HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1183 Admission of Children and Adolescents to Mental Health Facilities
SPONSOR(S): Silvers
TIED BILLS: **IDEN./SIM. BILLS:** SB 1580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Siples	Brazzell
2) Judiciary Committee			
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 the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness and presenting a threat of harm to themselves or others. The Baker Act also establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations and then act in response to the findings.

During calendar year 2015, 32,882 involuntary examinations were initiated under the Baker Act for individuals under the age of 18. These examinations occur in receiving facilities such as crisis stabilization units and hospitals and must conclude within 72 hours under most circumstances. Residential treatment centers generally provide longer-term assessment and treatment services.

HB 1183 requires that receiving facilities, crisis stabilization units, and residential treatment centers providing involuntary services to a minor notify the clerk of courts for the appointment of a public defender within 24 hours of the minor's arrival or admission to the facility. The child's attorney must have access to all records relevant for representation of the child in a judicial hearing. All hearings for a minor must be in person and may not be held by electronic or video means. Any person who violates the provisions of the bill commits a misdemeanor in the first degree.

The bill will have an indeterminate but significant negative fiscal impact on the State Court System and no impact on local governments.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Mental Illness

Mental health and mental illness are not synonymous. Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

Mental illness affects millions of people in the United States each year. Only about 17% of adults in the United States are considered to be in a state of optimal mental health.[4] One in five adults (43.8 million people) experiences mental illness in a given year, [5] and one in five children ages 13-18 have or will have a serious mental illness.[6]

Florida Mental Health Act

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws. [7] The Act provides legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.[8]

Involuntary Examination and Receiving Facilities

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a

---

[1] Centers for Disease Control and Prevention, *Mental Health Basics*, (Oct. 4, 2013), *available at* http://www.cdc.gov/mentalhealth/basics.htm (last visited March 17, 2017).
[2] Id.
[3] Id.
[4] Id. Mental illness can range in severity from no or mild impairment to significantly disabling impairment. Serious mental illness is a mental disorder that has resulted in a functional impairment which substantially interferes with or limits one or more major life activities. National Institute of Mental Health, *Any Mental Illness (AMI) Among Adults*, *available at* http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml (last viewed on March 17, 2017).
[5] National Alliance on Mental Illness, *Mental Health Facts in America, available at* http://www.nami.org/NAMI/media/NAMI-Media/Infographics/GeneralMHFacts.pdf (last visited March 17, 2017).
[6] National Alliance on Mental Illness *Mental Health Facts: Children & Teens*, *available at http://www.nami.org/NAMI/media/NAMI-Media/Infographics/Children-MH-Facts-NAMI.pdf (last visited March 17, 2017).*
[7] Sections 394.451-394.47892, F.S.
[8] Section 394.459, F.S.

voluntary or involuntary basis.[9] An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness[10]:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; **and**
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; **or**
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

Involuntary patients must be taken to either a public or a private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[11] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[12] Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.[13]

Within the 72-hour examination period, or if the 72 hours end on a weekend or holiday, no later than the next business day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to a placement as a voluntary and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.[14]

Receiving facilities must give prompt notice[15] of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,[16] guardian advocate,[17] health care surrogate or proxy, attorney, and representative.[18] If the patient is a minor, the receiving facility must give prompt notice to the minor's parent, guardian, caregiver, or guardian advocate. Notice for an adult may be provided within 24 hours of arrival; however, notice for a minor must be provided immediately after the minor's arrival at the facility. The facility may delay the notification for a minor for up to 24 hours if it has submitted a report to the central abuse hotline. The receiving facility must attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until it receives confirmation that the notice has been received. Attempts must be repeated at least once every hour during the first 12 hours after the minor's

[9] Sections 394.4625 and 394.463, F.S.
[10] Section 394.463(1), F.S.
[11] Section 394.455(39), F.S. This term does not include a county jail.
[12] Section 394.455(37), F.S
[13] Rule 65E-5.400(2), F.A.C.
[14] Section 394.463(2)(g), F.S.
[15] Notice may be provided in person or by telephone; however, in the case of a minor, notice may also be provided by other electronic means. Section 394.455(2), F.S.
[16] "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 394.455(17), F.S.
[17] "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. Section 394.455 (18), F.S.
[18] Section 394.4599(2)(b), F.S.

