



Health & Human Services Committee

Thursday, February 20, 2014
9:00 AM - 11:00 AM
Morris Hall

Will Weatherford
Speaker

Richard Corcoran
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Committee

Start Date and Time: Thursday, February 20, 2014 09:00 am
End Date and Time: Thursday, February 20, 2014 11:00 am
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 97 Dentists & Dental Hygienists by Magar, Spano
CS/HB 287 Certificates of Need by Health Innovation Subcommittee, Artiles
HB 7021 Sexually Violent Predators by Healthy Families Subcommittee, Harrell, Eagle

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Wednesday, February 19, 2014.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, February 19, 2014.

NOTICE FINALIZED on 02/13/2014 14:04 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Dentists & Dental Hygienists
SPONSOR(S): Magar and Spano
TIED BILLS: None **IDEN./SIM. BILLS:** SB 142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Cary	Bond
2) Health & Human Services Committee		Castagna <i>TC</i>	Calamas <i>CC</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 766.1115, F.S., the Access to Health Care Act (Act), was enacted to provide sovereign immunity to health care professionals who contract with the state to provide free medical care for indigent persons. The contract must be for "volunteer, uncompensated services" for the benefit of low-income recipients. Dentists and dental hygienists licensed by the state are among those health care professionals that are protected by sovereign immunity under the Act.

The bill allows a dentist or dental hygienist to accept reimbursement of some or all of a patient's dental laboratory costs without being considered to have accepted compensation, thus retaining sovereign immunity protection.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

History of Sovereign Immunity

The legal doctrine of sovereign immunity prevents a government from being sued in its own courts without its consent.¹ According to United States Supreme Court Justice Oliver Wendell Holmes, citing the noted 17th century Hobbes work, *Leviathan*, “a sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.”² State governments in the United States, as sovereigns, inherently possess sovereign immunity.³

Sovereign Immunity in Florida

The Florida Constitution addresses sovereign immunity as follows:

Suits Against the State.—Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.⁴

The Florida Constitution grants “absolute sovereign immunity for the state and its agencies absent waiver by legislative enactment or constitutional amendment.”⁵ The state has waived its sovereign immunity in tort actions and the state may be liable to the same extent as a private individual under like circumstances.⁶ However, the Legislature has capped damages in suits against the state.⁷ The current cap on damages is \$200,000 per person and \$300,000 per incident.⁸

Exceptions to Sovereign Immunity in Florida

There are exceptions to the otherwise broad waiver of governmental tort immunity when the government is performing a discretionary function and when the government has a public duty.⁹ Whether the particular facts of a case bring the case within one of these exceptions is complex. One court described the problem as such: “Although these exceptions are somewhat elusive and are not susceptible to neat formulations which fit all cases, the courts have nonetheless attempted to articulate these exceptions in general terms.”¹⁰

Parties That May Claim Sovereign Immunity in Florida

As discussed above, the state has provided a limited waiver of sovereign immunity in some circumstances. A party may sue the state or one of its agencies or subdivisions in a tort action.¹¹ The statutes define state agencies or subdivisions to include executive departments, the legislature, the judicial branch, and independent establishments of the state, such as state university boards of

¹ Black’s Law Dictionary, 3rd Pocket Edition, 2006.

² *Kawananakoa v Polyblank*, 205 U.S. 349, 353 (1907).

³ See, e.g., *Fla. Jur. 2d, Government Tort Liability, Sec. 1.*

⁴ Fla. Const., Art. X, s. 13.

⁵ *Cir. Ct. of the Twelfth Jud. Cir. v. Dep’t of Natural Resources*, 339 So.2d 1113, 1114 (Fla. 1976).

⁶ Section 768.28(1), F.S.

⁷ Section 768.28(5), F.S.

⁸ *Id.*

⁹ *Seguine v. City of Miami*, 627 So.2d 14, 16 (Fla. 3d DCA 1993).

¹⁰ *Id.*

¹¹ Section 768.28(1), F.S.

trustees, counties and municipalities, and corporations primarily acting as instrumentalities or agencies of the state, including the Florida Space Authority.¹²

Whether a corporation is primarily acting as an instrumentality or agency of the state primarily depends on the level of governmental control over the performance and day-to-day operations of the corporation.¹³ The analysis tends to be heavily fact-dependent, while also considering the intent of the Legislature. For example, the University of Central Florida Athletics Association was found to have sovereign immunity¹⁴ while the University of Florida's Shands Hospital was not.¹⁵¹⁶

An individual state employee or agent of the state is also immune if the employee is acting within the scope of his employment as long as the acts are not done in bad faith or with a wanton and willful disregard of human rights, safety or property.¹⁷ Many agencies or individuals that do not work directly for the state have been granted sovereign immunity under certain circumstances. Among those are:

- Department of Corrections-contracted health care providers;¹⁸
- Department of Health-supervised regional poison control centers;¹⁹
- Department of Transportation contractors, if the tort is not an automobile accident;²⁰
- Department of Juvenile Justice contractors;²¹ and
- Health care professionals who contract to provide free medical care to indigent residents.²²

Volunteer Health Services Program

The Access to Health Care Act (Act) was enacted to provide sovereign immunity to health care professionals who contract with the state to provide free medical care for indigent residents.²³ The contract must be for "volunteer, uncompensated services" for the benefit of low-income recipients.²⁴ Dentist and dental hygienists licensed by the state are among those health care professionals that are protected by sovereign immunity.²⁵ To be protected, the governmental contractor must not accept compensation and must provide written notice to each patient or the patient's legal representative, which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.²⁶

The individual accepting services through this contracted provider may not have medical or dental care coverage for the illness, injury, or condition in which medical or dental care is sought.²⁷ The services not covered under this program include experimental procedures and clinically unproven procedures.²⁸ The governmental contractor has the authority to determine whether a procedure is covered.²⁹ A provider must provide services without compensation from the government contractor for any services provided under the contract and "must not bill or accept compensation from the recipient, or

¹² Section 768.28(2), F.S.

¹³ *UCF Athletics Ass'n Inc. v. Plancher*, 121 So.3d 1097, 1106 (Fla. 5th DCA 2013).

¹⁴ *Id.*

¹⁵ *Shands Teaching Hospital & Clinics, Inc. v. Lee*, 478 So.2d 77 (Fla. 1st DCA 1985).

¹⁶ Teaching hospitals have since been granted sovereign immunity by statute. *See* s. 768.28(10)(f), F.S.

¹⁷ Section 768.28(9)(a), F.S.

¹⁸ Section 768.28(10)(a), F.S.

¹⁹ Section 768.28(10)(c), F.S.

²⁰ Section 768.28(10)(e), F.S.

²¹ Section 768.28(11), F.S.

²² Section 766.1115(2), F.S.

²³ *Id.*

²⁴ Section 766.1115(3)(a), F.S.

²⁵ Section 766.1115(3)(d)(13), F.S.

²⁶ Section 766.1115(5), F.S.

²⁷ Rule 64I-2.002, F.A.C.

²⁸ Rule 64I-2.006, F.A.C.

²⁹ *Id.*

any public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.³⁰ Additionally, the health care provider may not subcontract for the provision of services under the Act.³¹

In 2012-2013 there were a total of 13,543 licensed health care providers who were contractual agents providing uncompensated services under the Act. Of these providers, approximately 1,501 were licensed dentists or dental hygienists. Total goods and services provided by all contractual agents for uncompensated care totaled approximately \$294,427,678 in 2013.³²

Effect of Proposed Changes

The bill amends ss. 766.1115(4) and 766.1115(3)(a), F.S., to allow a patient of a health care provider licensed under ch. 466, F.S. (dentists and dental hygienists) and providing uncompensated services under the Act to make a monetary contribution towards dental laboratory costs, but the contribution may not exceed the actual laboratory costs. The monetary contribution is not considered compensation to the health care provider and, therefore, the health care provider retains sovereign immunity protection.

B. SECTION DIRECTORY:

Section 1. Amends s. 766.1115, F.S., relating to health care providers and creation of agency relationship with governmental contractors.

Section 2. 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:

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

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:

The bill does not appear to have any direct economic impact on the private sector.

³⁰ Section 766.1115(3)(a), F.S.

³¹ Section 766.1115(4), F.S.

³² *Volunteer Health Services Annual Report*, Florida Department of Health, January 2014, accessible at: <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html> (last visited February 18, 2014).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

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

None.

1 A bill to be entitled
 2 An act relating to dentists and dental hygienists;
 3 amending s. 766.1115, F.S.; revising the definition of
 4 the term "contract"; requiring that a contract with a
 5 governmental contractor for health care services
 6 include a provision allowing a voluntary contribution
 7 toward certain dental laboratory work; providing that
 8 the contribution may not exceed the actual amount of
 9 the dental laboratory charges; providing an effective
 10 date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (a) of subsection (3) of section
 15 766.1115, Florida Statutes, is amended, and paragraph (g) is
 16 added to subsection (4) of that section, to read:

17 766.1115 Health care providers; creation of agency
 18 relationship with governmental contractors.—

19 (3) DEFINITIONS.—As used in this section, the term:

20 (a) "Contract" means an agreement executed in compliance
 21 with this section between a health care provider and a
 22 governmental contractor which allows. ~~This contract shall allow~~
 23 the health care provider to deliver health care services to low-
 24 income recipients as an agent of the governmental contractor.
 25 The contract must be for volunteer, uncompensated services,
 26 except as provided in paragraph (4)(g). For services to qualify
 27 as volunteer, uncompensated services under this section, the
 28 health care provider must receive no compensation from the

29 governmental contractor for any services provided under the
 30 contract and must not bill or accept compensation from the
 31 recipient, or a any public or private third-party payor, for the
 32 specific services provided to the low-income recipients covered
 33 by the contract.

34 (4) CONTRACT REQUIREMENTS.—A health care provider that
 35 executes a contract with a governmental contractor to deliver
 36 health care services on or after April 17, 1992, as an agent of
 37 the governmental contractor is an agent for purposes of s.
 38 768.28(9), while acting within the scope of duties under the
 39 contract, if the contract complies with the requirements of this
 40 section and regardless of whether the individual treated is
 41 later found to be ineligible. A health care provider under
 42 contract with the state may not be named as a defendant in any
 43 action arising out of medical care or treatment provided on or
 44 after April 17, 1992, under contracts entered into under this
 45 section. The contract must provide that:

46 (g) As an agent of the governmental contractor for
 47 purposes of s. 768.28(9), while acting within the scope of
 48 duties under the contract, a health care provider licensed under
 49 chapter 466 may allow a patient or a parent or guardian of the
 50 patient to voluntarily contribute a monetary amount to cover
 51 costs of dental laboratory work related to the services provided
 52 to the patient. This contribution may not exceed the actual cost
 53 of the dental laboratory charges.

54
 55 A governmental contractor that is also a health care provider is
 56 not required to enter into a contract under this section with

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57 | respect to the health care services delivered by its employees.
58 | Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 287 Certificates of Need
SPONSOR(S): Health Innovation Subcommittee; Artilles
TIED BILLS: IDEN./SIM. **BILLS:** SB 268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	10 Y, 0 N, As CS	Guzzo	Shaw
2) Health & Human Services Committee		Guzzo <i>GG</i>	Calamas <i>CC</i>

SUMMARY ANALYSIS

A certificate of need (CON) is a written statement issued by the Agency for Health Care Administration (AHCA) evidencing community need for a new, converted, expanded or otherwise significantly modified health care facility, health service, or hospice. Prior to constructing a new nursing home or adding additional beds, the facility must obtain approval from AHCA through the CON review and approval process.

