

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 Appropriations

BILL: CS/CS/SB 522

INTRODUCER: Appropriations Committee; Children, Families, and Elder Affairs Committee; and Senator Grimsley and others

SUBJECT: Involuntary Civil Commitment of Sexually Violent Predators

DATE: February 24, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown, C.</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Brown, A.</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 must treat a sexual offender whose offense was an attempt, criminal solicitation, or conspiracy to commit a sexually violent offense, the same as an offender who completed the sexually violent offense.
- The monitoring of sexual offenders may be facilitated by requiring notice to law enforcement 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 bill will have an indeterminate fiscal impact.

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 Fiscal Year 2010-2011 to 154 convictions in Fiscal Year 2012-2013) represented a 1,100 percent increase which may be due, in part, to additional sting operations conducted by law enforcement officials.

Sex offenses account for fewer than six 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 age³ to a third degree felony punishable up to five 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.⁴

The average prison sentence of 12.7 years for sex offenders is longer than in the past. The Department of Corrections indicates that the three-year recidivism rate for sex offenders is 34 percent. The new offense, however, might not be an additional 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, with an average age of 13.4 years old, tend to be much younger than victims of other crimes. Eighty-three percent of victims 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.

¹ Section 800.04(4)(a), F.S.

² Section 800.04(5)(b), F.S.

³ Section 794.011(2)(a), F.S.

⁴ Section 800.04(5)(d), F.S.

Faced with these challenges, the 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.⁵

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.⁶

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.⁷

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 2012-2013, 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 Fiscal Year 2011-2012 the DOC revoked supervision of 427 sex offenders for misconduct. A technical

⁵ 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).

⁶ Section 775.21(4), F.S.

⁷ Section 943.0435(1), F.S.

violation was the basis of 74 percent of revocations. Supervision was revoked for 26 percent of the offenders 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.⁸ 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.⁹
- The Act is non-punitive in nature, requires treatment during commitment, and bases commitment on mental deficiency rather than criminal intent.¹⁰
- A court must review commitment annually and determine whether a detainee continues to be mentally infirm.¹¹
- The Act provides due process based on numerous procedural and evidentiary protections.¹²
- Because the commitment is civil in nature, not criminal, the Act does not violate constitutional protections against double jeopardy.¹³
- Because the Act is not a criminal law, the Act does not violate the ex post facto clause of the U.S. Constitution.¹⁴

In *Kansas v. Crane*, the U.S. Supreme Court refined the *Hendricks* requirement that the offender possess a lack of behavioral control.¹⁵ *Crane* requires a stronger showing of a lack of control, namely, that the offender's inability to control behavior constitutes a serious public danger.¹⁶

⁸ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

⁹ *Id.* at 357-358.

¹⁰ *Id.* at 363 and 367.

¹¹ *Id.* at 364.

¹² *Id.*

¹³ *Id.* at 369.

¹⁴ *Id.* at 371.

¹⁵ 534 U.S. 407 (2002).

¹⁶ *Id.* at 413.

The Florida Supreme Court upheld Florida's civil commitment program in 2002.¹⁷ 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"¹⁸

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

The 1998 Florida Legislature established the Sexually Violent Predator Program (SVPP).¹⁹ 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).

Initially, the number of detainees significantly outnumbered the number of committed sexually violent predators. 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.²⁰

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 six 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.

¹⁷ *Westerheide v. State*, 831 So. 2d 93 (Fla. 2002).

¹⁸ *Id.* at 100.

¹⁹ Chapter 98-64, L.O.F. The 1998 Legislature created the "Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act."

²⁰ Marti Harkness, Senate Appropriations Subcommittee on Criminal and Civil Justice, *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.²¹

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.²²

Multidisciplinary Team Review (MDT):

By law, MDT members must be licensed psychologists or psychiatrists. Administrative rules further require MDT members to have at least one 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.²³

- 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.²⁴
- 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.²⁵
- 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.²⁶

²¹ Section 394.912(9), F.S.

²² Section 394.913(1), F.S.

²³ Rule 65E-25.002, F.A.C.

²⁴ Section 394.913(2) and (3), F.S.

