

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 535

Mental Illness

SPONSOR(S): Drake

TIED BILLS:

IDEN./SIM. BILLS: SB 456

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee	7 Y, 0 N	Schoolfield	Schoolfield
2)	Public Safety & Domestic Security Policy Committee			
3)	Health & Family Services Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

This bill makes substantive changes to 394, Part I, Florida Statutes, the Florida Mental Health Act also known as "The Baker Act." This section of statute provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment

The bill requires each law enforcement agency to develop memorandums of understanding with all receiving facilities within their jurisdiction to include protocols for safe and secure transportation of persons, transfer of custody of the person and to address crisis intervention measures. The bill also requires the transfer of custody of a person who is transported along with related documentation to a responsible individual at the appropriate receiving or treatment facility. Finally, the bill provides that medical professionals conducting first or second opinion examinations may do so either face to face or by electronic means. These examinations are conducted as reviews of recommendations for inpatient or outpatient placements from receiving or treatment facilities.

The bill is not anticipated to have a fiscal impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Chapter 394, Part I, Florida Statutes is the Florida Mental Health Act also known as "The Baker Act." This section provides authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment. The Department of Children and Families (DCF) administers this portion of the Baker Act through receiving facilities which provide for the examination of persons with evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities which provide for the involuntary examination and short term treatment of persons who meet criteria under this act.<sup>1</sup> Current law provides that an involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness the person has refused a voluntary examination or the person is unable to determine for themselves that an examination is needed and is likely to suffer from self neglect, substantial harm to themselves or be a danger to themselves or others.<sup>2</sup> An involuntary examination may be initiated by any of the following:<sup>3</sup>

- A court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. This order is based on the sworn testimony by the petitioner and is the most frequently used by relatives of the person.
- A law enforcement officer may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.
- Certain medical professionals provided in statute may issue a certificate stating the person they examined meets the criteria for involuntary examination.

During 2007, 122,443 requests for involuntary examination were initiated which represents one or more examination for approximately 83,000 people. Law enforcement officials initiated almost half of the involuntary exams (49 percent) followed by mental health professionals (48 percent) and then *ex parte* orders by judges (3 percent).<sup>4</sup>

Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g.

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<sup>1</sup> s.394.455(26), F.S.

<sup>2</sup> s.394.463(1),F.S.

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

<sup>4</sup> Summary: Involuntary Examination Data and Key Research Findings, Annette Christy, USF, de la Parte Florida Mental Health Institute.

Florida State Hospital) which provide extended treatment and hospitalization, beyond what is provided in a receiving facility.<sup>5</sup>

### *Transportation to Facilities*

Florida statute provides a process for the transportation of persons by law enforcement to receiving facilities for involuntary examination.<sup>6</sup> Law enforcement officers are required to transport an individual to the nearest receiving facility or first to a hospital for emergency medical treatment when warranted. Current law allows DCF to approve transportation exception plans to improve the provision of local transportation services for involuntary examination.<sup>7</sup> The receiving facility is required to accept persons brought by law enforcement unless the person is charged with a crime and the facility is unable to provide adequate security.<sup>8</sup> For all others, the current law does not address the transfer of custody from law enforcement to the receiving facility. DCF offers in their bill analysis that the burden is on the receiving facility to ensure preparedness and adequacy to the task of accepting custody of an individual.<sup>9</sup>

The bill requires each law enforcement agency to develop memorandums of understanding with all receiving facilities within their jurisdiction to include protocols for safe and secure transportation of persons, transfer of custody of the person and to address crisis intervention measures. Some protocols related to safe and secure transportation may already be addressed, in service areas with transportation exception plans as provided for in s. 394.462(3), F.S. The bill does not require a memorandum of understanding with hospitals who are required to accept persons transported for involuntary examination when the person is experiencing an emergency medical condition.<sup>10</sup>

Law enforcement generally provides transport to receiving facilities, but not to treatment facilities. The transport to treatment facilities is arranged by the county government and precludes law enforcement to transport except in small rural counties where there are no cost efficient alternatives.<sup>11</sup> DCF reports they are not aware of any county currently using law enforcement to provide transportation to treatment facilities.<sup>12</sup> Currently, the receiving facility most often provides the transportation to the treatment facility.

The bill requires the transfer of custody of a person who is transported along with related documentation to a responsible individual at the appropriate receiving or treatment facility. The term responsible individual is not defined in the bill or otherwise in statute. It is not clear how the responsible individual would be determined by the person providing the transportation. In addition, the memorandum of understanding in this bill which is to address transfer of custody is only required for receiving facilities and not treatment facilities.

### *Involuntary inpatient or outpatient placement examination*

Florida law allows the administrator of the receiving facility to recommend involuntary inpatient or outpatient placement (admission) of a person who has been examined. Treatment facility administrators may recommend outpatient placements.<sup>13</sup> These recommendations must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist who have personally examined the individual within the preceding 72 hours.<sup>14</sup> The statute is currently silent as to how this examination is to take place. However, DCF reports that these are currently face to face examinations.

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<sup>5</sup> s.394.455(32),F.S.

<sup>6</sup> Under certain circumstances provided in s.394.462(1)(a),F.S. law enforcement may decline to transport individuals to receiving facilities.

<sup>7</sup> s.394.462(3),F.S.

<sup>8</sup> s.394.462(1)(g),F.S.

<sup>9</sup> DCF Staff Analysis and Economic Impact for HB 535, January 9, 2009.

<sup>10</sup> s.394.462(1)(h),F.S.

<sup>11</sup> s.394.462(2)(d),F.S.

<sup>12</sup> DCF Staff Analysis and Economic Impact for HB 535, January 9, 2009.

<sup>13</sup> ss.394.4655 and 394.467,F.S.

<sup>14</sup> In counties with a population less than 50,000 people, a physician with post graduate training in mental or nervous disorders or a psychiatric nurse may provide the second opinion.

The bill provides that the examination for first or second opinion regarding placement by the medical professionals may be conducted either face to face or by electronic means. The term electronic means is not defined in the bill. This examination could be construed to be a video, audio (e.g. telephone examination), email, etc. Without further definition of "electronic means" it is possible that the medical professional providing either first or second opinion would not be required to visually see the patient either by video or face to face.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 394.462, Florida Statutes relating to transportation to a receiving facility and transfer of custody.

**Section 2.** Amends s. 394.4655, Florida Statutes relating to involuntary outpatient placement.

**Section 3.** Amends s. 394.467, Florida Statutes relating to involuntary inpatient placement.

**Section 4.** Provides for an effective date of July 1, 2009

**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:**

No apparent fiscal impact.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None

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

The term "responsible individual" in section 1 is not defined in the bill. A definition could be that the responsible individual is the person identified in the memorandum of agreement to receive transfer of custody.

The transfer of custody in section 1 includes transfers to treatment facilities. However, treatment facilities are not required by the bill to have memorandums of agreement. Also, current law precludes the use of law enforcement to transport to treatment facilities except in small rural counties. Consideration should be given to excluding treatment facilities from (3) since law enforcement is rarely used as transport to these facilities.

The term "electronic means" used in sections 2 and 3 of the bill is not defined. Without a definition, the examination by electronic means could be construed in a variety of ways including audio (e.g. telephone examination), email, video only, video with audio, etc.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2009, the Health Care Services Policy Committee adopted one amendment to the bill. The amendment requires law enforcement agencies to develop memorandums of understanding with each receiving facility within jurisdiction. The memorandums of understanding must reflect a single set of protocols for safe and secure transfer of custody of the individual and include crisis intervention measures.

The bill was reported favorably as a committee substitute.