

STORAGE NAME: h3327s1z.flc
DATE: May 26, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
Family Law and Children
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3327

RELATING TO: Involuntary civil commitment for sexually violent predators.

SPONSOR(S): Committee on Family Law and Children, Representative Villalobos,
Representative Murman and others

COMPANION BILL(S): Identical S 788; S 398; CS/CS/SB 646

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Family Law and Children YEAS 8 NAYS 0
- (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 12 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

CS/HB 3327 originally passed the House of Representatives on 4/20/98. The Senate substituted CS/HB 3327 for CS/CS/SB 646 and adopted an amendment on 5/1/98. The House passed CS/HB 3327 as amended by the Senate on 5/1/98. REFER TO CH. # 98-64.

II. SUMMARY:

CS/HB 3327 creates the "Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act." The Act establishes legal procedures by which sexually violent predators may be committed to the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Several statutes provide for the involuntary commitment of individuals with the Department of Children and Family Services for care, custody and control.

- F.S. 985.223 provides that every child who is adjudicated incompetent to proceed may be involuntarily committed to DCF for treatment upon a finding by the court of clear and convincing evidence that:
 - the child is mentally ill or mentally retarded and because of the mental illness or retardation the child is manifestly incapable of surviving, and without treatment the child is likely to either suffer from neglect or refusal to care for self, and the neglect or refusal poses a real and present threat of substantial harm to the child's well being; OR there is a substantial likelihood that in the near future the child will inflict serious bodily harm on self or others as evidenced by recent behavior; AND
 - all available less restrictive alternatives are inappropriate.
- F.S. 916.13 provides that every person adjudicated incompetent to stand trial or incompetent for sentencing may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:
 - the person is mentally ill or mentally retarded and because of the mental illness or retardation the person is manifestly incapable of surviving alone or with the help of family or friends, and without treatment the person is likely to suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to his or her well being; OR there is a substantial likelihood that in the near future the person will inflict serious bodily harm on self or another person, as evidenced by recent behavior; AND
 - all available less restrictive treatment alternatives which would offer an opportunity for improvement of the person's condition have been judged to be inappropriate.
- F.S. 945.12 provides that a prisoner who has been determined by DCF and the Department of Corrections to be amenable to rehabilitative treatment for sexual deviation, and who has voluntarily agreed to participate in such rehabilitative treatment, may be transferred to DCF, provided appropriate bed space is available.
- F.S. 393.11 provides that when a person is mentally retarded and requires involuntary admission to residential services provided by DCF, the circuit court has jurisdiction to hold a hearing and enter an order involuntarily admitting the person in order that the person may receive the care, treatment, habilitation, and rehabilitation which the person needs. The court must find that:
 - the person is mentally retarded;
 - placement in a residential setting is the least restrictive and most appropriate alternative; and
 - because of the person's degree of mental retardation the person lacks sufficient capacity to give express and informed consent, and lacks basic survival and self-care skills to such a degree that close supervision is necessary and if not provided, would result in a real and present threat of

substantial harm to the person's well being; OR is likely to physically injure others if allowed to remain at liberty.

- F.S. 394.467 (commonly known as "The Baker Act") provides for involuntary placement for treatment upon a finding of the court by clear and convincing evidence that:
 - the person is mentally ill and because of the mental illness has refused voluntary placement; or is unable to determine for self whether placement is necessary; and is manifestly incapable of surviving alone or with the help of family and friends, and without treatment is likely to suffer from neglect or refuse to care for self, which poses a real and present threat of substantial harm to well being; or
 - there is substantial likelihood that in the near future the person will inflict serious bodily harm on self or others, as evidenced by recent behavior; AND
 - all available less restrictive alternative treatment alternatives which would offer an opportunity for improvement have been judged to be inappropriate.

SEXUAL PREDATORS

Florida's Sexual Predators Act (F.S. 775.21), is designed to track sex offenders during and after completion of their sentences. Designation as a sexual offender is mandatory for qualified offenders and requires an order from the court at sentencing. A sexual predator is defined as anyone convicted of specified capital, life or first degree felonies or specified second-degree felonies AND the offender has previously been convicted of another specified crime. The sexual predator is required to register directly with the Florida Department of Law Enforcement, provide certain information, and be fingerprinted. In lieu of initially registering with FDLE, the sexual predator may register with the Department of Corrections or any law enforcement agency. Each sexual predator who is residing permanently or temporarily in the state outside a correctional facility, jail, or secure treatment facility must register or be registered within 48 hours after entering the county of permanent or temporary residence. Any change in temporary or permanent address, also, must be provided within 48 hours. Typically, a designated sexual predator must maintain registration with the FDLE for the duration of the offender's life. However, current law contains an amnesty provision. If the offender breaks no laws for a period of 10 years, then he or she may petition the court for removal of the sexual predator designation. A sexual predator who fails to register or be registered, or who fails after registration, to provide location information, commits a third degree felony. Law enforcement must inform the community and the public of a sexual predator's presence. FDLE is responsible for the on-line maintenance of current information regarding each registered sexual predator.

Further, sexual predators may have their parental rights terminated pursuant to F.S. 39.464, or be denied visitation pursuant to F.S. 61.13((2)(b)2., if they are incarcerated in a state or federal institution and the period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years, and the court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child.

Currently, sex offender treatment is an unfunded program provided by the Department of Corrections as an adjunct to other mental health services. DOC offers group therapy for inmates with a diagnosed sexual disorder, who acknowledge the problem and who express an interest in treatment. Group therapy lasts approximately 6 months, typically meeting weekly for 90 minutes; the goal of the therapy is to reinforce the inmate's need for in-depth treatment, help the offender engage in the treatment process, and encourage continued treatment participation in the community upon release. The Director of Mental Health Services at the Department of Corrections reports that of 9,500 inmates screened, approximately 10% fit the criteria for sex offender treatment. Currently 450 offenders are in treatment, and another 500 are on waiting lists. An inmate's priority for treatment increases as the inmate approaches within 6 months of expiration of sentence.

CONSTITUTIONAL ISSUES

Article 1, Section 9 of the Florida Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Substantive due process under the Florida Constitution protects the full panoply of individual rights from unwarranted encroachment by the government. Department of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991). To ascertain whether the encroachment can be justified, courts have considered the propriety of the state's purpose; the nature of the party being subjected to state action; the substance of that individual's right being infringed upon; the nexus between the means chosen by the state and the goal it intended to achieve; whether less restrictive alternatives were available; and whether individuals are ultimately being treated in a fundamentally unfair manner in derogation of their substantive rights. Id at 960. The courts have found that when placing persons involuntarily due to mental disorders, least restrictive alternatives must be actually available, and not just hypothetical possibilities. Williams v. Davis, 459 So. 2d 406 (Fla. 1st DCA 1984). Further, courts have found that to keep a mental patient committed when there are less restrictive alternatives available, would violate the constitutional rights of the patient. Handley v. Dennis, 642 So. 2d 115 (Fla. 1st DCA 1994).

Procedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue. There is no single, inflexible test by which courts determine whether the requirements of procedural due process have been met. Department of Law Enforcement, at 960.

The United States Supreme Court, in a narrow 5 to 4 ruling, recently found a similar statute constitutional in Kansas v. Hendricks, 117 S.Ct 2072, 65 USLW 4564 (U.S. 1997). The Kansas Sexually Violent Predator Act establishes procedures for the civil commitment of persons who, due to mental abnormality or personality disorder, are likely to engage in predatory acts of sexual violence. Regarding substantive due process, the Court stated that it generally sustains commitment statutes if they couple proof of dangerousness with proof of some additional factor, such as mental illness or mental abnormality. The Court leaves to the States the task of defining terms of a medical nature that have legal significance. In finding that the Kansas Act did not violate Double Jeopardy or Ex Post Facto provisions of the U.S. Constitution, the Court held that the Kansas Act did not establish criminal

proceedings, and involuntary confinement under it was not punishment. The Court relied on the following arguments in making its determination:

- the State disavowed any punitive intent;
- the Act limited confinement to a small segment of particularly dangerous individuals;
- the Act provided strict procedural safeguards;
- the Act directed that confined persons be segregated from the general prison population and afforded the same status as others who have been civilly committed;
- the Act recommends treatment if such is possible;
- the Act permitted immediate release upon a showing that the individual is no longer dangerous or mentally impaired.

