

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 524

INTRODUCER: Senators Sobel and Detert

SUBJECT: Sexually Violent Predators

DATE: February 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Brown, C.</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Brown, A.</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

I. Summary:

SB 524 creates the “Protecting Our Children from Sexual Predators Act.” The primary purpose of the bill is to facilitate the accurate assessment of sex offenders for civil commitment as sexually violent predators.

The bill amends various provisions governing the sexually violent predator program to strengthen the ability of multidisciplinary teams to identify sexually violent predators. The bill requires the Department of Children and Families (DCF) to train team members and to create a process for measuring the effectiveness of multidisciplinary team members in accurately recommending civil commitment of offenders.

Currently the DCF may contract with independent contractors to serve as members of a multidisciplinary team. The bill limits such contracts to one-year terms, subject to renewal. Because the DCF will annually evaluate the contractors based on performance, the department will be able to more quickly replace contractors who are poorly performing.

The bill may lower the threshold for recommendations to a state attorney that a person be civilly committed as a sexually violent predator. Under the bill, an offender will be recommended for civil commitment if the recommendation is supported by two multidisciplinary team members. Current law is silent on the number of members required to designate a sex offender as a sexually violent predator.

The Florida Department of Law Enforcement maintains a website to inform the public of sex offenders and sexually violent predators who are listed by their address of residence. The bill requires public and private colleges and universities to inform students and employees about the website.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Trends in Sex Offenses, Prison Sentences, and Recidivism

Although the prevalence of sexual violence in Florida as measured by new prison admissions has decreased in the last decade, recent trends show an increase. Researchers attribute the largest increase in prison admissions for sex crimes to one offense—traveling to meet a minor met on the Internet for the purpose of sex. The steep rise for this particular crime (14 convictions in Fiscal Year 2010-2011 to 154 convictions in Fiscal Year 2012-2013) represented a 1,100 percent increase which may be due, in part, to additional sting operations conducted by law enforcement officials.

Sex offenses account for fewer than six percent of annual prison admissions. Lewd and lascivious battery with a victim between 12 and 15 years of age¹ and sexual battery by an adult with a victim under 12 years of age represent the two most common sex crimes resulting in incarceration.²

Criminal penalties for sex acts with children range widely from a capital felony with a mandatory term of life for sexual battery with a victim under 12 years of age³ to a third degree felony punishable up to five years in prison for lewd or lascivious molestation of a victim 12 to 15 years of age and the offender is less than 18 years of age.⁴

The average prison sentence of 12.7 years for sex offenders is longer than in the past. The Department of Corrections indicates that the three-year recidivism rate for sex offenders is 34 percent. The new offense, however, might not be an additional sex crime.

Factors Relating to Prosecution, Conviction, and Sentencing of Sex Offenses

In a 2006 report by the Legislature's Office of Economic and Demographic Research (EDR), the EDR noted:

- Sex offenses share some characteristics with other serious offenses such as murder and robbery. Facing potentially lengthy prison terms, defendants tend to fight charges with all resources available. Trial rates are highest for these three offenses.
- Sex offenses are also different from other offenses. The type of sanction and the length of sentence is often mitigated. A high percentage of cases involved dismissal of some counts.
- Eighty-five percent of victims of a sex crime know the offender.
- Victims of sexual offenses, at an average age of 13.4 years old, tend to be much younger than victims of other crimes. Eighty-three percent of victims are 15 years old or younger. Successful prosecution usually requires the victim to testify in court. Because many victims are children, and many know the offender, victim's families often consider the trauma of revisiting the crimes in a public forum too difficult. Many children do not possess the

¹ Section 800.04(4)(a), F.S.

² Section 800.04(5)(b), F.S.

³ Section 794.011(2)(a), F.S.

⁴ Section 800.04(5)(d), F.S.

intellectual and emotional skills necessary for adversarial confrontation with the defense. Faced with these challenges, the prosecution often determines that the best outcome can be achieved by a plea bargain including a reduced charge or lesser sentence. Although mitigation may result in a reduced sanction, a conviction may require the offender to register as a sex offender.⁵

Sexual Predator/Offender Registration

Florida's registry laws subject sexual predators and offenders to registration and notification requirements. All qualifying sexual predators or offenders are listed on a public registry website maintained by FDLE.⁶ The website can also provide the public with email notifications when an offender moves nearby.

