

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 829 Operation and Administration of the Baker Act

**SPONSOR(S):** Silvers and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 938

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**FINAL HOUSE FLOOR ACTION:** 108 Y's      0 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 829 passed the House on April 13, 2023, and subsequently passed the Senate on April 18, 2023.

The Baker 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. The Baker Act governs voluntary and involuntary admissions for mental health care, among other aspects of the state's mental health program.

A variety of other entities are involved in meeting the needs of individuals in a mental health crisis, and many other state and federal laws and associated regulations govern the operation of and interaction between these entities in the performance of their duties relating to behavioral health acute care.

Section 394.457, F.S., requires the Department of Children and Families (DCF) to publish and distribute an information handbook to facilitate understanding of the Baker Act. DCF also educates professionals and the public about the Baker Act, such as through webinars, presentations, and a frequently asked question (FAQ) repository. The handbook (known as a user reference guide) was last updated in 2014, and some of the FAQ's were last updated in 2012, despite the multiple legislative revisions to the Baker Act since then.

HB 829 requires DCF to annually update the Baker Act handbook and to maintain a FAQ repository.

The bill was approved by the Governor on June 5, 2023, ch. 2023-198, L.O.F., and will become effective on July 1, 2023.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Mental Health

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.<sup>1</sup> The primary indicators used to evaluate an individual's mental health are:<sup>2</sup>

- **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.<sup>3</sup> 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 lives with a mental illness.<sup>4</sup> 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%.<sup>5</sup>

##### *Mental Health Safety Net Services*

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

Some of the services administered by DCF are part of the state's behavioral health acute care system.

##### *Behavioral Health Acute Care System*

The behavioral health acute care system is extraordinarily complex. This graphic indicates some of the entities involved in the system regarding mental health specifically. Additional entities are involved regarding substance abuse, such as addictions receiving facilities and detoxification units.

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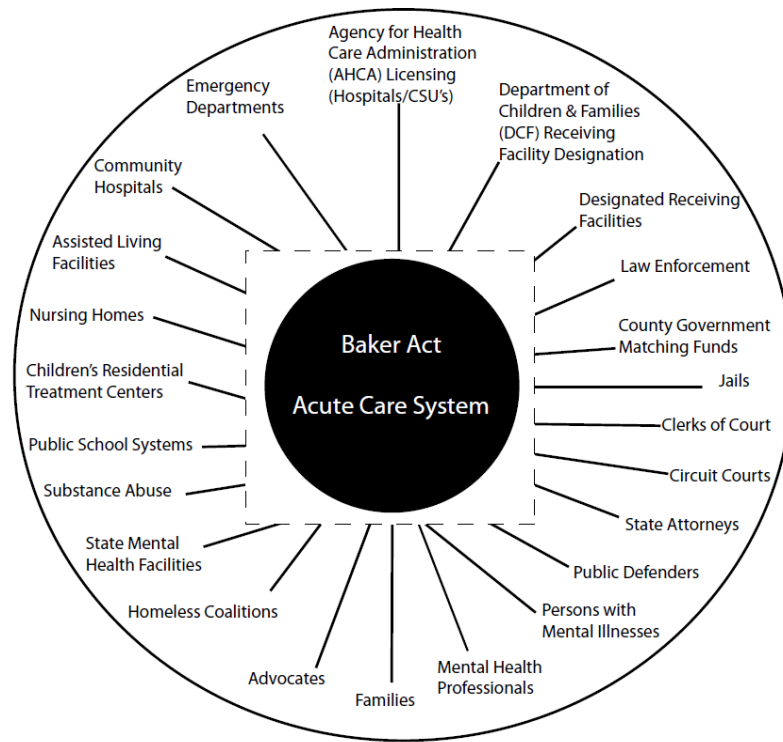
<sup>1</sup> World Health Organization, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (last visited February 20, 2023).

<sup>2</sup> Centers for Disease Control and Prevention, *Mental Health Basics*, <http://medbox.iab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm> (last visited February 20, 2023).

<sup>3</sup> *Id.*

<sup>4</sup> National Institute of Mental Health (NIH), *Mental Illness*, <https://www.nimh.nih.gov/health/statistics/mental-illness> (last visited February 20, 2023).

<sup>5</sup> *Id.*



Source: Florida Mental Health Institute, USF, 2014 Baker Act User Reference Guide.

