

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 572

INTRODUCER: Senator Altman

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: November 13, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____

I. Summary:

SB 572 authorizes an Advanced Registered Nurse Practitioner (ARNP) and a Physician’s Assistant (PA) to execute a certificate that finds that a person appears to meet the criteria for an involuntary examination under The Baker Act for persons believed to have a mental illness.

II. Present Situation:

The Florida Mental Health Act

In 1971, the Florida Legislature passed the Florida Mental Health Act (also known as “The Baker Act”) to address mental health needs in the state.¹ Part I, of ch. 394, F.S., 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 individuals for treatment.

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:²

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

An involuntary examination may be initiated by a circuit court or a law enforcement officer.³ A circuit court may enter an ex parte order stating a person meets the criteria for involuntary

¹ Section 1, ch. 71-131, Laws of Fla.

² Section 394.463(1), F.S.

³ Section 394.463(2)(a), F.S.

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 that person to the nearest receiving facility for examination.

In addition, the following professionals, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for an involuntary examination, including in the certificate the observations upon which that conclusion is based:^{4,5}

- 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 physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under ch. 394.
- 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, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under ch. 394, F.S.
- A psychiatric nurse who is an ARNP certified under s. 464.012, F.S., has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.⁶
- 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.

The Department of Children and Families (DCF) administers The Baker Act 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 the examination and short-term treatment of persons who meet the criteria under The Baker Act.⁷

A patient taken to a receiving facility must be examined by a physician, clinical psychologist, or psychiatric nurse. Upon the order of a physician, the patient may be given emergency treatment if it is determined that such treatment is necessary.⁸ Subsequent to the examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities are designated by DCF and are state hospitals (e.g., Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.⁹

To be released by a receiving facility, a patient must have documented approval from a psychiatrist, clinical psychologist, or a psychiatric nurse working within the framework of an establish protocol with a psychiatrist.¹⁰ If the receiving facility is a hospital, the patient may also

⁴ Section 394.463(2)(a), F.S.

⁵ Section 394.455, F.S.

⁶ Section 394.455(23), F.S.

⁷ Section 394.455(26), F.S.

⁸ Section 394.463(2)(f), F.S.

⁹ Section 394.455 (32), F.S.

¹⁰ Section 394.463(2)(f), F.S.

be released by an attending emergency department physician.¹¹ However, receiving facilities are prohibited from holding a patient for involuntary examination for longer than 72 hours.¹²

Advanced Registered Nurse Practitioner (ARNP)

Currently an ARNP is not specifically listed as one of the enumerated healthcare providers authorized by s. 394.463(2)(a)3., F.S., to execute a certificate indicating that he or she has examined a person within the last 48 hours, and that the person appears to meet the criteria for an involuntary examination.

Part I, of ch. 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON). For an applicant to be eligible to be certified as an ARNP, the applicant must hold a current, active registered nursing license and meet one or more of the following requirements as determined by the BON:¹³

- Satisfactorily complete at least one year of a formal post-basic education program the primary purpose of which is to prepare nurses for advanced or specialized practice;¹⁴
- Hold a current national advanced practice certification from a board approved specialty board;
- Hold a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills;
- Submit proof to the board that the applicant holds a current national advanced practice certification from a board-approved nursing specialty board.

An ARNP applicant must also pass a criminal background screening, and pay applicable fees. Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

Section 464.003, F. S., lists three categories of ARNP: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.¹⁵ 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.¹⁶

¹¹ Section 394.463(2)(g), F.S.

¹² Section 394.463(2)(f), F.S.

¹³ Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C., which provides that applications for certification as an Advanced Registered Nurse Practitioner pursuant to Section 464.012(3), F.S., shall submit proof of current national advanced practice certification from an approved nursing specialty board.

¹⁴ Section 464.0115(1), F.S., *Certification of clinical nurse specialists*, states that any nurse seeking certification as a clinical nurse specialist must apply to the department and submit proof that he or she holds a current license to practice professional nursing, a master's degree in a clinical nursing specialty, and either: (a) Proof of current certification in a specialty area as a clinical nurse specialist from a nationally recognized certifying body as determined by the board; or (b) Proof that he or she holds a master's degree in a specialty area for which there is no certification within the clinical nurse specialist role and specialty and proof of having completed 1,000 hours of clinical experience in the clinical specialty for which he or she is academically prepared, with a minimum of 500 hours of clinical practice after graduation. The applicant for certification as a clinical nurse specialist must submit an affidavit to the Board of Nursing affirming the required hours of clinical experience. Falsification of the affidavit constitutes grounds for discipline in accordance with s. 464.018(1)(f), F.S.

