

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 325 Involuntary Examinations under the Baker Act

**SPONSOR(S):** Health Quality Subcommittee; Campbell; Plasencia and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N, As CS	Siples	O'Callaghan
2) Civil Justice Subcommittee	12 Y, 0 N	Robinson	Bond
3) Health & Human Services Committee	15 Y, 0 N	Siples	Calamas

### SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness, and establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations.

The bill adds advanced registered nurse practitioners and physician assistants to the list of health care practitioners who may initiate the involuntary examination of a person under the Baker Act.

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

The bill has an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Involuntary Examination under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as “The Baker Act”<sup>1</sup>), codified in part I of ch. 394, F.S., to address mental health needs in the state.<sup>2</sup> The Baker Act provides the 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 such individuals for treatment.

The Department of Children and Families (DCF) administers The Baker Act through receiving facilities that examine persons with evidence of mental illness. Receiving facilities are designated by the DCF and may be public or private facilities that provide the examination and short-term treatment of persons who meet the criteria under The Baker Act.<sup>3</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 the DCF are state hospitals (e.g. Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.<sup>4</sup>

Current law provides that an involuntary examination may be initiated if there is reason to believe a person has a mental illness and because of the illness:<sup>5</sup>

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

Courts, law enforcement officers, and certain health care practitioners are authorized to initiate such involuntary examinations.<sup>6</sup> A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer<sup>7</sup> may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination. Health care practitioners may initiate an involuntary examination by executing the *Certificate of a Professional Initiating an Involuntary Examination*, an official form adopted in rule by the DCF.<sup>8</sup> The health care practitioner must have examined the person within the preceding 48 hours and

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<sup>1</sup> “The Baker Act” is named for its sponsor, Representative Maxine E. Baker, one of the first two women from Dade County elected to office in the Florida Legislature. As chair of the House Committee on Mental Health, she championed the treatment of mental illness in a manner that would not sacrifice a patient's rights and dignity. Baker served five terms as a member of the Florida House of Representatives from 1963-1972 and was instrumental in the passage of the Florida Mental Health Act. See University of Florida Smathers Libraries, *A Guide to the Maxine E. Baker Papers*, available at <http://www.library.ufl.edu/spec/pkyonge/baker.htm> (last visited December 1, 2015), and Department of Children and Families and University of South Florida, Department of Mental Health and Law, *Baker Act Handbook and User Reference Guide 2014* (2014), available at <http://myflfamilies.com/service-programs/mental-health/baker-act> (select “2014 Baker Act Manual”) (last visited Jan. 15, 2014).

<sup>2</sup> Chapter 71-131, s. 1, Laws of Fla.

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

<sup>4</sup> Section 394.455(32), F.S.

<sup>5</sup> Section 394.463(1), F.S.

<sup>6</sup> Section 394.463(2)(a)1.-3., F.S.

<sup>7</sup> “Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. s. 943.10(1), F.S.

<sup>8</sup> The *Certificate of a Professional Initiating an Involuntary Examination* is a form created by the DCF which must be executed by health care practitioners initiating an involuntary examination under The Baker Act. The form contains information related to the person's diagnosis and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination

state that the person meets the criteria for involuntary examination.<sup>9</sup> The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:<sup>10</sup>

- A physician licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure.
- A physician or psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two 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.
- A clinical social worker licensed under ch. 491, F.S.

In 2014, there were 181,471 involuntary examinations initiated in the state. Law enforcement initiated half of the involuntary examinations (50.18 percent), followed closely by mental health professionals (47.86 percent), with the remaining initiated pursuant to *ex parte* orders by judges (1.96 percent).<sup>11</sup>

### Physician Assistants

Physician assistant (PA) licensure in Florida is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH) licenses PAs and the Florida Council on Physician Assistants (Council) regulates them.<sup>12</sup> PAs are also regulated by either the Florida Board of Medicine for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S. The duty of a board and its members is to make disciplinary decisions concerning whether a doctor or PA has violated the provisions of his or her practice act.<sup>13</sup> There are 7,987 PAs who hold active licenses in Florida.<sup>14</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.<sup>15</sup> A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>16</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>17</sup>

To be licensed as a PA in Florida, an applicant must demonstrate to the Council:<sup>18</sup>

- Satisfactory passage of the National Commission on Certification of Physician Assistant exam;
- Completion of the application and remittance of the application fee;<sup>19</sup>

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of such person. See Florida Department of Children and Families, *CF-MH 3052b*, incorporated by reference in Rule 65E-5.280, F.A.C., and available at <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf>. (last visited January 15, 2016).

<sup>9</sup> Section 394.463(2)(a)3., F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Annette Christy & Christina Guenther, Baker Act Reporting Center, College of Behavioral & Community Sciences, University of South Florida, *Annual Report of Baker Act Data: Summary of 2014 Data*, available at [http://bakeract.fmhi.usf.edu/document/BA\\_Annual\\_2014.pdf](http://bakeract.fmhi.usf.edu/document/BA_Annual_2014.pdf) (last visited Jan. 15, 2016).

<sup>12</sup> The Council consists of three physicians who are members of the Board of Medicine; one member who is a member of the Board of Osteopathic Medicine, and a physician assistant appointed by the State Surgeon General. (Sections 458.347(9) and 459.022(8), F.S.)

<sup>13</sup> Sections 458.347(12) and 459.022(12), F.S.

