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 Judiciary

BILL:	CS/SB 1844
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Bean
SUBJECT:	Mental Health and Substance Abuse
DATE:	February 4, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Fav/CS**
2.	Ravelo	Cibula	JU	**Pre-meeting**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1844 removes the requirement for Baker Act receiving facilities to hold voluntariness hearings for patients under 18 years of age seeking voluntary admission. Voluntariness hearings are not consistently used in practice, as minors generally lack the legal capacity to voluntarily consent, and any hearing would need to take place before the child's voluntary admission at a facility, regardless of the parents' consent.

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 also:

- Provides law enforcement officers with discretion in deciding whether to detain someone and transfer them to a receiving facility under both the Baker and Marchman Acts;

- Requires law enforcement officers transporting an individual to a receiving facility for an involuntary examination under the Baker or Marchman Acts to:
  - Consider the person's mental and behavioral state; and
  - Restrain the individual in the least restrictive manner possible, especially if the person is a minor.

The bill may have an indeterminate fiscal impact on receiving facilities. 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 for mental health examination and treatment, including voluntary and involuntary examinations.[2] The Baker Act also provides protections for all individuals examined or treated for mental illness in Florida.[3]

Involuntary Examination

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] 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]

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

- 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 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 psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.[9] The patient must be examined by the receiving facility within 72 hours after 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

[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 must be made a part of the patient's clinical record
[9] Section 394.455(40), F.S.
[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, Fla. Admin. R. 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

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 legal requirement, and that such hearings would need to be conducted before 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 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, however, require staff to conduct a nonjudicial "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]

The Marchman Act

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[22] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[23] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[24] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[25]

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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 Feb. 1, 2022) (hereinafter, "The DCF FAQs")

[17] *Id.*, p. 8.

[18] Prior to 1997, Fla. Admin. Code R 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* Fla. Admin. Code R 10E-5.050(3) (1996) (on file with the Senate Committee on Children, Families, and Elder Affairs).

[19] The DCF FAQs, p. 11.

[20] *Id*.

[21] *Id*.

[22] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).

[23] *Id*.

[24] *Id*.

[25] *Id*.

In 1993, legislation was adopted to combine chs. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[26]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[27] However, denial of addiction is a prevalent symptom of substance abuse disorder, creating a barrier to timely intervention and effective treatment.[28] As a result, treatment typically must stem from a third party providing the intervention needed for substance abuse disorder.[29]

Involuntary Admissions

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved.[30] Three of the procedures do not involve the court, while two require direct petitions to the circuit court. The same criteria for involuntary admission apply regardless of the admission process used.[31]

An individual meets the criteria for an involuntary admission under the Marchman Act if there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use, and either:

- Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard;[32] or
- 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 substantial likelihood that the person:
    - Has inflicted, or threatened to or attempted to inflict physical harm on himself, herself, or another; or
    - Is likely to inflict, physical harm on himself, herself, or another unless he or she is admitted.[33]

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[26] Chapter 93-39, s. 2, Laws of Fla., which codified current ch. 397, F.S.

[27] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment if sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.

[28] Darran Duchene and Patrick Lane, State University of Florida, Self-Insurance Programs, Risk Rx, *Fundamentals of the Marchman Act*, Vol. 6 No. 2 (Apr.–Jun. 2009), *available at* http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited Feb. 1, 2022) (hereinafter cited as "Fundamentals of the Marchman Act").

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] Section 394.675(2)(a), F.S. However, mere refusal to receive services does not constitute evidence of lack of judgment with respect to the person's need for such services.

[33] Section 397.675(2)(b), F.S.

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act include protective custody, emergency admission, and the alternative involuntary assessment for minors.

