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DATE: February 12, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH & HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: HB 949
RELATING TO: Sexually Violent Offenders
SPONSOR(S): Representative(s) Trovillion

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
 - (2) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (3) HEALTHY COMMUNITIES COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

House Bill 949 would increase the time in advance of release that agencies with jurisdiction would be required to give notification to the Department of Children and Family Services of the future release of offenders who may qualify for civil commitment under the Jimmy Ryce Act (Sexually Violent Predator Program). The increased time frame would:

- Extend the time that multidisciplinary teams have to evaluate offenders convicted for a qualifying offense to determine whether the offender is a sexually violent predator.
- Extend the time that State Attorney and defense counsel have to prepare for the civil confinement trial.
- Possibly allow for the legal process to reach finality prior to the expiration of the offender's natural incarceration sentence.

The bill clarifies that persons detained or committed under the Jimmy Ryce Act must be housed in a secure facility segregated from patients of the Department of Children and Family Services who are not detained or committed under the Jimmy Ryce Act.

The bill amends the catchline of s. 394.929, F.S., to clarify that the Department of Children and Family Services is not responsible for litigation costs of the civil commitment proceedings.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. 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 incarceration sentence. The person is then committed to the Department of Children and Family Services (DCF) for long-term residential treatment, care, and custody in a secure facility.

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

Commitment Procedure for the Sexually Violent Predator Program

In s. 394.913, F.S., the procedure to be followed upon the impending release from custody of an offender who may fit the criteria of a sexually violent predator is set forth.¹ First, the agency with jurisdiction² over an offender who has committed a qualifying offense must notify the state attorney and a multidisciplinary team,³ assembled by DCF, that the offender's release from custody is approaching. This notice must occur 365 days prior to release in the case of an offender in the adult correctional system or 90 days in the case of delinquent child. The DCF must provide notice 365 days prior to the anticipated hearing regarding possible release of persons adjudicated not guilty by reason of insanity or mental incapacity.⁴

¹ To be considered for placement into the civil confinement treatment program, an offender must have been convicted of one or more of the following offenses: sexual battery in violation of s. 794.011, F.S.; lewd, lascivious, or indecent assault or act upon or in the presence of a child in violation of s. 800.04, F.S.; murder of a human being while engaged in sexual battery; kidnapping or false imprisonment of a child under the age of 13 and in the course of the kidnapping or false imprisonment, committing sexual battery or a lewd, lascivious, or indecent assault upon the child.

² Agencies with jurisdiction are the Department of Corrections, the Department of Juvenile Justice, and the Department of Children & Family Services.

³ As provided by s. 394.13(3)(b), each multidisciplinary team must include two licensed psychiatrists or psychologists, or one licensed psychiatrist and one licensed psychologist.

⁴ The DCF has indicated that the 365-day deadline is not reasonable because such hearings are not scheduled 365 days in advance.

Upon receiving such notice, the multidisciplinary team completes an assessment of the offender. During such assessment, the team reviews the offender's record and background, among other things, and if necessary may interview the offender if the offender should choose to have the interview. The team must then make a determination as to whether the offender meets the definition of a sexually violent predator and the team must file a report, including a recommendation, with the appropriate state attorney.⁵ Presently, s. 394.913(3)(e), F.S., requires the team to have its report and recommendation to the appropriate state attorney within 90 days of receiving notice of the offender's approaching release from custody. Upon review of the multidisciplinary team's report and recommendations, the state attorney may file a petition seeking to have the offender declared a sexually violent predator. If the court determines that there is probable cause, the offender is detained pending trial, without the possibility of pre-trial release.

Purpose of the Pre-Release Notification Period

The purpose of the pre-release notification period (as described in the third paragraph under Section B of this analysis) is to allow time for the department to conduct assessment and evaluation activities and to make recommendations concerning commitment to the state attorney; and for the court system to complete the commitment trial prior to the alleged sexually violent predator reaching the end of his incarceration sentence. *According to the DCF, the established time frames have not been sufficient to permit the slow-moving commitment trial process to be completed for most individuals prior to their release from incarceration.*⁶

Statistics

According to figures provided by DCF, 9,307 offenders have been referred to date for consideration for sexually violent predator commitment. Upon completion of an initial records review, 1,300 of those offenders were considered to meet the basic criteria for commitment (378 of the cases are still pending an initial records review). Upon completion of their assessment review, multidisciplinary teams determined that 597 of the 1,300 offenders met the established definition of a sexually violent predator and were consequently referred to the appropriate state attorney. At this time, there are 31 offenders currently being reviewed by multidisciplinary teams. There have been 518 individuals the courts have found probable cause upon which to proceed with civil commitment trials. To date, there have been 67 trials, 55 individuals have been legally committed, and 338 individuals are being detained pending trial. So far, only two individuals have been released from commitment by the court after receiving treatment.

These statistics show that the majority of persons presently confined in the DCF's sexually violent predator facilities are pre-trial detainees, rather than persons who have been to trial and been committed to the DCF for long-term care, custody and treatment. According to DCF, between 15 – 20% of persons against whom commitment petitions are filed will ultimately not be committed for long-term custody and treatment.⁷ Therefore, the DCF is paying for the care and custody of approximately 15 – 20% more individuals under the Jimmy Ryce Act than it would if all trials were completed prior to the end of the incarceration sentence.

