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 1262
INTRODUCER:	Senator Burgess
SUBJECT:	Mental Health and Substance Abuse
DATE:	January 24, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 1262 makes several changes to procedures surrounding voluntary and involuntary examinations of individuals under the Baker and Marchman Acts. The bill prohibits restrictions on visitors, phone calls, and written correspondence for Baker Act patients unless certain qualified medical professionals document specific conditions are met. The bill requires law enforcement officers to search certain electronic databases for emergency contact information of Baker and Marchman Act patients being transported to a receiving facility.

Under the bill, patients subject to an involuntary Baker Act examination who do not meet the criteria for a petition for involuntary services must be released at the end of 72 hours, regardless of whether the examination period ends on a weekend or holiday, as long as certain discharge criteria are met.

The bill makes it a second degree misdemeanor for a person to knowingly:

- Furnish false information for the purpose of obtaining emergency or other involuntary admission for any person;
- Cause, or conspire with another to cause, any emergency or other involuntary mental health procedure for the person under false pretenses; or,
- Cause, or conspire with another to cause, any person to be denied their rights under the Baker Act statutes.

The bill requires receiving facilities to offer voluntary Baker and Marchman Act patients the option to authorize the release of clinical information to certain individuals known to the patient within 24 hours of admission.

The bill clarifies that telehealth may be used when discharging patients under an involuntary Baker Act examination, and directs facilities receiving transportation reports detailing the

circumstances of a Baker Act to share such reports with the Department of Children and Families (the DCF) for use in analyzing annual Baker Act data.

The bill requires the DCF to receive and maintain reports relating to transportation of individuals subject to an involuntary examination, which may result in the bill having a negative fiscal impact on the DCF. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

The Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.[1] The Baker Act deals with Florida's mental health commitment laws, and includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations.[2] The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.[3]

Involuntary Examination

Individuals suffering from an acute mental 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.[4] 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:

- 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.[5]

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[6]

[1] Ch. 71-131, LO.F.; The Baker Act is contained in ch. 394, F.S.
[2] Sections 394.451-394.47891, F.S.
[3] Section 394.459, F.S.
[4] Sections 394.4625 and 394.463, F.S.
[5] Section 394.463(1), F.S.
[6] Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.

- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;[7] or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.[8]

A law enforcement officer who delivers an individual to a receiving facility must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.[9] Any facility accepting the patient based on this certificate must send a copy of the certificate to the DCF within 5 working days.[10] The same reporting requirements apply in instances where a law enforcement officer delivers a person to a receiving facility pursuant to a certificate executed by a health care professional.[11]

Involuntary patients must be taken to either a public or private facility which has been designated by the 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 psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.[12]

The patient must be examined by the receiving facility within 72 hours of the initiation of the involuntary examination. The examination may be performed by:

- A physician;[13]
- A clinical psychologist;[14] or
- A psychiatric nurse[15] performing within the framework of an established protocol with a psychiatrist at a facility.[16]

The patient may not be released by the receiving facility without the documented approval of one of the following:

[7] Section 394.463(2)(a)2., F.S.
[8] Section 394.463(2)(a)3., F.S.
[9] Section 394.463(2)(a)2., F.S.
[10] *Id*.
[11] Section 394.463(2)(a)3., F.S.
[12] Section 394.455(40), F.S.
[13] "Physician" means a medical practitioner licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental illness or a physician employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense. Section 394.455(33), F.S.
[14] "Clinical psychologist" means a psychologist as defined in s. 490.003(7), F.S., with 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 that qualifies as a receiving or treatment facility. Section 394.455(5), F.S.
[15] "Psychiatric nurse" means an advanced practice registered nurse licensed 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 2 years of post-master's clinical experience under the supervision of a physician. Section 394.455(36), F.S.
[16] Section 394.463(2)(f), F.S.

- A psychiatrist;
- A clinical psychologist; or
- If the receiving facility is owned or operated by a hospital or health system:
  - A psychiatric nurse performing within the framework of an established protocol with a psychiatrist;[17] or
  - An attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination.[18]

By the end of the 72 hour period, or if the period ends on a weekend or holiday, no later than the next working day, one of the following actions must be taken to address the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case the patient is to be returned to the custody of a law enforcement officer;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless he or she is charged with a crime, must be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient must be admitted as a voluntary patient; or
- A petition for involuntary services must be filed in the circuit court if inpatient treatment is deemed necessary or with the criminal county court, as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition must be made available. A petition for involuntary inpatient placement must be filed by the facility administrator.[19]

Receiving facilities must also ensure that a patient's discharge plan considers all of the following prior to the patient's release:

- The patient's transportation resources;
- The patient's access to stable living arrangements;
- How assistance in securing needed living arrangements or shelter will be provided to patients at risk of readmission within the 3 weeks immediately following discharge due to homelessness or transient status. The discharging facility must document that, before discharging the patient, it has requested a commitment from a shelter provider that assistance will be rendered;
- The availability of assistance in obtaining a timely aftercare appointment for needed services, including continuation of prescribed psychotropic medications. Aftercare appointments for psychotropic medication and case management must be requested to occur not later than 7 days after the expected date of discharge; if the discharge is delayed, the discharging facility must document notification of the delay to the aftercare provider. The discharging facility shall coordinate with the aftercare service provider and document the aftercare planning;
- The availability of, and access to, prescribed psychotropic medications in the community. To ensure a patient's safety and provision of continuity of essential psychotropic medications, such prescribed psychotropic medications, prescriptions, multiple partial prescriptions for psychotropic medications, or a combination thereof, must be provided to the patient upon

[17] A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. Section 394.463(2)(f), F.S.
[18] Section 394.463(2)(f), F.S.
[19] Section 394.463(2)(g), F.S.

discharge to cover the intervening days until the first scheduled psychotropic medication aftercare appointment, up to a maximum of 21 calendar days;
- The provision of education and written information about the patient's illness and psychotropic medications, including other prescribed and over-the-counter medications; the common side-effects of any medications prescribed; and any common adverse clinically significant drug-to-drug interactions between that medication and other commonly available prescribed and over-the-counter medications;
- The provision of contact and program information about, and referral to, any community-based peer support services in the community;
- The provision of contact and program information about, and referral to, any needed community resources;
- Referral to substance abuse treatment programs, trauma or abuse recovery-focused programs, or other self-help groups, if indicated by assessments; and
- The provision of information about advance directives, including how to prepare and use them.[20]

Notice Requirements

Receiving facilities must give prompt notice[21] of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,[22] guardian advocate,[23] health care surrogate or proxy, attorney, and representative.[24] If the patient is a minor, the receiving facility must give prompt notice to the minor's parent, guardian, caregiver, or guardian advocate. Notice 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.[25] 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.[26]

Involuntary Inpatient Placement

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:
- He or she is mentally ill and because of his or her mental illness:

[20] Rule 65E-5.1303, F.A.C.
[21] 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. Section 394.455(2), F.S.
[22] "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.
[23] "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.
[24] Section 394.4599(2)(b), F.S.
[25] Section 394.4599(2)(b)-(c), F.S.
[26] Section 394.4599(c)2., F.S.

  - He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement or is unable to determine for himself or herself whether placement is necessary; and
  - He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services; and
  - Without treatment, is likely to suffer from neglect or refuse to care for himself or herself; and
  - Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or
  - There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.[27]

The administrator of the receiving or treatment facility that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[28] Upon filing, the clerk of the court must provide copies to the DCF, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.[29] The court must hold a hearing on involuntary inpatient placement within 5 court working days, unless a continuance is granted.[30]

The Marchman Act

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[31] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[32] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[33] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[34] In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[35]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider. An individual who wishes to enter

[27] Section 394.467(1), F.S.
[28] Section 394.467(2) and (3), F.S.
[29] Section 394.467(3), F.S.
[30] Section 394.467(5), F.S.
[31] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (On file with the Senate Children, Families, and Elder Affairs Committee).
[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] Ch. 93-39, s. 2, L.O.F. (creating ch. 397, F.S., effective October 1, 1993).

treatment may apply to a service provider for voluntary admission.[36] Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.[37] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[38] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[39]

Involuntary Admissions

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved.[40] Three of the procedures do not involve the court, while two require direct petitions to the circuit court. The same criteria for involuntary admission apply regardless of the admission process used.[41]

An individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use, and either:

- Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard;[42] or
- 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 substantial likelihood that the person:
    - Has inflicted, or threatened to or attempted to inflict physical harm on himself, herself, or another; or
    - Is likely to inflict, physical harm on himself, herself, or another unless he or she is admitted.[43]

[36] Section 397.601(1), F.S
[37] Section 397.601(2), F.S.
[38] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited January 19, 2022) (hereinafter cited as "Fundamentals of the Marchman Act").
[39] *Id*.
[40] *Id*.
[41] *Id*.
[42] Section 394.675(2)(a), F.S. However, mere refusal to receive services does not constitute evidence of lack of judgment with respect to the person's need for such services.
[43] Section 397.675(2)(b), F.S.

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act include protective custody, emergency admission, and the alternative involuntary assessment for minors.

Law enforcement officers use the protective custody procedure when an individual is substance-impaired or intoxicated in public and such impairment is brought to the attention of the officer.[44] The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment. A law enforcement officer may take the individual to their residence, a hospital, a detoxification center, or an addiction receiving facility, whichever the officer determines is most appropriate.[45] The officer is also required to execute a written report[46] detailing the circumstances under which the individual was taken into custody.[47] The current version of the form developed and disseminated by the DCF must also include information on transportation, family members or others present when the individual was taken into custody, and next of kin or other contact information, if known.[48]

If the individual in these circumstances does not consent to protective custody, the officer may do so against the person's will, without using unreasonable force. Additionally, the officer has the option of taking an individual to a jail or detention facility for his or her own protection. Such detention cannot be considered an arrest for any purpose and no record can be made to indicate that the person has been detained or charged with any crime.[49] However, if the individual is a minor, the law enforcement officer must notify the nearest relative of a minor in protective custody without consent.[50]

The second process, emergency admission, authorizes an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only.[51] Individuals admitted for involuntary assessment and stabilization under this provision must have a certificate from a specified health professional[52] demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[53]

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[44] Section 397.677, F.S. The individual can be a minor or adult under this process.
[45] Section 397.6771, F.S. A person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.
[46] The DCF is required to develop the form pursuant to s. 397.321(19), F.S.
[47] Section 397.6772(1)(a), F.S.
[48] The current version of the form is available at https://eds.myflfamilies.com/DCFFormsInternet/Search/OpenDCFForm.aspx?FormId=1061 (last visited January 19, 2022).
[49] Section 397.6772(1), F.S.
[50] Section 397.6772(2), F.S.
[51] Section 397.679, F.S.
[52] Section 397.6793(1), F.S., provides a list of professionals that include a physician, a clinical psychologist, a physician assistant working under the scope of practice of the supervising physician, a psychiatric nurse, an advanced practice registered nurse, a mental health counselor, a marriage and family therapist, a master's-level-certified addictions professional for substance abuse services, or a clinical social worker.
[53] Section 397.6793, F.S. The certificate can be from a physician, advanced practice registered nurse, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, or a physician

Lastly, the alternative involuntary assessment for minors provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[54]

Transportation to a Facility

Baker Act

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.[55] Law enforcement must then relinquish the person, along with corresponding documentation, to a responsible individual at the facility.[56]

Marchman Act

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.[57]

If a person in circumstances which justify protective custody[58] fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:

- Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force; or
- In the case of an adult, detain the person for his or her own protection in any municipal or county jail or other appropriate detention facility.[59]

The officer must use a standard form developed by the DCF to execute a written report detailing the circumstances under which the person was taken into custody, and the written report shall be included in the patient's clinical record.

assistant working under the scope of a practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services.

[54] Section 397.6798, F.S.

[55] Section 394.462(1)(f)-(g), F.S.

[56] Section 394.462(3), F.S.

[57] Section 397.6795, F.S.

[58] Section 397.677, F.S., states that a law enforcement officer may implement protective custody measures when a minor or an adult who appears to meet the involuntary admission criteria in s. 397.675, F.S., is brought to the attention of law enforcement or in a public space.

[59] Section 397.6772(1)(a)-(b), F.S.