Law enforcement officers use the protective custody procedure when an individual is substance-impaired or intoxicated in public and such impairment is brought to the attention of the officer.[34] The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment. A law enforcement officer may take the individual to their residence, to a hospital, a detoxification center, or an addiction receiving facility, whichever the officer determines is most appropriate.[35]

If the individual in these circumstances does not consent to protective custody, the officer may do so against the person's will, without using unreasonable force. Additionally, the officer has the option of taking an individual to a jail or detention facility for his or her own protection. Such detention cannot be considered an arrest for any purpose, and no record can be made to indicate that the person has been detained or charged with any crime.[36] However, if the individual is a minor, the law enforcement officer must notify the nearest relative of a minor in protective custody without consent.[37]

The second process, emergency admission, authorizes an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only.[38] Individuals admitted for involuntary assessment and stabilization under this provision must have a certificate from a specified health professional[39] demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[40]

[34] Section 397.677, F.S. The individual can be a minor or adult under this process.
[35] Section 397.6771, F.S. A person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody, Section 397.6773, F.S.
[36] Section 397.6772(1), F.S.
[37] Section 397.6772(2), F.S.
[38] Section 397.679, F.S.
[39] Section 397.6793(1), F.S., provides a list of professionals that include a physician, a clinical psychologist, a physician assistant working under the scope of practice of the supervising physician, a psychiatric nurse, an advanced practice registered nurse, a mental health counselor, a marriage and family therapist, a master's-level-certified addictions professional for substance abuse services, or a clinical social worker.
[40] Section 397.6793, F.S. The certificate can be from a physician, advanced practice registered nurse, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, or a physician assistant working under the scope of a practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services.

Lastly, the alternative involuntary assessment for minors provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[41]

Transportation to a Facility

Baker Act

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. A law enforcement officer is required to take a person into custody if the individual appears to meet the criteria for an involuntary examination under the Baker Act.[42] 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.[43] Law enforcement must then relinquish the person, along with corresponding documentation, to a responsible individual at the facility.[44]

Marchman Act

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.[45]

If a person in circumstances that justify protective custody[46] fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:

- Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force; or
- In the case of an adult, detain the person for his or her own protection in any municipal or county jail or other appropriate detention facility.[47]

The officer must use a standard form developed by the DCF to execute a written report detailing the circumstances under which the person was taken into custody, and the written report must be included in the patient's clinical record.

[41] Section 397.6798, F.S.
[42] Section 394.463(2)(a)2., F.S.
[43] Section 394.462(1)(f)-(g), F.S.
[44] Section 394.462(3), F.S.
[45] Section 397.6795, F.S.
[46] Section 397.677, F.S., states that a law enforcement officer may implement protective custody measures when a minor or an adult who appears to meet the involuntary admission criteria in s. 397.675, F.S., is brought to the attention of law enforcement or in a public space.
[47] Section 397.6772(1)(a)-(b), F.S.

III. Effect of Proposed Changes:

Voluntariness Hearings for Minors under the Baker Act

The bill amends s. 394.4625, F.S., removing 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.

Transportation

Baker Act

The bill amends s. 394.463, F.S., authorizing, rather than requiring as in current law, law enforcement officers to transport those who appear to meet Baker Act criteria to receiving facilities.

Further, the bill requires law enforcement officers transporting Baker Act patients to consider a person's mental and behavioral state when deciding to restrain an individual for transport to a receiving facility, and to restrain the individual in the least restrictive manner possible, especially if the patient is a minor.

Marchman Act

The bill creates s. 397.341, F.S., making identical changes in the Marchman Act to those made by the bill under the Baker Act related to requiring a law enforcement officer to use the least restrictive means when transferring an individual under the Marchman Act, especially if the patient is a minor.

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 this provision of CS/SB 1844 is unlikely to have an impact on receiving facilities or hospitals. Facilities may also see fewer patients brought in for involuntary examinations, which may have an indeterminate negative impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 394.4625 and 394.463 of the Florida Statutes.

This bill creates section 397.341 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.)

CS by Children, Families, and Elder Affairs on January 25, 2022:
The committee substitute:

- Provides law enforcement officers with discretion in deciding whether or not to detain someone and transfer them to a receiving facility under both the Baker and Marchman Acts;
- Requires law enforcement officers transporting an individual to a receiving facility for an involuntary examination under the Baker and Marchman Acts to:
  - Consider the person's mental and behavioral state; and
  - Restrain the individual in the least restrictive manner possible, especially if the person is a minor.
- Removes the requirement for Baker Act receiving facilities to hold voluntariness hearings for patients under 18 years of age seeking voluntary admission and provides that receiving facilities may 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.

B. Amendments:

None.

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