

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1680

SPONSOR: Committee on Children and Families and Senator Peardon

SUBJECT: Sexually Violent Offenders

DATE: April 19, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gardner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1680 would increase the time frame for the processing of inmates convicted of a sexually violent offense being considered for involuntary civil confinement in the sexually violent predator treatment program (SVPP). This bill would require the agency having custody to notify the state attorney and Department of Children and Family Services (department) of the pending release at least 18 months in advance for adult offenders and at least 180 days in advance for juvenile offenders and persons found not guilty by reason of insanity. This would:

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

This bill would also clarify the statute to express that persons “detained” as well as those “committed” under the Jimmy Ryce Act must be housed in a secure facility segregated from persons detained or committed for reasons other than the Act.

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

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

II. Present Situation:

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

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

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

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

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

The department informed committee staff that 7,295 persons have been referred for consideration for sexually violent predator commitment, and 5,481 of those people were not referred to a state attorney following review because they did not meet the criteria for full evaluation. At this time, there are 707 persons being reviewed by the multi-disciplinary team. The department has referred 475 individuals to the state attorney. There have been 398 persons

the courts have found probable cause upon which to proceed with civil commitment. There have been 37 trials, 28 have been legally committed, and 283 are detained pending trial.

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

III. Effect of Proposed Changes:

CS/SB 1680 amends s. 394.913, F.S., to increase the time in advance of release that agencies with jurisdiction would be required to give notification of the future release of persons who may qualify for civil commitment under the Jimmy Ryce Act. The bill requires the Department of Corrections to provide notification of the release of qualifying inmates 18 months prior to the end of sentence instead of the current 365 days. For persons who are totally confined in the Department of Corrections for less than 18 months, written notice must be given as soon as practicable. The department's mental health facilities would likewise be charged with providing notification 18 months prior to an anticipated hearing regarding possible release of persons committed under ch. 916, F.S. The Department of Juvenile Justice would be required to provide notification of the release of qualifying persons in its custody 180 days prior to release, up from 90 days.

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

According to the department, if the 18-month referral period goes into effect, the Department of Corrections could send as many as 1,400 more files to the department in Fiscal Year 2001-02 than would be received under current law. If current percentages requiring full clinical evaluation hold constant, the department projects that an additional 125 clinical evaluations would be conducted per fiscal year until the additional cases resulting from this bill are absorbed into the process. This workload increase could result in an additional \$500,000 per year over the next 2 years (125 cases multiplied by \$4,000 per case totaling \$500,000). According to the director of the SVPP, the current staffing levels would not allow the department to proceed at a rate much faster than this, and it would take 1.5 to 2 years to catch up with the back log that would be created by this change to 18 months.

The long term savings that may be realized from CS/SB 1680 would be a reduction in the number of persons who are transferred into the department's custody as pre-trial detainees. Currently, approximately 20 percent rate of these individuals win their commitment trials and are released. This bill could result in fewer persons being transferred to the department's custody and requiring placement in the SVPP facility if trials are completed prior to the end of the prison sentence. Because the SVPP facility has a significantly higher per capita cost than prison facilities, this bill may save significant dollars by reducing the need in the future to expand the SVPP facility.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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