Individual Bill of Rights

Both the Marchman Act and the Baker Act provide an individual bill of rights.[60] Rights in common include the right to:

- Dignity;
- Quality of treatment;
- Not be refused treatment at a state-funded facility due to an inability to pay;
- Communicate with others;
- Care and custody of personal effects; and
- Petition the court on a writ of habeas corpus.[61]

The individual bill of rights also imposes liability for damages on persons who violate individual rights.[62] The Marchman Act ensures the right to habeas corpus, which means that a petition for release may be filed with the court by an individual involuntarily retained or his or her parent or representative.[63] In addition to the petitioners authorized in the Marchman Act, the Baker Act permits the DCF to file a writ for habeas corpus on behalf of the individual.[64]

The Marchman Act also makes it a first degree misdemeanor[65] for a person to:

- Knowingly furnishing false information for the purpose of obtaining emergency or other involuntary admission for any person;
- Causing or otherwise securing, or conspiring with or assisting another to cause or secure, without reason for believing a person to be impaired, any emergency or other involuntary procedure for the person;
- Causing, or conspiring with or assisting another to cause, the denial to any person of any right accorded under the Marchman Act.[66]

The Baker Act currently does not contain similar criminal penalties for activities that infringe upon patients' rights.

Right to Outside Communication and Visitation

All patients held at a receiving facility have the explicit right to communicate freely and privately with others outside the facility unless it is determined that communication will likely harm the patient or others.[67] Similar conditions apply to the right of patients to send, receive, and mail correspondence, and to access outside visitors.[68] Facilities must review restrictions on a

[60] Section 394.459, F.S., provides "Rights of Individuals" for individuals served through the Baker Act; section 397.501, F.S., provides "Rights of Individuals" for individuals served through the Marchman Act.
[61] *Id*.
[62] Sections 394.459(10) and 397.501(10)(a), F.S.
[63] Section 397.501(9), F.S.
[64] Section 394.459(8)(a), F.S.
[65] A first degree misdemeanor is punishable by one year imprisonment and a fine of $1,000. Sections 775.082 and 775.083, F.S. However, s. 397.581, F.S., specifically provides that this offense is punishable by a fine of up to $5,000.
[66] Section 397.581, F.S.
[67] Section 394.459(5)(a), F.S.
[68] Section 394.459(5)(b)-(c), F.S.

patient's right to communicate, send or receive sealed, unopened correspondence, or receive visitors at least once every 7 days.[69]

Emergency Contact Information and Florida Databases

On December 7, 2005, Tiffiany Marie Olson was killed in a traffic crash on U.S. 19 in Manatee County.[70] Following her mother not being notified of her death for several hours, her mother was instrumental in getting emergency contact information (ECI) added to a person's driver license or identification card record.[71] The Florida Department of Highway Safety and Motor Vehicles (the FLHSMV) launched the program on October 2, 2006, and it has since been adopted by 15 other states.[72]

ECI allows law enforcement to contact designated individuals in the event of an emergency.[73] The system is securely maintained by the FLHSMV and can be accessed by law enforcement only in an emergency situation.[74] Floridians with a valid driver's license or ID card may enter up to two emergency contacts.[75] Residents can register or update their ECI without cost at flhsmv.gov/eci and in local driver license offices statewide.[76]

Driver and Vehicle Information Database (DAVID)

The DAVID system is a FLHSMV-owned, multifaceted database that provides accurate, concise, and up-to-date driver and motor vehicle information to law enforcement, criminal justice officials, and other state agencies.[77] To maintain the integrity of this information, the records are regulated and can only be accessed and used by authorized personnel in accordance with state and federal law.[78]

The DAVID system also contains ECI for Florida drivers who have chosen to list emergency contacts.[79] ECI available through DAVID may only be accessed by law enforcement and may only be used in emergency situations.[80]

Florida Crime Information Center (FCIC) System

The FCIC system is Florida's central database for tracking various crime-related information. The system is designed "to provide services, information, and capabilities to the law enforcement

