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 Health Policy

BILL:	SB 690
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Involuntary Examinations of Minors
DATE:	March 18, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Pre-meeting**
2.			ED	
3.			AED	
4.			AP	

I. Summary:

SB 690 makes a series of changes in Florida law to require that the parent of a minor child is notified when the child is removed from school, school transportation, or a school-sponsored activity for involuntary examination under the Baker Act. The bill adds notification to the required elements of the school health services plan, the K-12 student and parent rights, and the requirements applicable to charter schools. The bill also amends the Baker Act to distinguish between notice related to the whereabouts of an adult or emancipated minor patient and notice related to the whereabouts of a minor patient. In both instances, notification must be initiated promptly. If the receiving facility cannot immediately locate the parent, guardian, or guardian advocate of a minor patient, however, it must repeat notification attempts hourly. The bill authorizes the schools and the receiving facility to delay notice up to 24 hours in cases where a report has been made to the Florida Abuse Hotline based on knowledge or suspicion of abuse, abandonment, or neglect.

II. Present Situation:

Involuntary Examination

In 1971, the Legislature created part I of ch. 394, F.S., the "Florida Mental Health Act," also known as the Baker Act, to address mental health needs in the state. The Baker Act is a civil commitment law which provides a process for the involuntary examination and subsequent involuntary placement (commitment) of a person for either inpatient or outpatient treatment of a mental, emotional, or behavioral disorder.

The Department of Children and Families (DCF) administers this law through receiving facilities, which are public or private facilities that are designated by the DCF to receive and hold involuntary patients under emergency conditions for psychiatric evaluation and to provide short-

term treatment.[1] A patient who requires further treatment may be transported to a treatment facility. Treatment facilities designated by the DCF are state-owned, state-operated, or state-supported hospitals which provide extended treatment and hospitalization beyond what is provided in a receiving facility.[2]

Section 394.463(1), F.S., provides that a person may be taken to a receiving facility for involuntary examination if the person is believed to be mentally ill and because of that mental illness the person has refused voluntary examination or cannot determine for himself or herself whether examination is necessary; and, without care or treatment, the person is either likely to suffer from self-neglect, cause substantial harm to himself or herself, or be a danger to himself or herself or others.[3] An involuntary examination may be initiated in one of the following ways: [4]

- A court may enter an *ex parte* order stating a person appears to meet the criteria for involuntary examination. This order is based on sworn testimony, either written or oral.
- A law enforcement officer may take a person into custody who appears to meet the criteria for involuntary examination and transport him or her to a receiving facility for examination.
- 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 examined the person within the preceding 48 hours and the person appears to meet the criteria for involuntary examination.

A receiving facility is required to give prompt notice to the patient's guardian, guardian advocate, attorney, or representative by telephone or in person of the patient's whereabouts, unless the patient requests that no notification be made. Efforts to provide notice must be initiated as soon as reasonably possible after the patient's arrival and be documented in the patient's record and must occur within 24 hours.[5] In addition, the receiving facility must send a copy of the document initiating the examination to the Agency for Health Care Administration by the next working day.[6]

A person accepted by a receiving facility must receive an initial examination by a physician or clinical psychologist without unnecessary delay and may be given emergency treatment if ordered by a physician and necessary to protect the patient or others.[7] The examination must include:[8]

- A thorough review of any observations of the patient's recent behavior;
- A review of the document initiating the involuntary examination and the transportation form; and
- A face-to-face examination of the patient in a timely manner to determine if the patient meets criteria for release.

[1] Section 394.455(26), F.S.
[2] Section 394.455(32), F.S.
[3] Section 394.463(1), F.S.
[4] Section 394.463(2)(a), F.S.
[5] Section 394.4599(2), F.S.
[6] Section 394.463(2)(a), F.S.
[7] Section 394.463(2)(f), F.S.
[8] Rule 65E-5.2801(1), F.A.C.

Within 72 hours of arriving at the receiving facility, one of the following must occur:[9]

- The patient is released, unless the person has committed a crime;
- The patient is offered the opportunity to consent to voluntary outpatient treatment and released for treatment, unless the person has committed a crime; or,
- A petition for involuntary placement must be filed with the circuit court.