Since 2001, a moratorium on new CONs for nursing homes has prevented AHCA from approving additional community nursing home beds. The moratorium will expire on October 1, 2016, or upon the date that Medicaid managed care is implemented statewide, whichever is earlier. Full implementation of the statewide Medicaid managed care program is statutorily required to be completed by October 1, 2014.

The bill repeals the moratorium effective July 1, 2014. As a result, AHCA will be authorized to approve new community nursing home beds under the CON process. However, the bill prohibits AHCA from issuing further CONs for nursing home beds once 5,000 total new beds have been approved from July 1, 2014, to June 30, 2019.

Additionally, the bill will allow for increased flexibility in the CON approval process for the construction of new nursing homes and the expansion of existing nursing homes. Specifically, the bill amends ss. 408.034 through 408.036, F.S., to:

- Decrease the required sub-district average occupancy rate that AHCA uses in its nursing home bed-need methodology from 94 to 92 percent.
- Establish a positive CON application factor for an applicant in a sub-district where bed-need has been determined to exist.
- Authorize an applicant to combine the published bed need of geographically contiguous sub-districts within a district for a proposed community nursing home.
- Provide expedited review of a CON application for the replacement of a nursing home within a 30-mile radius of the existing nursing home.
- Provide expedited review of a CON application for the replacement of a nursing home within the same district if the proposed project site is outside a 30-mile radius of the replaced nursing home but within the same sub-district or a geographically contiguous sub-district. If the proposed project site is in the geographically contiguous sub-district, the prior six-month occupancy rate for licensed community nursing homes for that sub-district must be at least 85 percent.
- Provide expedited review of a CON application for a nursing home to relocate a portion of its beds to another facility or to establish a new facility in the same district, or a contiguous district, if the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the state does not increase.
- Create an exemption from nursing home CON review for a nursing home that is adding up to 30 beds or 25 percent of the number of beds in the facility being replaced, whichever is less.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Certificates of Need

A certificate of need (CON) is a written statement issued by the Agency for Health Care Administration (AHCA) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.¹ Under this regulatory program, AHCA must provide approval through the CON review and approval process prior to a provider establishing a new nursing home or adding nursing home beds.

Florida's CON program has been in operation since 1973, and has undergone several changes over the years. From 1974 through 1986, the specifics of the program were largely dictated by the National Health Planning and Resources Development Act, which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria. Each state was required to have a CON program in compliance with those standards as a condition for obtaining federal funds for health programs. The federal health planning legislation was repealed in 1986, but Florida retained its CON program.

A moratorium on the approval of additional nursing home beds has been in effect since 2001.² In 2006, the Florida Legislature extended the moratorium through July 1, 2011.³ The current moratorium, which was last extended in 2011,⁴ is scheduled to expire on October 1, 2016, or upon the date that Medicaid managed care is implemented statewide, whichever is earlier. Full implementation of the statewide Medicaid managed care program is statutorily required to be completed by October 1, 2014.⁵

Determination of Need

Granting a CON is predicated on a determination of need. The CON formula for determining need for community nursing home beds provides an allocation of projected nursing home beds which will be needed in a specific AHCA CON sub-district within a three-year time horizon. There are 44 sub-districts within AHCA's 11 service districts.⁶ However, bed need projections have not been calculated since the moratorium on additional community nursing home beds went into effect on July 1, 2001.⁷

The formula considers the projected increase in the district population age 65 to 74 and age 75 and over, with the age group 75 and older given six times more weight in projecting the population increase.⁸ The projected total bed need of a district is then allocated to its sub-districts consistent with the current sub-district distribution.⁹ The result for a given sub-district is adjusted to reflect the current sub-district occupancy of licensed beds. A given sub-district is expected to have a minimum

¹ S. 408.032(3), F.S.

² Ch. 2001-45, L.O.F.

³ Ch. 2006-161, L.O.F.

⁴ Ch. 2011-135, L.O.F.

⁵ SS. 409.971 and 409.978, F.S.

⁶ Nursing home sub-districts are set forth in Rule 59C-2.200, F.A.C., and generally consist of 1 to 2 counties. Sub-district 3/2 consists of 7 small rural counties, which is the highest total number of counties in a sub-district. Duval county is divided between several sub-districts of district 4.

⁷ Agency for Health Care Administration, Bill Analysis, House Bill 287, dated December 20, 2013, on file with Health & Human Services Innovation Subcommittee staff.

⁸ Rule 59C-1.036, F.A.C.

⁹ *Id.*

occupancy rate of 94 percent.¹⁰ Rules governing CON provide that if current occupancy of licensed nursing home beds is less than 85 percent, the net need in a sub-district is zero regardless of whether the formula indicates otherwise.¹¹

Projects Subject to Review and Exemptions

There are three levels of CON review: full, expedited, and exempt.¹²

Projects Subject to Full Review

The addition of beds in community nursing homes or the new construction or establishment of community nursing home projects are subject to full CON review by AHCA.¹³ However, pursuant to s. 408.0435, F.S., a CON for additional community nursing home beds may not be approved by AHCA until the moratorium expires.

Projects Subject to Expedited Review

Pursuant to s. 408.036(2), certain projects are subject to expedited review. These projects include:

- Replacement of a nursing home within the same district, if the proposed project site is located within a geographic area that contains at least 65 percent of the facility's current residents and is within a 30-mile radius of the replaced nursing home;
- Relocation of a portion of a nursing home's licensed beds to a facility within the same district, if the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the district does not increase; and

Applications for new construction of a community nursing home in a retirement community are subject to expedited review, and are exempt from the moratorium.¹⁴ This provision went into effect on July 1, 2013,¹⁵ and to date, there have been no applications for such projects filed with AHCA.¹⁶

An applicant is eligible for expedited review for construction of a community nursing home in a retirement community if all of the following criteria are met:

- The residential use area of the retirement community is deed-restricted as housing for older persons;
- The retirement community is located in a county in which 25 percent or more of its population is age 65 and older;
- The retirement community is located in a county that has a rate of no more than 16.1 beds per 1,000 persons age 65 or older;
- The retirement community has a population of at least 8,000 residents within the county; and
- The number of proposed community nursing home beds in an application does not exceed the projected bed need after applying the rate of 16.1 beds per 1,000 persons age 65 and older.

Exemptions from CON Review

Pursuant to s. 408.036(3), F.S., certain projects are exempt from nursing home CON review.

¹⁰ *Id.*

¹¹ *Id.*

¹² S. 408.036, F.S.

¹³ S. 408.036(1), F.S.

¹⁴ S. 408.036(2), F.S.

¹⁵ Ch. 2013-153, L.O.F.

¹⁶ Agency for Health Care Administration, Bill Analysis, House Bill 287, dated December 20, 2013, on file with Health & Human Services Innovation Subcommittee staff.

These projects include:

- The creation of a single nursing home within a district by combining licensed beds from two or more licensed nursing homes within a district, regardless of sub-district boundaries; if
 - Fifty-percent of the beds in the created nursing home are transferred from the only nursing home in a county and its utilization data demonstrates that it had an occupancy rate of less than 75 percent for the 12-month period ending 90 days before the request for the exemption;
- The addition of nursing home beds, not to exceed 10 total beds, or 10 percent of the number of licensed beds in the facility being expanded, whichever is greater;
- The replacement of a licensed nursing home on the same site, or within three miles of the same site; if
 - The number of licensed beds does not increase;
- The consolidation or combination of licensed nursing homes or transfer beds between licensed nursing homes within the same planning sub-district, by providers that operate multiple nursing homes within that planning sub-district; if
 - There is no increase in the planning sub-district total number of nursing home beds and the site of the relocation is not more than 30 miles from the original location.

Exceptions to the Moratorium

Pursuant to s. 408.0435, F.S., the moratorium does not apply to certain projects. These projects include:

- Adding sheltered nursing home beds¹⁷ in a continuing care retirement community;
- Adding nursing home beds in a county that has no community nursing home beds and the lack of beds is the result of the closure of a nursing home that was licensed on July 1, 2001;¹⁸
- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a facility located in a county having up to 50,000 residents; if
 - The nursing home has not had any class I or class II deficiencies within the 30 months preceding the request for addition; and
 - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has never had a class I or class II deficiency; or
 - For a facility that has been licensed for less than 24 months, the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has never had a class I or class II deficiency;
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds; if
 - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
 - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
 - The prior 12-month occupancy rate for the nursing home beds in the sub-district is 94 percent or greater; and
 - Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months.¹⁹

¹⁷ A "sheltered nursing home bed" is defined by s. 651.118(3), F.S., as nursing home beds located within a continuing care facility for which a certificate of need is issued pursuant to subsection (2) shall be known as sheltered nursing home beds.

¹⁸ The request to add beds under this exception to the moratorium is subject to the full competitive review process for CONs.

¹⁹ The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.

Effect of Proposed Changes

The bill repeals the moratorium on CONs for new community nursing home beds effective July 1, 2014. This is three months earlier than the current expiration date.

The bill amends s. 408.034(5), F.S., to revise the nursing home bed-need methodology threshold from 94 percent to 92 percent. Statewide nursing home bed occupancy rates have remained around 88.5 percent since FY 2004-2005.²⁰ According to AHCA, reducing the occupancy rate standard from 94 percent to 92 percent may have a marginal effect on total bed need projection in some sub-districts, but it would have no impact on the increase in Medicaid nursing home patients beyond normal anticipated growth.²¹

The bill creates s. 408.034(6), F.S., to allow applicants to combine need numbers when need is shown for geographically contiguous sub-districts to establish a new community nursing home in one of these sub-districts. If need is aggregated from two sub-districts, the proposed nursing home site must be located in the sub-district with the greater need.

The bill also establishes an additional positive CON application factor for an applicant in a sub-district where bed-need has been determined to exist if that applicant voluntarily relinquishes licensed nursing home beds in one or more sub-districts where there is no calculated bed-need. The applicant must be able to demonstrate that it operates, controls, or has an agreement with another licensed nursing home to ensure that the beds are relinquished.

The bill amends s. 408.036(2)(b), F.S., to allow for the replacement of a nursing home if the proposed site is within a 30-mile radius of the replaced nursing home. If the proposed project site is outside the sub-district where the replaced nursing home is located, the prior 6-month occupancy rate for licensed community nursing homes in the proposed sub-district must be at least 85 percent. As a result, providers will be able to move a nursing home from one district to another as long as it is within a 30-mile radius.

The bill amends s. 408.036(2)(c), F.S., to allow for the replacement of a nursing home within the same district, if the proposed project site is outside a 30-mile radius of the replaced nursing home but within the same sub-district or a geographically contiguous sub-district. If the proposed project site is in the geographically contiguous sub-district, the prior 6-month occupancy rate for licensed community nursing homes for that sub-district must be at least 85 percent.

The bill also provides expedited review of a CON application for a nursing home to relocate a portion of its beds to another facility or to establish a new facility in the same district, or a contiguous district, if the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the state does not increase.

