

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1680

SPONSOR: Senator Peaden

SUBJECT: Sexually violent offenders

DATE: March 30, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gardner	Cannon	CJ	Favorable
2.	_____	_____	CF	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Senate Bill 1680 would increase the time frame for the processing of inmates convicted of a sexually violent offense being considered for involuntary civil confinement in the sexually violent predator treatment program (SVPP). This bill would require the agency having custody to notify the state attorney and Department of Children and Families (DCF) of the pending release at least 30 months in advance for adult offenders and at least 180 days in advance for juvenile offenders. This would:

- extend the time the Department of Children and Families’ multidisciplinary teams will have to evaluate inmates convicted of a qualifying offense to determine whether the inmate is a sexually violent predator;
- extend the time the State Attorney and defense counsel have to prepare for the civil confinement trial; and
- possibly allow for the legal process to reach finality prior to the expiration of the inmate’s natural incarcerative sentence.

This bill would also clarify the statute to express that persons “detained” as well as those “committed” under the Jimmy Ryce Act must be housed in a secure facility segregated from persons not detained or committed under the Act.

The provisions of this bill would become effective on July 1, 2001.

This bill substantially amends the following sections of the Florida Statutes: 394.913 and 394.917.

## II. Present Situation:

In 1998, the Legislature enacted the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators Treatment and Care Act. The Act provides a procedure for the civil confinement of a sexual offender who is determined to be a sexually violent predator subsequent to his or her release from custody or upon the expiration of his or her incarcerative sentence. The person is then committed to DCF for long-term residential treatment, care, and custody in a secure facility.

In 1999, the Legislature transferred the Jimmy Ryce Act from ch. 916, F.S., relating to mentally deficient and mentally ill criminal defendants, to ch. 394, F.S., relating to mental health, and created Part V of that chapter, which is entitled "Involuntary Commitment of Sexually Violent Predators." This transfer reflects the legislative intent and policy that commitments under the Jimmy Ryce Act procedures are civil in nature and relate to mental health issues, rather than criminal in nature and punitive in purpose.

In s. 394.913, F.S., the procedure to be followed upon the impending release from custody of a person who may fit the criteria of a sexually violent predator is set forth. First, the agency with jurisdiction over the person (i.e., the Department of Corrections, the Department of Juvenile Justice, the Department of Children and Family Services), must notify the state attorney and a multidisciplinary team assembled by DCF that the persons release from custody is imminent.

This notice must occur 365 days prior to release in the case of a person in the adult system, or 90 days in the case of a delinquent child. Next, there is an assessment of the person by the multidisciplinary team. The team makes an assessment of the persons record and background, among other things, and if necessary may interview the person if the person should choose to have the interview. Some persons may not want to be interviewed for fear they may incriminate themselves. The team must then make a determination whether the person meets the definition of a sexually violent predator and file a recommendation with the state attorney. The state attorney files a petition seeking to have the person declared a sexually violent predator. If the court determines that there is probable cause, the person is detained pending trial, without the possibility of pre-trial release.

Presently s. 394.913(3)(e), F.S., requires the team to have its report and recommendation to the state attorney within 90 days of receiving notice of the persons approaching release from custody. The purpose of the pre-release notification period is to allow commitment trials to be completed while the alleged sexually violent predator is still serving the incarcerative sentence for the most recent criminal offense. Involuntary civil commitment trials are not taking place within this time frame, for almost all of those involved in this process.

The Department of Children and Families informed committee staff that 7,295 persons have been referred for consideration for sexually violent predator commitment, and 5,481 of those people were not referred to a state attorney following review because they did not meet the criteria for full evaluation. At this time, there are 707 persons being reviewed by the multi-disciplinary team. DCF has referred 475 individuals to the state attorney. There have been 398 persons the courts have found probable cause upon which to proceed with civil commitment. There have been 37 trials, 28 have been legally committed, and 283 are detained pending trial.

According to the director of the SVPP, these cases move through the process much slower than would be anticipated. This can be attributed to a number of reasons. Prosecutors and criminal defense attorneys are becoming involved in a civil trial which they are not accustomed to and there may be scheduling conflicts between court hearings in civil and criminal court. According to the public defenders, there is little or no incentive for the defendant to push for a trial that will likely result in an involuntary commitment of indeterminate length. About 80 percent of those who have gone to trial are found to be sexually violent predators and committed. Of those committed, only one has ever been released.

