

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 340

SPONSOR: Committee on Judiciary and Senator Lynn

SUBJECT: Involuntary Commitment/Baker Act

DATE: March 25, 2003      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill extends to a hospital emergency department physician with specified diagnostic and treatment experience the same authority currently given to a clinical psychologist and psychiatrist to approve the release of a patient who has undergone medical screening for involuntary admission under the Baker Act.

This bill substantially amends section 394.463 of the Florida Statutes.

**II. Present Situation:**

Florida’s Baker Act is a civil commitment statute which allows a person to be involuntarily admitted to a receiving facility for short-term emergency service and maximum 72-hour detention until an evaluation and treatment of a mental, emotional or behavioral disorder are completed.<sup>1</sup> See Part I, ss. 394.451-394.4789, F.S. The statutory criteria for bringing someone to a receiving facility for involuntary examination are based on whether there is reasonable cause to believe that the person is mentally ill and:

- 1) The person has refused voluntary examination or is unable to make a determination whether the exam is necessary for himself or herself, and
- 2) The person is likely to suffer from neglect without care or treatment which poses threat of substantial harm to the person and is unavoidable even with family or friends’ assistance or

<sup>1</sup> In Florida, 84,162 Baker Act examinations were conducted during the 2001-2002 calendar year of which 12,186 constituted multiple examinations of the same people. This represents an increase from 61,906 examinations conducted in 2000. See Special Report of Baker Act Data, February 12, 2003. The average age of a person subjected to the Baker Act is 38 years old. See *The Florida Mental Health Act (The Baker Act) 2001 Annual Report*, Florida Agency for Health Care Administration.

the person will cause serious harm to self or others without care or treatment. *See* s. 394.463(1), F.S.

The process for involuntary admission and placement may be initiated in one of three general ways:

- 1) Ex parte court order: A judge may enter an ex parte order stating that the person meets the statutory criteria for emergency admission. The order must include findings and must direct the law enforcement officer to take the person to the nearest receiving facility for examination and treatment. A copy of the order must be sent to the Agency for Health Care Administration.<sup>2</sup> The order is valid until executed, for the time frame specified in the order, or for 7 days after the date the order is signed.
- 2) Law enforcement officer report: A law enforcement officer may take into custody a person who appears to meet the statutory criteria for involuntary examination and deliver that person to the nearest receiving facility for examination and treatment. The law enforcement officer must execute a written report detailing the circumstances under which the person was taken into custody. A copy of that report must be sent by the receiving facility to the Agency for Health Care Administration.
- 3) Mental health professional certificate: A physician, clinical psychologist, psychiatric nurse or clinical social worker may execute a certificate stating that the person has been examined within the preceding 48 hours and that the person appears to meet the statutory criteria for involuntary examination. The certificate must include the observations upon which the conclusion is based. A law enforcement officer must take that person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer must execute a written report. A copy of the certificate must be sent to the Agency for Health Care Administration.

Current law requires the patient to be examined by a physician or clinical psychologist at a receiving facility. A physician can order emergency treatment if necessary for the safety of the patient or others. The patient can not be detained any longer than 72 hours. Within the 72-hour period, the patient must be either:

- 1) Released unless charged with a crime and subsequently delivered to law enforcement;
  - 2) Released for outpatient treatment; or
  - 3) Asked for express and informed consent to voluntary placement and treatment.<sup>3</sup>
- Alternatively, if the patient refuses voluntarily placement for treatment, a proceeding for involuntary placement may be initiated.<sup>4</sup>

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<sup>2</sup> The Policy and Services Research Data Center at the Louis de la Parte Florida Mental Health Institute in agreement with the Agency for Health Care Administration serves as the repository for these forms, and carries out the data entry and analytic functions for the AHCA. During the calendar year 2001, the Center received and entered data from 95,990 Baker Act Initiation Forms. *See The Florida Mental Health Act (The Baker Act) 2001 Annual Report*, Florida Agency for Health Care Administration.

<sup>3</sup> *See* s. 394.463(2)(i), F.S.

<sup>4</sup> *See* s. 394.467, F.S.

For a patient who is being evaluated or treated at a hospital for an emergency medical condition prior to transfer for an examination at a receiving facility, the 72-hour period of detention begins from the time the patient arrives at the hospital to the time the attending physician documents the patient's emergency medical condition.<sup>5</sup>

Within 12 hours after an attending physician documents that the patient's medical condition is stable or does not exist, the patient must be transferred (if patient is not already at a receiving facility) and examined by a qualified professional at a receiving facility. A patient's release from a receiving facility requires the approval of a qualified clinical psychologist or a psychiatrist. Under the law, a "clinical psychologist" is qualified as one who has 3 years of postdoctoral experience in clinical psychology including licensure experience, or one who is a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.<sup>6</sup> A "psychiatrist" is qualified as a licensed medical practitioner who has primarily diagnosed and treated mental and nervous disorders for at least 3 years inclusive of a psychiatric residency.<sup>7</sup> Under current law, a physician at a receiving facility is not authorized to approve the release of a patient. Under chapter 394, F.S., a physician is defined as a licensed medical practitioner *who has experience* in the diagnosis and treatment of mental and nervous disorders, or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility.

A receiving facility is statutorily defined as a public or private facility designated by the Department of Children and Families<sup>8</sup> to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment.<sup>9</sup> A private facility is any hospital or facility operated by a for-profit or not-for profit corporation or association that provides mental health services.<sup>10</sup> A public facility is any facility that has contracted with the department to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.<sup>11</sup> There are 113 receiving facilities in Florida.

### III. Effect of Proposed Changes:

The bill amends s. 394.463(2)(g), F.S., which authorizes a clinical psychologist or psychiatrist to approve the release of a patient who is being involuntarily detained at a receiving facility under the Baker Act. The bill extends such authority to a hospital emergency department physician with diagnostic and treatment experience in mental and nervous disorders, provided the patient has undergone a medical screening and the hospital is designated as a receiving facility.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>5</sup> See s. 394.463(2)(g), F.S.

<sup>6</sup> See s. 394.455(2), F.S.

<sup>7</sup> See s. 394.455(24), F.S.

<sup>8</sup> Criteria for designation as a receiving facility is set forth in s. 394.461, F.S.

<sup>9</sup> See s. 394.455(26), F.S.

<sup>10</sup> See s. 394.455(22), F.S.

<sup>11</sup> See s. 394.455(25), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill may facilitate the earlier release of patients who would otherwise have to wait in those designated receiving facilities that are “hospital emergency departments” for the arrival of a qualified clinical psychologist or psychiatrist to authorize his or her release.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.