The person cannot be released without the documented approval of a psychiatrist, clinical psychologist, or qualified hospital emergency department physician.[10] Notice of the discharge or transfer of a patient must be given to the patient's guardian, guardian advocate, attorney, or representative; the person who executed the certificate admitting the patient to the receiving facility; and any court that ordered the evaluation.[11]

In 2012, there were 157,352 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary examinations (49.75 percent), followed by mental health professionals (48.14 percent), and then *ex parte* orders by judges (2.10 percent). Overall, the number of involuntary examinations has been increasing annually in a number that exceeds Florida population growth. Between 2007 and 2012, the population of Florida increased by 2.93 percent, while the number of involuntary examinations increased by 28.50 percent.[12]

According to the DCF, of the approximately 150,000 involuntary examinations initiated in 2011, 18,000 were of children. Between 2002 and 2011, there was an overall increase of 50 percent in the number of involuntary examinations and a 35 percent increase in examinations of children.[13]

School Health Services Program

Section 381.0056, F.S., is the "School Health Services Act," which sets forth requirements related to school health. The Department of Health (DOH), in cooperation with the Department of Education, supervises the program and conducts periodic program reviews. However, implementation of program requirements occurs at the local level with the input of the local school health advisory committee.[14] A nonpublic school may request to participate in the school health services program.

Each county health department must develop, jointly with the local school board and the school advisory committee, a school health services plan that includes, at a minimum, a plan for the

[9] Section 394.463(2)(i), F.S.
[10] Section 394.463(2)(f), F.S.
[11] Section 394.463(3), F.S.
[12] University of South Florida, de la Parte Florida Mental Health Institute, *Annual Report of Baker Act Data, Summary of 2012 Data*, 3 (Feb. 2014) , *available at* http://bakeract.fmhi.usf.edu/document/BA_Annual_2012_Final.pdf (last visited March 13, 2014).
[13] Department of Children and Families, *Florida's Baker Act: 2013 Fact Sheet* (2013), *available at* http://www.dcf.state.fl.us/programs/samh/mentalhealth/docs/Baker%20Act%20Overview%202013.pdf (last visited March 13, 2014).
[14] The advisory committee must, at a minimum, represent the eight components of Coordinated School Health as defined by the Centers for Disease Control. These include: health education; healthy school nutrition; physical education; school health services, guidance, counseling, and social service; healthy school environment; staff wellness; and family and community support. (Florida Department of Health, *Coordinated School Health*, http://www.floridahealth.gov/healthy-people-and-families/childrens-health/school-health/coordinated-school-health/index.html (last visited March 13, 2014).

delivery of school health services; accountability and outcome indicators; strategies for assessing and blending financial resources (both public and private); and establishment of a data system.[15] Section 381.0056, F.S., requires the plan to contain provisions addressing a wide range of services and health issues, including meeting emergency health needs[16] in each school, but does not specifically address notification when a student is transported for involuntary examination.

The plan must be reviewed and updated annually and approved biennially by the school district superintendent, chair of the school board, county health department medical director or administrator, and the DOH district administrator.[17]

Student and Parental Rights and Educational Choices

Section 1002.20, F.S., sets forth the right of parents of public school students to receive accurate and timely information regarding their child's academic performance and ways parents can enhance their performance. The section assembles and restates rights afforded K-12 students and their parents in various locations throughout the Florida Statutes.

Section 1002.33, F.S., authorizes charter schools as part of the state's program of public education and establishes minimum standards for their operation.

Child Protection

A child protective investigation begins with a report by any person[18] to the Florida Abuse Hotline. The state is required to maintain 24/7 capacity for receiving reports of maltreatment. The reports are sent out to child protective investigators across the state to investigate. In cases where the child appears to be in immediate danger, the family is a flight risk or the child may be unavailable, or other circumstances warrant, the investigation must be initiated immediately, regardless of the day or time. In all other cases, the investigation must be initiated within 24 hours.[19] Under certain circumstances, a child may be taken from the home and put into protective custody.[20] In some cases, the parent or legal guardian may be present and aware of the action, but even in cases where he or she is not, the law requires the DCF to notify the parents or legal custodians, to provide them with information about the dependency procedures, and to notify them of their right to obtain their own attorney.[21]

III. Effect of Proposed Changes:

The bill amends the School Health Services Program by revising the definition of "emergency health needs" and adding a requirement for a plan provision related to students who are taken to a receiving facility for involuntary examination. The definition is expanded to include evaluation for injury and illness and release to law enforcement. The plan must address immediate

[15] Rule 64F-6.002(1), F.A.C.
[16] "Emergency health needs" means onsite management and aid for illness or injury pending the student's return to the classroom or release to a parent, guardian, designated friend, or designated health care provider (s. 381.0056(2)(a), F.S.).
[17] Rule 64F-6.002(3), F.A.C.
[18] Every person has a duty to report a suspicion of abuse, abandonment, or neglect. (*See* s. 39.201, F.S.)
[19] Section 39.201(5), F.S.
[20] Section 39.401, F.S.
[21] Section 39.402(3), F.S

notification to a student's parent or guardian in the event that the student is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for involuntary examination. Notification may be delayed up to 24 hours if the school deems it in the best interests of the child and it has submitted a report to the Florida Abuse Hotline based on knowledge or suspicion of abuse, abandonment, or neglect. Each district school board is required to develop policies and procedures to implement the requirement.

