

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 1102

INTRODUCER: Senator Harrell

SUBJECT: Defendants With Mental Illness

DATE: March 26, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 1102 creates a framework for mental health diversion programs as an alternative to criminal prosecution for individuals charged with misdemeanor offenses who appear to meet the criteria for involuntary examination under the Baker Act. The bill requires county jails to screen misdemeanor offenders for mental health disorders within 24 hours of booking, and requires a mental health professional under the Baker Act (a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage/family therapist, or clinical social worker) to perform an evaluation if the screening indicates the presence of mental illness.

The bill requires a jail to transport defendants who are deemed to meet Baker Act evaluation criteria to a receiving facility. The bill requires the state attorney to consider dismissal of criminal charges against defendants who voluntarily agree to the terms of, and successfully complete, an outpatient treatment plan recommended by the facility.

The bill will likely have a fiscal impact on Baker Act receiving facilities, courts, local law enforcement, and county jails. The bill is effective July 1, 2019.

II. Present Situation:

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.¹ The Act authorized treatment programs for mental, emotional, and behavioral disorders. The Baker Act required programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated

¹ Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Mental illness creates enormous social and economic costs.² Unemployment rates for persons having mental disorders are high relative to the overall population.³ Rates of unemployment for people having a severe mental illness range between 60 percent and 100 percent.⁴ Mental illness increases a person's risk of homelessness in America threefold.⁵ Approximately 33 percent of the nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are untreated.⁶ Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future recidivism.⁷

Transportation to a Facility

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.⁸

Involuntary Admission to a Facility

Time Limits

A critical 72-hour period applies under the Baker Act; it provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.⁹ Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next working 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 resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.¹⁰

² MentalMenace.com, *Mental Illness: The Invisible Menace; Economic Impact*, <http://www.mentalmenace.com/economicimpact.php> (last visited March 21, 2019).

³ MentalMenace.com, *Mental Illness: The Invisible Menace: More impacts and facts*, <http://www.mentalmenace.com/impactsfacts.php> (last visited March 21, 2019).

⁴ *Id.*

⁵ Family Guidance Center for Behavioral Health Care, *How does Mental Illness Impact Rates of Homelessness?*, <http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/> (last visited March 21, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ Section 394.462(1)(f) and (g), F.S.

⁹ Section 394.463(2)(f), F.S.

¹⁰ Section 394.463(2)(i)4., F.S.

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within five working days after a petition for involuntary placement is filed.¹¹ The petitioner must show, by clear and convincing evidence all available less restrictive treatment alternatives are inappropriate and that the individual:

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect to such an extent that it poses a real and present threat of substantial harm to his or her well-being, or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.¹²

Crisis Stabilization Units

Individuals experiencing severe emotional or behavioral problems often require emergency treatment to stabilize their situations before referral for outpatient services or inpatient services can occur. Emergency mental health stabilization services may be provided to individuals on a voluntary or involuntary basis. Individuals receiving services on an involuntary basis must be taken to a facility that has been designated by DCF as a “receiving facility” as defined in Part I of ch. 394, F.S.¹³

Receiving facilities, often referred to as Baker Act Receiving Facilities, are public or private facilities designated by DCF for the purposes of receiving and examining individuals on an involuntary basis under emergency conditions and to provide short-term treatment. Receiving facilities that have a contract with one of the managing entities to provide mental health services to all persons regardless of their ability to pay, and that are receiving state funds for this purpose, are considered public receiving facilities.¹⁴

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals brought to the unit under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services.¹⁵ CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs. Individuals often enter the public mental health system through CSUs.¹⁶ Managing entities must follow current statutes and rules that require CSUs to be paid for bed availability rather than utilization.

¹¹ Sections 394.4655(6) and 394.467(6), F.S.

¹² Section 394.467(1), F.S.

¹³ Section 394.455(26), F.S.

¹⁴ Section 394.455(25), F.S.

¹⁵ Section 394.875, F.S.

¹⁶ Budget Subcommittee on Health and Human Services Appropriations, the Florida Senate, Crisis Stabilization Units, (Interim Report 2012-109) (September 2011).

Section 394.461(4), F.S., directs facilities designated as public receiving or treatment facilities to report to DCF on an annual basis the following data, unless the data is currently being submitted to the Agency for Health Care Administration:

1. Number of licensed beds.
2. Number of contract days.
3. Number of admissions by payor class and diagnosis.
4. Number of bed days by payor class.
5. Average length of stay by payor class.
6. Total revenues by payor class.

The DCF must issue an annual report based on the data required including individual facility data and statewide totals. The report is submitted to the Governor and the Legislature.

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.¹⁷

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.¹⁸

While a defendant is in the program, criminal charges remain pending. If the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case. The court may not appoint the public defender to represent an indigent offender released to the pretrial intervention program unless the offender's release is revoked and the offender is subject to imprisonment if convicted.¹⁹ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.²⁰

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.²¹

¹⁷ Section 948.08(1), F.S.

