

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 Children, Families, and Elder Affairs

BILL: SB 634

INTRODUCER: Senator Campbell

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Favorable
2.	Crosier	Hendon	CF	Favorable
3.			JU	
4.			RC	

I. Summary:

SB 634 adds advanced registered nurse practitioners (ARNPs) and physician assistants (PAs) to the list of health care practitioners who may initiate an involuntary mental examination of a person under the Florida Mental Health Act, also known as the Baker Act.

The bill has an effective date of July 1, 2017, and has no fiscal impact.

II. Present Situation:

Involuntary Examination Under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act, also known as, “The Baker Act,” which is codified in Part I, ch. 394, F.S., to address mental health needs in the state.¹ The Baker Act provides the authority and process for the voluntary and involuntary examination of persons who meet certain criteria, 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, which are designated by the DCF. The facilities that provide the examination and short-term treatment of persons who meet the criteria under The Baker Act may be public or private.² If, after an examination at a receiving facility,³ a person requires further treatment he or

¹ Chapter 71-131, s. 1, Laws of Fla.

² Section 394.455(39), F.S.

³ Id.

she may be transported to a treatment facility.⁴ Treatment facilities, designated by DCF, are state hospitals, which provide extended treatment and hospitalization beyond what is provided in a receiving facility.

A person who is subject to an involuntary examination generally may not be held longer than 72 hours in a receiving facility.⁵

A person may be subjected to an involuntary examination under s. 394.463, F.S., if there is reason to believe a person has a mental illness, and because of the illness, that person:

- Has refused a voluntary examination after the purpose of the exam has been explained, or
- Is unable to determine for himself or herself that an examination is needed; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself, herself, or others in the near future, as evidenced by recent behavior.⁶

A circuit or county court, law enforcement officers, and certain health care practitioners may initiate an involuntary examination of a person.⁷

A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer may take a person into custody who appears to meet the criteria for involuntary examination and transport that person to a receiving facility for examination.

Health care practitioners may initiate an involuntary examination if the health care practitioner has examined the person within the last 48 hours, and finds that the person meets the criteria for an involuntary examination; and states on a form⁸ adopted by the DCF, a Certificate of a Professional Initiating an Involuntary Examination, the observations upon which that conclusion is based.⁹ 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 of such person.¹⁰

The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:

⁴ Treatment facilities, designated by DCF, are state hospitals, which provide extended treatment and hospitalization beyond what is provided in a receiving facility. Section 394.55(47), F.S.

⁵ Section 394.463(2)(g), F.S.

⁶ Section 394.463(1), F.S.

⁷ Section 394.463(2), F.S.

⁸ See Florida Department of Children and Families, *CF-MH 3052b*, incorporated by reference in Rule 65E-5.280, F.A.C. at <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf>. (last visited Mar. 10, 2017).

⁹ Section 394.463(2)(a), F.S.

¹⁰ See Florida Department of Children and Families, *CF-MH 3052b*, incorporated by reference in Rule 65E-5.280, F.A.C. at <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf>. (last visited Mar. 10, 2017).

- 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 U.S. Department of Veterans Affairs or the United States Department of Defense;
- 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 psychologist employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense that qualifies as a receiving or treatment facility;
- A psychiatric nurse, who is an ARNP, with a master's degree or doctoral degree in psychiatric nursing, who 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;¹¹
- 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.¹²

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 to PAs. PAs are regulated by 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., and the Florida Council on Physician Assistants. 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. In 2016, there were 7,015 PAs holding active licenses in Florida.¹³

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.¹⁴ A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.¹⁵ The supervising physician is responsible and liable for any acts or omissions of the PA and may not supervise more than four PAs at any time.¹⁶

To be licensed as a PA in Florida, an applicant must demonstrate:

- Satisfactory passage of the National Commission on Certification of Physician Assistant exam;

¹¹ Section 455(35), F.S.;

¹² Section 464.

¹³ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2015-2016*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html>, (last visited Mar. 10, 2017).

¹⁴ Sections 458.347(2)(f) and 459.022(2)(f), F.S., are identical and 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.

¹⁵ Sections 458.347(12) and 459.022(12), F.S.

¹⁶ Sections 458.347(15) and 459.022(15), F.S.

- Completion of the application and remittance of the application fee;¹⁷
- Completion of an approved PA training program;
- Acknowledgement of any prior felony convictions;
- Acknowledgement 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.¹⁸

Licenses are renewed biennially.¹⁹ At the time of renewal, a PA must demonstrate that he or she has met the continuing education requirements and must submit an acknowledgement that he or she has not been convicted of any felony in the previous two years.²⁰

Current Florida law does not expressly allow PAs to refer for, or initiate, an involuntary examination of a person 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.²¹

Legislation enacted in 2016, chapter 2016-125, Laws of Fla., authorizes licensed PA to perform services delegated by the supervising physician in the physician assistant's practice in accordance with his or her education and training unless expressly prohibited under chapter 458 or 459, or rules adopted under those chapters.²²

PAs are not required by current Florida law to have any specific education, training or experience in the diagnosis or treatment of mental health or nervous disorders for licensure, or renewal.