The bill amends s. 408.036(3), F.S., to revise current exemptions to certain CON review projects. Specifically, the bill:

- Creates an exemption for a nursing home that is adding up to either 30 beds or 25 percent of the number of beds in the facility being replaced, whichever is less;
- Repeals an obsolete provision relating to the transfer of beds to establish a new facility. This provision was set to be repealed upon the expiration of the moratorium, which is consistent with the bill's provision to repeal s. 408.0435, F.S.;

²⁰ Agency for Health Care Administration, Bill Analysis, House Bill 287, dated December 20, 2013, on file with Health & Human Services Innovation Subcommittee staff.

²¹ *Id.*

- Ensures that the provision being repealed in s. 408.0435(5)(b), F.S., is retained in s. 408.036(3)(j), F.S., which requires an average occupancy rate of 94 percent to be able to apply for additional nursing home beds;
- Expands the distance a replacement facility may be from the original site from three miles to five miles, and clarifies that such a move must remain within the same sub-district;
- Authorizes exemptions for the consolidation or combination of licensed nursing homes, or transfer of beds between licensed nursing homes within the same district, by nursing homes with any shared controlled interest within the district; if
 - There is no increase in the district's total number of nursing home beds; and
 - The site of the relocation is not more than 30 miles from the original location.

The bill creates s. 408.0436, F.S., restricting AHCA from issuing any CONs for new nursing home beds following the batching cycle in which the total number of new community nursing home beds approved between July 1, 2014, and June 30, 2019, meets or exceeds 5,000. The bill also defines "batching cycle" as the grouping for comparative review of CON applications submitted for beds, services, or programs having a like CON need methodology or licensing category in the same planning horizon and the same applicable district or sub-district. The bill provides for the repeal of this section on July 1, 2019.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 408.034, F.S., relating to duties and responsibilities of the Agency for Health Care Administration; rules.
- Section 2:** Amends s. 408.036, F.S., relating to projects subject to expedited review; exemptions.
- Section 3:** Creates s. 408.0436, F.S., relating to limitation of nursing home certificates of need.
- Section 4:** Repeals s. 408.0435, F.S., relating to the moratorium on nursing home certificates of need.
- Section 4:** Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill repeals the moratorium that prohibits the Agency for Health Care Administration (AHCA) from issuing certificates of need (CONs) for new community nursing home beds. Repeal of the moratorium will allow AHCA to grant new CONs for the construction of new community nursing homes and the

addition of community nursing home beds to existing nursing homes when sufficient need is determined to exist.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2014, the Health Innovation Subcommittee adopted a strike-all amendment. The amendment:

- Establishes a positive CON application factor for an applicant in a sub-district where bed-need has been determined to exist if the applicant relinquishes nursing home beds in one or more sub-districts where there is no calculated need;
- Restricts the replacement of a nursing home within 30 miles of the original nursing home from moving to a new sub-district unless that sub-district has had at least an 85 percent occupancy rate for the prior 6 months;
- Provides an expedited CON review for a nursing home to relocate a portion of its beds to an existing facility or a new facility in the same district, or a contiguous district, if the total number of beds in the state does not increase;
- Creates an exemption from nursing home CON review for a nursing home that is adding up to 30 beds or 25 percent of the number of beds in the facility being replaced, whichever is less; and
- Creates s. 408.0436, F.S., to prohibit AHCA from issuing any further CONs for nursing home beds once 5,000 total new beds have been approved. This provision expires on June 30, 2019.

The analysis is drafted to the committee substitute as passed by the Health Innovation Subcommittee.

1 A bill to be entitled
 2 An act relating to certificates of need; amending s.
 3 408.034, F.S.; decreasing the subdistrict average
 4 occupancy rate that the Agency for Health Care
 5 Administration is required to maintain as a goal of
 6 its nursing-home-bed-need methodology; conforming a
 7 provision to changes made by the act; authorizing an
 8 applicant to aggregate the need of geographically
 9 contiguous subdistricts within a district for a
 10 proposed community nursing home under certain
 11 circumstances; requiring the proposed nursing home
 12 site to be located in the subdistrict with the greater
 13 need under certain circumstances; recognizing an
 14 additional positive application factor for an
 15 applicant who voluntarily relinquishes certain nursing
 16 home beds; requiring the applicant to demonstrate that
 17 it meets certain requirements; amending s. 408.036,
 18 F.S.; providing that, under certain circumstances,
 19 replacement of a nursing home and relocation of a
 20 portion of a nursing home's licensed beds to another
 21 facility, or to establish a new facility, is a health-
 22 care-related project subject to expedited review;
 23 conforming a cross-reference; revising the
 24 requirements for projects that are exempted from
 25 applying for a certificate of need; creating s.
 26 408.0436, F.S.; prohibiting the agency from approving

27 a certificate-of-need application for new community
 28 nursing home beds under certain circumstances;
 29 defining the term "batching cycle"; providing for
 30 future repeal; repealing s. 408.0435, F.S., relating
 31 to the moratorium on the approval of certificates of
 32 need for additional community nursing home beds;
 33 providing an effective date.

34

35 Be It Enacted by the Legislature of the State of Florida:

36

37 Section 1. Subsection (5) of section 408.034, Florida
 38 Statutes, is amended, subsection (6) is renumbered as subsection
 39 (8), and new subsections (6) and (7) are added to that section,
 40 to read:

41 408.034 Duties and responsibilities of agency; rules.—

42 (5) The agency shall establish by rule a nursing-home-bed-
 43 need methodology that has a goal of maintaining a subdistrict
 44 average occupancy rate of 92 94 percent ~~and that reduces the~~
 45 ~~community nursing home bed need for the areas of the state where~~
 46 ~~the agency establishes pilot community diversion programs~~
 47 ~~through the Title XIX aging waiver program.~~

48 (6) If nursing home bed need is determined to exist in
 49 geographically contiguous subdistricts within a district, an
 50 applicant may aggregate the subdistricts' need for a new
 51 community nursing home in one of the subdistricts. If need is
 52 aggregated from two subdistricts, the proposed nursing home site

53 must be located in the subdistrict with the greater need as
 54 published by the agency in the Florida Administrative Register.
 55 However, if need is aggregated from more than two subdistricts,
 56 the location of the proposed nursing home site must provide
 57 reasonable geographic access for residents in the respective
 58 subdistricts given the relative bed need in each subdistrict.

59 (7) If nursing home bed need is determined to exist in a
 60 subdistrict, an additional positive application factor may be
 61 recognized in the application review process for an applicant
 62 who agrees to voluntarily relinquish licensed nursing home beds
 63 in one or more subdistricts where there is no calculated need.
 64 The applicant must demonstrate that it operates, controls, or
 65 has an agreement with another licensed community nursing home to
 66 ensure that beds are voluntarily relinquished if the application
 67 is approved and the applicant is licensed.

68 Section 2. Subsection (2) and paragraphs (f), (k), (p),
 69 and (q) of subsection (3) of section 408.036, Florida Statutes,
 70 are amended to read:

71 408.036 Projects subject to review; exemptions.—

72 (2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt
 73 pursuant to subsection (3), the following projects are subject
 74 to an expedited review shall include, but not be limited to:

75 (a) A Transfer of a certificate of need, except that when
 76 an existing hospital is acquired by a purchaser, all
 77 certificates of need issued to the hospital which are not yet
 78 operational shall be acquired by the purchaser, ~~without need for~~

79 a transfer.

80 (b) Replacement of a nursing home ~~within the same~~
 81 ~~district~~, if the proposed project site is located ~~within a~~
 82 ~~geographic area that contains at least 65 percent of the~~
 83 ~~facility's current residents and is~~ within a 30-mile radius of
 84 the replaced nursing home. If the proposed project site is
 85 outside the subdistrict where the replaced nursing home is
 86 located, the prior 6-month occupancy rate for licensed community
 87 nursing homes in the proposed subdistrict must be at least 85
 88 percent in accordance with the agency's most recently published
 89 inventory.

90 (c) Replacement of a nursing home within the same
 91 district, if the proposed project site is outside a 30-mile
 92 radius of the replaced nursing home but within the same
 93 subdistrict or a geographically contiguous subdistrict. If the
 94 proposed project site is in the geographically contiguous
 95 subdistrict, the prior 6-month occupancy rate for licensed
 96 community nursing homes for that subdistrict must be at least 85
 97 percent in accordance with the agency's most recently published
 98 inventory.

99 (d)~~(e)~~ Relocation of a portion of a nursing home's
 100 licensed beds to another a facility or to establish a new
 101 facility within the same district or within a geographically
 102 contiguous district, if the relocation is within a 30-mile
 103 radius of the existing facility and the total number of nursing
 104 home beds in the state ~~district~~ does not increase.

105 ~~(e)-(d)~~ The New construction of a community nursing home in
 106 a retirement community as further provided in this paragraph.

107 1. Expedited review under this paragraph is available if
 108 all of the following criteria are met:

109 a. The residential use area of the retirement community is
 110 deed-restricted as housing for older persons as defined in s.
 111 760.29(4)(b).

112 b. The retirement community is located in a county in
 113 which 25 percent or more of its population is age 65 and older.

114 c. The retirement community is located in a county that
 115 has a rate of no more than 16.1 beds per 1,000 persons age 65
 116 years or older. The rate shall be determined by using the
 117 current number of licensed and approved community nursing home
 118 beds in the county per the agency's most recent published
 119 inventory.

120 d. The retirement community has a population of at least
 121 8,000 residents within the county, based on a population data
 122 source accepted by the agency.

123 e. The number of proposed community nursing home beds in
 124 an application does not exceed the projected bed need after
 125 applying the rate of 16.1 beds per 1,000 persons aged 65 years
 126 and older projected for the county 3 years into the future using
 127 the estimates adopted by the agency reduced by, ~~after~~
 128 ~~subtracting~~ the agency's most recently published inventory of
 129 licensed and approved community nursing home beds in the county
 130 ~~per the agency's most recent published inventory.~~

131 2. No more than 120 community nursing home beds shall be
 132 approved for a qualified retirement community under each request
 133 ~~for application~~ for expedited review. Subsequent requests for
 134 expedited review under this process may ~~shall~~ not be made until
 135 2 years after construction of the facility has commenced or 1
 136 year after the beds approved through the initial request are
 137 licensed, whichever occurs first.

138 3. The total number of community nursing home beds which
 139 may be approved for any single deed-restricted community
 140 pursuant to this paragraph may ~~shall~~ not exceed 240, regardless
 141 of whether the retirement community is located in more than one
 142 qualifying county.

143 4. Each nursing home facility approved under this
 144 paragraph must ~~shall~~ be dually certified for participation in
 145 the Medicare and Medicaid programs.

146 5. Each nursing home facility approved under this
 147 paragraph must ~~shall~~ be at least 1 mile, as measured over
 148 publicly owned roadways, from an existing approved and licensed
 149 community nursing home, ~~measured over publicly owned roadways~~.

150 ~~6. Section 408.0435 does not apply to this paragraph.~~

151 ~~6.7.~~ A retirement community requesting expedited review
 152 under this paragraph shall submit a written request to the
 153 agency for ~~an~~ expedited review. The request must ~~shall~~ include
 154 the number of beds to be added and provide evidence of
 155 compliance with the criteria specified in subparagraph 1.