arrival and then once every 24 hours thereafter until confirmation is received, the minor is released, or a petition for involuntary services is filed with the court.[19]

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding to provide services to individuals showing acute mental health disorders. CSUs screen, assess, and admit for stabilization individuals who voluntarily present themselves to the unit, as well as individuals who are brought to the unit on an involuntary basis.[20] CSUs provide patients with 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services.[21] The purpose of a crisis stabilization unit is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs.[22] Individuals often enter the public mental health system through CSUs.[23] For this reason, crisis services are a part of the comprehensive, integrated, community mental health and substance abuse services established by Legislature in the 1970s to ensure continuity of care for individuals.[24]

As of November 2015, there are 122 Baker Act receiving facilities in this state, including 53 public receiving facilities and 69 private receiving facilities.[25] Of the 53 public receiving facilities, 39 are also contracted to provide CSU services.[26] There were 193,410 involuntary examinations initiated at hospitals and CSUs in calendar year 2015 (most recent report). Of those, 32,882 involuntary examinations were initiated for individuals under the age of 18.[27]

Residential Treatment Centers for Children and Adolescents

Section 394.467, F.S., defines "residential treatment center for children and adolescents" as a 24-hour residential program, including a therapeutic group home, which provides mental health services to emotionally disturbed children or adolescents and which is a private for-profit or not-for-profit corporation licensed by the agency which offers a variety of treatment modalities in a more restrictive setting. Residential treatment centers provide longer-term treatment services. The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services to children and adolescents who are experiencing an acute mental or emotional crisis, have a serious emotional disturbance or mental illness, or have an emotional disturbance. The treatment center must provide the least restrictive available treatment that is appropriate to the individual needs of the child or adolescent.[28]

Section 39.407, F.S., details procedures for placing a child who is in the legal custody of the Department of Children and Families due to involvement in the child welfare system in a residential treatment center. Such procedures include an assessment by a qualified evaluator, mandatory appointment of a guardian ad litem, regular reporting by the center to the court on the child's progress, and court review hearings. There are no similar statutory provisions for child who is not in the legal custody of the Department of Children and Families.

---

[19] Section 394.4599(c), F.S.
[20] Section 394.875(1)(a), F.S.
[21] Id
[22] Id.
[23] Florida Senate, Budget Subcommittee on Health and Human Services Appropriations, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011), *available at* https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-109bha.pdf (last visited March 17, 2017).
[24] Id. Sections 394.65-394.9085, F.S.
[25] Department of Children and Families, *Crisis Stabilization Services Utilization Data Implementation Status Report*, (Feb. 29, 2016), available at http://www.dcf.state.fl.us/programs/samh/publications/CSSUReport.pdf (last visited March 17, 2017).
[26] Id.
[27] Christy, A. & Guenther, C. (2016). *Report of 2015 Baker Act Data*. Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute, *available at* https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/reports/BA_Annual_2015_Final.pdf (last visited March 17, 2017).
[28] Section 394.4785(2), F.S.

Public Defenders

The public defender is elected for a term of four years during a general election by the electors in his or her judicial circuit.[29] The public defender in each judicial circuit may employ, as authorized by the General Appropriations Act, assistant public defenders and other staff needed to fulfill the duties of office.[30]

Under s. 27.51, a public defender must represent, without additional compensation, any person determined to be indigent[31] and:

- Is under arrest for or charged with:
  - A felony;
  - Certain misdemeanors;
  - Certain traffic violations punishable by imprisonment;
  - A violation of a special law or county or municipal ordinance ancillary to a state charge;
- Alleged to be a delinquent child pursuant to a petition filed before the circuit court;
- Sought by petition filed in such court to be
  - Involuntarily placed as a mentally ill person under part I ch. 394, F.S.,
  - Involuntarily committed as a sexually violent predator under part V of ch. 394, F.S., or
  - Involuntarily admitted to residential services as a person with developmental disabilities under ch. 393, F.S.;
- Is convicted or sentenced to death, for purposes of handing an appeal to the Supreme Court; or
- Is appealing a matter for which a public defender may be appointed.