### **III. Effect of Proposed Changes:**

Section 1 of this bill would amend s. 394.913, F.S., to increase the time in advance of release that agencies with jurisdiction would be required to give notification of the future release of persons who may qualify for civil commitment under the Jimmy Ryce Act. Section 1 would require the Department of Corrections to provide notification of the release of qualifying inmates 30 months prior to the end of sentence instead of the current 365 days. The Department of Children and Families psychiatric institutions would likewise be charged with providing notification 30 months prior to an anticipated hearing regarding possible release. The Department of Juvenile Justice would be required to provide notification of the release of qualifying persons in its custody 180 days prior to release, up from 90 days.

Section 1 also increases to 180 from 90 the number of days DCF has to assess and evaluate a referred individual, make a recommendation as to potential commitment, and make a referral to the state attorney. According to DCF, this change affords time to compile a more complete assessment file. The additional 90 days for the assessment process can be accommodated in the 30-month referral period for Department of Corrections referrals, which constitute 97 percent of the Jimmy Ryce Act referrals to DCF.

This bill would also amend s. 394.917(2), F.S., to clarify that the DCF need only provide a single facility to confine persons detained and/or persons committed under the Jimmy Ryce Act. These individuals are to be kept secure and separated from other persons.

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

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

There may be some due process issues raised by the 30-month referral period. In some cases, the extended process could result in an adjudication that a person is a sexually violent predator in need of treatment as far as 18 to 22 months in advance of the end of their prison sentence. A person adjudicated to be a sexually violent predator could not receive an annual review of their status until they are committed to the Department of Children and Families. This could result in a person having no review of their status for as long as 18 to 22 months since a commitment to the department cannot occur until the end of a person's prison sentence. A committed person has a yearly right to review of their status under s. 394.918, F.S. This is a due process issue that has not been decided by any federal or state court.

The United States Supreme Court has not decided whether the Federal Constitution requires states to offer sex offender treatment to inmates during their prison sentence in order for a subsequent civil commitment to be valid as nonpunitive. This issue could arise if an inmate is adjudicated to be a sexually violent predator in a civil proceeding and will not be offered sex offender treatment for an additional 18 to 22 months, while still incarcerated.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Some of the mental health professionals working on the multidisciplinary teams evaluating the persons referred to DCF are independent contractors. To the extent that this bill requires DCF to contract with more mental health professionals, those persons would experience the benefit of additional business. The cost of the clinical evaluation/interview portion of the assessment averages \$4,000 per individual reviewed.

**C. Government Sector Impact:**

According to the DCF, if the 30-month referral period goes into effect, the Department of Corrections could send as many as 3,000 more files to DCF than they would receive under the current law. If current percentages requiring full clinical evaluation hold constant, DCF would have to conduct an additional 125 such evaluations. This could result in an additional \$500,000 per year over the next three to four years (125 cases \* \$4,000/case = \$500,000). According to the director of the SVPP, the current staffing levels would not allow DCF to proceed at a rate much faster than this, and that it would take three to four years to catch up with the back log that would be created by this bill. If the current approximately 20 percent rate of releases due to trial verdicts in favor of detainees continues, it could be possible that about 60 of the 283 presently detained might not have been detained if their trials occurred prior to release from incarceration. However, this does not take into consideration that those delaying going to trial might be more likely to be committed. The commitment rate has been going up as prosecutors gain more experience.

**VI. Technical Deficiencies:**

1. Section 1, page 2, lines 11-15 and lines 22-24, would require psychiatric institutions with jurisdiction over persons adjudicated not guilty by reason of insanity to provide the Sexually Violent Predator Program with notification of an upcoming release 30 months prior to hearings regarding possible release of those persons. According to the director of the SVPP, this requirement is impossible. The forensic psychiatric institutions have difficulty predicting the time of a potential release hearing 365 days in advance, as required by current statute. Those institutions cannot predict those hearings (or the likely result) 30 months in advance. Notification of pending release of persons who were adjudicated not guilty by reason of insanity should mirror the 180-day requirement proposed for juveniles.
2. Section 1, page 2, lines 18-19, provide that notification of release must be given as soon as practicable for persons who have been returned to total confinement for no more than 180 days. This requirement may be problematic. If the statute requires a 30-month notification period, then the “as soon as practicable” notification requirement should apply to all persons who have been returned to total confinement for any period less than 30 months.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.