



care, and treatment.<sup>2</sup> The Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Jimmy Ryce Act, was enacted in 1998 to address the treatment needs of these offenders.<sup>3</sup> The Act creates a civil commitment process for sexually violent predators that is similar to Baker Act procedures for involuntary commitment and treatment of mentally ill persons.

Referring agencies identify offenders who have been convicted of specified sexually violent offenses and notify the Department of Children and Families' Sexually Violent Predator Program and the state attorney who prosecuted the offender. The Department of Corrections makes 93 percent of these referrals, with others coming from the Department of Juvenile Justice and the department itself.

After a referral is made, a clinical specialist reviews information provided by the referring agency and gathers any additional information that is needed to complete the case file. Two licensed psychologists employed by the department independently screen the case file to determine if the offender meets the statutory sexually violent predator criteria. If the department psychologists find that the offender meets the criteria, an independent, contracted evaluator also reviews the case file and provides a recommendation to the department. A multidisciplinary team that includes at a minimum two persons who are either a licensed psychiatrist or a licensed psychologist reviews the evaluation reports. From this review, they render an opinion as to whether the offender meets the sexually violent predator criteria. The department must then provide a written assessment and written recommendation to the state attorney within 180 days of receiving notice from the referring agency. The recommendation must include the multidisciplinary team's report.<sup>4</sup>

The time frames for this process are drastically accelerated when a person who has been convicted of a sexually violent offense is to be immediately released for some reason. A person who has been released ahead of scheduled release is transferred to the custody of the department by the referring agency. The multidisciplinary team has 72 hours after the transfer to provide its written assessment and recommendation to the state attorney. In turn, the state attorney has 48 hours to petition the court for a determination that the person is a sexually violent predator.<sup>5</sup>

After receiving the department's assessment and recommendation, the state attorney can initiate commitment proceedings by filing a probable cause petition seeking a determination that the offender meets statutory criteria to be a sexually violent predator.<sup>6</sup> There is no prescribed time limit for filing other than in an immediate release situation. If the judge finds that the petition sets forth probable cause, a civil trial must be conducted within 30 days. A decision that an offender is a sexually violent predator must be made by the judge or a unanimous jury based upon clear and convincing evidence.<sup>7</sup>

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<sup>2</sup> Section 394.912, F.S.,

<sup>3</sup> Sections 394.910 through 394.932, F.S.

<sup>4</sup> Section 394.913(3), F.S.

<sup>5</sup> Section 394.9135, F.S.

<sup>6</sup> Section 394.914, F.S.

<sup>7</sup> Sections 394.916 and 394.917, F.S.

An offender who is found to be a sexually violent predator is committed to the department's custody upon completion of his or her criminal sentence and transferred to the Florida Civil Commitment Center in Arcadia. If the commitment process is not completed prior to the end of an offender's prison sentence, the offender is detained by court order and transferred to the commitment center to await the outcome of commitment proceedings. On June 30, 2009, the commitment center housed 447 civilly committed predators and 227 detainees awaiting completion of commitment procedures.<sup>8</sup>

Sexually violent predators who are committed to the state under the Jimmy Ryce Act are detained at the commitment center until the court determines that they are no longer a threat to public safety. The department currently contracts with GEO Group, Inc., to operate the center and provide all treatment and security services. The treatment program consists of four levels of cognitive behavior modification and takes a minimum of six years to complete, with progress assessed annually by program staff.<sup>9</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends the definition of "sexually violent offense" in s. 394.312, F.S. The current definition includes both specific crimes as well as any criminal act that was sexually motivated. The amendment specifies that only felonies may be considered in the "catch-all" category of offenses.

