

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: SB 2158

SPONSOR: Senator Crist

SUBJECT: Sexually Violent Predators

DATE: February 20, 2002

REVISED: 02/26/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	<u> </u>	<u> </u>	<u>CJ</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AHS</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill amends the “Jimmy Ryce Act” (“Act”), relating to the involuntary civil commitment of sexually violent predators, as follows:

- Provides that persons subject to the Act must file habeas corpus claims based on challenges to conditions, terms and location of confinement, independent of the commitment proceeding after exhausting all administrative remedies; and
- Provides immunity from civil liability for the Department of Legal Affairs and its officers and employees for good faith conduct under the Act.

This bill amends s. 394.923 of the Florida Statutes and creates s. 394.9215 of the Florida Statutes.

II. Present Situation:

The Jimmy Ryce Act

In 1998, the Legislature enacted the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators Treatment and Care Act. *See* ss. 394.910 – 394.931, F.S. The Act provides for post-sentence civil commitment 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 involuntarily committed to the Department of Children and Family Services 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.” *See* ch. 99-222, L.O.F. This transfer reflected 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.

Under the Act, the agency with jurisdiction over a person who has been convicted of a sexually violent offense must give written notice of the pending release of the person to the multidisciplinary team,¹ and a copy to the state attorney of the circuit where that person was last convicted of a sexually violent offense. The written notice must be given to the multidisciplinary team and the state attorney at least 365 days or, in the case of an adjudicated committed delinquent, at least 90 days before the anticipated release date 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. *See* s. 394.913(1), F.S.

The multidisciplinary team assesses and evaluates each person referred to the team to determine whether that person is a sexually violent predator.² The evaluation is based on an examination of the person's institutional history, treatment record, criminal background, and other information that is relevant. *See* s. 394.913(3) In addition, the person is offered the option of a personal interview with at least one member of the team. A written assessment and recommendation as to whether the person is a sexually violent predator must be submitted within 90 days of receiving notice.³

Following receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts to support the allegation. *See* s. 394.914, F.S. When the state attorney files a petition seeking to have a person declared a sexually violent predator, a judge determines whether probable cause exists to believe that the person is a sexually violent predator. If probable cause exists, the judge orders that the person remain in custody and be immediately transferred to an appropriate secure facility. *See* 394.915, F.S. Within 30 days of a finding a probable cause, the court must hold a trial to determine if the person is a sexually violent predator. *See* s. 394.916, F.S.

The person is entitled to counsel and the public defender is appointed to represent indigent persons.⁴ Either the state or the person may demand a jury trial. If no such demand is made, the trial is before the judge. The state must prove by clear and convincing evidence that the person is a sexually violent predator. *See* 394.917(1), F.S. A person found to be a sexually violent predator is committed to the Department of Children and Families until such time as the person's mental abnormality or personality disorder has changed so that it is safe for the person to be at large. The public defender is appointed to represent the sexually violent predator on appeal.

¹ The multidisciplinary team includes, at a minimum, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist and is established by secretary of the Department of Children and Families. *See* s. 394.913(3), F.S.

² "Sexually violent predator" means any person who has been convicted of a sexually violent offense and who suffers from a 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." s. 394.912(10), F.S.

³ The various deadlines in s. 394.913, F.S., are not jurisdictional. Failure to meet a deadline does not preclude classification as a sexually violent predator if a person meets the criteria.

⁴ Indigent criminal defendants are also entitled to appointed counsel at trial. However, indigent inmates are not entitled to appointed counsel in habeas corpus proceedings.

The Jimmy Ryce Act provides procedures for a person committed under the Act to gain his or her release. *See* ss. 394.918-394.920, F.S.

