SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2030

SPONSOR: Committee on Children and Families and Senator Peaden

SUBJECT: Mental Health Treatment

DATE: February 20, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Barnes	Whiddon	CF	Favorable/CS
2.			HC	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

CS/SB 2030 amends the Baker Act to allow the courts to order involuntary outpatient treatment services for certain mental health patients who are 18 years of age or older. The bill modifies the criteria for persons who are taken to a Baker Act receiving facility for an involuntary psychiatric examination and the criteria for involuntary placement by the court to a mental health treatment or receiving facility. These new provisions would require that consideration be given to a person's relevant medical and treatment history and would add a third treatment standard allowing consideration of a well-established history of either: 1) two or more prior acute episodes of mental illness in the previous 36 months that have resulted in self-neglect, dangerousness to self or others, or arrest for criminal behavior, or 2) at least one prior acute episode resulting in physical violence.

The bill provides statutory authority for the court to issue an order that services be provided on an outpatient basis if resources are available. If the patient does not comply with the court order, he may be transported to a Baker Act receiving facility to determine if outpatient placement continues to be the least restrictive treatment alternative. Failure to comply with an outpatient treatment order would not be grounds for contempt of court.

The bill provides for a voluntary treatment agreement and provides for the patient to waive the time periods for an involuntary hearing not to exceed 90 days. The bill provides for court hearings for patients who do not comply with the outpatient treatment order.

This bill substantially amends sections 394.455, 394.4598, 394.463, and 394.467, of the Florida Statutes and reenacts sections 394.67, 394.674, 394.492, 984.19, and 985.211, of the Florida Statutes.

II. Present Situation:

Part I of ch. 394, F.S., is known as the Florida Mental Health Act or the "Baker Act." The Baker Act contains all of the statutory provisions for the involuntary examination and the involuntary placement of persons who are mentally ill and require mental health treatment.

Section 394.463, F.S., specifies the criteria for an involuntary mental health examination. A person may be taken to a receiving facility for involuntary examination if there is reason to believe that he or she is mentally ill and because of his 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 if the examination is necessary; and
- without care or treatment, the person is likely to suffer from neglect or refuses to care for himself which poses a real and present threat of substantial harm to his well-being; and it is not apparent that 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, as evidenced by recent behavior that, without care or treatment, the person will cause serious bodily harm to himself or others in the near future.

Section 394.463(2)(f), F.S., states that a patient must be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay and may not be held in a receiving facility for involuntary examination longer than 72 hours. At the end of 72 hours, the patient must be released or a petition filed with the court for involuntary placement in a mental health receiving or treatment facility.

Section 394.467(1), F.S., includes the Baker Act provisions for the involuntary placement of a patient in a mental health treatment or receiving facility. A person may be involuntarily placed for treatment upon a finding of the court by clear and convincing evidence that the person is mentally ill and because of the mental illness the person:

- has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or
- is unable to determine for himself if placement is necessary; and
- 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 which poses a real and present threat of substantial harm to his well-being; or
- there is substantial likelihood, as evidenced by recent behavior, that in the near future he will inflict serious bodily harm on himself or another person, causing, attempting, or threatening harm; and
- all available less restrictive treatment alternatives which would offer an opportunity for improvement of his condition have been judged to be inappropriate.

According to Baker Act data collected by the Agency for Health Care Administration and analyzed by the Louis de la Parte Florida Mental Health Institute, 96,000 persons (78,720 were 18 years of age or older) received an involuntary examination pursuant to s. 394.463, F.S., during 2001.

Mental health advocates and professionals believe that many hospitalizations could be avoided if a person with serious mental illness received early interventions and appropriate treatment services prior to his mental decompensation. In many cases when persons with mental illness do not receive the proper services, other serious problems exist such as becoming homeless, incarcerated, suicidal, victimized or prone to violent episodes.

Judges and other professionals in Florida=s criminal system and mental health system find that many persons with mental illness who commit misdemeanors cycle in and out of the county jails because they do not have access to the appropriate mental health treatment and support services. These experts believe that persons with mental illness continue to commit misdemeanors for the following reasons: 1) many persons are not diagnosed and treated in jail immediately after arrest, 2) many persons who are stabilized in jail or in a mental health facility decompensate quickly when returning to their home because the appropriate psychiatric medications or other treatment modalities that help maintain mental stability are discontinued, and 3) there is a lack of managing and monitoring of the client in the community to assure that service needs are being met. Mental health experts in Florida=s community mental health system believe that one of the more subtle outcomes of the deinstitutionalization of persons with mental illness from the state mental health hospitals has been their reinstitutionalization in the criminal justice system.

