

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1544

INTRODUCER: Senator Braynon

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Pre-meeting
2.			HP	
3.			AP	

I. Summary:

SB 1544 adds physician assistants and advanced registered nurse practitioners to the list of medical professionals who may execute a certificate for involuntary examination of a person.

The bill provides an effective date of July 1, 2014, and the fiscal impact is unknown.

II. Present Situation:

In 1971, the Legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.¹ Part I of ch. 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 the criteria under The Baker Act.² 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.³

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:⁴

¹ Chapter 71-131, s. 1, Laws of Florida

² Section 394.455(26), F.S.

³ Section 394.455(32), F.S.

⁴ Section 394.463(1), F.S.

- 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 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.⁵ 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:⁶

- 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 three 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 two 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.⁷
- A clinical social worker licensed under ch. 491, F.S.⁸

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).⁹

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

⁵ Section 394.463(2)(a), F.S.

⁶ *Id.*

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

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

⁹ 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 April 3, 2014).

(Osteopathic Board) for PAs licensed under ch. 459, F.S. Currently, there are 5,874 active licensed PAs in Florida.¹⁰

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.¹¹ 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.¹²

PAs are regulated through the respective physician practice acts.¹³ 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.¹⁴

To become licensed as a PA in Florida, an applicant must demonstrate to the Council:¹⁵ 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;¹⁶ 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.¹⁷ Licensure renewal occurs biennially.¹⁸

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 are within the supervising physician's scope of practice.¹⁹

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

¹⁰ 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 April 3, 2014).

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

¹² Section 458.347(3), F.S., and s. 459.022(3), F.S.

¹³ Chapters 458 and 459, F.S.

¹⁴ Section 458.347(12), F.S., and s. 459.022(12), F.S.

¹⁵ Section 458.347(7), F.S. and s 459.022(7), F.S.

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

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

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

¹⁹ 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 April 3, 2014).

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,²⁰ demonstration of passage of a department approved examination, a clean criminal background screening, and payment of applicable fees.²¹ 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.²² 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.²³ ARNPs may carry out treatments as specified in statute, including:²⁴

- 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.,²⁵ 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.²⁶ Further, if it is within the ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.²⁷

There are 15,420 active, licensed ARNPs in Florida.²⁸

²⁰ Rule 64B-4.003, F.A.C., provides that an Advance 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.

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

²² Section 464.012(2), F.S.

²³ Section 464.012(3), F.S.

²⁴ *Id.*

²⁵ 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.

²⁶ Section 464.012(4), F.S.

²⁷ Section 464.012(4)(c)5, F.S.

²⁸ Florida Department of Health, *Medical Quality Assurance Annual Report 2012-2013*, available at <http://floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited April 3, 2014).

III. Effect of Proposed Changes:

Section 1 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.

Section 2 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.

Section 3 amends s. 39.407, F.S., to make necessary conforming changes due to the statutory changes made by the bill.

Section 4 amends s. 394.495, F.S., to make necessary conforming changes due to the statutory changes made by the bill.

Section 5 amends s. 394.496, F.S., to make necessary conforming changes due to the statutory changes made by the bill.

Section 6 amends s. 394.9085, F.S., to make necessary conforming changes due to the statutory changes made by the bill.

Section 7 amends s. 409.972, F.S., to make necessary conforming changes due to the statutory changes made by the bill.

Section 8 amends s. 744.704, F.S., to make necessary conforming changes due to the statutory changes made by the bill.

Section 9 provides an effective date of July 1, 2014.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The addition of advanced registered nurse practitioners and physician assistants to the list of medical professionals who may execute a certificate for involuntary examination of a person may increase the number of involuntary examinations initiated in the state.

C. Government Sector Impact:

An increase in the number of involuntary examinations initiated in the state for people who do not have the ability to pay for the care may impact the funding of receiving facilities and bed availability.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.463, 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.