

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 Education

BILL: SB 1240

INTRODUCER: Senator Harrell

SUBJECT: Mental Health of Students

DATE: January 31, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Berger</u>	<u>Cox</u>	<u>CF</u>	Favorable
2.	<u>Jahnke</u>	<u>Bouck</u>	<u>ED</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1240 requires charter schools to report the removal of a student from school, school transportation, or a school-sponsored activity for an involuntary mental health examination. The bill provides that the Department of Education (the DOE) must share data comprised of both public and charter school reporting with the Department of Children and Families (the DCF) by July 1 of each year. The bill also provides specific data the DCF is required to analyze when preparing its biannual report on the involuntary examinations of minors.

The bill modifies requirements for annual mental health assistance allocation plans prepared by school districts by requiring districts to:

- Provide parents of students receiving mental health services with information regarding other services available through the student's school or local community-based mental health providers; and
- Provide other individuals living in the same household as a student receiving mental health services with information about other services the student may qualify for that would contribute to the student's improved well-being.

The bill will have an indeterminate fiscal impact on charter schools, the DOE, and the DCF. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

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.¹ The Act includes 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.²

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.³ 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:⁴

- 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.⁵

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;⁶
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;⁷ or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.⁸

Involuntary patients must be taken to either a public or a private facility that has been designated by the 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

¹ Sections 394.451-394.47891, F.S.

² Section 394.459, F.S.

³ See Sections 394.4625 and 394.463, F.S.

⁴ Section 394.463(1), F.S.

⁵ Section 394.463(1), F.S.

⁶ Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.

⁷ Section 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.

⁸ Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.

service provider.⁹ 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.¹⁰ 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 who are the least able to pay.¹¹ Currently, there are 128 Baker Act receiving facilities in the state, including 54 public receiving facilities and 68 private receiving facilities.¹²

Under the Baker Act, a receiving facility must examine an involuntary patient within 72 hours of arrival.¹³ During those 72 hours, an involuntary patient must be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility to determine if the criteria for involuntary services are met.¹⁴ If the patient is a minor, the examination must be initiated within 12 hours.¹⁵

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.¹⁶

Mental Health Services for Students

The DOE, through the Bureau of Exceptional Education and Student Services and the Office of Safe Schools, promotes a system of support, policies, and practices that focus on prevention and early intervention to improve student mental health and school safety. Florida law requires instructional personnel to teach comprehensive health education that addresses concepts of mental and emotional health, as well as substance use and abuse.¹⁷

Student Services personnel, which includes school psychologists, school social workers, and school counselors, are classified as instructional personnel responsible for advising students regarding personal and social adjustments, and provide direct and indirect services at the district and school level.¹⁸ State funding for school districts' mental health services is provided primarily

⁹ Section 394.455(40), F.S. This term does not include a county jail.

¹⁰ Section 394.455(38), F.S.

¹¹ Rule 65E-5.400(2), F.A.C.

¹² Hospitals can also be designated as public receiving facilities. The DCF *Designated Baker Act Receiving Facilities*, available at <https://www.myflfamilies.com/service-programs/samh/crisis-services/docs/baker/Baker%20Act%20Receiving%20Faciliites.pdf> (last visited January 26, 2022).

¹³ Section 394.463(2)(g), F.S.

¹⁴ Section 394.463(2)(f), F.S.

¹⁵ Section 394.463(2)(g), F.S.

¹⁶ *Id.*

¹⁷ Section 1003.42(2)(n), F.S.

¹⁸ Section 1012.01(2)(b), F.S.

by legislative appropriations, the majority of which is distributed through an allocation through the Florida Education Finance Program (FEFP) to each district. In addition to the basic amount for current operations for the FEFP, the Legislature may appropriate categorical funding for specified programs, activities, or purposes.¹⁹ Each district school board must include the amount of categorical funds as a part of the district annual financial report to the DOE and the DOE must submit a report to the Legislature that identifies by district and by categorical fund the amount transferred and the specific academic classroom activity for which the funds were spent.²⁰

The law allows district school boards and state agencies administering children's mental health funds to form a multiagency network to provide support for students with severe emotional disturbance.²¹ The program goals for each component of the multiagency network are to:

