The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL:	SB 1580
INTRODUCER:	Senator Gibson
SUBJECT:	Admission of Children and Adolescents to Mental Health Facilities
DATE:	April 14, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Pre-meeting**
2.			JU	
3.			AP	

I. Summary:

SB 1580 requires a receiving facility or a mental health treatment facility to refer the case of a minor admitted to such a facility for a mental health assessment to the clerk of the court for the appointment of a public defender within a specified timeframe. The bill also requires the child's attorney have access to all records relevant for representation of the child in a judicial hearing and the hearing must be in person and not be held by electronic or video means. A violation of these provisions is a first degree misdemeanor.

The bill has an effective date of July 1, 2017, and an indeterminate but negative fiscal impact on the State Court System.

II. Present Situation:

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.

Individuals in 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.[1] 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:[2]

[1] Sections 394.4625 and 394.463, F.S.
[2] Section 394.463(1), F.S.

- 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.3

Within the 72-hour examination period, or if the 72 hours end 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 and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.[4]

Receiving facilities must give prompt notice[5] of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,[6] guardian advocate,[7] health care surrogate or proxy, attorney, and representative.[8] 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 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

[3] Section 394.455(39), F.S. This term does not include a county jail.
[4] Section 394.463(2)(g), F.S.
[5] 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.
[6] "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.
[7] "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.
[8] Section 394.4599(2)(b), F.S.

every 24 hours thereafter until confirmation is received, the minor is released, or a petition for involuntary services is filed with the court.[9]

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.[10] CSUs provide patients with 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services.[11] The purpose of a CSU is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs.[12] Individuals often enter the public mental health system through CSUs. For this reason, crisis services are a part of the comprehensive, integrated, community mental health and substance abuse services established by the Legislature in the 1970s to ensure continuity of care for individuals.[13]

During calendar year 2015, 32,882 involuntary examinations were initiated under the Baker Act for individuals under the age of 18. These examinations occur in receiving facilities such as crisis stabilization units and hospitals and must conclude within 72 hours under most circumstances. Residential treatment centers generally provide longer-term assessment and treatment services.

Section 394.467, F.S., defines "residential treatment center for children and adolescents" as a 24-hour residential program, including a therapeutic group home, which provides mental health services to emotionally disturbed children or adolescents and which is a private for-profit or not-for-profit corporation licensed by the agency which offers a variety of treatment modalities in a more restrictive setting. Residential treatment centers provide longer-term treatment services. The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services to children and adolescents who are experiencing an acute mental or emotional crisis, have a serious emotional disturbance or mental illness, or have an emotional disturbance. The treatment center must provide the least restrictive available treatment that is appropriate to the individual needs of the child or adolescent.[14]

Section 39.407, F.S., details procedures for placing a child who is in the legal custody of the Department of Children and Families due to involvement in the child welfare system in a residential treatment center. Such procedures include an assessment by a qualified evaluator, mandatory appointment of a guardian ad litem, regular reporting by the center to the court on the child's progress, and court review hearings. There are no similar statutory provisions for child who is not in the legal custody of the Department of Children and Families.

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[9] Section 394.4599(c), F.S.
[10] Section 394.875(1)(a), F.S.
[11] *Id.*
[12] *Id.*
[13] Florida Senate, Budget Subcommittee on Health and Human Services Appropriations, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-109bha.pdf (last visited April 12, 2017).
[14] Section 394.4785(2), F.S.

The public defender is elected for a term of four years during a general election by the electors in his or her judicial circuit.[15] The public defender in each judicial circuit may employ, as authorized by the General Appropriations Act, assistant public defenders and other staff needed to fulfill the duties of the office.[16]

Under s. 27.51, a public defender must represent, without additional compensation, any person determined to be indigent[17] and:

- Is under arrest for or charged with:
  - A felony;
  - Certain misdemeanors;
  - Certain traffic violations punishable by imprisonment;
  - A violation of a special law or county or municipal ordinance ancillary to a state charge;
- Alleged to be a delinquent child pursuant to a petition filed before the circuit court;
- Sought by petition filed in such court to be
  - Involuntarily placed as a mentally ill person under part I ch. 394, F.S.
  - Involuntarily committed as a sexually violent predator under part V of ch. 394, F.S., or
  - Involuntarily admitted to residential services as a person with developmental disabilities under ch. 393, F.S.;
- Is convicted or sentenced to death, for purposes of handling an appeal to the Supreme Court; or
- Is appealing a matter for which a public defendant may be appointed.