In Justice Breyer's dissent, in which three other Justices joined, he argued that because Kansas believed that treatment for the mental abnormality existed, but did not offer such treatment, the legislative scheme begins to look punitive. If treatment were the primary aim, the State could have required treatment during imprisonment. "When a State decides offenders can be treated and confines an offender to provide the treatment, but then refuses to provide it, the refusal to treat while a person is fully incapacitated begins to look punitive." If punitive, the Act would violate the Ex Post Facto clause, unless drafted to operate prospectively only. "Where so significant a restriction of an individual's basic freedoms is at issue, a State cannot cut corners."
Id. at 2098.

B. EFFECT OF PROPOSED CHANGES:

Section 1: Creates the "Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act."

Sections 2 and 3: Creates s. 916.30 and s. 916.31, F.S., to provide legislative findings and intent. ***Nearly identical to the Kansas Act. K.S.A. 59-29a01(1994).***

Section 4: Creates s. 916.32, F.S.: **Definitions.** Provides definitions of "agency with jurisdiction"; "convicted of a sexually violent offense"; "department"; "likely to engage in acts of sexual violence"; "mental abnormality"; "person"; "sexually motivated"; "sexually violent offense"; "sexually violent predator"; and "total confinement". ***Kansas includes persons charged with a sexually violent offense as a part of the definition of "sexually violent predator." K.S.A. 59-29a02(a) (1994).***

Section 5: Creates s. 916.33, F.S.: **Notice to state attorney and multi disciplinary team of release of sexually violent predator; establishing multi disciplinary team.** Requires that written notice be given to the multi disciplinary team 180 days, or in the case of an adjudicated committed delinquent, 90 days, before the anticipated release from total confinement of a person who has been convicted of a sexually violent offense, or the anticipated hearing regarding possible release of a person who has been found not guilty by reason of insanity or mental incapacity of a sexually violent offense. Requires the agency with jurisdiction to provide certain information to the multi disciplinary team. Establishes the multi disciplinary team, requires the team to assess

whether the person is a sexually violent predator, and provide the state attorney with its written assessment. ***The 1994 Kansas statute which was found constitutional by the U.S. Supreme Court, did not include a provision for a multi disciplinary team. The current version of the Kansas Act does include a provision for a multi disciplinary team as well as a prosecutor's review committee. K.S.A. 59-29a03 (1997 Supp.).***

Section 6: Creates s. 916.34, F.S.: **Petition; time; contents.** Allows the state attorney to file a petition following receipt of the written assessment and recommendation from the multi disciplinary team.

Section 7: Creates s. 916.35, F.S.: **Determination of probable cause; hearing; evaluation; respondent taken into custody; bail.** Requires the judge to make a determination whether probable cause exists to believe that the respondent is a sexually violent predator. If the judge finds probable cause, the judge shall direct that the person be taken into custody and held in an appropriate secure facility. Allows the state attorney to further petition the court for an adversarial probable cause hearing in certain circumstances. Requires the person to be given notice of and an opportunity to be heard at an adversary probable cause hearing. At this hearing, the judge shall receive evidence and hear argument and determine whether probable cause exists to believe that the person is a sexually violent predator. At the hearing the person has the right to be represented by counsel, present evidence, cross-examine any witnesses who testify against the person, and view and copy all petitions and reports in the court file. If the court again finds probable cause to believe that the person is a sexually violent predator, the court shall direct that the person be held in an appropriate secure facility for an evaluation. After the court finds probable cause, the person must be held in a secure facility without opportunity for pretrial release or release during the trial proceedings. ***The 1994 Kansas statute which was found constitutional by the U.S. Supreme Court, did not include an adversarial probable cause hearing, nor any provision regarding bail. The current version of the Kansas Act includes provision for an adversarial probable cause hearing. K.S.A. 59-29a05 (1997 Supp.).***

