

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 Children, Families, and Elder Affairs Committee

BILL: CS/SB 456

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Gaetz

SUBJECT: Mental Illness/Psychiatric Examination

DATE: March 4, 2009 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Ray | Walsh | CF | Fav/CS |
| 2. | _____ | _____ | HR | _____ |
| 3. | _____ | _____ | HA | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Senate Bill 456 provides for a memorandum of understanding between law enforcement agencies and receiving facilities within the law enforcement agency’s jurisdiction. The bill provides specific issues that must be contained within the memorandum.

The bill specifies that transfer of custody of a person who is transported pursuant to the Baker Act can be relinquished only to a responsible individual at the appropriate receiving or treatment facility.

The bill permits the personal examination of the patient by the psychiatrists or other specified medical professionals when formulating the accompanying opinions to a recommendation for involuntary placement, be conducted either face-to-face, which is current law, or by electronic means.

This bill substantially amends ss. 394.462, 394.4655, and 394.467, F.S.

II. Present Situation:

On July 22, 2008, an Okaloosa County Sheriff's Office Deputy was shot and killed by a man who, the previous afternoon, had been taken into custody pursuant to a court order for examination under the Baker Act. The subject of the court order was delivered to a local receiving facility, but he eloped from the facility and was picked up and returned by law enforcement, only to elope once again. Early on Tuesday, July 22, 2008, he was discovered barricaded in his home with a firearm. After unsuccessful attempts were made by the Okaloosa County Sheriff's Office Special Response Team and Crisis Negotiation Unit to talk the man out, the team entered the home. Shots were fired resulting in the death of both a Sheriff's Deputy and the subject of the action.¹

Florida Mental Health Act

Part I of Chapter 394, F.S., the "Florida Mental Health Act," also known as the "Baker Act," is a civil commitment law which provides a process for the involuntary examination and subsequent involuntary placement (admission) of a person for either inpatient or outpatient treatment of a mental, emotional, or behavioral disorder. It is designed to use the least restrictive means of intervention, while preserving a person's dignity and human rights.²

Criteria

Section 394.463(1), F.S., provides that a person may be taken to a receiving facility for involuntary examination if the person is believed to be mentally ill and because of that mental illness the person has refused voluntary examination or cannot determine whether examination is necessary.

In addition, it must be determined that, without care or treatment, the person is either likely to suffer from neglect³ resulting in a real and present threat of substantial harm that can't be avoided with the help of others, or is likely to cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.⁴ Section 394.463(2), F.S., provides that an involuntary examination may be initiated by a court through an *ex parte* order, a medical professional, or a law enforcement officer.

Transportation

The Baker Act requires law enforcement officers to transport any person for whom an involuntary examination has been initiated to the nearest receiving facility.⁵ The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination. If the receiving facility is at capacity or otherwise cannot meet the person's needs due to age or financial need, it should accept the person and arrange an appropriate transfer to another receiving facility.⁶

¹ Michele Nicholson, *Okaloosa County Deputy Killed-Suspect Killed in Stand Off*, News Channel 7 WJHG, July 23, 2008, available at: <http://www.wjhg.com/home/headlines/25753729.html>.

²Section 394.453, F.S.

³Neglect may take the form of refusing necessary prescription medications, refusing to eat or drink, inability to sleep, placing oneself in imminently dangerous situations, or other high risk behaviors. *Baker Act Guide*, Appendix F-4 (2008).

⁴Section 394.463(1)(b), F.S.

⁵ Section 394.462(1)(j), F.S.

⁶ Department of Children and Families (Mental Health Program Office), in collaboration with Department of Mental Health Law and Policy, Louis de la Parte Mental Health Institute, Univ. S. Fla., *2008 Baker Act User Reference Guide*, Appendix G-(2008)(available at: <http://www.dcf.state.fl.us/mentalhealth/laws/08appg.pdf>).

According to the department's *2008 Baker Act User Reference Guide*, a law enforcement officer does not have to wait at a hospital or other receiving facility for the person to be medically screened, treated, or to have their insurance verified. The officer's only duties are to present the person and complete the required paperwork. However, if the person is acting in a dangerous manner, beyond the ability of the facility staff to manage, the officer should stay to assist for a temporary period until hospital clinical or security staff can arrive. It is the responsibility of each Baker Act receiving facility to retain persons safely and not allow them to elope or to depart against medical advice if they meet criteria for involuntary examination.⁷

Evaluations for Involuntary Placement

Once an individual is determined to require continued psychiatric care and does not give consent to voluntary placement, he or she may be the subject of a petition for involuntary placement filed by the facility administrator. The Baker Act permits either involuntary inpatient⁸ or involuntary outpatient⁹ orders. The facility's recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or other psychiatrist,¹⁰ both of whom have personally examined the subject of the recommendation within the preceding 72 hours.

A growing amount of literature now suggests that the use of telepsychiatry or telemedicine to provide mental health services may have the potential to provide increased access to care, especially in remote and underserved areas.¹¹ According to the American Psychiatric Association, telemedicine is a specifically defined form of video conferencing that can provide psychiatric services to patients living in remote locations or otherwise underserved areas. It connects patients, psychiatrists, physicians, and other healthcare professionals through the use of television cameras and microphones.¹²

While telemedicine may provide increased access to services, reimbursement is difficult to receive.¹³ Currently Medicare reimburses telemedicine providers, while Medicaid does not.¹⁴ According to the Florida Association of Health Plans, some private health insurers in Florida cover telemedicine services.

⁷ *Id.*

⁸ Section 394.467, F.S.

⁹ Section 394.4655, F.S.

¹⁰ Section 394.467(2), F.S., provides that in counties of less than 50,000 population, the second opinion may be provided by a licensed physician trained and experienced in mental and nervous disorder diagnosis and treatment or a psychiatric nurse.

¹¹ Diana J. Antonacci, Richard M. Bloch, Sy Atezaz Saeed, Yilmaz Yildirim, Jessica Talley, *Empirical evidence on the use and effectiveness of telepsychiatry via videoconferencing: Implications for forensic and correctional psychiatry*, Behavioral Sciences and the Law, Vol. 26, Issue 3, May/June (2008). (on file with the committee).

¹² American Psychiatric Association website:

<http://www.psych.org/Departments/HSF/UnderservedClearinghouse/Linkedddocuments/telepsychiatry.aspx> (last visited February 25, 2009).

¹³ *Id.*

¹⁴ Centers for Medicare and Medicaid Services website: <http://www.cms.hhs.gov/Telemedicine/> (last visited February 25, 2009).

III. Effect of Proposed Changes:

The bill directs each law enforcement agency to develop a memorandum of understanding, which reflects a single set of protocols, with each receiving facility within the law enforcement agency's jurisdiction. The bill requires that the memorandum include protocols for the safe and secure transportation of the person and transfer of custody of the person. The memorandum must also address crisis intervention measures.

The bill specifies that custody of a person who is transported pursuant to the Baker Act can be relinquished only to a responsible individual at the appropriate receiving or treatment facility.

The bill permits the personal examination of the patient by the psychiatrists or other specified medical professionals when formulating the accompanying opinions to a recommendation for involuntary placement be conducted either face-to-face, which is current law, or by electronic means.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The Committee Substitute for SB 456 clarifies that the memorandum of understanding developed between a law enforcement agency and each receiving facility within the law enforcement agency's jurisdiction will reflect a single set of protocols.

B. Amendments:

None.

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