

STORAGE NAME: h2347.cf

DATE: April 12, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CHILDREN & FAMILIES
ANALYSIS**

BILL #: HB 2347 (formerly PCB CF 00-06A)

RELATING TO: Mental Health (Changes to the ways kids are placed in programs)

SPONSOR(S): Committee on Children & Families and Representative Murman

TIED BILL(S): CS/SB 682 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) Children & Families YEAS 6 NAYS 0

(2)

(3)

(4)

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I.

This bill addresses problems that have been identified in the area of children's residential mental health treatment that include client rights, treatment and oversight.

The bill creates the authority to license residential treatment centers that provide mental health treatment to children and adolescents with emotional disturbances.

The bill requires that children in the legal custody of the Department of Children and Families be placed by the department in a residential treatment center only after verification by a qualified evaluator (psychologist or psychiatrist) that residential mental health treatment is clinically appropriate and that available less restrictive treatment modalities have been considered.

The bill requires notification of the court and appointment of an attorney for the child if the independent evaluation recommends residential treatment.

The bill requires the residential treatment program to report monthly to the department on the child's progress. The Department of Children and Families must submit monthly status reports to the court and the attorney.

The bill requires a court hearing with representation of the child by the attorney no later than 3 months after the child is placed in residential treatment. The hearing includes a clinical review by a qualified evaluator addressing the need for continued residential treatment.

The bill includes consideration of assessments performed by school psychologists in the mental assessment of children, with written consent by parents.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

This bill increases the responsibility of the department to have independent evaluators assess the suitability of residential mental health placement for children in state custody and for the courts to review the placement. The bill will shift responsibility for licensure of these residential facilities from the department to the Agency for Health Care Administration.

B. PRESENT SITUATION:

Comprehensive Child and Adolescent Mental Health Services Act

Chapter 98-5, Laws of Florida, created the "Comprehensive Child and Adolescent Mental Health Services Act" in ss. 394.490-394.497, F.S. to address the need for better mental health services for children and adolescents. The act places greater emphasis on such things as individualized needs and strengths of the child or adolescent and his family; the involvement of the families in planning and services; and integrating services with schools, residential child-caring agencies, and other child-related agencies. The law directs the Department of Children and Family Services to establish within available resources an array of assessment and treatment services to meet the individualized needs of the children, adolescents, and their families.

Children's Residential Mental Health Treatment Issues Identified

A series of articles in the Sun-Sentinel, November 7-10, 1999 entitled "Throwaway Kids" identified serious issues in Florida's system of residential mental health treatment for children. The report found children and adolescents were being inappropriately placed in residential treatment centers for long periods of time with inadequate facility treatment standards. The articles stress the need for quality treatment programs in these residential centers as well as the need to develop community-based alternatives to residential care.

On December 28, 1999, the Florida Supreme Court Commission on Fairness released a report that urges changes to the Baker Act to better protect mental health clients. The Commission recommends a study of the legal needs of children under the Baker Act, including the right of children and adolescents to voluntarily consent to in-patient mental health treatment without the consent of their guardian.

In the case of *M.W. v. Davis*, 722 So.2d 966, 968 (Fla. 4th DCA), the appellate court concluded that the department seeking residential mental health treatment for a dependent

child in the legal custody of the department does not constitute an involuntary placement requiring a Baker Act hearing. Review of the intermediate appellate court's decision is currently pending before the Florida Supreme Court.

Number of Children in Residential Placements

The department reports that during FY 1998-99, there were 411 placements to residential treatment centers and 877 placements to therapeutic group homes funded through the department's children's mental health budget. In FY 1997-98 approximately 800 children in state custody were admitted to these facilities for treatment.

The department reports that since the late 1970s, all residential placements funded through the children's mental health budget are made through the district's multidisciplinary process requiring an assessment by a clinical psychologist or a psychiatrist with experience or training in children's mental disorders. This case review committee has been used under the authority of s. 394.4781, F.S., for making decisions on the placement of children and adolescents with serious emotional disturbances in residential mental health treatment programs. The review process ensures that community-based treatment has been fully explored before residential placement is considered.

