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DATE: February 27, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 1597
RELATING TO: Sexually Violent Predators
SPONSOR(S): Council for Smarter Government and Representative Needelman
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill amends the "Jimmy Ryce Act" ("Act"), relating to the involuntary civil commitment of sexually violent predators, to provide that persons detained must file habeas corpus petitions in proceedings outside of the commitment case and not as part of the commitment case. Under the Act, if a court finds probable cause that a person should be detained under the Act, it must hold a commitment trial. Current law allows persons to raise issues outside of the narrow issue of whether the person should be committed, such as whether he or she is being held in an appropriate facility pursuant to statute, during the course of a commitment trial.

This bill provides that a person who has been detained may raise claims that his or her state or federal constitutional rights are being violated or that he or she is not being held in an appropriate secure facility by filing a petition for habeas corpus in the circuit where he or she is being detained. These claims cannot be raised during a commitment proceeding.

This bill also provide civil immunity to employees and officers of the Department of Legal Affairs for good faith actions under the Act.

This bill appears to have a minimal fiscal impact on state and local governments. See "Fiscal Comments".

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Jimmy Ryce Act

Sections 394.910 – 394.931, F.S., commonly known as the "Jimmy Ryce Act"¹, deal with the involuntary civil commitment of sexual violent predators. The Act works as follows:

The agency with jurisdiction over a person who has been convicted of a sexually violent offense must give written notice of the pending release of the person to the multidisciplinary team,² and a copy to the state attorney of the circuit where that person was last convicted of a sexually violent offense. The written notice must be given to the multidisciplinary team and the state attorney at least 365 days or, in the case of an adjudicated committed delinquent, at least 90 days before the anticipated release date or the anticipated hearing regarding possible release of a person who has been found not guilty by reason of insanity or mental incapacity of a sexually violent offense. See s. 394.913(1), F.S.

The multidisciplinary team assesses and evaluates each person referred to the team to determine whether that person is a sexually violent predator.³ The evaluation is based on an examination of the person's institutional history, treatment record, criminal background, and other information that is relevant. See s. 394.913(3)(b), F.S. In addition, the person is offered the option of a personal interview with at least one member of the team. See s. 394.913(3)(c), F.S. A written assessment and recommendation as to whether the person is a sexually violent predator must be submitted within 90 days of receiving notice. See s. 394.913(3)(e), F.S.⁴

Following receipt of the written assessment and recommendation from the multidisciplinary team, the state attorney may file a petition with the circuit court alleging that the person is a sexually violent predator and stating facts to support the allegation. See s. 394.914, F.S. When the state

¹ See s. 1, ch. 98-64, L.O.F.

² The multidisciplinary team includes, at a minimum, two licensed psychiatrists or psychologists or one licensed psychiatrist and one licensed psychologist and is established by secretary of the Department of Children and Families. See s. 394.913(3), F.S.

³ "Sexually violent predator" means any person who has been convicted of a sexually violent offense and who 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." s. 394.912(10), F.S.

⁴ The various deadlines in s. 394.913, F.S., are not jurisdictional. Failure to meet a deadline does not preclude classification as a sexually violent predator if a person meets the criteria.

attorney files a petition seeking to have a person declared a sexually violent predator, a judge determines whether probable cause exists to believe that the person is a sexually violent predator. If probable cause exists, the judge orders that the person remain in custody and be immediately transferred to an appropriate secure facility. See 394.915, F.S. Within 30 days of a finding a probable cause, the court must hold a trial to determine if the person is a sexually violent predator. See s. 394.916, F.S. The person is entitled to counsel and the public defender is appointed to represent indigent persons.⁵ See s. 394.916(3), F.S. Either the state or the person may demand a jury trial. If no such demand is made, the trial is before the judge. See s. 394.916(5), F.S. The state must prove by clear and convincing evidence that the person is a sexually violent predator. See 394.917(1), F.S. A person found to be a sexually violent predator is committed to the Department of Children and Families until such time as the person's mental abnormality or personality disorder has changed so that it is safe for the person to be at large. See s. 394.917(2), F.S. The public defender is appointed to represent the sexually violent predator on appeal. See s. 394.917(3), F.S.