Section 8: Creates s. 916.36, F.S.: **Trial; counsel and experts; indigent persons; jury.** Requires the court to conduct a trial within 30 days of the determination of probable cause. The trial is to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced. At all adversarial proceedings under this act, the person subject to the act is entitled to the assistance of counsel, and if indigent, the court shall appoint the public defender. If a conflict exists, other counsel shall be appointed. The bill allows a person to retain qualified professionals to perform an examination on their behalf, if the person is subjected to an examination under this act. When the person wishes to be examined by a qualified professional of his or her own choice, the examiner shall be permitted to have reasonable access to the person and to all relevant medical and psychological records and reports. If the person is indigent, the court, upon the request of the person, shall determine whether such an examination is necessary. If so, the court shall appoint a mental health professional and determine the reasonable compensation for the professional's services. The bill also allows the person or the state attorney to demand that the trial be held before a jury. The demand must be filed in writing at least five days before the trial. If no demand is made, the trial shall

be held before the court. ***Similar to the Kansas Act. The 1994 Kansas statute which was found constitutional by the U.S. Supreme Court did not require a judicial finding of necessity in order to appoint a mental health professional to examine an indigent person. The current version of the Kansas Act requires a finding of necessity in order to appoint a mental health professional to examine an indigent person. K.S.A. 59-29a06 (1997 Supp.).***

Section 9: Creates s. 916.37, F.S.: **Determination; commitment procedure; mistrials; housing.** Subsection (1) requires the court or the jury to determine by clear and convincing evidence whether the person is a sexually violent predator. If the determination is made by a jury, the decision must be unanimous. If a majority of the jury finds that the person is a sexually violent predator, but the decision is not unanimous, the state attorney may refile the petition. Any retrial must occur within 90 days after the previous trial, unless continued. The determination that a person is a sexually violent predator may be appealed. ***The burden of proof required by the Kansas Act is beyond a reasonable doubt. However, the burden of proof required in Florida for civil commitment proceedings pursuant to the Baker Act is clear and convincing evidence. F.S. 394.467. The Kansas Act has no provision for retrial. The Kansas Act includes a provision for persons charged with a sexually violent offense but who have been found incompetent to stand trial.***

Subsection (2) provides for the commitment of the person if the court or jury determines that the person is a sexually violent predator. The person shall be committed to the custody of the Department of Children and Family Services (DCF) for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. At all times, sexually violent predators who are committed to DCF shall be kept in a secure facility segregated from patients who are not committed under this section.

Section 10: Creates s. 916.38, F.S.: **Examinations.** Subsection (1) requires each person committed to have an examination of his or her mental condition made once every year or more frequently at the court's discretion. The committed person may retain, or if the person is indigent and so requests, the court may appoint, a qualified professional to examine the person. Such person shall have access to all records concerning the person. The results of the examination shall be provided to the court that committed the person; upon receipt of the report, the court shall conduct a review of the person's status.

Subsection (2) requires the department to provide the person with annual written notice of the person's right to petition the court for release over the objection of the director of the facility where the person is housed. The notice must contain a waiver of rights. The director of the facility shall forward the notice and waiver form to the court.

Subsection (3) requires the court to hold a limited hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged. The person has the right to be represented by counsel, but is not entitled to be present. If the court determines that there is probable cause to believe it is safe to release the person, the court shall set a trial before the court on the issue.

Subsection (4) provides that the person is entitled to be present at the trial, and is entitled to the benefit of all constitutional protections afforded the person at the initial trial, except for the right to a jury. 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. ***The burden of proof required in the Kansas Act is beyond a reasonable doubt. K.S.A. 59-29a08 (1994).***

Section 11 Creates s. 916.39, F.S.: **Authorized petition for release; procedure.** Allows the Secretary of Children and Family Services to authorize a person to petition for the court for release if the Secretary at any time determines that the person is not likely to commit acts of sexual violence if conditionally discharged. The petition shall be served upon the court and the state attorney. The court, upon receiving such a petition, shall order a trial within 30 days, unless continued for a good cause. 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. ***The burden of proof required by the Kansas Act is beyond a reasonable doubt. K.S.A. 59-29a10 (1994).***

Section 12: Creates s. 916.40, F.S.: **Petition for release.** Provides that a person is not prohibited from filing a petition for discharge at any time. However, if the person has previously filed a petition without the approval of the Secretary of Children and Family Services and the court determined that the petition was without merit, a subsequent petition shall be denied unless the petition contains facts upon which a court could find that the person's condition has so changed that a probable cause hearing is warranted.