²⁵ Section 394.913(3)(c) and (e), F.S.

²⁶ Section 394.913(3)(e), F.S.

Commitment Trial:

- The state attorney receives the MDT recommendation and decides whether to file a commitment petition in circuit court.²⁷
- If a petition is filed, the court determines whether there is probable cause for commitment.²⁸
- 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.²⁹
- 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.³⁰
- 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.³¹

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.³²
- 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.³³

Number and Flow of SVPP Cases as of August 31, 2013³⁴

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.

²⁷ Sections 394.9135(3) and 394.914, F.S.

²⁸ Section 394.915, F.S.

²⁹ Section 394.916(1) and (2), F.S.

³⁰ Section 394.916(3), F.S.

³¹ Section 394.917(1), F.S.

³² Section 394.917(1) and (2), F.S.

³³ Section 394.917(2), F.S.

³⁴ 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 six 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 deceased 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.³⁵

³⁵ 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, expands the circumstances that may or will trigger such assessments, and provides more notice to victims and law enforcement of the release of a sexual offender from the sexually violent predator program.

Section 1 of the bill amends s. 394.912, F.S., and makes the following changes to definitions within the sexually violent predator program:

- The definition of “agency with jurisdiction” is amended to include an entity that releases a person who is serving a sentence in a county or municipal jail for a sexually violent offense;
- The definition of “sexually violent offense” is amended to include a criminal offense in which the state attorney refers a person to the Department of Children and Families (DCF) for civil commitment proceedings; and
- The definition of “total confinement” is amended to provide that a person is deemed to be in total confinement if the person is serving a sentence in a county or municipal jail for a sexually violent offense, or if a court or the agency with jurisdiction determines that the person should have been lawfully released at an earlier date and that the provisions of the program would have been applicable to the person on the date that he or she should have been released.

The latter change in the definition of “total confinement” is needed due to the Florida Supreme Court’s opinion in *Larimore v. State*.³⁶ In *Larimore*, the Department of Corrections (DOC) referred an offender to the multidisciplinary team (MDT) for assessment after his approval for release as a result of reinstatement of gain time that had previously been erroneously forfeited by decision of the state.³⁷ 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 [Sexually Violent Predator] Act.”³⁸ 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.³⁹

Section 2 of the bill creates s. 394.9125, F.S., to provide that:

- A state attorney is required to refer a person for civil commitment if the state attorney receives an arrest alert on the person under s. 394.926(4), F.S., and the person is subsequently sentenced to imprisonment in a county or municipal jail for any criminal offense.
- A state attorney is authorized to refer a person for civil commitment if the person is required to register as a sexual offender, has previously been convicted of specified sexually violent offenses, and has been sentenced to imprisonment in a county or municipal jail for any criminal offense.

³⁶ *Larimore v. State*, 2 So. 3d 101 (Fla. 2009).

³⁷ *Id.* at 104.

³⁸ *Id.* at 107.

³⁹ *Id.* at 117.

- A state attorney who refers a person for civil commitment as described above is required to notify the county or municipal jail to which the person has been sentenced within 24 hours after the referral is made.
- If a person is sentenced to imprisonment in a county or municipal jail but is not totally confined in the jail due to receiving credit for time served, a state attorney is authorized to file a petition with the circuit court within 120 hours after the person's sentencing proceeding, requesting the court to order the person into DCF custody for civil commitment proceedings. If a state attorney files such a petition, the judge is required to order that the person be taken into custody and delivered to DCF custody for civil commitment proceedings, if the judge determines that there is probable cause to believe that the person should have been referred to the DCF but was not referred because the person was not totally confined in a county or municipal jail due to receiving credit for time served.