- Enable students with severe emotional disturbance to learn appropriate behaviors, reduce dependency, and fully participate in all aspects of school and community living;
- Develop individual programs for students with severe emotional disturbance, including necessary educational, residential, and mental health treatment services;
- Provide programs and services as close as possible to the student's home in the least restrictive manner consistent with the student's needs; and
- Integrate a wide range of services necessary to support students with severe emotional disturbances and their families.²²

The DOE awards grants to district school boards for statewide planning and development of the multiagency Network for Students with Emotional or Behavioral Disabilities (SEDNET).²³ SEDNET is a network of 19 regional projects that are composed of major child-serving agencies, community-based service providers, and students and their families. Local school districts serve as fiscal agents for each local regional project.²⁴ SEDNET focuses on developing interagency collaboration and sustaining partnerships among professionals and families in the education, mental health, substance abuse, child welfare, and juvenile justice systems serving children and youth with and at risk of emotional and behavioral disabilities.²⁵ Currently, the school districts file a primary report with the DOE yearly, and charter schools are not statutorily required to file a yearly report regarding involuntary examinations of students.

Mental Health Allocation

The mental health assistance allocation was established in 2018²⁶ to provide funding to assist school districts in establishing or expanding school-based mental health care. These funds must be allocated annually in the General Appropriations Act or other law to each eligible school

¹⁹ Section 1011.62(6), F.S.

²⁰ *Id.*

²¹ See s. 1006.04(1)(a), F.S.

²² Section 1006.04(1)(b), F.S.

²³ Section 1006.04(2), F.S.

²⁴ Fiscal agencies include the Brevard, Broward, Clay, Columbia, Miami-Dade, Escambia, Hendry, Hernando, Hillsborough, Levy, Liberty, Orange, Palm Beach, Pinellas, Polk, St. Lucie, Volusia, and Washington school districts. The DOE, Bureau of Exceptional Education and Student Services, *BEESS Discretionary Projects* (January 2017), at p. 11, available at <http://www.fldoe.org/core/fileparse.php/7567/urlt/projectslisting.pdf>.

²⁵ The DOE, Bureau of Exceptional Education and Student Services, *BEESS Discretionary Projects* (January 2017), at p. 11, available at <http://www.fldoe.org/core/fileparse.php/7567/urlt/projectslisting.pdf>.

²⁶ Section 29, ch. 2018-4, L.O.F.

district. Each school district must receive a minimum of \$100,000 with the remaining balance allocated based on each school district's proportionate share of the state's total unweighted fulltime equivalent student enrollment. Eligible charter schools are entitled to a proportionate share of district funding.

At least 90 percent of a district's allocation must be expended on the elements specified in law. The allocated funds may not replace funds that are provided for this purpose from other operating funds or be used to increase salaries or provide bonuses. School districts are encouraged to maximize third-party health insurance benefits and Medicaid claiming for services, where appropriate.²⁷

Before the distribution of the allocation:

- The school district must develop and submit a detailed plan outlining the local program and planned expenditures to the district school board for approval.
- A charter school must develop and submit a detailed plan outlining the local program and planned expenditures to its governing body for approval and it must be provided to the charter school's sponsor after the plan is approved by the governing body.
- The required plans must be focused on delivering evidence-based mental health care treatment to children and include all of the following elements:
 - Provision of mental health assessment, diagnosis, intervention, treatment, and recovery services to students with one or more mental health or co-occurring substance abuse diagnoses and students at high risk of such diagnoses.
 - Coordination of such services with a student's primary care provider and with other mental health providers involved in the student's care.
 - Direct employment of such service providers, or a contract-based collaborative effort or partnership with one or more local community mental health programs, agencies, or providers.²⁸

School districts must submit approved plans, including approved plans of each charter school in the district, to the commissioner by August 1 of each fiscal year.²⁹

Beginning September 30, 2019, and annually by September 30, each school district must submit to the DOE a report on its program outcomes and expenditures for the previous fiscal year which, at a minimum, must include the number of each of the following:

- Students who receive screenings or assessments.
- Students who are referred for services or assistance.
- Students who receive services or assistance.
- Direct employment service providers employed by each school district.
- Contract-based collaborative efforts or partnerships with community mental health programs, agencies, or providers.³⁰

²⁷ Section 1011.62(16), F.S.