¹⁵ Section 464.012(2), F.S.

¹⁶ Section 464.012(3), F.S.

An ARNP may carry out treatments as specified in statute, including:¹⁷

- 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.; and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above, an ARNP may also perform other acts as authorized by statute and within his or her specialty.¹⁸ Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems; and diagnose and make treatment recommendations.¹⁹

Physician Assistant (PA)

Physician Assistants (PAs), as defined in s. 458.347 (2)(e), F.S., and s. 459.022(2)(e), F.S., are also not currently listed as one of the enumerated healthcare providers authorized by s. 394.463(2)(a)3., F.S., to execute a certificate indicating that the PA has examined a person within the last 48 hours, and the person appears to meet the criteria for an involuntary examination.

Section 458.347, F.S., and Rule 64B-8, F.A.C., and s. 459.022, F.S., and Rule and 64B15, F.A.C., govern the licensure and regulation of PAs in Florida. The PA's are licensed by the DOH and are regulated by the Board of Medicine (BOM) and the Board of Osteopathic Medicine (BOOM), with recommendations to the BOM and the BOOM from the DOH Council on PAs.²⁰ A PA's licensure requirements are as follows:

- Is at least 18 years of age;
- Has graduated from an BOM or BOOM approved PA program or its equivalent, or meets standards approved by the board;
- Has satisfactorily passed a proficiency examination with an acceptable score established by the National Commission on Certification of Physician Assistants (NCCPA);
- Has completed the DOH application form and remitted an application fee.

A PA must also pass a criminal background check. Renewal of PA licenses is biennial and contingent upon completion of certain continuing medical education requirements.

III. Effect of Proposed Changes:

Section 1 amends s. 494.455, F.S., to define, "advanced nurse registered nurse practitioner," (ARNP) and "physician assistant" (PA).

An ARNP is defined as, "a person licensed in the state to practice professional nursing and certified in advanced or specialized nursing as defined in s. 464.003, F.S."²¹

¹⁷ *Id.*

¹⁸ Section 464.012(4), F.S.

¹⁹ Section 464.012(4)(c)5, F.S.

²⁰ Section 458.347(9), F.S.

²¹ "Advanced or specialized nursing practice" as defined in s. 464.003(2), F.S., means, "in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the Board of Nursing (BON) which, by

A PA is defined as having the same meaning as defined in s. 458.347(2)(e), F.S.²²

Section 2 amends s. 394.463(2), F.S., to authorize an ARNP or PA to execute a certificate for an involuntary examination of a person believed to meet the criteria for having a mental illness under The Baker Act. This adds the ARNP and the PA to the list of healthcare providers who can issue such a certificate for an involuntary examination. Under current s. 394.463(2)(a)3., F.S., only a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may issue such a certificate to compel an involuntary examination under The Baker Act.

Sections 3 through 8, amend various sections of the Florida Statutes to conform cross references for the definitions s. 394.455, F.S.

The effective date of the bill is July 1, 2016.

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.

virtue of post-basic specialized education, training, and experience, are appropriately performed by an advanced registered nurse practitioner. Within the context of advanced or specialized nursing practice, the ARNP may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The ARNP may also perform acts of medical diagnosis and treatment, prescription, and operation which are identified and approved by a joint committee composed of members from the BON, BOM and State Surgeon General or his designee, under the supervision of an allopathic or osteopathic physician, or a dentist, within the framework of standing protocols which identify the medical acts to be performed and the conditions for their performance.

²² PA as defined in s. 458.374(2)(e), F.S., means, “a person who is a graduate of an approved program or its equivalent or meets standards approved by the boards and is licensed to perform medical services delegated by the supervising physician.”

C. Government Sector Impact:

The bill could possibly increase the number of involuntary examinations that receiving facilities would be required to perform with more healthcare providers being able to issue certificates for involuntary examinations under The Baker Act. The number of additional examinations is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.463, 39.407, 394.495, 394.496, 394.9085, 409.972, 744.704

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.