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RECIDIVISM RECOURSE: CRACKING DOWN ON FLORIDA'S SEXUALLY VIOLENT PREDATORS

Nicole Canha*

I. HISTORY OF THE JIMMY RYCE ACT

In 1999, the Florida Legislature passed a statute in response to the brutal rape and murder of a nine-year-old boy, Jimmy Ryce.¹ The statute was intended to protect citizens from a relatively small but nonetheless, extremely dangerous group of individuals—sexual predators—many of whom are released from prison only to commit similar, if not worse, crimes.² When Governor Lawton Chiles signed the bill into law he said “[n]o child should endure what Jimmy Ryce did.”³ This statement now raises the question—why then, do so many children and adults continue to suffer?

It has been over a decade since the statute was passed, and the Legislature is once again addressing the issue of violent sexual predators who are hastily released from confinement.⁴ According to an investigation led by the *Sun Sentinel*, since the enactment of the statute there have been at least 594 sex offenders who were evaluated for civil commitment and decidedly let go, who have now been convicted of a new sex offense in Florida.⁵ Amongst those who reoffended, nearly a quarter did so within six months of being released.⁶ “From South Florida to the Panhandle, these men have cut a fresh trail of pain, molesting more than 460 children, raping 121 women, and killing 14.”⁷ The pressing need to refine the statute sparked even more attention this past summer when eight-year-old Cherish Perrywinkle’s body was discovered behind a Jacksonville church.⁸ Her accused killer, Donald Smith, has been a registered sex offender since 1993 and was released from jail just three weeks prior to her murder.⁹ His most recent arrest was for “lewd and lascivious behavior—a misdemeanor—when in fact he had impersonated a [Department of Children and Families] worker in an effort to

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1. Sally Kestin & Dana Williams, *Sex Predators Unleashed*, *SUN SENTINEL* (Aug. 18, 2013), <http://interactive.sun-sentinel.com/jimmy-ryce/investigation.html>.

2. See FLA. STAT. § 394.910 (2014); Kestin & Williams, *supra* note 1.

3. Kestin & Williams, *supra* note 1.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. Mary K. Palka, Teresa Stepzinski & Jim Schoettler, *Cherish Perrywinkle, 8, Found Dead*, *ST. AUGUSTINE REC.* (Jun. 22, 2013), <http://staugustine.com/news/local-news/2013-06-22/charish-perriwinkle-8-found-dead#.UseBfpGp1g0>.

9. *Id.*

abduct a girl.”¹⁰ This misdemeanor charge ultimately shielded Smith from being evaluated under the civil commitment statute—just one of the statute’s many shortcomings.¹¹

The Jimmy Ryce Act, like many other involuntary civil commitment statutes, has been scrutinized for various reasons.¹² First and foremost, it has been examined for its constitutionality under the Double Jeopardy clause.¹³ Second and most recently, the statute’s interpretation and worthiness is now being questioned.¹⁴ What exactly defines an extremely dangerous sex predator? The answer to this question is problematic because the statute itself does not have a clear-cut procedure to commit sexual predators.¹⁵ In order to prevent sex offenders from slipping through the cracks of the statute, nearly all of them would need to be confined indefinitely, but the statute only calls for a “small but extremely dangerous number of sexually violent predators.”¹⁶ This leads to the next question—how can the State set up a system where it can successfully differentiate those sexual predators who are likely to attack again from those who are not?

Currently the State has a team of psychologists who evaluate each high-risk sex offender on a case-by-case basis.¹⁷ The psychologists consider all direct and circumstantial evidence and use different tools in assessing the offender’s risk to society.¹⁸ According to Dan Montaldi, the current director of Florida’s Sexually Violent Predator Program, “[s]creeners make the best decisions they can with the information available at the time. Signs of future violence are not always apparent,”¹⁹ which sometimes inadvertently leads to the premature release of offenders who should have been sent to confinement.²⁰

This paper will first briefly discuss the constitutional limitations arising from the statute. It will then provide psychological and neurological research, which explores possible deficits and abnormalities in the brain functioning of sexual predators. The paper will then shift to a discussion on the procedures currently utilized by the State to detect sex offenders who are considered extremely dangerous and the treatment process implemented to rehabilitate those offenders. It will conclude with possible statutory alterations that the Florida Legislature seeks to implement and an analysis of the proposed bills, which were enacted this year.

II. CONSTITUTIONAL LIMITATIONS

Florida Statutes, section 394.910 reads:

10. Margie Menzel, *Fla. Lawmakers to Revisit Sex Offender Laws*, TAMPA TRIB. (Sept. 24, 2013), <http://tbo.com/fla-lawmakers-to-revisit-sex-offender-laws-20130924/>.

11. *Id.*

12. *See* Kestin & Williams, *supra* note 1.

13. *See id.*

14. *See id.*

15. *See id.*

16. *See* FLA. STAT. § 394.910 (2014); Kestin & Williams, *supra* note 1.

17. Kestin & Williams, *supra* note 1.

18. *Id.*

19. *Id.*

20. *See id.*

The Legislature finds that a small but extremely dangerous number of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for involuntary treatment under the Baker Act, part I of this chapter, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under the Baker Act, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities, and those features render them likely to engage in criminal, sexually violent behavior. The Legislature further finds that the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedures under the Baker Act for the treatment and care of mentally ill persons are inadequate to address the risk these sexually violent predators pose to society. The Legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from the traditional treatment modalities for people appropriate for commitment under the Baker Act. It is therefore the intent of the Legislature to create a civil commitment procedure for the long-term care and treatment of sexually violent predators.²¹

The Jimmy Ryce Act, despite its unanimity amongst the Florida Legislature, has brought up several controversial issues under the United States Constitution including civil rights violations under the Ex Post Facto and Double Jeopardy clauses, in addition to substantive due process rights.²² In 1999, the Florida Legislature adopted this statute, mirroring a preceding Kansas statute that was held constitutional by the Supreme Court of the United States.²³ In the case of *Kansas v. Hendricks*, the Supreme Court considered the Kansas statute civil rather than criminal.²⁴ Accordingly, basic criminal protections available under the Ex Post Facto clause and Double Jeopardy clause are considered inapplicable under civil statutes such as the Jimmy Ryce Act.²⁵

The Ex Post Facto clause “[p]rohibits states from enacting legislation that relates back to a prior act if the legislation”²⁶ attempts to: (1) make a crime more severe than when it was first committed; (2) increase the punishment for the

21. FLA. STAT. § 394.910 (2014).

22. Mari M. Presley, *Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act: Replacing Criminal Justice with Civil Commitment*, 26 FLA. ST. U. L. REV. 487, 488 (1999).

23. *Id.*

24. *Id.*; see *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997).