The bill revises the notification requirements under the Baker Act to distinguish between notice related to the whereabouts of an adult or emancipated minor patient and notice related to the whereabouts of a minor patient. The notice related to a minor, which is created by the bill, must be by telephone or in person and attempts at notification must be initiated promptly and documented in the patient record. If the facility cannot immediately locate the parent, guardian, or guardian advocate, it must repeat notification attempts hourly. Notification may be delayed up to 24 hours if the facility has submitted a report to the Florida Abuse Hotline based on knowledge or suspicion of abuse, abandonment, or neglect.

Finally, the bill adds notification of involuntary examinations to the rights of parents of public school students. The language parallels the language added to the School Health Services Program requirements. Specifically, the school principal or his or her designee must immediately notify a parent of a student who is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for involuntary examination. Notification may be delayed up to 24 hours if the school deems it in the best interests of the child and it has submitted a report to the Florida Abuse Hotline based on knowledge or suspicion of abuse, abandonment, or neglect. The school board must develop a policy and procedure for the required notification. The bill adds nearly identical language to the requirements in ch. 1002, F.S., applicable to charter schools. The language differs only in that it substitutes the term "charter school governing board" for "school board" in describing the entity responsible for developing the notification policy and procedure.

The bill has an effective date of July 1, 2014.

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:

Charter schools will incur an indeterminate cost to develop and adopt the required notification policy and procedure.

The requirement for hourly attempts at notification may require additional staff time at a private receiving facility that does not already attempt repeated notification as a matter of policy and only in those cases when the receiving facility is unable to reach the minor patient's parent or guardian immediately.

C. Government Sector Impact:

School districts will incur an indeterminate cost to develop and adopt the required notification policy and procedure.

The requirement for hourly attempts at notification may require additional staff time at a publicly-owned private receiving facility that does not already attempt repeated notification as a matter of policy and only in those cases when the receiving facility is unable to reach the minor patient's parent or guardian immediately.

VI. Technical Deficiencies:

The new language that is added to the school health services plan provisions directing school boards to adopt policies and procedures to implement the notification requirement is redundant (lines 120 – 122). The bill already imposes the obligation in section 3. It may be appropriate to remove the language or, at a minimum, move it to s. 381.0056(6), F.S., which sets forth the duties of the district school board under the School Health Services Program.

It would be appropriate remove the reference to "emancipated minor" on line 142 to avoid conflicts elsewhere in the Baker Act, which currently does not distinguish between emancipated and unemancipated minors for purposes of services.[22]

Sections 3 and 4 require schools to provide notice only to parents and should be amended to add guardians.

VII. Related Issues:

The bill creates a new paragraph (c) of subsection (2) of s. 394.4599, F.S., that describes who must be notified and how. The new language introduces "parent" into the description of required

[22] *See e.g.*, s. 394.4625, F.S., which requires consent to treat any person age 17 and under.

notice under the Baker Act and creates a distinction between adult, emancipated minor, and minor patients. Other places in the act require notice that would also apply to minors, but do not reference "parent," only guardian, guardian advocate, or representative. As a practical matter, facilities are contacting parents today even though the statute does not expressly reference them. It may; however, be appropriate to amend the other references to required notice to ensure consistency of terms in the act.

The bill specifies that notification can be delayed for up to 24 hours in cases of suspected abuse, abandonment, or neglect. In effect, this would give schools and receiving facilities the option "to hide" the whereabouts of children and is inconsistent with other provisions in Florida law where children are in the legal custody of the state.[23] While the intent of the bill appears to be to allow the delay when the parent or guardian is suspected of abuse, abandonment, or neglect, the ultimate determination of whether or not this has occurred will result from the DCF investigation of the report. Receiving facilities and schools could exercise the option to delay notification in error leaving innocent parents with no information about the whereabouts of their child and the child without the benefit of contact with his or her parents for a full 24 hours. A receiving facility must have security to restrict the ingress and egress of patients it accepts for involuntary examination. In this same regard, the facility would have security to restrict ingress and egress of parents, whether or not they are thought to be a risk. It may be appropriate to remove the exception proposed by the bill.

Section 394.4599(2)(b), F.S., which is amended by the bill, requires that notice of the patient's whereabouts be provided by the receiving facility to the local advocacy council. It appears that the councils were defunded by the Legislature some number of years ago and are no longer functioning. References to the councils appear in many places throughout the Florida Statutes.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0056, 394.4599, 1002.20, and 1002.33.

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.

[23] *See e.g.* s. 39.402(3), F.S., requiring notice to a parent or legal custodian of a child who is taken into protective custody.