

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7021 PCB HFS 14-01 Sexually Violent Predators
SPONSOR(S): Health & Human Services Committee; Healthy Families Subcommittee, Harrell; Eagle
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Healthy Families Subcommittee	11 Y, 0 N	McElroy	Brazzell
1) Appropriations Committee	26 Y, 0 N	Fontaine	Leznoff
2) Health & Human Services Committee	16 Y, 0 N, As CS	McElroy	Calamas

SUMMARY ANALYSIS

House Bill 7021 makes statutory changes to the Jimmy Ryce Act to enhance the state's ability to identify and civilly commit sexually violent predators. The Jimmy Ryce Act was created to protect the public from sexual offenses committed by sexually violent predators while providing these individuals with long-term care and treatment through the Sexually Violent Predator Program (SVPP). The program is provided by the Florida Civil Commitment Center (FCCC) as administered by the Department of Children and Families (DCF).

The bill amends s. 394.913(3)(b), F.S., to require the clinicians on DCF's multidisciplinary team (MDT) who assess, evaluate, and recommend persons for civil commitment to have experience in or relevant to evaluating or treating persons with mental abnormalities. It also requires that all members of the MDT review all information provided to it by the referring agencies, as well as any clinical evaluations, prior to making a recommendation. The bill requires DCF to provide annual training on the civil commitment process to all MDT members and limits the standard contract term for MDT members retained on a contractual basis to one year. The bill also requires DCF to conduct performance evaluations of the contract evaluators on at least an annual basis.

The bill authorizes the MDT to conduct clinical evaluations and requires a second evaluation when any MDT member disagrees with the conclusion of the first clinical evaluation. The bill requires the MDT to weigh in its decision-making any attempt, criminal solicitation, or conspiracy to commit a sexually violent offense as having actually completed the offense. The bill allows the MDT to consult with law enforcement agencies and victim advocates during the assessment and evaluation process. The bill requires DCF to prioritize the assessment and evaluation of individuals referred to the SVPP based upon their release dates.

The bill requires the MDT to provide its recommendation to the state attorney at least one month before the offender's scheduled release. However, if the MDT receives the referral within 90 days of the offender's release, the MDT must provide the recommendation as soon as practicable.

The bill requires the MDT to send its written assessment and recommendation to the state attorney for additional review. If the state attorney questions the recommendation, the MDT must reexamine the case before a final written assessment and recommendation is provided to the state attorney. The bill lowers the threshold for the MDT to determine that a person meets civil commitment criteria to the affirmative vote of two members rather than a majority.

The bill grants the state attorney authority to file a petition to civilly commit a person as a sexually violent predator even in cases in which the MDT finds that the person does *not* meet the definition of a sexually violent predator and recommends that a petition not be filed. Filing a petition under this scenario is currently prohibited by case law.

The bill requires DCF to maintain and analyze data related to the clinical evaluation and judicial determination of whether an individual meets the criteria of a sexually violent predator. DCF is required to review this data at least annually for inter-rater reliability and trends.

The fiscal impact to DCF is \$104,000 and can be absorbed within existing department resources. The fiscal impact to the FCCC is indeterminate.

The bill provides an effective date of July 1, 2014.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7021c.HHSC

DATE: 2/21/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Jimmy Ryce Act

On September 11, 1995, nine-year-old Samuel James “Jimmy” Ryce was abducted at gunpoint as he was walking home from his school bus stop. He was sodomized and later murdered as he was attempting to escape his abductor. The abductor was convicted of Jimmy’s kidnapping, sexual assault, and murder on September 12, 1998.¹

In response to this tragedy, Jimmy’s parents, Don and Claudine Ryce, lobbied for legislation that would protect society from the criminal acts of sexually violent predators. This goal was achieved on May 19, 1998, when the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act (the “Act”) was signed into law.

The Act places sexually violent predators in the custody and control of the Department of Children and Families (DCF), which implements the Act through the Sexually Violent Predators Program (SVPP). Recently, a media outlet raised concerns about the enforcement of the Act and in particular, the screening process for determining whether an individual meets the definition of a sexually violent predator.² In response, the Act and the evaluation process for the SVPP have been reevaluated to ensure the purpose and intent of the Act is being achieved.