Commitment Housing

Subsection 394.917(2), F.S., currently reads “[a]t all times, sexually violent predators who are committed for control, care, and treatment by the Department of Children and Family Services under this section shall be kept in a secure facility segregated from patients who are not committed under this section.”

⁵ S. 394.912(10), F.S. A “sexually violent predator” is defined as any person who has been convicted of sexually violent offense and 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.

⁶ Information provided in bill analysis for HB 949 by the Department of Children & Family Services, January 23, 2002, pages 2 and 3.

⁷ Information provided in bill analysis for HB 949 by the Department of Children & Family Services, January 23, 2002, page 2.

According to staff at DCF, the language was intended to require that persons detained and committed under the Jimmy Ryce Act be housed separately from patients committed to the DCF for treatment under the Baker Act or under Chapter 916, F.S. However, the DCF has recently come under legal challenge for housing persons detained under the Jimmy Ryce Act in the same facility as persons committed under the Jimmy Ryce Act. The DCF believes that such an interpretation of the statutes (requiring detainees and commitments to be housed separately) is inaccurate and would place an undue burden on the department.

Responsibility for Evaluation and Treatment Costs

Section 394.929, F.S., provides that the DCF is responsible only for the costs of evaluation and treatment regarding sexually violent predators. However, the catchline for that specific statute section reads "Department of Children and Family Services responsible for costs." Because of the wording of the catchline, the DCF has been ordered to pay costs associated with the litigation of commitment cases, despite the fact that the wording of the actual statute section says otherwise. The Legislature has provided a separate appropriation to the Justice Administrative Commission to cover the litigation costs.⁸

C. EFFECT OF PROPOSED CHANGES:

Extension of Pre-Release Notification Period

HB 949 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 an offender 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 (545 days) prior to the end of sentence instead of the current 365 days notice. For qualifying offenders who are confined in the Department of Corrections for less than 18 months, written notice must be given as soon as practicable. The Department of Juvenile Justice would be required to provide notification of the release of a qualifying offender in its custody 180 days prior to release, up from 90 days. Likewise, the Department of Children and Family Services would be charged with providing notification 180 days prior to an anticipated hearing regarding possible release of persons committed to DCF who had been found not guilty by reason of insanity or mental incapacity of a sexually violent offense.

Agency with Jurisdiction over qualifying offenders	Current Notification Requirement	HB 949 Notification Requirement
Department of Corrections	365 days	545 days (18 months)
Department of Juvenile Justice	90 days	180 days
Department of Children and Family Services	365 days	180 days

The purpose of extending the pre-release notification period is to allow more time for the DCF to conduct assessment and evaluation activities and to make recommendations concerning commitment to the appropriate state attorneys.

HB 949 also increases the time frame from 90 days to 180 days for the DCF to assess and evaluate a referred individual, make a recommendation as to potential commitment, and make a referral to the appropriate state attorney. According to the DCF, the change affords time to compile a more complete assessment file.

Commitment Housing

⁸ Information provided in bill analysis for HB 949 by the Department of Children & Family Services, January 23, 2002, page 3.

The bill also amends s. 394.917(2), F.S., to clarify that the DCF may house persons committed under the Jimmy Ryce Act with persons detained under the Jimmy Ryce Act. The DCF is still required to house both commitments and detainees in a secure facility where they are segregated from other persons who are under DCF's custody but are not involved in the Jimmy Ryce Act. The change addresses DCF's concerns about housing Jimmy Ryce detainees separately from Jimmy Ryce commitments.

Responsibility for Costs

HB 949 amends the catchline for s. 394.929, F.S., to read "Program costs." This change was made at DCF's request to clarify that DCF is only responsible for costs associated with the evaluation and treatment of sexually violent offenders (as is explicitly stated in the statute section), not for the costs of litigation associated with the civil commitment trials.

D. SECTION-BY-SECTION ANALYSIS:

Please see Section C, "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DCF believes that the 18-month notification/referral period could be implemented within the Sexually Violent Predator Program's existing resources for assessment and evaluation, although they recognize that a backlog of cases will exist for approximately 18-24 months as they absorb and process the initial flood of cases (approximately 1,400) that would be received on July 1, 2002 (the day of the bill's implementation).⁹ This glut of cases would first have to be processed through the record review stage. Then, evaluators would have to conduct clinical evaluations for an increased number of inmates. Finally, the courts would have to absorb an increased number of commitment trials. In other words, each system that plays a role in the commitment process would have to absorb the additional workload. The department expects that it would be at least 18 months to two years before HB 949 has a significant impact on actual facility population.¹⁰

The long-term savings that may be realized from HB 949 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 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 Jimmy Ryce sexually violent predator program facility if their trials are completed prior to the end of their prison sentence.¹¹ Because the sexually violent

⁹ The initial flood of cases would result from the requirement that DOC refer all individuals whose release dates were between 365 days and 545 days out at one time.

¹⁰ Information provided in bill analysis by Department of Children & Family Services, January 23, 2002, page 5.

¹¹ Of the approximately 338 individuals presently detained, approximately 67 of those will be released after their trial.

predator program facility has a significantly higher per capita cost than prison facilities,¹² this bill may save significant dollars by reducing the need to house pre-trial detainees.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The 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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

¹² In telephone conversation with committee staff on 2/5/02, the director of the SVPP provided a rough cost estimate of approximately \$135 per day per detainee/commitment.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

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AS REVISED BY THE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS:

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