25. Presley, *supra* note 22.

26. *Id.*

original offense; (3) modify evidentiary rules in an effort to obtain a conviction; or (4) outlaw behavior that was considered innocent when the act was originally committed.²⁷ Essentially, it safeguards a criminal's expectations for the likely outcome of his or her punishment and prevents legislative abuse.²⁸ Likewise, the Double Jeopardy clause, which is also afforded to criminal prosecutions, protects a person from being punished twice for the same offense.²⁹ In addition to the two constitutional clauses at issue, the right to substantive due process also becomes problematic for the courts.³⁰ "Labeling sexually violent predators as mentally insane is controversial because there is no proof that [sex] predators have disturbed mental processes."³¹ Many argue that the statute simply furthers punishment for those most hated criminals, keeping them incarcerated long after their original sentence has expired.³² The Jimmy Ryce Act ultimately attempts to circumvent the constitutional protections recognized by our criminal justice system, by classifying violent sexual predators as civilly insane rather than simply charging them as criminals.³³

III. THE NEW ISSUE ARISING

While the courts have previously addressed the constitutional limitations under the Jimmy Ryce Act, there remains one issue that the Florida Legislature is now focused on—its reliability. Within the first eleven years since the enactment of the law, "the state identified an average of 128 predators a year for involuntary detention. But in 2010, that number began to drop dramatically, to just 19 [in 2012]."³⁴ The evaluation process is failing rapidly and lawmakers are now discussing topics regarding sentencing guidelines, risk assessment, and treatment evaluations, all in an effort to either modify the existing statute or create a new one.³⁵ According to House Criminal Justice Chairman Representative, Matt Gaetz, the changes will not take the form of just one bill, but instead, it "will be many, many bills."³⁶

After the disturbing investigation by the *Sun Sentinel*, and the death of Cherish Perrywinkle, State Representative Janet Adkins took the lead in holding a legislative hearing regarding the current sex offender laws in Florida.³⁷ The hearing provided "an opportunity to gather input from both the public and subject matter

27. *Id.*; see U.S. CONST. art. I, § 9, cl. 3.

28. Presley, *supra* note 22.

29. Presley, *supra* note 22; see U.S. CONST. amend. V.

30. Presley, *supra* note 22.

31. *Id.* at 489.

32. *Id.*

33. *Id.*

34. *What We Think: Fix Law, Stop Sexual Predators*, ORLANDO SENTINEL (Aug. 21, 2013), http://articles.orlandosentinel.com/2013-08-21/news/os-ed-sex-predators-unleashed-20130820_1_sexual-predators-fix-law-serial-rapist.

35. Menzel, *supra* note 10.

36. *Id.*

37. *Id.*

experts about necessary changes to legislation governing sex offender crimes.”³⁸ As a result, there have been several bill proposals attempting to change the risk assessment and treatment processes that have now been enacted by the Florida Legislature.³⁹

IV. PSYCHOLOGICAL AND PHYSIOLOGICAL ASSESSMENTS OF PREDATORS

Florida Statutes, section 394.912 defines a sexually violent predator as anyone who: “(a) Has been convicted of a sexually violent offense; and (b) 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.”⁴⁰ In order to establish whether or not a sex offender is considered a high risk to society, in that he or she will likely strike again, it is important to assess the psychological and physiological realm of those with the disorder. This next section will discuss potential cognitive deficits and brain abnormalities, and the effect both have on the ability to rehabilitate the sex offender to essentially avoid recidivism.

A. Cognitive Deficits

Researchers have recognized childhood victimization and lack of empathy as factors contributing to sexual offending.⁴¹ “It is thought that lack of victim empathy allows an offender to eliminate or avoid any ‘anxiety, guilt or loss of self-esteem’ as a result of his actions.”⁴² If a child molester had the capability of empathizing with children it would likely inhibit his abusive behavior or inappropriate sexual urges.⁴³ Empathy is commonly understood as a trait that is stable across individuals and situations, “that has one or two components: a perspective-taking component . . . and/or an affective component.”⁴⁴ The perspective-taking component is based on a person’s ability to adopt the viewpoint of another, while the affective component requires the “vicarious matching of another person’s emotional state.”⁴⁵

A “victim to victimizer” approach has been evaluated in sex offenders.⁴⁶ Researchers suggest that childhood sexual abuse is a contributing factor to future sex offending.⁴⁷

38. Matthew Dixon, *Janet Adkins to Host Hearing on Sex Offender*, FLA. TIMES-UNION (Aug. 26, 2013, 4:06 PM), <http://members.jacksonville.com/opinion/blog/403455/matt-dixon/2013-08-26/janet-adkins-host-hearing-sex-offender-laws>.

39. Dana Williams & Sally Kestin, *Lawmakers File Sex Predator Legislation*, SUN SENTINEL (Dec. 17, 2013), http://articles.sun-sentinel.com/2013-12-17/news/fl-sex-predators-legislation-filed-20131217_1_cherish-perrywinkle-offenders-predator-law.

40. FLA. STAT. § 394.912(10) (2014).

41. Christmas N. Covell, *Empathetic Deficits in Sexual Offenders: An Integration of Affective, Social, and Cognitive Constructs*, 7 U. NEB. 1, 1 (2002).

42. *Id.* at 2–3.

43. *See id.* at 3.

44. *Id.* at 4.

45. *Id.* (citation omitted).

46. Dominique Simons, Sandy K. Wurtele & Peggy Heil, *Childhood Victimization and Lack of Empathy as Predictors of Sexual Offending Against Women and Children*, 17 J. INTERPERSONAL VIOLENCE 1291, 1292 (2002).

This “victim to victimizer” theory postulates that sexual offenders [who] have experienced sexual abuse as children . . . re-enact this trauma in adolescence and adulthood. Research findings have illustrated that approximately 25% to 70% of adult sexual offenders in treatment or prison settings report having been sexually abused during childhood.⁴⁸

The question is how the interaction between child abuse and lack of empathy leads to a propensity for sexual offending.

When children become victims of abuse at home, their emotional needs are either improperly responded to or completely ignored.⁴⁹ “They attain little experience [with] empathic responding . . . or [an] opportunity to learn to identify and experience the affective cues and states of others.”⁵⁰ Male victims of childhood abuse have a tendency to show increased aggression and coercive behavior later on through adolescence and adulthood.⁵¹ From a cognitive standpoint, when victims of childhood abuse begin shaping the behavior of their abusers, they may grow up to be insensitive adults who are capable of abusing others.⁵² For this reason, the “victim to victimizer” approach should be considered in the offender’s risk assessment to evaluate whether and to what extent he or she was a victim of childhood abuse.

B. Brain Abnormalities

As new brain imaging techniques emerge, researchers are able to progressively evaluate structural and physiological brain abnormalities in sex offenders.⁵³ In particular, with functional magnetic resonance imaging (fMRI), research indicates that the prefrontal cortex and amygdala may control impulses and the ability to exhibit normal social behavior, in addition to the ability to make moral and ethical judgments.⁵⁴ Likewise, “[s]tructural lesions of the prefrontal cortex may give rise to a syndrome of acquired psychopathy”⁵⁵ that may cause an individual to develop symptoms associated with psychopathy such as loss of empathy, as well as impulsive and irresponsible behavior,⁵⁶ which are commonly associated with sexual predators.⁵⁷

Researchers suggest if lesions to the prefrontal cortex can lead to acquired psychopathy, then functional under-activity of the prefrontal cortex may trigger

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. Simons et al., *supra* note 46, at 1292.