Purpose and Constitutionality

The Act was created to protect the public from sexual offenses committed by sexually violent predators while providing these individuals with long-term care and treatment.³ The Act defines “sexually violent predators” as:

1. Any person who has been convicted of a sexually violent offense; and
2. Suffers 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.⁴

Sexually violent predators represent a small but extremely dangerous percentage of the sexual offender population. These individuals are a clear and present danger to the public due to their mental abnormalities or personality disorders. These conditions cannot be readily addressed through existing mental illness treatment modalities due to the antisocial personality features of these individuals.⁵ Thus, the use of civil commitment under the Baker Act is precluded as short-term care and treatment is ineffective. The Act addresses these issues by providing long-term care and treatment for sexually violent predators through involuntary civil commitment. This civil commitment continues until such time as the mental abnormality or personality disorder has been resolved such that these individuals no longer pose a menace to society.

The U.S. Supreme Court has upheld the constitutionality of involuntary civil commitment of sexually violent predators. In 1994, Kansas enacted its Sexually Violent Predator Act which permits involuntary civil commitment when there is a finding that a person suffers from a mental abnormality or personality disorder which makes the person likely to engage in repeat acts of sexual violence.⁶ Shortly after

¹ Jimmy Ryce’s abductor was executed on February 12, 2014.

² *Sex Predators Unleashed*, [Sun Sentinel](#), Sally Kestin and Dana Williams, August 18, 2013.

³ Twenty states and the District of Columbia have enacted sexual offender civil commitment laws.

⁴ S. 394.912(10), F. S. “Mental abnormality” means a mental condition affecting a person’s emotional or volitional capacity which predisposes the person to commit sexually violent offenses. S. 394.912(5), F. S.

⁵ S. 394.10, F.S.

⁶ Chapter 59, Article 29a, Kansas Statutes.

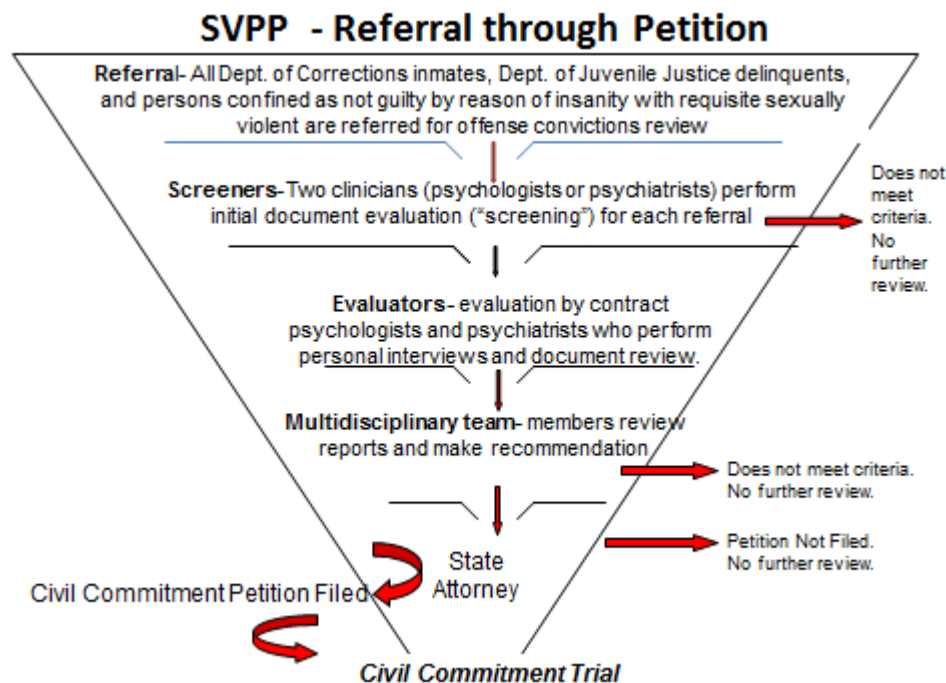
enactment the constitutionality of the Act was challenged on due process, double jeopardy, and ex post facto grounds in Kansas v. Hendrix.⁷

