

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 829 Involuntary Examinations under the Baker Act

**SPONSOR(S):** Campbell

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Health Care Workforce Innovation		Guzzo	Calamas
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

In 1971, the legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs of individuals in the state. The Baker Act allows for voluntary and involuntary examination of an individual and establishes procedures for the court, law enforcement and the medical community that ensure the preservation of an individual’s rights relating to medical services.

The Baker Act authorizes involuntary examination of an individual who appears to have a mental illness and who, because of mental illness, presents a substantial threat of harm to themselves or others. Involuntary examination may be initiated by courts, law enforcement officers, physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers.

The bill adds advanced registered nurse practitioners and physician assistants to the list of medical professionals who may execute a certificate for involuntary examination of a person.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Involuntary Examination Under the Baker Act

In 1971, the legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.<sup>1</sup> Part I of Chapter 394, F.S., provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment. The Department of Children and Families (DCF) administers this law through receiving facilities which provide for the examination of persons with evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities which provide the examination and short-term treatment of persons who meet criteria under The Baker Act.<sup>2</sup> Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g., Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.<sup>3</sup>

Current law provides that an involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness:<sup>4</sup>

- The person has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for themselves that an examination is needed; and
- The person and is likely to suffer from self-neglect, substantial harm to themselves, or be a danger to themselves or others.

An involuntary examination may be initiated by a circuit court or a law enforcement officer.<sup>5</sup> A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer, as defined in s. 943.10, F.S., may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.

In addition, the following professionals, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for involuntary examination:<sup>6</sup>

- A physician licensed under ch. 458, F.S., or an osteopathic physician licensed under ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master’s degree or a doctorate in psychiatric nursing and 2 years of post-master’s clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.<sup>7</sup>

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<sup>1</sup> Section 1, ch. 71-131, L.O.F.

<sup>2</sup> Section 394.455(26), F.S.

<sup>3</sup> Section 394.455(32), F.S.

<sup>4</sup> Section 394.463(1), F.S.

<sup>5</sup> Section 394.463(2)(a), F.S.

<sup>6</sup> *Id.*

- A clinical social worker licensed under ch. 491, F.S.<sup>8</sup>

In 2011, there were 150,466 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary exams (49.21 percent) followed by mental health professionals and physicians (48.73 percent) and then *ex parte* orders by judges (2.06 percent).<sup>9</sup>

### Physician Assistants

Sections 458.347(7) and 459.022(7), F.S., govern the licensure of physician assistants (PAs) in Florida. PAs are licensed by the Department of Health (DOH) and are regulated by the Florida Council on Physician Assistants (Council) and either the Florida Board of Medicine (Board of Medicine) for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine (Osteopathic Board) for PAs licensed under ch. 459, F.S. Currently, there are 5,874 active licensed PAs in Florida.<sup>10</sup>

PAs may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship. A supervising physician may only delegate tasks and procedures to the physician assistant that are within the supervising physician's scope of practice.<sup>11</sup> The supervising physician is responsible and liable for any and all acts of the PA and may not supervise more than four PAs at any time.<sup>12</sup>

PAs are regulated through the respective physician practice acts.<sup>13</sup> Each of the medical practice acts has a corresponding board (i.e., the Board of Medicine and Osteopathic Board). The duty of a Board and its members is to make disciplinary decisions concerning whether a doctor or PA was practicing medicine within the confines of their practice act.<sup>14</sup>

To become licensed as a PA in Florida, an applicant must demonstrate to the Council:<sup>15</sup> passage of the National Commission on Certification of Physician Assistant exam; completion of the application; completion of a PA training program; a sworn, notarized statement of felony convictions; a sworn statement of denial or revocation of licensure in any state; letters of recommendation from physicians;<sup>16</sup> payment of a licensure fee; and completion of a two hour course on the prevention of medical errors, error reduction and prevention, and patient safety.<sup>17</sup> Licensure renewal occurs biennially.<sup>18</sup>

In 2008 Attorney General Bill McCollum issued an opinion stating that:

*A physician assistant licensed pursuant to Chapter 458 or 459, F.S., may refer a patient for involuntary evaluation pursuant to section 394.463, F.S., provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks as are within the supervising physician's scope of practice.*<sup>19</sup>

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<sup>7</sup> Marriage and Family Therapists use practice methods of a psychological nature to evaluate, assess, diagnose, treat and prevent emotional and mental disorders or dysfunctions. Section 491.003(8), F.S.

<sup>8</sup> Clinical Social Workers are required by law to have experience in providing psychotherapy and counseling. Section 491.003(3), F.S.

