

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #: HB 291

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Harrell

117 Y's

0 N's

COMPANION CS/SB 954
BILLS:

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

HB 291 passed the House on April 28, 2015, as CS/SB 954.

The bill requires each county school health services plan to provide for immediate notification to a student's parent, guardian, or caregiver if the student is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination. Each district school board and charter school governing board must develop policies and procedures for such notification. Each public school principal or the principal's designee must provide immediate notification to the parent of a student removed for an involuntary examination.

The bill amends the definition of "emergency health needs" for purposes of school health services programs to expressly include onsite evaluation for illness or injury and release to a law enforcement officer.

The bill revises notification requirements for minors held for an involuntary examination. When a minor is being held by a receiving facility for an involuntary examination, the receiving facility must notify the minor's parent, guardian, caregiver, or guardian advocate immediately upon the minor's arrival. The facility must attempt notification until confirmation is received, the patient is released, or a petition for involuntary placement is filed. The facility must provide documentation of each notification attempt.

The bill allows the school principal, or his or her designee, and the receiving facility each to delay notification by up to 24 hours if there is suspected abuse, abandonment, or neglect and the delay has been deemed to be in the student's or minor patient's best interest. Delay in notification may occur only after a report of suspected abuse, abandonment, or neglect is submitted to the Department of Children and Families' central abuse hotline.

The bill changes the term used to describe an adult being held for an involuntary examination from "patient" to "individual." The bill revises notification requirements for individuals held for an involuntary examination by requiring the notification also be provided to the individual's health care surrogate or proxy, in addition to the individual's guardian, guardian advocate, attorney, and representative. The bill repeals a provision which allows the individual to request that notification not be made and the requirement that the receiving facility notify the Florida local advocacy council.

The bill does not appear to have a fiscal impact on the state or local governments.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2015

I. SUBSTANTIVE INFORMATION

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

STORAGE NAME: h0291z.KTS

DATE: May 7, 2015

A. EFFECT OF CHANGES:

Present Situation

Involuntary Examinations under Florida's Baker Act

The Florida Mental Health Act, otherwise known as the Baker Act,¹ provides legal procedures for mental health examination and treatment,² including, among other things, involuntary examinations.³ The Baker Act protects the rights of all individuals examined or treated for mental illness in Florida.⁴

Involuntary examinations under the Baker Act are psychiatric examinations conducted without the examinee's consent.⁵ Involuntary examinations under the Baker Act may only be initiated by a law enforcement officer, mental health professional or physician, or circuit court order.⁶ An involuntary examination may be initiated only if an individual appears to have a mental illness, presents a danger to him or herself or others, and refuses a voluntary examination or is unable to understand the need for the examination.⁷ Each law enforcement agency must enter a memorandum of understanding with each receiving facility within the law enforcement agency's jurisdiction to establish a single set of protocols for the safe and secure transportation and transfer of custody of individuals for involuntary examination.⁸

Only institutions designated as a receiving facility by the Florida Department of Children and Families (DCF) may conduct an involuntary examination.⁹ A physician or clinical psychologist must conduct the involuntary examination of a patient taken to a receiving facility without unnecessary delay.¹⁰ The receiving facility may not release the patient without the documented approval of a psychiatrist, a clinical psychologist, or, if at a hospital, an attending emergency department physician experienced in diagnosing and treating mental disorders.¹¹ However, a patient may not be held in a receiving facility for an involuntary examination longer than 72 hours.¹²

Within the 72-hour involuntary examination period, the patient must be released or a petition for involuntary placement of the patient in outpatient or inpatient treatment must be filed in the circuit court.¹³ Nearly 76 percent of involuntary examinations end without a petition for involuntary placement. The average length of stay is 4.5 days.¹⁴

In 2011, approximately 150,000 involuntary examinations were conducted on 111,000 individuals under the Baker Act.¹⁵ Nearly 18,000 of the examinees were children. Over the span of ten years (2002 to 2011), there was a 35 percent increase in the number of children involuntarily examined.¹⁶

¹ Chapter 1971-131, L.O.F.

² See Part I, ch. 394, F.S.; Florida Department of children and Families, *Florida's Baker Act: 2013 Fact Sheet*, available at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/docs/Baker%20Act%20Overview%202013.pdf> [hereinafter referred to as Baker Act Fact Sheet].

³ Section 394.463, F.S.

⁴ See Section 394.453, F.S.; see also Baker Act Fact Sheet, *supra* note 2.

⁵ Section 394.463, F.S.; see also Baker Act Fact Sheet, *supra* note 2.

⁶ Section 394.463(2), F.S.

⁷ Section 394.463(1), F.S.; see also Baker Act Fact Sheet, *supra* note 2.

⁸ Section 394.462(k), F.S.

⁹ See Sections 394.455(26), 394.461, and 394.463, F.S.; see also Baker Act Fact Sheet, *supra* note 2.

¹⁰ Section 394.463(2)(f), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ Section 394.463(2)(i), F.S.; see s. 394.4655(3)(a), F.S.

¹⁴ Baker Act Fact Sheet, *supra* note 2.

¹⁵ *Id.*

¹⁶ *Id.*

Receiving facilities must give prompt notice of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,¹⁷ guardian advocate,¹⁸ attorney, and representative.¹⁹ The notice must be made by telephone or in person within 24 hours after the patient's arrival at the facility.²⁰ Attempts at notification must begin as soon as reasonably possible after the patient's arrival and must be documented in the patient's clinical record.²¹ However, a patient may prohibit the receiving facility from providing this notice.²²

School Health Services

Each county health department must jointly develop with the district school board and local school health advisory committee a school health services plan.²³ The school health services plan describes the services to be provided pursuant to the plan, the responsibility for the provision of the services, the anticipated expenditures to provide the services, and evidence of cooperative planning by local school districts and county health departments.²⁴

Each health services plan must include provisions for, among other things, meeting emergency health needs in each school.²⁵ "Emergency health needs" is defined as "onsite management and aid for illness or injury pending the student's return to the classroom or release to a parent, guardian, designated friend, or designated health care provider."²⁶ Each school health services plan must be reviewed annually for the purpose of updating the plan, and the plan must be approved biennially by the school district's superintendent, school board chairperson, county health department medical director or administrator, and the Department of Health's district administrator.²⁷

Health services plans are not required to provide for notification of a student's parent or guardian when the student is transported to a receiving facility for purposes of an involuntary examination under the Baker Act.²⁸

K-12 Student and Parent Rights

In Florida, K-12 students and their parents are afforded certain statutory rights, including rights relating to health issues.²⁹ The rights enumerated by statute contain no requirement that a student's parent or guardian be notified when the student is transported to a receiving facility for purposes of an involuntary examination under the Baker Act.

Effect of Proposed Changes

The bill amends the definition of "emergency health needs" for purposes of school health services programs to expressly include onsite evaluation for illness or injury and release to a law enforcement officer. In addition, the bill requires each county school health services plan to provide for immediate notification to a student's parent or guardian if the student is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary

¹⁷ Section 394.455(11), F.S.

¹⁸ Sections 394.455(12) and 394.4589, F.S.

¹⁹ Section 394.4599(2)(a), F.S.

²⁰ Section 394.4599(2)(b), F.S.

²¹ *Id.*

²² *Id.*

²³ Section 381.0056(4), F.S.

²⁴ Section 381.0056(2)(e), F.S.

²⁵ *See* s. 381.0056, F.S.

²⁶ Section 381.0056(2)(a), F.S.

²⁷ Rule 64F-6.002(3), F.A.C.

²⁸ *See* ss. 381.0056 and 394.4599(2)(b), F.S.

²⁹ *See* s. 1002.20(3), F.S.

examination. Each district school board and charter school governing board must develop policies and procedures for such notification.

The bill provides that, if a student is removed from a public school, school transportation, or a school-sponsored activity for an involuntary examination, the school principal or the principal's designee must immediately notify the student's parent.³⁰ If the principal or principal's designee has submitted a report to the central abuse hotline³¹ for suspected abuse, abandonment, or neglect and deems delay of notification to be in the student's best interest, notification may be delayed by no more than 24 hours after the student's removal.³²

The bill requires receiving facilities to give notice of the whereabouts of a minor patient who is being held for an involuntary examination to the patient's parent, guardian, or guardian advocate immediately after the patient's arrival at the receiving facility. The receiving facility must attempt to notify the minor patient's parent, guardian, or guardian advocate until confirmation is received either verbally, by telephonic or other form of electronic communication, or by recorded message that notification has been made. Attempts at notification must be made hourly during the first 12 hours after the patient's arrival at the facility and then once every 24 hours thereafter until confirmation is received, the patient is released at the end of the 72-hour examination period, or a petition for involuntary placement is filed with the court.³³

The bill requires the receiving facility to document each attempt at notification in the patient's clinical record and authorizes the facility to seek assistance from law enforcement if notification is not made within the first 24 hours after the patient's arrival. The bill allows a receiving facility to delay notification by no more than 24 hours if it has submitted a report to the central abuse hotline for suspected abuse, abandonment, or neglect and deems delay of notification to be in the patient's best interest.³⁴

The bill changes the term used to describe an adult being held for an involuntary examination from "patient" to "individual." The bill revises notification requirements for individuals held for an involuntary examination by requiring that notification also be provided to the individual's health care surrogate³⁵ or proxy³⁶, in addition to the individual's guardian, guardian advocate, attorney, and representative.

Section 394.4599(2)(b), F.S., requires a receiving facility to give prompt notice of the whereabouts of a patient who is being involuntarily held for examination unless a patient requests that no notification be made. The bill repeals the notification exception for patients who request that no notice be given. However, pursuant to the federal Health Insurance Portability and Accountability Act, receiving facilities will likely still be required to provide individuals who have capacity with the opportunity to object to any such notification.³⁷

³⁰ Section 1000.21(5), F.S.

³¹ Section 39.201(1) and (2), F.S., requires a person who knows or has reasonable cause to suspect that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, other person responsible for the child's welfare, other adult, or a victim of sexual abuse by a known or suspected juvenile sexual offender to report such knowledge or suspicion to the Department of Children and Families using its central abuse hotline.

³² The bill also applies these requirements to charter schools.

³³ See Section 394.463(2)(i)4., F.S.

³⁴ See *supra* text accompanying note 31.

³⁵ Section 765.101(16), F.S. defines "surrogate" as any competent adult expressly designated by a principal to make health care decisions on behalf of the principal upon the principal's incapacity.

³⁶ Section 765.101(15), F.S. defines "proxy" as a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401, F.S. to make health care decisions for such individual.

³⁷ 45 C.F.R. s. 164.510(b)(2)(i-iii). If an individual with capacity is present, or otherwise available, prior to disclosure, the covered entity may use or disclose the protected health information if it: (i) Obtains the individual's agreement; (ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or (iii) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None