Section 13: Creates s. 916.41, F.S.: **Release of records to state attorney.** Requires records that are otherwise confidential or privileged to be released to the agency having jurisdiction or to the state attorney for the purpose of meeting the notice requirement and determining whether a person is or continues to be a sexually violent predator. Specified records that have been submitted to the court or admitted into evidence shall be a part of the record, but shall be sealed and may be opened only pursuant to court order. ***Included as part of the current version of the Kansas Act. K.S.A. 59-29a16 and 59-29a17 (1997 Supp.).***

Section 14: Creates s. 916.42, F.S.: **Constitutional requirements.** Requires the long-term control, care, and treatment of a person committed to conform to constitutional requirements. ***Identical to the Kansas Act. K.S.A. 59-29a09 (1994).***

Section 15: Creates s. 916.43, F.S.: **Immunity from civil liability.** Provides specified persons and agencies immunity from any civil liability for good-faith conduct under ss. 916.30-916.49. ***Similar to the Kansas Act. K.S.A. 59-29a03(c) (1994).***

Section 16: Creates s. 916.44, F.S.: **Severability.** Provides that if any section, subsection, or provision of this act is held to be unconstitutional or invalid by a court of competent jurisdiction, the remaining provisions shall be unaffected because the

Legislature declares that the provisions of ss. 916.30 - 916.49 are severable from each other. ***The Kansas Act includes a severability provision. K.S.A. 59-29a15 (1994).***

Section 17: Creates s. 916.45, F.S.: **Applicability of act.** Provides that this act is applicable to all persons currently in custody who have been convicted of a sexually violent offense, as that term is defined in this act, as well as to all persons convicted of a sexually violent offense in the future.

Section 18: Creates s. 916.46, F.S.: **Notice to victims of release of persons committed as sexually violent predators.** Requires the Department of Children and Family Services to give written notice of the release of a person committed as a sexually violent predator to any victim of the committed person who is alive and whose address is known to the department, or if the victim is deceased, to the victim's family, if the address is known to the department. Failure to notify is not a reason for postponement of the release. This section does not create a cause of action against the state or any employee of the state acting within the scope of the employee's employment as a result of the failure to notify. ***Similar to the Kansas Act. K.S.A. 59-29a13 (1994).***

Section 19: Creates s. 916.47, F.S.: **Escape while in lawful custody.** Provides that a person who escapes or attempts to escape under specified circumstances, commits a felony of the second degree.

Section 20: Creates s. 916.48, F.S.: **Subsistence fees and costs of treatment.** Requires committed persons to disclose all revenue or assets to the department, to pay all or a fair portion of the person's daily subsistence and treatment costs, the liability to the victim, and the needs of dependents. Committed persons required to pay costs are entitled to a reasonable advance notice of the assessment, and are afforded an opportunity to present reasons for opposition. An order for payment may survive against the estate of the person.

Section 21: Creates s. 916.49, F.S.: **Department of Children and Family Services responsible for costs.** Makes the Department of Children and Family Services responsible for all costs relating to the evaluation and treatment of persons committed to the department's custody as sexually violent predators. Provides that a county is not obligated to fund specified costs. Requires costs for psychological examinations, expert witnesses, and court-appointed counsel be paid from state funds appropriated by general law.

Section 22: Allows the Department of Children and Family Services to contract with a private entity or state agency for use of and operations of facilities to comply with the requirements of this act. Allows DCF to contract with the Correctional Privatization Commission to issue a request for proposals and monitor contract compliance for these services.

Section 23: Appropriates from the General Revenue Fund to the Department of Children and Family Services \$4.9 million, of which \$1.5 million is from non-recurring funds, and 50 full-time equivalent positions and from the Grants and Donations Trust Fund, \$1.5 million to the Department of Corrections for the purpose of carrying out this act. From the funds appropriated to the Department of Children and Family Services, the department shall, at the counties' request, reimburse counties for specified expenses.

Section 24: Provides an effective date of January 1 after the year in which enacted.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

CS/HB 3327 creates a civil commitment process for the care, custody, and treatment of sexually violent predators.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

CS/HB 3327 will require a substantial amount of court involvement in the commitment and subsequent release of sexually violent predators.

Agencies with jurisdiction are required to notice the multi disciplinary team and the State Attorney 180 days prior to the anticipated release of specified persons.

The State Attorney may file a petition alleging that a person is a sexually violent predator, and then is responsible for arguing the case through to trial, and representing the state when a committed person petitions for release.

The Office of the Public Defender is responsible for representing the alleged sexually violent predator, if indigent, during all adversary proceedings under this act.

