

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 573 Involuntary Examinations Under the Baker Act

**SPONSOR(S):** Daniels and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N	Siples	McElroy
2) Civil Justice & Claims Subcommittee	14 Y, 0 N	Tuszynski	Bond
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act ("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 establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations.

Currently, the following health care practitioners may initiate the involuntary examination of a person under the Baker Act (some subject to certain training and experience requirements): a physician, a clinical psychologist, a psychiatric nurse, a mental health counselor, a marriage and family therapist, and a clinical social worker.

HB 573 adds advanced registered nurse practitioners and physician assistants to the list of health care practitioners who may initiate the involuntary examination of a person under the Baker Act.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Involuntary Examination under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as “The Baker Act”<sup>1</sup>), codified in part I of ch. 394, F.S., to address mental health needs in the state.<sup>2</sup> 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 DCF. The receiving facility may be public or private and provides the initial examination and short-term treatment of persons who meet the criteria under the Baker Act.<sup>3</sup> A person who requires longer term treatment may be transported to a DCF-designated treatment facility. Treatment facilities are state owned, operated, or supported that hospitals, centers, or clinics that are provide extended treatment and hospitalization beyond what is provided in a receiving facility.<sup>4</sup>

Current law allows an involuntary examination if there is reason to believe a person has a mental illness and; because of the illness, the person:<sup>5</sup>

- Has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for himself or herself that an examination is needed; and
- Is likely to suffer from self-neglect or substantial harm to her or his well-being, or be a danger to himself or herself or others.

A person who is subject to an involuntary examination may not be held longer than 72 hours in a receiving facility.<sup>6</sup>

Courts, law enforcement officers, and certain health care practitioners are authorized to initiate such involuntary examinations.<sup>7</sup> A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination.<sup>8</sup> A law enforcement officer<sup>9</sup> may take a person into custody who

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<sup>1</sup> “The Baker Act” is named for its sponsor, Representative Maxine E. Baker, one of the first two women from Dade County elected to office in the Florida Legislature. As chair of the House Committee on Mental Health, she championed the treatment of mental illness in a manner that would not sacrifice a patient's rights and dignity. Baker served five terms as a member of the Florida House of Representatives from 1963-1972 and was instrumental in the passage of the Florida Mental Health Act. See University of Florida Smathers Libraries, *A Guide to the Maxine E. Baker Papers*, available at <http://www.library.ufl.edu/spec/pkyong/baker.htm> (last visited January 22, 2018), and Department of Children and Families and University of South Florida, Department of Mental Health Law and Policy, *2014 Baker Act User Reference Guide: The Florida Mental Health Act* (2014), available at <http://www.dcf.state.fl.us/programs/samh/mentalhealth/laws/BakerActManual.pdf> (last visited January 22, 2018).

<sup>2</sup> Chapter 71-131, s. 1, Laws of Fla.

<sup>3</sup> S. 394.455(39), F.S.

<sup>4</sup> S. 394.455(47), F.S.

<sup>5</sup> S. 394.463(1), F.S. If the examination period ends on a weekend or a holiday, the person must be released no later than the next working day.

<sup>6</sup> S. 394.463(2)(g), F.S. For those under the age of 18, the examination must be initiated within 12 hours of arrival at the receiving facility.

<sup>7</sup> S. 394.463(2)(a), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> “Law enforcement officer” means 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. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(1), F.S.

appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.<sup>10</sup> Health care practitioners may initiate an involuntary examination by executing the *Certificate of Professional Initiating an Involuntary Examination*, an official form adopted in rule by DCF.<sup>11</sup> The health care practitioner must have examined the person within the preceding 48 hours and state that the person meets the criteria for involuntary examination.<sup>12</sup> The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:<sup>13</sup>

- 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, or a physician employed by the United States Department of Veterans Affairs or Department of Defense.<sup>14</sup>
- 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.<sup>15</sup>
- A psychiatric nurse who is certified as an advanced registered nurse practitioner under s. 464.012, who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.<sup>16</sup>
- 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.

Between July 1, 2015 and June 30, 2016, there were 194,354 involuntary examinations initiated in the state. Law enforcement initiated half of the involuntary examinations (50.86 percent), followed closely by mental health professionals (47.27 percent), with the remaining initiated pursuant to *ex parte* orders by judges (1.88 percent).<sup>17</sup>

### 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 PAs and the Florida Council on Physician Assistants (Council) regulates them.<sup>18</sup> PAs are also regulated by either 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. 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.<sup>19</sup> There are 9,118 PAs who hold active licenses to practice in Florida.<sup>20</sup>

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<sup>10</sup> Supra, FN 7.

<sup>11</sup> The *Certificate of Professional Initiating an Involuntary Examination* is a form created by the DCF which must be executed by health care practitioners initiating an involuntary examination under The Baker Act. 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. See rule reference in Rule 65E-5.280, F.A.C. The form is also available at: <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf> (last visited January 22, 2018).

<sup>12</sup> S. 394.463(2)(a)3., F.S.

<sup>13</sup> Id.

<sup>14</sup> S. 394.455(32), F.S.

<sup>15</sup> S. 394.455(5), F.S.

<sup>16</sup> S. 394.455(35), F.S.

