

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Education

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BILL: SB 954

INTRODUCER: Senator Garcia

SUBJECT: Involuntary Examinations of Minors

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Favorable</b>
3.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 954 requires each county health department to develop, jointly with the district school board and the local school health advisory committee, a school health services plan to provide for immediate notification to a student’s parent or guardian if the student is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to the Baker Act. Each district school board and charter school governing board must develop a policy and procedures for such notification.

Specifically, the bill:

- Expands the definition of “emergency health needs” to include onsite evaluation of a student for illness or injury and release of the student to a law enforcement officer.
- Requires immediate notification by the school principal, or his or her designee, to a public school or a charter school student’s parent or guardian if the student is removed from the school, school transportation, or a school-sponsored activity for an involuntary examination.
- Permits a school principal, or his or her designee, and the receiving facility to delay notification no more than 24 hours if it has been deemed to be in the student’s or minor patient’s best interest and after a report of known or suspected abuse, abandonment, or neglect is submitted to the Department of Children and Families’ Central Abuse Hotline.
- Provides the following notification requirements for receiving facilities that hold minor patients for involuntary examination:
  - Immediate notice to the patient’s parent, guardian, or guardian advocate in person or by telephone or other electronic communication.
  - Repeated and documented attempts of notification until receiving confirmation by the parent, guardian, or guardian advocate.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2015.

## II. Present Situation:

### Involuntary Examination

In 1971, the Legislature created part I of chapter 394, F.S., the “Florida Mental Health Act,” also known as the Baker Act, to address mental health needs in the state.<sup>1</sup> The Baker Act is a civil commitment law that 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.<sup>2</sup>

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.<sup>3</sup> A patient who requires further treatment may be transported to a treatment facility.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> An involuntary examination may be initiated in one of the following ways:

- 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> In addition, the receiving facility must send a

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<sup>1</sup> Section 394.451, F.S.; s. 1, ch. 71-131, L.O.F.

<sup>2</sup> 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>.

<sup>3</sup> Section 394.455(26), F.S.

<sup>4</sup> Section 394.463(2)(f), F.S.

<sup>5</sup> Section 394.455(32), F.S.

<sup>6</sup> Section 394.463(1), F.S.

<sup>7</sup> Section 394.463(2)(a), F.S.

<sup>8</sup> Section 394.4599(2), F.S.

<sup>9</sup> *Id.*

copy of the document initiating the examination to the Agency for Health Care Administration by the next working day.<sup>10</sup>

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.<sup>11</sup> The examination must include:<sup>12</sup>

- 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.

Within 72 hours of arriving at the receiving facility, one of the following must occur:<sup>13</sup>

- 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.<sup>14</sup> 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.<sup>15</sup>

In 2013, there were 171,744 involuntary examinations initiated in the state.<sup>16</sup> Law enforcement initiated almost half of the involuntary examinations (49.65 percent), followed by mental health professionals (48.39 percent), and then *ex parte* orders by judges (1.96 percent).<sup>17</sup> Overall, the number of involuntary examinations has been increasing annually in a number that exceeds Florida population growth.<sup>18</sup> Between 2002<sup>19</sup> and 2013, the population of Florida increased by 15.25 percent, while the number of involuntary examinations increased by 72.14 percent.<sup>20</sup>

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<sup>10</sup> Section 394.463(2)(a), F.S.

<sup>11</sup> Section 394.463(2)(f), F.S.

<sup>12</sup> Rule 65E-5.2801(1), F.A.C.

<sup>13</sup> Section 394.463(2)(i), F.S.

<sup>14</sup> Section 394.463(2)(f), F.S.

<sup>15</sup> Section 394.463(3), F.S.

<sup>16</sup> University of South Florida, de la Parte Florida Mental Health Institute, *Annual Report of Baker Act Data, Summary of 2013 Data*, 3 (May 2014), available at [http://bakeract.fmhi.usf.edu/document/BA\\_Annual\\_2013\\_Redacted%20Final.pdf](http://bakeract.fmhi.usf.edu/document/BA_Annual_2013_Redacted%20Final.pdf).

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 3. According to the census estimates from Florida Charts, available at <http://www.floridacharts.com>, the state's population increased by 0.93 percent, while involuntary exam initiations increased by 9.15 percent (last visited March 9, 2015).

<sup>19</sup> In 2002, the number of involuntary exam initiations were 99,772. University of South Florida, de la Parte Florida Mental Health Institute, *Annual Report of Baker Act Data, Summary of 2013 Data*, 3 (May 2014), available at [http://bakeract.fmhi.usf.edu/document/BA\\_Annual\\_2013\\_Redacted%20Final.pdf](http://bakeract.fmhi.usf.edu/document/BA_Annual_2013_Redacted%20Final.pdf).