The Department of Children and Families is responsible for housing and treating persons committed as sexually violent predators. DCF is also responsible for the annual examination of the committed person, and for the provision of an annual written notice to the committed person of their right to petition the court for discharge over the department's objection. The department is responsible for all costs relating to evaluation and treatment of a person committed to the department's custody as a sexually violent predator. The Department is required to notice victims or next of kin prior to the release of a committed person.

- (3) any entitlement to a government service or benefit?

A committed person would have a strong argument pursuant to the dissent in *Kansas v. Hendricks*, that he or she is entitled to treatment.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Section 20 of CS/HB 3327 requires committed persons to pay for all or a fair portion of daily subsistence costs, based on ability to pay.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

CS/HB 3327 creates the following sections of the Florida Statutes: 916.30, 916.31, 916.32, 916.33, 916.34, 916.35, 916.36, 916.37, 916.38, 916.39, 916.40, 916.41, 916.42, 916.43, 916.44, 916.45, 916.46, 916.47, 916.48, and 916.49.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates the "Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act."

Sections 2 and 3: Creates s. 916.30 and s. 916.31, F.S., to provide legislative findings and intent.

Section 4: Creates s. 916.32, F.S., to provide definitions of "agency with jurisdiction"; "convicted of a sexually violent offense"; "department"; "likely to engage in acts of sexual violence"; "mental abnormality"; "person"; "sexually motivated"; "sexually violent offense"; "sexually violent predator"; and "total confinement".

Section 5: Creates s. 916.33, F.S., requiring that written notice be given to the multi disciplinary team 180 days, or in the case of an adjudicated committed delinquent, 90 days, before the anticipated release from total confinement of a person who has been convicted of a sexually violent offense, or the anticipated hearing regarding possible release of a person who has been found not guilty by reason of insanity or mental incapacity of a sexually violent offense. Requires the agency with jurisdiction to provide certain information to the multi disciplinary team. Establishes the multi disciplinary team, requires the team to assess whether the person is a sexually violent predator, and provide the state attorney with its written assessment.

Section 6: Creates s. 916.34, F.S., allowing the state attorney to file a petition following receipt of the written assessment and recommendation from the multi disciplinary team.

Section 7: Creates s. 916.35, F.S., requiring the judge to make a determination whether probable cause exists to believe that the respondent is a sexually violent predator. If the judge finds probable cause, the judge shall direct that the person be taken into custody and held in an appropriate secure facility. Allows the state attorney to further petition the court for an adversarial probable cause hearing in certain circumstances. Requires the person to be given notice of and an opportunity to be heard at an adversary probable cause hearing. At this hearing, the judge shall receive evidence and hear argument and determine whether probable cause exists to believe that the person is a sexually violent predator. At the hearing the person has the right to be represented by counsel, present evidence, cross-examine any witnesses who testify against the person, and view and copy all petitions and reports in the court file. If the court again finds probable cause to believe that the person is a sexually violent predator, the court shall direct that the person be held in an appropriate secure facility for an evaluation.

Section 8: Creates s. 916.36, F.S. requiring the court to conduct a trial within 30 days of the determination of probable cause. The trial is to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced. At all adversarial proceedings under this act, the person subject to the act is entitled to the assistance of counsel, and if indigent, the court shall appoint the public defender. If a conflict exists, other counsel shall be appointed. The bill allows a person to retain qualified professionals to perform an examination on their behalf, if the person is subjected to an examination under this act. When the person wishes to be examined by a qualified professional of his or her own choice, the examiner shall be permitted to have reasonable access to the person and to all relevant medical and psychological records and reports. If the person is indigent, the court, upon the request of the person, shall determine whether such an examination is necessary. If so, the court shall appoint a mental health professional and determine the reasonable compensation for the professional's services. The bill also allows the person or the state attorney to demand that the trial be held before a jury. The demand must be filed in writing at least five days before the trial. If no demand is made, the trial shall be held before the court.

Section 9: Creates s. 916.37. Subsection (1) requires the court or the jury to determine by clear and convincing evidence whether the person is a sexually violent predator. If the determination is made by a jury, the decision must be unanimous. If a majority of the jury finds that the person is a sexually violent predator, but the decision is not unanimous, the state attorney may refile the petition. Any retrial must occur within 90

days after the previous trial, unless continued. The determination that a person is a sexually violent predator may be appealed.