Current Statutory Authority for Placement of Children and Adolescents in Residential Treatment Facilities

The statutory provisions for placing children and adolescents who are in the department's legal custody into in-patient facilities or residential treatment facilities include:

1. Provision for voluntary admission of persons under 18 years of age to a mental health facility. The law specifies that a facility may receive for observation, diagnosis, or treatment any person age 17 or under for whom an application is made by his or her guardian. A person age 17 or under may be admitted to the facility only after a hearing to verify the voluntariness of the consent. (s. 394.4625)
2. Requirement that children and children and adolescents who are in danger of harm to themselves or others because of mental illness (s. 394.463, s. 394.467) be placed in a designated Baker Act facility for appropriate mental health treatment. (s.394.467). Statutes include provisions for: client criteria for placement, admission to a treatment facility, petition for involuntary placement, appointment of counsel, continuance of hearing, hearing on involuntary placement, procedure for continued involuntary placement, and return of patients.
3. Provision that a judge may order a child to an out-of-home placement to receive mental health services from a psychiatrist, psychologist, or other appropriate service provider based on evidence that the child should receive treatment. (s. 39.407(4)). The law states that the judge may order that the child be placed in a residential facility for treatment services. The law specifies that in those cases, the procedures and criteria contained in s. 394.467, F.S., apply.
4. State mental health facilities may not be included in the array of services for children and adolescents with emotional disturbances because the legislature does not intend for children and adolescents to be admitted to those facilities. (s. 394.495) Section 394.4785, is not consistent with this provision because it specifies the residential circumstances of children admitted to state facilities. (The department reports that children have not been placed in the civil units of the state mental health facilities since 1987, and adolescents

have not been placed in state facilities since 1991. At any given time there are approximately 10-15 adolescents admitted to the forensic units of the state mental health facilities because they were tried as adults.)

Current Licensure Requirements for Residential Child-Caring Agencies

Section 409.175, F.S., includes requirements for the licensure of residential child-caring agencies which include residential treatment centers and groups homes, many of which serve children and adolescents with an emotional disturbance.

The department reports that 41 child-caring agencies licensed under s. 409.175, F.S., also contract with the Alcohol, Drug Abuse, and Mental Health (ADM) program office in the department to provide children's mental health services. Of these 41 under contract, 16 are residential treatment centers and 25 are therapeutic groups homes. Agencies under contract are required to comply with licensure standards that address areas such as staff composition and coverage; intake and admission; assessment, treatment planning, and discharge planning; service activities; children's rights; protective restraints; seclusion; and clinical record documentation.

C. EFFECT OF PROPOSED CHANGES:

This bill requires that children in the legal custody of the Department of Children and Families be placed by the department in a residential treatment center licensed under s. 394.875, F.S., or in a hospital licensed under ch. 395, F.S., only after verification by a qualified evaluator (psychologist or psychiatrist) that residential mental health treatment is clinically appropriate for treating the child's emotional disturbance and that available less restrictive treatment has been considered.

The bill requires the department to notify the court and provide a copy of the assessment by the qualified evaluator immediately upon placing a child in a residential treatment program. The court shall appoint an attorney for the child pursuant to s. 27.51, relating to public defenders, who shall review the findings of the evaluation and may petition the court for a fact-finding hearing.

The bill requires the residential treatment program to report monthly to the Department of Children and Families on the child's progress. The department must submit monthly status reports to the court. The bill requires a court hearing no later than 3 months after the child is placed in residential treatment that includes a clinical review by a qualified evaluator addressing the need for continued residential treatment. Additional court reviews are required.

It creates the authority to license residential treatment centers that provide mental health treatment to children and adolescents with emotional disturbances. The Department of Children and Family Services, in consultation with the Agency for Health Care Administration, is directed to adopt rules specifying standards for these facilities.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 39.407, F.S., relating to medial, psychiatric, and psychological examination and treatment of child; physical or mental examination of child or person requesting custody of child.

