

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; reordering and amending s. 394.455, F.S.; providing definitions; updating references to the Department of Children and Families; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to initiate involuntary examinations under the Baker Act of persons believed to have mental illness; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455 ~~394.455(9)~~ and as described in s. 394.459(3)(a), from the child's parent or legal

27 guardian. The department must take steps necessary to facilitate
28 the inclusion of the parent in the child's consultation with the
29 physician. However, if the parental rights of the parent have
30 been terminated, the parent's location or identity is unknown or
31 cannot reasonably be ascertained, or the parent declines to give
32 express and informed consent, the department may, after
33 consultation with the prescribing physician, seek court
34 authorization to provide the psychotropic medications to the
35 child. Unless parental rights have been terminated and if it is
36 possible to do so, the department shall continue to involve the
37 parent in the decisionmaking process regarding the provision of
38 psychotropic medications. If, at any time, a parent whose
39 parental rights have not been terminated provides express and
40 informed consent to the provision of a psychotropic medication,
41 the requirements of this section that the department seek court
42 authorization do not apply to that medication until such time as
43 the parent no longer consents.

44 2. Any time the department seeks a medical evaluation to
45 determine the need to initiate or continue a psychotropic
46 medication for a child, the department must provide to the
47 evaluating physician all pertinent medical information known to
48 the department concerning that child.

49 Section 2. Section 394.455, Florida Statutes, is reordered
50 and amended to read:

51 394.455 Definitions.—As used in this part, ~~unless the~~
52 ~~context clearly requires otherwise,~~ the term:

53 (1) "Administrator" means the chief administrative officer
 54 of a receiving or treatment facility or his or her designee.

55 (2) "Advanced registered nurse practitioner" means a
 56 practitioner licensed under part I of chapter 464 who is
 57 authorized to perform the functions listed in s. 464.012(4)(c).

58 (3)~~(2)~~ "Clinical psychologist" means a psychologist as
 59 defined in s. 490.003(7) with 3 years of postdoctoral experience
 60 in the practice of clinical psychology, inclusive of the
 61 experience required for licensure, or a psychologist employed by
 62 a facility operated by the United States Department of Veterans
 63 Affairs that qualifies as a receiving or treatment facility
 64 under this part.

65 (4)~~(3)~~ "Clinical record" means all parts of the record
 66 required to be maintained and includes all medical records,
 67 progress notes, charts, and admission and discharge data, and
 68 all other information recorded by a facility which pertains to
 69 the patient's hospitalization or treatment.

70 (5)~~(4)~~ "Clinical social worker" means a person licensed as
 71 a clinical social worker under chapter 491.

72 (6)~~(5)~~ "Community facility" means any community service
 73 provider contracting with the department to furnish substance
 74 abuse or mental health services under part IV of this chapter.

75 (7)~~(6)~~ "Community mental health center or clinic" means a
 76 publicly funded, not-for-profit center which contracts with the
 77 department for the provision of inpatient, outpatient, day
 78 treatment, or emergency services.

79 | (8)~~(7)~~ "Court," unless otherwise specified, means the
 80 | circuit court.

81 | (9)~~(8)~~ "Department" means the Department of Children and
 82 | Families ~~Family Services~~.

83 | (10)~~(38)~~ "Electronic means" means a form of
 84 | telecommunication that requires all parties to maintain visual
 85 | as well as audio communication.

86 | (11)~~(9)~~ "Express and informed consent" means consent
 87 | voluntarily given in writing, by a competent person, after
 88 | sufficient explanation and disclosure of the subject matter
 89 | involved to enable the person to make a knowing and willful
 90 | decision without any element of force, fraud, deceit, duress, or
 91 | other form of constraint or coercion.

92 | (12)~~(10)~~ "Facility" means any hospital, community
 93 | facility, public or private facility, or receiving or treatment
 94 | facility providing for the evaluation, diagnosis, care,
 95 | treatment, training, or hospitalization of persons who appear to
 96 | have a mental illness or have been diagnosed as having a mental
 97 | illness. The term ~~"Facility"~~ does not include any program or
 98 | entity licensed pursuant to chapter 400 or chapter 429.

99 | (13)~~(11)~~ "Guardian" means the natural guardian of a minor,
 100 | or a person appointed by a court to act on behalf of a ward's
 101 | person if the ward is a minor or has been adjudicated
 102 | incapacitated.

