

# 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 1824

SPONSOR: Committee on Children and Families and Senator Peadar

SUBJECT: Sexually Violent Offenders

DATE: March 6, 2002                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</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:

CS/SB1824 would increase the time frame for processing the cases of inmates and juvenile offenders who have been convicted of a sexually violent offense and are 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 (DCF) of the pending release at least 545 days (18 months) in advance for adult offenders and at least 180 days in advance for juvenile offenders. Notification for juveniles who are committed to low or moderate risk levels must be given as soon as practicable. The time for DCF's multidisciplinary team to evaluate whether a person qualifies for commitment to the SVPP would also be extended. Notification of the anticipated release of persons confined for less than 545 days would be made as soon as practicable, and the bill would add a reference to the existing s. 394.9135, F.S., governing procedures for persons immediately released from total confinement.

The bill would also change the referral periods for persons incarcerated as not guilty by reason of insanity and for incarcerated juvenile delinquents. DCF forensic facilities would be charged with providing notification 180 days prior to the anticipated hearing regarding possible release, down from 365 days.

This bill would also amend s. 349.917, F.S., to clarify that persons "detained" as well as those "committed" under the Jimmy Ryce Act must be housed in a secure facility segregated from persons not detained or committed under the Act. It also amends the catch line of s. 349.929, F.S., to correct a misstatement that DCF is responsible for all costs of the commitment process.

The provisions of this bill would become effective on July 1, 2002.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 349.913, 349.917, 349.929.

## II. Present Situation:

In 1998, the Legislature enacted the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators Treatment and Care Act. The Jimmy Ryce Act provides that persons who are determined to be sexually violent predators may be civilly confined upon release from custody or expiration of an incarcerative sentence. The person is then committed to DCF for long-term residential treatment, care, and custody in a secure facility. Jimmy Ryce Act procedures are civil in nature and relate to mental health issues, not criminal punishment.

Section 394.913, F.S., sets forth the procedure to be followed upon the impending release from custody of a person who may fit the criteria of a sexually violent predator. First, the agency with jurisdiction over the person (most often the Department of Corrections) must notify the state attorney and a multidisciplinary team assembled by DCF that the person is to be released from custody. 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 in the custody of the Department of Juvenile Justice.

Currently, DCF forensic facilities are required to provide notification of release of persons confined as not guilty by reason of insanity 365 days prior to the anticipated hearing that could result in the person's release. This is not possible in practice because hearings to consider the release of persons who are not guilty by reason of insanity are not scheduled 365 days in advance. These cases are a very small percentage of the total SVPP referrals.

After receiving notification, the person's records are reviewed to determine whether the person meets the criteria for further evaluation. If so, the multidisciplinary team assesses the person's record and background, among other things, and offers the person an opportunity for a personal interview. If the team determines that the person meets the definition of a sexually violent predator, it files a recommendation with the state attorney. The state attorney may file 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.

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. However, the director of the SVPP indicates that most civil commitment trials are not taking place prior to completion of the incarcerative sentence.

Data provided by DCF as of January 31, 2002, indicates that 9,307 persons have been referred for consideration for SVP commitment, and 7,629 of those were not referred to a state attorney because they did not meet the criteria for full evaluation. Review is pending for the records of 378 persons. Of the 1,300 persons who received a full evaluation by the multi-disciplinary team, 597 were referred to the state attorney. State attorneys have filed commitment petitions relating

to 519 of the persons referred to them, and the courts have found probable cause in all but one case. Sixty-seven commitment trials have resulted in commitment of 51 persons to the SVPP. An additional 338 persons are awaiting trial, with 332 detained and 4 released pending trial.

According to the director of the SVPP, commitment cases have been processed more slowly than was anticipated. However, processing times may lessen as the courts and attorneys become more familiar with the law and procedures in this area. The development of legal precedent relating to recurring issues may also lessen delays that result from motions.

Approximately 80 percent of those who have gone to trial are found to be sexually violent predators and committed. Two persons who were committed have been released after treatment. The SVPP currently houses persons who are detained for evaluation and trial in the same facility as persons who have been committed to the SVPP. According to the director of the SVPP, detainees continue to raise court challenges to being confined with committed offenders because s. 394.917, F.S., does not mention confinement of detained persons.

The catch line of s. 394.929, F.S., is "Department of Children and Family Services responsible for costs," but the statute provides that DCF is only responsible for costs relating to evaluation and treatment of committed persons. Other costs, such as those incurred by public defenders, are paid from funds appropriated to the Justice Administrative Commission. According to the director of the SVPP, it is common for courts to order DCF to pay costs for which it is not responsible.

### III. **Effect of Proposed Changes:**

**Section 1** of this bill would amend s. 394.913, F.S., to increase the time by which agencies would be required to give notification of the future release of persons who may qualify for civil commitment under the Jimmy Ryce Act. The 365 day time frame for adults would be increased to 545 days, and the 90 day time frame for juveniles would be increased to 180 days, except for juveniles who are committed to low or moderate risk levels for whom notice must be given as soon as practicable. The bill would also specify that notification of the release of adults confined for less than 545 days would be made as soon as practicable.

The bill would require DCF forensic facilities to give notification 180 days prior to an anticipated hearing regarding possible release of a person confined as not guilty by reason of insanity. According to DCF, this decrease from the current 365 day notification reflects the fact that such release hearings are not scheduled 365 days in advance.

The time allotted for DCF's multi-disciplinary team to assess and evaluate a referred individual, make a recommendation as to potential commitment, and make a referral to the state attorney would increase from 90 to 180 days. DCF indicates that this change will afford time to compile a more complete assessment file.

DCF indicates that the new time standards, when fully implemented, should result in earlier filing by the state attorneys and completion of more commitment trials prior to release dates. However, this is dependent on reduction of processing times within the legal system.

**Section 2** of the bill would amend s. 394.917(2), F.S., to clarify that persons who are detained pending commitment proceedings under the Jimmy Ryce Act may be kept in the same secure facility as persons who are already committed to the SVPP. This will eliminate the contention that the statute does not allow for detained persons to be kept in the same facility as committed persons.

Finally, **section 3** of the bill changes the catch line of s. 349.929, F.S. to “Program costs.” This removes the implication that DCF is responsible for all costs of the commitment process and may reduce the number of court orders requiring DCF to pay the costs of commitment trials.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Commitment processing times are likely to decrease as recurring legal issues are resolved and participants become more familiar with the commitment process. If so, the earlier notification time may result in commitment to the SVPP program well in advance of an inmate’s anticipated date of release from incarceration. The United States Supreme Court has not decided whether the Constitution requires states to offer sex offender treatment to inmates in order for a subsequent civil commitment to be valid as nonpunitive.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Tax/Fee Issues:

None.

C. Private Sector Impact:

If commitment proceedings are completed prior to offenders’ anticipated release dates, fewer persons will be detained pending trial. This could result in some revenue loss to the private sector but would be offset in part as more persons are committed to the SVPP.

**D. Government Sector Impact:**

There will be no net cost increase to the government sector. The bill accelerates identification of persons who may need treatment but does not change eligibility criteria. However, DCF indicates that it will take 12 to 18 months for it to fully meet the accelerated schedule with current staffing and funds.

Completion of commitment trials prior to the prison release date may result in reduced cost increases because fewer persons will be detained pending trial. However, total costs may not decrease because more offenders will be committed to the treatment program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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