

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 Judiciary

BILL: SB 938

INTRODUCER: Senator Davis

SUBJECT: Operation and Administration of the Baker Act

DATE: March 28, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Delia</u> | <u>Cox</u> | <u>CF</u> | Favorable |
| 2. | <u>Davis</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 938 directs the Department of Children and Families (the DCF) to update and publish a Baker Act handbook annually and post the updated handbook on the agency's website every year by October 1. The bill also directs the DCF to maintain a repository of frequently asked questions (FAQs) on the agency's website, and continually revise and expand the repository as necessary.

The bill requires the DCF to inform certain stakeholders of their role in the Baker Act process and support their effective implementation of the Act. The DCF must support and facilitate research conducted by public and private agencies, institutions of higher learning, and hospitals in the interest of the elimination and amelioration of mental illness.

The DCF anticipates that the bill will not have a significant fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

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

¹ Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

² Sections 394.451 through 394.47892, F.S.

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
- 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, physician assistant, clinical psychologist, psychiatric nurse, advanced practice registered 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

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.⁹ The patient must be examined by the receiving facility within 72 hours after the

³ Section 394.459, F.S.

⁴ Sections 394.4625 and 394.463, F.S., respectively.

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.

⁷ Section 394.463(2)(a)2., F.S. The officer 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.

⁸ Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.

⁹ Section 394.455(40), F.S.

initiation of the involuntary examination and specified actions must be taken within that time frame to address the individual needs of the patient.¹⁰

Education and Training on Mental Health for Law Enforcement and School Personnel

As of 2021, there were 43,876 law enforcement officers in Florida's police departments, sheriffs' offices, schools, and ports who could initiate an involuntary exam under Baker Act.¹¹ Some portion of these officers receive training on working with individuals with mental illness through approaches such as Crisis Intervention Team training.¹² Of the state's law enforcement agencies, 94% initiated at least one involuntary exam in FY 2020-21.¹³

In FY 2022-23, there were 343,238 full-time staff in Florida's public schools.¹⁴ Many receive training through Youth Mental Health First Aid, which helps school personnel identify and understand the signs of mental health concerns and substance use disorders, and provide such personnel with the next steps to find help for a person who is developing or experiencing mental health concerns or a substance use disorder.¹⁵

Education and Training on the Baker Act by the DCF

Chapter 394, F.S., assigns the DCF statutory responsibility for the planning, evaluation, and implementation of a complete and comprehensive statewide program of mental health, including community services, receiving and treatment facilities, child services, research, and training.¹⁶ The DCF reports that it has created webinars on the Baker Act and provides informational community presentations.¹⁷ A Baker Act user reference guide and frequently asked question repository are other sources of information maintained by the DCF.¹⁸

Webinars and Community Presentations on the Baker Act

The DCF has worked with a contracted vendor to produce the following four webinars regarding the Baker Act:

- Introduction to the Baker Act (revised effective 2016).
- Law enforcement and the Baker Act.

¹⁰ Section 394.463(2)(g), F.S.

¹¹ See the Florida Department of Law Enforcement, *Criminal Justice Agency Profile (CJAP) Report-Statewide Ratios*, <https://www.fdle.state.fl.us/CJSTC/Publications/CJAP/Statewide-Ratios.aspx> (last visited March 26, 2023).

¹² See generally the Florida Sheriff's Association, *Crisis Intervention Team Training*, <https://www.flsheriffs.org/law-enforcement-programs/crisis-intervention-team> (last visited March 26, 2023).

¹³ The University of South Florida Baker Act Reporting Center, *The Baker Act Fiscal Year 2020/2021 Annual Report*, p. 3, https://www.usf.edu/cbcs/baker-act/documents/usf_bar_c_fy_20_21_annual_report.pdf (last visited March 26, 2023).

¹⁴ The Florida Department of Education (The DOE), *PK-12 Public School Data Publications and Reports: Staff*, <https://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/staff.html> (last visited March 26, 2023).

¹⁵ The DOE, *Youth Mental Health Awareness Training*, available at <https://www.fldoe.org/schools/k-12-public-schools/sss/ymhat.html> (last visited March 26, 2023). Rule 6A-1.094120, F.A.C., requires an annual certification that at least 80% of school personnel in required job codes in a school district, including school personnel at charter schools, have completed the approved training (last visited March 26, 2023).

¹⁶ Department of Children and Families, *SB 938 2023 Agency Legislative Bill Analysis*, 2 (Feb. 21, 2023) (on file with the Senate Committee on Judiciary).

¹⁷ *Id.*

¹⁸ *Id.*

- Minors and the Baker Act (revised effective 2016).
- Long-term Care and the Baker Act.¹⁹

Baker Act Handbook

Section 394.457, F.S., requires the DCF to publish and distribute an information handbook to facilitate understanding of the Baker Act. The DCF last published an updated version of the handbook, known as the *Baker Act User Reference Guide*, in 2014.²⁰ The 2014 volume is 496 pages long and includes:

- Overviews and historical background;
- Maps of judicial circuits, DCF regions, and managing entity service areas;
- Contact information for managing entities;
- Statutes linked to associated rules;
- Flow charts;
- Quick reference guides;
- Charts depicting authority granted to various mental health professionals under different situations;
- Comparison of the Baker and Marchman Act provisions;
- Resources, such as information about helplines, service providers, patient groups, and online training; and
- Forms.²¹

Since 2014, the Baker Act has been amended by the Legislature multiple times.²² Some of these changes include:

- Identifying the components of a coordinated system of care to be provided for individuals with mental illness or substance use disorder and defining a “No Wrong Door” model for accessing care;²³
- Encouraging school districts to adopt a standardized suicide assessment tool that school-based mental health professionals may implement prior to initiation of an involuntary examination;²⁴
- Requiring that when a patient communicates a specific threat against an identifiable individual to a mental health service provider, the provider must notify a law enforcement agency of the potential threat;²⁵
- Requiring patients subject to an involuntary Baker Act examination who do not meet the criteria for a petition for involuntary services to 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;²⁶

¹⁹ *Id.*

²⁰ The DCF, *2014 Baker Act: the Florida Mental Health Act User Reference Guide*, available at https://www.myflfamilies.com/sites/default/files/2023-03/2014%20Baker%20Act%20Manual_0.pdf (last visited March 26, 2023) (hereinafter cited as, “The Baker Act Handbook”).

²¹ The Baker Act Handbook at pp. i-iv.

²² For example, including SB 12 (2016), SB 1418 (2019), and SB 1262 and SB 1844 (2022).

²³ Chapter 2016-241, Laws of Fla.

²⁴ Chapter 2019-134, Laws of Fla.

²⁵ *Id.*

²⁶ Chapter 2022-36, Laws of Fla.

- Requiring law enforcement officers to search certain electronic databases for Emergency Contact Information (ECI) of Baker and Marchman Act patients being transported to a receiving facility and expanding the entities who can access the ECI to specifically include receiving facilities, hospitals, and licensed detoxification and addictions receiving facilities;²⁷ and
- Revising the voluntariness provision under the Baker Act to allow a minor's voluntary admission to a receiving facility or hospital after a clinical review of the minor's assent has been conducted, rather than a hearing on the minor's consent.²⁸

The handbook has not been updated to address any of these changes.

Frequently Asked Questions Repository

The DCF maintains a repository of FAQs and responses on its website.²⁹ These FAQs address issues that arise in the field in the day-to-day administration of the Baker Act by the hundreds of thousands of individuals working in law enforcement, schools, mental health providers, hospitals, nursing homes and ALF's, and jails, as well as individual clinicians, who may come in contact with someone who might meet criteria for an involuntary exam under the Baker Act. The FAQs are the DCF staff's responses to public questions received from stakeholders.³⁰ At this time, the manual revisions normally occur after new statutory requirements are enacted and rules are formally adopted.³¹

Topics in the DCF FAQ list with accessible content include all of the following:

- Baker Act Forms.
- Long-term Care Facilities.
- Clinical Records and Confidentiality.
- Marchman Act.
- Discharge Planning.
- Minors.
- Emergency Medical Conditions.
- Professional Credentials.
- Emergency Treatment Orders.
- Receiving Facilities.
- Express and Informed Consent.
- Involuntary Examination.
- Involuntary Inpatient Placement.
- Transportation.
- Involuntary Outpatient Placement.
- Voluntary Admissions.

²⁷ *Id.*

²⁸ Chapter 2022-41, Laws of Fla.

²⁹ The DCF, *Baker Act Frequently Asked Questions*, available at <https://www.myflfamilies.com/crisis-services/baker-act/baker-act-frequently-asked-questions> (last visited March 26, 2023).

³⁰ Department of Children and Families, *SB 938 2023 Agency Legislative Bill Analysis*, 2 (Feb. 21, 2023) (on file with the Senate Committee on Judiciary).

³¹ *Id.*

- Weapons & Contraband.
- Law Enforcement.
- Telehealth.³²

III. Effect of Proposed Changes:

The bill amends s. 394.457, F.S., requiring the DCF to inform law enforcement officers, qualified professionals, and service providers of:

- The provisions of the Baker Act;
- Policies and procedures relating to effective implementation of the Baker Act;
- Roles and responsibilities of those individuals as they relate to the Baker Act; and
- Any other information necessary for the effective implementation of the Baker Act.

The bill requires the DCF to update and publish the Baker Act handbook annually and post the handbook on the agency's website by October 1 of each year. The bill also requires the DCF to maintain a repository of frequently asked questions related to the Baker Act, publish the repository on the agency's website, and continually revise and expand it as necessary.

The bill also directs the DCF to support and facilitate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the elimination and amelioration of mental illness.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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.

³² The DCF, *Baker Act Frequently Asked Questions*, available at <https://www.myflfamilies.com/crisis-services/baker-act/baker-act-frequently-asked-questions> (last visited March 26, 2023).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF anticipates that the bill will have no fiscal impact on state government.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 394.457 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.

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

³³ Department of Children and Families, *SB 938 2023 Agency Legislative Bill Analysis*, 4 (Feb. 21, 2023) (on file with the Senate Committee on Judiciary).