

There is no fiscal impact associated with this legislation.

This bill substantially amends ss. 394.455, 394.462, 394.4655, and 394.467, F.S.

II. Present Situation:

On July 22, 2008, an Okaloosa County Sheriff's Office Deputy was shot and killed by a man who, the previous afternoon, had been taken into custody pursuant to a court order for examination under the Baker Act. The subject of the court order was delivered to a local receiving facility, but he eloped from the facility and was picked up and returned by law enforcement, only to elope once again. Early on Tuesday, July 22, 2008, the subject was discovered barricaded in his home with a firearm. After unsuccessful attempts were made by the Okaloosa County Sheriff's Office Special Response Team and Crisis Negotiation Unit to talk the man out, the team entered the home. Shots were fired resulting in the deaths of both a sheriff's deputy and the subject of the action.¹

Florida Mental Health Act

Part I of chapter 394, F.S., the "Florida Mental Health Act," also known as the "Baker Act," is a civil commitment law that provides a process for the involuntary examination and subsequent involuntary placement (admission) of a person for either inpatient or outpatient treatment of a mental, emotional, or behavioral disorder. It is designed to use the least restrictive means of intervention, while preserving a person's dignity and human rights.²

Criteria

Section 394.463(1), F.S., provides that a person may be taken to a receiving facility for involuntary examination if the person is believed to be mentally ill and because of that mental illness the person has refused voluntary examination or cannot determine whether examination is necessary. In addition, it must be determined that, without care or treatment, the person is likely to suffer from neglect³ resulting in a real and present threat of substantial harm to his or her well-being; and it is not apparent that this harm can be avoided with the help of others; or there is a substantial likelihood that without care or treatment, the person is likely to cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.⁴

Section 394.463(2), F.S., provides that an involuntary examination may be initiated by a court through an *ex parte* order, a medical professional, or a law enforcement officer.

¹ Michele Nicholson, *Okaloosa County Deputy Killed-Suspect Killed in Stand Off*, News Channel 7 WJHG, July 23, 2008, available at: < <http://www.wjhg.com/home/headlines/25753729.html> > (Last visited on March 13, 2009).

²Section 394.453, F.S.

³Neglect may take the form of refusing necessary prescription medications, refusing to eat or drink, inability to sleep, placing oneself in imminently dangerous situations, or other high risk behaviors. *Baker Act Guide*, Appendix F-4 (2008).

⁴Section 394.463(1)(b), F.S.

Transportation

The Baker Act requires law enforcement officers to transport any person for whom an involuntary examination has been initiated to the nearest receiving facility.⁵ The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination. If the receiving facility is at capacity or otherwise cannot meet the person's needs due to age or financial need, it should accept the person and arrange an appropriate transfer to another receiving facility.⁶

According to the Department of Children and Family Services' *2008 Baker Act User Reference Guide*, a law enforcement officer does not have to wait at a hospital or other receiving facility for the person to be medically screened, treated, or to have his/her insurance verified. The officer's only duties are to present the person and complete the required paperwork. However, if the person is acting in a dangerous manner, beyond the ability of the facility staff to manage, the officer should stay to assist for a temporary period until hospital clinical or security staff can arrive. It is the responsibility of each Baker Act receiving facility to retain persons safely and not allow them to elope or to depart against medical advice if they meet criteria for involuntary examination.⁷

Evaluations for Involuntary Placement

Once an individual is determined to require continued psychiatric care and does not give consent to voluntary placement, he or she may be the subject of a petition for involuntary placement filed by the facility administrator. The Baker Act permits either involuntary inpatient⁸ or involuntary outpatient⁹ orders. The facility's recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or other psychiatrist,¹⁰ both of whom have personally examined the subject of the recommendation within the preceding 72 hours.

A growing amount of literature now suggests that the use of telepsychiatry or telemedicine to provide mental health services may have the potential to provide increased access to care, especially in remote and underserved areas.¹¹ According to the American Psychiatric Association, telemedicine is a specifically defined form of video conferencing that can provide psychiatric services to patients living in remote locations or otherwise underserved areas. It

⁵ Section 394.462(1)(j), F.S.

