

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1081 Involuntary Civil Commitment of Sexually Violent Predators
SPONSOR(S): Persons-Mulicka
TIED BILLS: **IDEN./SIM. BILLS:** SB 1384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N	Padgett	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

The Involuntary Civil Commitment of Sexually Violent Predators Act requires an offender convicted of specified sex offenses, or an offender who meets specified criteria for civil commitment, to be referred to the Department of Children and Families for assessment to determine whether he or she meets the clinical definition of a sexually violent predator (SVP). If, after receiving the results of the assessment, the state attorney decides to file a civil commitment petition, a judge must determine whether probable cause exists to believe the offender is a SVP. If the court determines a person is a SVP, the offender is detained until a trial is conducted. After trial, a person found to be a SVP is committed to a secure facility and remains confined until the court determines that the person is no longer a threat to public safety.

Section 394.9155, F.S., provides the Florida Rules of Civil Procedure (Civil Rules) apply in civil commitment proceedings for SVPs. However, the Civil Rules do not address circumstances in which the competency of the respondent in the civil commitment proceeding is in question.

HB 1081 provides that the Florida Rules of Criminal Procedure are applicable in civil commitment proceedings for SVPs where the competency of the respondent in the civil commitment proceeding is in doubt. The bill provides a procedural framework for civil commitment cases involving competency matters by:

- Requiring civil proceedings to cease when a person has been found incompetent to proceed.
- Authorizing the court, the state attorney, or an attorney for the respondent in the commitment proceeding to file a motion for a competency hearing.
- Requiring the court to order the respondent in a civil commitment proceeding who has been found to be incompetent into treatment at a secure facility until such respondent's competency is restored.

If the respondent has been found incompetent by the court and is referred to a secure treatment facility, the facility must file an initial report with the court within six months of the respondent's admission addressing his or her competency. The facility has an ongoing obligation to file a report with the court if, at any time following the respondent's commitment, the administrator of the treatment facility determines he or she has become competent to proceed.

If the court has reasonable grounds to believe the respondent has regained competency, the court must order the treatment facility to file an updated report on the respondent's competence and conduct a hearing within 30 days after such report is filed. If the court finds the respondent is still incompetent, the court must order the respondent to continue treatment. If the court finds the respondent's competency has been restored, the court must proceed with civil commitment proceedings.

The bill requires the court to biannually evaluate the competency of a respondent who has previously been found to be incompetent to proceed.

The bill may have a negative, yet indeterminate fiscal impact on the State Courts System.

The bill provides an effective date of July 1, 2021.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1081c.JUA

DATE: 3/25/2021

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Involuntary Civil Commitment for Sexually Violent Predators

A sexually violent predator (SVP) is a person who has been convicted of a sexually violent offense and has a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.¹

Section 394.912(9), F.S., defines the term “sexually violent offense” as:

- Murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.;
- Kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery; or a lewd, lascivious, or indecent assault or act upon or in the presence of the child;
- Sexual battery in violation of s. 794.011, F.S.;
- Lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of ss. 800.04 or 847.0135(5), F.S.;
- An attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense;
- Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense listed above or any federal conviction or conviction in another state for a felony offense that would be a sexually violent offense in Florida;
- 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; or
- A criminal offense in which the state attorney refers a person to the department for civil commitment proceedings pursuant to s. 394.9125, F.S.

To address the treatment needs of such offenders, the 1998 Legislature enacted the Involuntary Civil Commitment of Sexually Violent Predators Act,² also known as the Ryce Act.³ The Ryce Act creates a civil commitment process for SVPs that is similar to the Baker Act (used to involuntarily commit and treat mentally ill persons).⁴ Under the Ryce Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence, or offenders that meet specified criteria for civil commitment, are referred to the Department of Children and Families (DCF) for assessment as to whether the offender meets the clinical definition of a SVP.⁵ After assessment, DCF provides a recommendation to the state attorney.⁶

Following receipt of DCF’s recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the offender is a SVP.⁷ If the judge determines probable cause exists, the offender is detained in a secure facility until a trial is conducted.⁸ At trial, a judge or jury must determine by clear and convincing evidence that an offender meets the definition of a sexually violent predator.⁹

¹ S. 394.912(10), F.S.

² Ch. 394, part V, F.S.

³ Ch. 98-64, Laws of Fla.

⁴ S. 394.910, F.S.

⁵ S. 394.913, F.S.

⁶ *Id.*

⁷ *Id.*

⁸ S. 394.915, F.S.

⁹ S. 394.917, F.S.

