HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1179 Voluntary Admissions of Minors
SPONSOR(S): Children, Families & Seniors Subcommittee, Chaney and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1844

FINAL HOUSE FLOOR ACTION: 117 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/HB 1179 passed the House on March 8, 2022, as CS/SB 1844.

The Florida Baker Act, ch. 394, F.S., provides legal procedures for voluntary and involuntary mental health examination and treatment and the Marchman Act, ch. 397, F.S., does the same for substance abuse. Current law does not specify how law enforcement officers transporting an individual under the Baker and Marchman Acts must restrain the person.

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; however, judicial hearings are current practice.

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.

Additionally, the bill requires law enforcement officers transporting an individual under the Baker and Marchman Acts to restrain the individual in the least restrictive manner available and appropriate under the circumstances.

The bill has an indeterminate, positive fiscal impact of the State Courts System and no fiscal impact on local governments.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2022.

STORAGE NAME:
DATE:

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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]

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, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being

[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.

and such harm is unavoidable through help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[9]

An 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;[10]
- 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;[11] or
- A physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered 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.[12]

While courts and medical professionals have discretion in initiating an involuntarily examination for a person appearing to meet the criteria, law enforcement officers have no discretion, as current law requires officers to do so.

Transportation to a Receiving Facility

Section 394.462, F.S., governs transportation of individuals to a Baker Act receiving facility and requires a county or group of counties working through a memorandum of understanding to collaborate with the managing entity[13] to develop and implement a transportation plan. The plan must describe methods for transporting individuals for involuntary examination under the Baker Act and involuntary admission under the Marchman Act (see below). The plans may also rely on emergency medical transport (EMT) services or private transport companies.[14]

Additionally, the Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services.[15] If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer must 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.[16] Law enforcement must then relinquish the person, along with corresponding documentation, to a responsible individual at the facility.[17]

However, current law does not specify how law enforcement officers must restrain a person during transport to a facility.

Voluntary Admissions of Minors

[9] S. 394.463(1), F.S.
[10] S. 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[11] S. 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.
[12] S. 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.
[13] In 2001, the Legislature authorized DCF to implement behavioral health managing entities as the management structure for the delivery of local mental health and substance abuse services. Ch. 2001-191, L.O.F. Managing entities create and manage provider networks by contracting with service providers for the delivery of mental health and substance abuse services.
[14] S. 394.462, F.S. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a shared transportation plan. The plans must also comply with the transportation requirements in ss. 394.462, 397.6772, 397.697, 397.6795, 397.6822, and 397.697, F.S.
[15] S. 394.462(1)(a), F.S.
[16] S. 394.462(1)(g)-(h), F.S.
[17] S. 394.462(3), F.S.

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. [18] 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. 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.[19] Additionally, facilities must discharge a patient within 24 hours if he or she is sufficiently improved such that admission is no longer appropriate, consent is revoked, or discharge is requested, unless the patient is qualified for and is transferred to involuntary status.[20]

However, different standards apply to minors.

Consent vs. Assent

In general, a minor (a person under age 18) lacks the legal capacity to consent to medical treatment or enter into contracts and other financial arrangements,[21] unless the disability of nonage is removed.[22]

Under the Baker Act, a minor cannot be legally admitted for mental health examination on voluntary status unless:[23]

- The minor's legal guardian applies for the admission; and
- A hearing is conducted to assess the voluntariness of the minor's consent.

The Baker Act, recognizing the disability of nonage, expressly requires the minor's legal guardian to determine whether voluntary admission is warranted, and does not expressly require the minor to consent to treatment (as it does for adults). However, it also requires a hearing to assess the voluntariness of the minor's *consent*, implying that the minor's consent is required. This lack of clarity appears to conflict with general law on the disability of nonage.

In situations where a minor's constitutional due process or liberty interests arise, or where participation in decision-making which affects them is advisable for other reasons, the concept of "assent" may be useful. 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 them.[24] 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.[25]

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:[26]

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[18] S. 394.4625, F.S.
[19] S. 394.4625(1)(e), F.S.
[20] S. 394.4625(2), F.S.
[21] This disability of nonage is removed as a matter of law upon reaching the age of 18 (s. 743.07, F.S.), or upon marriage (s. 743.01, 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).
[22] Ch. 743, F.S., authorizes removal of nonage by circuit court proceeding for minors age 16 and over, and in other specified instances with and without a court order.
[23] *Id*.
[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).
[25] *Id*.
[26] 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).