Subsection (2) provides for the commitment of the person if the court or jury determines that the person is a sexually violent predator. The person shall be committed to the custody of the Department of Children and Family Services (DCF) for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. At all times, sexually violent predators who are committed to DCF shall be kept in a secure facility segregated from patients who are not committed under this section.

Section 10: Creates s. 916.38, F.S., which requires each person committed to have an examination of his or her mental condition made once every year or more frequently at the court's discretion. The committed person may retain , or if the person is indigent and so requests, the court may appoint, a qualified professional to examine the person. Such person shall have access to all records concerning the person. The results of the examination shall be provided to the court that committed the person; upon receipt of the report, the court shall conduct a review of the person's status.

Subsection (2) requires the department to provide the person with annual written notice of the person's right to petition the court for release over the objection of the director of the facility where the person is housed. The notice must contain a waiver of rights. The director of the facility shall forward the notice and waiver form to the court.

Subsection (3) requires the court to hold a limited hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged. The person has the right to be represented by counsel, but is not entitled to be present. If the court determines that there is probable cause to believe it is safe to release the person, the court shall set a trial before the court on the issue.

Subsection (4) provides that the person is entitled to be present at the trial, and is entitled to the benefit of all constitutional protections afforded the person at the initial trial, except for the right to a jury. 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.

Section 11 Creates s. 916.39, F.S., which allows the Secretary of Children and Family Services to authorize a person to petition for the court for release if the Secretary at any time determines that the person is not likely to commit acts of sexual violence if conditionally discharged. The petition shall be served upon the court and the state attorney. The court, upon receiving such a petition, shall order a trial within 30 days, unless continued for a good cause. 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.

Section 12: Creates s. 916.40, F.S., which provides that a person is not prohibited from filing a petition for discharge at any time. However, if the person has previously filed a

petition without the approval of the Secretary of Children and Family Services and the court determined that the petition was without merit, a subsequent petition shall be denied unless the petition contains facts upon which a court could find that the person's condition has so changed that a probable cause hearing is warranted.

Section 13: Creates s. 916.41, F.S., which requires records that are otherwise confidential or privileged to be released to the agency having jurisdiction or to the state attorney for the purpose of meeting the notice requirement and determining whether a person is or continues to be a sexually violent predator. Specified records that have been submitted to the court or admitted into evidence shall be a part of the record, but shall be sealed and may be opened only pursuant to court order.

Section 14: Creates s. 916.42, F.S., which requires the long-term control, care, and treatment of a person committed to conform to constitutional requirements.

Section 15: Creates s. 916.43, F.S., which provides specified persons and agencies immunity from any civil liability for good-faith conduct under ss. 916.30-916.49.

Section 16: Creates s. 916.44, F.S., provides that if any section, subsection, or provision of this act is held to be unconstitutional or invalid by a court of competent jurisdiction, the remaining provisions shall be unaffected because the Legislature declares that the provisions of ss. 916.30 - 916.49 are severable from each other.

Section 17: Creates s. 916.45, F.S. which provides that this act is applicable to all persons currently in custody who have been convicted of a sexually violent offense, as that term is defined in this act, as well as to all persons convicted of a sexually violent offense in the future.

Section 18: Creates s. 916.46, F.S., which requires the Department of Children and Family Services to give written notice of the release of a person committed as a sexually violent predator to any victim of the committed person who is alive and whose address is known to the department, or if the victim is deceased, to the victim's family, if the address is known to the department. Failure to notify is not a reason for postponement of the release. This section does not create a cause of action against the state or any employee of the state acting within the scope of the employee's employment as a result of the failure to notify.

Section 19: Creates s. 916.47, F.S., which provides that a person who escapes or attempts to escape under specified circumstances, commits a felony of the second degree.

Section 20: Creates s. 916.48, F.S., which requires committed persons to disclose all revenue or assets to the department, to pay all or a fair portion of the person's daily subsistence and treatment costs, the liability to the victim, and the needs of dependents. Committed persons required to pay costs is entitled to a reasonable advance notice of the assessment, and is afforded an opportunity to present reasons for opposition. An order for payment may survive against the estate of the person.