[69] Section 394.459(5)(c), F.S.
[70] The Florida Highway Safety and Motor Vehicles (the FLHSMV), *Emergency Contact Information History*, available at https://www.flhsmv.gov/driver-licenses-id-cards/emergency-contact-information-history/ (last visited January 19, 2022).
[71] *Id*.
[72] To Inform Families First, *About TIFF*, available at https://www.toinformfamiliesfirst.org/ (last visited January 19, 2022) (hereinafter "About TIFF").
[73] The FLHSMV, *ECI Brochure*, available at https://flhsmv.gov/pdf/eci/eci_brochure.pdf (last visited January 19, 2022).
[74] *Id*.
[75] *Id*.
[76] *Id*.
[77] The FLHSMV Office of Inspector General, *DAVID Audits*, p. 1, available at https://www.flhsmv.gov/pdf/igoffice/20171823.pdf (last visited January 19, 2022).
[78] *Id*., s. 119.0712(2)(d), F.S.
[79] About TIFF.
[80] The Fort Lauderdale Police Department, *Access to Criminal Justice Information*, p. 4, available at https://www.flpd.org/home/showpublisheddocument/4061/637662691735570000 (last visited January 19, 2022).

and criminal justice community" in the state, and gives them access to other criminal justice information systems nationwide.[81] All employees that access the FCIC must be certified by the Florida Department of Law Enforcement, and all information obtained through the system is restricted to criminal justice purposes.[82]

Law enforcement can also use FCIC to access information pertaining to a driver's specific license, providing an officer with information including a driver's name, date of birth, residential address and licensure status. If a driver has chosen to add ECI, it will also be provided to an officer along with the rest of the driver-specific information at the bottom of the screen when he or she queries the FCIC database.[83]

Mental Health Data Reporting and Analysis

The DCF collects and maintains copies of ex parte orders, involuntary outpatient services orders, involuntary inpatient placement orders, and professional certificates initiating Baker Act examinations.[84] Such documents are considered part of a patient's clinical record and are used to prepare annual reports analyzing the de-identified data contained therein.[85] The DCF contracts with the Louis de la Parte Florida Mental Health Institute at the University of South Florida (the Institute) to perform the data analysis and prepare the reports.[86] The Institute also analyzes other information relating to mental health and acts as a provider of crisis services to certain patients.[87] The reports are provided to the DCF, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.[88]

Telehealth

Relevant Terminology

Section 456.47, F.S., defines the term "telehealth" as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

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[81] Florida Highway Patrol Policy Manual, *Criminal Justice Information Services: Policy 14.02.04C.* (Rev. Mar. 2015), available at https://www.flhsmv.gov/fhp/Manuals/1402.pdf (last visited Nov. 21, 2017).
[82] *Id.* at Policy 14.02.07C. and D.
[83] News 6 Orlando, *Do Florida Drivers Need to Set Up Emergency Contact Information?*, available at https://www.clickorlando.com/news/local/2022/01/17/do-florida-drivers-need-to-set-up-emergency-contact-information/ (last visited January 19, 2022).
[84] Section 394.463(2)(e), F.S.
[85] *Id*.
[86] The University of South Florida, Baker Act Reporting Center, *About Us*, available at https://www.usf.edu/cbcs/baker-act/about/index.aspx (last visited January 19, 2022).
[87] *See* The University of South Florida, Baker Act Reporting Center, *What We Do*, available at https://www.usf.edu/cbcs/baker-act/about/whatwedo.aspx (last visited Jan. 7, 2022); and The University of South Florida, Louis de la Parte Florida Mental Health Institute, *About the Institute*, available at https://www.usf.edu/cbcs/fmhi/about/ (last visited January 19, 2022).
[88] *Id*.

"Synchronous" telehealth refers to the live, real-time, or interactive transmission of information between a patient and a health care provider during the same time period. The use of live video to evaluate and diagnosis a patient would be considered synchronous telehealth.

"Asynchronous" telehealth refers to the transfer of data between a patient and a health care provider over a period of time and typically in separate time frames. This is commonly referred to as "store-and-forward."

"Remote patient monitoring" refers to the collection, transmission, evaluation, and communication of individual health data to a health care provider from the patient's location through technology such as wireless devices, wearable sensors, implanted health monitors, smartphones, and mobile apps.[89] Remote monitoring is used to monitor physiologic parameters, including weight, blood pressure, blood glucose, pulse, temperature, oximetry, respiratory flow rate, and more. Remote monitoring can be useful for ongoing condition monitoring and chronic disease management. Depending upon the patient's needs, remote monitoring can be synchronous or asynchronous.