Section 3 of the bill amends s. 394.913, F.S., to provide that:

- A county or municipal jail must provide written notice to the MDT, with a copy to the state attorney, of the anticipated release from total confinement of a person who has been convicted of a sexually violent offense at least 180 days before the anticipated release, except that in the case of a person who is totally confined for a period of less than 180 days, written notice must be given as soon as practicable.
- The MDT is authorized to consult with law enforcement agencies and victim advocate groups during the assessment and evaluation process, and a clinical evaluation may be conducted.
- A second clinical evaluation must be conducted if a member of the MDT questions the conclusion of the first evaluation.
- All members of the MDT are required to review, at a minimum, specific information relative to a case, and any clinical evaluations conducted for that case, before making a recommendation.
- The DCF is required, after all clinical evaluations have been completed, to provide the state attorney with a written assessment and recommendation as to whether a person meets the definition of a sexually violent predator.
- The DCF is required to recommend that the state attorney file a petition for civil commitment if at least two members of the MDT determine that the person meets the definition of a sexually violent predator.
- If the state attorney questions, in writing, the determination of whether a person does or does not meet the definition of a sexually violent predator, the MDT is required to reexamine the case before a final written assessment and recommendation are provided to the state attorney.
- For cases with referral dates that occur at least 90 days before the person's scheduled release date, the MDT is required to provide to the state attorney a written assessment and recommendation as to whether the person meets the definition of a sexually violent predator at least one month before the person's scheduled release date. In cases in which the referral date is less than 90 days before the person's expiration of sentence, the MDT is required to provide the state attorney with a written assessment and recommendation as soon as is practicable before the person's expiration of sentence.
- In the assessment and evaluation process, the MDT is required to give equal consideration to an offender whose sexually violent offense was an attempt, criminal solicitation, or

conspiracy under s. 777.04, F.S., to commit one or more specified sexually violent offenses, as it gives to an offender who completed the sexually violent offense. The bill also provides that no rule or policy may reduce the MDT's level of consideration because the offense was an attempt, criminal solicitation, or conspiracy.

Section 4 of the bill amends s. 394.9135, F.S., to provide that if a person who committed a sexually violent offense is serving a sentence under the custody of the DOC or the Department of Juvenile Justice (DJJ), and is released from a local detention facility, the state attorney may file a petition with the circuit court within 120 hours after the release to allege: (1) that the person was required to be referred for consideration for civil commitment before being released but was not referred because of a mistake, oversight, or intentional act; or (2) that the person was referred for commitment consideration but, through a mistake, oversight, or intentional act, was released rather than transferred to DCF custody. If a judge determines that probable cause exists to believe the person was released instead of being lawfully referred, the judge must order to person to be taken into custody and delivered to an appropriate secure facility designated by the DCF. In addition, within 72 hours after the transfer of the person to the custody of the DCF, the MDT must assess whether the person meets the definition of a sexually violent predator, and if at least two team members determine that the person does not meet the definition, the person must be immediately released.

Section 5 of the bill amends s. 394.914, F.S., to conform technically to changes made elsewhere in the bill.

Section 6 of the bill amends s. 394.918, F.S., to provide that when a court holds a limited hearing to determine whether probable cause exists to believe a person may safely be discharged from civil commitment, the person has the right to be present at the hearing, and that both the petitioner and the respondent may present evidence that the court may consider. Current law provides that the person has the right to be represented by counsel at the hearing.

Section 7 of the bill amends s. 394.926, F.S., to provide that the DCF must give notice of the release of a person in the custody of the department to any living victim of the person whose address is known to the department. If the victim is deceased, notice must be given to the victim's family if the family's address is known to the department. Under current law, such notice is required only upon the release of a person who has been committed as a sexually violent predator. The bill requires that the DCF must also give notice to the Florida Department of Law Enforcement (FDLE) and the sheriff of the county in which the person intends to reside. If the person's intended residence is unknown, notice must be given to the sheriff of the county in which the person was most recently convicted.

In addition, the bill requires that the DCF, in conjunction with the FDLE, enroll and maintain a sexually violent offender in the arrest notification program through the FDLE's Florida Criminal Justice Network. If the DCF receives an alert that an offender has been arrested for a subsequent criminal offense, the department must notify the state attorney of the circuit in which the arrest occurred. For purpose of this new requirement, the term "sexually violent offender" means a person who has been committed to the DCF as a sexually violent predator or who has been in DCF custody based on a court finding of probable cause to believe the person is a sexually violent predator.