²⁸ Section 1011.62(16)(b), F.S.

²⁹ Section 1011.62(16)(c), F.S.

³⁰ Section 1011.62(16)(d), F.S.

Children and the Baker Act

Over a 15-year period, the number of children subject to involuntary commitments under the Baker Act have increased at a faster pace than any other age group.³¹ Children are incapable of legally consenting to medical intervention needed to gauge whether an involuntary examination under the Baker Act is necessary.³² School officials and mental health professionals have stressed the need for additional mobile response teams, greater access to telehealth technology in accessing the teams, and more school psychologists as methods of addressing the growing number of children subjected to the Baker Act.³³ Over 130 law enforcement agencies across the state have policies in place requiring a parent or family member of a minor to be contacted prior to initiating a Baker Act.³⁴

Mental Health Data Reporting and Analysis

Professionals who initiate Baker Acts are required to capture the circumstances of the mental health crisis and make an affirmative statement that the person examined meets statutory criteria.³⁵ This information is recorded on a standardized form and reported to the DCF.³⁶ The DCF contracts with the Louis de la Parte Florida Mental Health Institute at the University of South Florida (the Institute) to perform the data analysis and provide an annual report using, among other things, the information provided on the forms.³⁷ The Institute also analyzes other information relating to mental health and acts as a provider of crisis services to certain patients.³⁸

Report on Involuntary Examinations of Minors

In 2017, the Legislature created a task force within the DCF³⁹ to address the issue of involuntary examination of minors age 17 years or younger, specifically by:⁴⁰

- Analyzing data on the initiation of involuntary examinations of minors.
- Researching the root causes of and trends in such involuntary examinations.
- Identifying and evaluating options for expediting the examination process.
- Identifying recommendations for encouraging alternatives to or eliminating inappropriate initiations of such examinations.

The task force found that specific causes of increases in involuntary examinations of children are unknown. Possible factors cited in the task force report include:

³¹ Lynn Hatter, WFSU Public Media, *Committed: Improving Florida's Baker Act for Children a Challenge*, December 17, 2020, available at <https://news.wfsu.org/2020-12-17/committed-improving-floridas-baker-act-for-children-a-challenge>.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Section 394.463(2)(a)3., F.S.; Rule 65E-5.280(3), F.A.C.

³⁶ Section 394.463(2)(a)3., F.S.; Rules 65E-5.120 and 65E-5.280(3), F.A.C.

³⁷ The University of South Florida, Baker Act Reporting Center, *About Us*, <https://www.usf.edu/cbcs/baker-act/about/index.aspx> (last visited January 18, 2022).

³⁸ See University of South Florida, Baker Act Reporting Center, *What We Do*, <https://www.usf.edu/cbcs/baker-act/about/whatwedo.aspx> (last visited January 18, 2022); and University of South Florida, Louis de la Parte Florida Mental Health Institute, *About the Institute*, <https://www.usf.edu/cbcs/fmhi/about/> (last visited January 27, 2022).

³⁹ Chapter 2017-151, LO.F.

⁴⁰ The DCF, *Task Force Report on Involuntary Examination of Minors*, (November 2017), at p. 1, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/S17-005766-TASK%20FORCE%20ON%20INVOLUNTARY%20EXAMINATION%20OF%20MINORS.pdf>.

