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 Criminal Justice

BILL:	SB 270
INTRODUCER:	Senator Steube
SUBJECT:	Involuntary Examination and Involuntary Admission of Minors
DATE:	January 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	**Pre-meeting**
2.			CF	
3.			RC	

I. Summary:

SB 270 amends the Baker Act to provide that a designated law enforcement agency may decline to transport a minor 14 years of age or younger to a receiving facility for involuntary examination if current law requirements for declining transport are met and the minor's parent or guardian agrees to transport the minor to the receiving facility.

The bill provides specific criteria for taking a minor 14 years of age or younger to a receiving facility for involuntary examination, including consent of the minor's parent or guardian. Exceptions to this consent are provided. A person 14 years of age or older is subject to the criteria in current law for taking a person to a receiving facility for involuntary examination.

If the patient is a minor 14 years of age or younger, the involuntary examination at the receiving facility must be initiated within 8 hours after the patient's arrival at the facility. If the patient is a minor older than 14 years of age, the examination must be initiated within 12 hours after the patient's arrival at the facility.

A receiving facility must release a minor 14 years of age or younger without delay to the minor's parent or guardian upon request of the parent or guardian, unless parent or guardian consent was not necessary to conduct the examination; the facility made a report with the central abuse hotline based upon knowledge or suspicion of abuse, abandonment, or neglect; or the facility filed a petition for involuntary services.

II. Present Situation:

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, otherwise known as the Baker Act.[1] The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Receiving Facility

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 voluntary or involuntary basis.[2] Involuntary patients must be taken to a receiving facility, which is a public or private facility or hospital designated by the Department of Children and Families (DCF) to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health evaluation and to provide treatment or transportation to the appropriate service provider. A county jail is not a receiving facility.[3]

Criteria for Taking a Person to a Receiving Facility for Involuntary Examination

An involuntary examination includes an examination performed under s. 394.463, F.S.[4] The purpose of the examination is to determine whether a person qualifies for involuntary services.[5] Involuntary services include court-ordered outpatient services or inpatient placement for mental health treatment.[6] Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness[7] and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
- The person is and is unable to determine for himself or herself whether examination is necessary; **and**

[1] Section 394.451, F.S. The act was created by ch. 71-131, L.O.F., and is codified in Part I of ch. 394, F.S. (ss. 394.451-394.47892, F.S.).
[2] Sections 394.4625 and 394.463, F.S.
[3] Section 394.455(39), F.S.
[4] Section 394.455(22), F.S.
[5] *Id.*
[6] Section 394.455(23), F.S. The bill does not amend ss. 394.4655 and 394.467, F.S., which relate, respectively, to involuntary outpatient services and involuntary inpatient placement, and therefore the criteria and procedures relevant to involuntary outpatient services and involuntary inpatient placement are not discussed in this analysis.
[7] "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. For purposes of Part I of ch. 394, F.S., the term does not include a developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse. Section 394.455(28), F.S.

- Either of the following applies:
  - 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.
  - 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.[8]

Initiation of Involuntary Examination

There are three means of initiating an involuntary examination. First, a court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer or other designated agent of the court takes the person into custody and delivers him or her to an appropriate, or the nearest, facility within the designated receiving system for examination.[9]

Second, a law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility for examination. The officer executes a written report detailing the circumstances under which the person was taken into custody, which is made a part of the patient's clinical record.[10]

Third, a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer takes the person named in the certificate into custody and delivers him or her to the appropriate, or nearest, facility for examination. The law enforcement officer executes a written report detailing the circumstances under which the person was taken into custody. The certificate and the law enforcement officer's report are made a part of the patient's clinical record.[11]

Transportation to a Receiving Facility

The Baker Act requires each county to designate a single law enforcement agency within the county to transfer the person in need of services to a receiving facility for involuntary examination.[12] If the person is in custody based on noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under s. 394.463, F.S., the law enforcement officer must transport the person to the appropriate facility within the designated