The U.S. Supreme Court acknowledged in Hendrix that a person's substantive due process rights are violated when dangerousness is the sole factor used to justify indefinite involuntary commitment. The fact that an individual has dangerous or violent tendencies does not guarantee he or she will commit a violent crime in the future. However, the Kansas Act added an additional factor of having a mental abnormality as a second requirement for involuntary civil commitment. The Court held that the Kansas Act did not violate due process because it coupled the dangerousness requirement with a mental abnormality requirement.⁸ This is because the additional mental abnormality requirement serves to limit involuntary civil commitment to those who suffer from a volitional impairment rendering them dangerous beyond their control.⁹ The Court also held that ex post facto and double jeopardy were inapplicable because the Kansas Act was neither criminal nor punitive in nature.¹⁰

The Jimmy Ryce Act was modeled after the Kansas Act. In 2002, the Florida Supreme Court, in Westerheide v. State, held that the Act is constitutional.¹¹

Sexually Violent Predator Determination

The Act requires both a clinical and judicial determination that a person meets the criteria of a "sexually violent predator" prior to his or her involuntary civil commitment. The clinical determination is conducted by licensed psychologists and psychiatrists. If a clinical determination is established and it is recommended that a petition be filed, the matter is forwarded to the state attorney, who may then proceed with the judicial determination.



Clinical Determination

⁷ Kansas v. Hendrix, 521 U.S. 346 (U.S. S.Ct. 1997).

⁸ *Id* at 358; Mental abnormality is a clinical determination which, in cases of involuntary civil commitment, is later confirmed through a judicial determination.

⁹ *Id.*

¹⁰ *Id* at 361 and 369

¹¹ Westerheide v. State, 831 So.2d 93 (Fla. 2002).

The process of determining whether a person meets sexually violent predator criteria begins with the clinical determination. The clinical determination is a three-step process consisting of referral, evaluation and recommendation. The referral is made by an agency with jurisdiction over the person while the evaluation and recommendation are performed by DCF employees and contractors.

Referral

The clinical evaluation begins with the referral of a person by an agency with jurisdiction.¹² Under the Jimmy Ryce Act the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and the Department of Children and Families (DCF) are agencies with jurisdiction.¹³ These agencies are required to provide written notice (known as a “referral”) to DCF and the state attorney of the circuit where that person was last convicted of a sexually violent offense¹⁴ prior to the release of that person from total confinement.¹⁵ DCF receives 93.5% of its referrals from DOC with DJJ and DCF contributing 3.5% and 3% respectively.¹⁶ The referring agency must provide DCF with the following information:

- The person’s name; identifying characteristics; anticipated future residence; the type of supervision the person will receive in the community, if any; and the person’s offense history;
- The person’s criminal history, including police reports, victim statements, presentence investigation reports, post-sentence investigation reports, if available, and any other documents containing facts of the person’s criminal incidents or indicating whether the criminal incidents included sexual acts or were sexually motivated;
- Mental health, mental status, and medical records, including all clinical records and notes concerning the person;
- Documentation of institutional adjustment and any treatment received and, in the case of an adjudicated delinquent committed to the DJJ, copies of the most recent performance plan and performance summary; and
- If the person was returned to custody after a period of supervision, documentation of adjustment during supervision and any treatment received.¹⁷

Evaluation

The evaluation begins with documentation compilation by a reviewer. The reviewer (generally an individual with a master’s degree in social work or psychology) is a DCF employee tasked with

¹² DCF receives approximately 3,000 to 3,500 referrals per year.

¹³ S. 394.912(1), F.S.

¹⁴ Pursuant to s. 394.912(9), F.S., “sexually violent offense” means:

(a) Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2.;

(b) Kidnapping of a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(c) Committing the offense of false imprisonment upon a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(d) Sexual battery in violation of s. 794.011;

(e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04 or s. 847.0135(5);

(f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;

(g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or

(h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

¹⁵ S. 394.913(1). The Department of Corrections (DOC) must provide notice at least 545 days prior to the release of a person whereas the Department of Juvenile Justice (DJJ) and Department of Children and Families (DCF) must each provide notice at least 180 days prior to the release of a person from total confinement. S. 394.913(1)(a), (b) and (c). Individuals who are immediately released from confinement but who have committed a sexual offense are transferred to the custody of DCF, S. 394.9135(1). The multidisciplinary team then has 72 hours to determine if the individual meets the definition of sexually violent predator. S. 394.9135(2).

