

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1384

INTRODUCER: Senator Rodrigues

SUBJECT: Involuntary Civil Commitment of Sexually Violent Predators

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 1384 amends s. 394.9155, F.S., providing that the Florida Rules of Criminal Procedure apply when competency is at issue. If at any time during a proceeding a person is found to be mentally incompetent to proceed, the proceedings must cease until the person is determined competent. The court must enter an order setting a competency hearing if there are reasonable grounds to believe the respondent is incompetent. The court may order the defendant be examined by no more than three experts. Additionally, the bill provides the court with authority to commit the respondent for competency restoration upon certain findings.

The bill amends s. 394.918, F.S., providing that the court must biannually evaluate the competency of a person who has been found incompetent and has been committed as a sexually violent predator. If the person's competency has been restored, the court must proceed with the annual review settings in this section. If the person's competency has not been restored, competency treatment must continue at the commitment facility.

This bill is effective July 1, 2021.

II. Present Situation:

Involuntary Civil Commitment for Sexually Violent Predators

In 1998, the Legislature enacted the Jimmy Ryce Involuntary Civil Commitment of Sexually Violent Predators Act (Jimmy Ryce Act).¹ The Jimmy Ryce Act created a civil commitment process for sexually violent predators that is similar to the Baker Act (used to involuntarily commit and treat persons with mental illness).²

¹ Chapter 394, part V, F.S.; Ch. 98-64, L.O.F.

² Section 394.910, F.S.

A sexually violent predator (SVP) is a person who has been convicted of a sexually violent offense and has a mental abnormality³ or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.⁴

“Sexually violent offense,” is defined to mean:

- Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.;
- Kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing:
 - Sexual battery; or
 - Lewd, lascivious, or indecent assault or act upon or in the presence of the child;
- Sexual battery in violation of s. 794.011, F.S.;
- Lewd, lascivious, or indecent assault or act upon or in the presence of the child in violation of ss. 800.04 or 847.0135(5), F.S.;
- An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense;
- Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense listed above or any federal conviction or conviction in another state for a felony offense that would be a sexually violent offense in Florida;
- 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 motivated⁵; or
- A criminal offense in which the state attorney refers a person to the department for civil commitment proceedings pursuant to s. 394.9125, F.S.⁶

Under the Jimmy Ryce Act, the agency with jurisdiction over a person who has been convicted of a sexually violent offense and is nearing the end of his or her criminal sentence, must give written notice to the multidisciplinary team⁷ established under the Department of Children and Families (DCF) and a copy of such notice to the state attorney.⁸ The multidisciplinary team must assess and evaluate each person referred to the team. The assessment and evaluation must include a review of the person’s institutional history and treatment record, the person’s criminal background, and any other factor that is relevant to determine whether a person is a SVP.⁹ Before recommending that a person meets the definition of a SVP, the person must be offered a personal interview with at least one person of the team who is a licensed psychiatrist or psychologist. If

³ Section 394.912(5), F.S., provides that “mental abnormality,” means a mental condition affecting a person’s emotional or volitional capacity which predisposes the person to commit sexually violent offenses.

⁴ Section 394.912(10), F.S.

⁵ Section 394.912(8), F.S., provides that “sexually motivated,” means that one of the purposes for which the defendant committed the crime was for sexual gratification.

⁶ Section 394.912(9)(a)-(i), F.S.

⁷ Section 394.913(3)(a) and (b), F.S., provides that the secretary of the DCF or his or her designee must establish a multidisciplinary team or teams. Each team must include, but need not be limited to, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist who must each have experience in or relevant to the evaluation or treatment of persons with mental abnormalities.

⁸ Section 394.913(1), F.S.

⁹ Section 394.913(3)(d), F.S.

the person refuses to fully participate in the interview, the team must proceed with its recommendation without the interview.¹⁰

The multidisciplinary team must provide the state attorney a written assessment and recommendation as to whether the person meets the definition of a SVP at least 1 month before the person's scheduled release date from the Department of Corrections, the Department of Juvenile Justice, or the DCF. At least 24 hour notice must be provided if the person is being released from a county or municipal jail.¹¹

Following receipt of DCF's recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the offender is a SVP.¹² If the judge determines probable cause exists to believe that the person is a SVP, the person is detained in a secure facility.¹³ The court or jury must determine by clear and convincing evidence that an offender meets the definition of a sexually violent predator.¹⁴ If such determination is made, upon the expiration of incarceration on all criminal sentences and dispositions of any detainers, the person must be committed to the custody of the DCF for control, care, treatment, and rehabilitation of criminal offenders. The person must remain in custody of the DCF until the person's mental abnormality or personality disorder has so changed that it is safe for the person to be out of custody.¹⁵