The sexual predator designation in Florida is reserved for relatively few sex offenders. As of September 11, 2013, a total of 43,640 persons located in Florida were required to register as a sexual predator or sexual offender. Of that number, courts designated 21 percent as sexual predators.

Designation of a Sexual Predator or Sexual Offender

A person is designated a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Is subject to civil commitment.⁷

A person is designated as a sexual offender by the FDLE if the person:

- Has been convicted of a qualifying sex offense and released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Is a Florida resident and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the victim was 14 years of age or older.⁸

⁵ Office of Economic and Demographic Research, *Factors Relating to the Sentencing of Sex Offenders*, p. 1-2 (March 1, 2006) (on file with the Senate Committee on Judiciary).

⁶ The website is located online at: <http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=ufDGM1GsKxoKox-uPJD6mQ>.

⁷ Section 775.21(4), F.S.

⁸ Section 943.0435(1), F.S.

Registration Obligations of Sexual Predators/offenders

- Registrants must report to their local sheriff's office and provide a photograph, personal identifying information, driver's license/state ID number, social security number, residence address (including transient addresses), employer information, email addresses, instant message names, and crime information.⁹
- Sexual predators and some sexual offenders must report to the local sheriff's office quarterly; other sexual offenders report bi-annually.¹⁰
- Sexual predators and offenders must update their driver's license or identification card within 48 hours after any change of residence or name change.¹¹
- Generally, sexual predators and offenders are subject to lifetime registration. Some sexual offenders may petition for removal of registration requirements if they have been released from the latest sanction for at least 25 years, remain arrest-free, and do not have an adult conviction for a disqualifying offense. Persons convicted of a qualifying sex offense as a young adult may also petition for removal of registration requirements.¹²
- Sexual predators are prohibited from working or volunteering at any place where children regularly congregate.¹³

Sex Offenders under Community Supervision

A court may place a convicted felon on community supervision, either immediately upon sentencing or after serving a sentence. Convicted felons on community supervision report to and are monitored by Department of Corrections' (DOC) probation officers. Data on sex offenders released from prison to community supervision include the following:

- In Fiscal Year 2012-2013, 66.1 percent of sex offenders released from prison began supervision upon release.
- As of July 31, 2013, 5.3 percent of the total population on community supervision were required to register as sexual offenders. Of offenders on community supervision for a sexual offense, the DOC tracked 34.5 percent by electronic monitoring.
- Supervised offenders must comply with statutory terms and conditions as well as special terms and conditions imposed by the sentencing court or by the Parole Commission.
- Offenders on community supervision for a sex offense are more likely to have supervision revoked for a technical violation than other offenders on supervision. For Fiscal Year 2011-2012 the DOC revoked supervision of 427 sex offenders for misconduct. A technical violation was the basis of 74 percent of revocations. Supervision was revoked for 26 percent of the offenders due to a new crime. In contrast, the DOC revoked supervision of 34,095 felons for misconduct during the same time period, with 39 percent revoked for a technical violation and 61 percent revoked for a new crime.
- Offenders on community supervision for certain sex offenses committed against a child have conditions restricting them from living near schools or working or volunteering in places

⁹ Sections 775.21(6) and 943.0435(2), F.S.

¹⁰ Sections 775.21(8)(a) and 943.0435(14)(a), F.S.

¹¹ Sections 775.21(6)(g)1. and 943.0435(4)(a), F.S.

¹² Sections 775.21(6)(l) and 943.0435(11), F.S.

¹³ Section 775.21(3)(b)5., F.S.

where children regularly congregate or having unsupervised contact with a minor. Residency and employment restrictions apply to certain offenders after completion of sentence and community supervision. Local ordinances may impose additional residence restrictions, including wider exclusion zones.

- In recent years, mandatory conditions of supervision for sex offenders were expanded to prohibit certain activities such as distributing candy at Halloween and visiting schools without prior approval of the probation officer.

