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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 547
RELATING TO: Mental Health
SPONSOR(S): Representative Rodriguez-Chomant
STATUTE(S) AFFECTED: s. 394.463, F.S.
COMPANION BILL(S): SB 930 by Senator Gutman (s)

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

- (1) CIVIL JUSTICE & CLAIMS YEAS 8 NAYS 0
- (2) ELDER AFFAIRS & LONG TERM CARE
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 547 would amend part 1 of ch. 394, F.S., known as the "Florida Mental Health Act." Currently, s. 394.463, F.S., authorizes courts to issue ex parte orders requiring involuntary mental examinations of persons who exhibit symptoms of acute mental illness. Persons whose behavior poses an apparent threat to themselves or others may be detained and examined by a "receiving facility" for up to 72 hours.

CS/HB 547 would not alter the basic structure of proceedings related to involuntary mental examinations. The bill would, however, provide an additional element of due process. It would authorize the court to initiate a hearing at its own discretion. Under the bill, hearings would be conducted on an expedited basis. If, after conducting such a hearing, the court finds that the detainee does not meet the criteria set forth in the statutes, it could rescind the ex parte order or direct the detainee's release.

In addition, CS/HB 547 would require receiving facilities to make immediate and repeated attempts to notify the parents or guardians of a minor, detained for an involuntary mental examination, of the minor's whereabouts. Under certain circumstances, CS/HB 547 would forbid receiving facilities from administering a psychotropic drug to an involuntary examinee. Finally, CS/HB 547 would penalize persons who: (1) knowingly furnish false information in relation to an involuntary examination, (2) cause an involuntary examination to be administered without a reason for believing the examinee is mentally ill, and (3) cause a denial of any right accorded pursuant to ch. 394, F.S.

CS/HB 547 would probably not have a significant fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

1. **The Florida Mental Health Act** - The Florida Mental Health Act, formerly known as the "Baker Act," is located at part 1 of ch. 394, F.S. It provides a mechanism for the emergency detention of mentally ill persons. The Florida Mental Health Act relies upon a mixture of judicial and clinical decisionmaking to ensure the appropriateness of involuntary mental examinations.

a. **Criteria for Involuntary Mental Examinations** - Section 394.463(1), F.S., permits courts to issue ex parte orders requiring involuntary mental examinations of persons who appear to suffer from mental illness. Section 394.453(18), F.S., defines mental illness.

"Mental illness" means an impairment of the emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

Furthermore, an involuntary examinee must meet at least one of three additional criteria set out under s. 394.463(1), F.S.

- (1) **Refusal Spurred by Mental Illness** - The person, because of mental illness, has declined to undergo a voluntary mental examination;
 - (2) **Likelihood of Neglect** - The person is unable to determine whether an examination is necessary and, without proper care, the person is likely to suffer from neglect; or
 - (3) **Potential for Serious Harm** - There is a substantial likelihood that, without treatment, the person's behavior could cause serious bodily harm to the person or others.
- b. **Initiation of Involuntary Examinations** - Section 394.463(2), F.S., provides three methods for initiating involuntary mental examinations.
- (1) **Court Issuance of Ex Parte Order** - Subsection 1 of s. 394.463(2)(a), F.S., allows courts to issue ex parte orders requiring involuntary mental examinations. These ex parte orders must state that the person appears to meet the criteria for involuntary examination set forth in the statutes. In addition, they must be based upon sworn testimony. Section 394.463(2)(b), F.S., permits courts to issue ex parte orders for the removal of persons from residential placements, or other programs, to receiving facilities to undergo involuntary mental examinations. Under either provision, courts lack the power to initiate hearings. Cf. *Administrator, Retreat Hospital v. Broward County*, 660 So.2d 333 (Fla. 4th DCA 1995)(holding that the trial court should not have invited briefs on requiring hearings and court orders prior to involuntary mental examinations).