Various state and federal laws and associated regulations govern the operation of and interaction between these entities in the performance of their duties relating to behavioral health acute care. For example, the federal Emergency Medical Treatment and Active Labor Act<sup>6</sup> applies to all hospitals with emergency service capacity, including freestanding psychiatric hospitals. The law prohibits the delay or denial of emergency medical services, including psychiatric or substance abuse emergencies, due to inability to pay.<sup>7</sup> Examples of state laws include:

- Baker Act and other provisions of ch. 394, F.S., governing the operation of the mental health system, including those governing transportation of clients, local match for mental health services, and the managing entity system.
- Marchman Act and other provisions of ch. 397, F.S., including those governing substance abuse provider licensure.
- Access to emergency services and care, s. 396.1041, F.S., which also prohibits the delay or denial of emergency services by hospitals. It governs access to care and transfers from a hospital.
- Guardianship, ch. 744, F.S., through which an individual is adjudicated incompetent and a guardian appointed.
- Advance directives, ch. 765, F.S., which addresses advanced planning for incapacity and surrogate health care decisionmakers and proxies.
- Medicaid, ch. 409, which governs the operation of the state's medical assistance program. For example, managed care plans must offer at a minimum mental health services and substance abuse treatment services.<sup>8</sup>

Other laws, such as federal law regarding the Community Mental Health Services and Substance Abuse Prevention and Treatment Block Grants, which fund safety-net services, and confidentiality of

<sup>6</sup> 42 U.S.C. 1395dd.

<sup>7</sup> 2014 Baker Act: the Florida Mental Health Act User Reference Guide.

[https://www.myflfamilies.com/sites/default/files/2023-03/2014%20Baker%20Act%20Manual\\_0.pdf](https://www.myflfamilies.com/sites/default/files/2023-03/2014%20Baker%20Act%20Manual_0.pdf) (last accessed March 1, 2023).

<sup>8</sup> S. 409.973(1)(q) and (bb), F.S.

client records govern behavioral health care generally and also affect the operation of the behavioral health acute care system.

Funding for services provided in this system comes from a variety of sources, including but not limited to state general revenue, federal block grant funds, Medicaid, private insurance, and client fees<sup>9</sup>.

### 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.<sup>10</sup> The Baker Act is the short title for part I of ch. 394. 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.<sup>11</sup> The Baker Act governs voluntary and involuntary admissions for mental health care, among other aspects of the state's mental health program.

### *Involuntary Exams under the Baker Act*

Children, adults, and seniors are all potentially subject to the Baker Act. During FY 20-21, 194,680 involuntary exams were performed on 121,921 individuals. In FY 20-21, these exams, by group, were as follows:

- Children under 18: 38,447 exams.
- Adults 18-64: 115,359 exams.
- Adults 65 and over: 13,288 exams.<sup>12</sup>

There are three approaches in law for initiating an involuntary exam under the Baker Act, as follows, with the percent of exams initiated through that approach in FY 20-21:

- Law enforcement: 52% of exams.
- Licensed clinicians and other professionals: 45% of exams.
- Ex parte order through the courts: 2% of exams.<sup>13</sup>

Individuals can move from a variety of settings into an involuntary exam under the Baker Act. For example, in FY 20-21:

- For adults 65+: 6.19% of exams were initiated from an assisted living facility, and 1.76% from a nursing home.
- For children: 11.12% were in a school setting when the exam was initiated.<sup>14</sup>

### *Education and Training on Mental Health for Law Enforcement and School Personnel*

As of 2021, there were 43,876 law enforcement officers in Florida's police departments, sheriffs' offices, schools and ports who could initiate an involuntary exam under Baker Act.<sup>15</sup> Some portion of these officers receive training on working with individuals with mental illness through approaches such as Crisis Intervention Team training.<sup>16</sup> Of the state's law enforcement agencies, 94% initiated at least one involuntary exam in FY 20-21.

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<sup>9</sup> S. 394.674(3), F.S.

<sup>10</sup> Ss. 394.451-394.47892, F.S.

<sup>11</sup> S. 394.459, F.S.

<sup>12</sup> Annette Christy, Ph.D., et al; The Baker Act: Florida Mental Health Act FY 2020/2021 Annual Report, (2022), Tampa, FL: University of South Florida, Department of Mental Health Law and Policy, Baker Act Reporting Center, at pg. 3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at pg. 11.

<sup>15</sup> Florida Department of Law Enforcement, Criminal Justice Agency Profile (CJAP) Report-Statewide Ratios; <https://www.fdle.state.fl.us/CJSTC/Publications/CJAP/Statewide-Ratios.aspx> (last accessed March 3, 2023).

<sup>16</sup> See generally Florida Sheriff's Association, *Crisis Intervention Team Training*, <https://www.flsheriffs.org/law-enforcement-programs/crisis-intervention-team> (last accessed March 3, 2023).

In FY 2022-23, there were 343,238 full-time staff in Florida's public schools.<sup>17</sup> Many receive training through Youth Mental Health First Aid, which helps school personnel identify and understand the signs of mental health concerns and substance use disorders, and provide such personnel with the next steps to find help for a person who is developing or experiencing mental health concerns or a substance use disorder.<sup>18</sup>

### *DCF Education and Training on the Baker Act*

DCF is tasked in law with providing information about the Baker Act. DCF reports that it has created webinars on the Baker Act and will provide community presentations.<sup>19</sup> A Baker Act user reference guide and frequently asked question repository are other sources of information maintained by DCF.

#### DCF Baker Act Webinars

The department has worked with a contracted vendor to produce four webinars regarding the Baker Act:<sup>20 21</sup>

- Introduction to the Baker Act (revised effective 2016).
- Law enforcement and the Baker Act.
- Minors and the Baker Act (revised effective 2016).
- Long-term Care and the Baker Act.

#### Baker Act Community Presentations

DCF staff also make presentations on the Baker Act to community stakeholder groups upon request.<sup>22</sup>

#### DCF Baker Act Handbook

Section 394.457, F.S., requires DCF to publish and distribute an information handbook to facilitate understanding of the Baker Act. DCF last published an updated version of the handbook, known as the *Baker Act User Reference Guide*, in 2014.<sup>23, 24</sup> Since then, the Baker Act has been amended by the Legislature multiple times.<sup>25</sup> The handbook has not kept up with changes to Baker Act law and is growing obsolete.

The 2014 volume is 496 pages long and includes:

- Overviews and historical background;
- Maps of judicial circuits, DCF regions, and managing entity service areas;
- Contact information for managing entities;
- Statutes linked to associated rules;

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<sup>17</sup> Florida Department of Education, PK-12 Public School Data Publications and Reports: Staff, <https://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/staff.shtml> (last accessed March 3, 2023).

<sup>18</sup> Florida Department of Education, Youth Mental Health Awareness Training, <https://www.fldoe.org/schools/k-12-public-schools/sss/ymhat.stml> (last accessed March 3, 2023). Rule 6A-1.094120, F.A.C., requires an annual certification that at least 80% of school personnel in required job codes in a school district, including school personnel at charter schools, have completed the approved training (last accessed March 1, 2023).

<sup>19</sup> Department of Children and Families, Agency Analysis of 2023 HB 829, at pg. 2 (February 21, 2023).

<sup>20</sup> *Id.*

<sup>21</sup> Department of Children and Families, Baker Act On-Line Training Courses, <https://www.myflfamilies.com/crisis-services/baker-act/baker-act-training/baker-act-line-training-courses> (accessed March 1, 2023).

<sup>22</sup> *Supra* note 19

<sup>23</sup> *Supra* note 7.

<sup>24</sup> Email from Chad Corcoran, Deputy Legislative Affairs Director, Department of Children and Families, RE: Where is Baker Act manual on DCF's website?--PS (March 1, 2023).

<sup>25</sup> For example, 2016 (SB 12), 2019 (SB 1418), and 2022 (SB 1262, SB 1844).

- Flow charts;
- Quick reference guides;
- Charts depicting authority granted to various mental health professionals under different situations;
- Comparison of the Baker and Marchman Act provisions;
- Resources, such as information about helplines, service providers, patient groups, and online training; and
- Forms.

### DCF Frequently Asked Questions Repository

DCF maintains a repository of frequently asked questions and responses on its website.<sup>26</sup> These FAQs address issues that arise in the field in the day-to-day administration of the Baker Act by the hundreds of thousands of individuals working in law enforcement, schools, mental health providers, hospitals, nursing homes and ALF's, and jails, as well as individual clinicians, who may come in contact with someone who might meet criteria for an involuntary exam under the Baker Act. All of these individuals must comply with the Baker Act's provisions regarding involuntary exams.

Topics in the DCF FAQ list with accessible content include the following, with the date of last revision noted:

- Baker Act Forms—2020.
- Long-term Care Facilities—2012.
- Clinical Records and Confidentiality—2012.
- Marchman Act—2012.
- Discharge Planning—2012.
- Minors—2012.
- Emergency Medical Conditions—2012.
- Professional Credentials—2012.
- Emergency Treatment Orders—2012.
- Receiving Facilities—2012.
- Express and Informed Consent—2011.
- Involuntary Examination—2012.
- Involuntary Inpatient Placement—2012.
- Transportation—2019.
- Involuntary Outpatient Placement—2012.
- Voluntary Admissions—2012.
- Weapons & Contraband—2012.
- Law Enforcement--2012.
- Telehealth--2021.

### Effect of Proposed Changes

The bill requires DCF to annually update its information handbook on the Baker Act and publish it online by October 1 each year. It also requires DCF to maintain and publish on its website a repository of answers to frequently asked questions, and revise and expand the FAQs annually.

The bill has an effective date of July 1, 2023.

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<sup>26</sup> Department of Children and Families, Baker Act Frequently Asked Questions, <https://www.myflfamilies.com/crisis-services/baker-act/baker-act-frequently-asked-questions> (visited March 3, 2023).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.