53. Harold Dressing, Alexander Sartorius, & Andreas Meyer-Lindenberg, *Implications of fMRI and Genetics for the Law and the Routine Practice of Forensic Psychiatry*, 14 *NEUROCASE* 7, 8 (2008).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

similar results.⁵⁸ To test this hypothesis, an fMRI study was conducted with ten emotionally detached psychopaths and ten healthy control subjects.⁵⁹ Results indicated that:

[The] [p]sychopaths displayed *no significant activity* in the limbic-prefrontal circuit during an aversive delay conditioning paradigm, while healthy controls showed *enhanced differential activation* in the limbic-prefrontal circuit during the acquisition of fear. [Researchers] concluded that the dissociation of emotional and cognitive processing may be a neural basis of the lack of anticipation of aversive events in psychopaths, and *therefore [psychopaths] will remain unable to learn from experience.*⁶⁰

As a result, if some psychologists argue that psychopaths are unable to learn empathetic responses, then indefinite confinement may not be the best approach in dealing with sexually violent predators.⁶¹

Researchers are beginning to refine their studies in psychopathy to more specific categories of individuals, such as violent sex offenders and pedophiles.⁶² In 2008, Alexander Sartorius evaluated abnormal amygdala activation in pedophiles.⁶³ Because the amygdala controls the processing of emotions, Sartorius hypothesized differences “in activation patterns among pedophile sex-offenders (attracted to boys; while viewing boys) compared to normal heterosexual control subjects.”⁶⁴ The study involved ten male subjects who were all convicted sex offenders, specifically pedophiles who were attracted to boys.⁶⁵ The control group included ten heterosexual males who were matched by age and education.⁶⁶ Non-explicit photos of men, women, boys, and girls were randomly embedded in geometric symbols to determine activity in the amygdala.⁶⁷ “While controls activated significantly less to pictures of children compared to adults, the activation profile was reversed in subjects with paedophilia, who exhibited significantly more activation to children than adults.”⁶⁸ Results indicated that the highest level of amygdala activation was during the observation of boys for the pedophile group, and for women in the control group.⁶⁹ “This study revealed an enhanced activation to children’s pictures even in an incidental context [suggesting] the provocative hypothesis that a normally present mechanism for reduced emotional arousal for

58. *Id.*

59. Dressing et al., *supra* note 53, at 8.

60. *Id.* (emphasis added) (internal citation omitted).

61. *Id.*

62. See Alexander Sartorius, *Abnormal Amygdala Activation Profile in Pedophilia*, 258 EUR. ARCHIVES PSYCHIATRY & CLINICAL NEUROSCIENCE 271, 271 (2008).

63. *Id.*

64. *Id.* at 272.

65. *Id.*

66. *Id.*

67. *Id.*

68. Sartorius, *supra* note 62, at 271.

69. *Id.* at 271–72.

children relative to adults is reversed in paedophilia, suggesting a neural substrate⁷⁰ associated with deviant sexual preference in this condition.”⁷¹

Recent fMRI studies have also indicated that pedophiles have significantly less white brain matter than individuals who are not sexually aroused by children.⁷² The study used fMRI brain scans of 127 sex and non-sex offenders, 65 of which were incarcerated sex offenders.⁷³ Of those 65 sex offenders, 44 were labeled pedophiles because their offenses involved children under the age of 14.⁷⁴ Results indicated that the pedophilic group had less white matter in the frontal part of the brain than controls responses to sexual stimuli.⁷⁵ “The researchers theorize pedophilia is the result of a partial disconnection within that network. The most straightforward explanation of [this] present result is that low white matter volumes increase the risk of developing pedophilia.”⁷⁶

One noteworthy case in Virginia, involved a forty-year-old male teacher with no history of pedophilia, who suddenly became fixated on child pornography.⁷⁷ He was later arrested for molesting his prepubescent stepdaughter.⁷⁸ The evening prior to his sentencing, he went to the emergency room complaining of a severe headache.⁷⁹ “An MRI revealed a tumor compressing his brain’s right frontal lobe. When the tumor was removed, his obsession faded, according to Dr. Russell Swerdlow, a neurologist on the case. A year later he again became sexually fixated on children. The tumor was growing back.”⁸⁰

While there is developing research to suggest that pedophilia can be caused by brain abnormalities, some psychologists say that it is a combination of factors.⁸¹ Dr. Craig Shifrin, a Missouri psychologist, explains it as a multi-dimensional problem, involving biology, psychology, and sociology.⁸² Still others, like Toronto psychologist James Cantor, say “Whatever chain of events leads to pedophilia, the first link in that chain seems to be before birth.”⁸³ This leads to the next question, if sexually violent predators are born with this type of disorder, should the criminal justice system change the way it handles these types of cases?

70. Neural substrate is the term used to describe the regulation of a behavior within the nervous system. Steven W. Porges, *The Polyvagal Theory: Phylogenetic Substrates of a Social Nervous System*, 42 INT’L J. PSYCHOPHYSIOLOGY 123, 126 (2001).

71. Sartorius, *supra* note 62, at 271 n.57.

72. *Pedophiles Have Less Brain White Matter: Toronto Study*, CBC NEWS (Nov. 28, 2007, 2:09 PM), <http://www.cbc.ca/news/technology/pedophiles-have-less-brain-white-matter-toronto-study-1.659415>.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* (internal quotation marks omitted).

77. Alan Zarembo, *Many Researchers Taking a Different View of Pedophilia*, L.A. TIMES (Jan. 14, 2013), <http://articles.latimes.com/2013/jan/14/local/la-me-pedophiles-20130115>.

78. *Id.*

79. *Id.*

80. *Id.*

81. Joanna Small, *New Research Says Pedophiles Are Born That Way*, KSPR (May 15, 2013), http://articles.kspr.com/2013-05-15/offenders_39289011.

82. *Id.*

83. Eliza Shapiro, *Can Science Spot a Pedophile? Research Zeroes in on Brain Abnormalities*, DAILY BEAST (Oct. 19, 2012, 4:45 AM), <http://www.thedailybeast.com/articles/2012/10/19/can-science-spot-a-pedophile-research-zeroes-in-on-brain-abnormalities.html>.

V. TREATMENT METHODS

Treatment procedures for high-risk sex offenders often include three approaches: (1) pharmacological; (2) psychotherapeutic; and (3) cognitive-behavioral therapies.⁸⁴ With a pharmacological approach the goal is to inhibit sexual arousal and reduce the occurrence of sexual fantasies through the use of anti-androgen medication,⁸⁵ essentially resulting in what is commonly known as “chemical castration.”⁸⁶ The goal of psychotherapeutic treatment involves a combination of “increasing [the] offender[‘s] empathy for the victims of sexual assault together with their sense of responsibility for their sexual crimes.”⁸⁷ Cognitive-behavioral therapies attempt to alter the cognitive process related to sexual offending and patterns of sexual arousal.⁸⁸

Florida Statute, section 794.0235, mandates the administration of medroxyprogesterone acetate (MPA) to any incarcerated person convicted of sexual battery, who had a prior conviction for the same offense.⁸⁹ The statute further discusses that “in lieu of treatment with [MPA], the court may order the defendant to undergo physical castration upon written motion by the defendant providing the defendant’s intelligent, knowing, and voluntary consent to physical castration as an alternative penalty.”⁹⁰ Under this statute the offender has the choice of either taking medication to inhibit his sexual urges, or undergoing physical castration.⁹¹

In addition to using chemical or physical castration to inhibit sexual urges while incarcerated, Florida has also required sex offenders to seek therapy as part of their probation.⁹² Florida Statute, section 948.30 requires the “[a]ctive participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders, at the probationer’s or community controllee’s own expense.”⁹³

Unlike sex offenders who are released with probationary terms, those considered high-risk are evaluated under the civil commitment process and referred to the Department of Children and Families’ (DCF) Sexually Violent Predator Program.⁹⁴ “They are then reviewed by a series of specialists, and the DCF ultimately sends a recommendation to the state attorney [on] whether or not the

84. Karen Harrison, *Legal and Ethical Issues When Using Antiandrogenic Pharmacotherapy with Sex Offenders*, 3 SEXUAL OFFENDER TREATMENT 1, 1 (2008), available at <http://www.sexual-offender-treatment.org/index.php?id=70&type=123>.