103 | (14)~~(12)~~ "Guardian advocate" means a person appointed by a
 104 | court to make decisions regarding mental health treatment on

105 | behalf of a patient who has been found incompetent to consent to
106 | treatment pursuant to this part. The guardian advocate may be
107 | granted specific additional powers by written order of the
108 | court, as provided in this part.

109 | (15)~~(13)~~ "Hospital" means a facility as defined in s.
110 | 395.002 and licensed under chapter 395 and part II of chapter
111 | 408.

112 | (16)~~(14)~~ "Incapacitated" means that a person has been
113 | adjudicated incapacitated pursuant to part V of chapter 744 and
114 | a guardian of the person has been appointed.

115 | (17)~~(15)~~ "Incompetent to consent to treatment" means that
116 | a person's judgment is so affected by his or her mental illness
117 | that the person lacks the capacity to make a well-reasoned,
118 | willful, and knowing decision concerning his or her medical or
119 | mental health treatment.

120 | (18)~~(34)~~ "Involuntary examination" means an examination
121 | performed under s. 394.463 to determine if an individual
122 | qualifies for involuntary inpatient treatment under s.
123 | 394.467(1) or involuntary outpatient treatment under s.
124 | 394.4655(1).

125 | (19)~~(35)~~ "Involuntary placement" means either involuntary
126 | outpatient treatment pursuant to s. 394.4655 or involuntary
127 | inpatient treatment pursuant to s. 394.467.

128 | (20)~~(16)~~ "Law enforcement officer" means a law enforcement
129 | officer as defined in s. 943.10.

130 | (21)~~(36)~~ "Marriage and family therapist" means a person

131 licensed as a marriage and family therapist under chapter 491.

132 (22)~~(37)~~ "Mental health counselor" means a person licensed
 133 as a mental health counselor under chapter 491.

134 (23)~~(17)~~ "Mental health overlay program" means a mobile
 135 service which provides an independent examination for voluntary
 136 admissions and a range of supplemental onsite services to
 137 persons with a mental illness in a residential setting such as a
 138 nursing home, assisted living facility, adult family-care home,
 139 or nonresidential setting such as an adult day care center.
 140 Independent examinations provided pursuant to this part through
 141 a mental health overlay program must only be provided under
 142 contract with the department for this service or be attached to
 143 a public receiving facility that is also a community mental
 144 health center.

145 (24)~~(18)~~ "Mental illness" means an impairment of the
 146 mental or emotional processes that exercise conscious control of
 147 one's actions or of the ability to perceive or understand
 148 reality, which impairment substantially interferes with the
 149 person's ability to meet the ordinary demands of living. For the
 150 purposes of this part, the term does not include a developmental
 151 disability as defined in chapter 393, intoxication, or
 152 conditions manifested only by antisocial behavior or substance
 153 abuse impairment.

154 (25)~~(19)~~ "Mobile crisis response service" means a
 155 nonresidential crisis service attached to a public receiving
 156 facility and available 24 hours a day, 7 days a week, through

157 which immediate intensive assessments and interventions,
158 including screening for admission into a receiving facility,
159 take place for the purpose of identifying appropriate treatment
160 services.

161 ~~(26)-(20)~~ "Patient" means any person who is held or
162 accepted for mental health treatment.

163 ~~(27)-(21)~~ "Physician" means a medical practitioner licensed
164 under chapter 458 or chapter 459 who has experience in the
165 diagnosis and treatment of mental and nervous disorders or a
166 physician employed by a facility operated by the United States
167 Department of Veterans Affairs which qualifies as a receiving or
168 treatment facility under this part.

169 (28) "Physician assistant" means a physician assistant
170 licensed under chapter 458 or chapter 459 who has experience
171 regarding the diagnosis and treatment of mental and nervous
172 disorders and such tasks as are within the supervising
173 physician's scope of practice.

174 ~~(29)-(22)~~ "Private facility" means any hospital or facility
175 operated by a for-profit or not-for-profit corporation or
176 association that provides mental health services and is not a
177 public facility.

178 ~~(30)-(23)~~ "Psychiatric nurse" means a registered nurse
179 licensed under part I of chapter 464 who has a master's degree
180 or a doctorate in psychiatric nursing and 2 years of post-
181 master's clinical experience under the supervision of a
182 physician.

183 (31)~~(24)~~ "Psychiatrist" means a medical practitioner
184 licensed under chapter 458 or chapter 459 who has primarily
185 diagnosed and treated mental and nervous disorders for a period
186 of not less than 3 years, inclusive of psychiatric residency.

187 (32)~~(25)~~ "Public facility" means any facility that has
188 contracted with the department to provide mental health services
189 to all persons, regardless of their ability to pay, and is
190 receiving state funds for such purpose.

191 (33)~~(26)~~ "Receiving facility" means any public or private
192 facility designated by the department to receive and hold
193 involuntary patients under emergency conditions or for
194 psychiatric evaluation and to provide short-term treatment. The
195 term does not include a county jail.

196 (34)~~(27)~~ "Representative" means a person selected to
197 receive notice of proceedings during the time a patient is held
198 in or admitted to a receiving or treatment facility.

199 (35)~~(28)~~ (a) "Restraint" means a physical device, method,
200 or drug used to control behavior. A physical restraint is any
201 manual method or physical or mechanical device, material, or
202 equipment attached or adjacent to the individual's body so that
203 he or she cannot easily remove the restraint and which restricts
204 freedom of movement or normal access to one's body.

205 (b) A drug used as a restraint is a medication used to
206 control the person's behavior or to restrict his or her freedom
207 of movement and is not part of the standard treatment regimen of
208 a person with a diagnosed mental illness who is a client of the

209 department. Physically holding a person during a procedure to
 210 forcibly administer psychotropic medication is a physical
 211 restraint.

212 (c) Restraint does not include physical devices, such as
 213 orthopedically prescribed appliances, surgical dressings and
 214 bandages, supportive body bands, or other physical holding when
 215 necessary for routine physical examinations and tests; or for
 216 purposes of orthopedic, surgical, or other similar medical
 217 treatment; when used to provide support for the achievement of
 218 functional body position or proper balance; or when used to
 219 protect a person from falling out of bed.

220 (36)~~(29)~~ "Seclusion" means the physical segregation of a
 221 person in any fashion or involuntary isolation of a person in a
 222 room or area from which the person is prevented from leaving.
 223 The prevention may be by physical barrier or by a staff member
 224 who is acting in a manner, or who is physically situated, so as
 225 to prevent the person from leaving the room or area. For
 226 purposes of this chapter, the term does not mean isolation due
 227 to a person's medical condition or symptoms.

228 (37)~~(30)~~ "Secretary" means the Secretary of Children and
 229 Families ~~Family Services~~.

230 (38)~~(33)~~ "Service provider" means any public or private
 231 receiving facility, an entity under contract with the Department
 232 of Children and Families ~~Family Services~~ to provide mental
 233 health services, a clinical psychologist, a clinical social
 234 worker, a marriage and family therapist, a mental health

235 counselor, a physician, a psychiatric nurse as defined in
 236 subsection (30) ~~(23)~~, or a community mental health center or
 237 clinic as defined in this part.

238 (39) ~~(31)~~ "Transfer evaluation" means the process, as
 239 approved by the appropriate district office of the department,
 240 whereby a person who is being considered for placement in a
 241 state treatment facility is first evaluated for appropriateness
 242 of admission to the facility by a community-based public
 243 receiving facility or by a community mental health center or
 244 clinic if the public receiving facility is not a community
 245 mental health center or clinic.

246 (40) ~~(32)~~ "Treatment facility" means any state-owned,
 247 state-operated, or state-supported hospital, center, or clinic
 248 designated by the department for extended treatment and
 249 hospitalization, beyond that provided for by a receiving
 250 facility, of persons who have a mental illness, including
 251 facilities of the United States Government, and any private
 252 facility designated by the department when rendering such
 253 services to a person pursuant to the provisions of this part.
 254 Patients treated in facilities of the United States Government
 255 shall be solely those whose care is the responsibility of the
 256 United States Department of Veterans Affairs.

257 Section 3. Paragraph (a) of subsection (2) of section
 258 394.463, Florida Statutes, is amended to read:

259 394.463 Involuntary examination.—

260 (2) INVOLUNTARY EXAMINATION.—

261 (a) An involuntary examination may be initiated by any one
262 of the following means:

263 1. A court may enter an ex parte order stating that a
264 person appears to meet the criteria for involuntary examination,
265 giving the findings on which that conclusion is based. The ex
266 parte order for involuntary examination must be based on sworn
267 testimony, written or oral. If other less restrictive means are
268 not available, such as voluntary appearance for outpatient
269 evaluation, a law enforcement officer, or other designated agent
270 of the court, shall take the person into custody and deliver him
271 or her to the nearest receiving facility for involuntary
272 examination. The order of the court shall be made a part of the
273 patient's clinical record. No fee shall be charged for the
274 filing of an order under this subsection. Any receiving facility
275 accepting the patient based on this order must send a copy of
276 the order to the Agency for Health Care Administration on the
277 next working day. The order shall be valid only until executed
278 or, if not executed, for the period specified in the order
279 itself. If no time limit is specified in the order, the order
280 shall be valid for 7 days after the date that the order was
281 signed.