Many states have adopted new treatment standards that are not based solely on dangerousness to self or other but are based on a patient's well established medical and treatment history and other factors such as self-neglect, violence, or arrest for criminal behavior. According to the publication, *The Effectiveness of Involuntary Outpatient Treatment: Empirical Evidence and the Experience of Eight States* by John Petrila, M. Susan Ridgely, and Randy Borum, at least 38 states and the District of Columbia have laws with specific provisions for involuntary outpatient treatment. An evidence-based review was conducted by the researchers of the empirical literature on involuntary outpatient treatment. They found that only two randomized clinical trials of involuntary outpatient treatment have been conducted, one in New York City and one by Duke University investigators in North Carolina, and there were conflicting conclusions.

The New York City study found no statistically significant differences in rates of rehospitalization, arrests, quality of life, psychiatric symptoms, homelessness or other outcomes between the involuntary outpatient treatment group and those who receive intensive services but without a commitment order. The researchers point out that the New York study included a small sample size, non-equivalent comparison groups, and a lack of enforcement of court orders that may have affected the findings making it difficult to draw definitive conclusions.

The Duke study suggests that a sustained outpatient commitment order (180+ days), when combined with intensive mental health services, may increase treatment adherence and reduce the risk of negative outcomes such as relapse, violent behavior, victimization, and arrest. According to the Duke investigators, two factors associated with reduced recidivism and improved outcomes among people with severe mental illness appear to be intensive mental

health treatment and enhanced monitoring for a sustained period of time. In the Duke study, outcomes were only improved for those under court order who received intensive mental health services. The researchers could not conclude if court orders without intensive treatment make a difference in client outcomes.

III. Effect of Proposed Changes:

CS/SB 2030 amends s. 394.455, F.S., by adding definitions for "comprehensive treatment plan" and "service provider." The "comprehensive treatment plan" is defined as a behavioral description of the problems being addressed based on professional evaluations or assessments; a description of the services or treatment to be provided to the patient which address the identified problems, including the type of services or treatment, the frequency and duration of services or treatment, the location at which the services or treatment are to be provided, and the name of each accountable provider of services or treatment; and a description of the measurable objectives of treatment, which, if met, will result in measurable improvements of the condition of the patient. "Service provider" is defined as a publicly funded or private not-for-profit mental health provider that meets the requirements under s. 394.459, F.S., and provides 24-hour, 7-days-a-week on call and on-site services.

The bill amends s. 394.4598, F.S., to specify that if a patient has an involuntary outpatient placement order that includes medication and the patient refuses medication, the guardian advocate may consent to administration of medication over the patient's objection only if the patient is in a receiving facility or a treatment facility.

CS/SB 2030 amends s. 394.463(1), F.S., modifying the criteria for persons 18 years of age or older who are taken to a Baker Act receiving facility for an involuntary psychiatric examination. The bill requires that consideration be given to a person's relevant medical and treatment history and adds a third treatment standard that allows for consideration of a well-established history of either: 1) two or more prior acute episodes of mental illness in the previous 36 months that have resulted in self-neglect, dangerousness to self or others, or arrest for criminal behavior, or 2) at least one prior acute episode resulting in physical violence.

The Department of Children and Family Services (department) believes that this criterion is ambiguous providing little direction to professionals and law enforcement officers who initiate the involuntary examination and could result in a substantial increase in the number of persons taken to a public or private Baker Act receiving facility for an examination.

Section 394.467(1), F.S., is amended to specify that the court must consider a person's "relevant medical and treatment history" when making a decision about the treatment placement of a person with mental illness. The bill adds a third treatment standard that allows for consideration of a well-established history of either: 1) two or more prior acute episodes of mental illness in the previous 36 months that have resulted in self-neglect, dangerousness to self or others, or arrest for criminal behavior, or 2) at least one prior acute episode resulting in physical violence. The bill states that the court may use this new standard only for outpatient treatment.

Section 394.467(2), F.S., is amended to specify that the patient may agree to be evaluated on an outpatient basis for an involuntary placement certificate that must be supported by the opinion of

a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist. The bill requires that both professionals must have personally examined the patient within the preceding 72 hours verifying that the criteria for involuntary outpatient placement are met. The bill includes a provision for those counties with less than 50,000 population when the psychiatrist certifies that no psychiatrist or clinical psychologist is available to provide the second opinion. In those cases, as in current law, the second opinion may be provided by a licensed physician who has had postgraduate training and experience in the diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse.

The bill states that the petition for involuntary outpatient placement may be filed by the administrator of the receiving facility or by any responsible adult and must be based on and include an outpatient placement certificate supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist. The petition must be filed in the county where the patient is located.