85. *Id.*

86. *Id.*

87. *Intervention with Sex Offenders, Toward a National Strategy*, CORR. SERV. CANA., <http://www.csc-scc.gc.ca/publications/so/conference/confe-eng.shtml> (last visited Aug. 20, 2015).

88. *Id.*

89. See FLA. STAT. § 794.0235 (2014).

90. *Id.*

91. *Id.*

92. FLA. STAT. § 948.30 (2014).

93. *Id.*

94. Matt Dixon, *Florida Senate Files Sweeping Overhaul of State’s Sexual Predator Laws*, FLA. TIMES-UNION, (Dec. 17, 2013, 7:02 AM), <http://members.jacksonville.com/news/2013-12-17/story/senate-files-sweeping-overhaul-floridas-sexual-predator-laws>.

offender should be ‘involuntarily committed.’”⁹⁵ The treatment program for sex offenders who are civilly committed in Florida is vastly different from the treatment program afforded to those on probation.⁹⁶ Those who have served their prison sentence and are still considered a risk to society by the Florida courts are sent to the Florida Civil Commitment Center (FCCC) in Arcadia, Florida.⁹⁷

On June 6, 2006, GEO Care LLC took over management of the FCCC after its predecessor, Liberty Behavioral Health Corporation (LBHC), failed to provide adequate services for nearly seven years.⁹⁸ In 2007, the *New York Times* published an article highlighting some of LBHC’s shortcomings at the FCCC.⁹⁹ The article starts off describing how “[t]wo men [at the FCCC] took their shirts off, rubbed each other’s backs and held hands, while others disappeared together into dormitory rooms. Some of the sex offenders appeared to be drunk from homemade ‘buck’ liquor secretly brewed and sold here.”¹⁰⁰ One employee said, “[t]he residents . . . ran the whole facility.”¹⁰¹ The article goes on to discuss the high employee turnover rate due to the inappropriate sexual relationships between female employees and sex offender residents.¹⁰² But it does not stop there. Problems for LBHC began early on, after a resident escaped in June of 2000.¹⁰³ The bizarre incident occurred when an accomplice who frequently visited the resident, landed a helicopter onto the facility’s grounds and departed with the escapee.¹⁰⁴ The helicopter crashed after its departure and the escapee was caught nearly twenty-six hours later.¹⁰⁵ The State blamed LBHC for not having proper security, while LBHC blamed the State for not providing sufficient financing.¹⁰⁶ The State concluded that there were not enough staff members “in the yard when the escape occurred . . . and the center’s director had ordered razor wire removed from a security fence because . . . the wire was damaging volleyballs . . . [that] the residents used.”¹⁰⁷ Alarming incidents continued to transpire, one involving a mentally ill man jumping off the facility’s rooftop and another involving one resident stabbing another resident nearly twelve times.¹⁰⁸ The turmoil between

95. *Id.*

96. *Id.*

97. See CORRECT CARE RECOVERY SOLUTIONS, <http://www.correctcarers.com/> (last visited Aug. 20, 2015) (“Correct Care, LLC (formerly known as GEO Care, LLC) has more than 15 years of experience operating state psychiatric hospitals”); see also CORRECT CARE RECOVERY SOLUTIONS, <http://www.correctcarers.com/florida-civil-commitment-center/> (last visited Aug. 20, 2015) (“On June, 6, 2006 Correct Care received notice of intent to award a contract from the State of Florida, Department of Children and Families for the management and operation of the 580-bed Florida Civil Commitment Center.”); Abby Goodnough & Monica Davey, *A Record of Failure at Center for Sex Offenders*, N.Y. TIMES (Mar. 5, 2007), http://www.nytimes.com/2007/03/05/us/05civil.html?pagewanted=all&_r=1&.

98. Goodnough & Davey, *supra* note 97.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. Goodnough & Davey, *supra* note 97.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

LBHC's management and the State's concerns eventually led to LBHC's departure when GEO Care was hired.¹⁰⁹

GEO Care has since stepped in, and is now focusing on the treatment of the sex offenders.¹¹⁰ Its mission is “[t]o provide comprehensive and effective residential sexual offender treatment services in a safe and secure environment for residents, staff, and the community.”¹¹¹ The goal of the FCCC's clinical program is to aid sex offenders in developing “balanced, self-determined lifestyles.”¹¹² The evidence-based Comprehensive Treatment Program (CTP) for those who have sexually offended is a multiphase program, based on the Risk-Needs-Responsivity¹¹³ (RNR) and Good Lives/Self-Regulation (GLM/SRM) modalities.¹¹⁴ This includes a comprehensive effort in assisting sex offenders to lead “better” lives and avoid sexual recidivism, which can take five or more years to complete.¹¹⁵ The program consists of four separate phases: (1) Preparation for Change; (2) Awareness; (3) Healthy Alternative Behaviors; and (4) Maintenance and Comprehensive Discharge Planning.¹¹⁶ The first phase, “Preparation for Change,” utilizes Moral Reconciliation Therapy,¹¹⁷ which aims to decrease recidivism by increasing moral reasoning.¹¹⁸ During the second phase, “Awareness,” sex offenders “develop an agreed on and comprehensive identification of the main factors that contributed to their past offending. They are then provided opportunities to demonstrate insight

109. *Id.*

110. FLORIDA CIVIL COMMITMENT CENTER RESIDENT HANDBOOK (2013), available at http://ccrs.wpengine.com/wp-content/uploads/2014/10/FCCC_09-12-13-final.pdf.

111. *Id.*

112. Robin J. Wilson et al., *Comparing Sexual Offenders at the Regional Treatment Centre (Ontario) and the Florida Civil Commitment Center*, INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 378, 383 (2012).

113. *Risk-Needs-Responsivity (RNR) Simulation Tool*, CENTER FOR ADVANCING CORRECTIONAL EXCELLENCE, http://www.gmuace.org/research_rnr.html (last visited Jan. 11, 2014) (“[T]he RNR Simulation Tool has three portals: (1) Assess an Individual; (2) Assess a Program; and (3) Assess Jurisdiction’s Capacity. The RNR Tool allows jurisdictions to modify the parameters of the model based on the unique features of their jurisdictions. It complements efforts to advance the use of [evidenced-based practices] by helping jurisdictions strategically review their existing correctional and treatment services and then make choices based on maximizing different outcomes (i.e., costs, offender change, and public safety) in their jurisdiction.”).