The bill specifies that the Department of Children and Family Services may place a child in its legal custody into treatment in a residential treatment center licensed under s. 394.875, F.S., or in a hospital licensed under chapter 395, F.S. A child may be admitted as a voluntary patient, or admitted involuntarily upon order of the court pursuant to s. 394.463 or 394.467, F.S. The bill requires that an attorney be appointed for all children placed in a residential treatment program.

The bill provides definitions for residential treatment, least-restrictive alternative and suitable for residential treatment.

The bill requires that prior to placement, the child must have a suitability assessment completed by a qualified evaluator (a psychiatrist or psychologist, with at least 3 years of experience in diagnosing and treating children with serious emotional disturbances). The assessment is to verify that a residential treatment setting is clinically appropriate for the child's mental health treatment needs, and that available, less restrictive treatment has been considered.

The bill requires the Department of Children and Families to notify the court and provide a copy of the assessment by the qualified evaluator immediately upon placing a child in a residential treatment program. The court shall appoint an attorney for the child pursuant to s. 27.51, relating to public defenders, who shall review the findings of the evaluation and may petition the court for a fact-finding hearing.

The residential treatment program must submit a copy of the preliminary treatment plan to the child, attorney, and the department within 10 days after the child's admission. Within 30 days after admission, the program must review the child's progress toward achieving treatment goals and the appropriateness of the placement, and submit a written report to the department and the attorney. This report must also include the child's discharge plan.

The bill requires the residential treatment program to report monthly to the department on the child's progress. The department must submit monthly status reports to the court. The bill requires a court hearing no later than 3 months after the child is placed in residential treatment that includes a clinical review by a qualified evaluator addressing the need for continued residential treatment. The court reviews the case every 90 days thereafter. The court may order that the child be placed in a less restrictive setting at any time it determines that residential treatment is not meeting the child's needs.

The bill directs the department to adopt rules for implementing timeframes for completing the initial suitability assessments and the 3-month review by the qualified evaluators. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting evaluators, and a reasonable cost-efficient fee schedule for the qualified evaluators.

Section 2. Amends s, 394.4785, F.S., relating to Minors; admission and placement in mental facilities.

This section of the bill replaces the word minor in the title with children and adolescents.

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The bill prohibits admission of children or adolescents to state owned or operated mental health facilities, consistent with s. 394.495, F.S. A child or adolescent may be admitted to a residential treatment center or crisis stabilization unit licensed under ch. 394, F.S., or to a hospital licensed under ch. 395, F.S.

The bill specifies that these facilities must provide the least restrictive treatment appropriate to the child's or adolescent's needs and must adhere to the guiding principles, system of care, and service planning provisions contained in Part III of ch. 394, F.S., known as the "Comprehensive Child and Adolescent Mental Health Services Act."

Section 3. Amends s. 394.495, F.S. relating to child and adolescent mental health system of care; programs and services.

The bill provides for consideration of assessments performed by school psychologists in the mental health assessment of children, with written consent of parents.

Section 4. Amends s. 394.67, F.S., relating to definitions.

The bill creates a new subsection (18) that defines residential treatment center for children and adolescents. Residential treatment centers for children and adolescents are 24-hour programs, including therapeutic group homes, that provide mental health services to emotionally disturbed children. They offer a variety of treatment in a more restrictive setting.

Section 5. Amends s. 394.875, F.S., relating to crisis stabilization units and residential treatment facilities.

The bill adds residential treatment centers for child and adolescents to the facilities included in the section. It defines their purpose and client criteria pursuant to other statutes (ss. 394.491, 394.495 and 394.496, and s. 394.493 (1)(a), (b) or (c)), F.S.

The bill prohibits entities from operating as residential treatment centers for child and adolescents unless they licensed by the Agency for Health Care Administration pursuant to ch. 394, F.S., mental health.

The bill directs the Department of Children and Families in consultation with the Agency for Health Care Administration to adopt rules specifying standards in the areas of admission, length of stay, discharge, treatment planning, program and staffing, seclusion, restraints, and time-out, the rights of patients under s. 394.459, F.S., use of psychotropic medications, and standards of operation.

Section 6. Amends s. 409.175(2)(j), F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies.

The bill specifies that residential child-caring agencies do not include residential treatment centers licensed under s. 394.875, F.S.