¹⁸ Section 948.08 (2), F.S.

¹⁹ Section 948.08(3) and (4), F.S.

²⁰ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

²¹ Section 948.08(1), F.S.

Reentry Programs for Nonviolent Offenders

Inmates who enter prison often have shortcomings in one or more areas of education, employment skills, substance abuse-free living, and mental health that contributed to their current situation. Unless addressed, these deficiencies are likely to contribute to re-offending and a return to prison. In the past decade the executive and legislative branches of state government have acknowledged the importance of reentry services and post-release planning and transition, and the Department of Corrections (DOC) revised its mission statement to include assisting offenders with reentry into society in order to reduce recidivism and to lower crime rates.²²

Mental Health Courts

Mental health courts are a type of problem-solving court that combines judicial supervision with community mental health treatment and other support services in order to reduce criminal activity and improve the quality of life of participants. Mental health court programs are not established or defined in Florida Statutes. A key objective of mental health courts is to prevent the jailing of offenders with mental illness by diverting them to appropriate community services or to significantly reduce time spent incarcerated. As of March 2019, Florida has 25 mental health courts operating in 16 jurisdictions.²³

III. Effect of Proposed Changes:

Section 1 amends s. 916.105, F.S., expressing legislative intent that a defendant who is charged with a misdemeanor and has a mental illness, intellectual disability, or autism should be evaluated and provided services in a community setting. The bill adds legislative intent that law enforcement agencies provide law enforcement officers with crisis intervention team training, and that in all instances in which a person meeting the criteria for involuntary placement under the Baker Act commits a nonviolent misdemeanor, that person be civilly committed under the Baker Act in lieu of, rather than in addition to, criminal prosecution.

Section 2 amends s. 916.106, F.S., revises the definition of “defendant” to include an adult, or juvenile who is prosecuted as an adult, who has been arraigned or charged with a misdemeanor offense.

Section 3 creates s. 916.135, F.S., relating to mental health screening of defendants who commit misdemeanors and mental health diversion programs. The bill requires all defendants arrested for misdemeanor crimes to be screened for mental health disorders by jail staff within 24 hours of being booked into jail; if the screening results in an indication of mental illness, an authorized professional under the Baker Act must evaluate the defendant to determine their suitability for involuntary examination. The bill requires that if the individual appears to meet the criteria for involuntary examination, the authorized professional must issue a certificate to this effect and state the observations upon which their conclusion is based.

²² Department of Corrections, *2012 Florida Prison Recidivism Study – Releases from 2004 to 2012*, p. 9, <http://www.dc.state.fl.us/pub/recidivism/2012/ratesovertime.html> (last visited March 21, 2019).

²³ Florida Courts, *Mental Health Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Mental-Health-Courts> (last visited March 21, 2019).

Upon the issuance of a professional certificate, the bill requires the jail to immediately forward a copy of the certificate to the assigned misdemeanor judge or a designated mental health judge if available, and the judge must sign a transport order requiring the sheriff or jail to transport the defendant to a Baker Act receiving facility within 48 hours. The bill also requires the jail to forward a copy to the state attorney and public defender or private counsel. The bill requires the transport order to specify that the receiving facility may only release the defendant back to jail custody and must reset the misdemeanor case for return to court within 14 days. The bill requires the defendant to undergo an assessment and evaluation to determine if they meet the criteria for involuntary placement upon their arrival at the receiving facility. If the defendant meets the criteria for involuntary inpatient placement under the Baker Act and chooses to accept the terms of a treatment plan on a voluntary basis, the defendant, upon discharge from the designated receiving facility, must be returned to court before the assigned judge for issuance of an order releasing the defendant on his or her own recognizance, on the condition that the defendant comply with all aspects of the treatment plan.

The bill provides that as a condition of participating in a mental health diversion program, the defendant must authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient's health care or mental health care and to appear for all court appearances, and the defendant must be advised that failure to comply fully with any aspect of the treatment plan or release order may cause the court to issue a warrant for the defendant's arrest and return to jail. The bill provides that the defendant's successful completion of the treatment plan may also be a requirement of a diversion contract that the state attorney may offer and the defendant may accept in resolution of a misdemeanor charge. If the defendant does not meet the criteria for involuntary inpatient placement under the Baker Act and the defendant does not choose to accept the terms of an outpatient treatment plan on a voluntary basis, the bill requires the receiving facility to evaluate the defendant to determine if they meet the criteria to file a petition for involuntary outpatient placement under the Baker Act. If this is case, the bill requires that the facility file a petition with the court for involuntary outpatient services, along with a written proposed treatment plan.

The bill requires the assigned judge to promptly review the defendant's case and charges with the assigned assistant state attorney and assistant public defender or private counsel. The bill requires the parties to consider diverting the defendant's case to a mental health diversion program on the condition that the defendant comply with the involuntary outpatient placement treatment plan. The bill specifies that if the defendant is assigned an assistant public defender or regional counsel, or if private counsel is retained, a guardian does not need to be appointed.

The bill provides that if the defendant does not meet the Baker Act criteria but has a qualifying mental health diagnosis and chooses to voluntarily participate in a mental health diversion program, the defendant must be returned to court. Qualifying mental health diagnoses include schizophrenia spectrum and other psychotic disorders, bipolar disorder, major depressive disorder, post-traumatic stress disorder, or other disorders diagnosed by a qualified professional, that result in serious functional impairment that substantially interferes with or limits one or more major life activities.

The bill further provides that if the defendant is admitted to a receiving facility and does not meet the criteria for involuntary inpatient outpatient placement under the Baker Act and the defendant does not choose to accept the terms of a treatment plan on a voluntary basis, or if the state attorney declines to offer a mental health diversion contract to the defendant, the defendant must be returned to the custody of the jail where his or her case must proceed under the applicable rules of criminal procedure.

The bill requires that if, at any stage of a criminal case, a party or the court raises a concern regarding a defendant's competency to proceed due to a mental illness and the defendant is in jail custody, the judge must order the jail medical staff to assess the defendant for issuance of a professional certificate under the Baker Act. If a professional certificate is issued, speedy trial must immediately be tolled and the parties must follow the procedures in the bill as previously outlined.

If the jail medical staff finds that the defendant does not meet the criteria for issuance of a professional certificate or if the defendant is not in jail custody, the assigned judge on the misdemeanor case must hold an evidentiary hearing to determine whether clear and convincing evidence exists to conclude that the defendant meets any of the following criteria:

- The defendant is manifestly incapable of surviving alone or without the help of willing and responsible family or friends, including available alternative services, and without treatment the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being;
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; or
- There is a substantial likelihood that a mental illness played a central role in the behavior leading to the current arrest, or there is a substantial likelihood that a mental illness will lead to repeated arrests for criminal behavior if the defendant does not receive treatment.

If the assigned judge concludes that any of the criteria in paragraph (a) is met, the bill requires the judge to enter an order tolling speedy trial in the misdemeanor case and enter an ex parte order stating that the person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The bill requires the defendant to appear within 48 hours at the nearest mental health treatment center to submit to a full mental health assessment. If the defendant is in jail custody, the assigned judge must execute an order directing the sheriff or jail authorities to transport the defendant for purposes of completing the assessment. The bill requires the results of the assessment be sent to the assigned judge, who must provide the results to the state attorney and the public defender or private counsel and enter an order amending the conditions of the defendant's pretrial release to compel the defendant to comply with all recommendations for treatment from the assessment. The bill requires that the defendant be advised that failure to comply with the order may result in the issuance of a warrant revoking the defendant's pretrial release and directing the sheriff to arrest and return the defendant to the jail.

Finally, the bill provides that once the defendant successfully completes of all recommendations from the mental health assessment, the state attorney shall consider dismissal of the charges. If

dismissal is deemed inappropriate by the state attorney, the parties must consider referral of the defendant's case to mental health court or another available mental health diversion program. Alternatively, the bill allows the defendant to utilize the Rules of Criminal Procedure to contest the misdemeanor charges.

Section 4 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Since the bill requires cities and counties to have jail staff screen defendants charged with misdemeanor offenses for mental health disorders within 24 hours of booking, it falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that cities and counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. None of the exceptions apply. However, subsection (d) provides an exemption from this prohibition for laws determined to have an "insignificant fiscal impact." The fiscal impact of this bill is indeterminate because the amount of additional staff required at jails throughout the state to conduct mandatory mental health screenings under the bill is unclear. If the costs exceeds the insignificant threshold, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**State Government**

The bill will increase the demand on Baker Act receiving facilities serving defendants charged with misdemeanors who meet the criteria for involuntary examination.

Local Government

The bill will have a fiscal impact on jails in additional staff needed to screen misdemeanor offenders. The bill may also have a fiscal impact on courts if additional staff are needed to process the new Baker Act cases resulting from the bill. Finally, the bill may have a fiscal impact on sheriff's offices and local law enforcement resulting from the need to transport defendants to receiving facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may cause some defendants to be kept in jail for a longer period of time than under current law if they are transported to a receiving facility and subsequently returned to jail if they do not meet the criteria for involuntary admission under the Baker Act.

VIII. Statutes Affected:

This bill substantially amends sections 916.105 and 916.106 of the Florida Statutes. This bill creates section 916.135 of the Florida Statutes.

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.