156 ~~7.8.~~ After verifying that the retirement community meets

157 the criteria for expedited review specified in subparagraph 1.,
 158 the agency shall publicly notice in the Florida Administrative
 159 Register that a request for an expedited review has been
 160 submitted by a qualifying retirement community and that the
 161 qualifying retirement community intends to make land available
 162 for the construction and operation of a community nursing home.
 163 The agency's notice must ~~shall~~ identify where potential
 164 applicants can obtain information describing the sales price of,
 165 or terms of the land lease for, the property on which the
 166 project will be located and the requirements established by the
 167 retirement community. The agency notice must ~~shall~~ also specify
 168 the deadline for submission of the ~~any~~ certificate-of-need
 169 application, which may ~~shall~~ not be earlier than the 91st day or
 170 ~~and not be~~ later than the 125th day after the date the notice
 171 appears in the Florida Administrative Register.

172 8.9. The qualified retirement community shall make land
 173 available to applicants it deems to have met its requirements
 174 for the construction and operation of a community nursing home
 175 but may ~~will~~ sell or lease the land only to the applicant that
 176 is issued a certificate of need by the agency under ~~the~~
 177 ~~provisions of~~ this paragraph.

178 a. A certificate-of-need ~~certificate-of-need~~ application
 179 submitted under ~~pursuant to~~ this paragraph must ~~shall~~ identify
 180 the intended site for the project within the retirement
 181 community and the anticipated costs for the project based on
 182 that site. The application must ~~shall~~ also include written

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183 evidence that the retirement community has determined that both
 184 the provider submitting the application and the project satisfy
 185 ~~proposed by that provider satisfies~~ its requirements for the
 186 project.

187 b. If the retirement community determines ~~community's~~
 188 ~~determination~~ that more than one provider satisfies its
 189 requirements for the project, it may notify ~~does not preclude~~
 190 ~~the retirement community from notifying~~ the agency of the
 191 provider it prefers.

192 ~~9.10.~~ The agency shall review each submitted application
 193 ~~submitted shall be reviewed by the agency.~~ If multiple
 194 applications are submitted for a the project as published
 195 pursuant to subparagraph 7. 8., then the agency shall review the
 196 competing applications ~~shall be reviewed by the agency.~~

197
 198 The agency shall develop rules to implement the ~~provisions for~~
 199 expedited review process, including time schedule, application
 200 content that ~~which~~ may be reduced from the full requirements of
 201 s. 408.037(1), and application processing.

202 (3) EXEMPTIONS.—Upon request, the following projects are
 203 subject to exemption from the provisions of subsection (1):

204 (f) For the addition of nursing home beds licensed under
 205 chapter 400 in a number not exceeding 30 total beds or 25
 206 percent of the number of beds licensed in the facility being
 207 replaced under paragraph (2) (b), paragraph (2) (c), or paragraph
 208 (p), whichever is less. ~~For the creation of a single nursing~~

209 ~~home within a district by combining licensed beds from two or~~
 210 ~~more licensed nursing homes within such district, regardless of~~
 211 ~~subdistrict boundaries, if 50 percent of the beds in the created~~
 212 ~~nursing home are transferred from the only nursing home in a~~
 213 ~~county and its utilization data demonstrate that it had an~~
 214 ~~occupancy rate of less than 75 percent for the 12-month period~~
 215 ~~ending 90 days before the request for the exemption. This~~
 216 ~~paragraph is repealed upon the expiration of the moratorium~~
 217 ~~established in s. 408.0435(1).~~

218 (k) For the addition of nursing home beds licensed under
 219 chapter 400 in a number not exceeding 10 total beds or 10
 220 percent of the number of beds licensed in the facility being
 221 expanded, whichever is greater; or, for the addition of nursing
 222 home beds licensed under chapter 400 at a facility that has been
 223 designated as a Gold Seal nursing home under s. 400.235 in a
 224 number not exceeding 20 total beds or 10 percent of the number
 225 of licensed beds in the facility being expanded, whichever is
 226 greater.

227 1. In addition to any other documentation required by the
 228 agency, a request for exemption submitted under this paragraph
 229 must certify that:

230 a. ~~Certify that~~ The facility has not had any class I or
 231 class II deficiencies within the 30 months preceding the request
 232 ~~for addition.~~

233 b. ~~Certify that~~ The prior 12-month average occupancy rate
 234 for the nursing home beds at the facility meets or exceeds 94 ~~96~~

235 percent.

236 c. ~~Certify that~~ Any beds authorized for the facility under
 237 this paragraph before the date of the current request for an
 238 exemption have been licensed and operational for at least 12
 239 months.

240 2. The timeframes and monitoring process specified in s.
 241 408.040(2)(a)-(c) apply to any exemption issued under this
 242 paragraph.

243 3. The agency shall count beds authorized under this
 244 paragraph as approved beds in the published inventory of nursing
 245 home beds until the beds are licensed.

246 (p) For replacement of a licensed nursing home on the same
 247 site, or within 5 ~~3~~ miles of the same site if within the same
 248 subdistrict, if the number of licensed beds does not increase
 249 except as permitted under paragraph (f).

250 (q) For consolidation or combination of licensed nursing
 251 homes or transfer of beds between licensed nursing homes within
 252 the same planning district ~~subdistrict~~, by ~~providers that~~
 253 ~~operate multiple~~ nursing homes with any shared controlled
 254 interest within that planning district ~~subdistrict~~, if there is
 255 no increase in the planning district ~~subdistrict~~ total number of
 256 nursing home beds and the site of the relocation is not more
 257 than 30 miles from the original location.

258 Section 3. Section 408.0436, Florida Statutes, is created
 259 to read:

260 408.0436 Limitation on nursing home certificates of need.-

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261 Notwithstanding the establishment of need as provided in this
 262 chapter, the agency may not approve a certificate-of-need
 263 application for new community nursing home beds following the
 264 batching cycle in which the cumulative number of new community
 265 nursing home beds approved from July 1, 2014, to June 30, 2019,
 266 equals or exceeds 5,000. As used in this section, the term
 267 "batching cycle" means the grouping for comparative review of
 268 certificate-of-need applications submitted for beds, services,
 269 or programs having a like certificate-of-need need methodology
 270 or licensing category in the same planning horizon and the same
 271 applicable district or subdistrict. This section is repealed
 272 July 1, 2019.

273 Section 4. Section 408.0435, Florida Statutes, is
 274 repealed.

275 Section 5. This act shall take effect July 1, 2014.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee
3 Representative Articles offered the following:

Amendment

6 Remove lines 265-272 and insert:
7 nursing home beds approved from July 1, 2014 to June 30, 2017,
8 equals or exceeds 3,750. As used in this section, the term
9 "batching cycle" means the grouping for comparative review of
10 certificate-of-need applications submitted for beds, services,
11 or programs having a like certificate-of-need methodology or
12 licensing category in the same planning horizon and the same
13 applicable district or subdistrict. This section is repealed
14 July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7021 PCB HFS 14-01 Sexually Violent Predators
SPONSOR(S): Healthy Families Subcommittee, Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Healthy Families Subcommittee	11 Y, 0 N	McElroy	Brazzell
1) Appropriations Committee	26 Y, 0 N	Fontaine	Leznoff
2) Health & Human Services Committee		McElroy	Calamas

SUMMARY ANALYSIS

House Bill 7021 makes statutory changes to the Jimmy Ryce Act to enhance the state's ability to identify and civilly commit sexually violent predators. The Jimmy Ryce Act was created to protect the public from sexual offenses committed by sexually violent predators while providing these individuals with long-term care and treatment through the Sexually Violent Predator Program (SVPP). The program is provided by the Florida Civil Commitment Center (FCCC) as administered by the Department of Children and Families (DCF).

The bill amends s. 394.913(3)(b), F.S., to require the clinicians on the DCF's multidisciplinary team (MDT) who assess, evaluate, and recommend persons for civil commitment to have experience in or relevant to evaluating or treating persons with mental abnormalities. The bill requires DCF to provide annual training on the civil commitment process to all MDT members and limits the standard contract term for MDT members retained on a contractual basis to one year.

The bill amends s. 394.913(3)(d), F.S., to require MDT members to review all available information, including information from the referring agency and clinical evaluations, prior to making its final determination and recommendation on whether a person meets the definition of a sexually violent predator. The bill clarifies the MDT's authority to conduct clinical evaluations and requires a second evaluation when any MDT member disagrees with the conclusion of the first clinical evaluation. The bill also allows the MDT to consult with law enforcement agencies and victim advocates during the assessment and evaluation process.

The bill requires the MDT to send its written assessment and recommendation to the state attorney for additional review, if the person has received a clinical evaluation and the MDT proposes to recommend that the person does not meet the definition of a sexually violent predator. If the state attorney questions the negative recommendation, the MDT must reexamine the case before a final written assessment and recommendation is provided to the state attorney. The bill lowers the threshold for the MDT to determine that a person meets civil commitment criteria to the affirmative vote of two members rather than a majority.

The bill grants the state attorney authority to file a petition to civilly commit a person as a sexually violent predator even in cases in which the MDT finds that the person does *not* meet the definition of a sexually violent predator and recommends that a petition not be filed. Filing a petition under this scenario is currently prohibited by case law.

The bill provides specific authority to DCF to make rules related to the procedures and requirements for selecting, contracting with, providing routine feedback to, and evaluating contracted members of the multidisciplinary team.

The fiscal impact to DCF is \$104,000 and can be absorbed within existing department resources. The fiscal impact to the FCCC is indeterminate.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Jimmy Ryce Act

On September 11, 1995, nine-year-old Samuel James “Jimmy” Ryce was abducted at gunpoint as he was walking home from his school bus stop. He was sodomized and later murdered as he was attempting to escape his abductor. The abductor was convicted of Jimmy’s kidnapping, sexual assault, and murder on September 12, 1998.¹

In response to this tragedy, Jimmy’s parents, Don and Claudine Ryce, lobbied for legislation that would protect society from the criminal acts of sexually violent predators. This goal was achieved on May 19, 1998, when the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act (the “Act”) was signed into law.

The Act places sexually violent predators in the custody and control of the Department of Children and Families (DCF), which implements the Act through the Sexually Violent Predators Program (SVPP). Recently, a media outlet raised concerns about the enforcement of the Act and in particular, the screening process for determining whether an individual meets the definition of a sexually violent predator.² In response, the Act and the evaluation process for the SVPP have been reevaluated to ensure the purpose and intent of the Act is being achieved.

Purpose and Constitutionality

The Act was created to protect the public from sexual offenses committed by sexually violent predators while providing these individuals with long-term care and treatment.³ The Act defines “sexually violent predators” as:

1. Any person who has been convicted of a sexually violent offense; and
2. 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.⁴

Sexually violent predators represent a small but extremely dangerous percentage of the sexual offender population. These individuals are a clear and present danger to the public due to their mental abnormalities or personality disorders. These conditions cannot be readily addressed through existing mental illness treatment modalities due to the antisocial personality features of these individuals.⁵ Thus, the use of civil commitment under the Baker Act is precluded as short-term care and treatment is ineffective. The Act addresses these issues by providing long-term care and treatment for sexually violent predators through involuntary civil commitment. This civil commitment continues until such time as the mental abnormality or personality disorder has been resolved such that these individuals no longer pose a menace to society.

The U.S. Supreme Court has upheld the constitutionality of involuntary civil commitment of sexually violent predators. In 1994, Kansas enacted its Sexually Violent Predator Act which permits involuntary civil commitment when there is a finding that a person suffers from a mental abnormality or personality

¹ Jimmy Ryce’s abductor was executed on February 12, 2014.

