

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7019 PCB CRJS 14-06 Involuntary Civil Commitment of Sexually Violent Predators
SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee, Hutson
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 0 N	Cunningham	Cunningham
1) Appropriations Committee	25 Y, 0 N	McAuliffe	Leznoff
2) Judiciary Committee	15 Y, 0 N, As CS	Cunningham	Havlicak

SUMMARY ANALYSIS

Under the Involuntary Civil Commitment of Sexually Violent Predators Act (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) and assessed by a multidisciplinary team (MDT) to determine whether they meet the clinical definition of a sexually violent predator (SVP). If, after receiving the MDT's recommendation, the state attorney decides to file a civil commitment petition, a judge must determine whether probable cause exists to believe an offender is an SVP. If so, the offender is detained at the Florida Civil Commitment Center (FCCC) until a trial is conducted. After trial, those civilly committed as SVPs are housed for treatment at FCCC, and remain confined until the court determines that they are no longer a threat to public safety.

The bill makes a variety of changes to the Ryce Act. Specifically, the bill:

- Creates processes by which a state attorney can refer a person sentenced to a term of imprisonment in a jail to DCF for civil commitment proceedings;
- Creates processes that allow a person convicted of a sexually violent offense to be referred to DCF for civil commitment proceedings even after release from total confinement;
- Makes a variety of changes to the MDT's assessment process, including provisions that:
 - Authorize the MDT to consult with law enforcement agencies and victim advocate groups during the assessment and evaluation process;
 - Require the MDT to recommend that the state attorney file a civil commitment petition if at least two members of the MDT, after clinical evaluation, determine a person meets criteria; and
 - Provide that if the state attorney questions the MDT's determination that a person does or does not meet the definition of an SVP, the MDT must reexamine the case before a final assessment and recommendation is submitted; and
- Requires the MDT to prioritize assessments based upon a person's release date and to provide a recommendation to the state attorney by certain deadlines;
- Allows state attorneys to file a civil commitment petition even if the MDT's recommendation is negative;
- Requires DCF to notify victims, DOC, the Florida Department of Law Enforcement, and the sheriff of the release of all persons in the custody of DCF – not just those committed as an SVP; and
- Requires DOC to compile recidivism data on those referred, detained, or committed to DCF, and include this data in their Annual Report.

While the Criminal Justice Impact Conference (CJIC) has not considered the bill in its current form, CJIC did determine that HB 7019 will have an indeterminate impact on the number of offenders committed to DCF, and no impact on prison beds. The PCS creates an additional process by which persons may be referred to DCF for civil commitment, changes the MDT's assessment process, and imposes notification and reporting requirements on DCF and DOC. However, it is unlikely that CJIC's determination will change. See fiscal section.

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 offense¹ 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.²

To address the treatment needs of these offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,³ also known as the Ryce Act.⁴ 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).⁵ 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 (MDT) as to whether the offender meets the clinical definition of a sexually violent predator. After assessment, DCF provides a recommendation to the state attorney.⁶

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.⁷

Those civilly committed as sexually violent predators are housed for treatment at FCCC.⁸ The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete. 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.⁹

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 her to be released. If the court believes there is probable cause, a trial is held at which the state

¹ 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.

² Section 394.912(10), F.S.

³ Part V of ch. 394, F.S.

⁴ *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).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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

⁹ Section 394.918, F.S.

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.¹⁰

Referral to DCF for Civil Commitment

As noted above, persons convicted of a sexually violent offense who are nearing the end of their criminal sentence must be referred to DCF for assessment as to whether the person meets the clinical definition of a sexually violent predator. Currently, only the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and DCF are permitted to refer such persons to DCF for civil commitment proceedings. There is not a mechanism by which persons sentenced to local detention centers (jails) can be referred.

Effect of the Bill

The bill creates s. 394.9125, F.S., which establishes two different processes by which persons sentenced to jail can be referred to DCF for civil commitment.

The first process requires DCF to enroll the following persons in the arrest notification program through the Criminal Justice Network¹¹ upon the offender's release from DCF's custody:

- Persons who have been committed to DCF as a sexually violent predator; and
- Persons who have been in DCF's custody based upon a court finding of probable cause to believe that the person is a sexually violent predator.

If DCF receives an alert that a person in the arrest notification program has been arrested, DCF must notify the state attorney of the circuit in which the arrest occurred. The state attorney must refer such person to DCF for civil commitment if the person is subsequently sentenced to a term of imprisonment in a county or municipal jail for any criminal offense.

