HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1183 Admission of Children and Adolescents to Mental Health Facilities
SPONSOR(S): Health & Human Services Committee, Children, Families & Seniors Subcommittee, Silvers
TIED BILLS: **IDEN./SIM. BILLS:** SB 1580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 0 N, As CS	Siples	Brazzell
2) Health & Human Services Committee	18 Y, 0 N, As CS	Siples	Calamas

SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness and presenting a threat of harm to themselves or others. The Baker Act also establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations and then act in response to the findings. Baker Act examinations occur in receiving facilities such as crisis stabilization units and hospitals and must conclude within 72 hours under most circumstances.

Between July 1, 2015 and June 30, 2016, 32,475 involuntary examinations were initiated under the Baker Act for individuals under the age of 18. CS/CS/HB 1183 requires a receiving facility to initiate an involuntary examination of a minor within 12 hours of arrival.

The bill creates a 12-member task force within the Department of Children and Families to address the issue of involuntary examinations of minors, and requires the task force to report its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2017.

The bill will have an insignificant negative fiscal impact on DCF and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

Mental illness affects millions of people in the United States each year. Only about 17% of adults in the United States are considered to be in a state of optimal mental health.[4] One in five adults (43.8 million people) experiences mental illness in a given year, [5] and one in five children ages 13-18 have or will have a serious mental illness.[6] Half of all lifetime cases of mental illness begin by age 14, and scientists are discovering that changes in the body leading to mental illness may start much younger, before any symptoms appear.[7]

Baker Act

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws. [8] The Act provides legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.[9]

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[1] Centers for Disease Control and Prevention, *Mental Health Basics*, (Oct. 4, 2013), available at http://www.cdc.gov/mentalhealth/basics.htm (last visited April 11, 2017).
[2] Id.
[3] Id.
[4] Id. Mental illness can range in severity from no or mild impairment to significantly disabling impairment. Serious mental illness is a mental disorder that has resulted in a functional impairment which substantially interferes with or limits one or more major life activities. National Institute of Mental Health, *Any Mental Illness (AMI) Among Adults*, available at http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml (last viewed on April 11, 2017).
[5] National Alliance on Mental Illness, *Mental Health Facts in America,* available at http://www.nami.org/NAMI/media/NAMI-Media/Infographics/GeneralMHFacts.pdf (last visited April 11, 2017).
[6] National Alliance on Mental Illness *Mental Health Facts: Children & Teens*, available at http://www.nami.org/NAMI/media/NAMI-Media/Infographics/Children-MH-Facts-NAMI.pdf (last visited April 11, 2017).
[7] National Institute of Mental Health, *Treatment of Children with Mental Illness*, (rev. 2009), available at https://www.nimh.nih.gov/health/publications/treatment-of-children-with-mental-illness-fact-sheet/index.shtml (last visited April 11, 2017).
[8] Sections 394.451-394.47892, F.S.
[9] Section 394.459, F.S.

Involuntary Examination and Receiving Facilities

Individuals in an acute mental or behavioral 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.[10] 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[11]:

- 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.

Involuntary patients must be taken to either a public or a private facility that has been designated by the Department of Children and Families (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 mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[12] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[13] Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.[14]

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding to provide services to individuals showing acute mental health disorders. CSUs screen, assess, and admit for stabilization individuals who voluntarily present themselves to the unit, as well as individuals who are brought to the unit on an involuntary basis.[15] CSUs provide patients with 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services.[16] The purpose of a crisis stabilization unit is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs.[17] Individuals often enter the public mental health system through CSUs.[18] For this reason, crisis services are a part of the comprehensive, integrated, community mental health and substance abuse services established by Legislature in the 1970s to ensure continuity of care for individuals.[19]

As of November 2015, there are 122 Baker Act receiving facilities in this state, including 53 public receiving facilities and 69 private receiving facilities.[20] Of the 53 public receiving facilities, 39 are also contracted to provide CSU services.[21]

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[10] Sections 394.4625 and 394.463, F.S.
[11] Section 394.463(1), F.S.
[12] Section 394.455(39), F.S. This term does not include a county jail.
[13] Section 394.455(37), F.S
[14] Rule 65E-5.400(2), F.A.C.
[15] Section 394.875(1)(a), F.S.
[16] Id
[17] Id.
[18] Florida Senate, Budget Subcommittee on Health and Human Services Appropriations, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011), available at https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-109bha.pdf (last visited April 11, 2017).
[19] Id. Sections 394.65-394.9085, F.S.
[20] Department of Children and Families, *Crisis Stabilization Services Utilization Data Implementation Status Report*, (Feb. 29, 2016), available at http://www.dcf.state.fl.us/programs/samh/publications/CSSUReport.pdf (last visited April 11, 2017).
[21] Id.

