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.)

Prepared By: Health Care Committee

BILL:	CS/SB 1034
INTRODUCER:	Health Care Committee and Senator Rich
SUBJECT:	The Florida Mental Health Act
DATE:	March 9, 2006 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Goltry	Whiddon	CF	**Favorable**
2.	Munroe	Wilson	HE	**Fav/CS**
3.				
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 1034 adds marriage and family therapists (MFTs) licensed under chapter 491, Florida Statutes, to the list of mental health professionals who can execute a certificate authorizing the involuntary examination of an individual believed to be dangerous to herself, himself, or others because of a mental illness. The bill defines "marriage and family therapist" and "mental health counselor" for purposes of part I of ch. 394, F.S. (the Florida Mental Health Act). The definition of "service provider" is revised to include MFTs and mental health counselors (MHCs). The bill also authorizes MFTs and MHCs to determine if the services recommended in a treatment plan for an individual being considered for involuntary outpatient treatment are clinically appropriate. It requires any evaluations performed by an MFT or an MHC to be included in any documentation provided to a treatment facility director when an individual is ordered to involuntary inpatient placement.

This bill substantially amends the following sections of the Florida Statutes: s. 394.455, s. 394.463, s. 394.4655, and s. 394.467, F.S.

II. Present Situation:

The Florida Mental Health Act

Part I of ch. 394, F.S., is the Florida Mental Health Act, also known as "the Baker Act." It provides criteria and processes for the involuntary examination and subsequent involuntary placement (civil commitment) of a person for treatment of a mental illness. For purposes of the Baker Act, "mental illness means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands

of living, regardless of etiology." [1] It does not include developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

Involuntary Examination and Placement

When a person is believed to be mentally ill and because of that illness meets the Baker Act criteria, the law provides that the person must be taken to the nearest receiving facility. The criteria and process required to admit a person to a receiving facility for involuntary examination are found in s. 394.463, F.S., which provides that "a person may be taken to a receiving facility for involuntary examination 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
- The person 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."

The involuntary examination process may be initiated by an ex parte court order, by a law enforcement officer, or by a certificate executed by a physician,[2] clinical psychologist,[3] psychiatric nurse,[4] mental health counselor,[5] or clinical social worker.[6] Persons who are believed to meet the criteria for involuntary examination may be transported to a receiving facility in one of several ways, usually dependent on the method by which the examination was initiated. They may be brought to a facility by a law enforcement officer, a private ambulance service, a family member or friend, or may present themselves for examination.

[1] s. 394.455(18), F.S.
[2] s. 394.455(21), F.S., defines a physician as "a medical practitioner licensed under ch. 458, F.S. or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part."
[3] s. 394.455(2), F.S., defines clinical psychologist as "a psychologist as defined in s. 490.003(7), F.S., with three 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 under this part."
[4] s. 394.455(23), F.S., defines psychiatric nurse as "a registered nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and two years of post-master's clinical experience under the supervision of a physician."
[5] The term "mental health counselor" is not defined in ch. 394, F.S.; it is defined in ch. 491, F.S., as "a person licensed under this chapter to practice mental health counseling."
[6] s. 394.455(4), F.S., defines clinical social worker as "a person licensed as a clinical social worker under ch. 491, F.S."

A person brought to a receiving facility must be examined by a physician or clinical psychologist immediately and may be treated on an emergency basis if treatment is necessary for the safety of the person or others. If the individual is found to meet the criteria for involuntary examination, he or she may be held in a receiving facility for examination for no more than 72 hours. Based on the results of the examination, within the 72 hours one of following must occur:

- The person must be released unless he or she is charged with a crime, in which case he or she is to be returned to the custody of law enforcement;
- The person must be released for voluntary outpatient treatment;
- The person must be asked to give consent for voluntary placement (unless charged with a crime) and if consent is given, admitted as a voluntary patient; or,
- A petition for involuntary placement must be filed in the circuit court.[7]

Section 394.4655, F.S., provides requirements for the involuntary outpatient placement of an individual after examination at a receiving facility. At the time of the hearing on involuntary placement, the court must be provided with a written proposed treatment plan for inclusion in the involuntary outpatient placement order. A service provider has specified duties under the Baker Act for involuntary outpatient placement.[8] A copy of the treatment plan must be given to the patient and the administrator of the receiving facility. The service provider must certify to the applicable court in the proposed treatment plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. The treatment plan must be prepared by the service provider who will be providing treatment to the individual and must be deemed to be "clinically appropriate" by a physician, clinical psychologist, psychiatric nurse, or clinical social worker.[9]

The service provider who will have primary responsibility for service provision must be identified by the designated Department of Children and Family Services (DCF) representative before the order for involuntary outpatient placement and must before filing a petition for involuntary outpatient placement, certify to the court whether the services recommended in the patient's discharge plan are available in the local community and whether the service provider agrees to provide those services.[10] The service provider must develop with the patient a treatment or service plan that addresses the needs identified in the discharge plan. The treatment or service plan must be deemed clinically appropriate by certain mental health professionals who consult with or are employed or contracted by the service provider.[11]

Section 394.467, F.S., provides that when an individual is involuntarily placed in an inpatient setting, the administrator of the receiving facility must provide a copy of the court order and "adequate documentation of a patient's mental illness" to the administrator of the treatment facility to which the person is be admitted. The documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a clinical psychologist or a clinical social worker.

[7] S. 394.463(2)(i), F.S.
[8] S. 394.4655(2)(a), F.S.
[9] S. 394.4655(2)(a), F.S.
[10] S. 394.4655(2)(c), F.S.
[11] S. 394.4655(2)(c), F.S.