The second process authorizes a state attorney to refer a person who meets all of the following criteria to DCF for civil commitment proceedings:

- A person who is required to register as a sexual offender pursuant to s. 943.0435, F.S.;
- A person who has previously been convicted of a sexually violent offense as defined in s. 394.912(9)(a)-(h), F.S.; and
- A person who has been sentenced to a term of imprisonment in a county or municipal jail for any criminal offense.

A state attorney who refers a person for civil commitment must notify the jail to which the person has been sentenced within 24 hours of the referral being made.

A jail that has custody of a person that has been referred by a state attorney must, at least 180 days prior to the anticipated release of the person, give written notice to the MDT¹² of such person's upcoming release. If the person is confined in the jail for less than 180 days, the jail must provide notice to the MDT as soon as practicable.

The bill also specifies that if a person is sentenced to a term of imprisonment in a jail but is not subsequently confined in the jail due to receiving credit for time served, the state attorney may file a petition with the circuit court within 120 hours after such person's sentencing proceeding requesting the court to order such person into DCF's custody for purposes of initiating civil commitment proceedings. If the judge determines that there is probable cause to believe that the person should have been referred to DCF but that the referral was not made because the person was not totally confined in a jail due to receiving credit for time served, the judge must order that the person be taken into custody and delivered to DCF for civil commitment proceedings.

¹⁰ *Id.*

¹¹ This network is maintained through the Florida Department of Law Enforcement (FDLE). The bill requires FDLE to provide DCF's Sexually Violent Predator Program online access to the arrest notification program.

¹² And the state attorney of the circuit where the person was last convicted of a sexually violent offense. Section 394.913(1), F.S.

The bill amends the definitions of the terms “agency with jurisdiction,” “sexually violent offense,” and “total confinement” to conform with the above-described referral process and to ensure that all of the provisions of the Ryce Act are applicable to the newly-created referral process.

Immediate Release from Confinement

Section 394.913, F.S., requires DOC, DJJ, and DCF, to notify the MDT of the release of a person convicted of a sexually violent offense within specified timeframes. For example, DOC must notify the MDT that a person convicted of a sexually violent offense is being released within 545 days of such person’s release.¹³

On occasion, a person convicted of a sexually violent offense is released without much notice, which may prevent DOC, DJJ, and DCF from complying with the notice timeframes discussed above. In such instances, the provisions of s. 394.9135, F.S., take effect, which requires DOC, DJJ, and DCF, to immediately transfer a person convicted of a sexually violent offense to the custody of DCF for civil commitment if the person’s release becomes immediate for any reason. However, even with this “back-up” provision, there are still instances in which a person convicted of a sexually violent offense may be released without being referred to DCF. For example, a DOC inmate who has been convicted of a sexually violent offense may leave prison to attend a court hearing and, as a result of the hearing, have his or her release date changed. In such cases, the inmate may be released at the conclusion of the hearing and never return to prison. These situations are problematic because current law prohibits a person from being referred for civil commitment after release.¹⁴

Effect of the Bill

The bill addresses the above-described scenario by specifying that if the release of a person who has been convicted of a sexually violent offense occurs due to the following reasons, the state attorney may file a petition with the circuit court within 120 hours of the person’s release requesting the court to order such person into DCF’s custody for purposes of initiating civil commitment proceedings:

- Sections 394.9125, 394.913 or 394.9135, F.S., required that the person be referred for consideration for civil commitment before release, but the person was not referred due to mistake, oversight, or intentional act; or
- The person was referred for civil commitment proceedings but, through mistake, oversight, or intentional act, the person was released rather than transferred to the custody of the department.

If the judge determines that there is probable cause to believe that the person was released due to the reasons specified above, the judge must order that the person be taken into custody and delivered to the custody of DCF for civil commitment proceedings. The MDT must assess the person within 72 hours after transfer and, if determined that the person meets criteria, provide the state attorney with the assessment and recommendation. The MDT must release the person if the MDT determines the person does not meet the definition of a sexually violent predator.

Multidisciplinary Team

As noted above, the MDT is responsible for assessing persons referred to DCF to determine if they meet the criteria for commitment as a sexually violent predator.

The assessment begins with documentation compilation by a reviewer. The reviewer (generally an individual with a master’s degree in social work or psychology) is a DCF employee tasked with compiling and summarizing all records and information regarding a particular individual. The reviewer does not evaluate any of the documentation he or she compiles, but simply compiles and forwards it to screeners for evaluation.

Two screeners, who are licensed psychologists employed by DCF, independently review all of the records. If any screener reviewing a case determines that the person may meet criteria for commitment, the case is sent on for a clinical evaluation.

¹³ Section 394.913(1)(a), F.S.

¹⁴ See, e.g., *Larimore v. State*, 2 So.3d 101 (Fla. 2008). Sections 394.913 and 394.9135, F.S.

Clinical evaluations are performed by evaluators who are either licensed psychologists or psychiatrists and who have contracted with DCF to perform the clinical evaluations. The clinical evaluation includes, but is not limited to, administering assessment tools (Static 99R and other similar tools), a face-to-face interview (if the referred individual cooperates), documentation review (on-site documents and documents compiled by the reviewers) and interviews with staff and personnel at the site where the person is being held. Upon completion of the evaluation, the evaluator submits his or her opinion as to whether the individual meets criteria as a sexually violent predator to the MDT.¹⁵

The full MDT is responsible for the final evaluation and clinical determination of whether a referred person meets criteria as a sexually violent predator. The members of the MDT review all information compiled throughout the assessment process and may request additional information as needed. The MDT meets once every two to three weeks to discuss cases and make a final determination as to whether an individual meets criteria as a sexually violent predator. The determination is based upon a majority vote of the MDT (typically consisting of five to seven members).

The MDT must then make a recommendation to the state attorney as to whether a civil commitment petition should be filed. If the MDT determines that a person does not meet criteria as a sexually violent predator, they recommend that the state attorney not file a petition. However, if the MDT determines that a person does meet criteria as a sexually violent predator, they recommend that the state attorney file a petition.

Effect of the Bill

The bill makes a variety of changes to the MDT's assessment process. Specifically, the bill:

- Authorizes the MDT to consult with law enforcement agencies and victim advocate groups during the assessment and evaluation process;
- Requires a second clinical evaluation to be conducted if a member of the MDT questions the conclusion of the first clinical evaluation;
- Requires all members of the MDT to review, at minimum, the information provided by the agency with jurisdiction¹⁶ and the clinical evaluation(s) before making a recommendation to the state attorney;
- Requires the MDT, when conducting an assessment, to give equal consideration to those who attempt, criminally solicit, or conspire to commit a sexually violent offense as it does to those who actually commit a sexually violent offense;¹⁷
- Requires the MDT to recommend that the state attorney file a civil commitment petition if at least two members of the MDT, after clinical evaluation, determine a person meets the definition of a sexually violent predator (currently the MDT makes such a recommendation by majority vote); and
- Provides that if the state attorney questions the MDT's determination that a person does or does not meet the definition of a sexually violent predator, the MDT must reexamine the case before a final assessment and recommendation is submitted.

Timeframes - Notice to the State Attorney

¹⁵ Evaluators are considered members of the MDT with their "votes" represented by the conclusions contained within the evaluation reports.

¹⁶ This information is listed in s. 394.913(2), F.S., and includes:

- The person's name; identifying characteristics; anticipated future residence; the type of supervision the person will receive in the community, if any; and the person's offense history;
- The person's criminal history, including police reports, victim statements, presentence investigation reports, post-sentence investigation reports, if available, and any other documents containing facts of the person's criminal incidents or indicating whether the criminal incidents included sexual acts or were sexually motivated;
- Mental health, mental status, and medical records, including all clinical records and notes concerning the person;
- Documentation of institutional adjustment and any treatment received and, in the case of an adjudicated delinquent committed to DJJ, copies of the most recent performance plan and performance summary; and
- If the person was returned to custody after a period of supervision, documentation of adjustment during supervision and any treatment received.

¹⁷ The bill also prohibits DCF from establishing a rule or policy that reduces the MDT's level of consideration for attempts, etc.

Once the MDT receives notice from DOC, DJJ, or DCF that a person convicted of a sexually violent offense is nearing release, the MDT must, within 180 days after receiving notice, assess the person to determine whether he or she meets the clinical definition of a sexually violent predator. The MDT's assessment and recommendation must be provided to the state attorney. In cases where an assessment and recommendation have not been completed at least 365 days before a person's release, DCF must prioritize the assessment based upon the person's release date.

Effect of the Bill

The bill eliminates the requirement that the MDT provide an assessment and recommendation to the state attorney within 180 days of receiving notice that a person convicted of a sexually violent offense is nearing release. Instead, the bill requires the MDT to prioritize the assessment and evaluation based upon the person's scheduled release date. However, the MDT must complete all clinical evaluations and provide the state attorney a recommendation:

- At least one month before the person's scheduled release date from DOC, DJJ, or DCF; or
- At least 24 hours before a person's scheduled release date from a county or municipal jail.

