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: CS/SB 1790

INTRODUCER: Senator Powell

SUBJECT: Baker Act

DATE: January 30, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Fav/CS**
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1790 directs the Department of Children and Families (DCF) to create a work group to evaluate methods to improve the operational effectiveness of the Florida Mental Health Act (The Baker Act). The bill identifies the members of the workgroup and provides that a report be provided to the Secretary of DCF, the Secretary of the Agency for Health Care Administration, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2018.

The bill shall take effect upon becoming law and could have an insignificant fiscal impact.

II. Present Situation:

Baker Act

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 presenting a threat of harm to themselves or others. The Baker Act also establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations and then act in response to the findings.

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[1] An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:[2]

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; 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 or herself or others in the near future, as evidenced by recent behavior.

Involuntary Admissions

Involuntary patients must be taken to either a public or a private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[3]

Within the 72-hour examination period, or if the 72 hours end on a weekend or holiday, no later than the next business day, one of the following must occur:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to placement as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.[4]

Receiving facilities must give prompt notice[5] of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,[6] guardian advocate,[7] health care surrogate or proxy, attorney, and representative.[8] If the patient is a minor, the receiving facility must give prompt notice to the minor's parent, guardian, caregiver, or guardian advocate. Notice

[1] SS. 394.4625 and 394.463, F.S.
[2] S. 394.463(1), F.S.
[3] S. 394.455(39), F.S. This term does not include a county jail.
[4] S. 394.463(2)(g), F.S.
[5] Notice may be provided in person or by telephone; however, in the case of a minor, notice may also be provided by other electronic means. S. 394.455(2),F.S.
[6] "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated. Section 394.455(17), F.S.
[7] "Guardian advocate" means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment. Section 394.455(18), F.S.
[8] S. 394.4599(2)(b), F.S.

for an adult may be provided within 24 hours of arrival; however, notice for a minor must be provided immediately after the minor's arrival at the facility. The facility may delay the notification for a minor for up to 24 hours if it has submitted a report to the central abuse hotline. The receiving facility must attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until it receives confirmation that the notice has been received. Attempts must be repeated at least once every hour during the first 12 hours after the minor's arrival and then once every 24 hours thereafter until confirmation is received, the minor is released, or a petition for involuntary services is filed with the court.[9]

Voluntary Admissions and Transfer to Voluntary Status

Baker Act receiving facilities also admit any person 18 years of age or older making application by express and informed consent for admission or any person age 17 or under for whom such application is made by his or her guardian.[10] If found to show evidence of mental illness, to be competent to provide express and informed consent, and to be suitable for treatment, such person 18 years of age or older may be admitted to the facility.[11] Any person age 17 or under may be admitted only after a hearing to verify the voluntariness of their consent.[12] However, In 1997 a joint legislative committee determined that the "voluntariness hearing" described in the Baker Act Florida Administrative Rules at that time didn't conform to a "hearing" as intended in this section of the law because each other time that term was used in the law, it applied to a judicial hearing.[13] As a result, all reference to "voluntary hearings" were deleted from the rules. DCF stated that only a judicial hearing would suffice to meet this legal requirement and that it had to be conducted prior to the minor's voluntary admission, despite the consent of the parents or assent of the child to the admission.[14] Most patients age 17 or under are admitted under involuntary status and either discharged or later transferred to voluntary status, and it is unlikely that pre-admission court hearings for voluntary admission of minors are being conducted anywhere in the state.[15]

A patient admitted on an involuntary basis who applies to be transferred to voluntary status must be transferred to voluntary status immediately, unless the patient has been charged with a crime, or has been involuntarily placed for treatment by a court pursuant to s. 394.467, F.S., and continues to meet the criteria for involuntary placement.[16]

III. Effect of Proposed Changes:

Section 1 directs DCF to convene a workgroup to evaluate methods to improve the operational effectiveness of Part I of ch. 394, F.S., the Florida Mental Health Act, and recommend changes to existing laws, rules, and agency policies needed to implement the workgroup recommendations.

[9] S. 394.4599(c), F.S.
[10] S. 394.4625
[11] *Id.*
[12] *Id.*
[13] Department of Children and Families; Frequently Asked Questions, http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/Minors.pdf (last visited January 25, 2018).
[14] *Id.*
[15] *Id.*
[16] *Supra* at note 10.

This section also provides that the workgroup consists of 20 members from various stakeholder groups. Members of the workgroup shall be appointed by June 1, 2018, and the first meeting of the workgroup shall take place before July 1, 2018. The draft of its recommendations shall be reviewed by the group by September 1, 2018. A final report shall be provided to the Secretary of the Department of Children and Families, the Secretary of the Agency for Health Care Administration, the President of the Senate and the Speaker of the House of Representatives by November 1, 2018. The report must include the workgroup's findings and recommended statutory and administrative rule changes.

Section 2 provides that the bill shall take effect upon becoming law.

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:

The bill requires DCF to create the workgroup and the meetings of the workgroup to take place in Tallahassee; however, the bill does not address the issue of reimbursement of costs for members to travel in Tallahassee. If DCF is responsible for the reimbursements there will be an insignificant fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on January 29, 2018:

- Removes Section 2, requiring voluntariness consent hearings for minor patients voluntarily admitted to Baker Act receiving facilities.
- Removes Section 3, requiring voluntariness consent hearings for minor patients who transfer from involuntary to voluntary status.

B. Amendments:

None.

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