Florida Telehealth Providers

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, creating s. 456.47, F.S., which became effective on July 1, 2019.[90] It authorized Florida-licensed health care providers[91] to use telehealth to deliver health care services within their respective scopes of practice.

Telehealth providers who treat patients located in Florida must be one of the licensed health care practitioners listed below and be either Florida-licensed, licensed under a multi-state health care licensure compact of which Florida is a member state, or registered as an out-of-state telehealth provider:

- Behavioral Analyst;[92]
- Acupuncturist;[93]
- Allopathic physician;[94]
- Osteopathic physician;[95]
- Chiropractor;[96]
- Podiatrist;[97]
- Optometrist;[98]
- Nurse;[99]

[89] American Board of Telehealth, *Telehealth: Defining 21st Century Care*, available at https://www.americantelemed.org/resource/why-telemedicine/ (last visited January 19, 2022).
[90] Chapter 2019-137, s. 6, L.O.F.
[91] Section 456.47(1)(b), F.S.
[92] Section 393.17, F.S.
[93] Chapter 457, F.S.
[94] Chapter 458, F.S.
[95] Chapter 459, F.S.
[96] Chapter 460, F.S.
[97] Chapter 461, F.S.
[98] Chapter 463, F.S.
[99] Chapter 464, F.S.

- Pharmacist;[100]
- Dentist;[101]
- Dental Hygienist;[102]
- Midwife;[103]
- Speech Therapist;[104]
- Occupational Therapist;[105]
- Radiology Technician;[106]
- Electrologist;[107]
- Orthotist;[108]
- Pedorthist;[109]
- Prosthetist;[110]
- Medical Physicist;[111]
- Emergency Medical Technician;[112]
- Paramedic;[113]
- Massage Therapist;[114]
- Optician;[115]
- Hearing Aid Specialist;[116]
- Clinical Laboratory Personnel;[117]
- Respiratory Therapist;[118]
- Psychologist;[119]
- Psychotherapist;[120]
- Dietician/Nutritionist;[121]
- Athletic Trainer;[122]
- Clinical Social Worker;[123]

[100] Chapter 465, F.S.
[101] Chapter 466, F.S.
[102] *Id*.
[103] Chapter 467, F.S.
[104] Chapter 468, F.S.
[105] *Id*.
[106] *Id*.
[107] Chapter 458, F.S.
[108] Chapter 468, F.S.
[109] *Id*.
[110] *Id*.
[111] Chapter 483, F.S.
[112] Chapter 401, F.S.
[113] *Id*.
[114] Chapter 480, F.S.
[115] Chapter 484, F.S.
[116] *Id*.
[117] Chapter 483, F.S.
[118] Chapter 468, F.S.
[119] Chapter 490, F.S.
[120] Chapter 491, F.S.
[121] Chapter 468, F.S.
[122] Chapter 468, F.S.
[123] Chapter 491, F.S.

- Marriage and Family Therapist;[124] and
- Mental Health Counselor.[125]

III. Effect of Proposed Changes:

Rights of Patients

Patient Access and Communication

The bill prohibits receiving facilities from restricting any of the following patients' rights unless a qualified professional determines that failing to do so would be detrimental to the patient's clinical well-being, including:

- The right to communicate freely and privately with persons outside of the receiving facility;
- The right to receive, send, and mail sealed, unopened correspondence; and
- The right to access to any patient, subject to the patient's right to deny or withdraw consent at any time, by the patient's family, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney.

A "qualified professional" is defined in s. 394.455(39), F.S., to mean:

- A physician licensed under ch. 458, F.S.;
- A physician assistant licensed under ch. 459, F.S.;
- A psychiatrist licensed under ch. 458, F.S., or ch. 459, F.S.;
- A psychologist as defined in s. 490.003(7), F.S.; or
- A psychiatric nurse as defined in s. 394.455(36), F.S.

The bill also reduces the number of days within which a receiving facility must review restrictions on a patient's right to communicate or receive visitors from 7 days to 4 days.

Criminal Penalty

The bill also makes it a second degree misdemeanor[126] to:

- Knowingly furnish false information for the purpose of obtaining emergency or other involuntary admission for any person;
- Cause, or conspire with another to cause, any involuntary mental health procedure for the person without a reason for believing a person is impaired; or,
- Cause, or conspire with another to cause, any person to be denied their rights under the mental health statutes.

The bill also provides that a person who is convicted of this offense may be punished by a fine not exceeding $5,000.

[124] *Id*.
[125] *Id*.
[126] A second degree misdemeanor is punishable by up to 60 days in jail and a fine. This bill specifically authorizes that the fine is punishable up to $5,000. Sections 775.082 and 775.083(1)(e), F.S.

Notice Requirements

Involuntary Admissions

Baker Act

The bill adds emergency contacts, identified by law enforcement through the DAVID or FCIC electronic databases, to the list of individuals a receiving facility may contact when a patient is brought to a receiving facility for an involuntary examination under the Baker Act.

Under the bill, an officer who delivers a patient to a receiving facility must include all ECI discoverable through FCIC, DAVID, or other electronic databases maintained by the FDLE or the FLHSMV in the report detailing the circumstances under which the person was taken into custody. Such information must be included in reports following instances where a law enforcement officer:

- Determines an individual meets the criteria for involuntary examination and delivers the individual to a receiving facility;
- Delivers an individual to a receiving facility pursuant to a certificate executed by a health care professional under s. 394.463(2)(a)3., F.S.; or
- Determines that a hospital or addictions receiving facility is the most appropriate place for a person who:
  - Is in protective custody; or
  - Refuses to consent to assistance.

Marchman Act

When a law enforcement officer delivers a person to a hospital or addictions receiving facility under the Marchman Act, the bill requires the officer to attempt to notify the nearest relative or emergency contact of the person and document such notification, and attempts at notification, in the report.

Voluntary Admissions

The bill requires receiving facilities and substance abuse service providers serving Baker Act and Marchman Act patients, respectively, to document that individuals admitted on a voluntary basis have been provided with the option to authorize the release of clinical information, within 24 hours of admission, to the individual's:

- Health care surrogate or proxy;
- Attorney;
- Representative; or
- Other known emergency contact.

The release authorization will help to ensure patients admitted on a voluntary basis will have the option of sharing important information regarding health care decisions with the individuals specified above.

Transportation Reports

The bill adds reports completed by law enforcement when a person is transported to a receiving facility to the documents received and maintained by the DCF for use in preparing annual reports on Baker Act data. The bill also makes such reports a part of a patient's clinical record. The transportation reports will allow the Baker Act Reporting Center to provide a more comprehensive overview of Baker Act data statewide.

Discharge Procedures

The bill provides a definition for "telehealth," specifically that telehealth has the same meaning as defined in s. 456.47, F.S. The bill permits receiving facilities holding patients for an involuntary examination under the Baker Act to authorize the release of a patient via telehealth.

Where a patient's 72-hour involuntary examination period ends on a weekend or holiday, the bill allows receiving facilities to delay release of the patient until the next working day only if a qualified professional documents that proper discharge planning and procedures cannot be implemented until that date. Specifically, receiving facilities must include, and document consideration of the discharge planning and procedure requirements delineated in the DCF's existing rule referenced above.

Cross-References

The bill amends ss. 409.972 and 744.2007, F.S., relating to mandatory and voluntary managed care enrollment, and the powers and duties of public guardians, respectively, to conform cross-references to changes made by the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF anticipates that the fiscal impact will be based on the level of effort required by data staff employed under the DCF's contract with the University of South Florida's Baker Act Reporting Center.[127] The first year estimated cost of implementation anticipated to be approximately $90,000. Of this amount, $15,000 is non-recurring for the cost to develop data infrastructure, a data entry interface, and user testing.[128]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 394.455, 394.459, 394.4599, 394.4615, 394.463, 397.601, 397.6772, 409.972, and 744.2007 of the Florida Statutes.

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.

[127] The DCF, *Agency Analysis for SB 1262*, p. 5, January 20, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[128] *Id*.