According to the American Association of Physician Assistants, most PA programs are approximately 26 months (three academic years) and award master's degrees. They include classroom instruction and clinical rotations. A PA student receives classroom instruction in:

- Anatomy;

¹⁷ The application fee is \$100 and the initial license fee is \$205. See <http://flboardofmedicine.gov/licensing/physician-assistant-licensure/> (last visited Mar. 10, 2017).

¹⁸ Sections 458.347(7) and 459.022(7), F.S.

¹⁹ 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. Florida Board of Medicine, Renewals, Physician Assistants <http://flboardofmedicine.gov/renewals/physician-assistants/> (last visited Mar. 10, 2017).

²⁰ Sections 458.347(7)(b)-(c) and 459.022(7)(b)-(c), F.S.

²¹ Op. Att'y Gen. Fla. 08-31 (2008) at p. 4 <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf>, (last visited Mar. 10, 2017).

²² See ss. 458.347(4)(h) and 459.022(4)(g), F.S.

- Physiology;
- Biochemistry;
- Pharmacology;
- Physical diagnosis;
- Pathophysiology;
- Microbiology;
- Clinical laboratory science;
- Behavioral science; and
- Medical ethics

PA students also complete more than 2,000 hours of clinical rotations, with an emphasis on primary care in ambulatory clinics, physician offices and acute or long-term care facilities. PA rotations could include:

- Family medicine;
- Internal medicine;
- Obstetrics and gynecology;
- Pediatrics;
- General surgery;
- Emergency medicine; and
- Psychiatry.²³

PAs are not currently required under Florida law to have any specific education, training or experience in the diagnosis or treatment of mental health or nervous disorders for licensure, or renewal. However, a PA working under the supervision of a physician who has experience in the diagnosis and treatment of mental and nervous disorders, or a physician employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense might obtain training or experience in these areas.

Advanced Registered Nurse Practitioners

Nursing licensure is governed by part, I 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.²⁴

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 post-basic educational program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board; or

²³ American Association of Physician Assistant, "Attend a PA Program", <https://www.aapa.org/career-central/become-a-pa/> (last visited Mar. 12, 2017).

²⁴ 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.

- 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 four categories of ARNPs: certified registered nurse anesthetists; certified nurse midwives; a nurse practitioner,²⁵ and a psychiatric nurse.²⁶ 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 dentist.²⁷ ARNPs may carry out treatments as specified in statute, including:²⁸

- Prescribing, dispensing, administering, or ordering any drug;²⁹
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy;
- Ordering any medication for administration patients in certain facilities; and
- Performing additional functions as maybe determined by rule in accordance with s. 464.003(2), F.S.³⁰

In addition to the above-allowed acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.³¹ Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.³²

Currently, only ARNPs who are "psychiatric nurses" may initiate involuntary examinations under the Baker Act.³³ To qualify as a psychiatric nurse, an ARNP must have a master's or doctoral degree in psychiatric nursing, hold a national advanced practice certification as a psychiatric mental health advanced practice nurse, and two years post-master's clinical experience.

III. Effect of Proposed Changes:

SB 634 specifically authorizes PAs and ARNPs to initiate involuntary examinations under The Baker Act. The PA or ARNP must execute 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 s. 394.463, F.S., as currently enacted, only a physician with experience in

²⁵ Section 464.012(2), F.S.

²⁶ Section 394.455(35), F.S., defines a "Psychiatric nurse" as an ARNP certified under s. 464.012, F.S., who 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.

²⁷ Section 464.012(3), F.S.

²⁸ *Id.*

²⁹ An ARNP may only prescribe controlled substances if he or she has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills. An ARNP is limited to prescribing a 7-day supply of Schedule II controlled substances. Only a psychiatric nurse may prescribe psychotropic controlled substances for the treatment of mental disorders and psychiatric mental health controlled substances for children younger than 18.

³⁰ 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.

³¹ Section 464.012(4), F.S.

³² Section 464.012(4)(c)1., F.S.

³³ Section 394.463(2)(a), F.S.

the diagnosis and treatment of mental and nervous disorders, 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 makes necessary conforming changes due to the statutory changes made by the bill.

The bill has an effective date of July 1, 2017.

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:

The bill defines a “physician assistant” and an “advanced registered nurse practitioner” in the same manner as their respective practice acts.³⁴ The bill does not direct any additional training, clinical or continuing education requirements for either the PA or the ARNP to be qualified to perform the examination, and execute the certificate, to subject a person to an involuntary mental

³⁴ See ss. 458.347, 459.022, and 464.003, F.S.

health examination. All others health care providers authorized to initiate an involuntary examination have additional professional specialized training in psychiatric mental health.

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 744.2007.

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.

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