114. Wilson et al., *supra* note 112; PAMELA M. YATES, DAVID PRESCOTT & TONY WARD, APPLYING THE GOOD LIVES AND SELF-REGULATION MODELS TO SEX OFFENDER TREATMENT: A PRACTICAL GUIDE FOR CLINICIANS, at x (2010), available at <http://www.safersociety.org/uploads/WP145-TOC-Introduction.pdf> (The GLM/SRM is a “combined model [that] explicitly addresses both the promotion of a good life and the management of risk. It is based on an understanding of the relationships between risk, sexual offending, and clients’ attempts to implement a good lives plan. . . . The GLM/SRM-R utilizes the full range of cognitive-behavioral treatment methods in practice in order to maximize the effectiveness of intervention in assisting clients to manage risk and attain good lives.”).

115. Wilson et al., *supra* note 112.

116. *Id.*

117. *Id.*; see also Gregory L. Little, *Cognitive-Behavioral Treatment of Offenders: A Comprehensive Review of MRT Outcome Research*, 2 ADDICTIVE BEHAV. TREATMENT REV. 12, 12, 14, 17 (2000), available at <http://www.moral-reconciliation-therapy.com/Resources/Review%20of%20MRT%20research.pdf> (“Moral Reconciliation Therapy . . . is a unique, cognitive-behavioral treatment approach” that “increase[s] levels of moral reasoning.” Effective treatment results in moving “increas[ing] participants’ reasoning levels from hedonistic, self-centered concerns to levels that involve concern for the welfare of others.”).

118. *Moral Reconciliation Therapy*, NAT'L RES. CTR. FOR PERMANENCY & FAM. CONNECTIONS, [http://www.nrcpfc.org/ebp/downloads/AdditionalEBPs/Moral_Reconciliation_Therapy_\(MRT\)_8.26.13.pdf](http://www.nrcpfc.org/ebp/downloads/AdditionalEBPs/Moral_Reconciliation_Therapy_(MRT)_8.26.13.pdf) (last visited Aug. 20, 2014).

into the current expression of personal risk factors and personal life-barriers.”¹¹⁹ The next phase, “Healthy Alternative Behaviors,” involves increasing awareness of emotional deficits, and adopting strategies to reduce deviant sexual arousal.¹²⁰ The last phase, “Maintenance and Comprehensive Discharge Planning,” is for those offenders who demonstrate attitudes and skills necessary to avoid recidivism, making preparations to transition to independent life in the community.¹²¹

By comparison, sex offenders who are civilly committed are afforded more resources to cope and manage their sexually deviant behaviors than those who are released from prison on probation.¹²² Sex offenders in prison are not provided with any psychotherapeutic treatment.¹²³ Instead, the only treatment provided is for those offenders who are required to take MPA for chemical castration, which is a mandated stand-alone treatment.¹²⁴ Once released from incarceration, according to Florida Statutes, section 948.30, the offender has to provide for his or her own treatment while on probation.¹²⁵ The problem most sex offenders face post-release is the inability to pay for treatment services, as employment for registered sex offenders is often times difficult to attain.¹²⁶ With treatment options varying depending on the risk of recidivism, it is essential to effectively ascertain those sex offenders who are considered a threat to society.

VI. RELIABILITY OF FLORIDA’S CIVIL COMMITMENT CRITERIA

In order to civilly commit a sexually violent predator (SVP), the Supreme Court of the United States has determined that the offender, in addition to having a history of sexual violence, (1) has a “mental abnormality”; and (2) is likely to engage in future “predatory acts of sexual violence.”¹²⁷ Forensic evaluators, who determine whether a sex offender is considered a SVP, have interpreted the meaning of a “mental abnormality” as a “mental disorder.”¹²⁸ Distinguishing a relatively ambiguous term, “mental abnormality” to a more concrete term “mental disorder” enables evaluators to use the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* for guidance.¹²⁹ “Florida law does not mandate a *DSM-IV* diagnosis per se, however, evaluators are required by the Florida Department of Children and Families, which is the agency responsible for implementing the statute, to provide a *DSM-IV* diagnosis.”¹³⁰

119. Wilson et al., *supra* note 112.

120. *Id.*

121. *Id.*

122. Kate Howard Perry, *Sex Offenders Often Don’t Get Enough Treatment in Prison*, ST. AUGUSTINE REC. (July 12, 2013, 11:08 PM), <http://staugustine.com/news/florida-news/2013-07-11-0#.UtH1-ZGplg1>.

123. *Id.*

124. See FLA. STAT. § 948.30 (2014).

125. *Id.*; see also Perry, *supra* note 122.

126. Perry, *supra* note 122.

127. See *Kansas v. Hendricks*, 521 U.S. 346, 346–47 (1997); Jill S. Levenson, *Reliability of Sexually Violent Predator Civil Commitment Criteria in Florida*, 28 L. & HUM. BEHAV. 357, 357–58, (2004).

128. Levenson, *supra* note 127.

129. *Id.*

130. *Id.* at 358.

In Florida, the *DSM-IV* is used to determine the Supreme Court's first criterion, whether the offender has a mental disorder.¹³¹ The second criterion, likelihood of recidivism, is generally established by using "actuarial risk assessment instruments which estimate the probability of reoffense by referring to the known recidivism rates of individuals with similar characteristics."¹³² Evaluators are permitted to use a number of tests at their discretion, including: (1) the Static-99,¹³³ (2) the Rapid Risk Assessment for Sex Offense Recidivism, (3) Minnesota Sex Offender Screening Tool—Revised, and (4) the Psychopathy Checklist Revised.¹³⁴

Research suggests that the reliability of SVP civil commitment criteria is low when diagnosing mental disorders with the *DSM-IV*.¹³⁵ One of the main reasons is that in responding to questionnaires, offenders are "reluctant to admit having deviant fantasies, urges or behaviors, as evidenced by a survey where only 65% of 205 convicted sex offenders admitted to the crime for which they were found guilty."¹³⁶ Additionally, when using the *DSM-IV* to diagnose paraphilia,¹³⁷ a six-month time frame is required.¹³⁸ Because "[i]t is well-established that sex offenders often commit many sexual crimes for which they are not caught, . . . it may be difficult for clinicians to diagnose paraphilias in offenders for whom no prior arrest records exist."¹³⁹ However, unlike the results related to the *DSM-IV* diagnostic criteria, studies have demonstrated statistically favorable results when examining the reliability of risk assessment instruments used to determine the likelihood of recidivism.¹⁴⁰

In 2004, a study was conducted to evaluate the reliability of SVP civil commitment criteria in Florida.¹⁴¹ The study looked at the reliability of: (1) *DSM-IV* diagnoses used to assess whether an offender has a predisposition to sexual violence due to a mental disorder; (2) risk assessment instruments used to assess recidivism; and (3) evaluator recommendations for civil commitment.¹⁴² There were twenty-five evaluators in the study who assessed a total of 295 men for SVP civil commitment.¹⁴³

131. *Id.*

132. *Id.*

133. See *Static-99*, STATE AUTHORIZED RISK ASSESSMENT TOOL FOR SEX OFFENDERS (SARATSO) COMMITTEE, <http://www.saratso.org/docs/SARATSO%20Review%20Committee%20Notification.pdf> (last visited Aug. 20, 2014) ("The Static-99 is a research derived actuarial risk assessment tool designed to predict sexual recidivism.").

