

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 Judiciary

BILL: SB 572

INTRODUCER: Senator Altman

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: February 15, 2016

REVISED: _____

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

I. Summary:

SB 572 adds advanced registered nurse practitioners and physician assistants to the list of health care providers who are authorized to initiate an involuntary mental health examination of another person under The Baker Act. An authorized health care provider may initiate the examination by executing a certificate stating that he or she examined a person within the past 48 hours and found that the person appears to meet the criteria for involuntary examination. The certificate must also state the observations on which the conclusion is based.

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 of the state.¹ The Baker Act, codified in part I of ch. 394, F.S., provides the authority and process for the voluntary and involuntary examination of persons showing evidence of a mental illness. It further provides for the subsequent inpatient or outpatient placement of individuals for treatment.

Under the Act, a person may be taken by a law enforcement officer to a receiving facility for an involuntary examination if there is reason to believe the person has a mental illness and because of the mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination and the person is unable to determine for himself or herself whether examination is necessary; and

¹ Section 1, ch. 71-131, Laws of Fla.

- Without care or treatment, the person is likely to suffer from neglect or refuse to care for, cause substantial harm to, or be a danger to himself or herself or others.²

A person who is subject to an involuntary examination generally may not be held longer than 72 hours in a receiving facility.³

Involuntary examinations may be initiated by a circuit court or by a law enforcement officer.⁴ A law enforcement officer, as defined by section 943.10, F.S.,⁵ may take into custody a person who appears to meet the criteria for involuntary examination. The officer may then transport that person to the nearest receiving facility for examination.⁶

Similarly, the following professionals, having examined an individual within the preceding 48 hours, may initiate an involuntary examination by executing a certificate stating that the individual meets the criteria for involuntary examination:⁷

- 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, F.S.;
- A clinical psychologist, as defined in s. 490.003(7), F.S., who has 3 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 which qualifies as a receiving or treatment facility under ch. 394, F.S.;⁸
- 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 2 years of post-master's clinical experience under the supervision of a physician;⁹
- A mental health counselor licensed under ch. 491, F.S.;
- A marriage and family therapist licensed under ch. 491, F.S.; and
- A clinical social worker licensed under ch. 491, F.S.

The Department of Children and Families ("DCF") administers¹⁰ The Baker Act through receiving facilities that provide for the examination of persons showing evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities that

² Section 394.463(1), F.S.

³ Section 394.463(2)(f)(i), F.S.

⁴ Section 394.463(2)(a), F.S.

⁵ Under section 943.10, F.S., a law enforcement officer is defined as "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."

⁶ See generally Section 394.463(2), F.S.

⁷ Section 394.463(2)(a)3., F.S.

⁸ See Section 394.455(2), F.S.

⁹ See Section 394.455(23), F.S.

¹⁰ See generally section 394.457, F.S. DCF is designated as the "Mental health Authority" of Florida and shall exercise executive and administrative supervision over all mental health facilities, programs, and services.

provide for the examination and short-term treatment of persons who meet the criteria under The Baker Act.¹¹

Once received by a facility, a patient must be examined by a physician, a clinical psychologist, or a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a receiving facility without unnecessary delay.¹² The patient may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others.¹³ Upon recommendation of the administrator of the receiving facility, a patient who requires additional treatment may be transported to a treatment facility.¹⁴ Treatment facilities are designated by DCF and are state-owned, state-operated, or state-supported hospitals (e.g., Florida State Hospital) that provide extended treatment and hospitalization beyond what is provided in a receiving facility.¹⁵

Advanced Registered Nurse Practitioners

Currently, ARNPs¹⁶ are not enumerated as healthcare providers authorized by s. 394.463(2)(a)3., F.S., to initiate an involuntary examination.

Part I of chapter 464, F.S., governs the licensure and regulation of nurses in this state. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing.

A person is eligible for certification as an ARNP, if he or she holds a current, active registered nursing license and, as determined by the board:¹⁷

- Satisfactorily completes at least 1 year of a formal post-basic education program, the primary purpose of which is to prepare nurses for advanced or specialized practice;¹⁸
- Holds a current national advanced practice certification from a board approved specialty board;
- Holds a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills; or

¹¹ Section 394.455(26), F.S.

¹² Section 394.463(2)(f), F.S.

¹³ *Id.*

¹⁴ Section 394.467(1), F.S.

¹⁵ Section 394.455(32), F.S.

¹⁶ An ARNP is defined under s. 464.003(3), F.S., as “any person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, including certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.”

¹⁷ 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., must include proof of current national advanced practice certification from an approved nursing specialty board.

¹⁸ Section 464.0115(1), F.S., relating to the 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.

- Submits proof 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.¹⁹ 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.²⁰

An ARNP may carry out treatments as specified in statute, including:²¹

- 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.²² Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.²³

Physician Assistants

Physician assistants ("PAs"), as defined in s. 458.347 (2)(e), F.S., and s. 459.022(2)(e), F.S., are also not enumerated as healthcare providers authorized by s. 394.463(2)(a)3, F.S., to execute a certificate stating an individual meets the criteria for an involuntary examination.

Section 458.347, F.S., and Rule 64B-8, F.A.C., along with s. 459.022, F.S., and Rule and 64B15, F.A.C., govern the licensure and regulation of PAs in this state. The PA's are licensed by the DOH and are regulated by the Board of Medicine and the Board of Osteopathic Medicine; however, the DOH Council on PAs may make recommendations to the boards.²⁴ A person may be licensed as a PA if he or she:

- Is at least 18 years of age;
- Graduates from an approved PA program or its equivalent or meets standards approved by the board;
- Satisfactorily passes a proficiency examination with an acceptable score established by the National Commission on Certification of Physician Assistants (NCCPA);
- Completes the DOH application form and remits an application fee.

¹⁹ Section 464.012(2), F.S.

²⁰ Section 464.012(3), F.S.

²¹ *Id.*

²² Section 464.012(4), F.S.

²³ Section 464.012(4)(c)5, F.S.

²⁴ Section 458.347(9), F.S.

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

III. Effect of Proposed Changes:

The bill amends s. 394.463(2), F.S., to add ARNPs and PAs to the list of health care providers who may initiate the involuntary examination of another person under The Baker Act. As a result, an ARNP or PA may initiate an involuntary examination by executing a certificate stating that he or she has examined another person within the past 48 hours and found that the person appears to meet the criteria for involuntary examination. The certificate must also state the observations on which the conclusion is based.

The bill also amends s. 494.455, F.S., to define “advanced registered nurse practitioner” and “physician assistant.” An “advanced registered nurse practitioner” 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.”²⁵ The definition of a “physician assistant” is tied to existing s. 458.347(2)(e), F.S.²⁶

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

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁵ “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 which, by 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 certain acts of medical diagnosis and treatment, prescription, and operation.

²⁶ Physician assistant as defined in s. 458.347(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.”

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may result in additional individuals being taken to a private receiving facility for an involuntary examination.

C. Government Sector Impact:

Because the bill increases the number of enumerated health care providers authorized to issue certificates for involuntary examination under The Baker Act, involuntary examinations may rise. The rise in involuntary examinations may commensurately increase government sector costs.

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, and 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.