

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 9, 1998

Revised: _____

Subject: R. Newman and S. Simon Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Wiehle	Moody	JU	Favorable/CS
2.			CF	
3.				
4.				
5.				

I. Summary:

An ex parte order is one that is granted at the request of one party without notice to the affected party. The bill provides that upon a request for an ex parte order for involuntary examination of a person alleged to be mentally ill, the court may hold a hearing either before the order for involuntary examination is entered or anytime during the 72-hour period the person is being held at the receiving facility for examination. The hearing must be held on an expedited basis. The court must rescind the ex parte order upon a finding that the person does not meet the statutory criteria for involuntary examination and notify the receiving facility to release the person.

The bill prevents a patient from being given a psychotropic drug immediately before or during the involuntary examination without a court order, unless the actions of the patient endanger the health or safety of the patient or others, or the facility personnel know that the drug had been previously prescribed for the patient and clinical evidence supports administering the drug.

The bill creates criminal penalties for knowingly providing false information or otherwise assisting in having a person held for involuntary examination without reason to believe the person is mentally ill.

The bill provides for notice if the person admitted for an involuntary examination is a minor.

The bill substantially amends sections 394.463 and 394.4599 of the Florida Statutes.

II. Present Situation:

Currently, the court can issue an ex parte order stating that a person meets the criteria for involuntary examination contained in s. 394.463(1), F.S., and the basis for that finding.

s. 394.463(2)(a)1., F.S. An ex parte order is one that is granted at the request of one party without notice to the affected party. The criteria for involuntary examination are that there is reason to believe that a person is mentally ill and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or
 - The person is unable to determine for himself or herself whether examination is necessary; and
 - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
 - There is a substantial likelihood that without care or treatment, the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.
- s. 394.463(1), F.S.

The order for involuntary examination must be based upon written or oral sworn testimony.

s. 394.463(2)(a)1., F.S. Absent less restrictive means, a law enforcement officer or other designated agent then takes the person into custody and delivers him or her to the nearest receiving facility for involuntary examination. *Id.* The patient then must be examined by a physician or clinical psychologist at the receiving facility without unnecessary delay and cannot be released from the facility without the documented approval of a physician or clinical psychologist.

s. 394.463(2)(f), F.S. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours. *Id.* After that, unless the patient is charged with a crime and taken into custody, the patient must be released with or without outpatient treatment, or asked to give express and informed consent to voluntary placement, or a petition for involuntary commitment must be filed in the appropriate court by the facility administrator. s. 394.463(i), F.S.

Currently, the law does not prohibit the administration of psychotropic drugs to a patient immediately prior to or during the involuntary examination, nor does it address notification of a parent or guardian if the patient is a minor.

III. Effect of Proposed Changes:

The bill provides that the court may order a hearing on a request for an ex parte order for the involuntary examination of a person alleged to be mentally ill. The hearing may be held either before the order for involuntary examination is entered or anytime during the 72-hour period the person is being held at the receiving facility for examination. The hearing must be held on an expedited basis. If the court enters an ex parte order prior to the hearing, it must rescind the order if it finds at hearing that the person does not meet the statutory criteria for involuntary examination. Thus, the bill enables an individual for whom involuntary commitment is sought to have access to the court to oppose an order which currently can be issued without notice and can result in the individual being held involuntarily for up to 72 hours.

Additionally, the bill makes the following actions misdemeanors of the first degree, punishable as provided in s. 775.082, F.S., and by a fine not to exceed \$5,000:

- Knowingly providing false information for the purpose of obtaining emergency or other involuntary examination or treatment for another person; and
- Causing or otherwise securing, or conspiring with or assisting another to cause or secure, any emergency or other involuntary procedure for another person without reason to believe the person is mentally ill.

The bill prohibits giving a patient a psychotropic drug immediately before or during the involuntary examination without a court order, unless the actions of the patient endanger the health or safety of the patient or others, or the facility personnel know that the drug had been previously prescribed for the patient and clinical evidence supports administering the drug. This eliminates tainting the results of the examination by the effects of drugs on a patient while allowing a patient in need of medication to receive it.

The bill amends s. 394.4599(2)(b), F.S., which relates to notice of the whereabouts of a patient who is being involuntarily held for examination. The bill requires that if the person admitted for an involuntary examination is a minor, the facility to which the minor is admitted must immediately attempt to notify the minor's parent or guardian. If the parent or guardian is not immediately located, the facility must reattempt to locate the parent or guardian at least every 6 hours.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who knowingly furnish false information to obtain involuntary examination of another or who, without reason to believe a person is mentally ill, cause that person to be involuntarily examined, would be subject to conviction of a misdemeanor of the first degree and punishment to include a fine not to exceed \$5,000.

C. Government Sector Impact:

The bill may increase the workload for the judiciary.

VI. Technical Deficiencies:

Procedurally, it is unclear how the hearing would be set and to whom and by what method notice would be provided.

VII. Related Issues:

None.

VIII. Amendments:

None.