- (2) **Police Action** - Subsection 2 of s. 394.463(2)(a), F.S., allows law enforcement officers to detain, and deliver to receiving facilities, those persons who meet the criteria for involuntary examination.
 - (3) **Health Specialist Determination** - Subsection 3 of s. 394.463(2)(a), F.S., allows physicians, psychologists, psychiatric nurses, and clinical social workers to execute certificates stating that persons appear to meet the criteria for involuntary mental examination.
 - c. **Administration of Mental Examinations** - According to s. 394.463(f), F.S., receiving facilities must conduct involuntary mental examinations “without unnecessary delay.” Section 394.455(28), F.S., defines “receiving facilities,” as “any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment.” It notes that “the term does not include a county jail.” According to s. 394.463(g), F.S., to conduct involuntary mental examinations, receiving facilities may hold persons for up to 72 hours.
 - d. **Disposition following Examinations** - Section 394.463(2)(i), requires receiving facilities to take one of four actions following an involuntary mental examination:
 - (1) **Release** - The patient may be released, or returned to the custody of law enforcement if charged with a crime;
 - (2) **Release for Outpatient Treatment** - The patient may be released for outpatient treatment;
 - (3) **Consent to Placement as a Voluntary Patient** - The receiving facility asks and receives the patient’s consent to placement as a voluntary patient; or
 - (4) **Petition for Involuntary Placement** - The receiving facility files a petition for involuntary placement if it determines that such treatment is necessary.
2. **Perjury** - Persons who offer false testimony in judicial proceedings related to involuntary mental examinations may be guilty of perjury. Section 837.02(1), F.S., provides, “Whoever makes a false statement, which he does not believe to be true, under oath in an official proceeding in regard to any material matter shall be guilty of a felony of the third degree”
3. **Malicious Prosecution** - A person who is wrongfully detained under the Florida Mental Health Act may have a cause of action for malicious prosecution. According to the Fifth District Court of Appeal, in *Pellegrini v. Winter*, 476 So.2d 1363 (Fla. 5th DCA 1985)(citing *Wright v. Yurko*, 446 So.2d 1162 (Fla. 5th DCA 1984)), a cause of action for malicious prosecution consists of six elements:
 - a. The initiation or continuance of a civil or criminal proceeding against the plaintiff;
 - b. The defendant initiated or caused the proceeding;
 - c. The decisionmaker rendered a determination in favor of the plaintiff;

- d. The prosecution of the action lacked probable cause;
 - e. The defendant acted with malice; and,
 - f. The plaintiff sustained damages.
5. **False Imprisonment** - A person who is wrongfully detained under the Florida Mental Health Act may bring a tortious claim for false imprisonment. See *Foshee v. Health Management Associates*, 675 So.2d 957 (Fla. 5th DCA 1996)(allowing false imprisonment claim to proceed although certain other claims were procedurally barred). False imprisonment is also treated as a crime under s. 787.02, F.S. Section 787.02(1)(a), F.S., defines false imprisonment as “forcibly , by threat, or secretly confining abducting, imprisoning, or restraining another person without lawful authority and against his will.” False imprisonment is punishable as a felony of the third degree.
6. **Federal Law:**
- a. **Due Process** - The Due Process Clause of the Fourteenth Amendment prohibits state governments from depriving individuals of a liberty interest without due process of law. The United States Supreme Court has treated due process as a flexible concept and has not yet settled upon the structure of procedural safeguards required before the state can subject a person to an involuntary mental examination. But cf. *Heller v. Doe*, 113 S. Ct. 2637 (1993)(examining Kentucky’s civil commitment procedures); *Parham v. J.R.*, 442 U.S. 584 (1979)(examining Georgia’s due process requirements for the voluntary civil commitment of children). In *Addington v. Texas*, 441 U.S. 418 (1979), the Supreme Court determined that, prior to involuntary commitment, the state must prove mental illness by a “clear and convincing” standard. *Id.* at 431-433.
 - b. **Title 42** - Title 42 of the United States Code provides:
 - Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state . . . subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. s. 1983 (1988).

B. EFFECT OF PROPOSED CHANGES:

- 1. **Would Give the Judiciary Power to Conduct Additional Hearings** - HB 547 would not modify the overall structure of proceedings related to involuntary mental examinations. In certain circumstances, however, the bill would authorize courts to hold hearings on their own initiative and at their own discretion.
 - a. **Power Would Only Relate to Ex Parte Orders** - Although HB 547 grants courts the power to initiate hearings, this new power seems limited to situations where a request for an ex parte order is pending or has been granted. The bill provides, “The court . . . may order a hearing on a request for an ex parte order . . . before entering such order or at any time thereafter while the person is being held for examination” Apparently, the bill would not permit courts to initiate

hearings where law enforcement actions or determinations by health care specialists precipitate involuntary mental examinations.

- b. **Court Could Order Release** - After conducting a hearing, if the court finds that a person does not appear to meet the statutory criteria for involuntary mental examination, the court could rescind its ex parte order. It could also direct receiving facilities to release persons who do not appear to meet the statutory criteria.
2. **Would Require Parental Notification** - CS/HB 547 would require receiving facilities to make immediate and repeated attempts to notify the parents or guardians of the whereabouts of any minor detained for an involuntary mental examination.
3. **Would Restrict the Administration of Psychotropic Drugs** - Under certain circumstances, CS/HB 547 would forbid the administration of psychotropic drugs to involuntary examinees. Receiving facilities would be permitted, however, to obtain court orders allowing them to administer psychotropic drugs. Also, where patients represent a danger to themselves or others, receiving facilities would be allowed administer psychotropic drugs with or without court orders.
4. **Would Penalize Certain Wrongdoers** - CS/HB 547 would penalize persons who: (1) knowingly furnish false information in relation to an involuntary examination, (2) cause an involuntary examination to be administered without a reason for believing the examinee is mentally ill, and (3) cause a denial of any right accorded pursuant to ch. 394, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. It would allow courts to order hearings related to ex parte orders for involuntary mental examinations.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Potentially. It might result in fewer involuntary detentions for mental examinations under the Florida Mental Health Act.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

NA.