² *Sex Predators Unleashed*, [Sun Sentinel](#), Sally Kestin and Dana Williams, August 18, 2013.

³ Twenty states and the District of Columbia have enacted sexual offender civil commitment laws.

⁴ S. 394.912(10), F. S. “Mental abnormality” means a mental condition affecting a person’s emotional or volitional capacity which predisposes the person to commit sexually violent offenses. S. 394.912(5), F. S.

⁵ S. 394.10, F.S.

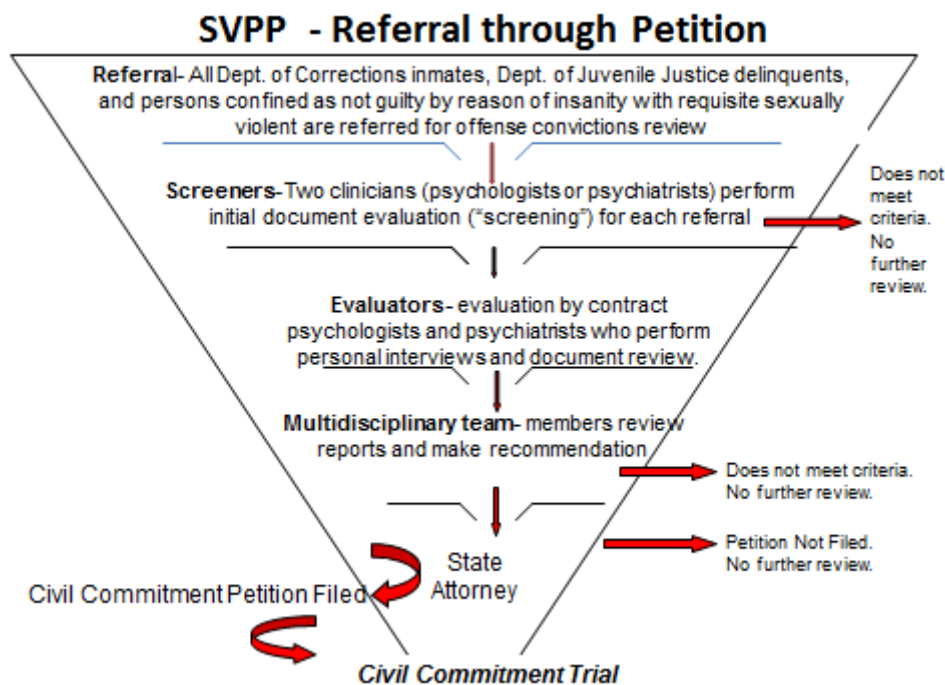
disorder which makes the person likely to engage in repeat acts of sexual violence.⁶ Shortly after enactment the constitutionality of the Act was challenged on due process, double jeopardy, and ex post facto grounds in Kansas v. Hendrix.⁷

The U.S. Supreme Court acknowledged in Hendrix that a person’s substantive due process rights are violated when dangerousness is the sole factor used to justify indefinite involuntary commitment. The fact that an individual has dangerous or violent tendencies does not guarantee he or she will commit a violent crime in the future. However, the Kansas Act added an additional factor of having a mental abnormality as a second requirement for involuntary civil commitment. The Court held that the Kansas Act did not violate due process because it coupled the dangerousness requirement with a mental abnormality requirement.⁸ This is because the additional mental abnormality requirement serves to limit involuntary civil commitment to those who suffer from a volitional impairment rendering them dangerous beyond their control.⁹ The Court also held that ex post facto and double jeopardy were inapplicable because the Kansas Act was neither criminal nor punitive in nature.¹⁰

The Jimmy Ryce Act was modeled after the Kansas Act. In 2002, the Florida Supreme Court, in Westerheide v. State, held that the Act is constitutional.¹¹

Sexually Violent Predator Determination

The Act requires both a clinical and judicial determination that a person meets the criteria of a “sexually violent predator” prior to his or her involuntary civil commitment. The clinical determination is conducted by licensed psychologists and psychiatrists. If a clinical determination is established and it is recommended that a petition be filed, the matter is forwarded to the state attorney, who may then proceed with the judicial determination.



⁶ Chapter 59, Article 29a, Kansas Statutes.

⁷ Kansas v. Hendrix, 521 U.S. 346 (U.S. S.Ct. 1997).

⁸ *Id* at 358; Mental abnormality is a clinical determination which, in cases of involuntary civil commitment, is later confirmed through a judicial determination.

⁹ *Id*.

¹⁰ *Id* at 361 and 369

¹¹ Westerheide v. State, 831 So.2d 93 (Fla. 2002).

Clinical Determination

The process of determining whether a person meets sexually violent predator criteria begins with the clinical determination. The clinical determination is a three-step process consisting of referral, evaluation and recommendation. The referral is made by an agency with jurisdiction over the person while the evaluation and recommendation are performed by DCF employees and contractors.

Referral

The clinical evaluation begins with the referral of a person by an agency with jurisdiction.¹² Under the Jimmy Ryce Act the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and the Department of Children and Families (DCF) are agencies with jurisdiction.¹³ These agencies are required to provide written notice (known as a “referral”) to DCF and the state attorney of the circuit where that person was last convicted of a sexually violent offense¹⁴ prior to the release of that person from total confinement.¹⁵ DCF receives 93.5% of its referrals from DOC with DJJ and DCF contributing 3.5% and 3% respectively.¹⁶ The referring agency must provide DCF with the following information:

- 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 the 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

¹² DCF receives approximately 3,000 to 3,500 referrals per year.

¹³ S. 394.912(1), F.S.

¹⁴ Pursuant to s. 394.912(9), F.S., “sexually violent offense” means:

(a) Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2.;

(b) Kidnapping of a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(c) Committing the offense of false imprisonment upon a child under the age of 13 and, in the course of that offense, committing:

1. Sexual battery; or

2. A lewd, lascivious, or indecent assault or act upon or in the presence of the child;

(d) Sexual battery in violation of s. 794.011;

(e) Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of s. 800.04 or s. 847.0135(5);

(f) An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, of a sexually violent offense;

(g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or

(h) 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.

¹⁵ S. 394.913(1). The Department of Corrections (DOC) must provide notice at least 545 days prior to the release of a person whereas the Department of Juvenile Justice (DJJ) and Department of Children and Families (DCF) must each provide notice at least 180 days prior to the release of a person from total confinement. S. 394.913(1)(a), (b) and (c). Individuals who are immediately released from confinement but who have committed a sexual offense are transferred to the custody of DCF, S. 394.9135(1). The multidisciplinary team then has 72 hours to determine if the individual meets the definition of sexually violent predator. S. 394.9135(2).

¹⁶ Department of Children and Families presentation to the House of Representatives Healthy Families Subcommittee, November 5, 2013.

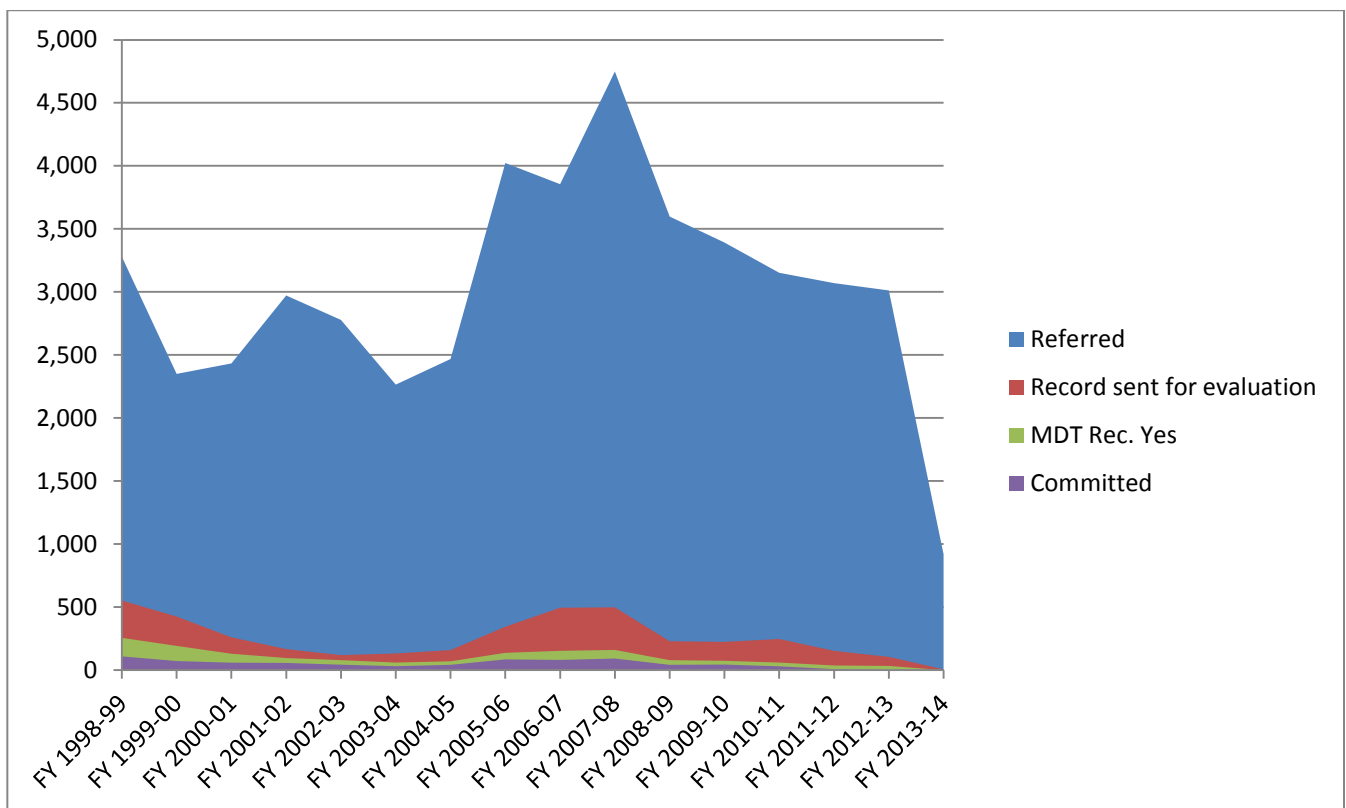
¹⁷ S. 394.913(2) (a), (b), (c), (d) and (e).

Evaluation

The evaluation 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 or assess any of the documentation he or she compiles. Instead, once the information is compiled, the reviewer forwards it to screeners for evaluation.

The next stage is a document review of all pertinent records of the referred person. The screening is performed by licensed psychologists employed by DCF. Screeners work independently of one another, and at least two review each file. If any screener reviewing a case determines that the person may meet criteria for commitment, the case is sent on for a clinical evaluation, as described below. However, as the following chart indicates, the vast majority of the referral pool is eliminated in this stage.

Status of Referrals to Sexually Violent Predator Program by Fiscal Year Received¹⁸



Next, 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 multidisciplinary team (MDT).¹⁹

¹⁸ See footnote 16. The graph terminates at FY 11-12 because the large number of referrals with pending dispositions precludes the availability of meaningful data for FY 12-13 and FY 13-14.

¹⁹ Evaluators are considered members of the MDT with their "votes" represented by the conclusions contained within the evaluation reports.

The MDT is established by the Secretary of DCF or his or her designee. Each team must include, but is not limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist. The evaluation is a multi-tiered process designed to eliminate from the referral pool individuals who do not meet criteria while accurately identifying sexually violent predators.