An offender committed to the state under the Ryce Act must be confined until the court determines that he or she is no longer a threat to public safety.¹⁰ An offender committed under the Ryce Act has an examination of his or her mental condition once every year (or more frequently at the court's discretion) and the court holds a hearing to determine whether there is probable cause to believe that the offender's condition has changed such that it is safe for him or her to be released.¹¹ If the court believes there is probable cause that an offender can safely be released, a trial is held at which the state attorney bears the burden of proving by clear and convincing evidence that the person's mental condition remains such that, if released, he or she is likely to engage in acts of sexual violence.¹²

Competency

Civil Commitment Proceedings

The respondent in a civil commitment proceeding does not have a fundamental constitutional due process right to be competent in such a proceeding.¹³ However, the respondent does have a limited due process right to be competent when the state intends to present hearsay evidence¹⁴ that has not been admitted by the respondent through a previous plea or subject to adversarial testing at trial.¹⁵ Thus, in cases where the state introduces evidence of a respondent's prior uncharged bad acts, such as information from a police report where the respondent was not charged with a crime or information from previous psychological treatment, the respondent has a right to be competent so he or she can actively contest this evidence.¹⁶ Thus, under current law the state attorney cannot proceed in a civil commitment proceeding where the respondent's competence is in doubt and the evidence presented by the state consists of previously untested hearsay evidence.

Criminal Proceedings

The Florida Rules of Criminal Procedure (Criminal Rules) require a person accused of a criminal offense or a violation of probation to be competent at each material stage¹⁷ of a criminal proceeding.¹⁸ If a defendant's competency is in doubt, court proceedings against the defendant must cease and the court must appoint no more than three experts to examine the defendant.¹⁹

In considering the issue of competence to proceed, the experts appointed by the court are required to consider and include in their report:

- The defendant's capacity to:
 - Appreciate the charges or allegations against him or her;
 - Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
 - Understand the adversary nature of the legal process;
 - Disclose to counsel facts pertinent to the proceedings at issue;
 - Manifest appropriate courtroom behavior;
 - Testify relevantly; and
 - Any other factors deemed relevant by the experts.²⁰

¹⁰ S. 394.918, F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Branch v. State*, 890 So. 2d 322 (Fla. 2d DCA 2004).

¹⁴ Hearsay evidence is admissible in civil commitment proceedings unless the court finds such evidence unreliable, although hearsay evidence alone cannot be the basis for a person's commitment. S.394.9155(5), F.S.

¹⁵ *Id.* at 329.

¹⁶ *Id.* at 328.

¹⁷ "A material stage of a criminal proceeding" includes the trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, violation of probation or violation of community control proceedings, sentencing, hearings on issues regarding a defendant's failure to comply with court orders or conditions, or other matters where the mental competence of the defendant is necessary for a just resolution of the issues being considered. Fla. R. Crim. P. 3.210.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Fla. R. Crim. P. 3.210.

If, after reviewing reports from experts, the court finds a defendant incompetent to proceed, the court must order a defendant into treatment for the purpose of regaining competency.²¹ The court may order treatment on an outpatient basis or, in severe cases, may order a defendant to be committed to a secure facility for treatment.²²

Effect of Proposed Changes

HB 1081 provides that the Florida Rules of Criminal Procedure apply in civil commitment proceedings for SVPs where the competency of the respondent of the civil commitment proceeding is in doubt. The bill provides a procedural framework for civil commitment proceedings that closely mirrors the competency provisions in the Criminal Rules by:

- Requiring civil proceedings to cease when a person has been found incompetent to proceed.
- Authorizing the court, the state attorney, or an attorney for the respondent of the commitment proceeding to file a motion to request a competency hearing.
- Requiring the court to order the respondent of a civil commitment proceeding who has been found incompetent to proceed into treatment at a secure facility until such subject's competency is restored.

If the respondent has been found incompetent by the court and is referred to a secure treatment facility, the bill requires the facility to file an initial report with the court within six months of the respondent's admission to the treatment facility addressing his or her competency. The facility has an ongoing obligation to file a report with the court if, at any time following the respondent's commitment, the administrator of the treatment facility determines the respondent has become competent to proceed.

If the court has reasonable grounds to believe the respondent has regained competency, the court must order the treatment facility to file an updated report on the respondent's competence and conduct a hearing within 30 days after such report is filed with the court. If the court finds the respondent is still incompetent, the court must order the respondent to continue treatment in the secure facility. If the court finds the respondent's competency has been restored, the court must expeditiously proceed with civil commitment proceedings.

The bill requires the court to biannually evaluate the competency of respondent who has previously been found to be incompetent to proceed.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.9155, F.S., relating to rules of procedure and evidence.

Section 2: Amends s. 394.918, F.S., relating to examinations; notice; court hearings for release of committed persons; burden of proof.

Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative, yet indeterminate fiscal impact on the state courts system. Currently, an SVP respondent in a civil commitment proceeding does not need to be competent to proceed because it is a civil case. Therefore, applying the Florida Rules of Criminal Procedure standards on

²¹ Fla. R. Crim. P. 3.212.

²² *Id.*

competency to SVP involuntary civil commitment proceedings could increase the related judicial workload by an indeterminate amount.²³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²³ Email from Sean Burnfin, Chief of Legislative Affairs, State Courts System, RE: HB 1081, Mar. 17, 2021.
STORAGE NAME: h1081c.JUA
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