State Attorney – Limitations on Filing a Petition

Currently, s. 394.914, F.S., states that upon receipt of the written assessment and recommendation from the MDT, the state attorney may file a petition alleging the person is a sexually violent predator. The Third District Court of Appeals has interpreted this section as requiring a positive MDT assessment and recommendation as a condition precedent to the State's ability to exercise its discretion in filing a petition for involuntary commitment.¹⁸ Thus, the state attorney is prohibiting from filing a petition in any case it did not receive a positive recommendation from the MDT.

Effect of the Bill

The bill eliminates this judicially-imposed prohibition by authorizing a state attorney to file a petition if it receives a positive or negative recommendation from the MDT.

Post-Commitment Probable Cause Hearings

Section 394.918, F.S., currently requires persons committed as a sexually violent predator to have an examination of his or her mental condition at least annually. The results of the examination must be provided to the court, which must review the person's status.¹⁹ If the person files a petition for release, the court must hold a limited hearing to determine if there is probable cause to believe that the person's condition has so changed that it is safe for the person to be at large and that the person will not engage in acts of sexual violence if discharged.²⁰ Currently, caselaw prohibits the court from considering evidence presented by the state attorney at the probable cause hearing.²¹

Effect of the Bill

The bill specifies that both the petitioner and the respondent may present evidence that the court may weigh and consider at a post-commitment probable cause hearing. The bill also authorizes the petitioner to attend the probable cause hearing.

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 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

¹⁸ *Harden v. State*, 932 So.2d 1152 (Fla. 3d DCA 2006).

¹⁹ Section 394.918(1), F.S.

²⁰ Section 394.918(3), F.S.

²¹ *See Spivey v. State*, 100 So.3d 1254 (Fla. 5th DCA 2012); *In re Commitment of Allen*, 927 So.2d 1070, 1074 (Fla. 2d DCA 2006); and *Westerheide v. State*, 888 So.2d 702, 706 (Fla. 5th DCA 2004).

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 Florida Department of Law Enforcement and 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. DOC must include the recidivism data in their Annual Report.

B. SECTION DIRECTORY:

Section 1. Amends s. 394.912, F.S., relating to definitions.

Section 2. Creates s. 394.9125, F.S., relating to state attorney; authority to refer a person for civil commitment.

Section 3. Amends s. 394.913, F.S., relating to notice to state attorney and multidisciplinary team of release of sexually violent predator; establishing multidisciplinary teams; information to be provided to multidisciplinary teams.

Section 4. Amends s. 394.9135, F.S., relating to immediate release from total confinement; transfer of person to department; time limitations on assessment, notification, and filing petition to hold in custody; filing petition after release.

Section 5. Amends s. 394.914, F.S., relating to petition; contents.

Section 6. Amends s. 394.918, F.S., relating to examinations; notice; court hearings for release of committed persons; burden of proof.

Section 7. Amends s. 394.926, F.S., relating to notice to victims of release of persons committed as sexually violent predators; notice to Department of Corrections and Parole Commission.

Section 8. Amends s. 394.931, F.S., relating to quarterly reports.

Section 9. Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

Section 10. Provides a severability clause.

Section 11. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

While the Criminal Justice Impact Conference (CJIC) has not considered the bill in its current form, CJIC did determine that HB 7019 (creating a discretionary referral process) will have an indeterminate impact on the number of offenders committed to DCF, and no impact on state prison beds.

The bill may have a negative fiscal impact on DCF because it requires state attorneys to refer certain persons to DCF for civil commitment proceedings, and authorizes a state attorney to refer other persons who meet specified criteria to DCF for civil commitment proceedings. This has the effect of broadening the pool of individuals that may be referred to DCF for civil commitment.

According to DCF, each person referred costs approximately \$700 to review.²² Roughly 7% of those referred require a face-to-face evaluation, which costs approximately \$2,000.²³ Ultimately, approximately 3% of those referred to DCF are recommended for commitment housed at FCCC, which has a daily bed rate of approximately \$99.²⁴

DCF will incur the \$700 initial review cost for each additional person referred. The additional costs described above would only be incurred if the person, after the initial review, required a face-to-face evaluation or was housed at FCCC. However, the precise impact of the bill is indeterminate because it is unknown how many people state attorneys may refer.