The MDT is responsible for the final evaluation and clinical determination of whether a referred person meets criteria for a sexually violent predator. The members of the MDT review all information compiled throughout the evaluation 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 specific individuals meet criteria for sexually violent predators. The determination is based upon a majority vote of the MDT (typically consisting of five to seven members).

Recommendation

The recommendation on whether to file a petition is the final stage of the clinical determination. If the MDT finds criteria is not met, then a recommendation not to file a petition is forwarded to the state attorney and the matter is closed. However, if the MDT finds criteria are met, then a recommendation to file a petition is forwarded to the state attorney and the case enters the judicial determination phase.

Judicial Determination

The judicial determination process begins with the filing of a petition and continues through a trial, and, if it results in a commitment, concludes with annual review.

Petition and Trial

The judicial determination phase is a multi-step process which begins with the state attorney filing a petition for involuntary civil commitment.²⁰ The state attorney has discretionary authority to file a petition; however, this authority only vests if the MDT determines the referred individual meets criteria and recommends filing a petition.²¹ If the state attorney elects to go forward with the case, he or she files a petition with the circuit court which contains factual allegations that the person is a sexually violent predator.²²

Upon receipt of the petition, the judge must determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator.²³ If the judge determines there is probable cause, an order is issued requiring the person to remain in custody and be immediately transferred to an appropriate secure facility if his or her incarcerative sentence expires.²⁴

The court is required to conduct a trial to determine whether the referred individual is a sexually violent predator within 30 days of its determination of probable cause.²⁵ The trial is held before either a judge or a six-member jury who must determine, by clear and convincing evidence, whether a person is a sexually violent predator.²⁶ If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences, the person is committed to the custody of DCF.²⁷ The person will remain under the control, care, and treatment of DCF until such time

²⁰ Approximately 1,500 petitions have been filed since the inception of the Act.

²¹ *Harden v. State*, 932 So.2d 1152 (3rd DCA 2006) (a positive MDT assessment and recommendation is a condition precedent to the State's ability to exercise its discretion in filing a petition for involuntary commitment). Thus, without the positive finding and recommendation from the MDT, state attorneys are prohibited from filing a petition.

²² S. 394.914, F.S.

²³ S. 394.915(1), F.S.

²⁴ *Id.* The secured facility to which the person is transferred is the Florida Civil Commitment Center.

²⁵ S. 394.916, F.S.

²⁶ S. 394.917(1), F.S.

²⁷ S. 394.917(2), F.S.

as his or her mental abnormality or personality disorder has so changed that it is safe for the person to be at large.²⁸

Annual Review

A person committed under the Act is required to have an examination of his or her mental condition conducted at least once every year.²⁹ The committed person is also entitled to file a petition for release at any time after his or her initial commitment.³⁰ Under both scenarios, the court is required to hold a limited, non-adversarial hearing to determine whether there is probable cause to believe that:

1. The person's condition has so changed that it is safe for the person to be at large; and
2. The person will not engage in acts of sexual violence if discharged.³¹

The court sets a trial if it determines that there is probable cause.³² At the trial, the state bears the burden of proving, by clear and convincing evidence, that the person's mental condition remains such that it is not safe for the person to be at large and that, if released, the person is likely to engage in acts of sexual violence.³³

Florida Civil Commitment Center

All individuals detained³⁴ or committed under the Act reside in the Florida Civil Commitment Center (FCCC) located in Arcadia, Florida. The FCCC has a capacity of approximately 720 people and houses 648 individuals as of December 2013.³⁵ The population is projected to increase at a rate of 22 persons a year with population anticipated to be 744 in FY 16-17.³⁶ Annual cost per resident is approximately \$36,500.³⁷

Committed residents receive long-term care and treatment at the FCCC. The treatment program is not mandatory and many committed residents elect not to participate.³⁸ For those persons who participate, the treatment program consists of four phases:

- Phase I is "Preparation for Change" and takes approximately 15-18 months to complete;
- Phase II is "Awareness" and takes approximately 18-24 months to complete;
- Phase III is "Healthy Alternative Behaviors" and takes approximately 18-24 months to complete; and,
- Phase IV is "Maintenance and Comprehensive Discharge Planning" and takes approximately 6-9 months to complete.

Completion of each phase is based solely upon the individual's active participation in the treatment (i.e. an individual who has not participated will not progress to the next phase simply because that individual

²⁸ *Id.* See also footnote 4.

²⁹ S. 394.918(1), F.S.

³⁰ S. 394.920, F.S.

³¹ S. 394.918(3), F.S. As this is a non-adversarial hearing only the committed person or his/her counsel may present evidence establishing probable cause. The State is prohibited from presenting any evidence which refutes the committed person's evidence.

³² S. 394.918(3), F.S.

³³ S. 394.918(4), F.S.

³⁴ Detainees are individuals in DCF's custody who have been clinically determined to meet criteria for a sexually violent predator but have not been adjudicated as such. These individuals reside at the Center until the conclusion of their trial. However, these individuals are not provided any treatment at the Center due to the lack of adjudication.

³⁵ The overall population varies slightly from month to month based primarily upon changes in the detainee population. Last census data was provided by DCF in the *Contract #LI702 Financial Summary* of the Florida Civil Commitment Center, on file with Appropriations Committee staff.

³⁶ *Involuntary Civil Commitment of Sexually Violent Predators—History and Forecast*, Adopted at the November 20, 2013, Criminal Justice Estimating Conference, Office of Economic & Demographic Research.

³⁷ See footnote 16.

³⁸ Department of Children and Families presentation to the House of Representatives Healthy Families Subcommittee, January 8, 2014 (some of the committed residents do not begin participating in treatment until many years after their initial commitment to the Center).

has been in a particular phase for a specific period of time). Additionally, an individual will not be immediately discharged upon completion of all four phases. As previously noted, the standard for discharge is that the person's condition has so changed that it is safe for the person to be at large and that the person is unlikely to engage in acts of sexual violence if discharged.³⁹

Recidivism

From 1998 to 2013, 47,846 individuals were referred to DCF for evaluation and assessment. The MDT determined that 1,611 of these individuals met criteria.⁴⁰ Currently, there is no recidivism data for the 46,235 individuals that the MDT determined did not meet criteria.

DCF has analyzed the recidivism of offenders who were recommended for commitment and later released. As previously noted, the Act's commitment process requires both a clinical determination and a judicial determination that a person is a sexually violent predator. Although the MDT determined the individuals in this group met the clinical criteria, for various reasons the state attorney has elected not to pursue a judicial determination. These reasons include insufficient probable cause, lack of evidence or witness testimony and other similar factors which would likely result in the judicial determination that a person does not meet criteria.

There have been 762 offenders who were recommended for commitment and subsequently released. Some were released after having been committed as sexually violent predators and receiving some level of treatment, but most were released without having been committed. These offenders comprised:

- 85 released directly from prison;
- 406 released as detainees;
- 170 released pursuant to settlement agreements; and
- 101 released after being determined as no longer meeting criteria.⁴¹

DCF analyzed arrest and conviction data for the 762 offenders and determined there had been 74 arrests for sexual offenses. These arrests resulted in 48 convictions. Thus, the average⁴² recidivism rate for sexual offenses perpetrated by this group was 9.7% for arrests and 5.5% for convictions.⁴³

Only 23 of the 101 released after being determined as no longer meeting criteria had completed all four phases of treatment at FCCC.⁴⁴ The arrest recidivism rate for this group is 8.6% (2 of 23).⁴⁵ However, caution must be exercised when analyzing this data for trends due to the small size of the group.

Effects of Proposed Changes

The bill amends the Jimmy Ryce Act to enhance the state's ability to identify and civilly commit sexually violent predators.

Currently, s. 394.913(3)(b), F.S., requires that the MDT include at least two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist. The bill requires that they each have experience in or relevant to evaluating or treating persons with mental abnormalities. The bill additionally requires DCF to provide annual training on the civil commitment process to all members of the MDT.

³⁹ S. 394.918(4), F.S.

⁴⁰ See footnote 16.

⁴¹ Department of Children and Families presentation to the House of Representatives Healthy Families Subcommittee, January 8, 2014.

⁴² Amongst the four released offender groups (prison, detention, no longer meets criteria and settlement agreement) the recidivism rate for arrests ranged from 6.9% to 11.3% and from 3.5% to 8.1% for convictions.

⁴³ See footnote 43. As a matter of comparison, Texas, Washington and California have recidivism rates of .8%, 25.2% and 6.5%, respectively.

⁴⁴ See footnote 16.

⁴⁵ Id.

The bill codifies new DCF policy to limit the contract term of contracted evaluators to one year, allowing renewal if performance is satisfactory. The bill requires DCF to regularly provide feedback to each MDT member and to formally evaluate their performance at least annually. The bill also establishes the factors to be considered by DCF in conducting its performance evaluation. Specifically, a performance evaluation is based on, at a minimum, the quality of the team member's research, analysis, reasoning, adherence to professional standards, and compliance with technical and procedural requirements.

Section 394.913(3)(d), F.S., currently requires the MDT to assess and evaluate each person referred to the team. The assessment and evaluation must include the review of the person's institutional history and treatment record, if any, the person's criminal background, and any other relevant information. The bill expands this requirement by mandating that all members of the MDT review all information provided to it by the referring agencies, as well as any clinical evaluations conducted by a member of the team, prior to making a recommendation. The bill authorizes the MDT to conduct a clinical evaluation and then request a second clinical evaluation if any member questions the conclusion of the first clinical evaluation. The bill also allows the MDT to consult with law enforcement agencies and victim advocate groups during the assessment and evaluation process.

The bill requires the MDT to send its written assessment and recommendation to the state attorney for additional review, if the person has received a clinical evaluation and the MDT intends to determine that the person does not meet the definition of a sexually violent predator. If the state attorney questions the negative recommendation, the MDT must reexamine the case before a final written assessment and recommendation is provided to the state attorney.

Currently, a majority vote by the MDT is required to recommend that a petition be filed. The bill reduces this requirement by directing the MDT to recommend the state attorney file a petition if any two members determine that the person meets the definition of a sexually violent predator.

Section 394.9135(1), F.S., currently requires that if the anticipated release from total confinement of a person convicted of a sexually violent offense becomes immediate, the agency with jurisdiction shall, upon immediate release, transfer that person to the custody of the DCF. Section 394.9135(2), F.S., requires that within 72 hours after transfer of the person, the MDT shall assess whether the person meets the definition of a sexually violent predator. Currently, a majority vote by the MDT is required to determine that a person meets the definition of sexually violent predator in this immediate release scenario. The bill lowers the threshold for the MDT to determine that a person meets civil commitment criteria to the affirmative vote of two members rather than a majority.

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.⁴⁶ Thus, the state attorney is prohibited from filing a petition in any case it did not receive a positive recommendation from the MDT. The bill eliminates this judicially-imposed prohibition by stating that a state attorney may file a petition if it receives a positive or negative recommendation from the MDT.

Section 394.930, F.S., provides DCF with general rule-making authority. The bill provides specific authority to DCF to make rules related to the procedures and requirements for selecting, contracting with, providing routine feedback to, and evaluating contracted members of the multidisciplinary team.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.913, F.S., relating to multidisciplinary teams.