[8] Section 394.463(1), F.S.
[9] Section 394.463(2)(a)1., F.S.
[10] Section 394.463(2)(a)2., F.S.
[11] Section 394.463(2)(a)3., F.S.
[12] Section 394.462(1)(a), F.S.

receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply[13]

If the person is arrested for a felony and it appears the person meets the statutory guidelines for involuntary examination or placement under Part I of ch. 394, F.S., the person must first be processed in the same manner as any other criminal suspect. Thereafter, the law enforcement officer must immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply. The receiving facility is responsible for promptly arranging for the examination and treatment of the person, but is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security.[14]

If the law enforcement officer believes the person has an emergency medical condition, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.[15]

A designated law enforcement agency may decline to transport a person to a receiving facility only if:

- The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and
- The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.[16]

The appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or the nearest receiving facility if neither apply, must accept a person brought by a law enforcement officer, or an emergency medical transport service or private transport company authorized by the county, for involuntary examination pursuant to s. 394.463, F.S.[17]

Notice by Receiving Facility to Parent or Guardian of a Minor

A receiving facility must give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463, F.S., to the minor's parent, guardian, caregiver, or guardian advocate, in person or by telephone or other form of electronic communication, immediately after the minor's arrival at the facility. The facility may delay notification for no more than 24 hours after the minor's arrival if the facility has submitted a report to the central abuse hotline pursuant to s. 39.201, F.S., based upon knowledge or suspicion of abuse,

[13] Section 394.462(1)(g), F.S.
[14] Section 394.462(1)(h), F.S. If the facility is unable to provide adequate security, examination or treatment of the person is provided where he or she is held. *Id.*
[15] Section 394.462(1)(i), F.S.
[16] Section 394.462(1)(b)1., F.S.
[17] Section 394.462(1)(k), F.S.

abandonment, or neglect and if the facility deems a delay in notification to be in the minor's best interest.[18]

The receiving facility must also attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until the receiving facility receives confirmation from the parent, guardian, caregiver, or guardian advocate, verbally, by telephone or other form of electronic communication, or by recorded message, that notification has been received. Attempts to notify the parent, guardian, caregiver, or guardian advocate must be repeated at least once every hour during the first 12 hours after the minor's arrival and once every 24 hours thereafter and must continue until such confirmation is received, unless the minor is released at the end of the 72-hour examination period, or until a petition for involuntary services is filed with the court. The receiving facility may seek assistance from a law enforcement agency to notify the minor's parent, guardian, caregiver, or guardian advocate if the facility has not received within the first 24 hours after the minor's arrival a confirmation by the parent, guardian, caregiver, or guardian advocate that notification has been received. The receiving facility must document notification attempts in the minor's clinical record.[19]

Time Limitations for Conducting an Involuntary Examination

Specified time periods apply to holding a person in a receiving facility for involuntary examination. Generally, the examination period must be for up to72 hours.[20] However, for a minor, the examination must be initiated within 12 hours after the minor arrives at the facility.[21] Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.[22]

[18] Section 394.4599(2)(c)1., F.S.
[19] Section 394.4599(2)(c)2., F.S.
[20] Section 394.463(2)(g), F.S.
[21] *Id.*
[22] *Id.* A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition must be examined by a facility within the examination period specified in s. 394.463(2)(g), F.S. The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services or involuntary inpatient placement, the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. Section 394.463(2)(h), F.S. One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist: the patient must be examined by a facility and released; or the patient must be transferred to a designated facility in which appropriate medical treatment is available. However, the facility must be notified of the transfer within two hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist. Section 394.463(2)(i), F.S.

III. Effect of Proposed Changes:

The bill amends s. 394.462, F.S., to provide that a designated law enforcement agency may decline to transport a minor 14 years of age or younger to a receiving facility for involuntary examination if current law requirements for declining transport are met and the minor's parent or guardian agrees to transport the minor to the receiving facility.

