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 700

SPONSOR: Children and Families Committee and Senator Peaden

SUBJECT: Mental health

DATE: February 18, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Fav/CS
2.			JU	
3.			CJ	
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I. Summary:

The committee substitute for SB 700 substantially amends ch. 394, Part I, F.S. (the Baker Act), Florida's involuntary civil commitment law, to incorporate the provisions for court-ordered outpatient mental health services and voluntary agreements for outpatient services. Specifically, the bill makes the following major changes:

- Creates a process for involuntary placement for outpatient services for certain persons who meet the criteria for involuntary outpatient placement, provided services or programs are available.
- Adds a process for continued involuntary placement for outpatient services.
- Provides rulemaking authority to the Department of Children and Family Services.

This committee substitute substantially amends sections 394.455, 394.4598, 394.463, and 394.467, of the Florida Statutes and creates section 394.467, of the Florida Statutes.

II. Present Situation:

The Florida Mental Health Act, also known as the Baker Act, permits receiving facilities to temporarily detain persons for up to 72 hours to conduct a mental health evaluation if there is reason to believe the person is mentally ill and meets the criteria for involuntary examination. Specific criteria that must be met for evaluation and placement include: because of this mental illness, the person is likely to suffer from neglect resulting in harm that can not be avoided through the help of others; or there is substantial likelihood that without treatment or care the person will cause serious harm to self or others. When a person is evaluated and found to meet criteria provided in the Baker Act, the person may be either voluntarily or involuntarily committed to a civil treatment facility. Many of the individuals who meet the criteria for

involuntary commitment have very severe and persistent mental illnesses with histories of violence directed at self, family members or others. In addition, they have typically not responded successfully to community-based treatment programs.

Persons who suffer from mental illness and who are at high risk for relapse may experience repeated hospitalizations as well as contacts with the criminal justice system. These individuals often have co-occurring alcohol or drug abuse problems and may fail to take their psychotropic medications as prescribed, which contributes to episodic worsening of their psychiatric condition and even to disruptive or violent behavior. For various reasons, even when treatment is available, some of these individuals refuse to comply with recommended treatment. When the symptoms of their illness are untreated and become exacerbated, the person is readmitted to a receiving facility for evaluation. This cycle of events frequently leads to a "revolving door" of persons being brought in for treatment, becoming stabilized, and when released failing to follow through with recommended treatments and relapsing again.

Individuals with a severe and persistent mental illness frequently have contact with law enforcement officers for disruptive behavior or infractions that occur because they are experiencing psychiatric symptoms. These encounters frequently result in arrest leading to mentally ill individuals being held in jails and being processed through the court system. National data indicates that 16% of the inmates in state jails and prisons have a severe mental illness.

Florida, like many other states in the nation, has drastically reduced the number of inpatient beds as mental health treatment has moved from the state hospitals to the community. In 1979, there were 4,743 individuals in Florida's civil facilities. Today, the three civil treatment facilities have a combined operating bed capacity of 1,369. Approximately 388, or 28%, of these beds are used for forensic step down and not accessible to civil commitments. Even with the reduction in beds, however, the goals of involuntary treatment have not changed radically. These goals include ensuring public safety, guaranteeing access to treatment for those who need it, and assuring that treatment is provided in the least restrictive environment consistent with the needs of the individual. With an increasing number of mentally ill persons in communities rather than state hospitals, many states have amended their existing civil commitment statutes to allow for involuntary outpatient commitment; thirty-nine states and the District of Columbia have provisions for some level of involuntary outpatient treatment.

Involuntary outpatient treatment is a form of civil commitment in which the court orders an individual to comply with specific mental health treatment(s) on an outpatient basis. Theoretically, this practice can allow the person with mental illness increased autonomy while extending the state's supervisory control beyond the hospital and into the community.

