

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 497 Involuntary Examinations of Minors

**SPONSOR(S):** Harrell and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	12 Y, 0 N, As CS	Brink	Ahearn
2) Healthy Families Subcommittee		McElroy	Brazzell
3) Education Committee			

### SUMMARY ANALYSIS

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

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 requires a public school's principal, or his or her designee, to notify a student's parent or guardian if the student is removed from the school, school transportation, or a school-sponsored activity for an involuntary examination. The bill also provides notification requirements for receiving facilities that hold minor patients for involuntary examination.

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

The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### *Involuntary Examinations under Florida's Baker Act*

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

Involuntary examinations under the Baker Act are psychiatric examinations conducted without the examinee's consent.<sup>5</sup> Involuntary examinations under the Baker Act may only be initiated by a law enforcement officer, mental health professional or physician, or circuit court order.<sup>6</sup> An involuntary examination may be initiated only if an individual appears to have a mental illness, presents a danger to him or herself or to others, and refuses a voluntary examination or is unable to understand the need for the examination.<sup>7</sup> 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.<sup>8</sup>

Only institutions designated as a receiving facility by the Florida Department of Children and Families (DCF) may conduct an involuntary examination.<sup>9, 10</sup> A physician or clinical psychologist must conduct the involuntary examination of a patient taken to a receiving facility without unnecessary delay.<sup>11</sup> 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.<sup>12</sup> However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.<sup>13</sup>

Within the 72-hour involuntary examination period,<sup>14</sup> 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.<sup>15</sup> Nearly 76 percent of involuntary examinations end without a petition for involuntary placement.<sup>16</sup> The average length of stay is 4.5 days.<sup>17</sup>

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<sup>1</sup> Chapter 1971-131, L.O.F.

<sup>2</sup> 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>.

<sup>3</sup> Section 394.463, F.S.

<sup>4</sup> See Sections 394.453, 394.459, 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>.

<sup>5</sup> *Id.*

<sup>6</sup> Section 394.463(2), F.S.

<sup>7</sup> Section 394.463(a), 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>.

<sup>8</sup> Section 394.462(k), F.S.

<sup>9</sup> See Sections 394.455(26), F.S. 394.461, and 394.463, F.S.

<sup>10</sup> Section 394.461, F.S. The term "facility" is defined as any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have a mental illness or have been diagnosed as having a mental illness. Section 493.455(10), F.S. Facilities licensed under chapter 400 or chapter 429 are not included under the term "facility" as defined by s. 493.455(10), F.S.

<sup>11</sup> Section 394.463(2)(f), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> If the 72 hours ends on a weekend or holiday, then the period is extended to the next working day thereafter. Section 493.463(2)(i), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

In 2011, approximately 150,000 involuntary examinations were conducted on 111,000 individuals under the Baker Act.<sup>18</sup> 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.<sup>19</sup>

A 2013 study on involuntary examinations initiated for children ages 4 to 17 indicates that the rate of initiations for this age group is higher during the school year than it is over summer and winter break (December) months.<sup>20</sup> In addition, a significant number of these initiations occurred immediately after children returned to school from summer break.<sup>21</sup>

Receiving facilities must give prompt notice of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,<sup>22</sup> guardian advocate,<sup>23</sup> attorney, and representative.<sup>24</sup> The notice must be made by telephone or in person within 24 hours after the patient's arrival at the facility.<sup>25</sup> 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.<sup>26</sup> However, a patient, including a minor, has the right to prohibit a receiving facility from providing this notice.<sup>27</sup>

### *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.<sup>28</sup> 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.<sup>29</sup>

Each health services plan must include provisions for, among other things, meeting emergency health needs in each school.<sup>30</sup> "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."<sup>31</sup> Each school health services plan must be reviewed each year for the purpose of updating the plan, and the plan must be approved every two years by the school district's superintendent, school board chairperson, county health department medical director or administrator, and the Department of Health's district administrator.<sup>32</sup>

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.

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<sup>17</sup> 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>.

<sup>18</sup> 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>.

<sup>19</sup> *Id.*

<sup>20</sup> Annette Christy, University of South Florida de la Parte Florida Mental Health Institute, *Baker Act Examinations for Youth in Calendar Year 2012* (2013).

<sup>21</sup> *Id.* at 2.

<sup>22</sup> "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated. Section 394.453(11), F.S.

<sup>23</sup> "Guardian advocate" means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment. The guardian may be granted specific additional powers by court order. Section 394.453, F.S.

<sup>24</sup> Section 394.4599(2)(a), F.S.

<sup>25</sup> Section 394.4599(2)(b), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Section 381.0056(4), F.S.

<sup>29</sup> Section 381.0056(2)(e), F.S.

<sup>30</sup> See s. 381.0056, F.S.

<sup>31</sup> Section 381.0056(2)(a), F.S.

<sup>32</sup> Rule 64F-6.002(3), F.A.C.

## *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.<sup>33</sup> 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 examination. Each district school board and charter school governing board must develop a policy 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.<sup>34</sup> If the principal or principal's designee has submitted a report to the Central Abuse Hotline<sup>35</sup> 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.<sup>36</sup>

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 patient's parent, guardian, or guardian advocate until confirmation is received either verbally, through telephonic or 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 or until the patient is released at the end of the 72-hour examination period or a petition for involuntary placement is filed with the court. A minor may not prohibit a receiving facility from providing this notice.

The bill requires the receiving facility to document each attempt at notification in the patient's clinical record and provides that the facility may 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.<sup>37</sup>

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 381.0056, F.S., revising the term "emergency health needs"; requiring school health services plans to include notification requirements when a student is removed from school, school transportation, or a school-sponsored activity for involuntary examination.

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<sup>33</sup> See Section 1002.20(3), F.S.

<sup>34</sup> Section 1000.21(4), F.S., defines parent as either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.

<sup>35</sup> 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.

<sup>36</sup> The bill also applies these requirements to charter schools.

<sup>37</sup> See *supra* text accompanying note 34.

Section 2. Amends s. 394.4599, F.S., requiring a receiving facility to provide notice of the whereabouts of an adult or minor patient held for involuntary examination; providing conditions for delay in notification; requiring documentation of contact attempts.

Section 3. Amends s. 1002.20, F.S., requiring public schools to provide notice of the whereabouts of a student removed from school, school transportation, or a school-sponsored activity for involuntary examination; providing conditions for delay in notification; requiring district school boards to develop certain notification policies and procedures.

Section 4. Amends s. 1002.33, F.S., requiring charter schools to provide notice of the whereabouts student removed from school, school transportation, or a school-sponsored activity for involuntary examination; providing conditions for delay in notification; requiring charter school governing boards to develop certain notification policies and procedures.

Section 5. Provides an effective date of July 1, 2014.

## **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.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

None.

#### **2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill vests discretion in both the school principal and the receiving facility to delay notification upon suspicion of abuse, neglect, or abandonment.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 12, 2014, the K-12 Subcommittee reported the PCS for HB 497 favorably as a committee substitute. Unlike HB 497, the PCS provides a time certain by which a receiving facility is no longer required to continue attempts at notifying a minor patient's parent, guardian, or guardian advocate. The PCS also provides that the facility may seek assistance from a local law enforcement agency for notification purposes if confirmation of notice has not been received after 24 hours.