As part of major revisions to the Baker Act in 2004, the Legislature added mental health counselors (MHCs) to the list of professionals who could initiate an involuntary examination under the provisions of s. 394.463, F.S.[12] However, this provision had a delayed effective date to allow time for completion of a study of the effect of expanding the pool of qualified mental health professionals who may assess and refer persons for involuntary examination. The law directed DCF to contract with the Louis de la Parte Florida Mental Health Institute at the University of South Florida to evaluate data provided by a pilot project in DCF District 4, which encompasses Baker, Clay, Duval, Nassau, and St. John's counties. The purpose of the study was to determine the fiscal impact of including in the involuntary examination provisions of the Baker Act mental health professionals who were not at that time permitted by law to seek involuntary examination under the Baker Act.

The study found that there was no fiscal impact as a result of adding MHCs as a mental health professional authorized to initiate examinations. This was based on the negligible change in the total number of examinations, the number of examinations by mental health professionals, and the relative percentages of exams by mental health professionals, law enforcement officials and judges. The study's findings included:

- There were 106 MHC initiated exams during the four-month time span in 2004.
- The number and percentage of the total exams initiated by mental health professionals decreased from the 2003 time period when compared to the identical period in 2004 (2003 = 933 exams or 36 percent; 2004 = 869 exams or 33 percent).
- There was a negligible (less than one percent) increase in involuntary examinations in District 4 Baker Act receiving facilities from the four-month time span in 2003 (2,639 exams) to the same four-month time span in 2004 (2,658 exams).
- The number of initiations from physicians decreased 11 percent from 728 (78 percent of mental health professional initiations) for the 2003 time span to 587 (67 percent) for the 2004 time span. The number and percentage of exams decreased slightly or remained almost the same for psychologists, nurses and licensed clinical social workers.
- The 106 MHC initiations accounted for 13 percent of the mental health professional initiations during the 2004 time span. The 11 percent reduction in mental health professional initiations by physicians and the 13 percent increase accounted for by MHCs suggests that MHCs may have conducted initiations previously conducted by physicians.[13]

Based on the absence of any observed fiscal impact, the workgroup recommended no change to the statutory amendment permitting MHCs to initiate Baker Act involuntary examinations statewide beginning July 1, 2005.

Although MHCs are among the list of mental health professionals who can execute a certificate authorizing the involuntary examination of an individual believed to be dangerous to herself, himself, or others because of a mental illness, the applicable statutes in the Baker Act have not

[12] Ch 2004-385, L.O.F.
[13] University of South Florida, Louis de la Parte Florida Mental Health Institute, The Fiscal Impact of Permitting Licensed Mental Health Counselors to Initiate Baker Act Involuntary Examinations, March 1, 2005.

been amended to conform. The Baker Act does not define MHCs for purpose of the Baker Act or include MHCs within the definition of "service providers." The Baker Act defines "service provider" to mean any public or private receiving facility, an entity under contract with DCF to provide mental health services, a clinical psychologist, a clinical social worker, a physician, a psychiatric nurse, or a community mental health center or clinic as defined in the Baker Act. The Baker Act has not been revised to require that the documentation for hearings on the involuntary inpatient placement of a patient include evaluations of the patient performed by an MHC.[14]

Licensure of Marriage and Family Therapists

Marriage and family therapists are licensed under ch. 491, F.S., which defines the practice of marriage and family therapy as "the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. The practice of marriage and family therapy includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of marriage and family therapy includes, but is not limited to, marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy. The practice of marriage and family therapy also includes counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients, when using methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, or substance abuse. The practice of marriage and family therapy may also include clinical research into more effective psychotherapeutic modalities for the treatment and prevention of such conditions."[15]

The law also provides that the terms "diagnose" and "treat," as used in ch. 491, F.S., shall not be construed to permit the performance of any act which MFTs are not educated and trained to perform, including, but not limited to, admitting persons to hospitals for treatment of the foregoing conditions, treating persons in hospitals without medical supervision, prescribing medicinal drugs as defined in ch. 465, F.S., authorizing clinical laboratory procedures pursuant to ch. 483, F.S., or radiological procedures, or use of electroconvulsive therapy.[16]

The practice of marriage and family therapy is regulated by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within the Department of Health. Marriage and family therapists are licensed by examination and must meet minimum educational and clinical practice experience which includes a minimum of a master's degree from an accredited institution of higher education with major emphasis in marriage and family therapy or a closely related field, a supervised clinical practicum, internship, or field experience in a

[14] s. 394.467, F.S.
[15] s. 491.003(8), F.S.
[16] Ibid.

marriage and family counseling setting, and not less than two years of clinical experience. To obtain a license as an MFT, an applicant must pass a theory and practice examination provided by the department for this purpose.[17]

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1034 amends s. 394.455, F.S., adding a definition of "marriage and family therapist" and "mental health counselor." For purposes of the Baker Act, an MFT or MHC must be licensed under ch. 491, F.S. The definition of "service provider" is revised to include MFTs and MHCs. The bill adds MFTs to the list of mental health professionals who can execute a certificate authorizing the involuntary examination of an individual believed to be dangerous to herself, himself, or others because of a mental illness. It also authorizes MFTs and MHCs to determine if the services recommended in a treatment plan for an individual being considered for involuntary outpatient treatment are clinically appropriate. It requires any evaluations performed by an MFT or MHC to be included in any documentation provided to a treatment facility director when an individual is ordered to involuntary inpatient placement.

The bill has an effective date of July 1, 2006.

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 Art. VII, s. 18 of the Florida Constitution.

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 Art. I, s. 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 Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Marriage and family therapists will be authorized to deliver certain services for which they may be reimbursed.

[17] s. 491.005(3), F.S.

C. Government Sector Impact:

If the addition of another professional who can authorize involuntary examination results in more people admitted to public-receiving facilities, there will be an increased cost to the state. However, based on previous experience, this impact would most likely be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.