

IN THE SUPREME COURT OF FLORIDA

CASE. NO. SC04-2255

IN RE: AMENDMENTS TO
FLORIDA RULE OF CRIMINAL
PROCEDURE 3.172

COMMENTS ON PROPOSED AMENDMENTS TO
FLORIDA RULE OF CRIMINAL PROCEDURE 3.172(c)

The Office of the Public Defender, Second Judicial Circuit, through undersigned counsel, hereby submits the following comments to the Criminal Procedure Rules Committee's Amendment to Rule 3.172(c).

1. Our office greatly appreciates the work of the Criminal Procedure Rules Committee and the positive steps taken in the proposed amendment to Rule 3.172(c) that would address the need to inform criminal defendants of the possible consequences of the Jimmy Ryce Act, Sections 394.910-931, Florida Statutes (2003).

2. While our office agrees with the proposed language contained within proposed Rule 3.172(c)(9), we would request additional language that addresses Section 394.912(9)(h), Florida Statutes (2003).

3. In order to be committed as a sexual violent predator under the Jimmy Ryce Act, one must have a qualifying sexually violent offense as enumerated in Section 394.912(9), Florida

Statutes (2003). Section 394.912(9)(h), Florida Statutes (2003) includes in the definition of a sexually violent offense: 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.® Asexually motivated® means that one of the purposes for which the defendant committed the crime was for sexual gratification. Section 394.912(8), Florida Statutes (2003).

4. Because there will be instances wherein criminal defendants will enter into pleas to lesser included offenses that can later be determined beyond a reasonable doubt to have been sexually motivated, it should be made clear that the plea to a lesser included offense may subject the defendant to involuntary civil commitment as a sexually violent offender upon completion of his or her sentence.

5. For example, under the plain language of the statute, entering into a plea to aggravated battery as a lesser included offense of sexual battery with a deadly weapon is clearly a qualifying offense under Section 394.912(9)(h), Florida Statutes (2003) that would subject an individual to the provisions of the Jimmy Ryce Act. The following case from Leon County illustrates this point.

6. Ernest Contrillo was charged by Information with Sexual Battery With a Deadly Weapon in Counts I-III and False Imprisonment in Count IV. On May 9, 2001 Mr. Contrillo entered pleas of nolo contendere to the lesser included offenses of Aggravated Battery in Count I, to a lesser included offense of Battery in Count II, to a lesser included offense of Assault in Count III, and to the lesser included offense of Attempted False Imprisonment in Count IV. In accordance with the plea agreement, Mr. Contrillo was sentenced to a term of 18 months in the Department of Corrections with credit for 365 days time served followed by 3 years probation. (Appendix A) Prior to his release from the incarcerative portion of his sentence, on September 27, 2001, the State of Florida filed a Petition in the Circuit Court for Mr. Contrillo's commitment pursuant to the Jimmy Ryce Act, Chapter 394, Part V, Florida Statutes (1999). (Appendix B) On September 28, 2001, an Order determining probable cause was entered. (Appendix C)

7. In light of the above example, the Office of the Public Defender, Second Judicial Circuit, requests that proposed Rule 3.172(c)(9) read as follows: that if the defendant pleads guilty or nolo contendere, and the offense to which the defendant is pleading is a sexually violent offense, or is any criminal act that has been determined beyond a reasonable doubt to have been sexually motivated, or if the defendant has been

previously convicted of a sexually violent offense or any criminal act that has been determined beyond a reasonable doubt to have been sexually motivated, the plea may subject the defendant to involuntary civil commitment as a sexually violent offender upon completion of his or her sentence.

WHEREFORE, undersigned counsel on behalf of the Office of the Public Defender, Second Judicial Circuit, supports the proposed amendment to Florida Rule of Criminal Procedure 3.172(c) with the exception of the matter noted above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the Honorable Thomas H. Bateman III, Leon County Courthouse, 301 S. Monroe Street, Room 365-C, Tallahassee, Florida 32301, on this _____ day of January, 2005.

Respectfully submitted,

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