282 2. A law enforcement officer shall take a person who
283 appears to meet the criteria for involuntary examination into
284 custody and deliver the person or have him or her delivered to
285 the nearest receiving facility for examination. The officer
286 shall execute a written report detailing the circumstances under

287 | which the person was taken into custody, and the report shall be
288 | made a part of the patient's clinical record. Any receiving
289 | facility accepting the patient based on this report must send a
290 | copy of the report to the Agency for Health Care Administration
291 | on the next working day.

292 | 3. A physician, physician assistant, clinical
293 | psychologist, psychiatric nurse, mental health counselor,
294 | marriage and family therapist, ~~or~~ clinical social worker, or
295 | advanced registered nurse practitioner may execute a certificate
296 | stating that he or she has examined a person within the
297 | preceding 48 hours and finds that the person appears to meet the
298 | criteria for involuntary examination and stating the
299 | observations upon which that conclusion is based. If other less
300 | restrictive means are not available, such as voluntary
301 | appearance for outpatient evaluation, a law enforcement officer
302 | shall take the person named in the certificate into custody and
303 | deliver him or her to the nearest receiving facility for
304 | involuntary examination. The law enforcement officer shall
305 | execute a written report detailing the circumstances under which
306 | the person was taken into custody. The report and certificate
307 | shall be made a part of the patient's clinical record. Any
308 | receiving facility accepting the patient based on this
309 | certificate must send a copy of the certificate to the Agency
310 | for Health Care Administration on the next working day.

311 | Section 4. Paragraphs (a) and (c) of subsection (3) of
312 | section 394.495, Florida Statutes, are amended to read:

313 394.495 Child and adolescent mental health system of care;
 314 programs and services.—

315 (3) Assessments must be performed by:

316 (a) A professional as defined in s. 394.455(3), (5), (27),
 317 (30), or (31) ~~394.455(2), (4), (21), (23), or (24)~~;

318 (c) A person who is under the direct supervision of a
 319 professional as defined in s. 394.455(3), (5), (27), (30), or
 320 (31) ~~394.455(2), (4), (21), (23), or (24)~~ or a professional
 321 licensed under chapter 491.

322
 323 The department shall adopt by rule statewide standards for
 324 mental health assessments, which must be based on current
 325 relevant professional and accreditation standards.

326 Section 5. Subsection (6) of section 394.496, Florida
 327 Statutes, is amended to read:

328 394.496 Service planning.—

329 (6) A professional as defined in s. 394.455(3), (5), (27),
 330 (30), or (31) ~~394.455(2), (4), (21), (23), or (24)~~ or a
 331 professional licensed under chapter 491 must be included among
 332 those persons developing the services plan.

333 Section 6. Subsection (6) of section 394.9085, Florida
 334 Statutes, is amended to read:

335 394.9085 Behavioral provider liability.—

336 (6) For purposes of this section, the terms "receiving
 337 facility," "addictions receiving facility," and "detoxification
 338 services," ~~"addictions receiving facility," and "receiving~~

339 ~~facility"~~ have the same meanings as ~~those~~ provided in ss.
 340 394.455(33), 397.311(18)(a)1., and 397.311(18)(a)4.,
 341 ~~397.311(18)(a)1., and 394.455(26),~~ respectively.

342 Section 7. Paragraph (b) of subsection (2) of section
 343 409.972, Florida Statutes, is amended to read:

344 409.972 Mandatory and voluntary enrollment.—

345 (2) The following Medicaid-eligible persons are exempt
 346 from mandatory managed care enrollment required by s. 409.965,
 347 and may voluntarily choose to participate in the managed medical
 348 assistance program:

349 (b) Medicaid recipients residing in residential commitment
 350 facilities operated through the Department of Juvenile Justice
 351 or mental health treatment facilities as defined by s.
 352 394.455(40) ~~394.455(32)~~.

353 Section 8. Subsection (7) of section 744.704, Florida
 354 Statutes, is amended to read:

355 744.704 Powers and duties.—

356 (7) A public guardian shall not commit a ward to a mental
 357 health treatment facility, as defined in s. 394.455(40)
 358 ~~394.455(32)~~, without an involuntary placement proceeding as
 359 provided by law.

360 Section 9. This act shall take effect July 1, 2014.