The bill also amends s. 396.463, F.S., to provide that a minor 14 years of age or younger may be taken to a receiving facility for involuntary examination *with the consent of the minor's parent or guardian* if there is reason to believe that the minor has a mental illness and because of his or her mental illness:

- Without care or treatment, the minor 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 minor will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

A person older than 14 years of age is subject to the criteria in current law (s. 394.463(1), F.S.) for taking a person to a receiving facility for involuntary examination.

The bill provides exceptions to the consent requirement. The consent of a parent or guardian of the minor is not required if the person who initiates the examination details in writing that at least one of the following events has occurred:

- Reasonable attempts have been made to contact the parents or guardians of the minor, and the parents or guardians could not be contacted or could not take custody of the minor within a reasonable amount of time.
- The minor was considered for an involuntary examination because he or she caused or attempted to cause serious bodily harm to himself or herself or others or possessed an item such as a weapon, a knife, a razor, a pill, or poison for the purpose of conducting such harm.
- The minor is in the custody of the DCF.
- The person who initiated the involuntary examination or the person who reported the minor's suspected mental illness to the person authorized to initiate an involuntary examination made a report to the central abuse hotline pursuant to s. 39.201, F.S., based upon knowledge or suspicion of abuse, abandonment, or neglect.

If the patient is a minor 14 years of age or younger, the involuntary examination at the receiving facility must be initiated within 8 hours after the patient's arrival at the facility. If the patient is a minor older than 14 years of age, the examination must be initiated within 12 hours after the patient's arrival at the facility.

A receiving facility must release a minor 14 years of age or younger without delay to the minor's parent or guardian upon request of the parent or guardian, unless consent of the parent or guardian was not necessary to conduct the examination (i.e., an exception to consent applies); the facility made a report with the central abuse hotline pursuant to s. 39.201, F.S., based upon

knowledge or suspicion of abuse, abandonment, or neglect; or the facility filed a petition for involuntary services.

The bill also amends ss. 394.4599 and 790.065, F.S., to conform cross-references.

The bill takes effect July 1, 2018.

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 DCF notes that the bill may have fiscal impact on the private sector:

> The requirement that the examination of a minor 14 years of age or younger be conducted within the first 8 hours of their arrival at the facility could result in the need for additional clinicians at receiving facilities. As a result, the bill could increase costs for designated receiving facilities if they do not currently have enough clinicians on staff to conduct examinations within the new 8 hour requirement.[23]

C. Government Sector Impact:

The DCF indicates that the bill does not have a fiscal impact on state government.[24] The DCF also notes that the bill may result in a cost-savings to local law enforcement agencies:

[23] *2018 Agency Legislative Bill Analysis* (SB 270) (July 1, 2018), Department of Children and Families (on file with the Senate Committee on Criminal Justice).
[24] *Id.*

> The bill authorizes a designated law enforcement agency to decline to transport … a minor 14 years of age or younger to a designated receiving facility if the parent or guardian agrees to transport. As a result, this could reduce the number of minors 14 years of age or younger transported by a designated law enforcement agency and would result in a cost-savings for the designated law enforcement agency.[25]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Task Force Report on Involuntary Examination of Minors

In 2017, the Legislature created a task force within the DCF to address the issue of involuntary examination of minors 17 years of age or younger. The task force was required to submit a report of its findings to the Governor, President of the Senate, and Speaker of the House of Representatives by November 15, 2017.[26] The task force submitted its report on November 15, 2017.[27]

One of the task force's findings is that "[i]nvoluntary examinations for children have increased over time…. From FY 2000/2001 to FY 2015/2016, there was an 86% increase in involuntary examinations for children."[28] However, the task force cautioned that "it is not possible to identify specific root causes directly linked to the trend of increased Baker Act initiations. There is a confluence of individual, family, community, and societal factors at play, which may vary by community."[29]

None of the changes proposed by the bill were recommendations of the task force. However, the task force did recommend amending s. 381.0056(4)(a)19., F.S., "to require school administrators to notify a student's parent, guardian, or caregiver before a Baker Act is initiated and the student is removed from school, school transportation, or a school-sponsored activity."[30] The bill does not amend s. 381.0056(4)(a)19., F.S.

