Sexually violent predator determinations, continuance

Number: INFORMAL

Date: December 13, 2006

The Honorable Katherine Fernandez Rundle
State Attorney
Eleventh Judicial Circuit
E.R. Graham Building
1350 Northwest 12th Avenue
Miami, Florida 33136-2111

Dear Ms. Fernandez Rundle:

You have asked for clarification of House Bill 5021, Chapter 2006-33, Laws of Florida, and its attendant appropriations mandate contained in Chapter 2006-25, Laws of Florida.

Chapter 2006-33, Laws of Florida, amended by section 394.916(2), Florida Statutes, to set a limit of one continuance of not more than 120 days in a trial to determine whether a person is a sexually violent predator, with no additional continuances allowed unless the court finds that a "manifest injustice would otherwise occur."

In its passage of Chapter 2006-33, Laws of Florida, the Legislature recognized that limiting the number of continuances in court proceeding under the Jimmy Ryce Act[1] for the civil commitment of sexually violent predators would increase the workload for the courts, State Attorneys and Public Defenders and would require faster processing of cases. It was acknowledged that the General Appropriations Act contains additional funding for workload for State Attorneys and Public Defenders, with a portion of the appropriation earmarked "to expedite sexually violent predator civil proceedings."[2]

The proviso language attendant to the general appropriation for State Attorneys during the 2006-2007 fiscal year[3] provides:

"Funds in Specific Appropriations 891 through 991 include $9,500,000 from General Revenue and 164.3 FTE for increased workload. Each state attorney in a circuit with a population of one million or more shall dedicate at least 2 additional assistant state attorney FTE to expedite the resolution of civil commitment proceedings of sexually violent predators pursuant to Part V of Chapter 394 that have been pending for more than 545 days so that all such cases in existence on July 1, 2006, are resolved by December 31, 2006. Each state attorney in a circuit with a population of less than one million shall dedicate at least 1 additional assistant state attorney FTE to expedite the resolution of civil commitment proceedings of sexually violent predators pursuant to Part V of Chapter 394 that have been pending for more than 545 days so that all such cases in existence on July 1, 2006, are resolved by December 31, 2006. A state attorney shall be exempt from this requirement upon written notification to the Governor, the Speaker of the House of Representatives and the President of the Senate that there are no such cases within that circuit existing on July 1, 2006, that have been pending for more than 545 days.

Additional FTE assigned pursuant to this paragraph shall continue to be assigned for the above stated purpose until all cases pending for more than 545 days have been resolved."

While this proviso language contains aspirational language that the cases pending for more than 545 days on July 1, 2006, be resolved by December 31, 2006, it also recognizes and provides that the full-time employees assigned to handle such cases will continue until all such cases have been resolved. It would appear, therefore, that the Legislature has provided continuing funding for the handling of such cases, while at the same time setting a goal of finishing up the backlog before the end of 2006. There is no apparent conflict between the provisions in section 394.916(2), Florida Statutes, as amended by Chapter 2006-33, Laws of Florida, and the proviso language in the appropriations for full-time positions to resolve the backlog of cases.

I trust these informal comments will be of assistance to you. Please contact this office should you have any further questions.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/fl
---

[1] Part V, Ch. 394, Fla. Stat. (see s. 1, Ch. 98-64, Laws of Fla.).

[2] House of Representatives Fiscal Council Staff Analysis, HB 5021, March 20, 2006.

[3] Section 4, items 891 through 991, Chapter 2006-25, Laws of Florida.