

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 14-05 Supervision of Sexually Violent Predators

SPONSOR(S): Criminal Justice Subcommittee; Clelland

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham

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 a sexually violent offense who are nearing the end of their prison 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. 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.

In many instances, offenders convicted of a sexually violent offense are sentenced to a term of community supervision (e.g., probation, community control, conditional release, etc.) following their release from prison (split sentence). Currently, an offender's community supervision term begins immediately upon his or her release from prison, even if the offender is referred to DCF and confined at FCCC for Ryce Act proceedings. Many of these offenders complete their entire community supervision period while confined at FCCC.

The bill tolls the community supervision period of offenders sentenced to a split sentence who are transferred to DCF's custody pursuant to the Ryce Act. The supervision period is tolled until the offender is no longer in DCF's custody.

DOC reports that this bill will not have a fiscal impact.

The bill is effective October 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)⁷ 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.⁸

Those civilly committed as sexually violent predators are housed for treatment at FCCC. The treatment program consists of four levels of sex offender-specific cognitive behavior treatment, which takes approximately six years to complete.⁹ 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.¹⁰

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.¹¹ 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 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 Criminal Justice Subcommittee staff.

⁵ *Id.*

⁶ *Id.*

⁷ FCCC is a 720-bed, physically secure facility located in Arcadia, FL, and operated by the GEO Group. *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 394.918, F.S.

¹¹ *Id.*

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.¹²

Civil Commitment / Community Supervision

In many instances, an offender convicted of a sexually violent offense will receive a split sentence, whereby he or she is sentenced to serve a specified number of years incarcerated at a Department of Corrections (DOC) institution followed by a specified number of years of community supervision (e.g., probation, community control, conditional release, etc.).¹³ In such instances, the offender is transferred to DCF's custody for civil commitment proceedings upon completing the incarcerative portion of his or her sentence. Despite being in DCF's custody, the offender's community supervision period begin to run immediately upon release from DOC – it is not tolled.¹⁴ As such, many offenders who receive a split sentence and who are transferred to DCF's custody complete their entire community supervision period while confined at FCCC.

According to DOC, as of December, 2013, there were 182 offenders confined at FCCC on community supervision.¹⁵ Of the 59 offenders released from FCCC in 2013, 17 were still on community supervision when released, and 6 had their community supervision period end prior to their release.¹⁶

Effect of the Bill

The bill tolls the community supervision period of offenders sentenced to a split sentence who are transferred to DCF's custody pursuant to the Ryce Act. The supervision period is tolled until the offender is no longer in DCF's custody.

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 Department of Corrections and Parole Commission.

Section 2. Amends s. 947.1405, F.S., relating to conditional release program.

Section 3. Amends s. 948.012, F.S., relating to split sentence of probation or community control and imprisonment.

Section 4. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 5. Provides an effective date of October 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:

DOC reports that this bill will not have a fiscal impact.¹⁷

¹² *Id.*

¹³ Section 948.012, F.S.

¹⁴ Section 948.012(1), F.S. *Also see, Parole Com'n v. Smith*, 896 So.2d 966 (Fla. 2nd DCA 2005); *David v. Meadows*, 881 So.2d 653 (Fla. 1st DCA 2004); and *State v. Harris*, 881 So.2d 1079 (Fla. 2004).

¹⁵ E-mail dated January 13, 2014, from David Ensley, DOC's Research and Data Analysis Bureau Chief (on file with the Criminal Justice Subcommittee).

¹⁶ *Id.*

¹⁷ E-mail dated January 7, 2014, from Will Kendrick, DOC's Legislative Affairs Director (on file with Criminal Justice Subcommittee).

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:

Florida courts have held that community supervision is not tolled while in DCF's custody pursuant to the Ryce Act.¹⁸ In doing so, they have not held that the constitution prohibits tolling, but have instead pointed to the applicable criminal and civil statutes and noted that nowhere do the statutes require tolling.¹⁹

The bill amends ss. 947.1405 and 948.012, F.S., to specify that one's community supervision is tolled while in DCF's custody pursuant to the Ryce Act. While there is no case law directly addressing the constitutionality of this concept, the idea that a person should not be on probation while confined is not unique. In 2007, Florida 5th District Court of Appeal stated:

It is well settled that a defendant cannot serve a prison term and be on probation simultaneously. *Porter v. State*, 585 So.2d 399, 400 (Fla. 1st DCA 1991). To hold otherwise would be inconsistent with the rehabilitative concept of probation which presupposes that the probationer is not in prison confinement. Any term of probation presumed to run when the defendant cannot be supervised would be a nullity. As this court explained in *State v. Savage*, 589 So.2d 1016, 1018 (Fla. 5th DCA 1991):

Simple logic would seem to dictate that, where a defendant is incarcerated ..., a probationary period from an unrelated sentence would be tolled since a probationary term should not be allowed to expire simply because a defendant has decided to incur new prison time as a result of a separate and distinct offense.²⁰

Because persons detained by and committed to DCF pursuant to the Ryce Act are essentially confined, the 5th DCA's argument in favor of tolling supervision would appear to apply. However, confinement pursuant to the Ryce Act is the result of a civil proceeding –

¹⁸ See, e.g., *Parole Com'n v. Smith*, 896 So.2d 966 (Fla. 2nd DCA 2005); *David v. Meadows*, 881 So.2d 653 (Fla. 1st DCA 2004); and *State v. Harris*, 881 So.2d 1079 (Fla. 2004).

¹⁹ *David v. Meadows*, 881 So.2d 653, 654 (Fla. 1st DCA 2004).

²⁰ *Jones v. State*, 964 So.2d 167 (Fla 5th DCA 2007).

not a criminal proceeding, which is factually a different scenario than that addressed by the 5th DCA. As such, the bill could be challenged as violating double jeopardy²¹ principles or one's due process rights,²²

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

On January 16, 2014, the Criminal Justice Subcommittee adopted one amendment to the PCB and reported the PCB favorably. The amendment removes the requirement that DCF notify DOC of the release of a person who has an *active* term of probation. Because the bill tolls an offender's community supervision period until the offender is no longer in DCF's custody, offender's being released from DCF's custody will no longer have an *active* term of probation.

This analysis is drafted to the PCB as amended and passed by the Criminal Justice Subcommittee.

²¹ The double jeopardy clause (found in the Fifth Amendment of the United States Constitution and Article I, Section 9 of the Florida Constitution) protects against the imposition of multiple criminal penalties for the same offense.

²² 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) require a state to provide due process of law before depriving any person of life, liberty or property.