In September 2016, the 2nd District Court of Appeal issued a ruling in response to a suit brought by 14 patients in Lee County regarding conducting Baker Act hearings via videoconference. The judge and magistrate presiding over Baker Act hearings in that county had decided they would no longer travel to receiving facilities to hold commitment hearings in person. Instead, the judge and magistrate would remain in the courthouse and hold hearings via videoconference while the patients, witnesses, and attorneys would continue to be physically present at the receiving facility. The 2nd DCA ruled that "there is simply no duty 'clearly and certainly established in the aw' requiring the judicial officer to be in the physical presence of the patient, attorneys, and witnesses while presiding over the hearing" and concluded that it was within the court's authority to hold Baker Act hearings through videoconferencing. However, the 2nd DCA certified as a question of great public importance, "Does a judicial officer have an indisputable legal duty to preside over section 394.467 hearings in person?"[18] In December 2016 the Supreme Court initially refused to grant a stay and thus allowed the hearings to continue. However, in February 2017 the Supreme Court vacated that ruling and instead issued a stay.[19] The Supreme Court indicated it will issue an opinion in the future.

[15] Section 27.50, F.S.
[16] Section 27.53, F.S.
[17] Section 27.52, F.S.
[18] Doe v. State, 41 Fla. L. Weekly D2220a (Fla. 2d DCA 2016).
[19] Doe v. State, SC16-1852.

III. Effect of Proposed Changes:

Section 1 amends s. 394.4599, F.S., to require that within 24 hours after a minor arrives at a receiving facility for an involuntary examination under the Baker Act, or is admitted to a crisis stabilization unit or a residential treatment center, the facility must refer the case to the clerk of court for the appointment of a public defender for a potential judicial review hearing. The attorney representing the child must have access to all records relevant to the child's case. All hearings involving the child must be held in physical presence of the child and may not be conducted by an electronic or video means. A person who fails to comply with the requirements of the bill's provisions commits a first degree misdemeanor.

Section 2 amends s. 394.4785, F.S., to require that within 24 hours after a minor arrives at a receiving facility for an involuntary examination under the Baker Act, or is admitted to a crisis stabilization unit or a residential treatment center, the facility must refer the case to the clerk of court for the appointment of a public defender for a potential judicial review hearing. The attorney representing the child must have access to all records relevant to the child's case. All hearings involving the child must be held in physical presence of the child and may not be conducted by an electronic or video means. A person who fails to comply with the requirements of the bill's provisions commits a first degree misdemeanor.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.[20] This fundamental liberty interest is rooted in the fundamental right of privacy from interference in making important decisions relating to things such as marriage, family relationships, and child rearing and education.[21]

[20] *Santosky v. Kramer*, 45 U.S. 745 (1982); *Troxel v. Granville*, 530 U.S. 57, 65 (2000)
[21] See *Carey v. Population Svcs. Int/l*, 431 U.S. 678, 684-685 (1977)

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.[22] These rights may not be intruded upon absent a compelling state interest.[23]

When it comes to medical decisions, parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the State also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.[24]

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.[25] In the event the minor's parent or legal guardian are not contacted prior to the appointment of a public defender, under this bill the parent and the minor's legal representative may be at odds regarding medical treatment for a child.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If review hearings are scheduled in response to any motions by the appointed public defenders, there may be additional costs to facilities to transport minors to the hearings.

C. Government Sector Impact:

The state court system will experience an indeterminate but significant negative fiscal impact associated with the additional duty assigned to the public defenders to represent children under the age of 18 within 24 hours after admission to a public or private facility. Presently, if a person is admitted for evaluation and assessment meets the criteria, within 72 hours a petition for involuntary inpatient treatment must be filed with the court. At the hearing on the petition, a public defender is appointed to represent the person being held if they cannot afford to hire their own attorney.

VI. Technical Deficiencies:

None.

[22] *Beagle v. Beagle*, 678 So. 2d 1271
[23] See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.* 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So.2d 1105, 1107 (fla. 5th DCA 2001).
[24] *Von Eiff v. Azicri*, 720 So.2d 510 (Fla. 1998).
[25] *M.N. v. S. Baptist Hosp.*, 648 so.2d 769 (Fla. 1st DCA 1994).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.4599, 394.4785.

IX. Additional Information:

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

None.

B. Amendments:

None.