Remote Hearings

In September 2016, the 2nd District Court of Appeal issued a ruling in response to a suit brought by 14 patients in Lee County regarding conducting Baker Act hearings via videoconference. The judge and magistrate presiding over Baker Act hearings in that county had decided they would no longer travel to receiving facilities to hold commitment hearings in person. Instead, the judge and magistrate would remain in the courthouse and hold hearings via videoconference while the patients, witnesses, and attorneys would continue to be physically present at the receiving facility. The 2nd DCA ruled that "there is simply no duty 'clearly and certainly established in the law' requiring the judicial officer to be in the physical presence of the patient, attorneys, and witnesses while presiding over the hearing" and concluded that it was within the court's authority to hold Baker Act hearings through videoconferencing. However, the 2nd DCA certified as a question of great public importance, "Does a judicial officer have an indisputable legal duty to preside over section 394.467 hearings in person?"[32] In December 2016 the Supreme Court initially refused to grant a stay and thus allowed the hearings to continue. However, in February 2017 the Supreme Court vacated that ruling and instead issued a stay.[33] The Supreme Court indicated it will issue an opinion in the future.

Effect of Proposed Changes

HB 1183 requires that within 24 hours after a minor arrives at a receiving facility for an involuntary examination under the Baker Act, or is admitted to a crisis stabilization unit or a residential treatment center, the facility must refer the case to the clerk of court for the appointment of a public defender for a

[29] Section 27.50, F.S.
[30] Section 27.53, F.S.
[31] Under s. 27.52, F.S., a person seeking a determination of indigency must file an application with the clerk of courts, detailing income, assets, and all liabilities and debt. A clerk will deem an applicant indigent if his or her family household income is equal to or below 200 percent of the federal poverty guidelines or if the person is receiving certain public financial assistance Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI).
[32] Doe v. State, 41 Fla. L. Weekly D2220a (Fla. 2d DCA 2016).
[33] Doe v. State, SC16-1852.

potential judicial review hearing. The attorney representing the child must have access to all records relevant to the child's case. All hearings involving the child must be held in physical presence of the child and may not be conducted by an electronic or video means. A person who fails to comply with the requirements of the bill's provisions commits a misdemeanor of the first degree.[34]

As a receiving facility in most cases has only 72 hours before either releasing an individual, admitting the individual under voluntary status if competent, or filing a petition for involuntary placement, and given that a facility has 24 hours to refer a child to the clerk of court for appointment of a public defender, this leaves only 48 hours for the clerk to make the appointment of a public defender and for the public defender to make contact with the child and request a judicial review hearing prior to the child's release, move to voluntary status, or the facility's filing of a petition for involuntary placement.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.4599, F.S.; regarding notice.
Section 2: Amends s. 394.4785, F.S.; regarding children and adolescents; admission and placement in mental facilities.
Section 3: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The state court system will experience an indeterminate but significant negative fiscal impact associated with the additional duty assigned to public defenders to represent children under the age of 18. In 2015, there were 32,882 children under the age of 18 who were subject to an involuntary examination under the Baker Act.[35]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If review hearings are scheduled in response to any motions by the appointed public defenders, there may be additional costs to facilities to transport minors to review hearings.

D. FISCAL COMMENTS:

None.

[34] A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed 1 year and/or a fine not to exceed $1,000 (ss. 775.082 and 775.083, F.S.).
[35] *Supra* note 27.

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:

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.[36] This fundamental liberty interest is rooted in the fundamental right of privacy from interference in making important decisions relating to things such as marriage, family relationships, and child rearing and education.[37] The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

> The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.[38]

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.[39] These rights may not be intruded upon absent a compelling state interest.[40] According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:

> The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.[41]

When it comes to medical decisions, parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the State also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.[42] The state's interest diminishes as the severity of an affliction and the likelihood of death increase:

> There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.[43]

---

[36] *Santosky v. Kramer*, 455 U.S. 745 (1982); *Troxel v. Granville,* 530 U.S. 57, 65 (2000).
[37] See *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977)
[38] *Wisconsin v. Yoder*, 406, U.S. 205, 232 (1972).
[39] *Beagle v. Beagle*, 678 So. 2d 1271
[40] *See, e.g., Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc*., 379 So.2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So.2d 1105, 1107 (Fla. 5th DCA 2001).
[41] *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So.2d 544, 547 (Fla. 1985)
[42] *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998).
[43] *M.N. v. S. Baptist Hosp.*, 648 So. 2d 769 (Fla. 1st DCA 1994)

> A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.[44]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[44] *Id.*