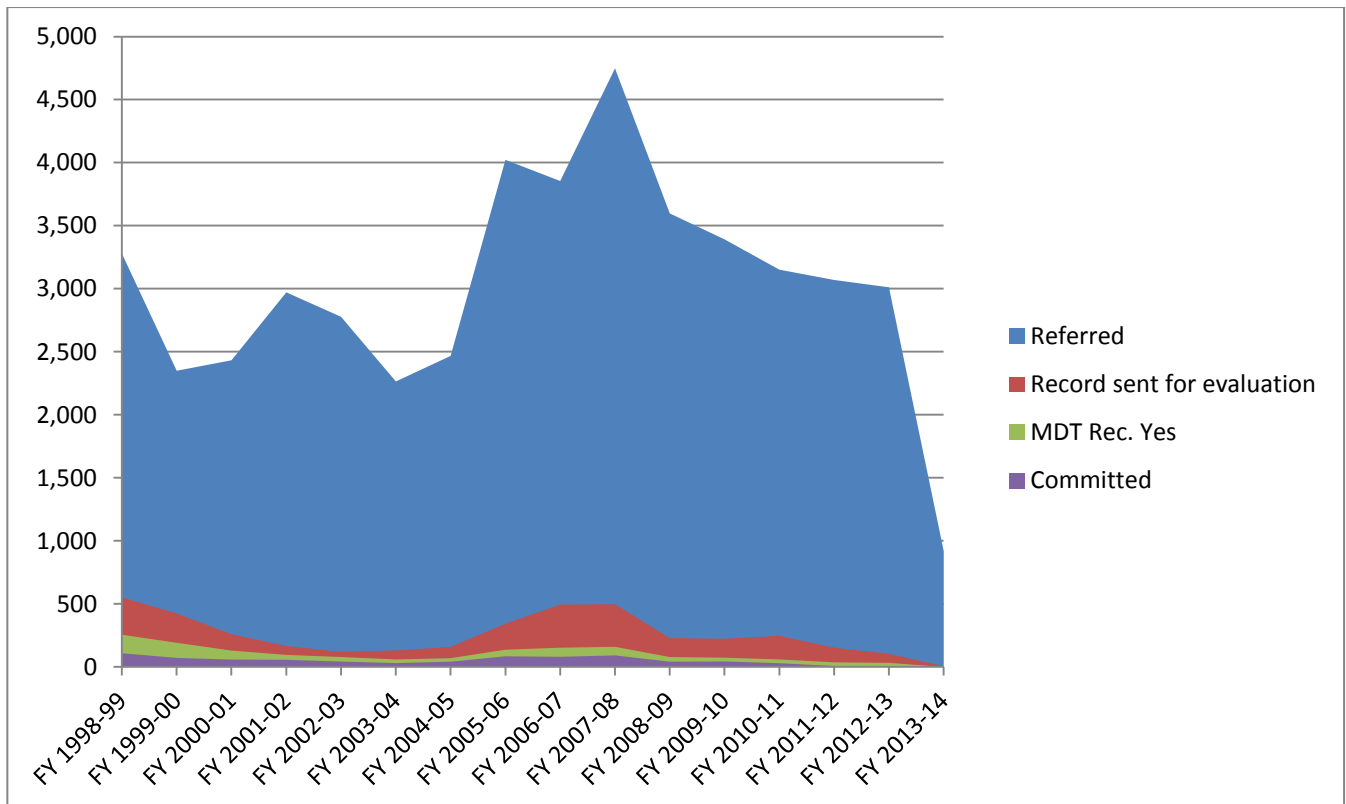
¹⁶ Department of Children and Families presentation to the House of Representatives Healthy Families Subcommittee, November 5, 2013.

¹⁷ S. 394.913(2) (a), (b), (c), (d) and (e).

compiling and summarizing all records and information regarding a particular individual. The reviewer does not evaluate or assess any of the documentation he or she compiles. Instead, once the information is compiled, the reviewer forwards it to screeners for evaluation.

The next stage is a document review of all pertinent records of the referred person. The screening is performed by licensed psychologists employed by DCF. Screeners work independently of one another, and at least two review each file. If any screener reviewing a case determines that the person may meet criteria for commitment, the case is sent on for a clinical evaluation, as described below. However, as the following chart indicates, the vast majority of the referral pool is eliminated in this stage.