**Section 2** amends s. 394.913, F.S., to allow the department more flexibility in prioritizing its cases. The statute currently requires that the assessment and recommendation process be completed within 180 days of receiving notification from the referring agency. Therefore, the cases are prioritized based upon when notification is received. The amendment adds a new subparagraph 2. to s. 394.913(3)(e), F.S., to give priority to evaluation of the cases of persons who are within 365 days of release and for whom the written assessment and recommendation has not been completed. The department notes that the current system negatively effects management and its workflow and also sometimes results in assessments and recommendations being prepared too early to be used in a civil commitment trial.<sup>10</sup>

**Section 3** amends s. 394.9135, F.S., to provide for extension of the deadlines for the department to provide its written assessment and recommendation to the state attorney and for the state attorney to file a commitment petition. The bill provides that if the 72-hour deadline for providing the recommendation to the state attorney falls after 5 p.m. or during a weekend or holiday, the recommendation may be provided during the next work day. Similarly, if the state attorney's 48-hour petition filing deadline falls on after 5 p.m. or on a weekend or holiday, the commitment petition may be filed during the next work day.

**Section 4** provides an effective date of July 1, 2010.

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<sup>8</sup> "Involuntary Civil Commitment of Sexually Violent Predators – History and Forecast," Adopted at the February 19, 2010 Criminal Justice Estimating Conference, and available at <http://edr.state.fl.us/criminal%20justice/sexually%20violent%20predator%20program/svpp%20forecast.pdf>.

<sup>9</sup> "The Delays in Screening Sexually Violent Predators Increase Costs; Treatment Facility Security Enhanced," Report No. 08-10, February 2008, Office of Program Policy Analysis & Governmental Accountability, p. 2.

<sup>10</sup> Department of Children and Families Staff Analysis of Senate Bill 1314, p. 2.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill would not require additional expense. To the extent that it eliminates referral of persons who had been convicted only of a misdemeanor, there would be a reduction in the cost of processing such a referral. This is not a common type of referral and any reduction would be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:****Barcode 320504 by Criminal Justice on March 18, 2010:**

Creates a new third-degree felony prohibiting introduction of contraband into the Jimmy Ryce Center, as well as acts done away from the facility in an attempt to transmit contraband into the facility. "Contraband" includes intoxicating beverages, controlled substances, firearms, or any other item that is designated as contraband by rule of DCF or another agency with jurisdiction because the item is hazardous to facility clients or to the operation of the facility. There is an exception if the item is specifically authorized by the person in charge of the facility.

It is not clear whether the provision allowing designation of contraband items by agency rule is a permissible delegation of legislative power. However, in some cases analogous delegations have been upheld (e.g., in *State v. Cummings*, 365 So.2d (Fla. 1978), the court found that a statute could lawfully permit the Fish & Wildlife Commission to designate by rule what animals are dangerous and unlawful to keep). (WITH TITLE AMENDMENT)

**Barcode 585352 by Criminal Justice on March 18, 2010:**

The first section of this amendment:

- Enhances the penalty for committing loitering and prowling to a first-degree misdemeanor when the offense is committed by a person who has been convicted of certain sexual offenses and who is knowingly within 300 feet of a school or child care facility during operating hours or a park, playground, or school bus stop while children are present.
- Prohibits a person who has been convicted of certain sexual offenses from approaching a child at a public park or playground with the intent to engage in conduct or communication of a sexual nature. Violation is a first-degree misdemeanor.
- Requires a person who has been convicted of certain sexual offenses to notify officials before entering the building or grounds of a child care facility or school, and to be directly supervised while on school grounds. Failure to do so constitutes a first-degree misdemeanor.

The second section amends s. 775.21, F.S., the sexual predator statute, to clarify the meaning of "temporary residence" and to add references to and a definition of "transient residence." The definition of "temporary residence" is amended to provide "vacation, business, or personal travel destinations in or out of Florida" as examples of temporary residences. "Transient residence" is newly defined as:

a place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term may include, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

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Changes are also made throughout s. 775.21, F.S., to require registration and notification of transient addresses in the same manner as is currently required for permanent or temporary addresses. It also provides that a sexual predator who vacates a temporary or transient residence, or who gives notice of intent to do so but does not, must provide notice in the same manner as is currently required for those vacating a permanent residence. (WITH TITLE AMENDMENT)

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

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