There is ongoing controversy surrounding involuntary outpatient treatment. Both philosophical and operational concerns have been expressed regarding the practice of involuntary outpatient commitment. Experts disagree about both the appropriateness and the effectiveness of involuntary outpatient commitment, and there are mixed results from states that have implemented these procedures. Research shows that the key to successful outpatient treatment is the availability of an appropriate array of community-based services, whether or not there is a court order.

Florida's civil commitment law provides a process for involuntary examination and involuntary admission of a person who meets certain criteria for treatment of a mental illness.

Involuntary Evaluation
If an individual is believed to meet Baker Act criteria, an involuntary examination may be initiated in accordance with s. 394.463(2), F.S., by one of three means: the court may issue an ex parte order based upon sworn testimony; a law enforcement officer may take the individual into custody and deliver him or her to the nearest receiving facility; or certain professionals (a physician, licensed clinical psychologist, licensed mental health practitioner, psychiatric nurse, or clinical social worker) may execute a certificate stating that he or she has examined the person within the preceding 48 hours and finds the person to meet the criteria for examination.

In order to complete an involuntary examination, an individual may be detained at a designated receiving facility for a maximum of 72 hours. Within the 72 hour time frame, the individual must be evaluated by a physician or clinical psychologist. At the end of the time frame, the individual must be either:

- Released unless charged with a crime and subsequently delivered to law enforcement;
- Released for outpatient treatment;
- Asked for express and informed consent to voluntary placement and treatment; or
- Detained upon recommendation of the receiving facility pending transfer to an inpatient treatment facility and, if at the treatment facility, until the disposition of the hearing on the petition for involuntary placement.

If the individual is not released and will not voluntarily consent or otherwise refuses to be admitted for treatment, the individual may be involuntarily placed for treatment at a receiving facility pending transfer to a treatment facility or involuntarily placed for treatment in a treatment facility upon the filing of a petition by the receiving facility's administrator. The petition must be supported by a psychiatrist's opinion and a second opinion from a clinical psychologist or psychiatrist or, in those counties with less than 50,000 in population, a physician with special mental health training.

According to a number of analyses, Florida currently provides an inadequate number of crisis stabilization unit (CSU) beds for critical 24 hour psychiatric emergency and stabilization services. The legislatively established Florida Commission on Mental Health and Substance Abuse recommended a significant increase in the number of CSU beds **(**2001**)**. In many parts of the state, individuals must stay in waiting rooms and hallways awaiting formal admission until a bed becomes available.

Appointment of Counsel and Hearing
Under current law, the court must appoint a public defender to represent the interests of the individual who is the subject of the petition within one working day after filing the petition for involuntary placement, unless the individual is otherwise represented by counsel. If continuance is not granted, the court must hold the hearing on involuntary placement within 5 days in the county where the individual is located. The state attorney for the circuit in which the individual is located represents the state. The court may appoint a master to preside at the hearing, and one

of the professionals who executed the involuntary placement certificate must be a witness at the hearing. The individual who is the subject of the hearing has a right to an independent expert examination. If the individual cannot afford the examination, the court is directed to provide for one (s. 394.4598, F.S.).

Guardian Advocate
If the court finds the individual incompetent to consent to treatment during the Baker Act process, a guardian advocate must be appointed for the person in accordance with s. 394.4598, F.S. The guardian advocate has the authority to consent for the individual's medical treatment as long as the person is deemed incompetent to consent and is involuntarily committed for treatment. At the time the individual regains competency to consent to treatment, the facility must notify the court, and the guardian advocate is discharged.

The need for guardianship is not limited to persons with mental illness. There are also provisions for appointing a "guardian advocate" in chapter 393, F.S. Issues pertaining to guardianship were of such concern that in June, 2003, the Governor established by Executive Order a Joint Work Group on Guardianship for the Developmentally Disabled. Some of the key findings of this work group reflect that there are an insufficient number of people willing to serve as guardians or guardian advocates and that there is a significant fiscal impact associated with increasing the availability of these services.