Section 7. Amends s. 27.51, F.S., relating to duties of public defender.

The bill requires representation without compensation for a dependent child under the custody of the department when the department seeks residential treatment for the child.

Section 8. Provides that, if passed by the Legislature and approved by the Governor, the bill shall take effect on October 1, 2000.

FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

E. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

There would be additional costs to the department relating to qualified evaluators (psychiatrists and psychologists) conducting the suitability assessment on each child in the department's custody who may need residential mental health treatment. The department estimates this annual cost to be \$206,250. This estimate is based on 825 children in their custody requiring a suitability assessment at an average cost of \$250 per assessment. A portion of the initial suitability assessments would be paid by the Medicaid program because all children in state custody are Medicaid eligible and the Agency for Health Care Administration reports that these suitability assessments would qualify for reimbursement under the Medicaid program. Because Medicaid pays only \$180 for a psychiatric evaluation, it is estimated that \$57,750 of the assessment costs would need to be paid by the department (general revenue) rather than by the Medicaid program.

The bill also requires that a qualified evaluator review the child's treatment progress prior to the 3-month court review. The department reports that four months is the average length of stay in residential treatment programs. It is likely that the stringent reporting and oversight provisions in this bill will reduce the length of stay for many cases to less than 3 months. If the average cost for each 3-month clinical review is \$250, and only 50 percent of the cases require these reviews; the cost would be approximately \$100,000. Because Medicaid does not currently pay for any residential mental health treatment, these costs would not be covered by the Medicaid program.

There would be additional court hearings for those children who stay in residential treatment longer than 3 months which would result in an indeterminate fiscal impact on the judicial system. Some court hearings to review residential treatment would be included in the 6-month dependency review as the bill requires that continuing residential placement must be a subject of the child's 6-month judicial review required under s. 39.701, F.S.

The department reports that the Family Safety and Preservation staff that license child-caring agencies would have a reduced workload. There could be an increase in workload in the Agency for Health Care Administration that is responsible for licensing mental health residential treatment facilities and crisis stabilization units under s. 394.875, F.S.

F. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

G. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The department reports that residential treatment centers currently licensed under s. 409.175, F.S., could incur new costs in order to meet mental health standards under ch. 394, F.S.

H. FISCAL COMMENTS:

N/A

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill directs the Department of Children and Families to adopt rules for implementing timeframes for completing the initial suitability assessments and the 3-month review by the qualified evaluators. The Agency for Health Care Administration must adopt rules for the

registration of qualified evaluators, the procedure for selecting evaluators, and a reasonable cost-efficient fee schedule for the qualified evaluators.

The bill directs the Department of Children and Families in consultation with the Agency for Health Care Administration to adopt rules specifying standards in the areas of admission, length of stay, discharge, treatment planning, program and staffing, seclusion, restraints, and time-out, the rights of patients under s. 394.459, F.S., use of psychotropic medications, and standards of operation.

C. OTHER COMMENTS:

The Florida Supreme Court Commission on Fairness issued a report December 1999 on "The Baker Act", chapter 394 of the Florida Statutes. This law governs issues related to mental health services including involuntary examination, voluntary admission, and involuntary placements. This bill addresses part of the general recommendations from the Supreme Court Commission. However, it emphasizes only the issues relating to children in the custody of the Department of Children and Families, not those in the custody of their biological or adoptive parents. There are other unresolved issues the commission identified:

- Whether children under the age of 18 should have the right to voluntarily consent to in-patient mental health treatment, without the consent of their guardian.
- Whether the Human Rights Advocacy Committees or another independent entity should have the authority to make contact with a child confined to a mental health facility, to confirm the voluntariness of the child's consent.
- Whether a child's right to petition for a writ of habeas corpus pursuant to Chapter 394 is adequately protected and whether legal counsel should be provided.
- Whether judicial review of placement of children in mental health facilities should be required, to ensure the appropriateness of involuntary placements and the voluntariness of voluntary admissions.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VI. SIGNATURES:

COMMITTEE ON CHILDREN & FAMILIES:

Prepared by:

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Glenn A. Mitchell

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