Status of Referrals to Sexually Violent Predator Program by Fiscal Year Received¹⁸



Next, clinical evaluations are performed by evaluators who are either licensed psychologists or psychiatrists and who have contracted with DCF to perform the clinical evaluations. The clinical evaluation includes, but is not limited to, administering assessment tools (Static 99R and other similar tools), a face-to-face interview (if the referred individual cooperates), documentation review (on-site documents and documents compiled by the reviewers) and interviews with staff and personnel at the site where the person is being held. Upon completion of the evaluation, the evaluator submits his or her opinion as to whether the individual meets criteria as a sexually violent predator to the multidisciplinary team (MDT).¹⁹

The MDT is established by the Secretary of DCF or his or her designee. Each team must include, but is not limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist. The evaluation is a multi-tiered process designed to eliminate from the referral pool individuals who do not meet criteria while accurately identifying sexually violent predators.

¹⁸ See footnote 16. The graph terminates at FY 11-12 because the large number of referrals with pending dispositions precludes the availability of meaningful data for FY 12-13 and FY 13-14.

¹⁹ Evaluators are considered members of the MDT with their “votes” represented by the conclusions contained within the evaluation reports.

The MDT is responsible for the final evaluation and clinical determination of whether a referred person meets criteria for a sexually violent predator. The members of the MDT review all information compiled throughout the evaluation process and may request additional information as needed. The MDT meets once every two to three weeks to discuss cases and make a final determination as to whether specific individuals meet criteria for sexually violent predators. The determination is based upon a majority vote of the MDT (typically consisting of five to seven members).

Recommendation

The recommendation on whether to file a petition is the final stage of the clinical determination. If the MDT finds criteria is not met, then a recommendation not to file a petition is forwarded to the state attorney and the matter is closed. However, if the MDT finds criteria are met, then a recommendation to file a petition is forwarded to the state attorney and the case enters the judicial determination phase.

Judicial Determination

The judicial determination process begins with the filing of a petition and continues through a trial, and, if it results in a commitment, concludes with annual review.

Petition and Trial

The judicial determination phase is a multi-step process which begins with the state attorney filing a petition for involuntary civil commitment.²⁰ The state attorney has discretionary authority to file a petition; however, this authority only vests if the MDT determines the referred individual meets criteria and recommends filing a petition.²¹ If the state attorney elects to go forward with the case, he or she files a petition with the circuit court which contains factual allegations that the person is a sexually violent predator.²²

Upon receipt of the petition, the judge must determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator.²³ If the judge determines there is probable cause, an order is issued requiring the person to remain in custody and be immediately transferred to an appropriate secure facility if his or her incarcerative sentence expires.²⁴

The court is required to conduct a trial to determine whether the referred individual is a sexually violent predator within 30 days of its determination of probable cause.²⁵ The trial is held before either a judge or a six-member jury who must determine, by clear and convincing evidence, whether a person is a sexually violent predator.²⁶ If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences, the person is committed to the custody of DCF.²⁷ The person will remain under the control, care, and treatment of DCF until such time as his or her mental abnormality or personality disorder has so changed that it is safe for the person to be at large.²⁸

Annual Review

A person committed under the Act is required to have an examination of his or her mental condition conducted at least once every year.²⁹ The committed person is also entitled to file a petition for release

²⁰ Approximately 1,500 petitions have been filed since the inception of the Act.

²¹ *Harden v. State*, 932 So.2d 1152 (3rd DCA 2006) (a positive MDT assessment and recommendation is a condition precedent to the State's ability to exercise its discretion in filing a petition for involuntary commitment). Thus, without the positive finding and recommendation from the MDT, state attorneys are prohibited from filing a petition.

²² S. 394.914, F.S.

²³ S. 394.915(1), F.S.

²⁴ *Id.* The secured facility to which the person is transferred is the Florida Civil Commitment Center.

²⁵ S. 394.916, F.S.

²⁶ S. 394.917(1), F.S.

²⁷ S. 394.917(2), F.S.

²⁸ *Id.* See also footnote 4.