⁶ Department of Children and Families (Mental Health Program Office), in collaboration with Department of Mental Health Law and Policy, Louis de la Parte Mental Health Institute, Univ. S. Fla., *2008 Baker Act User Reference Guide*, Appendix G-(2008) which is available at: <<http://www.dcf.state.fl.us/mentalhealth/laws/08appg.pdf>> (Last visited on March 13, 2009).

⁷ *Id.*

⁸ Section 394.467, F.S.

⁹ Section 394.4655, F.S.

¹⁰ Section 394.467(2), F.S., provides that in counties of less than 50,000 population, the second opinion may be provided by a licensed physician trained and experienced in mental and nervous disorder diagnosis and treatment or a psychiatric nurse.

¹¹ Diana J. Antonacci, Richard M. Bloch, Sy Atezaz Saeed, Yilmaz Yildirim, Jessica Talley, *Empirical evidence on the use and effectiveness of telepsychiatry via videoconferencing: Implications for forensic and correctional psychiatry*, Behavioral Sciences and the Law, Vol. 26, Issue 3, May/June (2008). (On file with the Professional Staff of the Florida Senate Children, Families, and Elder Affairs Committee).

connects patients, psychiatrists, physicians, and other healthcare professionals through the use of television cameras and microphones.¹²

While telemedicine may provide increased access to services, it is difficult to receive reimbursement for telemedicine services.¹³ Currently, Medicare reimburses telemedicine providers, while Medicaid does not.¹⁴ According to the Florida Association of Health Plans, some private health insurers in Florida cover telemedicine services.

III. Effect of Proposed Changes:

The bill directs each law enforcement agency to develop a memorandum of understanding, which reflects a single set of protocols, with each receiving facility within the law enforcement agency's jurisdiction. The bill requires the memorandum to include protocols for the safe and secure transportation of the person and transfer of custody of the person. The memorandum must also address crisis-intervention measures.

The bill specifies that custody of a person who is transported pursuant to the Baker Act may only be relinquished to a responsible individual at the appropriate receiving or treatment facility.

For purposes of the Baker Act, the bill defines "electronic means" to mean a form of telecommunication that requires all parties to maintain visual as well as audio communication.

For purposes of involuntary outpatient placement under the Baker Act, the bill clarifies that the examination of an individual must be *face-to-face*, whether the examination is in person or by *electronic means*, by psychiatrists or other specified medical professionals when they are formulating the accompanying opinions to be used as a basis for a recommendation for involuntary placement. The bill also provides for patient examination, face-to-face, whether in person or by electronic means, when a patient in involuntary placement meets the criteria for involuntary outpatient placement or when a patient is being retained by a receiving facility or involuntarily placed in a treatment facility.

The effective date of the bill is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

¹² American Psychiatric Association website:

<<http://www.psych.org/Departments/HSF/UnderservedClearinghouse/Linkedddocuments/telepsychiatry.aspx>> (Last visited March 13, 2009).

¹³ *Id.*

¹⁴ Centers for Medicare and Medicaid Services website: <<http://www.cms.hhs.gov/Telemedicine/>> (Last visited March 13, 2009).

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 30-32 of the bill specify that transfer of custody of a person who is transported pursuant to the Baker Act can be relinquished only to a *responsible individual* at the appropriate receiving or treatment facility. It is unclear who the responsible individual should be and whether the term needs to be defined for purposes of the Baker Act procedures.

The definition of this term may confer a duty on the Department of Children and Family Services, which must be done by the adoption of rules. Under s. 394.457(5), F.S., the Department of Children and Family Services, must adopt rules necessary for the implementation and administration of the provisions of part I, chapter 394, F.S., relating to the Baker Act. Section 120.52(17), F.S., defines "rulemaking authority" to mean statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term: "rule." Section 120.52(16), F.S., defines "rule" to mean each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation and Children on March 25, 2009:

The Committee Substitute for the Committee Substitute for SB 456 clarifies that the examination of an individual in a competency proceeding for involuntary placement under the Baker Act must be face-to-face, whether the examination is in person or by electronic means.

CS by Children, Families, and Elder Affairs on March 4, 2009:

The Committee Substitute for SB 456 clarifies that the memorandum of understanding developed between a law enforcement agency and each receiving facility within the law enforcement agency's jurisdiction will reflect a single set of protocols.

- B. **Amendments:**

None.