Other Litigation Within Commitment Proceedings

The Act does not address the scope of issues that may be raised during the commitment proceedings. However, in a recent appellate decision, the court held that a person in a pending commitment proceeding can raise issues unrelated to the substance of the commitment proceeding which is to determine whether a person should be civilly committed post-sentence as a sexually violent predator. In *Dept. of Children and Families v. Jackson*, 790 So. 2d 535 (Fla. 2d DCA 2001), Jackson and other petitioners had filed motions in the lower court asking that they be transferred from the facility where they were housed. The petitioners claimed that the facility was “really a prison” and not a facility “designed and operated for the care and treatment of persons with alleged mental disorders.” *Id.* at 537. That is, the petitioners claimed the facility in which they were housed was not an appropriate secure facility pursuant to s. 394.915, F.S. No motions had been served on the department. The department eventually received notice of the proceedings and participated in the process. After a hearing, the trial court ordered that the persons be transferred to other facilities and the state sought certiorari review of the order. On appeal, the state argued that claims regarding the adequacy of the facility could not be raised in commitment proceedings. The Second District Court of Appeal, however, held that such claims could be raised in commitment proceedings. *Id.* at 538.

According to the Department of Children and Families, this ruling and the ambiguity in statute presents the following concerns:

- Litigation of collateral issues such as the conditions of confinement or violation of state or federal constitutional rights draws significantly on existing resources and substantially delays the commitment process. The Legislature has provided respondents with appointed counsel in the commitment proceeding, as well as funds to litigate the commitment proceeding. However, the commitment proceeding should be solely for the purpose of determining whether or not an individual meets the criteria for commitment under the Act.
- The Department’s status in the commitment proceeding is unclear. Under current law, it is not a party to the proceeding although the court may enter orders directing the Department to take specific action. The orders are often entered without giving notice or the opportunity to be heard to the Department. Consequently, as a nonparty, it has no appeal rights, and must seek review pursuant to a petition for writ of certiorari (if the department learns of the order in time to seek review). The department's only other alternative would be to ignore the court order and then respond to an order to show cause in a contempt proceeding.
- Until after the termination of the commitment proceeding, the Department is not represented in the commitment proceedings. Commitment proceedings involve the state and the offender. The State Attorney represents only the "state" as in the interest of the people of the state. The State Attorney is not ready, willing, or able to argue, within the commitment proceeding, as to why a certain procedure or decision by the facility with regard to a particular resident is or is not appropriate. Issues such as conditions of

confinement are beyond the scope and interest of the State Attorneys and are not contested when raised.

- There is a lack uniformity of rulings governing challenges to conditions of confinement. Different circuit courts could order different resolutions to the same issue.

Habeas Corpus

There is a constitutional right to petition for writ of habeas corpus. *See* art. I, s. 13, *Florida Constitution*. This provision is based on the common law writ to determine the illegality of and seek relief of one's confinement or a restraint on liberty in an expedited manner. A petitioner is constitutionally exempt from paying the courts costs and filing fees associated with a petition. The Supreme Court, the District Courts of Appeal and the circuit courts have concurrent jurisdiction in habeas corpus petitions. *See* art. V, ss. 3, 4, and 5, Fla. Const., respectively.

Chapter 79, F.S., sets forth general provisions applying to habeas corpus proceedings but the provisions appears to be applicable exclusively to such claims as raised by inmates, prisoners or other incarcerated persons connected with an offense. As pertains to persons involuntarily civilly detained (i.e., on the basis of public health, mental health, or substance abuse), the provisions governing a right to habeas corpus claims are less specific. *See* s. 384.281, F.S. (hospitalization, placement and residential isolation of persons infected with sexually transmitted disease), s. 393.11, F.S. (involuntary admission to residential services), s. 394.459, F.S. (rights of mental health or Baker Act patients), 397.501, F.S. (rights of clients receiving substance abuse services including those retained involuntarily), s. 916.107, F.S. (rights of forensic clients, including those detained by a facility). These provisions also do not impose any limitations or notice requirements as to the exercise of the writ of habeas corpus and most require that a written notice of the right to petition for a writ of habeas corpus be provided to the person. Section 941.10, F.S., applicable to the right of an accused person to petition for writ of habeas corpus, is the only statutory provision in which notice of the writ and the time and place of the hearing has to be given to the state attorney for the county in which the arrest is made, and in which the accused is in custody, and to the state agent of the demanding state.

Civil Immunity Under the Jimmy Ryce Act

Section 394.923, F.S., provides immunity from civil liability for good faith conduct under the Jimmy Ryce Act to the agency with jurisdiction and its employees, members of the multidisciplinary team, the state attorney and the state attorney's employees, and those involved in the evaluation, care, and treatment of sexually violent predators. *See* s. 394.923, F.S. This immunity, however, is not available to the attorney general's office and its employees although the Office is required to serve as legal counsel to the multidisciplinary team under s. 394.913(3)(d), F.S.

III. Effect of Proposed Changes:

This bill creates a new section of the Jimmy Ryce Act. Section 394.9215, F.S., provides a mechanism for raising specified habeas corpus claims. After exhausting administrative remedies, a person held in a secure facility may petition for habeas corpus on either one of two grounds: 1) challenging the conditions of confinement as violative of state or federal statutory or constitutional law, or 2) challenging the statutory appropriateness of the secure facility. The

petition must be filed in the circuit court for the county where the facility is located. This type of claim can not then be raised during the commitment proceeding. Unlike the right to counsel afforded in the commitment proceeding, the petitioner does not have a right to counsel to raise the habeas corpus claims.

The court may direct the Department of Children and Families to respond to a legally sufficient petition. The court may also hold an evidentiary hearing and issue an order to correct the violation. The relief granted must be narrowly drawn and not exceed what is minimally necessary to correct the violation. The court is required to give substantial weight in its consideration of how the relief may effect the operation of the facility and public safety.

A trial court order may be appealed directly to the district court of appeal. An appeal by the Department of Children and Families stays the order pending resolution of the appeal. It provides that nonfinal orders may be appealed pursuant to the Florida Rules of Appellate Procedure.

This bill adds officers and employees of the Department of Legal Affairs to the list of persons immune from civil liability for good faith conduct under the Act.

This bill takes effect upon becoming law.

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:

To the extent that the bill is construed to prohibit a person from asserting habeas corpus claims until after the exhaustion of all administrative remedies and pending the duration of the commitment process, this bill presents some constitutional concerns under Article I, s. 13, of the Florida Constitution, which grants a right to habeas corpus. Such an interpretation could also prevent a petitioner from raising possibly meritorious claims simply because a commitment proceeding was ongoing. Additionally, this bill does not require that written notice of the right to petition for writ of habeas corpus be given to any potentially affected person as is found in other provisions governing involuntarily civilly committed or detained persons.

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

None.

B. Private Sector Impact:

This bill will affect solely those persons who have been released from sentence but are detained in secure facilities pursuant to this Act. Such persons will not be able to raise claims challenging the conditions, terms and location of confinement within the commitment proceeding but may petition these claims independently in a separate action for a writ of habeas corpus. Contrary to current practices, such persons will now be responsible for, other than court cost and filing fees, the cost of representation and litigation for the habeas corpus claims.

C. Government Sector Impact:

According to the Office of State Courts Administrator, this bill may affect the workload of the judicial circuits in which these secure facilities for the sexually violent predators are located. There are less than 400 offenders involving in some stage of involuntary civil commitment. The impact, however, may be offset by the reduction in time spent on addressing issues of conditions of confinement in civil commitment proceedings.

The Department reports that the bill is cost-neutral in that the Attorney General provides representation on conditions of confinement issues, and the department is obligated to pay for costs attributable to that representation. Consolidation of these claims to circuits in which the secure facilities are located may simplify coordination of these cases. The bill provides the Department with the opportunity to participate in the habeas corpus proceedings upon directive to respond from the court.

The public defenders appointed as counsel for affected persons subject to the Jimmy Ryce Act, will no longer be able to raise habeas corpus claims based on challenges to conditions, terms, and location of confinement. It has been represented that the Office of the Attorney General and the Department recommend an amendment to clarify that such habeas corpus claims can be raised outside the pending commitment proceeding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Unlike similarly situated persons (i.e., persons detained on the basis of public health problems, mental health, or substance abuse) who are involuntarily civilly committed, persons affected under this bill must first exhaust all administrative remedies prior to petitioning for writ of habeas corpus.

VIII. Amendments:

By Judiciary

Clarifies that the habeas corpus claims challenging issues of conditions or location of confinement can only be brought as provided under this bill and may not be considered in ongoing commitment proceedings.

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