134. Levenson, *supra* note 127.

135. *Id.* at 359.

136. *Id.*

137. See Dr. Christopher L. Heffner, *Paraphilias: Common Characteristics*, ALLPSYCH, <http://allpsych.com/disorders/paraphilias/> (last visited Jan. 12, 2014) ("Paraphilias all have in common distressing and repetitive sexual fantasies, urges, or behaviors. These fantasies, urges, or behaviors must occur for a significant period of time and must interfere with either satisfactory sexual relations or everyday functioning if the diagnosis is to be made. There is also a sense of distress within these individuals. In other words, they typically recognize the symptoms as negatively impacting their life but feel as if they are unable to control them.").

138. Levenson, *supra* note 127, at 359.

139. *Id.*

140. *Id.* at 360.

141. *Id.* at 357.

142. *Id.* at 361.

143. *Id.* at 362.

Results indicated that the reliability of *DSM-IV* “[d]iagnoses did not fare so well; reliability was poor for most diagnoses Pedophilia demonstrated fair reliability, as did ‘other mental illness,’ which was defined as a psychotic disorder or major mood disorder.”¹⁴⁴ Results for the risk assessment instruments in determining recidivism all indicated good reliability.¹⁴⁵ However, the reliability for SVP civil commitment recommendation by evaluators was poor.¹⁴⁶ In order to test the interrater reliability of recommendations, two evaluators assessed the same offender, to determine whether they would come to the same recommendation outcome.¹⁴⁷ Only half the observations yielded evaluators with the same recommendations for SVP civil commitment.¹⁴⁸

Taken as a whole, the Florida SVP civil commitment procedure has both *good* and *poor* reliability.¹⁴⁹ Good reliability rests on the risk assessment, while poor reliability falls on the evaluator recommendations and *DSM-IV* diagnostics.¹⁵⁰ Although the likelihood of recidivism is an element of SVP civil commitment, it is not by itself, sufficient to justify the recommendation of commitment.¹⁵¹ “Federal case law and Florida’s Jimmy Ryce Act require an SVP to suffer from a *mental abnormality that predisposes the individual to future sexual violence*, and thus diagnosis is an integral component of the assessment of dangerousness.”¹⁵² Therefore, it is not enough to trust the reliability of the procedure as a whole, when not all criteria are considered reliable. Additionally, “[t]he poor reliability of civil commitment selection appears to be related to the ambiguity of DSM [sic] diagnostic criteria. Without consistent agreements on the diagnoses that render an individual predisposed to commit future sexually violent crimes, it is unlikely that evaluators will be able to agree on the commitment recommendation.”¹⁵³ Consequently, some tentative solutions and practice considerations have been proposed.¹⁵⁴

O’Donohue suggested the recognition of a “pedophilia response disorder,” where a single pedophilic episode would be labeled as “acute” and a continuing or patterned behavior as “chronic.”¹⁵⁵ Specifying pedophilia as either acute or chronic would be advantageous to the clinical community, where the term “pedophile” is generally used to label men whose sexual interest is primarily in children.¹⁵⁶ The

144. Levenson, *supra* note 127, at 363.

145. *Id.*

146. *Id.*

147. *Id.* at 364; NEIL J. SALKIND, 1 ENCYCLOPEDIA OF RES. DESIGN 626 (2010) (“Interrater or interobserver (these terms can be used interchangeably) reliability is used to assess the degrees to which different raters or observers make consistent estimates of the same phenomenon.”).

148. Levenson, *supra* note 127, at 364.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* at 365.

154. Levenson, *supra* note 127, at 365.

155. *Id.*

156. *Id.*

reasoning behind it is that all pedophiles are child molesters but not all child molesters are necessarily pedophiles.¹⁵⁷

Researchers have also noted that:

It is possible for offenders to obtain moderate or high scores on risk assessment instruments *by virtue of their extensive criminal history or demographic factors*. Therefore it has been argued that an individual should meet the criteria for a paraphilia disorder in order to be recommended for SVP commitment. Without the requisite mental abnormality demonstrating sexual deviance, it cannot be determined that the subject is predisposed to commit a future sexually violent offense as opposed to a generally violent offense.¹⁵⁸

Practitioners and evaluators are inevitably left with diagnostic criteria, such as the *DSM* and risk assessment tools, which refute empirical research and clinical standards.¹⁵⁹ “It has been suggested that the *DSM* [sic] may not be sufficiently clear and accurate for use in legal settings, especially those in which grave consequences are imposed by a judge or jury.”¹⁶⁰ The insufficiency rests on various reasons such as: (1) assessing the severity of symptoms by a single interview; (2) patient manipulation; and (3) inaccurate or irrelevant medical and criminal records.¹⁶¹ “Because the *DSM* [sic] is the only diagnostic taxonomy recognized by American courts and mental health professionals, its idiosyncrasies and shortcomings have a direct impact on SVP proceedings.”¹⁶²

The *DSM-IV* has now been revised to the *DSM-V* and was recently released in May of 2013.¹⁶³ The revised *DSM* addresses only some of the paraphilia diagnostic deficiencies of its prior version.¹⁶⁴ The “Sexual and Gender Identity Disorder” category of the *DSM-V* attempts to differentiate between atypical behavior and behavior that triggers mental distress or “makes the person a serious threat to the psychological and physical well-being of other individuals.”¹⁶⁵ In the updated

157. *Id.*

158. *Id.* at 364 (emphasis added) (citation omitted). Some risk-assessment tools consider factors such as the offender’s age, other non-offender criminal convictions, and demographics. *Paraphilic Disorders*, AM. PSYCHIATRIC ASS’N (2013), <http://www.dsm5.org/Documents/Paraphilic%20Disorders%20Fact%20Sheet.pdf> (“Most people with atypical sexual interests do not have a mental disorder. To be diagnosed with a paraphilic disorder, DSM-5 requires that people with these interests: feel personal distress about their interest, not merely distress resulting from society’s disapproval; or have a sexual desire or behavior that involves another person’s psychological distress, injury, or death, or a desire for sexual behaviors involving unwilling persons or persons unable to give legal consent.”).

159. Levenson, *supra* note 127, at 366.

160. *Id.*

161. *Id.*

162. *Id.*

163. Loren Grush, *The DSM-5 Is Here: What the Controversial New Changes Mean for Mental Health Care*, FOX NEWS, (May 21, 2013), <http://www.foxnews.com/health/2013/05/21/dsm-5-is-here-what-controversial-new-changes-mean-for-mental-health-care/>.

164. AM. PSYCHIATRIC ASS’N, *supra* note 158.

165. *Id.*

version, the paraphilia disorder category is no longer a generalization, rather it is now distinguished between the behaviors themselves and the disorder related to the behavior.¹⁶⁶ For example, Sexual Masochism is now labeled Sexual Masochism Disorder.¹⁶⁷ The American Psychiatric Association (APA) claims that “[i]t is a subtle but crucial difference that makes it possible for an individual to engage in consensual atypical sexual behavior without inappropriately being labeled with a mental disorder.”¹⁶⁸ The APA also claims that with these revisions, the *DSM-V* “clearly distinguishes between atypical sexual interests and mental disorders involving these desires or behaviors.”¹⁶⁹ Despite efforts, however, the pedophilia classification remains the same with no distinguished revisions, except that the name has now changed from pedophilia to pedophilic disorder.¹⁷⁰

VII. 2014 FLORIDA BILL PROPOSALS

The *Sun Sentinel* investigative report on sexually violent predators confronted lawmakers with disturbing evidence that the current Jimmy Ryce Statute and civil commitment process is not effectively protecting communities in Florida.¹⁷¹ In 2013, lawmakers met with mental health experts, police, and victim advocates whose suggestions were all considered in creating future bill proposals.¹⁷²

Senator Rob Bradley introduced Senate Bill 526.¹⁷³ His recommendations focused on the post-release procedures for sex offenders.¹⁷⁴ First, he suggested an increase in sentencing for sex offenders who already have prior sex offenses.¹⁷⁵ For example, “[m]ore crimes [would] lead to a life sentence, and punishment for some repeat offenders could double to 30 years.”¹⁷⁶ His bill, in particular, was influenced by Cherish Perrywinkle’s case.¹⁷⁷ Her accused murderer, Donald Smith, whose DNA has now specifically linked him to her murder,¹⁷⁸ spoke to police for a routine address check¹⁷⁹ on the same day that he abducted her.¹⁸⁰ Senator Bradley noted that Smith, who had been released from jail nearly three weeks prior for another incident involving a child,¹⁸¹ was not on probation.¹⁸² This prevented

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. AM. PSYCHIATRIC ASS’N, *supra* note 158.

171. Williams & Kestin, *supra* note 39.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. Williams & Kestin, *supra* note 39.

178. Hailey Winslow, *Documents: How Cherish’s Body Was Found, How She Died*, NEWS4JAX (Dec. 24, 2013), <http://www.news4jax.com/news/documents-detail-how-cherish-died-was-found/-/475880/22676832/-/uekbf6z/-/index.html> (“The medical examiner said Smith’s DNA was found on her body, and the profile shows the likelihood the DNA came from anyone other than Smith is 35-quintillion-to-1.”).

179. FLA. STAT. § 944.607 (2014) (routine procedure requiring sex offenders to provide information regarding their address and other information to law enforcement).

180. Williams & Kestin, *supra* note 39.

181. *See infra* Introduction.

detectives from conducting a search of his house that would lead to anything raising suspicion.¹⁸³ In Florida, “[w]hen an individual is on probation, law enforcement has rights to go into the probationer’s place of work, to their home, and . . . to review their computers. The ultimate goal is to give law enforcement every tool available to prevent these tragedies.”¹⁸⁴

Senator Bradley also proposed that imprisoned sex offenders, who are convicted of certain sex crimes against children, be prohibited from early release for good behavior, and once they have been released, to mandate probation.¹⁸⁵ Furthermore, Senate Bill 526 would delay the start of probation for civilly committed sex offenders, whereas the current laws allow the start of probation to begin when they enter the civil commitment center.¹⁸⁶ The bill’s last proposition would require a written ruling on whether the crime was sexually motivated when sex offender charges have been reduced.¹⁸⁷ This would elicit an evaluation at the end of the sentence in determining whether the offender should be considered for civil commitment as a sex offender regardless of whether the charge was a felony or misdemeanor.¹⁸⁸ If this bill had been enacted previously, it may have had a direct effect on the case of Cherish Perrywinkle. Because Donald Smith was released from jail for what was recognized as a misdemeanor, there was no civil commitment evaluation prior to his release.¹⁸⁹ Prosecutors reduced his charges, and therefore made no mention that his crime was sexually motivated.¹⁹⁰ If a written ruling were mandated to state that his crime was sexually motivated, it would raise a red flag for his evaluation, especially considering his prior offenses.

Senate Bill 528, introduced by Greg Evers in December of 2013, emphasized the monitoring of current sex offenders.¹⁹¹ It would require registered sex offenders to provide additional information rather than simply an address, which includes: (1) phones numbers; (2) social networking names; (3) email addresses; (4) professional licenses; (5) immigration status; and (6) any registered vehicles at their residence.¹⁹² Furthermore, punishment would be increased for those who fail to report or knowingly provide false information to law enforcement agencies.¹⁹³

Lastly, Senate Bills 522 and 524 focused on the evaluation process altogether.¹⁹⁴ Currently, only mental health professionals are permitted to evaluate

182. Williams & Kestin, *supra* note 39.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. Williams & Kestin, *supra* note 39; Menzel, *supra* note 10 (“[Donald] Smith, who was released from jail as a sex offender 21 days before Cherish Perrywinkle was murdered, had been busted for lewd and lascivious behavior — a misdemeanor” In this case, Smith was not evaluated for civil commitment because his prior charge was a misdemeanor. House Criminal Justice Chariman Re. Matthew Gaetz, suggests that a lewd and lascivious charge should prompt a civil commitment evaluation.).

189. See Menzel, *supra* note 10.

190. *Id.*

191. Williams & Kestin, *supra* note 39.

192. *Id.*

193. *Id.*

194. *Id.*

civil commitment cases.¹⁹⁵ Senate Bill 522 purported to include prosecutors, police officers, and victim advocates in that process.¹⁹⁶ It would also expand the review process to not only those sex offenders released from prisons and state facilities, but also to those released from county jails.¹⁹⁷ Senate Bill 524 focused mostly on the team of evaluators, suggesting the requirement of annual performance reports and supervision over the evaluation teams.¹⁹⁸ It also suggested requiring the Department of Children and Families (DCF) to provide uniform training processes for each evaluator.¹⁹⁹

VIII. ENACTMENT OUTCOME

As of March 4, 2014, all of the above-mentioned bill proposals were enacted into legislation, and became effective on either July 1, 2014, or October 1, 2014.²⁰⁰ First, Senate Bill 522 was passed, and now requires that DCF be notified when a sex offender, who was previously held at FCCC, has been rearrested and convicted for either a misdemeanor or felony.²⁰¹ It also allows members of the multidisciplinary evaluation team to consult with outside members, such as law enforcement and victim advocates for civil commitment considerations.²⁰² The bill further requires DCF to notify the sheriff of the county in which a sex offender plans to reside.²⁰³

Senate Bill 524, now cited as the “Protecting Our Children and Adults from Sexual Predators Act,” outlines the requirements for the multidisciplinary evaluation teams.²⁰⁴ According to the act, each evaluation team will need at least two licensed psychiatrists or psychologists, or one of each, and DCF must provide unified training to the team members.²⁰⁵ Each team member’s contract will be limited to one year, with the possibility of renewal, and DCF will have to evaluate the performance of each team member annually.²⁰⁶ Performance evaluation factors shall include the member’s: (1) clinical knowledge regarding the assessment of risk factors for sexual recidivism, (2) ability to review relevant criminal records to identify recommendations from law enforcement and insight from victim advocates, (3) ability to apply clinical information to the assessment of both risk factors and predictors of sexual recidivism, and (4) “[r]ecommendations compared retrospectively to the subsequent records of the offenders who were assessed.”²⁰⁷

195. *Id.*

196. *Id.*

197. Williams & Kestin, *supra* note 39.

198. *Id.*

199. *Id.*

200. See S.B. No. 522, 116th Reg. Sess. (Fla. 2014) (effective July 1, 2014); S.B. No. 524, 116th Reg. Sess. (Fla. 2014) (effective July 1, 2014); S.B. No. 526, 116th Reg. Sess. (Fla. 2014) (effective Oct. 1, 2014); S.B. No. 528, 116th Reg. Sess. (Fla. 2014) (effective Oct. 1, 2014).