<sup>17</sup> Christy, A., et al., Baker Act Reporting Center, Louis de la Parte Florida Mental Health Institute, Department of Mental Health Law & Policy, University of South Florida, *Fiscal Year 2015/2016 Report Annual Report* (March 2017), available at [http://www.usf.edu/cbcs/baker-act/documents/annual\\_report.pdf](http://www.usf.edu/cbcs/baker-act/documents/annual_report.pdf) (last visited January 22, 2018).

<sup>18</sup> The Council consists of three physicians who are members of the Board of Medicine; one member who is a member of the Board of Osteopathic Medicine, and a physician assistant appointed by the State Surgeon General. (Sections 458.347(9) and 459.022(8), F.S.)

<sup>19</sup> SS. 458.347(12) and 459.022(12), F.S.

<sup>20</sup> Email correspondence with the Department of Health, dated December 14, 2017 (on file with the Health Quality Subcommittee).

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.<sup>21</sup> A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>22</sup> 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.<sup>23</sup>

To be licensed as a PA in Florida, an applicant must:<sup>24</sup>

- Submit a completed application and appropriate fees.<sup>25</sup>
- Complete of an approved PA training program;
- Obtain a passing score on the National Commission on Certification of Physician Assistant exam;
- Acknowledge any prior felony convictions;
- Submit to a background screening and have no disqualifying offenses;<sup>26</sup>
- Acknowledge any previous revocation or denial of licensure in any state; and
- A copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy if the applicant is seeking prescribing authority.

Licenses are renewed biennially. At the time of renewal, must submit an acknowledgement that he or she has not been convicted of any felony in the previous two years and complete a physician assistant workforce survey.<sup>27</sup>

Florida law does not expressly allow PAs to refer for or initiate involuntary examinations 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.<sup>28</sup>

PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders.

### Advanced Registered Nurse Practitioners

Nurses are licensure are licensed by DOH and regulated by the Board of Nursing pursuant to part I of ch. 464, F.S. Licensure requirements to practice nursing include completion of an approved educational course of study, passage of an examination approved by DOH, and acceptable criminal background screening results.<sup>29</sup>

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<sup>21</sup> SS. 458.347(2)(f) and 459.022(2)(f), F.S., 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.

<sup>22</sup> Rules 64B8-30.012 and 64B15-6.010, F.A.C.

<sup>23</sup> S. 458.347(15) and 459.022(15), F.S.

<sup>24</sup> S. 458.347(7) and 459.022(7), F.S.

<sup>25</sup> The application fee is \$100 and the initial license fee is \$205. See rr. 64B8-30.019, and 64B15-6.013, F.A.C.

<sup>26</sup> S. 456.0135, F.S.

<sup>27</sup> SS. 458.347(7)(b)-(c) and 459.022(7)(b)-(c), F.S.

<sup>28</sup> Op. Att'y Gen. Fla. 08-31 (2008), available at <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf> (last visited January 22, 2018).

<sup>29</sup> SS. 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

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 both of the following requirements:

- Certification by a specialty board; or
- 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 three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>30</sup> 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.<sup>31</sup> ARNPs may carry out treatments as specified in statute, including:<sup>32</sup>

- Prescribing, dispensing, administering, or ordering any drug;<sup>33</sup>
- 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 determined by rule.<sup>34</sup>

In addition to the above-allowed acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.<sup>35</sup> Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.<sup>36</sup> There are 27,588 ARNPs who hold active licenses to practice in Florida.<sup>37</sup>

Currently, only ARNPs who are "psychiatric nurses" may initiate involuntary examinations under the Baker Act.<sup>38</sup> To qualify as a psychiatric nurse, an ARNP must have a master's or doctoral degree in psychiatric nursing, hold a national advance practice certification as a psychiatric mental health advanced practice nurse, and have two years post-master's clinical experience.<sup>39</sup>

### **Effect of Proposed Changes**

HB 573 authorizes PAs and ARNPs to initiate involuntary examinations under the Baker Act. A 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. Under current law, only a physician, 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 defines a "physician assistant" and an "advanced registered nurse practitioner" in the same manner as their respective practice acts (ss. 458.347, 459.022, and 464.003, F.S.).

The bill makes necessary conforming changes due to the statutory changes made by the bill.

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<sup>30</sup> S. 464.012(2), F.S.

<sup>31</sup> S. 464.012(3), F.S.

<sup>32</sup> Id.

<sup>33</sup> 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.

<sup>34</sup> S. 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.

<sup>35</sup> S. 464.012(4), F.S.

<sup>36</sup> S. 464.012(4)(c)1., F.S.

<sup>37</sup> Email correspondence with the Department of Health, dated December 14, 2017 (on file with the Health Quality Subcommittee).

<sup>38</sup> S. 394.463(2)(a), F.S.

<sup>39</sup> S. 394.455(35), F.S.

The bill provides an effective date of July 1, 2018.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 394.455, F.S., relating to definitions.

**Section 2:** Amends s. 394.463, F.S., relating to involuntary examinations.

**Section 3:** Amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

**Section 4:** Amends s. 394.495, F.S., relating to child and adolescent mental health system care; programs and services.

**Section 5:** Amends s. 394.496, F.S., relating to service planning.

**Section 6:** Amends s. 394.9085, F.S., relating to behavioral provider liability.

**Section 7:** Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.

**Section 8:** Amends s. 744.2007, F.S., relating to powers and duties.

**Section 9:** Provides an effective date of July 1, 2018.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

No additional rule-making authority is necessary to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**