

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Children, Families, and Elder Affairs Committee

BILL: SB 2866

INTRODUCER: Children, Families and Elder Affairs

SUBJECT: Sexually Violent Predators

DATE: March 16, 2007 REVISED: 03/21/2007

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/2amendments
2.			CJ	
3.			JA	
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 2866 authorizes employees of the state’s civil commitment center for sexually violent predators to use non-lethal force on persons committed to the program under certain circumstances. The bill describes procedures for documenting the use of force and incident reporting. The bill requires that information provided to a multidisciplinary team to evaluate a person for the Sexually Violent Predator Program (SVPP) indicate whether the person’s crimes included sexual acts or were sexually motivated. The bill also requires that a judgment of guilt for a felony offense include a written finding by the court indicating whether the offense was sexually motivated.

This bill substantially amends s. 394.913, F.S., and creates ss. 394.9223 and 921.245, F.S.

II. Present Situation:

In 1998, the Legislature enacted Part V of Chapter 394, F.S., known as the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators Treatment and Care Act. The act provides that persons who are determined to be sexually violent predators may be civilly confined upon release from custody or expiration of a prison sentence. Persons who have been identified as sexually violent predators are committed to the Department of Children and

Families (DCF) for long-term residential treatment, care, and custody in the Florida Civil Commitment Center located in Arcadia.

As of January 30, 2007, the Florida Civil Commitment Center had 581 residents. Of those residents, 309 persons are detained (waiting for trial), and 272 persons are committed for treatment. Commitment procedures are civil in nature and relate to mental health treatment, not criminal punishment.

A sexually violent predator is any person who has been convicted of a sexually violent offense and suffers from a mental abnormality or personality disorder that makes it likely that the person will commit acts of sexual violence if not confined in a secure facility for long-term treatment and control.¹

Subsection 394.912(9), F.S., defines “sexually violent offense” for the purposes of determining what crimes may subject an offender to civil commitment as a sexually violent predator. Section 394.912(9) (h), F.S., includes “any criminal act” that may be determined “beyond a reasonable doubt” to have been sexually motivated. According to the statute, a determination that a crime was sexually motivated must be done at the time of sentencing for the crime in question, or subsequently during the civil commitment trial.²

The SVPP must screen referrals for potential commitment under s. 394.913, F.S., and this screening occurs as an eligible offender approaches the end of his or her incarceration. Screening may be triggered by any past conviction, not just the conviction that resulted in the current incarceration. The SVPP staff often have difficulty identifying sexually motivated offenses in the criminal histories of referred individuals. The records that are available, particularly for older offenses, often do not provide very much detail. It has also proven difficult in many cases to wait until the actual civil commitment proceeding to identify a past offense as sexually motivated “beyond a reasonable doubt,” because without a determination as to sexual motivation in the assessment phase, the case does not result in a petition being filed. According to DCF, in eight years of program operation and over 24,000 referrals, SVPP staff has never seen a “sexually motivated” determination on sentencing or in other court dispositional documents.³ Therefore, while the statute requires that “sexually motivated” offenses be considered during the screening and evaluation process, no current mechanism exists to systematically label or flag such offenses for consideration. Without such a mechanism, some sexually violent predators may go undetected.

Section 944.35, F.S., provides express statutory authority for the use of force within a correctional facility. This section requires that all incidents involving use of force be documented in writing and a copy of the report sent to the Department of Corrections’ (DOC) Inspector General for review. This section also requires that the Criminal Justice Standards and Training Commission develop a course to teach appropriate methods for applying physical force on an inmate as part of the training program required for all correctional officers.

¹ s. 394.912 (10), F.S.

² s. 394.912 (9) (h), F.S.

³ Department of Children and Family Services, Staff Analysis and Economic Impact, SPB 7082.

Section 916.1091, F.S., allows for the use of chemical weapons in state forensic treatment facilities when such use is authorized by the facility administrator and is necessary to protect clients, personnel, equipment, facilities, grounds, or the surrounding community. There is no similar statutory authorization for the Florida Civil Commitment Center to use force on persons committed as sexually violent predators. There have been several incidents at the Florida Civil Commitment Center that have necessitated intervention and outside assistance from local law enforcement or other state agencies (DOC) to regain control of the facility and assure the safety of residents and staff.

III. Effect of Proposed Changes:

The bill amends s. 394.913, F.S., to require that the agency having jurisdiction over an individual who is convicted of a sexually violent offense and is being evaluated for the SVPP, include in the criminal history provided, documentation of whether felony criminal acts that are the basis of the referral were sexually motivated or included a sexual component. The bill also amends s. 921.245, F.S., to require that for every judgment of guilt for felony offenses, the court make a specific written finding as to whether or not a criminal act was sexually motivated.

The bill creates a new section in ch. 394, part V, F. S., which expressly provides statutory authorization for staff at the Florida Civil Commitment Center to use reasonable force to maintain order and ensure safety of residents and staff. The bill provides parameters for staff to follow when use of force is required to ensure that residents comply with lawful directives and do not harm themselves, others, or breach facility security. Staff must be trained in the use of electronic devices such as Tasers before these devices can be used.

The bill takes effect upon becoming a law.

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:

Use of Force Against Persons Detained or Committed as Sexually Violent Predators:

Although courts have applied various standards to measure the appropriateness of force used against civil detainees, use of reasonable force against a civil detainee to maintain order and ensure resident compliance with lawful staff directives is constitutional. See,

e.g., *Gibson v. County of Washoe*, 290 F.3d 1175 (9th Cir. 2002); *Davis v. Rennie*, 264 F.3d 86 (1st Cir. 2001); *Andrews v. Neer*, 253 F.3d 1052, 1060 (8th Cir. 2001); *Wright v. Whidden*, 951 F.2d 297, 300 (11th Cir. 1992); *Owens v. City of Ft. Lauderdale*, 174 F.Supp. 1282 (S.D. Fla. 2001).

Identification of Sexually Motivated Offenses: The information required by the amendment to s. 921.245, F.S., is an integral part of the effort to identify sexually motivated crimes during the assessment process for sexual predators. The fact that this change imposes a new requirement for courts to specifically find whether or not the criminal act was sexually motivated may be questioned on the basis of single-subject violation.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Page 2, line 25, references persons “committed to” a secure facility under Part V, ch.394, F.S. Many persons who are confined in the sexually violent predator facility are pre-trial detainees and have not been committed to the facility. If the intent is that the authorization for use of force applies to all persons confined at the facility, whether in pre-trial detainee status or as persons who have been committed as sexually violent predators, this should be amended to read, “confined in.”

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 302052 by Children, Families, and Elder Affairs Committee

Amendment clarifies that a judgment of guilt for a felony offense must contain a written finding by the court indicating whether the offense involved sexual motivation, but only in those cases in which the record demonstrates sexual motivation, with title amendment.

Barcode 842710 by Children, Families, and Elder Affairs Committee

Amendment takes out the references to deadly force and to forced administration of medical treatment, clarifies that the bill applies to all persons confined in the facility, and corrects technical deficiencies.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