Confidentiality of Clinical Records
All information about a person in a mental health facility is maintained as confidential in accordance with s. 394.4615, F.S., and only released with the consent of the person or a legally authorized representative. However, certain information can be released without consent to the person's attorney, in response to a court order, after a threat of harm to others, or to a parent or next-of-kin. Persons in mental health facilities have the right to access their own clinical records.

III. Effect of Proposed Changes:

The committee substitute for SB 700 amends Chapter 394, Part I, F.S., (the Baker Act) to include criteria and a process for involuntary outpatient placement that will allow individuals with mental illness who meet certain criteria to be ordered by the court to participate in community-based mental health treatment. In order for the court to order such services, the responsible service provider must certify to the court that the appropriate mental health services are available in the community. The court orders must address specific treatments that are to be provided to the individual and must be issued contingent upon the availability of treatment services in the community. Non-compliance with court-ordered outpatient treatment may result in the individual being evaluated for involuntary inpatient treatment if he or she is believed to meet the criteria.

Section 1: Amends s. 394.455, F.S., providing definitions for "service provider", "*involuntary examination*" and "involuntary placement."

Section 2: Amends s. 394.4598, F.S., to reference involuntary placement, as described in newly created s. 394.4655, F.S., specifying that the guardian advocate shall be discharged from an order

for involuntary outpatient placement or involuntary inpatient placement when the patient is transferred from involuntary to voluntary status.

Section 3: Amends s. 394.4615(3), F.S., providing for the release of the patient's clinical record with consent from the patient or the patient's guardian advocate, if one has been appointed, in a manner that is consistent with applicable state and federal law. It should be noted that this provision will only apply to "facility" records, not the outpatient records that are governed by chapter 456, F.S.

Section 4: Amends s. 394.463, F.S., to permit the person's current reported or observed behavior to be considered in implementing an involuntary examination. It is unclear how the report on behavior is to be verified and determined to be credible. Current law requires that a mental health professional personally conduct an examination to support the conclusion that the individual meets criteria for involuntary placement (s. 394.463(2), F.S).

This section also directs that both involuntary inpatient placement orders as well as involuntary outpatient placement orders be provided to and maintained by the Agency for Health Care Administration (AHCA).

Section 5: Creates s. 394.4655, F.S., to provide criteria for involuntary outpatient placement, a process for initiating involuntary outpatient placement, mechanisms for filing a petition for involuntary outpatient placement, the appointment of counsel, continuance of hearing, the hearing for involuntary outpatient placement and makes provisions for continued involuntary outpatient placement.

Criteria for Involuntary Outpatient Placement

In subsection (1), the bill provides criteria that must be met for an individual to be court ordered for involuntary outpatient placement. The individual must by clear and convincing evidence:

- Be 18 years old or older;
- Have a mental illness, along with a clinical determination that the person is unlikely to survive safely in the community;
- Have a history of non-compliance with mental health treatment ;
- Have been involuntarily admitted for to a receiving or treatment facility at least two times during the immediately preceding 36 months, not including any time the person was admitted or incarcerated, or have engaged in one or more acts of serious violent behavior or attempts at such acts within the preceding 36 months;
- Be unlikely to voluntarily participate in treatment as a result of mental illness;
- Based upon the individual's treatment history and current behavior, be in need of involuntary outpatient placement to prevent a relapse or deterioration that is considered likely to result in harm; and
- Be likely to benefit from involuntary outpatient placement.

All less restrictive alternatives must first have been deemed inappropriate.

The committee substitute for SB 700 provides broader criteria for determining the need for involuntary outpatient placement than is currently provided for inpatient placement. Some of the

additional criteria include involuntary admission to a treatment or receiving facility within the preceding 36 months; in light of the person's treatment history, the likelihood of relapse or deterioration that would cause serious bodily harm to self or others or substantial harm to his or her well being; the consideration of violent acts by the individual; and, as a result of his or her mental illness, the unlikelihood that the person would voluntarily cooperate with a treatment plan. Some of the criteria are unclear; for example, it is unclear how incidents of "serious violence" or "serious bodily harm" will be determined. Additionally, the information needed to be obtained comes from a variety of sources that may be difficult to access in a timely manner. Finally, there is no way to know if an individual obtained mental health services in the past without consent from the individual.

