

By Senator Altman

16-00798-16

2016572__

1 A bill to be entitled
2 An act relating to involuntary examinations under the
3 Baker Act; amending s. 394.455, F.S.; defining terms;
4 amending s. 394.463, F.S.; authorizing physician
5 assistants and advanced registered nurse practitioners
6 to execute a certificate that finds that a person
7 appears to meet the criteria for involuntary
8 examination under the Baker Act of persons believed to
9 have mental illness; amending ss. 39.407, 394.495,
10 394.496, 394.9085, 409.972, and 744.704, F.S.;;
11 conforming cross-references; providing an effective
12 date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Present subsections (2) through (21) of section
17 394.455, Florida Statutes, are redesignated as subsections (3)
18 through (22), respectively, present subsections (22) through
19 (38) of that section are redesignated as subsections (24)
20 through (40), respectively, and new subsections (2) and (23) are
21 added to that section, to read:

22 394.455 Definitions.—As used in this part, unless the
23 context clearly requires otherwise, the term:

24 (2) "Advanced registered nurse practitioner" means a person
25 licensed in this state to practice professional nursing and
26 certified in advanced or specialized nursing practice, as
27 defined in s. 464.003.

28 (23) "Physician assistant" has the same meaning as defined
29 in s. 458.347(2) (e).

16-00798-16

2016572__

30 Section 2. Paragraph (a) of subsection (2) of section
31 394.463, Florida Statutes, is amended to read:

32 394.463 Involuntary examination.—

33 (2) INVOLUNTARY EXAMINATION.—

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

36 1. A court may enter an ex parte order stating that a
37 person appears to meet the criteria for involuntary examination,
38 giving the findings on which that conclusion is based. The ex
39 parte order for involuntary examination must be based on sworn
40 testimony, written or oral. If other less restrictive means are
41 not available, such as voluntary appearance for outpatient
42 evaluation, a law enforcement officer, or other designated agent
43 of the court, shall take the person into custody and deliver him
44 or her to the nearest receiving facility for involuntary
45 examination. The order of the court shall be made a part of the
46 patient's clinical record. A No fee may not shall be charged for
47 the filing of an order under this subsection. Any receiving
48 facility accepting the patient based on this order must send a
49 copy of the order to the Agency for Health Care Administration
50 on the next working day. The order shall be valid only until
51 executed or, if not executed, for the period specified in the
52 order itself. If no time limit is specified in the order, the
53 order shall be valid for 7 days after the date that the order
54 was signed.

55 2. A law enforcement officer shall take a person who
56 appears to meet the criteria for involuntary examination into
57 custody and deliver the person or have him or her delivered to
58 the nearest receiving facility for examination. The officer

16-00798-16

2016572__

59 shall execute a written report detailing the circumstances under
60 which the person was taken into custody, and the report shall be
61 made a part of the patient's clinical record. Any receiving
62 facility accepting the patient based on this report must send a
63 copy of the report to the Agency for Health Care Administration
64 on the next working day.

65 3. A physician, physician assistant, clinical psychologist,
66 psychiatric nurse, mental health counselor, marriage and family
67 therapist, ~~or~~ clinical social worker, or advanced registered
68 nurse practitioner may execute a certificate stating that he or
69 she has examined a person within the preceding 48 hours and
70 finds that the person appears to meet the criteria for
71 involuntary examination and stating the observations upon which
72 that conclusion is based. If other less restrictive means are
73 not available, such as voluntary appearance for outpatient
74 evaluation, a law enforcement officer shall take the person
75 named in the certificate into custody and deliver him or her to
76 the nearest receiving facility for involuntary examination. The
77 law enforcement officer shall execute a written report detailing
78 the circumstances under which the person was taken into custody.
79 The report and certificate shall be made a part of the patient's
80 clinical record. Any receiving facility accepting the patient
81 based on this certificate must send a copy of the certificate to
82 the Agency for Health Care Administration on the next working
83 day.

84 Section 3. Paragraph (a) of subsection (3) of section
85 39.407, Florida Statutes, is amended to read:

86 39.407 Medical, psychiatric, and psychological examination
87 and treatment of child; physical, mental, or substance abuse

16-00798-16

2016572__

88 examination of person with or requesting child custody.—

89 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.
90 or paragraph (e), before the department provides psychotropic
91 medications to a child in its custody, the prescribing physician
92 shall attempt to obtain express and informed consent, as defined
93 in s. 394.455(10) ~~s. 394.455(9)~~ and as described in s.
94 394.459(3) (a), from the child's parent or legal guardian. The
95 department must take steps necessary to facilitate the inclusion
96 of the parent in the child's consultation with the physician.
97 However, if the parental rights of the parent have been
98 terminated, the parent's location or identity is unknown or
99 cannot reasonably be ascertained, or the parent declines to give
100 express and informed consent, the department may, after
101 consultation with the prescribing physician, seek court
102 authorization to provide the psychotropic medications to the
103 child. Unless parental rights have been terminated and if it is
104 possible to do so, the department shall continue to involve the
105 parent in the decisionmaking process regarding the provision of
106 psychotropic medications. If, at any time, a parent whose
107 parental rights have not been terminated provides express and
108 informed consent to the provision of a psychotropic medication,
109 the requirements of this section that the department seek court
110 authorization do not apply to that medication until such time as
111 the parent no longer consents.

112 2. Any time the department seeks a medical evaluation to
113 determine the need to initiate or continue a psychotropic
114 medication for a child, the department must provide to the
115 evaluating physician all pertinent medical information known to
116 the department concerning that child.

16-00798-16

2016572__

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

119 394.495 Child and adolescent mental health system of care;
120 programs and services.-

121 (3) Assessments must be performed by:

122 (a) A professional as defined in s. 394.455(3), (5), (22),
123 (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~;

124 (c) A person who is under the direct supervision of a
125 professional as defined in s. 394.455(3), (5), (22), (25), or
126 (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional
127 licensed under chapter 491.

128 Section 5. Subsection (5) of section 394.496, Florida
129 Statutes, is amended to read:

130 394.496 Service planning.-

131 (5) A professional as defined in s. 394.455(3), (5), (22),
132 (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a
133 professional licensed under chapter 491 must be included among
134 those persons developing the services plan.

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

137 394.9085 Behavioral provider liability.-

138 (6) For purposes of this section, the terms "detoxification
139 services," "addictions receiving facility," and "receiving
140 facility" have the same meanings as those provided in ss.
141 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(28) ~~394.455(26)~~,
142 respectively.

143 Section 7. Paragraph (b) of subsection (1) of section
144 409.972, Florida Statutes, is amended to read:

145 409.972 Mandatory and voluntary enrollment.-

16-00798-16

2016572__

146 (1) The following Medicaid-eligible persons are exempt from
147 mandatory managed care enrollment required by s. 409.965, and
148 may voluntarily choose to participate in the managed medical
149 assistance program:

150 (b) Medicaid recipients residing in residential commitment
151 facilities operated through the Department of Juvenile Justice
152 or mental health treatment facilities as defined by s.
153 394.455(34) ~~s. 394.455(32)~~.

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

156 744.704 Powers and duties.—

157 (7) A public guardian may ~~shall~~ not commit a ward to a
158 mental health treatment facility, as defined in s. 394.455(34)
159 ~~s. 394.455(32)~~, without an involuntary placement proceeding as
160 provided by law.

161 Section 9. This act shall take effect July 1, 2016.