiciary Committee (September 24, 2013) (on file with the Senate Committee on Judiciary).

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 is pending in 40 cases as to whether a petition will be filed.

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 FCCC pending trial.
- 21 petitions are otherwise pending trial.
- 30 persons are dead or out-of-state.

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

- 575 SVPs were committed to the FCCC.
- 1 person is in the FCCC by stipulated agreement.
- 4 SVPs await the end of their prison sentence before commitment.
- 140 SVPs 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 SVPs were committed but later determined to no longer meet criteria.
- 32 persons are deceased or out-of-state.
- 22 people were returned to prison for other reasons.

Of the respondents to the 1,509 petitions for civil commitment which were filed:

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

Notification of Release of a Sexually Violent Predator

As soon as is practicable, the DCF must notify a victim of the release of a SVP. The DCF must also notify the DOC if a SVP has an active or pending term of probation or community supervision.³³

³³ Section 94.926, F.S.

III. Effect of Proposed Changes:

This bill expands the class of sexual offenders who will be assessed for civil commitment as a sexually violent predator (SVP), adds additional members to multidisciplinary teams (MDT) that conduct the assessments, and provides more notice to victims and sheriffs of the release of a sexual offender from the sexually violent predator program.

Expanding Notice and Review Requirements for Jail Detainees Prior to Release

This bill expands the class of sexual offenders who may be assessed for civil commitment as a sexually violent predator to include individuals sentenced to confinement in a local detention facility, such as a jail. The assessment process of these individuals begins when the agency with jurisdiction over the confined individual provides written notice to the multidisciplinary team and a state attorney that the individual in custody has a prior or current conviction for a sexually violent offense. Current law limits the assessment of sexual offenders for civil commitment to offenders confined to facilities under the jurisdiction of the Department of Corrections (DOC) or in the custody of the Department of Juvenile Justice (DJJ) or the Department of Children and Families (DCF) for individuals adjudicated not guilty by reason of insanity of a sexually violent offense.

Local detention facilities must provide notice to the state attorney and MDT of the release of any person:

- For any offense other than DUI (s. 316.193, F.S.) or worthless checks (s. 832.05, F.S.) who is a designated sexual predator or sexual offender as the result of being convicted of a sexually violent offense; or
- 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.

Current law requires that notice be given by agencies with jurisdiction over a sexual offender a set number of days prior to the anticipated release of the offender. The bill anticipates shorter and unpredictable sentences of confinement for offenders detained in local detention facilities. As such, the bill requires local detention facilities to provide notice to the multidisciplinary team and state attorney as soon as practicable after the offender is taken into custody.

Multidisciplinary Team (MDT)

Membership

Current law requires a minimum of two individuals who are a licensed psychiatrist or psychologist to serve as members of the MDT. This bill designates the two clinical professionals as primary members and adds as advisory members:

- An assistant state attorney having at least 5 years of experience in prosecuting sexual offenses;
- A certified law enforcement officer having at least 10 years of experience in investigating sexual offenses; and

- A victim advocate having at least a master's degree in social work, psychology, sociology, or a related field and at least 5 years of experience representing victims of sexual violence.

Mandating that these other professionals serve as team members will ensure diversified representation on the team.

Responsibilities

The psychologists and psychiatrists must prepare a written assessment for the state attorney which recommends that a sexual offender be committed as a SVP. The bill elevates the input of the victim advocate, by requiring the recommendation to include a victim impact statement. The bill also gives the victim advocate veto power when the MDT determines that the offender does not qualify as a SVP. If the victim advocate vetoes the decision, both recommendations will be provided to the state attorney for consideration. These changes give the victim advocate a stronger say in recommending an offender as a SVP. Given the victim advocate's role, more sexual offenders may be recommended for designation as SVPs.

This bill requires the MDT to consider a sexual offender whose offense was an attempt, criminal solicitation, or conspiracy to commit a sexually violent offense as having completed the offense. This change may increase the number of sexual offenders recommended for civil commitment as a SVP.

This bill acknowledges that offenders intended for consideration for civil commitment may inadvertently be released without consideration. State attorneys are authorized to file a petition with the circuit court within 120 hours after release alleging the mistake. The court then must make a probable cause determination that the person was inadvertently released. If the court finds evidence of mistaken release, the court must order the person to be taken into custody. This change may help ensure that potentially dangerous sexual offenders are assessed for civil commitment.