- (2) Who makes the decisions?

NA.

- (3) Are private alternatives permitted?

NA.

- (4) Are families required to participate in a program?

NA.

- (5) Are families penalized for not participating in a program?

NA.

- b. Does the bill directly affect the legal rights and obligations between family members?

NA.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

NA.

- (2) service providers?

NA.

- (3) government employees/agencies?

NA.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides a title: "The Robert Newman and Stuart Simon Act of 1997."

Section 2: Amends s. 394.463, F.S., allows courts to conduct hearings related to ex parte orders for involuntary mental examinations; allows courts to rescind ex parte orders and order the release of persons held; prohibits the administration of psychotropic drugs under certain circumstances; provides penalties for certain wrongdoers.

Section 3: Requires receiving facilities to attempt to notify the parents or guardians of a minor detained for an involuntary examination.

Section 4: Provides that the act shall take effect on October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Because HB 547 would allow courts to conduct additional hearings, it could slightly increase the workload of the courts. On the other hand, it could prevent some future litigation filed on behalf of persons wrongfully detained under the Florida Mental Health Act. It might also slightly reduce the workload of state-operated mental facilities.

If public defenders are needed to safeguard the rights of detainees in court initiated hearings, HB 547 could have an additional fiscal impact.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Uncertain.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

HB 547 could slightly diminish the income of privately operated "receiving centers," by reducing the number of patients sent to such facilities for involuntary mental examinations.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

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 municipalities or counties have to raise revenues in the aggregate.

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

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

1. **Key Issues:**

a. **Question Presented** - *What level of procedural protection should be offered to persons before they are detained for involuntary mental examinations?*

b. **Other Policy Considerations:**

(1) Is there a need for additional hearings by courts issuing ex parte orders for involuntary mental examinations?

(2) Does the bill adequately protect against the adverse social consequences and loss of freedom that could result from an erroneous detention under the Florida Mental Health Act?

2. **Technical Considerations** - The application of CS/HB 547's criminal penalties is not entirely clear. The second penalty, a first degree misdemeanor, applies to one "who causes or otherwise secures, or conspires with or assists another to cause or secure, without reason for believing a person to be mentally ill, any emergency or other involuntary procedure" The mental state, "without reason for believing," may not be the same as "knowingly." The wording of this provision seems somewhat redundant and unnecessarily complex. The third penalty, also a first degree misdemeanor, applies

to one "who causes, or conspires with or assists another to cause, the denial . . . of any right accorded pursuant to this chapter" The applicable mental state is unclear. Is this a strict liability offense? Chapter 394 encompasses many rights and matters unrelated to involuntary mental examinations. The breadth and vagueness of this third penalty could render it unenforceable.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

1. **The Bill as Originally Filed:**

a. **Would Have Allowed the Court to Punish Perjury** - HB 547 would have allowed courts to punish perjured testimony given in support of ex parte orders for involuntary mental examination. Subsection (2) of the bill read, "The court may . . . find that sworn testimony leading to an ex parte order was perjured, and may impose the penalty for perjury prescribed by law." The bill's language seemed suggest that the court, rather than a jury, would be authorized to determine guilt and mete out punishment. Both the Sixth Amendment, and Article II, Section 2, of the Constitution of the United States, guarantee criminal defendants the right to a jury trial. Also, Article I, Section 22 of the Florida Constitution provides, in part, "The right of trial by jury shall be secure to all and remain inviolate." Finally, the Due Process Clauses of the federal and state constitutions protect the right to a jury trial in criminal cases. As a result of these concerns, this provision was eliminated from the committee substitute.

b. **Would Have Allowed the Court to Impose an Administrative Fine** - HB 547 would have allowed the court to impose an administrative fine of up to \$10,000 upon a person who "knowingly" requests an ex parte order for an involuntary examination of a person who does not meet the criteria outlined in s. 394.463(1), F.S. The size of the fine authorized under this provision, and the lack of procedural guidelines, raised some due process concerns. Consequently, this provision was eliminated from the committee substitute.

2. **Committee Substitute** - At the March 12 meeting of the Committee on Civil Justice and Claims, committee members adopted a committee substitute. The committee substitute added provisions imposing notification requirements upon receiving facilities examining a minor, restricting the administration of psychotropic drugs under certain circumstances, and imposing penalties for certain wrongdoers.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

Prepared by:

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