⁴⁶ See *Harden v. State*, 932 So.2d 1152 (3rd DCA 2006).
STORAGE NAME: h7021b.HHSC
DATE: 2/19/2014

Section 2: Amends s. 394.9135, F.S., relating to immediate release from confinement.

Section 3: Amends s. 394.914, F.S., relating to petition for involuntary civil commitment.

Section 4: Amends s. 394.930, F.S., relating to the Department of Children and Families' authority to adopt rules.

Section 5: Providing an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The expenditure impact of this bill affects two components of the SVPP: costs associated with modifications to the MDT and potential costs to the FCCC if the population increases. According to DCF, the total fiscal impact of \$104,000 includes \$20,000 of nonrecurring expenses for the development of an assessment tool for the annual evaluation of the MDT members, and \$84,000 on a recurring basis for the evaluation and training of MDT members as outlined in the bill.⁴⁷ These costs can be absorbed within existing department resources.

The fiscal impact related to the FCCC is indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference met January 31, 2014, and determined this bill to have no impact to state prison beds with an indeterminate fiscal impact to the FCCC. It is unknown if the modifications in this bill will result in additional commitments to the facility or in what number. The department indicates that capacity can be expanded from 720 to 774 beds by adding showers and double-bunking. This expansion is estimated to cost \$63,200. Other expansion options include the reoccupation of an existing Department of Corrections facility that offers 232 beds for \$1,320,000 or building a 112 bed annex at the FCCC for \$7,900,000.⁴⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁴⁷ Department of Children and Families' 2014 Agency Legislative Bill Analysis for Bill Number PCB HFS 14-01, dated January 9, 2014.

⁴⁸ E-mail communication from DCF dated January 30, 2014, and on file with Appropriations Committee staff.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 14, 2014, the Healthy Families Subcommittee adopted an amendment to PCB HFS 14-01. The amendment:

- Authorizes the MDT to conduct clinical evaluations; and,
- Requires the MDT to send its written assessment and recommendation to the state attorney for additional review when it recommends that a person does not meet the definition of a sexually violent predator.
- Requires all members of the multidisciplinary team to review, at a minimum, the information provided in by the referring agency and any clinical evaluations prior to making a recommendation.

The bill was reported favorably as amended.

27 sexually violent predator when that person's release
 28 is imminent; amending 394.914, F.S.; authorizing the
 29 state attorney to file a petition for civil commitment
 30 regardless of the multidisciplinary team's
 31 recommendation; amending s. 394.930, F.S.; authorizing
 32 the Department of Children and Families to adopt rules
 33 for selecting, contracting with, providing routine
 34 feedback to, and evaluating multidisciplinary team
 35 members; providing an effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Subsection (3) of section 394.913, Florida
 40 Statutes, is amended to read:

41 394.913 Notice to state attorney and multidisciplinary
 42 team of release of sexually violent predator; establishing
 43 multidisciplinary teams; information to be provided to
 44 multidisciplinary teams.-

45 (2) The agency having jurisdiction shall provide the
 46 multidisciplinary team with the following information:

47 (a) The person's name; identifying characteristics;
 48 anticipated future residence; the type of supervision the person
 49 will receive in the community, if any; and the person's offense
 50 history;

51 (b) The person's criminal history, including police
 52 reports, victim statements, presentence investigation reports,

53 postsentence investigation reports, if available, and any other
 54 documents containing facts of the person's criminal incidents or
 55 indicating whether the criminal incidents included sexual acts
 56 or were sexually motivated;

57 (c) Mental health, mental status, and medical records,
 58 including all clinical records and notes concerning the person;

59 (d) Documentation of institutional adjustment and any
 60 treatment received and, in the case of an adjudicated delinquent
 61 committed to the Department of Juvenile Justice, copies of the
 62 most recent performance plan and performance summary; and

63 (e) If the person was returned to custody after a period
 64 of supervision, documentation of adjustment during supervision
 65 and any treatment received.

66 (3)(a) The secretary or his or her designee shall
 67 establish a multidisciplinary team or teams.

68 (b) Each team shall include, but is not limited to, two
 69 licensed psychiatrists or psychologists or one licensed
 70 psychiatrist and one licensed psychologist who shall each have
 71 experience in or relevant to the evaluation or treatment of
 72 persons with mental abnormalities. The department shall provide
 73 annual training to all members of the multidisciplinary team
 74 regarding the civil commitment process.

75 (c) The term of a contract between the department and a
 76 member of the multidisciplinary team may not exceed 1 year;
 77 however, the contract may be renewed if the member's performance
 78 is satisfactory. The department shall regularly provide feedback

79 to each multidisciplinary team member and formally evaluate the
 80 member's performance at least annually. A performance evaluation
 81 is based on, at a minimum, the quality of the team member's
 82 research, analysis, and reasoning, adherence to professional
 83 standards, and compliance with technical and procedural
 84 requirements.

85 (d) The multidisciplinary team shall assess and evaluate
 86 each person referred to the team. The assessment and evaluation
 87 shall include a review of the person's institutional history and
 88 treatment record, if any, the person's criminal background, and
 89 any other factor that is relevant to the determination of
 90 whether such person is a sexually violent predator. The
 91 multidisciplinary team may consult with law enforcement agencies
 92 and victim advocate groups during the assessment and evaluation
 93 process. A member of the multidisciplinary team may conduct a
 94 clinical evaluation of the person. A second clinical evaluation
 95 must be conducted if a member of the multidisciplinary team
 96 questions the conclusion of the first clinical evaluation. All
 97 members of the multidisciplinary team shall review, at a
 98 minimum, the information provided in subsection (2) and any
 99 clinical evaluations before making a recommendation.

100 (e)~~(e)~~ Before recommending that a person meets the
 101 definition of a sexually violent predator, the person must be
 102 offered a personal interview. If the person agrees to
 103 participate in a personal interview, at least one member of the
 104 team who is a licensed psychiatrist or psychologist must conduct

105 a personal interview of the person. If the person refuses to
 106 fully participate in a personal interview, the multidisciplinary
 107 team may proceed with its recommendation without a personal
 108 interview of the person.

109 (f) After all clinical evaluations have been completed,
 110 the multidisciplinary team shall provide to the state attorney a
 111 written assessment and recommendation as to whether the person
 112 meets the definition of a sexually violent predator.

113 1. The multidisciplinary team must recommend that the
 114 state attorney file a petition for civil commitment if at least
 115 two members of the multidisciplinary team determine that the
 116 person meets the definition of a sexually violent predator.

117 2. If the multidisciplinary team recommends that a person
 118 who has received a clinical evaluation does not meet the
 119 definition of a sexually violent predator, the written
 120 assessment and recommendation shall be sent to the state
 121 attorney. If the state attorney in writing questions the
 122 recommendation that the person does not meet the definition of a
 123 sexually violent predator, the multidisciplinary team must
 124 reexamine the case before a final written assessment and
 125 recommendation is provided to the state attorney.

126 (g)(d) The Attorney General's Office shall serve as legal
 127 counsel to the multidisciplinary team.

128 (h)(e)1. Within 180 days after receiving notice, there
 129 shall be a written assessment as to whether the person meets the
 130 definition of a sexually violent predator and a written

131 recommendation, which shall be provided to the state attorney.
 132 The written recommendation shall be provided by the Department
 133 of Children and Families ~~Family Services~~ and shall include the
 134 written report of the multidisciplinary team.

135 2. Notwithstanding subparagraph 1., in the case of a
 136 person for whom the written assessment and recommendation has
 137 not been completed at least 365 days before his or her release
 138 from total confinement, the department shall prioritize the
 139 assessment of that person based upon the person's release date.

140 Section 2. Subsection (2) of section 394.9135, Florida
 141 Statutes, is amended to read:

142 394.9135 Immediate releases from total confinement;
 143 transfer of person to department; time limitations on
 144 assessment, notification, and filing petition to hold in
 145 custody; filing petition after release.-

146 (2) Within 72 hours after transfer, the multidisciplinary
 147 team shall assess whether the person meets the definition of a
 148 sexually violent predator. If the multidisciplinary team
 149 determines that the person does not meet the definition of a
 150 sexually violent predator, that person shall be immediately
 151 released. If at least two members of the multidisciplinary team,
 152 after all clinical evaluations have been conducted, determine
 153 ~~determines~~ that the person meets the definition of a sexually
 154 violent predator, the team shall provide the state attorney, as
 155 designated by s. 394.913, with its written assessment and
 156 recommendation within the 72-hour period or, if the 72-hour

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157 | period ends after 5 p.m. on a working day or on a weekend or
 158 | holiday, within the next working day thereafter.

159 | Section 3. Section 394.914, Florida Statutes, is amended
 160 | to read:

161 | 394.914 Petition; contents.—After ~~Following~~ receipt from
 162 | the multidisciplinary team of the written assessment and
 163 | positive or negative recommendation as to whether the person
 164 | meets the definition of a sexually violent predator ~~from the~~
 165 | ~~multidisciplinary team~~, the state attorney, in accordance with
 166 | s. 394.913, may file a petition with the circuit court alleging
 167 | that the person is a sexually violent predator and stating facts
 168 | sufficient to support such allegation. No fee shall be charged
 169 | for the filing of a petition under this section.

170 | Section 4. Section 394.930, Florida Statutes, is amended
 171 | to read:

172 | 394.930 Authority to adopt rules.—The Department of
 173 | Children and Family Services shall adopt rules for:

174 | (1) Procedures that must be followed by members of the
 175 | multidisciplinary teams when assessing and evaluating persons
 176 | subject to this part.†

177 | (2) Education and training requirements for members of the
 178 | multidisciplinary teams and professionals who assess and
 179 | evaluate persons under this part.†

180 | (3) The criteria that must exist in order for a
 181 | multidisciplinary team to recommend to a state attorney that a
 182 | petition should be filed to involuntarily commit a person under

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183 this part. The criteria shall include, but are not limited to,
 184 whether:

185 (a) The person has a propensity to engage in future acts
 186 of sexual violence.~~†~~

187 (b) The person should be placed in a secure, residential
 188 facility.~~†~~ ~~and~~

189 (c) The person needs long-term treatment and care.

190 (4) The designation of secure facilities for sexually
 191 violent predators who are subject to involuntary commitment
 192 under this part.~~†~~

193 (5) The components of the basic treatment plan for all
 194 committed persons under this part.~~†~~

195 (6) The protocol to inform a person that he or she is
 196 being examined to determine whether he or she is a sexually
 197 violent predator under this part.

198 (7) Procedures and requirements for selecting, contracting
 199 with, providing routine feedback to, and evaluating members of
 200 the multidisciplinary team who are under contract with the
 201 department.

202 Section 5. This act shall take effect July 1, 2014.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
 2 Committee

3 Representative Harrell offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (3) of section 394.913, Florida
8 Statutes, is amended, to read:

9 394.913 Notice to state attorney and multidisciplinary
10 team of release of sexually violent predator; establishing
11 multidisciplinary teams; information to be provided to
12 multidisciplinary teams.-

13 (2) The agency having jurisdiction shall provide the
14 multidisciplinary team with the following information:

15 (a) The person's name; identifying characteristics;
16 anticipated future residence; the type of supervision the person



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17 will receive in the community, if any; and the person's offense
18 history;

19 (b) The person's criminal history, including police
20 reports, victim statements, presentence investigation reports,
21 postsentence investigation reports, if available, and any other
22 documents containing facts of the person's criminal incidents or
23 indicating whether the criminal incidents included sexual acts
24 or were sexually motivated;

25 (c) Mental health, mental status, and medical records,
26 including all clinical records and notes concerning the person;

27 (d) Documentation of institutional adjustment and any
28 treatment received and, in the case of an adjudicated delinquent
29 committed to the Department of Juvenile Justice, copies of the
30 most recent performance plan and performance summary; and

31 (e) If the person was returned to custody after a period
32 of supervision, documentation of adjustment during supervision
33 and any treatment received.