The provisions requiring and authorizing a state attorney to refer certain persons sentenced to jail to DCF for civil commitment proceedings may result in an increased workload for state attorneys.

The bill also authorizes both the petitioner and the respondent to present evidence that the court may weigh and consider at a post-commitment probable cause hearing. This may have a negative fiscal impact on state attorneys, but will likely result in fewer subsequent continued commitment trials, which would have a positive fiscal impact.

According to DCF, the notice requirements imposed by the bill will not have a fiscal impact.²⁵ DOC reports that the requirement to compile recidivism data will not have a fiscal impact.²⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

²² E-mail dated December 20, 2014, from Kristin Kanner, Director of DCF's Sexually Violent Predator Program (on file with the Criminal Justice Subcommittee).

²³ *Id.*

²⁴ *Id.*

²⁵ E-mail dated January 9, 2014, from Tim Parson, DCF's Legislative Affairs Director (on file with the Criminal Justice Subcommittee).

²⁶ E-mail dated January 9, 2014, from Will Kendrick, DOC's Legislative Affairs Director (on file with the Criminal Justice Subcommittee).

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:

The Florida Legislature modeled the Ryce Act after Kansas' statutory scheme. In *Kansas v. Hendricks*, the United States Supreme Court held that Kansas's Sexually Violent Predator Act "comports with due process requirements and neither runs afoul of double jeopardy principles nor constitutes an exercise in impermissible ex post facto lawmaking."²⁷ The Florida Supreme Court likewise found the Ryce Act to be constitutional in *Westerheide v. State*.²⁸

Although they upheld the constitutionality of the Ryce Act, the Florida Supreme Court has repeatedly emphasized the importance of procedural safeguards and time constraints within the Ryce Act to ensure that an individual's constitutional rights are protected. For example, *Westerheide* noted the "range of procedural safeguards" provided by the Act, including the assistance of counsel and mental health professionals, the right to a jury trial, the right to appeal, at least an annual review of the person's condition, the right to petition for release, and the State's burden of proving by clear and convincing evidence that the person requires commitment.²⁹

The bill expands the instances in which a person may be referred to DCF for civil commitment, permits civil commitment proceedings to be commenced upon persons who are no longer in confinement (albeit in very limited instances), allows both the petitioner and the respondent to present evidence that the court may weigh and consider at a post-commitment probable cause hearing (while authorizing the petitioner to attend such hearings), and makes numerous changes to the MDT assessment process. These modifications to the Ryce Act could be challenged as violating one's due process³⁰ rights.

B. RULE-MAKING AUTHORITY:

Section 394.930, F.S., requires DCF to adopt rules for:

- Procedures that must be followed by members of the MDT when assessing and evaluating persons;

²⁷ 521 U.S. 346, 371 (1997).

²⁸ 831 So.2d 93 (Fla. 2002).

²⁹ *Id.* at 105.

³⁰ The due process clause (found in the Fifth Amendment of the United States Constitution and applied to states through the Fourteenth Amendment, and in Article I, Section 9 of the Florida Constitution) requires a state to provide due process of law before depriving any person of life, liberty or property.

- Education and training requirements for members of the MDT and professionals who assess and evaluate persons;
- The criteria that must exist in order for the MDT to recommend to a state attorney that a petition should be filed to involuntarily commit a person;
- The designation of secure facilities for sexually violent predators who are subject to involuntary commitment;
- The components of the basic treatment plan for all committed persons; and
- The protocol to inform a person that he or she is being examined to determine whether he or she is a sexually violent predator.

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2014, the Judiciary Committee adopted a Proposed Committee Substitute (PCS) and four amendments to the PCS. The PCS differed from HB 7019 in that it added a variety of provisions relating to the MDT's assessment process, created an additional process by which persons in jail may be referred to DCF for civil commitment, authorized the state attorney to file a civil commitment petition even upon receiving a negative recommendation from the MDT, and added the notice of release and recidivism reporting provisions.

The amendments to the PCS:

- Corrected the placement of the provision requiring the MDT to recommend that the state attorney file a civil commitment petition if at least two members of the MDT determine a person meets criteria;
- Required DOC to include the civil commitment recidivism data in its Annual Report;
- Required the MDT to prioritize assessments by a person's scheduled release date and complete all assessments by certain deadlines; and
- Broadened the provision that allows a person to be referred to DCF after being released from total confinement due to mistake or error to include those released from a jail.

The Judiciary Committee reported the PCS favorably as amended. This analysis is drafted to the PCS as amended and passed by the Judiciary Committee.