> 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.[27]

Minor's Liberty Interests

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.[28] 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.[29] The Court further determined due process does *not* require that:[30]

- 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, if he or she is free to evaluate independently the child's mental and emotional condition and need for treatment.[31]

Procedure

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.[32] 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.[33]

Current law does not specify the type of voluntariness hearing that must be held (e.g., judicial, administrative, or clinical); in practice, 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

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[27] *Supra*, note 24.
[28] Parham at 606.
[29] Parham at 617-618.
[30] Parham at 585.
[31] *Id*.
[32] S. 394.4625, F.S.
[33] *Id*. The statute does not provide further detail on the nature of, or process for, a voluntariness hearing.

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.[34]

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[35] Substance use disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[36] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.[37] Brain imaging studies of persons with substance use disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[38]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[39] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[40]

The Marchman Act

The Marchman Act, ch. 397, F.S., provides legal procedures for voluntary and involuntary substance abuse examination and treatment.

Involuntary Admissions

There are five involuntary admission procedures that can be broken down into two categories: non-court involved admissions and court involved admissions. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act when 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

[34] 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).
[35] *World Health Organization, Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Feb. 3, 2022).
[36] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited Feb. 3, 2022).
[37] National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited Feb. 3, 2022).
[38] *Id.*
[39] Darran Duchene & Patrick Lane, *Fundamentals of the Marchman Act,* Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Program, *available at* http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited Feb. 3, 2022).
[40] *Id*.

- The person's judgment has been so impaired because of substance abuse that he or she is incapable of appreciating the need for substance abuse services and of making a rational decision in regard to substance abuse services; or
- Without care or treatment, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to the person's well-being and such harm is unavoidable through help of willing family members or friends; or
- The person has either has inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another.[41]

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act are:

- **Protective Custody**: This procedure is used by law enforcement officers when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer.[42]
- **Emergency Admission**: This procedure permits 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. Individuals admitted for involuntary assessment and stabilization under this provision must have a physician's certificate for admission, 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.[43]
- **Alternative Involuntary Assessment for Minors**: This procedure 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.[44]

Court Involved Involuntary Admissions

The two court-involved Marchman Act procedures are involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services, and involuntary services,[45] which provides for long-term court-ordered substance abuse treatment.

Transportation to a Receiving Facility

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.[46]

Law enforcement officers that take a person into protective custody[47] are authorized to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to

[41] S. 397.675, F.S.
[42] Ss. 397.6771 – 397.6772, F.S. A law enforcement officer may take the individual to his or her residence, to a hospital, a detoxification center, or addictions receiving facility, or in certain circumstances, to jail. Minors, however, cannot be taken to jail.
[43] S. 397.679, F.S.
[44] S. 397.6798, F.S.
[45] The term "involuntary services" means "an array of behavioral health services that may be ordered by the court for a person with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders." S. 397.311(22), F.S. SB 12 (2016), ch. 2016-241, Laws of Fla., renamed "involuntary treatment" as "involuntary services" in ss. 397.695 – 397.6987, F.S., however some sections of the Marchman Act continue to refer to "involuntary treatment." For consistency, this analysis will use the term involuntary services.
[46] S. 397.6795, F.S.
[47] S. 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.

provide if necessary the transfer of the detainee to an appropriate licensed service provider with an available bed.[48] A law enforcement officer is also authorized to transport an individual for an emergency assessment and stabilization.[49]

However, current law does not specify how law enforcement officers must restrain a person during transport to a facility.

Effect of the Bill

Baker Act – Voluntary Admission of Minors

The bill requires a clinical review of the minor's assent, rather than a hearing on the minor's consent, for voluntary admission under the Baker Act. This recognizes that a minor for whom the disability of nonage has not been removed does not have capacity to consent, but may assent.

The bill does not define "clinical review" or specify who may conduct such a 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. 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.

Transportation by Law Enforcement Officers

The bill requires law enforcement officers transporting an individual under the Baker and Marchman Acts to restrain the individual in the least restrictive manner available and appropriate under the circumstances.

The bill has 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.[50]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[48] S. 397.6772(1), F.S.
[49] S. 397.6795, F.S.
[50] DCF, Agency Bill Analysis for HB 1179, p. 3 (Jan 12, 2022).

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 having to attend, testify, or otherwise participate in judicial hearings to determine voluntariness.

D. FISCAL COMMENTS:

None.