Involuntary Outpatient Placement

In subsection (2), the committee substitute specifies three areas from which an involuntary outpatient placement may be made: from a receiving facility, based upon a voluntary examination for outpatient placement or from a treatment facility. Recommendations for involuntary outpatient placement are made by the administrator of a receiving or treatment facility or the patient.

Recommendations for involuntary outpatient placement must be supported by the opinion of a psychiatrist and a second opinion by a clinical psychologist or another psychiatrist. Both of these experts must have examined the individual within the preceding 72 hours. In counties with populations of fewer than 50,000 residents, the second opinion may be provided by a licensed physician who has post graduate training and experience in diagnosis and treatment of mental disorders.

Recommendations for involuntary outpatient placement from a receiving facility must be made on an involuntary outpatient placement certificate. This certificate must authorize the receiving facility to retain the patient pending transfer to an involuntary outpatient placement or completion of the hearing. If the person becomes stabilized and no longer meets the criteria for involuntary examination provided in s. 394.463(1), F.S., the person must be released from the receiving facility while awaiting the hearing for involuntary outpatient placement.

Recommendations for involuntary outpatient placement that are made from a treatment facility must be made on the involuntary outpatient placement certificate. However, it is not specified that the individual must be released from the treatment facility while awaiting the involuntary outpatient placement hearing. It is not clear if individuals from treatment facilities who are recommended for involuntary outpatient treatment await the hearing at the treatment facility or if they are discharged and await the hearing in the community.

Under the condition when a patient chooses to be examined on a voluntary basis for involuntary outpatient placement, the required examinations must have been completed by the two experts within the preceding 14 calendar days. A spread of 14 days between examinations may result in very different opinions of the individual's mental condition. Further, if the individual is willing to cooperate with a mental health examination, it is likely the person will be willing to participate in treatment without a court order.

Petition for Involuntary Outpatient Placement

This committee substitute specifies that a petition for involuntary outpatient placement may be filed by the administrator of a receiving facility, one of the qualified professionals conducting a voluntary examination or by the administrator of a treatment facility. The petition for involuntary outpatient placement must address each of the criteria required for outpatient placement and must be accompanied by the certificate recommending involuntary outpatient placement. This committee substitute requires that a copy of the patient's treatment plan be attached to the petition at the time the petition is filed. Further, the service provider must also certify that the services proposed in the treatment plan are available. The petition may not be filed if the necessary services are not available in the community. A copy of the petition must be provided to the administrator of the designated receiving or treatment facility and must be filed in the county where the patient is located. When the petition is filed, the clerk of the court is required to provide copies to the Department of Children and Family Services, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.

Appointment of Counsel and Hearings

The committee substitute for SB 700 requires the court to appoint a public defender to represent the person under petition for involuntary outpatient placement unless the person is otherwise represented by counsel. The public defender must represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary outpatient placement. The attorney representing the individual is specified to have access to the individual, witnesses, and records relevant to the presentation of the individual's case.

Public defenders currently represent persons who are being petitioned for inpatient treatment until the resolution of the case. The requirements specified in CS/SB 700 will likely result in additional persons requiring representation by the public defender especially in counties where state mental health hospitals are located, and may also result in cases being held open for longer periods of time than they are currently.

The individual under petition is entitled to at least one continuance of hearing for four weeks with concurrence by counsel. Otherwise, the court must conduct the hearing on involuntary outpatient placement within five days. Hearings are required to be held in the county where the individual is located. If the court finds that the individual's presence at the hearing is not within the individual's best interests and counsel agrees, the court may waive the individual's presence from all or any portion of the hearing. The state attorney in the judicial circuit the individual is located in must represent the state in these proceedings.

During the hearings, individuals who executed the involuntary outpatient placement certificate must serve as a witness. Additionally, the individual has the right to an independent evaluation, and if the individual is unable to pay for an evaluation, the court must provide for one. The court must allow testimony from individuals, including family members, if deemed by the court to be relevant, regarding the person's prior history and how that history relates to the person's present condition.

The bill authorizes the court to order involuntary outpatient placement for up to six months if the individual meets the criteria. The bill authorizes the service provider to discharge the individual

when he or she no longer meets the criteria for involuntary outpatient placement. It is unusual to allow the modification of court orders by someone other than the court.

When an individual is ordered for involuntary outpatient placement, the administrator of the receiving facility or a designated department representative must identify the service provider that will have primary responsibility for providing court-ordered services. Prior to the hearing, the service provider is required to prepare a proposed treatment plan and submit it for the court's consideration for inclusion in the involuntary outpatient placement order. The treatment plan must specify the nature and extent of the individual's mental illness and may include provisions for certain treatment services. The plan may also require the individual to make use of the designated service provider to supply other services as well. This committee substitute requires the service provider to certify to the court in the proposed treatment plan whether sufficient services for improvement and stabilization are available and whether the service provider agrees to provide those services. If services are unavailable in the community, the petition must be withdrawn. The court may not order services that are unavailable. Copies of court orders must be sent to the Agency for Health Care Administration by the service provider within one working day after it is received from the court.

Modifications may be made to the treatment plan by the service provider with agreement by the patient or the patient's guardian advocate. Notification of modifications must be provided to the court. If modifications are contested by either the patient or the patient's guardian advocate, they must be submitted in writing by the service provider to the court and approved by the court. If the patient fails to comply with the treatment ordered by the court and it is thought that the patient meets the criteria for involuntary examination, the patient made be brought to a receiving facility and evaluated. If the person does not meet the criteria for involuntary inpatient treatment, the person must be discharged from the receiving facility. If at any time prior to the initial hearing the individual meets the criteria for involuntary inpatient treatment, the court may order the person to involuntary inpatient placement.

The court is required to consider testimony and evidence regarding the individual's competence to consent to treatment. If the court finds the person incompetent to consent to treatment, a guardian advocate must be appointed for the person. The guardian advocate may be discharged if the person's competency to consent to treatment has been restored.

<u>Procedure for Continued Involuntary Outpatient Placement</u>
If an individual continues to meet the criteria for involuntary outpatient placement beyond the initial six months order, prior to the expiration of that order, the service provider must file a continued involuntary outpatient placement certificate along with justification of the request, a brief description of the individual's treatment during the six months, and an individualized plan of continued treatment. Hearings for continued involuntary outpatient placement must be held before the circuit court and follow the same process as the initial hearing. Procedures for continued involuntary outpatient placement may involve a different public defender than the one assigned to the initial hearing.

Section 6: Amends current language to be consistent with s. 394.4655, Florida Statutes.

Section 7: Provides the Department of Children and Family Services with rule making authority to implement the act. This committee substitute directs that the rules developed for the implementation of this act are for the purpose of protecting the health, safety, and well-being of persons examined, treated, or placed under this act.

Section 8: Provides for the severability of sections.

Section 9: Provides an effective date of January 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator projects a workload increase for judges, state attorneys, public defenders, and clerks of court, at least some of which will fall on the counties. The biggest impact in this change is workload increase that may be experienced in Gadsden, Broward, and Baker counties where the three state-operated civil treatment facilities reside. Applying the legislatively required Weighted Caseload System judicial workload methodology, the State Courts System estimates it will require the equivalent of two to three full-time circuit judges to implement the proposal at the trial court level, at an initial recurring cost in the range of $636,000 to $954,000. This estimate was based upon the original contents of the bill; there has not been enough time to revise the estimate based upon amendments to the bill.

The Department of Children and Families Mental Health Program reports that during fiscal year 2002-2003, slightly more than 2,000 persons were discharged from state inpatient treatment facilities. It is estimated that up to 10 percent of the persons discharged (approximately 400 persons) may meet the criteria for involuntary outpatient placement. Initiating outpatient commitment procedures for persons being discharged from state treatment facilities will result in an additional staff workload in order to complete assessments, paperwork and to appear at judicial hearings.

There will be undetermined costs associated with the required evaluation of individuals under consideration for involuntary outpatient commitment as well as for the preparation of necessary reports, proposed treatment plans and the provision of expert testimony in court. The committee substitute specifies that this work is to be done by service providers and the clinicians who conduct the mental health examinations.

The Florida Association of Counties reports that there will be an undetermined fiscal impact to counties due to the required 25% matching funds that must be provided for mental health services.

The State Attorney's office estimates that one additional attorney and clerk will be needed in each of the 20 judicial circuits to implement the requirements of this bill. This estimate was based upon the original contents of the bill; there has not been enough time to revise the estimate based upon amendments to the bill.

The Public Defender's office reports that there will be an undetermined fiscal impact associated with increased workload as a result of this bill.

VI. Technical Deficiencies:

The amendment to language on p. 11 line 26 of the bill (requiring that the proposed treatment plan and the certification of service availability accompany the petition) conflicts with language on page 14 lines 2 and 3, and on page 15 lines 3 through 5.

VII. Related Issues:

There are currently options in the Baker Act that permit involuntary outpatient placement (s. 394.467, F.S.).

Prior to enacting similar legislation in 1999, the New York State Legislature passed enabling legislation (1994) for a pilot project to test involuntary outpatient commitment orders and provided for evaluation of the pilot project. The pilot was conducted for three years. The Florida Association of Counties recommends that a detailed evaluation of involuntary outpatient placement be conducted prior to its implementation statewide to assure the proper community infrastructure is in place. The association recommends the use of a pilot program in order to better prepare for specific changes that need to be made to help divert mentally ill persons from jails.

States that have implemented involuntary outpatient commitment procedures have typically infused their mental health treatment systems with significant funding. It is not clear that resources in Florida are sufficient to support such an initiative and continue to provide services to persons who currently receive services.

For FY 2004-2005, the Governor has recommended a shift in general revenue funding ($1,898,000) from the State Mental Health Treatment Facilities budget to the Adult Community Mental Health Budget. If approved, these revenues will be made available by a 27 bed reduction in capacity at Northeast Florida State Hospital and used to support community based services for persons with serious mental illness who might otherwise be admitted to a state civil bed at this facility.

The Governor's recommended budget for mental health services for fiscal year 2004-2005 reflects a lump sum amount of $19, 244,558 to provide services to adults, children, and adolescents suffering from mental illness. If funded, the revenues will be earmarked to:

- Increase the capacity of adult and children's crisis stabilization unit (CSU) beds; and
- Appropriately divert individuals with serious mental illness from civil and forensic state hospitals.

Psychotropic medications are often critical to the ability of a mentally ill person to remain safely in the community. If adopted, the Medicaid reform proposal to limit the types of medications that can be paid for with state funding is likely to have a negative impact on persons with mental illness who are unable to pay for the medications they need. Not having access to medications may result in these persons decompensating and possibly needing hospitalization.

It is not known whether this funding would be sufficient to accommodate the increased impact of this legislation on the community system. The current capacity to provide crisis services in the community is likely to experience further strain with the potential increase in the number of persons being brought in for mental health evaluations as well as an increased length of stay while awaiting hearings.

This committee substitute significantly changes the court's role in Baker Act proceedings from one of appointing a person to make treatment decisions for an individual who has been found incompetent to consent to his or her own treatment to one of issuing orders for a specific mental health treatment and appointing someone to monitor the provision of that treatment.

This committee substitute makes provisions for release of client information that may be in conflict with professional practice laws.

The committee substitute directs the qualified professional to complete and provide a copy of the certificate recommending involuntary outpatient placement. The term "qualified professional" is not defined.

Involuntary outpatient placement has been found to have increased effectiveness when the sufficient community resources are present. Involuntary outpatient placement is also associated with reduced lengths of stay in subsequent hospitalizations.

VIII. Amendments:

None.