Department of Children and Families (DCF)

This bill clarifies that the DCF must immediately give notice to the DOC and the appropriate sheriff of the release of a person civilly committed as a SVP or the taking into DCF custody of a person pending commitment trial. The DOC must provide this notice in writing.

Expanding Notice Requirements to Victims

Current law limits victim notification of a sexual offender's release to offenders who are already designated as a SVP. The bill requires the DCF to also provide notice to a victim prior to the release of a person who was detained, based on a probable cause finding, but not committed as a SVP.

Department of Corrections (DOC)

The DOC must collect information from the DCF on recidivism rates of SVPs committed to and released from civil commitment. Recidivism rates are defined as a return to prison or community

offense for a new sexual offense. The DOC must provide this information in an annual report to the Legislature, due by July 1, 2015 and annually thereafter of:

- Recidivism rates for persons released from detention and recidivism rates for SVPs released from civil commitment; and
- An analysis of technical violations of community supervision.

The differences in the recidivism rates of those detained but not committed and those civilly committed may aid in evaluating the accuracy of assessments by the MDT or the success of treatment provided during civil commitment.

The bill also broadens the definition of “total confinement” to include more persons as eligible for consideration for civil commitment:

- The bill includes confinement in a local detention facility.
- The bill 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 SVP Act at the time of release. This change is needed due to the Florida Supreme Court’s opinion in *Larimore v. State*.³⁴

In *Larimore*, the DOC referred an offender to the MDT for assessment after his approval for release as a result of reinstatement of gain time that was erroneously forfeited by the state.³⁵ In examining legislative intent, the Court opined that the “Legislature appears to have specifically contemplated that an individual would be lawfully in the State’s custody when civil commitment proceedings are commenced under the Act.”³⁶ The Court found that the offender was not in lawful custody at the time of his release because he should have been released at an earlier date. Thus, the offender was not subject to civil commitment under the Act.³⁷

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁴ *Larimore v. State*, 2 So. 3d 101 (Fla. 2009).

³⁵ *Id.* at 104.

³⁶ *Id.* at 107.

³⁷ *Id.* at 117.

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 vendor operating center may receive additional funding.

C. Government Sector Impact:

State Government

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 will increase the number of persons evaluated and committed over time. The DCF will incur increased costs for the MDTs and the detaining and treating of SVPs. The judicial system, including the state court system, the state attorneys, the public defenders, and the Justice Administrative Commission will also incur increased costs.

Estimate of Additional Sexually Violent Predators

An unknown number of additional persons will be evaluated by the DCF due to increasing the size and composition of the MDTs. The bill expands the SVPP to apply to certain individuals in county jails. To estimate the number of persons in jails that will 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 jail found to meet criteria in the bill for evaluation as a SVP.³⁸ County jail sentences are less than one year so the number of persons on an annual basis may be similar to the number meeting the new criteria found

³⁸ 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*. (December 30, 2013) (on file with the Senate Committee on Judiciary).

by OPPAGA. Some jail detainees may be sentenced to time served and therefore be released from custody before an evaluation.

Most referrals to the DCF come from the state prison system. Rates for referral, filing, and commitment may be lower for the jail population due to the difference in the severity of offenses between jail detainees and felons incarcerated by the DOC. 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 MDTs and DCF procedures.

Table 1 shows the number of persons referred to the DCF for evaluation, the number recommended for commitment by the DCF, the number filed by the state attorney, and the number of commitments since the start of the program in 1999.³⁹ If new population from jails result in similar rates of commitment, 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
	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 DCF will incur increased costs for evaluations of additional persons required to be assessed under the bill and the cost of housing additional SVPs. The DCF spent \$30.9 million on the SVPP to evaluate and house SVPs. The DCF will experience increased costs in evaluation, detention, and commitment of SVPs.

Costs associated with evaluations involve staff time, contracted evaluators, travel expenses, and office space. Currently, DCF evaluates approximately 3,500 individuals per year.⁴⁰ The DCF estimates that each evaluation costs an average of \$910.⁴¹

³⁹ Presentation to the Senate Committee on Children, Families and Elder Affairs and the Senate Judiciary Committee, (September 24, 2013) (on file with the Senate Committee on Judiciary).

⁴⁰ Correspondence from the Department of Children and Families, (December 6, 2013) (on file with the Senate Committee on Judiciary).

⁴¹ *Id.*

Evaluations that include face to face interviews with the individual cost more. At a unit cost of \$910, the 890 estimated new participants from county jail will cost \$809,900.

The DCF anticipates an annual cost of \$18,808 for three additional MDT members based on 240 hours of participation on the MDT for each new member.⁴² Regarding the addition of jail referrals, the DCF estimates 1,298 additional referrals. This number is based on the number of individuals added to the sex offender registry arrested solely for misdemeanors for included offenses. The DCF will need an additional master's level reviewer per 350 new referrals. The DCF also requires one psychologist per 700 new referrals. As such, the DCF will need four master level FTE and two psychologist FTE at a recurring cost of \$495,208.⁴³

Costs associated with detention and commitment of SVPs are for housing, security and treatment. The DCF contracts with a private vendor to operate the FCCC. The cost per day for detainees and committed persons is \$99.86 per day each or \$36,449 each year.

The length of time new program participants will be detained in the FCCC awaiting evaluations and hearings is unknown. Of the estimated new 890 participants, many will likely be released after evaluation. If evaluations take an average of 2 weeks and the estimated 890 new participants are held and evaluated evenly throughout the year, 34 additional participants will be screened at the center every two weeks (890/26), at a cost of \$1.2 million on an annual basis.

If new program participants are evaluated and adjudicated at similar rates to historical program participants, 11 new commitments will be made each year. At current annual cost, these new commitments will cost the state \$400,939. The current capacity of the FCCC is 720 and the current census is 647.⁴⁴ If the program needs to house more than the capacity of the current center, additional resources are needed. The amount cannot be determined at this point because the state could build a new facility, use 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 will also incur increased cost under the bill due to more cases filed for civil commitment by the state attorney. Increased judicial costs include additional judge and staff time for the state courts system and staff time and case related costs for 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 amount of time needed for a judge to adjudicate different case types. The court formula shows that SVP cases take an average of 16.9

⁴² Department of Children and Families, *2014 Legislative Bill Analysis, SB 522* (July 1, 2014) (on file with the Senate Committee on Judiciary).

⁴³ *Id.*

⁴⁴ Correspondence with the Senate Appropriations Committee on Health and Human Services, (January 10, 2014) (on file with the Senate Committee on Judiciary).

hours.⁴⁵ Using historical rates of filing for civil commitment, the new jail population required for evaluation will result in an estimated 28 additional filings each year. Using the standard of 2,080 hours per work year, one new judge will be able to preside over 123 additional SVP 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 SVP cases each year, the judicial cost per case will be \$2,032 (\$250,000/123). The estimated cost of 28 additional filings each year will 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 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 SVP case using the number of cases per attorney and the costs per attorney at \$1,486. With an estimated 30 new cases due to expanding the program to the county jail population, state attorneys will incur a cost of \$44,580.

Most persons determined to be SVPs are indigent and qualify for representation by the public defender’s office. The Florida Public Defender Association provided information from the 2nd judicial circuit at a cost per case was \$8,566. With an estimated 30 new cases due to expanding the program to the county jail population, public defenders statewide will incur a cost of \$256,980. These costs are significantly higher than those of the state attorney although staff costs are similar. Information from the 2nd circuit, however, may not be representative of all public defender offices.

In addition to 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, the state paid \$2,739,875 in case related costs for 575 SVP cases.⁴⁶ While the cases can continue more than 1 year, annual cost per case is estimated at \$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 total estimated costs to the state for evaluating an estimated 890 county jail inmates for the SVP program at \$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
DCF Subtotal	\$2,450,105

⁴⁵ Correspondence with the Office of State Courts Administrator, (November 20, 2013) (on file with the Senate Committee on Judiciary).

⁴⁶ Correspondence from the Justice Administrative Commission, (December 6, 2013) (on file with the Senate Committee on Judiciary).

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
Total	\$2,951,511

Prison Bed Impact

Pursuant to s. 216.136, F.S., the Criminal Justice Estimating Conference (CJEC) is charged with:

- Developing official information on the criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population, as the CJEC determines is needed for the state planning and budgeting system.
- Developing official information on the number of eligible discharges and the projected number of civil commitments for determining space needs pursuant to the civil proceedings provided under part V of chapter 394.
- Developing official information on the number of sexual offenders and sexual predators required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.

The CJEC met on January 30, 2014 and found that SB 522 will have no impact on the prison bed population.

Local Government

Counties may experience an increase in costs as their county jails will be required to gather and transmit jail inmate information to the DCF for sexually violent predator evaluations. The cost of this duty is indeterminate, but is expected to be insignificant.

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.

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:

- Authorizes the victim advocate to 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 DCF 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.