HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1179 Voluntary Admissions of Minors
SPONSOR(S): Health & Human Services Committee, Children, Families & Seniors Subcommittee, Chaney and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	12 Y, 0 N, As CS	Rahming	Brazzell
2) Health & Human Services Committee	20 Y, 0 N	Rahming	Calamas

SUMMARY ANALYSIS

Mental health is a state of well-being in which the individual realizes their own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to their community. In Florida, the Baker Act provides legal procedures for voluntary and involuntary mental health examination and treatment.

The U.S. Supreme Court has recognized that children have a protectable liberty interest in not being confined unnecessarily for medical treatment and found that the child's rights and the nature of the commitment decisions are such that parents do not always have absolute discretion to institutionalize a child.

Under the Baker Act, a facility may receive a minor for observation, diagnosis, or treatment with the minor's guardian's express and informed consent. If the facility finds there is evidence of mental illness, and the minor is suitable for treatment at that facility, then it can admit the minor, but only after a hearing to verify the voluntariness of the minor's consent. Current law does not specify the type of voluntariness hearing that must be held (e.g., judicial, administrative, or clinical), however, the hearings are currently of a judicial nature and are held before judges or magistrates.

The bill revises the voluntariness provision under the Baker Act to allow a minor's voluntary admission after a *clinical review* of the minor's *assent*, rather than a *hearing* on the minor's *consent*, has been conducted. The bill also requires that a clinical review be held to verify the voluntariness of a minor's assent before a minor patient's status is transferred from involuntary to voluntary.

The bill would have an indeterminate, positive fiscal impact of the State Courts System and no fiscal impact on local governments. See Fiscal Comments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Health and 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. Nearly one in five adults live with a mental illness.[4] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22%.[5]

The 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.[6] 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.[7] The Department of Children and Families (DCF) is the single state authority for mental health treatment services in the state of Florida. 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.[8]

Voluntary Admissions

Under current Florida law, an adult may apply for voluntary admission to a facility for observation, diagnosis, or treatment by giving their expressed and informed consent.[9] The facility may admit the adult if it finds evidence of mental illness, the adult to be competent to provide express and informed consent, and that the adult is suitable for treatment.

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[1] World Health Organization, *Mental Health: Strengthening Our Response,* https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited Jan. 9, 2022).
[2] Centers for Disease Control and Prevention, *Mental Health Basics*, http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited Jan. 9, 2022).
[3] *Id*.
[4] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Jan. 9, 2022).
[5] *Id*.
[6] Ss. 394.451-394.47891, F.S.
[7] S. 394.459, F.S.
[8] Ss. 394.4625 and 394.463, F.S.
[9] S. 394.4625, F.S.

Voluntary Admissions and Procedures Related to Minors

Parents generally have the longstanding right to, and responsibility for, the upbringing of a child, including making medical decisions. The U.S. Supreme Court has recognized that children have a protectable liberty interest in not being confined unnecessarily for medical treatment and found that the child's rights and the nature of the commitment decisions are such that parents do not always have absolute discretion to institutionalize a child. In Parham v. J.R., 442 U.S. 584 (1979), the Court did not recognize a child's right to consent to or refuse treatment or admission, but it did recognize the child's liberty interests, requiring the constitutional right to due process before even voluntary admission to a mental health institution.

The Court determined due process is satisfied as long as a "neutral factfinder" has the authority to deny admission and is able to determine whether the child meets the statutory and medical standards for admission.[10] Thus, while parents have the right to seek such care for their child, the decision to admit the child must be subject to independent medical judgment and periodic review.[11] The Court further determined due process does *not* require that:[12]

- The neutral factfinder be a person trained in the law or a judicial or administrative officer;
- The admitting physician conduct a formal or quasi-formal adversary hearing; or
- The hearing be conducted by someone other than the admitting physician.

This means a staff physician at a receiving facility could satisfy due process requirements, so long as he or she is free to evaluate independently the child's mental and emotional condition and need for treatment.[13]

Under current Florida law, a facility may receive a minor for observation, diagnosis, or treatment with the minor's guardian's express and informed consent.[14] If the facility finds there is evidence of mental illness, and the minor is suitable for treatment at that facility, then it can admit the minor, but only after a hearing to verify the voluntariness of the minor's consent.[15] Current law does not specify the type of voluntariness hearing that must be held (e.g., judicial, administrative, or clinical); however, the hearings are currently of a judicial nature and are held before judges or magistrates. As a result, DCF's most recent biennial report on involuntary examinations of children recommended statutory changes be made to remove the voluntariness hearing requirement before a minor is voluntarily admitted to a Baker Act receiving facility for evaluation and crisis stabilization, citing:

> Amongst other factors, recent increases in the use of involuntary examination on minors indicates that the requirement for a judicial hearing prior to a voluntary admission, while intended to protect minors, has deprived children and their parents of the right to seek treatment voluntarily in the least restrictive manner possible. As the need for an emergency evaluation can occur at any time of the day or night, seven days a week, most communities do not have the capacity to conduct judicial hearings to the degree needed to comply with this law.[16]

A voluntary patient who is unwilling or unable to provide express and informed consent to mental health treatment must either be discharged or transferred to involuntary status.[17] Additionally, facilities must discharge a patient within 24 hours if he or she is sufficiently improved such that admission is no longer