Legal Basis for Civil Commitment of Sexually Violent Predators

Florida enacted the Sexually Violent Predator Program (SVPP) in 1998 and modeled it after the Kansas Sexually Violent Predator Act, which provided for involuntary civil commitment of sexually violent predators. Challenged on due process, double jeopardy, and ex post facto grounds, in *Kansas v. Hendricks*, the U.S. Supreme Court upheld the Kansas' civil commitment program.¹⁴ The Court based its ruling on the following:

- The Act requires a finding of dangerousness to self or others, through evidence of an inability to control behavior and a finding that the person suffers from a mental abnormality or personality disorder.¹⁵
- The Act is non-punitive in nature, requires treatment during commitment, and bases commitment on mental deficiency rather than criminal intent.¹⁶
- A court must review commitment annually and determine whether a detainee continues to be mentally infirm.¹⁷
- The Act provides due process based on numerous procedural and evidentiary protections.¹⁸
- Because the commitment is civil in nature, not criminal, the Act does not violate constitutional protections against double jeopardy.¹⁹
- Because the Act is not a criminal law, the Act does not violate the ex post facto clause of the U.S. Constitution.²⁰

In *Kansas v. Crane*, the U.S. Supreme Court refined the *Hendricks* requirement that the offender possess a lack of behavioral control.²¹ *Crane* requires a stronger showing of a lack of control, namely, that the offender's inability to control behavior constitutes a serious public danger.²²

The Florida Supreme Court upheld Florida's civil commitment program in 2002.²³ As Florida's law is heavily based on the Kansas program, the Court cited *Kansas v. Hendricks* in support:

¹⁴ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

¹⁵ *Id.* at 357-358.

¹⁶ *Id.* at 363 and 367.

¹⁷ *Id.* at 364.

¹⁸ *Id.*

¹⁹ *Id.* at 369.

²⁰ *Id.* at 371.

²¹ 534 U.S. 407 (2002).

²² *Id.* at 413.

²³ *Westerheide v. State*, 831 So. 2d 93 (Fla. 2002).

Florida’s Ryce Act shares many of the hallmarks of the Kansas statute which the Supreme Court found significant in *Hendricks* While only individuals convicted of a sexually violent offense are *eligible* for commitment under the Ryce Act, the previous conviction must be coupled with a current “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”²⁴

History of the Sexually Violent Predator Program and the Civil Confinement of Predators

The 1998 Florida Legislature established the Sexually Violent Predator Program (SVPP).²⁵ The Martin Treatment Center, operated by Liberty Behavioral Health Care, originally housed the majority of sexually violent predators. Some detainees awaiting commitment proceedings were housed at the South Bay Sexually Violent Predator Detainee Unit, a unit of the South Bay Correctional Facility. In late 2000, the program moved to the Florida Civil Commitment Center (FCCC) in Arcadia, Florida, a larger facility which housed both detainees and committed Sexually Violent Predators (SVPs).

Initially, the number of detainees significantly outnumbered the number of committed sexually violent predators. Reports of lax security resulted in violence, introduction of contraband, and general disorder within the facility. DCF terminated its contract with Liberty Healthcare Group in 2006 and contracted with Geo Group, Inc. as the new provider. In addition to operating the program, Geo Group was awarded a design-and-build contract to construct a new facility. The new FCCC, having a population capacity of 720, opened in April 2009 and is a modern facility built specifically for the SVPP.²⁶

The FCCC currently houses 647 persons—567 sexually violent predators and 80 persons awaiting a commitment trial. The program provides four progressive stages of treatment. Completion of the entire program takes at least six years. From 2004 to 2009, DCF was a defendant in a federal class action lawsuit alleging unconstitutional conditions of confinement, ADA violations, and a lack of access to treatment. Parties to the lawsuit agreed to settle and the plaintiffs voluntarily dismissed the lawsuit in 2009, based on improved conditions and treatment opportunities.

Referral and Commitment Process for Sexually Violent Predators

Referral:

A referring agency gives notice to the state attorney and the DCF multidisciplinary team (MDT) of the upcoming release of a person in confinement who has been convicted, adjudicated delinquent, or found not guilty by reason of insanity of a qualifying sexually violent offense.²⁷

²⁴ *Id.* at 100.

²⁵ Chapter 98-64, L.O.F. The 1998 Legislature created the “Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act.”

²⁶ Marti Harkness, Senate Appropriations Subcommittee on Criminal and Civil Justice, *Overview of Sexually Violent Predator Program*, PowerPoint Presentation (September 24, 2013) (on file with the Senate Committee on Judiciary).

²⁷ Section 394.912(9), F.S.

The timing of the notices to the MDT depends on which agency has jurisdiction over the person:

- The Department of Corrections must give notice at least 545 days before release from incarceration.
- The Department of Juvenile Justice must give notice at least 180 days before release from residential commitment.
- Department of Children and Families must give notice at least 180 days before the release hearing of a person found not guilty by reason of insanity.²⁸

Multidisciplinary Team Review (MDT):

By law, MDT members must be licensed psychologists or psychiatrists. Administrative rules further require MDT members to have at least one year of experience in the treatment or evaluation of sex offenders, have completed training in use and scoring of the risk assessment actuarial (known as the Static 99 form), and earn 24 hours of continuing education credits related to assessment or treatment of sex offenders.²⁹

- After the referring agency provides notice to the proper entities, the referring agency also provides the MDT with a packet of relevant information. At least two MDT members make a threshold assessment of whether the referred person meets statutory commitment criteria of having a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined for treatment.³⁰
- If the MDT finds that the person meets commitment criteria, a clinical evaluation is conducted by at least one licensed psychiatrist or licensed psychologist. The evaluation must include a records review, a personal interview if the person consents, and a risk assessment.³¹
- The MDT recommends commitment to the state attorney within 180 days after referral, if a majority of the MDT, including at least one clinical evaluator, agree that the person meets commitment criteria.³²

Commitment Trial:

- The state attorney receives the MDT recommendation and decides whether to file a commitment petition in circuit court.³³
- If a petition is filed, the court determines whether there is probable cause for commitment.³⁴
- If the court finds probable cause, a commitment trial must be held within 30 days, unless the court grants a continuance of up to 120 days.³⁵

²⁸ Section 394.913(1), F.S.

²⁹ Rule 65E-25.002, F.A.C.

³⁰ Section 394.913(2) and (3), F.S.

³¹ Section 394.913(3)(c) and (e), F.S.

³² Section 394.913(3)(e), F.S.

³³ Sections 394.9135(3) and 394.914, F.S.

³⁴ Section 394.915, F.S.

³⁵ Section 394.916(1) and (2), F.S.

- If the court finds probable cause, the person will be transferred to DCF secure custody in detainee status if the trial is not held before the person is released from his or her current sentence or other confinement.
- The detainee has the right to counsel, and either party may elect trial by a six-person jury.³⁶
- A judge or jury determines whether there is clear and convincing evidence that the person meets sexually violent predator (SVP) criteria. A jury must reach a unanimous verdict to designate an offender as a sexually violent predator.³⁷

Post-commitment Trial:

- The SVP is committed to the custody of the DCF upon expiration of sentence or, if detained by DCF, moved to commitment status.³⁸
- Once in DCF custody, the SVP is transferred to the FCCC for secure custody and treatment. The SVP's status is reviewed by the court at least annually. The SVP may be discharged at any time if the court determines at a bench trial that it is safe to release him or her.³⁹

Number and Flow of SVPP Cases as of August 31, 2013⁴⁰

Since the inception of the SVPP, 47,932 cases have been screened by DCF:

- The multidisciplinary team (MDT) screened out 40,920 cases as not meeting commitment criteria.
- The MTD determined that 4,171 cases required a clinical evaluation.

Of the 4,171 cases referred for a clinical evaluation:

- The MDT recommended that 1,607 cases met commitment criteria.
- The MDT recommended that 2,477 cases did not meet commitment criteria.
- Eighty-seven cases are pending or were deferred or deleted.

Of the 1,607 cases for which the MDT recommended commitment, the State Attorney filed a petition in 1,509 cases:

- The State Attorney also filed petitions in six cases in which the MDT recommended that commitment criteria was not met.
- The State Attorney did not file a petition in 70 cases.
- A decision is pending in 40 cases as to whether a petition will be filed.

³⁶ Section 394.916(3), F.S.

³⁷ Section 394.917(1), F.S.

³⁸ Section 394.917(1) and (2), F.S.

³⁹ Section 394.917(2), F.S.

⁴⁰ Department of Children and Families, *An Overview of Florida's Sexually Violent Predator Program*, Presented at Joint Workshop of the Senate Children, Families, and Elder Affairs Committee and the Judiciary Committee (September 24, 2013) (on file with the Senate Committee on Judiciary).

Of the 1,509 cases in which petitions were filed by the State Attorney, 466 cases were disposed of before the commitment trial, or are pending trial:

- 332 persons were released (no probable cause, petition dismissed, or released by court order).
- 83 persons are detained in the FCCC pending trial.
- 21 petitions are otherwise pending trial.
- 30 persons are deceased or out-of-state.

Of the 1,037 cases that have been disposed of by a commitment trial:

- 575 SVPs were committed to the FCCC.
- 1 person is in the FCCC by stipulated agreement.
- 4 SVPs await the end of their prison sentence before commitment.
- 140 SVPs were committed but have been released by stipulated agreement.
- 117 persons were completely released at trial.
- 8 persons were released at trial with conditions.
- 20 persons had their commitment overturned or dismissed.
- 119 SVPs were committed but later determined to no longer meet criteria.
- 32 persons are deceased or out-of-state.
- 22 people were returned to prison for other reasons.

Of the respondents to the 1,509 petitions for civil commitment which were filed:

- 700 are in some form of secure custody in Florida.
- 741 have been released.
- 62 are deceased or out-of-state.

III. Effect of Proposed Changes:

This bill creates the “Protecting Our Children from Sexual Predators Act.” The primary purpose of the bill is to facilitate the accurate assessment of sex offenders for civil commitment as sexually violent predators.

Under the bill, the Department of Children and Families (DCF) must train members of a multidisciplinary team (MDT) who assess individuals for commitment as a sexually violent predator. Currently, DCF has no statutory requirements to train MDT members. The bill also limits contracted members of a MDT to one-year contracts, subject to renewal.

The DCF is required to annually evaluate contracted members of a MDT based upon their:

- Knowledge and understanding of clinical information in assessing risk for sexual deviance and recidivism;
- Ability to identify clinical data from a review of criminal records, including law enforcement recommendations and input from victim advocates;
- Ability to use assessment tools in analyzing clinical information; and

- Accuracy in assessing offenders for civil commitment, to be based on the recidivism rates of released offenders.

Requiring evaluations creates a performance-based review of the effectiveness of the independent contractors on the multidisciplinary team. This review may result in more capable MDTs and more accurate recommendations for civil commitment by allowing for non-renewal of contracts for MDT members who do not perform well.

Current law does not specify how many MDT members must agree on an assessment that an offender is a sexually violent predator. The bill specifies that an offender will be recommended to a state attorney for civil commitment if at least two members of a MDT find that the offender is a sexually violent predator. To the extent that assessments are currently made through consensus, more cases may be referred to the state attorney for civil commitment proceedings under the bill.

The bill requires private and public colleges, universities, and schools to notify students and employees about the sexual offender and sexual predator website maintained by the Department of Law Enforcement. Students who access the website may be more aware of sexual offenders and predators on or near school campus.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State Government

The bill could increase the number of persons referred to the Sexually Violent Predator Program (SVPP) and the program's costs by an indeterminate amount. To the extent that only two members of the multidisciplinary team must find that a person meets the definition of a sexually violent predator, the number of cases referred to the state attorney for civil commitment proceedings could increase by an indeterminate amount.

The state's Criminal Justice Impact Conference met on January 30, 2014, and found that SB 524 will have no impact on the prison bed population.⁴¹

The Board of Governors of the State University System of Florida (BOG) anticipates potentially meeting the required notice by referencing the FDLE website and toll-free number in the orientation material and handbooks provided to new students and employees.⁴² Therefore, the BOG does not expect a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 394.913 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 1005.10 and 1006.695.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴¹ See < <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/> > (last visited February 12, 2014)

⁴² Board of Governors, State University System of Florida, *2014 Legislative Bill Analysis* (January 13, 2014) (on file with the Senate Committee on Judiciary).