Section 8 of the bill amends s. 394.931, F.S., to provide that the Department of Corrections is required to compile recidivism data on persons referred, detained, or committed to the DCF's sexually violent predator program.

Section 9 of the bill amends s. 943.053, F.S., to require that the FDLE, notwithstanding any other law, provide the DCF's sexually violent predator program online access to the arrest notification program, to support DCF's duties with respect to the arrest notification program under Section 7 of the bill.

Section 10 of the bill provides for severability if any provision of the bill or its application is held invalid, and that the invalid provision does not affect the other provisions of the bill, which can be given effect without the invalid provision or application.

Section 11 of the bill provides an effective date of July 1, 2014.

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:

If the bill increases the number of individuals detained and civilly committed at the Florida Civil Commitment Center, the vendor operating the center may receive additional funding, but the need for such additional funding is indeterminate.

C. Government Sector Impact:

State Government

The renewed emphasis on public safety required by the bill, along with the expansion of the program to selected persons serving sentences in county and municipal jails, could increase the number of persons evaluated and committed over time.

The DCF could incur an indeterminate increase in 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, could also incur an indeterminate amount of increased costs. The FDLE indicates that the requirement to provide the DCF access to the arrest notification program under Section 9 of the bill is expected to have no fiscal impact.

Based on an analysis of CS/SB 522 conducted by the state's Criminal Justice Impact Conference on January 30, 2014, the bill is expected to have no impact on the prison bed population.⁴⁰

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 and is expected to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 276-292 of the committee substitute pertain to requirements for the MDT to provide written assessments and recommendations to state attorneys based on the timing of expected dates of release of persons being assessed by the MDT. For a person expected to be released at least 90 days after the date of referral, the bill references the person's "scheduled release date." However, for a person expected to be released less than 90 days from the date of referral, the bill references the person's "expiration of sentence." These two terms differ in their applicability, and the Legislature may wish to consider consistency with this terminology.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.912, 394.913, 394.9135, 394.914, 394.918, 394.926, 394.931, and 943.053.

The bill creates section 394.9125 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 20, 2014:

⁴⁰ See < <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/> > (last visited February 12, 2014)

The CS/CS:

- Changes the bill's requirement for a local detention facility, county jail, or municipal jail to provide notice to the MDT and state attorney of the release of a sexually violent offender from "as soon as practicable after receipt into custody" to at least 180 days before the anticipated release from total confinement, except in the case of a person who is totally confined for less than 180 days, the notice must be given as soon as practicable;
- Removes from the bill the requirement for MDTs to include a victim's advocate and certain other experts as advisory members;
- Removes from the bill the requirement for written reports on assessments and recommendations by the MDT to include victim impact statements prepared by a victim's advocate;
- Removes from the bill the ability of a victim's advocate to veto the decision of the MDT as to whether a person meets the definition of a sexually violent predator;
- Authorizes the MDT to consult with law enforcement agencies and victim advocate groups during the assessment and evaluation process and allows clinical evaluations to be conducted;
- Requires a second clinical evaluation if a member of the MDT questions the conclusions of the first clinical evaluation;
- Requires the DCF to recommend civil commitment for a person being evaluated if at least two members of the MDT determine that the person meets the definition of a sexually violent predator;
- Provides for specific time frames for the MDT to report assessments and recommendations based on the expected release dates of persons being evaluated;
- Provides that when a court holds a limited hearing to determine whether there is probable cause to believe that a sexually violent offender may safely be discharged from DCF custody, the offender has the right to be present at the hearing, and that both the petitioner and respondent may present evidence that the court may consider;
- Requires the DCF to provide notice to the FDLE as well as to a sheriff upon the release of a sexually violent offender from DCF custody;
- Requires the DCF to enroll and maintain a sexually violent offender in the FDLE's arrest notification program upon the offender's release from DCF custody, and to notify a state attorney upon receiving an alert about the offender's subsequent arrest; and
- Removes from the bill a requirement for the DOC to produce an annual report on the recidivism rates for offenders referred to and released from the sexually violent predator program's civil confinement facility and, instead, requires the DOC to compile recidivism data on persons referred, detained, or committed to the DCF's sexually violent predator program.

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.

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