Section 21: Creates s. 916.49, F.S., which makes the Department of Children and Family Services responsible for all costs relating to the evaluation and treatment of persons committed to the department's custody as sexually violent predators. Provides that a county is not obligated to fund specified costs. Requires costs for psychological examinations, expert witnesses, and court-appointed counsel be paid from state funds appropriated by general law.

Section 22: Allows the Department of Children and Family Services to contract with a private entity or state agency for use of and operations of facilities to comply with the requirements of this act. Allows DCF to contract with the Correctional Privatization Commission to issue a request for proposals and monitor contract compliance for these services.

Section 23: Appropriates from the General Revenue Fund to the Department of Children and Family Services \$4.9 million, of which \$1.5 million is from non-recurring funds, and 50 full-time equivalent positions, and from the Grants and Donations Trust Fund, \$1.5 million to the Department of Corrections for the purpose of carrying out this act. From the funds appropriated to the Department of Children and Family Services, the department shall, at the counties' request, reimburse counties for specified expenses.

Section 24: Provides an effective date of January 1 after the year in which enacted.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

See Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures: .

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

Based on several variables, each of which will affect the final cost of this program, the following fiscal impact is suggested:

1. Numbers of prison releases that will end up in this program The number of releases from prisons and juvenile justice facilities that might qualify for this category in the next fiscal year is approximately 1,413, based on information from the Departments of Corrections and Juvenile Justice. Of that number, based on other states' experience, it is estimated that approximately 60 will be committed to the program during the next fiscal year. However, the use of a multi-disciplinary team to assist in screening possible sexually violent predators before going to the State Attorney for filing may screen out as much as 90% of the persons who originally qualify, according to data from the state of Wisconsin.
2. Cost of Treatment. The two models analyzed were the staffing patterns of the Kansas Sexual Predator Treatment Program and the Mentally Disordered Sex Offender program used in Florida several years ago. The Kansas model uses a 30 bed concept with Mental Health Staff consisting of 22 professionals and direct service staff. The model could duplicate itself for each 30 bed increment. The Florida sex offender staffing model on the other hand, would utilize 27 professional and direct service staff for the same number of residents. The cost of 22 positions (Kansas model) as indicated in the State of Florida Pay Plan is \$817, 034, including \$74,200 for expenses, while the Florida estimation is \$939,796 including \$85,400 for expenses. A separate component for evaluations and re-evaluations consists of 2 teams which will conduct pre-commitment trial evaluations and will conduct yearly re-evaluations. The team would consist of a psychiatrist, psychologist and social worker, all at forensic/corrections pay level, and would cost approximately \$242,000 per year if the team consisted of state employees. It

is suggested that 2 teams would be sufficient to handle the numbers of assessments occurring in the first year. Other options regarding contracting for evaluations/re-evaluations could be explored, although at a significant increase in cost.

3. Location of Treatment Program. The calculated cost of using existing facilities with either contracted Department of Corrections staff and facility or Department of Children and Families Mental Health Institution facilities is in the neighborhood of \$15,000 to \$18,000 per bed for basic services and security. There may be additional costs to provide segregated secure fencing or other security schemes. The issue of separate adolescent facilities is mitigated by the assumption that a small number of persons under 18 who might eventually end up in this program would be tried as adults.

4. Public Defender and State Attorney. The Prosecution Coordination Office has indicated that the cost will be \$1,474,560 to fully manage the estimated number of petitions, hearings and commitment trial proceedings for which they would be responsible. The Public Defenders' Coordination Office has estimated an impact of 10 positions and \$330,000 to defend indigent clients, based on the number of persons being held for trial. However, without caseload and time study data, these estimates cannot be verified as appropriate costs for the services needed.

5. Summary of Costs, based on the Kansas model for 60 persons.

Treatment Program with 44 Staff for 60 beds	\$1,600,000
Evaluation Teams for initial evaluations and re-evaluations	\$500,000
Cost of basic services and security @ \$15,940 per bed	<u>\$1,000,000</u>
Total cost for 60 Sexually Violent Predators per year	\$3,100,000

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill will require counties to expend funds related to legal representation and psychological evaluations. The total statewide cost is not estimated to exceed \$1.4 million, so the bill is exempt from the requirement of Section 18, Article VII of the State Constitution as having an insignificant fiscal impact.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VIII. SIGNATURES:

COMMITTEE ON Family Law and Children:

Prepared by:

Legislative Research Director:

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