- Increase in mental health concerns:
 - In 2017, 31.5 percent of high school students experienced periods of persistent feelings of sadness or hopelessness within the past year, an increase from 28.5 percent in 2007.
 - In 2017, 17.2 percent of high school students seriously considered attempting suicide in the past year, an increase from 14.5 percent in 2007.⁴¹
- Social stressors such as parental substance use, poverty and economic insecurity, mass shootings, and social media and cyber bullying.⁴²
- Lack of availability of mental health services, due to wait lists for services, limitations on coverage or approval, lack of funding for prevention and diversion, and shortage of psychiatrists and other mental health professionals.
 - Among children ages 12 to 17 in Florida, approximately 13 percent experienced a major depressive episode in the past year, but only about 33 percent of children experiencing a major depressive episode in the past year receive treatment.⁴³

In 2019, as a follow up to the 2017 task force report, the Legislature instructed the DCF to prepare a report on the initiation of involuntary examinations of minors age 17 and younger and submit it by November 1 of each odd numbered year.⁴⁴ As part of the 2019 report, the DCF was required to:

- Analyze data on the initiation of involuntary examinations of minors.
- Identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child.
- Study root causes for such patterns, trends, or repeated involuntary examinations.
- Make recommendations for encouraging alternatives to and eliminating inappropriate initiations of such examinations.⁴⁵

In 2021, the Legislature⁴⁶ required the DCF to include in its analysis data on the initiation of Baker Acts of students who are removed from schools, to identify trends in Baker Acts involving students, and to make recommendations to encourage the use of alternatives to Baker Acts.⁴⁷ To aid the DCF in this task, school districts are required to annually report to the DOE the number of Baker Acts initiated at a school, on school transportation, or at a school-sponsored event.⁴⁸ The Office of Safe Schools is required to provide data to support the evaluation of mental health services performed by the Institute,⁴⁹ however there is no explicit requirement that the data be shared with the DCF.

In its 2021 biennial analysis of Bakers Acts of minors, the DCF reported 24,171 Baker Acts of minors under the age of 18 for FY 2019-2020 and that these made up 18 percent of all (128,193)

⁴¹ The DCF, *Task Force Report on Involuntary Examination of Minors*, (November 2019), p. 6, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/Report%20on%20Involuntary%20Examination%20of%20Minors.pdf>.

⁴² *Id.* at p. 3.

⁴³ *Id.* at p. 5.

⁴⁴ Chapter 2019-134, L.O.F.

⁴⁵ *Id.*

⁴⁶ Chapter 2021-176, L.O.F.

⁴⁷ Section 394.463(4), F.S.

⁴⁸ Section 1006.07(10), F.S.

Baker Acts that year.⁵⁰ Based on preliminary data from FY 2020-2021, the DCF reports a decrease in Baker Acts of children occurring in the school setting, with fewer than 15 percent of such Baker Acts being initiated at schools.⁵¹

III. Effect of Proposed Changes:

Data Collection and Reporting Requirements

The bill amends s. 394.463, F.S, requiring the DCF to include data received from the DOE on Baker Acts of students from both public and charter schools in preparing its biennial report on the involuntary examinations of minors.

Additionally, the bill amends s. 1002.33, F.S., subjecting all charter schools to the same reporting requirements regarding Baker Acts of minors that currently apply to public schools.

The bill amends s. 1006.07, F.S. requiring the DOE to share Baker Act data annually with the DCF no later than July 1 each year.

Procedures Regarding Mental Health Assistance Allocation

The bill also amends s. 1011.62, F.S., revising the requirements of mental health assistance allocation plans, which are prepared by school districts annually. Specifically, the bill adds the following requirements for the plans:

- After a student’s assessment and identification, parents of students receiving services must be provided with information regarding other services available through the student’s school or community.
- Any individual living in the same household as a student receiving services must be provided with information about behavioral health services available through other delivery systems or payors for which they may qualify, if such services appear to be needed or enhancements in their behavioral health would contribute to the improved well-being of the student.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁵⁰ The DCF, *Report of Involuntary Examinations of Children*, (November 2021), at p. 8, available at <https://www.myflfamilies.com/service-programs/samh/publications/docs/Report%20on%20Involuntary%20Examination%20of%20Minors%20-%202021.pdf>.

⁵¹ *Id.* at 9. The report does note that for eight percent of Baker Acts the setting of the initiation was not reported.

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:

The bill will likely have an indeterminate impact on charter schools as they will be required to collect, maintain, and share data on Baker Acts of students.

C. Government Sector Impact:

The bill will likely have an indeterminate impact on the DOE and the DCF due to the additional data sharing and analysis requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.463, 1002.33, 1006.07, and 1011.62.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