²⁹ S. 394.918(1), F.S.

at any time after his or her initial commitment.³⁰ Under both scenarios, the court is required to hold a limited, non-adversarial hearing to determine whether there is probable cause to believe that:

1. The person's condition has so changed that it is safe for the person to be at large; and
2. The person will not engage in acts of sexual violence if discharged.³¹

The court sets a trial if it determines that there is probable cause.³² At the trial, the state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.³³

Florida Civil Commitment Center

All individuals detained³⁴ or committed under the Act reside in the Florida Civil Commitment Center (FCCC) located in Arcadia, Florida. The FCCC has a capacity of approximately 720 people and houses 648 individuals as of December 2013.³⁵ The population is projected to increase at a rate of 22 persons a year with population anticipated to be 744 in FY 16-17.³⁶ Annual cost per resident is approximately \$36,500.³⁷

Committed residents receive long-term care and treatment at the FCCC. The treatment program is not mandatory and many committed residents elect not to participate.³⁸ For those persons who participate, the treatment program consists of four phases:

- Phase I is "Preparation for Change" and takes approximately 15-18 months to complete;
- Phase II is "Awareness" and takes approximately 18-24 months to complete;
- Phase III is "Healthy Alternative Behaviors" and takes approximately 18-24 months to complete; and,
- Phase IV is "Maintenance and Comprehensive Discharge Planning" and takes approximately 6-9 months to complete.

Completion of each phase is based solely upon the individual's active participation in the treatment (i.e. an individual who has not participated will not progress to the next phase simply because that individual has been in a particular phase for a specific period of time). Additionally, an individual will not be immediately discharged upon completion of all four phases. As previously noted, the standard for discharge is that the person's condition has so changed that it is safe for the person to be at large and that the person is unlikely to engage in acts of sexual violence if discharged.³⁹

Recidivism

³⁰ S. 394.920, F.S.

³¹ S. 394.918(3), F.S. As this is a non-adversarial hearing only the committed person or his/her counsel may present evidence establishing probable cause. The State is prohibited from presenting any evidence which refutes the committed person's evidence.

³² S. 394.918(3), F.S.

³³ S. 394.918(4), F.S.

³⁴ Detainees are individuals in DCF's custody who have been clinically determined to meet criteria for a sexually violent predator but have not been adjudicated as such. These individuals reside at the Center until the conclusion of their trial. However, these individuals are not provided any treatment at the Center due to the lack of adjudication.

³⁵ The overall population varies slightly from month to month based primarily upon changes in the detainee population. Last census data was provided by DCF in the *Contract #LI702 Financial Summary* of the Florida Civil Commitment Center, on file with Appropriations Committee staff.

³⁶ *Involuntary Civil Commitment of Sexually Violent Predators—History and Forecast*, Adopted at the November 20, 2013, Criminal Justice Estimating Conference, Office of Economic & Demographic Research.

³⁷ See footnote 16.

³⁸ Department of Children and Families presentation to the House of Representatives Healthy Families Subcommittee, January 8, 2014 (some of the committed residents do not begin participating in treatment until many years after their initial commitment to the Center).

³⁹ S. 394.918(4), F.S.

From 1998 to 2013, 47,846 individuals were referred to DCF for evaluation and assessment. The MDT determined that 1,611 of these individuals met criteria.⁴⁰ Currently, there is no recidivism data for the 46,235 individuals that the MDT determined did not meet criteria.

DCF has analyzed the recidivism of offenders who were recommended for commitment and later released. As previously noted, the Act's commitment process requires both a clinical determination and a judicial determination that a person is a sexually violent predator. Although the MDT determined the individuals in this group met the clinical criteria, for various reasons the state attorney has elected not to pursue a judicial determination. These reasons include insufficient probable cause, lack of evidence or witness testimony and other similar factors which would likely result in the judicial determination that a person does not meet criteria.

There have been 762 offenders who were recommended for commitment and subsequently released. Some were released after having been committed as sexually violent predators and receiving some level of treatment, but most were released without having been committed. These offenders comprised:

- 85 released directly from prison;
- 406 released as detainees;
- 170 released pursuant to settlement agreements; and
- 101 released after being determined as no longer meeting criteria.⁴¹

DCF analyzed arrest and conviction data for the 762 offenders and determined there had been 74 arrests for sexual offenses. These arrests resulted in 48 convictions. Thus, the average⁴² recidivism rate for sexual offenses perpetrated by this group was 9.7% for arrests and 5.5% for convictions.⁴³

Only 23 of the 101 released after being determined as no longer meeting criteria had completed all four phases of treatment at FCCC.⁴⁴ The arrest recidivism rate for this group is 8.6% (2 of 23).⁴⁵ However, caution must be exercised when analyzing this data for trends due to the small size of the group.

Effects of Proposed Changes

The bill amends the Jimmy Ryce Act to enhance the state's ability to identify and civilly commit sexually violent predators.