<sup>14</sup> Email correspondence with the Department of Health, Medical Quality Assurance staff on November 9, 2015. The number of active licensed PAs include both in-state and out-of-state licensees, as of November 9, 2015.

<sup>15</sup> Sections 458.347(2)(f) and 459.022(2)(f), F.S., define supervision as responsible supervision and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.

<sup>16</sup> Rules 64B8-30.012 and 64B15-6.010, F.A.C.

<sup>17</sup> Sections 458.347(3) and 459.022(3), F.S.

<sup>18</sup> Sections 458.347(7) and 459.022(7), F.S.

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**DATE:** 1/22/2016

- Completion of an approved PA training program;
- A sworn statement of any prior felony convictions;
- A sworn statement of any previous revocation or denial of licensure in any state;
- Two letters of recommendation; and
- If the applicant wishes to apply for prescribing authority, a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.

Licenses are renewed biennially.<sup>20</sup> At the time of renewal, a PA must demonstrate that he or she has met the continuing education requirements and must submit a sworn statement that he or she has not been convicted of any felony in the previous two years.<sup>21</sup>

Florida law does not expressly allow PAs to refer for or initiate involuntary examinations under the Baker Act, however, in 2008, Attorney General Bill McCollum issued an opinion stating:

A physician assistant pursuant to Chapter 458 or 459, Florida Statutes, may refer a patient for involuntary evaluation pursuant to section 394.463, Florida Statutes, provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice.<sup>22</sup>

However, PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders.

### Advanced Registered Nurse Practitioners

Nurse licensure is governed by part I of ch. 464, F.S. Nurses are licensed by the DOH and regulated by the Board of Nursing. Licensure requirements to practice nursing include completion of an approved educational course of study, passage of an examination approved by the DOH, acceptable criminal background screening results, and payment of applicable fees.<sup>23</sup> There are 22,003 ARNPs who hold active licenses in Florida.<sup>24</sup>

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

- Satisfactory completion of a formal postbasic educational program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>25</sup> All ARNPs, regardless of practice category, may only practice

<sup>19</sup> The application fee is \$100 and the initial license fee is \$205. See <http://flboardofmedicine.gov/licensing/physician-assistant-licensure/> (last visited January 15, 2016).

<sup>20</sup> For timely renewed licenses, the renewal fee is \$280 and the prescribing registration is \$150. An applicant may be charged an additional fee if the license is renewed after expiration or is more than 120 days delinquent. See <http://flboardofmedicine.gov/renewals/physician-assistants/> (last visited January 15, 2016).

<sup>21</sup> Sections 458.347(7)(c)-(d) and 459.022(7)(c)-(d), F.S.

<sup>22</sup> Op. Att'y Gen. Fla. 08-31 (2008), available at <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf> (last visited January 15, 2016).

<sup>23</sup> Sections 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

<sup>24</sup> Email correspondence with the Department of Health, Medical Quality Assurance staff on November 9, 2015. The number of active licensed ARNPs include both in-state and out-of-state licensees, as of November 9, 2015.

<sup>25</sup> Section 464.012(2), F.S.

within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or dentist.<sup>26</sup> ARNPs may carry out treatments as specified in statute, including:<sup>27</sup>

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy; and
- Performing additional functions as maybe determined by rule in accordance with s. 464.003(2), F.S.<sup>28</sup>

In addition to the above-allowed acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.<sup>29</sup> Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.<sup>30</sup>

Only ARNPs who are "psychiatric nurses" (who have a master's or doctoral degree in psychiatric nursing, hold a national advance practice certification as a psychiatric nurse, and two years post-master's clinical experience), may initiate involuntary examinations under the Baker Act.

### **Effect of Proposed Changes**

The bill authorizes a PA or an ARNP to initiate an involuntary examination under The Baker Act by executing a certificate stating that a person he or she examined within the preceding 48 hours appears to meet the criteria for an involuntary examination for mental illness. Under current law, only a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist or clinical social worker may initiate an involuntary examination by executing such a certificate.

The bill defines a "physician assistant" and an "advanced registered nurse practitioner" in the same manner as their respective practice acts (ss. 458.347, 459.022, and 464.003, F.S.).

The bill makes necessary conforming changes due to the statutory changes made by the bill.

The bill provides an effective date of July 1, 2016.

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

**Section 1:** Amends s. 394.464, F.S., relating to involuntary examination.

**Section 2:** Amends s. 394.455, F.S., relating to definitions.

**Section 3:** Amends s. 394.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

**Section 4:** Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.

**Section 5:** Amends s. 394.496, F.S., relating to service planning.

**Section 6:** Amends s. 394.9085, F.S., relating to behavioral provider liability.

**Section 7:** Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.

**Section 8:** Amends s. 744.704, F.S., relating to powers and duties.

**Section 9:** Provides an effective date of July 1, 2016.

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<sup>26</sup> Section 464.012(3), F.S.

<sup>27</sup> *Id.*

<sup>28</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>29</sup> Section 464.012(4), F.S.

<sup>30</sup> Section 464.012(4)(c)1., F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

No additional rule-making is necessary to implement the provisions of the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 17, 2015, the Health Quality Subcommittee adopted an amendment that incorporated, by reference, the definitions the definitions of physician in ss. 458.347(2)(e) and 459.022(2)(e), F.S.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.