[10] Parham at 606.
[11] Parham at 617-618.
[12] Parham at 585.
[13] *Id*.
[14] S. 394.4625, F.S.
[15] *Id*. The statute does not provide further detail on the nature of, or process for, a voluntariness hearing.
[16] Florida Department of Children and Families (DCF), Office of Substance Abuse and Mental Health, *Report on Involuntary Examinations of Children*, Nov. 1, 2021, https://www.myflfamilies.com/service-programs/samh/publications/docs/Report%20on%20Involuntary%20Examination%20of%20Minors%20-%202021.pdf (last visited Feb. 1, 2022).
[17] S. 394.4625(1)(e), F.S.

appropriate, consent is revoked, or discharge is requested, unless the patient is qualified for and is transferred to involuntary status.[18]

Consent vs. Assent

In Florida, a minor is any person under 18 years old who has not been married and has not had a court remove the disability of nonage.[19] However, most references in the Baker Act are to persons "under the age of 18". Therefore, a person age 0-17 is a minor for the purposes of the Baker Act and lacks the legal capacity to provide consent for admission or treatment. Instead, a minor must provide assent (agreement) for a voluntary admission. This means that minors cannot be legally admitted on voluntary status unless:[20]

- The minor's legal guardian has applied for the admission;
- The minor agrees to the admission (assent); and
- A "hearing" has been conducted prior to the admission.

Assent recognizes that minors might not, due to their developmental level, be capable of giving completely reasoned consent; however, minors might be capable of having preferences and communicating their preference.[21] Assent also recognizes the importance of the involvement of minors in the decision-making process, while also recognizing that a minor's level of participation is less than completely competent.[22]

The American Academy of Child & Adolescent Psychiatry (AACAP) recognizes that decision-making in child and adolescent psychiatry brings with it a variety of challenges for children, parents or guardians, and child and adolescent psychiatrists. As such, one of the AACAP Code of Ethical Principles relies on the concepts of assent and consent by proxy. Specifically:[23]

> Principle IV, Assent and Consent (Autonomy) focuses on respecting the rights of patients and caregivers to make their own informed decisions without pressure. Youth under the age of 18 years should be involved in the decision making about their care and assent should be obtained. Guardians must always consent to treatment except in emergencies. Practitioners should always provide full communication about all relevant issues for informed decisions to be made. Particular care should be taken when youth and guardian disagree.

With this, the AACAP has concluded that parents or guardians and child and adolescent psychiatrists should not exclude minors from decision-making without clear and convincing reasons.[24]

Effect of the Bill

Voluntariness of a Minor

The bill requires a clinical review of the minor's assent, rather than a hearing on the minor's consent, for voluntary admission. The bill does not define "clinical review" or specify who may conduct such a

[18] S. 394.4625(2), F.S.
[19] *See*, s. 1.01, F.S. *See also*, DCF, Minors, *Minority Defined*, https://www.myflfamilies.com/service-programs/samh/crisis-services/laws/Minors.pdf (last visited Feb. 1, 2022).
[20] *Id*.
[21] American Academy of Child & Adolescent Psychiatry (AACAP), *Ethical Issues in Clinical Practice*, https://www.aacap.org/AACAP/Member_Resources/Ethics/Ethics_Committee/Ethical_Issues_in_Clinical_Practice.aspx (last visited Feb. 1, 2022).
[22] *Id*.
[23] AACAP, *AACAP Code of Ethical Principles*, https://www.aacap.org/aacap/Member_Resources/Ethics/Foundation/AACAP_Code_of_Ethical_Principles.aspx#:~:text=Principle%20IV%2C%20Assent%20and%20Consent,and%20assent%20should%20be%20obtained. (last visited Feb. 1, 2022).
[24] American Academy of Child & Adolescent Psychiatry (AACAP), *Ethical Issues in Clinical Practice*, https://www.aacap.org/AACAP/Member_Resources/Ethics/Ethics_Committee/Ethical_Issues_in_Clinical_Practice.aspx (last visited Feb. 1, 2022).

review; however, it is probable that a staff physician at a receiving facility, or other skilled medical professional, would be chosen by a receiving facility to conduct the required clinical review to determine the voluntariness of a minor. The bill's requirement that a clinical review be conducted, rather than a hearing, means that judicial hearings are no longer necessary for a voluntary admission of a minor, which may make minors' voluntary admissions for mental health treatment timelier and clinically focused.

The bill also requires that the same type of clinical review be held to verify the voluntariness of a minor's assent before a minor patient's status is transferred from involuntary to voluntary.

The bill retains the current statutory requirement that a parent consent to the minor's voluntary admission before a minor is admitted for voluntary admission for mental health treatment.

The bill has an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.4625, F.S., relating to voluntary admissions.
Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The State Courts System would likely experience cost and time savings with the elimination of judicial hearings to determine voluntariness of minors seeking admission to a Baker Act receiving facility.[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Receiving facilities may experience an increase in workload and costs associated with conducting clinical reviews to determine voluntariness of minors seeking admission under the Baker Act, though it may be offset by a reduction in workload and costs associated with handling fewer involuntary admissions for minors.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[25] DCF, Agency Bill Analysis for HB 1179, p. 3 (Jan 12, 2022).

1. Applicability of Municipality/County Mandates Provision:

   None. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   Current law provides DCF sufficient rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES