

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5021 PCB FC 06-11 Sexually Violent Predators  
**SPONSOR(S):** Fiscal Council & Negrón  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.: Fiscal Council	20 Y, 0 N	DeBeaugrine	Kelly
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**SUMMARY ANALYSIS**

This bill contains a number of provisions related to the Jimmy Ryce Act which allows for the civil commitment of sexually violent predators in a secure treatment facility. Specific provisions are as follows:

- o limits continuances in court proceedings.
- o allows commitment to a secure forensic mental health facility for persons who are deemed incompetent to participate in court proceedings or treatment.
- o requires the Justice Administrative Commission to maintain a registry of experts who can provide examinations and expert testimony in these proceedings.

This bill could increase workload for the courts, State Attorneys and Public Defenders. The limitation of continuances would require faster processing of cases. There could also be increased utilization of secure forensic mental health facility beds. The House version of the General Appropriations Act (GAA) contains \$18 million of additional funding for workload for State Attorneys and Public Defenders. A portion of the increase is earmarked to expedite sexually violent predator civil proceedings. The proposed House GAA also contains funding for 24 new secure forensic mental health beds.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background:**

Current law allows civil commitment of sexually violent predators in a secure treatment facility. Sexually violent predators are individuals that have committed a qualifying sex offense and suffer from a mental abnormality that makes the person likely to engage in acts of sexual violence if not confined to a secure treatment facility.

The process starts when the agency having custody of a person who has committed a qualifying offense notifies a multi-disciplinary team at the Department of Children and Family Services and the state attorney of the individual's pending release. The law generally requires this notification 545 days prior to the person's anticipated release date. After the multi-disciplinary review, the state attorney decides whether to file for civil commitment. If the state attorney decides to file for civil commitment, a probable cause hearing is held. If the court finds probable cause, the individual is required to be held in a secure facility until proceedings are concluded. The civil commitment trial is supposed to commence within 30 days<sup>1</sup>.

The Department of Children and Family Services (DCF) is also responsible for administering the secure treatment facility. Currently, individuals who are committed or detained are housed at a secure facility in DeSoto County. The facility is owned by the state but run by Liberty Behavioral Health Corporation under contract with the DCF.

According to the DCF, 327 of the 539 people housed at the secure treatment facility in DeSoto County are detained awaiting trial<sup>2</sup>. This indicates that the process often takes longer than the 545 days contemplated by law.

In January of 2006, the Miami Herald ran a series of articles acknowledging this problem as well as several others<sup>3</sup>. Many of the problems were related to management of the facility, such as a lack of control over residents. One of the problems noted is that many detained and committed individuals refuse treatment. Although the articles refer to this as a loophole, the residents' civil status makes it very difficult, if not impossible, for the state to compel treatment. Finally, a number of individuals at the facility have serious mental illness and may be more appropriately treated in a mental health facility.

On February 16, 2006, the House Fiscal Council held a two hour workshop to discuss these and other problems with the state's sexually violent predator commitment program. Testimony revealed that the DCF is seeking to re-bid the contract for operation of the program, citing problems with the current vendor. Testimony also focused on recent security undertaken after DCF officials asked for help from the Department of Corrections to regain control of the facility from the residents.

Testimony and discussion at this meeting also revealed some of the reasons for the large numbers of detainees being held in the absence of formal commitment by a court. Given the high stakes involved, there is often little incentive for either party to reach conclusion. Defendants realize that civil commitment can be indefinite. The state realizes that a potentially dangerous person is kept out of society as long as the person is in detainee status. There was discussion of the lack of available expert

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<sup>1</sup> See part V of Chapter 394, Florida Statutes for further details.

<sup>2</sup> Bill analysis prepared by the Department of Children and Family Services on 3/28/2006

<sup>3</sup> Articles appeared in January 29-31, 2006 editions of the Miami Herald.

witnesses to conduct examinations and provide testimony. Current law allows unlimited delays by providing for continuances upon request by either party or the court<sup>4</sup>.

There are currently no specialized mental health services available at the facility for a number of individuals who have serious mental illness. Current law makes no specific provision for alternate confinement and treatment for these individuals.

***Impact of bill:***

The bill provides for a limit of one 90 day continuance upon request of either party unless the court determines that a manifest injustice would otherwise occur. The bill also provides for transfer of a person to a secure forensic mental health facility if there is evidence of serious mental illness that render the person incompetent to proceed with a civil proceeding or to participate in treatment. Finally, the bill requires the Justice Administrative Commission (JAC) to maintain a registry of professionals available to provide examinations and expert testimony at civil commitment proceedings. The JAC will not be required to verify the professional qualifications of individuals who request to be listed on the registry.

C. SECTION DIRECTORY:

Section 1. Amends s. 394.916, F.S., to limit continuances and provide for transfer to a secure forensic mental health facility for individuals who are incompetent to proceed.

Section 2. Creates s. 394.9171, F.S., to allow for transfer to a forensic mental health facility for certain mentally ill individuals.

Section 3. Creates s. 394.932, F.S., to require the Justice Administrative Commission to maintain a registry of mental health and other experts.

Section 4. Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There could be increased workload to the Courts, State Attorneys, and Public Defenders associated with moving cases through the legal process in a more expedited fashion. The House version of the General Appropriations Act contains \$18 million for additional workload for State Attorneys and Public Defenders statewide. Proviso language associated with these funds requires assignment of additional FTE to help clear existing backlogs of these cases. HB 113, if passed, would provide authorization and funding for 66 additional judges and associated support staff.

The Justice Administrative Commission (JAC) would experience additional workload associated with maintaining the registry required in section 3 of the bill. The JAC, however, is not required to verify information provided by individuals that wish to be listed on the registry.

The Department of Children and Family Services could experience increased utilization of secure forensic mental health treatment beds. This would be offset by a corresponding reduction in utilization of beds at the violent sexual predator civil commitment treatment facility. The House version of the General Appropriations Act contains \$3.3 million for 24 additional secure forensic mental health beds at the Florida State Hospital.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>4</sup> See s. 394.916, F.S.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to expend funds or take actions requiring the expenditure of funds. Neither does it reduce the authority of cities and counties to raise revenue or reduce the share of a state tax. Therefore, the provisions of Article VII, Section 18 do not appear to apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES