

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 9 Involuntary Examinations under the Baker Act

**SPONSOR(S):** Campbell and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N	Guzzo	O'Callaghan
2) Civil Justice Subcommittee	12 Y, 0 N	Williams	Bond
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

In 1971, the legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs of individuals in the state. The Baker Act allows for voluntary and involuntary examination of an individual and establishes procedures for the court, law enforcement and the medical community that ensure the preservation of an individual's rights relating to medical services.

The Baker Act authorizes involuntary examination of an individual who appears to have a mental illness and who, because of mental illness, presents a substantial threat of harm to themselves or others. Involuntary examination may be initiated by certain medical professionals, namely physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers.

The bill adds Advanced Registered Nurse Practitioners and Physician Assistants to the list of medical professionals who may execute a certificate for involuntary examination of a person.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### *Involuntary Examination (Baker Act)*

In 1971, the legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.<sup>1</sup> Chapter 394, Part I, F.S., provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment. The Department of Children and Families (DCF) administers this law through receiving facilities which provide for the examination of persons with evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities which provide for the involuntary examination and short term treatment of persons who meet criteria under this act.<sup>2</sup> Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g. Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.<sup>3</sup>

Current law provides that an involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness:<sup>4</sup>

- The person has refused a voluntary examination after explanation of the purpose of the exam; or
- The person is unable to determine for themselves that an examination is needed and is likely to suffer from self-neglect, substantial harm to themselves, or be a danger to themselves or others.

An involuntary examination may be initiated by any of the following:<sup>5</sup>

- A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination.
- A law enforcement officer, as defined in s. 943.10, F.S., may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.

In addition, the following persons may issue a certificate stating that a person who has been examined within the preceding 48 hours meets the criteria for involuntary examination:<sup>6</sup>

- A physician licensed under ch. 458, F.S., or an osteopathic physician licensed under ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.

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<sup>1</sup> Section 1, ch. 71-131, L.O.F.

<sup>2</sup> Section 394.455(26), F.S.

<sup>3</sup> Section 394.455(32), F.S.

<sup>4</sup> Section 394.463(1), F.S.

<sup>5</sup> Section 394.463(2)(a), F.S.

<sup>6</sup> *Id.*

- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.<sup>7</sup>
- A clinical social worker licensed under ch. 491, F.S.<sup>8</sup>

During 2011, there were 150,466 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary exams (49.21 percent) followed by mental health professionals (48.73 percent) and then *ex parte* orders by judges (2.06 percent).<sup>9</sup>

### *Physician Assistants (PA)*

Sections 458.347(7) and 459.022(7), F.S., govern the licensure of physician assistants (PAs) in Florida. PAs are licensed by the Department of Health (DOH) and are regulated by the Florida Council on Physician Assistants (Council) and either the Florida Board of Medicine (Board of Medicine) for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine (Osteopathic Board) for PAs licensed under ch. 459, F.S. Currently, there are 5,348 active licensed PAs in Florida.<sup>10</sup>

PAs may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship. A supervising physician may only delegate tasks and procedures to the physician assistant that are within the supervising physician's scope of practice.<sup>11</sup> The supervising physician is responsible and liable for any and all acts of the PA and may not supervise more than four PAs at any time.<sup>12</sup>

PAs are regulated through the respective physician practice acts.<sup>13</sup> Each of the medical practice acts has a corresponding board (i.e., the Board of Medicine and Osteopathic Board). The duty of a Board and its members is to make disciplinary decisions concerning whether a doctor or PA was practicing medicine within the confines of their practice act.<sup>14</sup>

To become licensed as a PA in Florida, an applicant must demonstrate to the Council:<sup>15</sup> passage of the National Commission on Certification of Physician Assistant exam; completion of the application; completion of a PA training program; a sworn, notarized statement of felony convictions; a sworn statement of denial or revocation of licensure in any state; letters of recommendation from physicians;<sup>16</sup> payment of a licensure fee; and completion of a two hour course on the prevention of medical errors, error reduction and prevention, and patient safety.<sup>17</sup> Licensure renewal occurs biennially.<sup>18</sup>

PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders. However, in 2008 Attorney General Bill McCollum issued an opinion stating that:

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

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

<sup>9</sup> Christy, A. (2013). *Report of Baker Act Data*. Tampa, FL; University of South Florida, Louis de la Parte Florida Mental Health Institute. Available at: <http://bakeract.fmhi.usf.edu/> (last visited February 15, 2013).

