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 1560
INTRODUCER:	Senator Bean
SUBJECT:	Voluntary Admissions for Mental Illness
DATE:	January 24, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 1560 removes the requirement for Baker Act receiving facilities to hold voluntariness hearings for patients under 18 years of age seeking voluntary admission. The bill provides that receiving facilities may instead admit minors on a voluntary basis if the following conditions are met:

- The patient is found to show evidence of mental illness;
- The patient is suitable for treatment; and
- The patient's guardian provides express and informed consent to admission.

Under the bill, before a minor patient is admitted for a voluntary examination under the Baker Act, providers at a receiving facility must determine that a minor patient has shown evidence of mental illness and suitability for treatment, and the express and informed consent of a parent or guardian must be obtained.

The bill is not anticipated to have a significant fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

The Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.[1] The Baker Act deals with Florida's mental health commitment laws, and includes legal procedures

[1] Chapter 71-131, L.O.F.; the Baker Act is contained in ch. 394, F.S.

for mental health examination and treatment, including voluntary and involuntary examinations.[2] The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.[3]

Individuals suffering from an acute mental 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.[4]

Involuntary Examination

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:

- 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 private facility which has been designated by the Department of Children and Families (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 psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.[9] The patient must be examined by the

[2] Sections 394.451-394.47891, F.S.
[3] Section 394.459, F.S.
[4] Sections 394.4625 and 394.463, 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
[9] Section 394.455(40), F.S.

receiving facility within 72 hours of the initiation of the involuntary examination and specified actions must be taken within that time frame to address the individual needs of the patient.[10]

Voluntary Admissions and Transfer to Voluntary Status

Baker Act receiving facilities also admit any person 18 years of age or older making application by express and informed consent for admission, or any person age 17 or under for whom such application is made by his or her guardian.[11] If found to show evidence of mental illness, to be competent to provide express and informed consent, and to be suitable for treatment, a person 18 years of age or older may be admitted to the facility.[12]

A patient admitted on an involuntary basis who applies to be transferred to voluntary status must be transferred to voluntary status immediately, unless the patient has been charged with a crime, or has been involuntarily placed for treatment by a court pursuant to s. 394.467, F.S., and continues to meet the criteria for involuntary placement.[13]

Voluntary Admissions for Minor Patients

Any person age 17 or under may be admitted only after a hearing to verify the voluntariness of their consent.[14] However, in 1997 a joint legislative committee determined that the "voluntariness hearing"[15] described in the Florida Administrative Code at that time did not conform to a "hearing" as intended elsewhere in statute, as all other references to "hearings" in the Baker Act are judicial in nature.[16] Moreover, minors lack the legal capacity to independently consent to admission or treatment.[17] As a result, all reference to "voluntary hearings" were removed from the Code.[18] The DCF states that only a judicial hearing would suffice to meet this

[10] Section 394.463(2)(g), F.S.
[11] Section 394.4625(1)(a), F.S.
[12] *Id*.
[13] Section 394.4625(4), F.S.
[14] *Id*.
[15] Prior to 1997, Rule 10E-5.21(4), F.A.C., defined a "voluntary hearing" as follows: "An informal hearing between a facility administrator or his designee and an individual under 18 years of age who has requested voluntary admission. The purpose of this meeting is to verify and ensure the voluntariness of the applicant's request. This is a nonjudicial procedure and is solely for the purpose of safeguarding against an individual being coerced, pressured, misled, or in any way forced to seek voluntary admission to a facility." Fla. Admin. Code R. 10E-5.21(4) (1996) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[16] The DCF, *Frequently Asked Questions*, p. 7-9, available at https://www.myflfamilies.com/service-programs/samh/crisis-services/laws/Minors.pdf (last visited January 18, 2022) (hereinafter, "The DCF FAQs").
[17] The DCF FAQs, p. 8.
[18] Prior to 1997, Rule 10E-5.050: Voluntary Admissions of Civil Patients, contained special requirements pertaining to the voluntary admission of minor patients at Baker Act receiving facilities. Specifically, a hearing must be conducted by the facility administrator or their designee, in such a manner as to ensure the applicant's ability to freely express their desires. Participation in the hearing was to be limited to the individual seeking voluntary admission, and the facility administrator or their designee was to ensure the uninfluenced response of the applicant. At the specific request of the administrator or the patient, another facility staff member or an attorney may be present. Findings of the hearing were to be recorded in the patient's clinical record and subject to review in the same manner as other items in the record. In the event the voluntary nature of the request was not confirmed, the facility was required to release the patient, unless the patient met the criteria for involuntary examination and a "Certificate of Professional Initiating Involuntary Examination" was executed. *See* Rule 10E-5.050(3), F.A.C. (1996) (on file with the Senate Committee on Children, Families, and Elder Affairs).

legal requirement, and that such hearings would need to be conducted prior to the minor's voluntary admission, despite the consent of the parents or assent of the child to the admission.[19]

The majority of patients under the age of 18 years old who are admitted under the Baker Act are admitted under involuntary status and either discharged or later transferred to voluntary status, and the DCF states that it is unlikely that pre-admission court hearings for voluntary admission of minors are being conducted anywhere in the state.[20] Some facilities still require staff to conduct a "voluntariness hearing"; some review voluntary admissions with the court magistrate at the time involuntary placement hearings are conducted; and others do not hold any type of hearing.[21]

Individual Bill of Rights

The Baker Act provides an individual bill of rights, which entitles patients to the right to:
- Dignity;
- Treatment;
- Express and informed consent;
- Quality of treatment
- Not be refused treatment at a state-funded facility due to an inability to pay;
- Communicate with others;
- Care and custody of personal effects;
- Voting in public elections; and
- Petition the court on a writ of habeas corpus.[22]

The individual bill of rights also imposes liability for damages on persons who violate individual rights.[23] The right to express and informed patient consent specifically provides that if a patient has been adjudicated incapacitated or found incompetent to consent to treatment, express and informed consent to treatment is to be sought instead from the patient's guardian or guardian advocate.[24] If the patient is a minor, consent for admission or treatment must also be requested from the patient's guardian,[25] and such consent is mandatory unless the minor is seeking outpatient crisis intervention services.[26] Further, express and informed consent for admission or treatment given by a minor patient cannot be a condition of admission when the patient's guardian gives express and informed consent for the patient's admission.[27]

[19] The DCF FAQs, p. 11.
[20] *Id*.
[21] *Id*.
[22] Section 394.459, F.S.
[23] Section 394.459(10), F.S.
[24] Section 394.459(3)(a)1., F.S.
[25] *Id*.
[26] *Id*.
[27] *Id*.

III. Effect of Proposed Changes:

The bill removes the requirement for Baker Act receiving facilities to hold voluntariness hearings as a condition of admission for patients under 18 years of age. The bill provides that receiving facilities may instead admit minor patients if the following conditions are met:

- The patient is found to show evidence of mental illness;
- The patient is suitable for treatment; and
- The patient's guardian provides express and informed consent to admission.

Under the bill, before a minor patient is admitted for a voluntary examination under the Baker Act, providers at a receiving facility must determine that a minor patient has shown evidence of mental illness and suitability for treatment, and the express and informed consent of a parent or guardian must be obtained. As a result, both medical providers and parents or guardians will have to agree on the decision to admit a minor patient.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Admissions of minor Baker Act patients already require consent of the patient's guardian, and as such the bill is unlikely to have an impact on receiving facilities or hospitals.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 394.4625 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.