A person committed to the DCF under the Jimmy Ryce Act must have his or her mental condition examined at least once per year.¹⁶ Additionally, the DCF must provide the person with annual written notice of the person's right to petition the court for release. The court must hold a limited hearing to determine whether there is probable cause to believe the person's condition has so changed that it is safe for the person to be out of custody and that the person will not engage in acts of sexual violence if released. The person has a right to be represented by counsel at the probable cause hearing.¹⁷

The court must set a trial if it determines that there is probable cause to believe it is safe for the person to be released.¹⁸ At the trial, the person is entitled to be present and is entitled to the benefit of all constitutional protections afforded at the initial trial, except for the right to a jury. At the trial, the state must prove by clear and convincing evidence that the person's mental condition remains such that it is not safe for the person to be released, and if released, the person is likely to engage in acts of sexual violence.¹⁹

¹⁰ Section 394.913(3)(f), F.S.

¹¹ Section 349.913(3)(g), F.S.

¹² Section 394.914, F.S.

¹³ Section 394.915(1), F.S.

¹⁴ Section 394.917(1), F.S.

¹⁵ Section 394.917(2), F.S.

¹⁶ Section 394.917(1), F.S.

¹⁷ Section 394.918(2), F.S.

¹⁸ *Id.*

¹⁹ Section 394.918(4), F.S.

Rules of Procedure and Evidence

In all civil commitment proceedings for SVP's, the following apply:

- The Florida Rules of Civil Procedure apply unless otherwise specified.
- The Florida Rules of Evidence apply unless otherwise specified.
- The psychotherapist-patient privilege under s. 90.503, F.S., does not exist or apply for communications relevant to an issue in proceedings to involuntarily commit a person.
- The court may consider evidence of prior behavior by a person who is subject to proceedings if such evidence is relevant to prove that the person is a SVP.
- Hearsay evidence, including reports of a member of the multidisciplinary team or reports produced on behalf of the multidisciplinary team, is admissible in proceedings unless the court finds that such evidence is not reliable. However, in trial hearsay evidence may not be used as the sole basis for committing a person.
- Rules adopted under s. 394.930, F.S.,²⁰ must not constitute:
 - An evidentiary predicate for the admission of any physical evidence or testimony.
 - A basis for excluding or otherwise limiting the presentation of any physical evidence or testimony in judicial proceedings.
 - Elements of the cause of action that the state needs to allege or prove in judicial proceedings.
- If the person refuses to be interviewed by or fully cooperate with members of the multidisciplinary team or any state mental health expert, the court may, in its discretion:
 - Order the person to allow members of the multidisciplinary team and any state mental health experts to review all mental health reports, tests, and evaluations by the person's mental health expert or experts.
 - Prohibit the person's mental health experts from testifying concerning mental health tests, evaluations, or examinations of the person.²¹

The failure of any party to comply with these rules does not constitute a defense in any judicial proceeding.²²

Competency

A defendant is incompetent to proceed for the purpose of a criminal proceeding if he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the

²⁰ Section 394.930, F.S., provides that the DCF must adopt rules for: (1) Procedures that must be followed by members of the multidisciplinary team when assessing and evaluating persons; (2) Education and training requirements for members of the multidisciplinary teams and professionals who assess and evaluate; (3) The criteria that must exist in order for a multidisciplinary team to recommend to a state attorney that a petition should be filed to involuntarily commit a person; (4) The designation of secure facilities for SVP's who are subject to involuntary commitment; (5) The components of the basic treatment plan for all committed persons; and (6) The protocol to inform a person that he or she is being examined to determine whether he or she is a SVP.

²¹ Section 394.9155(1)-(7), F.S.

²² *Id.*

proceedings against him or her.²³ A defendant may be found incompetent due to mental illness,²⁴ or intellectual disability, or autism.²⁵

Section 394.9155, F.S., provides the Florida Rules of Civil Procedure (Civil Rules) apply in civil commitment proceedings for SVPs. However, the Civil Rules do not address circumstances in which the competency of the respondent in the civil commitment proceeding is in question. However, the Florida Rules of Criminal Procedure (Criminal Rules) require a person accused of a criminal offense or a violation of probation to be competent at each material stage²⁶ of a criminal proceeding.²⁷ If at any time the court has reasonable grounds to believe that a defendant is incompetent to proceed, court proceedings against the defendant must cease and the court must appoint no more than three experts to examine the defendant.²⁸

In considering the issue of competence to proceed, the experts appointed by the court are required to consider and include in their report:

- The defendant’s capacity to:
 - Appreciate the charges or allegations against him or her;
 - Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
 - Understand the adversary nature of the legal process;
 - Disclose to counsel facts pertinent to the proceedings at issue;
 - Manifest appropriate courtroom behavior;
 - Testify relevantly; and
 - Any other factors deemed relevant by the experts.²⁹

²³ Sections 916.12(1), and 916.3012(1), F.S.

