

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7013      PCB CRJS 14-03      Sexually Violent Predator Program

**SPONSOR(S):** Criminal Justice Subcommittee, Slosberg

**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Appropriations Committee	25 Y, 0 N	McAuliffe	Leznoff
2) Judiciary Committee			

### SUMMARY ANALYSIS

In 1998, the Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act, also known as the Ryce Act. Under the Ryce Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment as to whether the offender meets the clinical definition of a sexually violent predator. A sexually violent predator is a person who has been convicted of a sexually violent offense and has a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.

If a judge determines that probable cause exists to believe an offender is a sexually violent predator, the offender is detained at the Florida Civil Commitment Center (FCCC) until a trial is conducted. After trial, those civilly committed as sexually violent predators are housed for treatment at FCCC, and remain confined until the court determines that they are no longer a threat to public safety.

Section 394.926, F.S., currently requires DCF to give victims written notice of the release of a person committed as a sexually violent predator. If such person being released has an active or pending term of community supervision, DCF must also notify the Department of Corrections (DOC). There is no statutory requirement that DCF provide notice of the release of a person that has simply been detained at the FCCC.

The bill requires DCF to notify victims and DOC of the release of *all* persons in the custody of DCF – not just those *committed* as a sexually violent predator. The bill also requires DCF to provide such notice to sheriffs in the county in which the person intends to reside or, if unknown, in the county in which the person was last convicted.

The bill requires DOC to compile recidivism data on those referred, detained, or committed to DCF, and submit this data to the Legislature annually.

The Criminal Justice Impact Conference met on January 30, 2014 and determined this bill will have no impact on state prison beds. According to DCF and DOC, this bill will not have a fiscal impact.

The bill is effective July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Sexually Violent Predator Program - Background**

A sexually violent predator is a person who has been convicted of a sexually violent offense<sup>1</sup> and has a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.<sup>2</sup>

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,<sup>3</sup> also known as the Ryce Act.<sup>4</sup> The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).<sup>5</sup> Under the Ryce Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment by a multidisciplinary team as to whether the offender meets the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.<sup>6</sup>

Following receipt of DCF's recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the offender is a sexually violent predator. If the judge determines probable cause exists, the offender is detained at the Florida Civil Commitment Center (FCCC) until a trial is conducted. At trial, a judge or jury must determine by clear and convincing evidence that an offender meets the definition of a sexually violent predator.<sup>7</sup>

Those civilly committed as sexually violent predators pursuant to the Ryce Act are housed for treatment at FCCC.<sup>8</sup> The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete.<sup>9</sup> However, persons committed to the state under the Ryce Act must be confined until the court determines that they are no longer a threat to public safety.<sup>10</sup>

A person committed under the Ryce Act has an examination of his or her mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether there is probable cause to believe that the person's condition has so changed that it is safe for him or

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<sup>1</sup> Section 394.912(9), F.S., defines the term "sexually violent offense" as:

- Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.;
- Kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery; or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;
- Sexual battery in violation of s. 794.011, F.S.;
- Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of ss. 800.04 or 847.0135(5), F.S.;
- An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense;
- Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense listed above or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or
- Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

<sup>2</sup> Section 394.912(10), F.S.

<sup>3</sup> Part V of Chapter 394, F.S.

<sup>4</sup> *Conditional Release of Sexually Violent Predators through Stipulated Agreements*, Office of Program Policy Analysis and Government Accountability (OPPAGA) Research Memorandum, October 21, 2011 (on file with the Criminal Justice Subcommittee).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> FCCC is a 720-bed, physically secure facility located in Arcadia, FL, and operated by the GEO Group. *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 394.918, F.S.

her to be released.<sup>11</sup> If the court believes there is probable cause, a trial is held at which the state attorney bears the burden of proving that the person's mental condition remains such that, if released, he or she is likely to engage in acts of sexual violence.<sup>12</sup>

### **Notice of Release**

Section 394.926, F.S., currently requires DCF to give victims written notice of the release of a person *committed* as a sexually violent predator. If such person being released has an active or pending term of community supervision, DCF must also notify the Department of Corrections (DOC). There is no requirement that DCF provide notice of the release of a person that has simply been *detained* at FCCC.

### Effect of the Bill

The bill requires DCF to notify victims and DOC of the release of *all* persons in the custody of DCF – not just those *committed* as a sexually violent predator. The bill also requires DCF to provide such notice to the sheriff in the county in which the person intends to reside or, if unknown, in the county in which the person was last convicted.

### **Reporting Requirements**

Section 394.931, F.S., requires DOC to collect information and compile quarterly reports on inmates released the previous quarter who met the Ryce Act criteria and were referred to DCF. At a minimum, the information that must be collected and compiled includes:

- Whether the qualifying offense was the current offense or the prior offense;
- The most serious sexual offense;
- The total number of distinct victims of the sexual offense;
- Whether the victim was known to the offender;
- Whether the sexual act was consensual;
- Whether the sexual act involved multiple victims;
- Whether direct violence was involved in the sexual offense; the age of each victim at the time of the offense;
- The age of the offender at the time of the first sexual offense;
- Whether a weapon was used;
- Length of time since the most recent sexual offense; and
- The total number of prior and current sexual-offense convictions.

In addition, DCF is required to implement a long-term study to determine the overall efficacy of the provisions of the Ryce Act.

### Effect of the Bill

The bill removes obsolete language requiring DCF to implement a long-term study to determine the overall efficacy of the Ryce Act, and requires DOC to compile recidivism data on those referred, detained, or committed to DCF. The recidivism data must be submitted to the Legislature annually.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 394.926, F.S., relating to notice to victims of release of persons committed as sexually violent predators; notice to the Department of Corrections and Parole Commission.

Section 2. Amends s. 394.931, F.S., relating to quarterly reports.

Section 3. Provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on January 30, 2014 and determined this bill will have no impact on state prison beds. According to DCF, the notice requirements imposed by the bill will not have a fiscal impact.<sup>13</sup> DOC reports that the requirement to compile recidivism data will not have a fiscal impact.<sup>14</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>13</sup> E-mail dated 1/9/14 from Tim Parson, DCF's Legislative Affairs Director (on file with the Criminal Justice Subcommittee).

<sup>14</sup> E-mail dated 1/9/14 from Will Kendrick, DOC's Legislative Affairs Director (on file with the Criminal Justice Subcommittee).