Section 381.0056(4)(a), F.S., requires each county health department to develop, jointly with the district school board and the local health advisory committee, a school health service plan that

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[25] *Id.*
[26] Section 27, ch. 2017-151, L.O.F.
[27] *Task Force Report on Involuntary Examination of Minors* (Nov. 15, 2017), Office of Substance Abuse and Mental Health, Department of Children and Families, available at http://www.fccmh.org/documents/2017/Oct_Dec/TASK_FORCE_ON_INVOLUNTARY_EXAMINATION_OF_MINORS.pdf (last visited on Jan. 16, 2018).
[28] *Id.* at p. 11.
[29] *Id.* at p. 21.
[30] *Id.* at p. 31. Findings of the report do not specifically indicate why this recommendation was made, though the task force noted that some key stakeholder responding to a survey initiated by the task force stated that a decrease in the initiation of Baker Act examinations could be attributed to "[i]ncreased parental involvement" and the "[a]bility to better diffuse, assess, and explain the situation to the parent, who is more willing to assist in a crisis situation if they are consulted and included in the process." *Id.* at p. 25.

includes numerous, specified components. One of those components (s. 381.0056(4)(a)19., F.S.) is 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 pursuant to s. 394.463, F.S., including the requirements established under ss. 1002.20(3) and 1002.33(9), F.S., as applicable.

Section 1002.20(3)(l), F.S., requires a public school principal of a K-12 public school or the principal's designee to immediately notify the parent of a student who is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to s. 394.463, F.S. The principal or the principal's designee may delay notification for no more than 24 hours after the student is removed if the principal or designee deems the delay to be in the student's best interest and if a report has been submitted to the central abuse hotline pursuant to s. 39.201, F.S., based upon knowledge or suspicion of abuse, abandonment, or neglect. Each district school board must develop a policy and procedures for notification under this paragraph.

Section 1002.33(9)(q), F.S., contains an identical requirement for the principal of a charter school.

DCF Concerns

The DCF states that it is unclear what the following terms used in the bill mean: "reasonable attempts," "reasonable amount of time," and "without delay." Additionally, the DCF recommends that "further clarification be provided for possession of a 'pill.' For example, is the possession of an aspirin an event that could trigger the initiation of an involuntary examination that would not require parent or guardian consent?"[31]

Inconsistent Notice

Notice provisions in the bill relevant to taking a minor 14 years of age or younger to a receiving facility for involuntary examination are narrower than and inconsistent with current requirements for notice by the receiving facility.

Section 394.4599(2)(c)1., F.S., requires a receiving facility to give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463, F.S., to the minor's *parent, guardian, caregiver, or guardian advocate.* Section 394.4599(2)(c)2., F.S., requires a receiving facility to attempt to notify the minor's *parent, guardian, caregiver, or guardian advocate* until the receiving facility receives confirmation from the *parent, guardian, caregiver, or guardian advocate*. (See discussion of s. 394.4599, F.S., *supra*.)

The bill requires the consent of the *parent or guardian* of a minor 14 years of age or younger before being taken to a receiving facility for involuntary examination (lines 94-96 of the bill). The bill also provides that the consent of the minor's *parent or guardian* is not required if the person who initiates the examination details in writing that at least one of four specified events has occurred. One of those events is that reasonable attempts have been made to contact the

[31] *Supra*, n. 23.

parents or guardians of the minor, and the *parents or guardians* could not be contacted or could not take custody of the minor within a reasonable amount of time.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.462, 394.463, 394.4599, and 790.065.

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.