34 (3) (a) The department shall prioritize the assessment and
35 evaluation of persons referred under subsection (1) based upon
36 their release dates.

37 (b) (a) The secretary or his or her designee shall establish
38 a multidisciplinary team or teams.

39 (c) (b) Each team shall include, but is not limited to, two
40 licensed psychiatrists or psychologists or one licensed
41 psychiatrist and one licensed psychologist who shall each have
42 experience in or relevant to the evaluation or treatment of



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43 persons with mental abnormalities. The department shall provide
44 annual training to all members of the multidisciplinary team on
45 topics including but not limited to research on sexual
46 offending, clinical evaluation methods, and the civil commitment
47 process.

48 (d) Members of the team who are hired on contract are
49 limited to 1-year contracts which may be renewed. The department
50 shall regularly provide feedback to each multidisciplinary team
51 member and formally evaluate the member's performance at least
52 annually. Such evaluations must include, but need not be limited
53 to, the member's:

54 1. Scope of knowledge and understanding of clinical
55 research regarding risk factors for sexual deviance and
56 recidivism;

57 2. Ability to identify relevant clinical data from review
58 of criminal records and other information, including
59 recommendations of law enforcement and insights from victim
60 advocates; and

61 3. Ability to apply clinical information in a structured
62 assessment of both static risk factors and dynamic predictors of
63 sexual recidivism.

64 (e) The multidisciplinary team shall assess and evaluate
65 each person referred to the team. The assessment and evaluation
66 shall include a review of the person's institutional history and
67 treatment record, if any, the person's criminal background, and
68 any other factor that is relevant to the determination of



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69 whether such person is a sexually violent predator. The
70 multidisciplinary team may consult with law enforcement agencies
71 and victim advocate groups during the assessment and evaluation
72 process. A member of the multidisciplinary team may conduct a
73 clinical evaluation of the person. A second clinical evaluation
74 must be conducted if a member of the multidisciplinary team
75 questions the conclusion of the first clinical evaluation. All
76 members of the multidisciplinary team shall review, at a
77 minimum, the information provided in subsection (2) and any
78 clinical evaluations before making a recommendation.

79 (f) ~~(e)~~ Before recommending that a person meets the
80 definition of a sexually violent predator, the person must be
81 offered a personal interview. If the person agrees to
82 participate in a personal interview, at least one member of the
83 team who is a licensed psychiatrist or psychologist must conduct
84 a personal interview of the person. If the person refuses to
85 fully participate in a personal interview, the multidisciplinary
86 team may proceed with its recommendation without a personal
87 interview of the person.

88 (g) The multidisciplinary team shall give equal
89 consideration in the evaluation and assessment of an offender
90 whose sexually violent offense was an attempt, criminal
91 solicitation, or conspiracy, in violation of s. 777.04, to
92 commit a sexually violent offense enumerated in s. 394.912(9) as
93 it does in the evaluation and assessment of an offender who
94 completed such an enumerated sexually violent offense. A rule



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95 or policy may not be established which reduces the level of
96 consideration because the sexually violent offense was an
97 attempt, criminal solicitation, or conspiracy.

98 (h) After all clinical evaluations have been completed,
99 the department shall provide to the state attorney a written
100 assessment and recommendation as to whether the person meets the
101 definition of a sexually violent predator.

102 1. The multidisciplinary team must recommend that the
103 state attorney file a petition for civil commitment if at least
104 two members of the multidisciplinary team determine that the
105 person meets the definition of a sexually violent predator.

106 2. If the multidisciplinary team recommends that a person
107 who has received a clinical evaluation does or does not meet the
108 definition of a sexually violent predator, the written
109 assessment and recommendation shall be sent to the state
110 attorney. If the state attorney in writing questions the
111 recommendation that the person does or does not meet the
112 definition of a sexually violent predator, the multidisciplinary
113 team must reexamine the case before a final written assessment
114 and recommendation is provided to the state attorney.

115 (i) The department shall maintain data by case on the
116 recommendations of the clinical evaluators in their clinical
117 evaluations, the final recommendations of the multidisciplinary
118 team, the petitions filed by state attorneys, and the results of
119 those petitions. The department shall at least annually analyze
120 this data to assess inter-rater reliability between clinical



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121 evaluators and the level of agreement between an individual
122 evaluator's recommendation and the multidisciplinary team's
123 recommendation for the same individual. The department shall
124 also assess trends in multidisciplinary team recommendations,
125 state attorneys' filing, and the results of such filings. State
126 attorneys shall provide information to the department regarding
127 filings and their results as necessary for the department to
128 maintain this data.

129 (j) ~~(d)~~ The Attorney General's Office shall serve as legal
130 counsel to the multidisciplinary team.

131 (k) ~~(e)~~ 1. After all clinical evaluations have been completed
132 but at least one month prior to the person's scheduled release
133 date, provided the referral date is 90 days or more from the
134 person's scheduled release date, the multidisciplinary team
135 shall provide to the state attorney ~~Within 180 days after~~
136 ~~receiving notice, there shall be a written assessment and~~
137 ~~recommendation~~ as to whether the person meets the definition of
138 a sexually violent predator ~~and a written recommendation, which~~
139 ~~shall be provided to the state attorney. If the referral date is~~
140 ~~less than 90 days from the person's scheduled release date, the~~
141 ~~multidisciplinary team shall provide to the state attorney a~~
142 ~~written assessment and recommendation as to whether the person~~
143 ~~meets the definition of a sexually violent predator as soon as~~
144 ~~is practicable prior to the person's scheduled release date. The~~
145 written recommendation shall be provided by the Department of



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146 Children and Families ~~Family Services~~ and must shall include the
147 written report of the multidisciplinary team.

148 ~~2. Notwithstanding subparagraph 1., in the case of a~~
149 ~~person for whom the written assessment and recommendation has~~
150 ~~not been completed at least 365 days before his or her release~~
151 ~~from total confinement, the department shall prioritize the~~
152 ~~assessment of that person based upon the person's release date.~~

153 Section 2. Subsection (2) of section 394.9135, Florida
154 Statutes, is amended to read:

155 394.9135 Immediate releases from total confinement;
156 transfer of person to department; time limitations on
157 assessment, notification, and filing petition to hold in
158 custody; filing petition after release.-

159 (2) Within 72 hours after transfer, the multidisciplinary
160 team shall assess whether the person meets the definition of a
161 sexually violent predator. If the multidisciplinary team
162 determines that the person does not meet the definition of a
163 sexually violent predator, that person shall be immediately
164 released. If at least two members of the multidisciplinary team,
165 after all clinical evaluations have been conducted, determine
166 ~~determines~~ that the person meets the definition of a sexually
167 violent predator, the team shall provide the state attorney, as
168 designated by s. 394.913, with its written assessment and
169 recommendation within the 72-hour period or, if the 72-hour
170 period ends after 5 p.m. on a working day or on a weekend or
171 holiday, within the next working day thereafter.



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172 Section 3. Section 394.914, Florida Statutes, is amended
173 to read:

174 394.914 Petition; contents.—After Following receipt from
175 the multidisciplinary team of the written assessment and
176 positive or negative recommendation as to whether the person
177 meets the definition of a sexually violent predator from the
178 multidisciplinary team, the state attorney, in accordance with
179 s. 394.913, may file a petition with the circuit court alleging
180 that the person is a sexually violent predator and stating facts
181 sufficient to support such allegation. No fee shall be charged
182 for the filing of a petition under this section.

183 Section 4. Section 394.930, Florida Statutes, is amended
184 to read:

185 394.930 Authority to adopt rules.—The Department of
186 Children and Family Services shall adopt rules for:

187 (1) Procedures that must be followed by members of the
188 multidisciplinary teams when assessing and evaluating persons
189 subject to this part.†

190 (2) Education and training requirements for members of the
191 multidisciplinary teams and professionals who assess and
192 evaluate persons under this part.†

193 (3) The criteria that must exist in order for a
194 multidisciplinary team to recommend to a state attorney that a
195 petition should be filed to involuntarily commit a person under
196 this part. The criteria shall include, but are not limited to,
197 whether:



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198 (a) The person has a propensity to engage in future acts
199 of sexual violence.~~†~~

200 (b) The person should be placed in a secure, residential
201 facility.~~†~~and

202 (c) The person needs long-term treatment and care.

203 (4) The designation of secure facilities for sexually
204 violent predators who are subject to involuntary commitment
205 under this part.~~†~~

206 (5) The components of the basic treatment plan for all
207 committed persons under this part.~~†~~

208 (6) The protocol to inform a person that he or she is
209 being examined to determine whether he or she is a sexually
210 violent predator under this part.

211 (7) Procedures and requirements for selecting, contracting
212 with, providing routine feedback to, and evaluating members of
213 the multidisciplinary team who are under contract with the
214 department.

215 Section 5. This act shall take effect July 1, 2014.

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217

218

219 T I T L E A M E N D M E N T

220 Remove everything before the enacting clause and insert:

221 An act relating to sexually violent predators; amending s.
222 394.913, F.S.; requiring the department to prioritize
223 assessments and evaluations based upon the person's release



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224 date; specifying experience, training, and contracting
225 requirements for the multidisciplinary team; authorizing the
226 multidisciplinary team to consult with law enforcement agencies
227 and victim advocate groups as part of the assessment and
228 evaluation process; authorizing a clinical evaluation; requiring
229 a second clinical evaluation under certain circumstances;
230 mandating review of information by the multidisciplinary team
231 before making a recommendation to the state attorney; requiring
232 the multidisciplinary team to give equal consideration to an
233 attempt, criminal solicitation, or conspiracy to commit certain
234 offenses as it does to the commission of such offenses;
235 requiring the multidisciplinary team to provide the state
236 attorney with a recommendation as to whether the person meets
237 the definition of a sexually violent predator; requiring the
238 multidisciplinary team to recommend that the state attorney file
239 a civil commitment petition under certain circumstances;
240 requiring the multidisciplinary team to send a recommendation to
241 the state attorney for further review under certain
242 circumstances if a person does or does not meet the definition
243 of a sexually violent predator; requiring the multidisciplinary
244 team to reexamine the case under certain circumstances;
245 requiring the department to maintain and annually assess certain
246 data; requiring state attorneys to provide information to the
247 department so that they may maintain the required data; revising
248 the timeframes for the written assessment; amending s. 394.9135,
249 F.S.; specifying the process for determining if a person meets

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250 the definition of a sexually violent predator when that person's
251 release is imminent; amending 394.914, F.S.; authorizing the
252 state attorney to file a petition for civil commitment
253 regardless of the multidisciplinary team's recommendation;
254 amending s. 394.930, F.S.; authorizing the Department of
255 Children and Families to adopt rules for selecting, contracting
256 with, providing routine feedback to, and evaluating
257 multidisciplinary team members; providing an effective date.