Currently, s. 394.913(3)(b), F.S., requires that the MDT include at least two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist. The bill requires that they each have experience in or relevant to evaluating or treating persons with mental abnormalities. The bill additionally requires DCF to provide annual training on research on sexual offending, clinical evaluation methods, and the civil commitment process to all members of the MDT.

The bill codifies new DCF policy to limit the contract term of contracted evaluators to one year, allowing renewal if performance is satisfactory. The bill requires DCF to regularly provide feedback to each MDT member and to formally evaluate their performance at least annually based, at a minimum, on the evaluator's:

- Knowledge and understanding of clinical information in assessing risk for sexual deviance and recidivism;
- Ability to identify clinical data from a review of criminal records, including law enforcement recommendations and input from victim advocates; and,
- Ability to use assessment tools in analyzing clinical information.

⁴⁰ See footnote 16.

⁴¹ Department of Children and Families presentation to the House of Representatives Healthy Families Subcommittee, January 8, 2014.

⁴² Amongst the four released offender groups (prison, detention, no longer meets criteria and settlement agreement) the recidivism rate for arrests ranged from 6.9% to 11.3% and from 3.5% to 8.1% for convictions.

⁴³ See footnote 43. As a matter of comparison, Texas, Washington and California have recidivism rates of .8%, 25.2% and 6.5%, respectively.

⁴⁴ See footnote 16.

⁴⁵ Id.

Section 394.913(3)(b), F.S., also currently requires the MDT to assess and evaluate each person referred to the team. The assessment and evaluation must include the review of the person's institutional history and treatment record, if any, the person's criminal background, and any other relevant information. The bill expands this requirement by mandating that all members of the MDT review all information provided to it by the referring agencies, as well as any clinical evaluations, prior to making a recommendation. The bill authorizes the MDT to conduct a clinical evaluation and then request a second clinical evaluation if any member questions the conclusion of the first clinical evaluation. The bill requires the MDT to weigh in its decision-making any attempt, criminal solicitation, or conspiracy to commit a sexually violent offense as having actually completed the offense. The bill also allows the MDT to consult with law enforcement agencies and victim advocate groups during the assessment and evaluation process.

The bill requires DCF to prioritize the assessment and evaluation of individuals referred to the SVPP based upon their release dates. Currently, assessment and evaluation is prioritized by referral dates.

The bill requires the MDT to send its written assessment and recommendation to the state attorney for additional review. If the state attorney questions the recommendation in writing, the MDT must reexamine the case before a final written assessment and recommendation is provided to the state attorney.

The bill requires DCF to maintain data by case on the recommendations of the clinical evaluators in their clinical evaluations, the final recommendations of the multidisciplinary team, the petitions filed by state attorneys, and the results of those petitions. DCF must, at least annually, analyze this data for inter-rater reliability between clinical evaluators and the level of agreement between an individual evaluator's recommendation and the multidisciplinary team's recommendation for the same individual. DCF must also assess trends in multidisciplinary team recommendations, state attorneys' filing, and the results of such filings. The bill also requires state attorneys to provide information to DCF regarding their filings and results.

The bill requires the MDT to provide its recommendation to the state attorney at least one month before the offender's scheduled release. However, if the MDT receives the referral late in the process (within 90 days of the offender's release) the MDT must provide the recommendation as soon as practicable.

Currently, a majority vote by the MDT is required to recommend that a petition be filed. The bill reduces this requirement by directing the MDT to recommend the state attorney file a petition if any two members determine that the person meets the definition of a sexually violent predator.

Section 394.9135(1), F.S., currently requires that if the anticipated release from total confinement of a person convicted of a sexually violent offense becomes immediate, the agency with jurisdiction shall, upon immediate release, transfer that person to the custody of the DCF. Section 394.9135(2), F.S., requires that within 72 hours after transfer of the person, the MDT shall assess whether the person meets the definition of a sexually violent predator. Currently, a majority vote by the MDT is required to determine that a person meets the definition of sexually violent predator in this immediate release scenario. The bill lowers the threshold for the MDT to determine that a person meets civil commitment criteria to the affirmative vote of two members rather than a majority.