The Jimmy Ryce Act provides procedures for a person committed under the Act to gain his or her release. See ss. 394.918-394.920, F.S.

Other Litigation Within Commitment Proceedings

Other litigation can occur during the commitment proceedings described above. In Department of Children and Families v. Jackson, 790 So. 2d 535 (Fla. 2d DCA 2001), Jackson and other petitioners filed motions asking that they be transferred from the facility where they were housed, which they claimed was "really a prison", to a facility "designed and operated for the care and treatment of persons with alleged mental disorders." Jackson, 790 So. 2d at 537. In other words, the petitioners claimed the facility in which they were housed was not an appropriate secure facility pursuant to s. 394.915, F.S. The motions were not served on the department. See Id. The department eventually received notice of the proceedings and participated in the process. See Id. After a hearing, the trial court ordered that the persons be transferred to other facilities and the state sought certiorari review of the order. On appeal, the state argued that claims regarding the adequacy of the facility could not be raised in commitment proceedings. See Jackson, 790 So. 2d at 535-537. The Second District Court of Appeal rejected that argument and held that such claims could be raised in commitment proceedings. See Jackson, 790 So. 2d at 538.

The Jackson case means that persons awaiting trial in Jimmy Ryce Act cases can raise issues in commitment proceedings that not related to whether those persons should be detained as sexually violent predators. In a bill analysis provided by the Department of Children and Families, the department explained the problems that it perceives are caused when other issues are raised within the commitment proceedings:

(1) The commitment proceeding is not the proper forum for conditions of confinement challenges: The court, in the commitment proceeding, is supposed to determine whether or not an individual meets, or continues to meet, the criteria for commitment. s. 394.916, F.S. The Legislature has provided respondents with appointed counsel in the commitment proceeding, as well as funds to litigate the commitment proceeding. Litigation of issues collateral to whether or not the respondent meets commitment criteria is a significant drain on the resources provided and contributes to substantial delays in the commitment trial process.

(2) The Department is not a party to the commitment proceedings: The department is not a party to commitment proceeding, and, therefore, is not under the jurisdiction of the trial court.

⁵ Indigent criminal defendants are also entitled to appointed counsel at trial. However, indigent inmates are not entitled to appointed counsel in habeas corpus proceedings.

Nevertheless, trial courts have continued to enter orders to the department directing that specific actions be taken with regard to particular respondents. Often these orders are entered without notice to the department or opportunity to respond. Because the department is not a party, it has no appeal rights, and must seek review pursuant to a petition for writ of certiorari (if the department learns of the order in time to seek review). The department's only alternative would be to ignore the court order and then respond to an order to show cause in a contempt proceeding. This is not an ideal option because it generally results in a hostile court.

Because of the lack of clarity with regard to the department's status in the commitment proceedings, the department is frequently in the position of having to appear in court to argue an issue with little or no notice and without time or opportunity to submit a formal written response.

(3) The department is not represented in the commitment proceedings: Commitment proceedings are the state v. the respondent. The State Attorney represents the "state" as in the interest of the people of the state. The State Attorney does not represent the department as a state agency. The State Attorney is not ready, willing, or able to argue, within the commitment proceeding, as to why a certain procedure or decision by the facility with regard to a particular resident is or is not appropriate. The State Attorneys have no interest in many of the conditions of confinement issues, and so do not contest them when they are raised.

(4) Potential for Conflicting Results: With challenges to conditions of confinement occurring in various circuit courts, there is no uniformity of results. Different courts could order different resolutions to the same issue.

Civil Liability Under the Jimmy Ryce Act

Section 394.923, F.S., provides immunity from civil liability for good faith conduct under the Ryce Act to the agency with jurisdiction and its employees, members of the multidisciplinary team, the state attorney and the state attorney's employees, and those involved in the evaluation, care, and treatment of sexually violent predators. Section 394.913(3)(d), F.S., provides that the Attorney General's office will serve as legal counsel to the multidisciplinary team. Section 394.923, F.S., does not provide civil immunity for employees of the office of the Attorney General.

C. EFFECT OF PROPOSED CHANGES:

This bill creates a new section of the Jimmy Ryce Act providing a mechanism for raising certain habeas corpus claims. This bill allows a person held in a secure facility, after exhausting administrative remedies, to file a petition for habeas corpus in the circuit court for the county where the facility is located, rather than raising the claim in the circuit court which ordered the commitment. The petition may raise (1) claims that the person's conditions of confinement violate a statutory or constitutional right or (2) claims that the facility is not an appropriate secure facility under s. 394.915, F.S. This bill provides that a person cannot assert these claims in commitment proceedings. A person does not have the right to appointed counsel in habeas corpus proceedings under this section.

Upon the filing of a legally sufficient petition, the court may direct the Department of Children and Families to respond. It may also conduct an evidentiary hearing to correct a violation of state or federal rights. Any relief granted by the court must be narrowly drawn and may not exceed that which is minimally necessary to correct the violation of state and federal constitutional rights. A court may not release a person from secure detention without an express finding that no remedy exists to correct the violation other than release. A court must consider the effect that its order will have on the operation of the facility and its effect on public safety.

This bill provides that direct appeal of a trial court order under this section shall be to the district court of appeal and that an appeal by the Department of Children and Families shall stay the order pending appeal. It provides that nonfinal orders may be appealed pursuant to the Florida Rules of Appellate Procedure.

This bill adds gives immunity from civil liability for good faith conduct under the Act to the officers and employees of the Department of Legal Affairs.

This bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments"

2. Expenditures:

See "Fiscal Comments"

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Families provided the following comments:

Possible impact on the circuit court for the county where the [sexually violent predator] facility is located. Viewed systemically, however, this impact would easily be offset by the reduced strain on the remainder of the circuits where conditions of confinement issues are choking the civil commitment trial docket. Additionally, the costs of the commitment trials should be somewhat reduced by removing issues from these trials that consume a great deal of attorney and court time.

From the department's perspective, the bill is cost-neutral. The Attorney General provides representation on conditions of confinement issues, and the department is obligated to pay for costs attributable to that representation. However, the department is already incurring those costs as these issues crop up haphazardly in circuit courts across the state. Consolidating these issues into a single circuit court will not likely reduce the cost to the department, but it will simplify coordination of the representation[.]

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The original bill contained language prohibiting a person from asserting claims regarding constitutional rights or the appropriateness of a secure facility "during the commitment proceedings". There was concern that the phrase could be interpreted to prohibit such claims while a commitment proceeding is ongoing. Such an interpretation would prevent a petitioner from raising possibly meritorious claims simply because a commitment proceeding was occurring and could be found by the courts to violate the Art. I, s. 13, Fla. Const., right to file a petition for habeas corpus. This issue was addressed by an amendment adopted by the Committee on Judicial Oversight on February 21, 2002. The amendment made clear that habeas corpus claims could not be considered in commitment proceedings.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2002, the Committee on Judicial Oversight adopted an amendment to provide that habeas corpus claims cannot be raised as part of a commitment case. This bill, as amended, allows habeas corpus claims to be raised but requires that they be filed in the circuit where the person is detained and provides that such claims cannot be raised as part of the commitment case. The bill, as amended, was reported favorably.

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The Council for Smarter Government reported the bill favorably as a council substitute.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

L. Michael Billmeier, Jr., J.D.

Nathan L. Bond, J.D.

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Council Director:

L. Michael Billmeier, Jr., J.D.

Don Rubottom