Section 394.467(6), F.S., is amended to allow the court to hear relevant testimony at the hearing on involuntary placement from individuals, including family members, regarding the person's prior history and how that history relates to the person's current situation. The bill states that the court may issue an order for outpatient treatment for a period of up to six months if it concludes that ss. 394.467(1)(a)2.a., b., or c., F.S., have been met. The court's outpatient treatment order must be based on the comprehensive treatment plan developed by the service provider and the patient or the patient's guardian or guardian advocate. The treatment plan must describe: 1) the individualized treatment and support needs of the person and 2) the services that are readily available in the community.

The bill states that a treatment order may include provisions for case management, intensive case management, assertive community treatment, or a program for assertive community treatment. The bill lists categories of services that may be used if available, such as medication, periodic urinalysis to determine compliance with treatment, individual or group therapy, day or partial day program activities, and educational or vocational training. Services ordered must be determined to be clinically appropriate by a physician, clinical psychologist, psychiatric nurse or social worker who consults with or is employed or contracted by the provider that is responsible for the delivery of services. The service provider must certify that the ordered services are currently available.

The bill states that the court must approve any modifications of the treatment plan to which the patient does not agree. The court may not order outpatient treatment unless the patient has sufficient support, services, or opportunity for improvement and stabilization. If the patient fails to comply with the outpatient treatment order and meets the criteria for an involuntary examination under s. 394.463(2)(c)-(i), F.S., the patient must be transported to the receiving facility for an involuntary examination to determine if outpatient placement is the least restrictive alternative. The bill states that failure to comply with an outpatient treatment order does not constitute a finding of contempt of court.

The bill specifies that if the patient has an involuntary outpatient placement order that includes medication and the patient refuses medication, the guardian advocate may consent to

administration of medication over the patient's objection only if the patient is in a Baker Act receiving facility or a designated treatment facility.

The bill provides for a voluntary treatment agreement that must be approved by the court and includes a treatment plan providing for treatment in the least restrictive manner consistent with the needs of the patient. The patient may waive the time period for the involuntary placement hearing specified in s. 394.467(6), F.S., not to exceed 90 days from the date of the waiver if the state attorney and the person agree to a voluntary treatment agreement. The bill states that the court shall designate the service provider to monitor the patient's treatment plan and compliance with the voluntary treatment agreement.

If the patient fails to comply with the voluntary treatment agreement, the bill states that the department or its designee must notify the state attorney and the patient's legal counsel. If the patient has not complied within 90 days after the date of the waiver (for a hearing), the bill states that the state attorney may file a statement of facts which constitutes the basis for the belief that the patient is not in compliance. Upon receipt of the statement of noncompliance, the court shall issue a notice of hearing under s. 394.4599, F.S., and proceed with the hearing on involuntary placement. The facts alleged as the basis for involuntary placement prior to the waiver of the time periods for hearing may be the basis for a final disposition at a hearing. A motion may be filed by the subject person requesting that the issue of noncompliance with the agreement be heard at the involuntary placement hearing under s. 394.467(7)(b)2., F.S. That motion must be filed 72 hours before the court hearing, and the burden of proving noncompliance shall be by a preponderance of the evidence.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 2030 has the potential to increase the number of persons who are taken to a private Baker Act receiving facility for an involuntary examination. Persons with private

health insurance will be affected as well as private hospitals that must provide emergency psychiatric care to indigent persons.

C. Government Sector Impact:

CS/SB 2030 would increase the number of persons who are taken to a public Baker Act receiving facility for an involuntary examination. There would be increased screening and treatment costs for publicly funded crisis stabilization units.

The bill specifies that the court may issue an order for outpatient treatment only if there are sufficient supports and services available to the patient.

The department estimates that the bill could result in a 10 percent annual increase in the number of involuntary examinations. There were 78,720 involuntary examinations in FY 1999-2000 for persons 18 years of age or older. Assuming that 75 percent of this number would require services from the publicly funded Baker Act receiving facilities, the annual increased costs for screening services would be approximately $3 million. If these persons are admitted to a publicly funded crisis stabilization unit for 8 days, it would cost an additional $13.7 million ($2852 per admission for 8 days in a crisis stabilization unit bed).

The department reports that patients who return to the Baker Act receiving facilities because of non-compliance with the outpatient treatment order would place an additional but unknown workload on the Baker Act screening programs, crisis stabilization units, and the private receiving facilities.

According to the Office of the State Courts Administrator, the bill would substantially increase court proceedings under the Baker Act. This would impact not only the courts but also the public defenders and the state attorneys. The full financial impact cannot be estimated without further data on the workload increase.

There would be a indeterminate fiscal impact on county governments because under s. 394.76(3)(b), F.S., Baker Act funds require a 25 percent local match.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.