201. See S.B. No. 522, 116th Reg. Sess. (Fla. 2014).

202. *Id.*

203. *Id.*

204. See S.B. No. 524, 116th Reg. Sess. (Fla. 2014).

205. *Id.*

206. *Id.*

207. *Id.*

An important feature of the act now requires civil commitment when two or more members of a multidisciplinary team recommend it.²⁰⁸ The bill further requires both public and non-public higher education institutions to inform students and employees of the Florida Department of Law Enforcement sexual predator and sexual offender registry website, telephone number, and other relevant information.²⁰⁹

Senate Bill 526, introduced by Senator Rob Bradley, is effective October 1, 2014.²¹⁰ This new legislation will now increase the length of sentencing for certain sexually motivated crimes, including adult-on-minor sexual offenses.²¹¹ It will also prevent the early release for good behavior.²¹² According to Senator Bradley, “[r]ecent events have shown we need to do more to keep these criminals away from our children. Through this legislative package, the Florida Senate has taken steps necessary to ensure sex offenders are kept behind bars for longer periods of time, and that once they are allowed back into society, they are closely monitored.”²¹³

The fourth and final, Senate Bill 528, which was proposed in December of 2013, now requires:

[The] disclosure of additional information during the sexual predator registration process; adding additional offenses to the list of sexual offender qualifying offenses; providing criminal penalties for knowingly providing false registration information by act or omission; revising the criteria applicable to provisions that allow removal of the requirement to register as a sexual offender or sexual predator; updating provisions of the offense severity ranking chart of the Criminal Punishment Code to reflect prior changes in the law, etc.²¹⁴

While the Florida Legislature has taken proactive measures to amend laws on the surveillance, punishment, and awareness of sexually violent predators, it has not addressed the issues of treatment or specific evaluation procedures.²¹⁵

IX. LOOKING FORWARD

The Florida Legislature has ultimately left the evaluation process in the hands of DCF, which mainly overlooks the management and hiring of evaluators.²¹⁶ With

208. *Id.*

209. *Id.*

210. *See* S.B. No. 526, 116th Reg. Sess. (Fla. 2014).

211. *Id.*

212. *Senate Bills to Increase Protections Against Sex Offenders Receive Unanimous, Bi-Partisan Support*, SUWANNEE VALLEY TIMES (Mar. 4, 2014), <http://www.suwanneevalleytimes.com/component/content/article/51-news-stories/1243--3-4-14-senate-bills-to-increase-protections-against-sex-offenders-receive-unanimous-bi-partisan-support.html>.

213. *Id.*

214. FL S0528, <http://www.billtrack50.com/BillDetail/438456> (last visited Jan. 24, 2015); *see* S.B. No. 528, 116th Reg. Sess. (Fla. 2014).

215. *See, e.g.,* Williams & Kestin, *supra* note 39.

the new bills in place, DCF will now be in control of training the evaluators.²¹⁷ However, none of the new bills set a standard for which evaluation procedures to utilize.²¹⁸ Unless DCF creates a specific evaluation procedure, evaluators will be able to use screening methods at their own discretion, which could invariably lead to inconsistent recommendation results, such as those discussed in Levenson's study.²¹⁹ Although the Florida Senate did not set up a unified evaluation procedure, its requirement that a sex offender's prior offense be labeled on whether it was sexually motivated is crucial in the evaluation process. Not only does it raise a red flag prior to his release from jail or prison for the consideration of a civil commitment evaluation proceeding, but it will also aid the evaluators in understanding the extent to which his crime was sexually motivated. This is beneficial in the evaluation of those offenders who were convicted of a misdemeanor that was also considered a sex offense.

Furthermore, while it may not be the most feasible option, in-depth research of brain functioning could potentially lead to more accurate evaluations. If the Supreme Court has determined that a sex offender must have a mental abnormality to be considered for civil commitment, then that mental abnormality should be assessed through all possible measures including brain imaging and psychological evaluation. In considering the sex offender's history, evaluators should not only look at the offender's criminal and medical history, but also his personal history. Specifically, the "victim to victimizer" theory to assess whether the offender was sexually abused as a child and, if so, who abused him and to what extent.

Unfortunately, research has not yet yielded the efficacy of treatment procedures used in civil commitment facilities. Based on the assumption that research is not conducive to support certain treatment measures, the State has instead focused its bill proposals on the monitoring and punishing of sex offenders.²²⁰ However, it is important to keep in mind that some researchers suggest that indefinite confinement may not be the best treatment option because sex offenders may be unable to learn empathetic responses.²²¹ If the State intends to successfully monitor sex offenders, it may be useful to implement some sort of outpatient care for those offenders who have either been released from the FCCC or released from prison without a civil commitment recommendation. In doing so, the State should financially assist those sex offenders who are required to seek treatment post-release, as most are unable to seek employment to support themselves or any sort of treatment. In regards to chemical castration, the State

216. *Florida House Passes Priority Legislation to Protect Florida's Most Vulnerable*, CAPITAL SOUP (Mar. 12, 2014), <http://capitalsoup.com/2014/03/12/florida-house-passes-priority-legislation-to-protect-floridas-most-vulnerable/>.

217. *Id.*

218. See S.B. No. 522, 116th Reg. Sess. (Fla. 2014); S.B. No. 524, 116th Reg. Sess. (Fla. 2014); S.B. No. 526, 116th Reg. Sess. (Fla. 2014); S.B. No. 528, 116th Reg. Sess. (Fla. 2014).

219. Levenson, *supra* note 127.

220. State Rep. Kathleen Passidomo, *2014 Legislative Session Update*, <http://www.myfloridahouse.gov/filestores/web/newsletter/4514.pdf> (last visited June 15, 2015).

221. See, e.g., John Kirwin, *One Arrow in the Quiver—Using Civil Commitment as One Component of a State's Response to Sexual Violence*, 29 WM. MITCHELL L. REV. 1135, 1203 (2003).

could also require the sex offender to continue taking the medication once he is released from prison or the FCCC and mandate some sort of outpatient care where administration of the drug could be monitored.

Time will be the only indicator of whether the new legislation will avail and provide the protections Florida lawmakers have sought to endorse. The need for reformation has become increasingly essential to protect communities and provide efficacious treatment in order to avoid recidivism in sexual offending. However, the issue remains open-ended. There is no standard approach to creating successful procedures in the evaluation, treatment, and monitoring of sexually violent predators. This paper has followed the Florida Legislature, from its prompt reaction to Cherish Perrywinkle's death to the bills recently passed in 2014. Given the speedy time frame from its inception to enactment, which was a little over six months, the Florida Legislature did its best to create laws that will immediately affect sexually violent predator proceedings in Florida.