Currently, s. 394.914, F.S., states that upon receipt of the written assessment and recommendation from the MDT, the state attorney may file a petition alleging the person is a sexually violent predator. The Third District Court of Appeals has interpreted this section as requiring a positive MDT assessment and recommendation as a condition precedent to the State's ability to exercise its discretion in filing a petition for involuntary commitment.⁴⁶ Thus, the state attorney is prohibited from filing a petition in any case it did not receive a positive recommendation from the MDT. The bill eliminates this judicially-imposed prohibition by stating that a state attorney may file a petition if it receives a positive or negative recommendation from the MDT.

⁴⁶ See Harden v. State, 932 So.2d 1152 (3rd DCA 2006).

Section 394.930, F.S., provides DCF with general rule-making authority. The bill provides specific authority to DCF to make rules related to the procedures and requirements for selecting, contracting with, providing routine feedback to, and evaluating contracted members of the multidisciplinary team.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.913, F.S., relating to multidisciplinary teams.

Section 2: Amends s. 394.9135, F.S., relating to immediate release from confinement.

Section 3: Amends s. 394.914, F.S., relating to petition for involuntary civil commitment.

Section 4: Amends s. 394.930, F.S., relating to the Department of Children and Families' authority to adopt rules.

Section 5: Providing an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The expenditure impact of this bill affects two components of the SVPP: costs associated with modifications to the MDT and potential costs to the FCCC if the population increases. According to DCF, the total fiscal impact of \$104,000 includes \$20,000 of nonrecurring expenses for the development of an assessment tool for the annual evaluation of the MDT members, and \$84,000 on a recurring basis for the evaluation and training of MDT members as outlined in the bill.⁴⁷ These costs can be absorbed within existing department resources.

The fiscal impact related to the FCCC is indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met January 31, 2014, and determined this bill to have no impact to state prison beds with an indeterminate fiscal impact to the FCCC. It is unknown if the modifications in this bill will result in additional commitments to the facility or in what number. The department indicates that capacity can be expanded from 720 to 774 beds by adding showers and double-bunking. This expansion is estimated to cost \$63,200. Other expansion options include the

⁴⁷ Department of Children and Families' 2014 Agency Legislative Bill Analysis for Bill Number PCB HFS 14-01, dated January 9, 2014.

reoccupation of an existing Department of Corrections facility that offers 232 beds for \$1,320,000 or building a 112 bed annex at the FCCC for \$7,900,000.⁴⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 14, 2014, the Healthy Families Subcommittee adopted an amendment to PCB HFS 14-01. The amendment:

- Authorizes the MDT to conduct clinical evaluations; and,
- Requires the MDT to send its written assessment and recommendation to the state attorney for additional review when it recommends that a person does not meet the definition of a sexually violent predator.
- Requires all members of the multidisciplinary team to review, at a minimum, the information provided in by the referring agency and any clinical evaluations prior to making a recommendation.

On February 20, 2014, the Health and Human Services Committee adopted a strike-all amendment to HB 7021. The amendment:

- Requires DCF to prioritize the assessment and evaluation of individuals referred to the SVPP based upon their release dates rather than their referral dates.
- Requires the MDT to provide its recommendation to the state attorney at least one month before the offender's scheduled release. However, if the MDT receives the referral late in the process (within 90 days of the offender's release) it must provide its recommendation as soon as practicable.
- Requires DCF to provide annual training to the members of the MDT on specific topics which include at a minimum:
 - Research on sexual offending;
 - Clinical evaluation methods; and,
 - The civil commitment process
- Requires DCF to annually evaluate MDT members based upon their:
 - Knowledge and understanding of clinical information in assessing risk for sexual deviance and recidivism;
 - Ability to identify clinical data from a review of criminal records, including law enforcement recommendations and input from victim advocates; and

⁴⁸ E-mail communication from DCF dated January 30, 2014, and on file with Appropriations Committee staff.

- Ability to use assessment tools in analyzing clinical information.
- Requires the MDT to weigh in its decision-making any attempt, criminal solicitation, or conspiracy to commit a sexually violent offense as having actually completed the offense.
- Allows a state attorney to review both positive and negative recommendations and ask in writing for MDT reconsideration if he or she questions a recommendation.
- Requires DCF to maintain and analyze the following data for inter-rater reliability or trends:
 - Recommendations of the clinical evaluators in their clinical evaluations;
 - Final recommendations of the multidisciplinary team,
 - Petitions filed by state attorneys; and,
 - Results of petitions filed by the state attorneys.

The bill was reported favorably as amended. This analysis is drafted to the committee substitute.