<sup>9</sup> Department of Children and Families, *Florida's Baker Act: 2013 Fact Sheet*, available at <http://myflfamilies.com/service-programs/mental-health/baker-act-manual> (last visited March 7, 2014).

<sup>10</sup> Florida Department of Health, *Medical Quality Assurance Annual Report 2012-2013*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited March 7, 2014).

<sup>11</sup> Rule 64B8-30.012(1), F.A.C., and Rule 64B15-6.010(1), F.A.C.

<sup>12</sup> Section 458.347(3), F.S., and s. 459.022(3), F.S.

<sup>13</sup> Chapters 458 and 459, F.S.

<sup>14</sup> Section 458.347(12), F.S., and 459.022(12), F.S.

<sup>15</sup> Section 458.347(7), F.S., and s. 459.022(7), F.S.

<sup>16</sup> Rule 64B8-30.003(1), F.A.C., and Rule 64B15-6.003(1), F.A.C.

<sup>17</sup> Rule 64B8-30.003(3), F.A.C., and Rule 64B15-6.003(4), F.A.C.

<sup>18</sup> Section 458.347(7)(c), F.S. Rule 64B8-30.019, F.A.C., establishes the initial licensure and renewal fee schedule. Section 459.022(7)(b), F.S. Rule 64B15-6.013, F.A.C., establishes the initial licensure and renewal fee schedule.

<sup>19</sup> See, 08-31 Fla. Op. Att'y Gen. (2008). Available at: <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf> (last visited March 7, 2014).

However, PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders.

### Advanced Registered Nurse Practitioners (ARNPs)

Part I of ch. 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by DOH and are regulated by the Board of Nursing. Licensure requirements to practice advanced and specialized nursing include completion of education requirements,<sup>20</sup> demonstration of passage of a department approved examination, a clean criminal background screening, and payment of applicable fees.<sup>21</sup> Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

A nurse who holds a license to practice advanced and specialized nursing may be certified as an ARNP under s. 464.012, F.S., if the nurse meets one or more of the following requirements:

- Completion of a post basic education program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board, such as a registered nurse anesthetist or nurse midwife; or
- Possession of a master's degree in a nursing clinical specialty area.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>22</sup> All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or a dentist.<sup>23</sup> ARNPs may carry out treatments as specified in statute, including:<sup>24</sup>

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.,<sup>25</sup> and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above allowed acts, ARNPs may also perform other acts as authorized by statute and within his or her specialty.<sup>26</sup> Further, if it is within the ARNPs established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.<sup>27</sup>

There are 15,420 active, licensed ARNPs in Florida.<sup>28</sup>

### **Effect of Proposed Changes**

The bill amends s. 394.463, F.S., to add that a PA or an ARNP may execute a certificate stating that a person who the ARNP or PA has examined within the preceding 48 hours appears to meet the criteria for involuntary examination for mental illness.

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<sup>20</sup> Rule 64B9-4.003, F.A.C., provides that an Advanced Nursing Program shall be at least one year long and shall include theory in the biological, behavioral, nursing and medical sciences relevant to the area of advanced practice in addition to clinical expertise with a qualified preceptor.

<sup>21</sup> Section 464.009, F.S., provides an alternative to licensure by examination for nurses through licensure by endorsement.

<sup>22</sup> Section 464.012(2), F.S.

<sup>23</sup> Section 464.012(3), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 464.003(2), F.S., defines “Advanced or Specialized Nursing Practice” to include additional activities that an ARNP may perform as approved by the Board of Nursing.

<sup>26</sup> Section 464.012(4), F.S.

<sup>27</sup> Section 464.012(4)(c)5, F.S.

<sup>28</sup> Florida Department of Health, *Medical Quality Assurance Annual Report 2012-2013*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited March 7, 2014).

The bill also amends s. 394.455, F.S., to add definitions of PAs and ARNPs to the terms associated with the provision of services and care under the Florida Mental Health Act.

Finally, the bill makes several necessary conforming changes due to the statutory changes made by the bill.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

**Section 2:** Amends s. 394.455, F.S., relating to definitions.

**Section 3:** Amends s. 394.463, F.S., relating to involuntary examination.

**Section 4:** Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.

**Section 5:** Amends s. 394.496, F.S., relating to service planning.

**Section 6:** Amends s. 394.9085, F.S., relating to behavioral provider liability.

**Section 7:** Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.

**Section 8:** Amends s. 744.704, F.S., relating to powers and duties.

**Section 9:** 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:**

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

No additional rule-making is necessary to implement the provisions of the bill.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**