<sup>20</sup> *Id.*

According to the DCF, of the approximately 150,000 involuntary examinations initiated in 2011, 18,000 were of children.<sup>21</sup> 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.<sup>22</sup>

### **School Health Services Program**

The “School Health Services Act,” sets forth requirements related to school health.<sup>23</sup> The Department of Health (DOH), in cooperation with the Department of Education, supervises the school health services program and conducts periodic program reviews.<sup>24</sup> However, implementation of program requirements occurs at the local level with the input of the local school health advisory committee.<sup>25</sup> A nonpublic school may request to participate in the school health services program.<sup>26</sup>

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 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.<sup>27</sup> The plan must contain provisions addressing a wide range of services and health issues, including meeting emergency health needs in each school.<sup>28</sup> The plan does not specifically address parental notification of a student who is transported for involuntary examination.<sup>29</sup>

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.<sup>30</sup>

### **Student and Parental Rights and Educational Choices**

Parents of public school students must receive accurate and timely information regarding their children’s academic progress and the ways in which they can help their children succeed in

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<sup>21</sup> 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>.

<sup>22</sup> *Id.*

<sup>23</sup> Section 381.0056, F.S.

<sup>24</sup> *Id.* at (3).

<sup>25</sup> *Id.* at (4). 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 9, 2015).

<sup>26</sup> *Id.* at (5).

<sup>27</sup> Rule 64F-6.002(1), F.A.C.

<sup>28</sup> Section 381.0056(4)(a), F.S. “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. *Id.* at (2)(a).

<sup>29</sup> The plan is required to contain provisions for consulting with a parent or guardian when a student’s health may need a diagnosis or treatment by the family physician, dentist, or other specialist. s. 381.0056(4)(a)15., F.S.

<sup>30</sup> Rule 64F-6.002(3), F.A.C.

school.<sup>31</sup> The section assembles and restates rights afforded K-12 students and their parents in various locations throughout the Florida Statutes.<sup>32</sup>

### **Child Protection**

A child protective investigation begins with a report by any person to the Department of Children and Families' (DCF) Central Abuse Hotline.<sup>33</sup> The state is required to maintain 24/7 capacity for receiving reports of maltreatment.<sup>34</sup> 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.<sup>35</sup> Under certain circumstances, a child may be taken from the home and put into protective custody.<sup>36</sup> If a child is taken into custody, the DCF must immediately notify the child's parent or legal custodian of such action, provide him or her with a summary of the procedures in dependency cases, and notify him or her of the right to obtain his or her own attorney.<sup>37</sup>

### **III. Effect of Proposed Changes:**

The bill requires each county health department to develop, jointly with the district school board and the local school health advisory committee, a school health services plan to provide for immediate notification to a student's parent or guardian if the student is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to the Baker Act. Each district school board and charter school governing board must develop policy and procedures for such notification.

The bill adds a requirement under the School Health Services Act that if a public school student or charter school student is transported to a receiving facility for involuntary examination, his or her parents must be immediately notified by the school principal or his or her designee. Notification may be delayed up to 24 hours if the school deems it in the best interests of the student and the school has submitted a report to the Department of Children and Families' (DCF) Central Abuse Hotline based on knowledge or suspicion of abuse, abandonment, or neglect.

The bill specifies the notification requirements pursuant to the Baker Act relating to the whereabouts of an emancipated minor patient. Specifically, the bill requires that a receiving facility notify a minor patient's parent, guardian, or guardian advocate, in person or by telephone or other form of electronic communication, immediately after the patient's arrival at the facility. However, if the facility has submitted a report to the DCF Central Abuse Hotline based on knowledge or suspicion of abuse, abandonment, or neglect, notification may be delayed for no more than 24 hours after the patient's arrival.

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<sup>31</sup> Section 1002.20, F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 39.201, F.S. Every person has a duty to report a suspicion of abuse, abandonment, or neglect. *Id.*

<sup>34</sup> *Id.* at (5)

<sup>35</sup> *Id.*

<sup>36</sup> Section 39.401, F.S.

<sup>37</sup> Section 39.402(3), F.S.

If the facility cannot immediately locate the patient's parent, guardian, or guardian advocate, it must make repeated and documented notifications, until receiving confirmation that notice has been received, the patient is released, or a petition for involuntary placement is filed with the court. The receiving facility may seek assistance from law enforcement if notification is not made within the first 24 hours after the patient's arrival.

The bill has an effective date of July 1, 2015.

**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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

For the purpose of incorporating the amendments, this bill reenacts the following sections of the Florida Statutes: 154.503, 381.0057, 381.0059, 381.00593, 409.91211, 409.9122, 1006.062, 394.4625, 394.4655, 394.467, 394.4685, 394.469, and 1002.345.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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