<sup>10</sup> Florida Department of Health, Medical Quality Assurance Annual Report 2011-2012.

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

<sup>12</sup> Section 458.347(3), F.S., and s. 459.022(3), F.S.

<sup>13</sup> Chapters 458 and 459, F.S.

<sup>14</sup> Section 458.347(12), F.S., and s. 459.022(12), F.S.

<sup>15</sup> Section 458.347(7), F.S., and s. 459.022(7), F.S.

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

<sup>17</sup> Rule 64B8-30.003(3), F.A.C., and Rule 64B-15-6.003(4), F.A.C.

<sup>18</sup> Section 458.347(7)(c), F.S. Rule 64B8-30.019, F.A.C., establishes the initial licensure and renewal fee schedule.

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

*A physician assistant licensed pursuant to Chapter 458 or 459, F.S., may refer a patient for involuntary evaluation pursuant to section 394.463, F.S., provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks as are within the supervising physician's scope of practice.*<sup>19</sup>

### *Advanced Registered Nurse Practitioner (ARNP)*

Part I of ch. 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by DOH and are regulated by the Board of Nursing. Licensure requirements to practice professional nursing include completion of education requirements,<sup>20</sup> demonstration of passage of a department-approved examination, a clean criminal background screening, and payment of applicable fees.<sup>21</sup> Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

A nurse who holds a license to practice professional nursing may be certified as an ARNP under s. 464.012, F.S., if the nurse meets one or more of the following requirements:

- Completion of a post basic education program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board, such as a registered nurse anesthetist or nurse midwife; or
- Possession of a master's degree in a nursing clinical specialty area.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>22</sup> All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or a dentist.<sup>23</sup> ARNPs may carry out treatments as specified in statute, including:<sup>24</sup>

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.;<sup>25</sup> and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above allowed acts, ARNPs may also perform other acts as authorized by statute and within his or her specialty.<sup>26</sup> Further, if it is within the ARNPs established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.<sup>27</sup>

There are 14,440 active, licensed ARNPs in Florida.<sup>28</sup>

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<sup>19</sup> See, 08-31 Fla. Op. Att'y Gen. (2008).

Available at: [www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf](http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf) (last visited February 15, 2013).

<sup>20</sup> Rule 64B9-4.003, F.A.C., provides that an Advanced Nursing Program shall be at least one year long and shall include theory in the biological, behavioral, nursing and medical sciences relevant to the area of advanced practice in addition to clinical expertise with a qualified preceptor.

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

<sup>22</sup> Section 464.012(2), F.S.

<sup>23</sup> Section 464.012(3), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 464.003(2), F.S., defines "Advanced or Specialized Nursing Practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.

<sup>26</sup> Section 464.012(4), F.S.

<sup>27</sup> Section 464.012(4)(c)5, F.S.

<sup>28</sup> Florida Department of Health, Medical Quality Assurance Annual Report 2011-2012.

### **Effect of Proposed Changes:**

The bill amends s. 394.463, F.S., to add that a Physician Assistant (PA) or an Advanced Registered Nurse Practitioner (ARNP) may execute a certificate stating that a person who the ARNP or PA has examined within the preceding 48 hours appears to meet the criteria for involuntary examination for mental illness.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 394.463, F.S., relating to involuntary examination.

**Section 2:** Provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

##### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

##### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

#### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Current law provides that a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist and clinical social worker may execute certificates for involuntary examination. These professions have been defined under The Baker Act. The bill amends current law to allow an advanced registered nurse practitioner or physician assistant to execute a certificate for involuntary examination, but does not create a definition for these professions. This would allow any advanced registered nurse practitioner or physician assistant, regardless of their specialization, to initiate an involuntary examination under the Baker Act.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.