²⁴ See ch. 916, Part II.; Section 916.106(14), F.S., provides that “mental illness,” means an impairment of the emotional processes that exercise conscious control of one’s actions, or of the ability to perceive or understand reality, which impairment substantially interferes with the defendant’s ability to meet the ordinary demands of living. For the purposes of this chapter, the term does not apply to defendants who have only an intellectual disability or autism or a defendant with traumatic brain injury or dementia who lacks a co-occurring mental illness, and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment.

²⁵ See ch. 916, Part III.; Section 393.063(5) and (24), F.S., provides that “autism” means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests; and “intellectual disability,” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. “Adaptive behavior,” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. “Significantly subaverage general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

²⁶ “A material stage of a criminal proceeding” includes the trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, violation of probation or violation of community control proceedings, sentencing, hearings on issues regarding a defendant’s failure to comply with court orders or conditions, or other matters where the mental competence of the defendant is necessary for a just resolution of the issues being considered. Fla. R. Crim. P. 3.210.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Fla. R. Crim. P. 3.211.

If the court finds a defendant incompetent to proceed, or that the defendant's competence depends upon continued treatment for mental illness or intellectual disability, the court must consider issues relating to treatment necessary to restore or maintain the defendant's competence. The court may order the defendant:

- Receive community based treatment;
- Receive treatment administered at the custodial facility, or be transferred to another facility for treatment; or
- Be committed for treatment to restore competency if the court finds:
 - The defendant meets criteria for commitment as set forth by statute;
 - There is a substantial probability that the mental illness or intellectual disability causing the defendant's incompetence will respond to treatment and that the defendant will regain competency to proceed in the reasonably foreseeable future;
 - Treatment appropriate for restoration of the defendant's competence to proceed is available; and
 - No appropriate treatment alternative less restrictive than that involving commitment is available.³⁰

III. Effect of Proposed Changes:

This bill amends s. 394.9155, F.S., providing that the Florida Rules of Criminal Procedure apply when competency is at issue. If at any time during a proceeding a person is found to be mentally incompetent to proceed, the proceedings must cease until the person is determined competent.

Upon its own motion, the motion of counsel for the respondent, or the state, the court must enter an order setting a competency hearing if there are reasonable grounds to believe the respondent is incompetent. The court may order the defendant be examined by no more than three experts. Additionally, the bill provides the court with authority to commit the respondent for competency restoration upon certain findings. Attorneys for the state and respondent may be present at the examination.

If the court finds the respondent is incompetent to proceed, or is competent but that competency depends on continuation of appropriate treatment for mental illness or intellectual disability, the court must order the person into treatment at an appropriate secure facility to have his or her competency restored or to maintain competency.

The facility must admit the person for treatment. Within 6 months of admission, the facility must file a report with the court that addresses the person's competency and that considers the factors in Rule 3.211, Florida Rules of Criminal Procedure. The clerk must provide copies of the report to all parties. If at any time during the initial 6 month period or any period of extended time ordered:

- The administrator of the facility determines that the respondent no longer meets criteria for commitment for incompetency or has become competent to proceed, the facility must file a report with the court.
- Counsel for the respondent has reasonable grounds to believe that the respondent is competent to proceed or no longer meets the criteria for continued treatment, counsel may

³⁰ Fla. R. Crim. P. 3.212.

move for a hearing on the issue of competency. The motion must contain a certificate of counsel certifying that the motion is made in good faith and on reasonable grounds that the respondent is competent to proceed or no longer meets criteria for commitment for incompetency.

If the court has reasonable grounds to believe that the respondent is competent, the court must order the facility to file a report addressing competency and set a hearing. The court must hold a hearing within 30 days after a report is filed by a facility. If the court finds the respondent:

- Incompetent, and meets criteria for continued treatment, the court must ordered continued treatment.
- Competent, the court must enter an order stating such finding and proceed with a hearing or trial.

The bill amends s. 394.918, F.S., providing that the court must biannually evaluate the competency of a person who has been found incompetent and has been committed as a sexually violent predator. If the person's competency has been restored, the court must proceed with the annual review settings in this section. If the person's competency has not been restored, competency treatment must continue at the commitment facility.

This bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.9155 and 394.918.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.