Under the Baker Act, a receiving facility must examine an involuntary patient within 72 hours of arrival.[22] Within that 72-hour examination period, or if the 72 hours ends on a weekend or holiday, no later than the next business day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to a placement as a voluntary patient and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.[23]

Receiving facilities must give prompt notice[24] of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,[25] guardian advocate,[26] health care surrogate or proxy, attorney, or representative.[27] If the patient is a minor, the receiving facility must give prompt notice to the minor's parent, guardian, caregiver, or guardian advocate. Notice for an adult may be provided within 24 hours of arrival; however, notice for a minor must be provided immediately after the minor's arrival at the facility. The facility may delay the notification for a minor for up to 24 hours if it has submitted a report to the DCF central abuse hotline. The receiving facility must attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until it receives confirmation that the notice has been received. Attempts must be repeated at least once every hour during the first 12 hours after the minor's arrival and then once every 24 hours thereafter until confirmation is received, the minor is released, or a petition for involuntary services is filed with the court.[28]

There were 194,354 involuntary examinations initiated at hospitals and CSUs between July 1, 2015 and June 30, 2016. Of those, 32,475 involuntary examinations were initiated for individuals under the age of 18.[29]

Effect of Proposed Changes

CS/CS/HB 1183 requires a receiving facility to initiate an involuntary examination under the Baker Act of a minor within 12 hours of arrival at the facility.

The bill creates a 12-member task force within DCF to address the issue of involuntary examinations of minors. The task force must:

- Analyze data on the initiation of involuntary examinations of children;
- Research the root causes of trends in such examinations;
- Identify and evaluate options for expediting examinations for children; and
- Identify recommendations for encouraging alternatives to these examinations.

[22] Section 394.463(2)(g), F.S.
[23] Id.
[24] Notice may be provided in person or by telephone; however, in the case of a minor, notice may also be provided by other electronic means. Section 394.455(2), F.S.
[25] "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated. Section 394.455(17), F.S.
[26] "Guardian advocate" means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment. Section 394.455 (18), F.S.
[27] Section 394.4599(2)(b), F.S.
[28] Section 394.4599(c), F.S.
[29] Christy, A., et al., Baker Act Reporting Center, Louis de la Parte Florida Mental Health Institute, Department of Mental Health Law & Policy, University of South Florida, *Fiscal Year 2015/2016 Report Annual Report* (March 2017), available at http://www.usf.edu/cbcs/baker-act/documents/annual_report.pdf (last visited April 11, 2017).

The task force is comprised of stakeholders from the education, mental health, law enforcement, and legal fields. The bill authorizes the Secretary of DCF to add additional members, if appropriate. The task force must submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2017.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.463, F.S.; regarding involuntary examination.
Section 2: Creates a task force within Department of Children and Families.
Section 3: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF may incur an insignificant negative fiscal impact for costs associated with the task force created in the bill. However, the bill directs DCF to use existing and available resources to administer and support the task force.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Receiving facilities are required to initiate an involuntary examination within 12 hours. Depending on an individual facility's staffing levels and the number of minors that require an involuntary examination, a receiving facility may incur increased costs to meet the bill's requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Children, Families, and Seniors Subcommittee adopted an amendment that deleted the requirement that a public defender be appointed, within 24 hours of arrival, for each minor under the age of 18 who is subject to involuntary services at a receiving facility or residential treatment center. The amendment requires that a facility initiate an involuntary examination of a minor age 10 or younger within 12 hours of arrival and complete it within 24 hours of arrival. It also makes a conforming change to parental notification requirements.

On April 20, 2017, the Health and Human Services Committee adopted an amendment that requires a receiving facility initiate an involuntary examination of all minors within 12 hours of arrival at the facility. The amendment also creates a task force within DCF to address the issue of involuntary examinations of minors and requires it to report its findings to the Governor and Legislature by December 1, 2017.

The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.