



# **Florida Mental Health Act**

## **Baker Act**

**World Autism Day  
April 2, 2020**

# Alternatives to the Baker Act

## **Mental Illness – No other conditions**

- Marchman Act, 397, FS
- Developmental Disabilities, 393, FS

## **Psychiatric – Not Medical**

- Emergency Examination & Treatment of Incapacitated Persons, 401, FS
- Federal EMTALA – Emergency Medical Treatment and Active Labor Act & Access to Emergency Services and Care, 395.1041, F.S.
- Medical Consent Law, 766.103, FS
- Rule 5.900 Expedited Judicial Intervention Concerning Medical Treatment

## **Intervention Alternatives**

- Adult Protective Services, 415, FS
- Guardianship, 744, FS
- Advance Directives Act/Health Care Surrogate & Proxy, 765, FS

## **Not a Discharge Destination**

- Nursing Homes / ALF's, 400, FS

# History

- Each state has its own mental health and substance abuse laws
- History of Baker Act in Florida
- Lack of due process
- Representative Maxine Baker / Intent
- 1971 passage -- 1972 implementation
- Frequently amended

**Balances liberty interests against safety of individual and society**



# **Baker Act**

## **Who is Protected?**

- Voluntary and Involuntary
  - Inpatient and Outpatient
  - Children and Adults (including elders)
  - Competent and Incapacitated
  - Publicly and Privately Funded Facilities
- **Florida Mental Health Act**
  - **Balances individual liberty**
  - **with safety of individual and society**



# Selected Definitions

394.455(39), (44), and (47)

**Receiving Facility:** means a public or private facility or hospital designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation

**Treatment Facility:** means a state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.



# Receiving Facilities Public & Private

- Public receiving facilities receive legislatively appropriated Baker Act funds
- Private receiving facilities do not.
- Both public & private receiving facilities serve indigent patients and have insurance contracts.
- Public & private receiving facilities have the same responsibilities under the Baker Act and people served have the same rights.
- Public receiving facilities must ensure the centralized provision and coordination of acute care services for eligible persons with acute mental illnesses, regardless of whether they can accept a transfer.

# Receiving Facilities

394.461, FS and 65E-5.350 and 65E-5.180(5), FAC

## Receiving facilities must:

- Provide onsite emergency reception, screening & inpatient treatment services 24 hours a day, 7 days a week, regardless of ability to pay
- “Accept” individuals of all ages, although compliance with Transportation Plan regarding age is strongly encouraged.
- Assess all individuals for clinical safety, co-occurring disorders, substance abuse, physical/sexual abuse or trauma
- Ensure all rights & procedures under the Baker Act are protected at all times.
- Must comply with all federal EMTALA requirements, if a hospital, including free-standing psychiatric hospitals.

# **Voluntary Admissions - Adults**

394.4625, FS and 65E-5.270, FAC

- Have a mental illness as defined in law
- Be suitable for treatment
- Be competent to provide express and informed consent

# **Voluntary Admission - Minors**

394.4625, FS and 65E-5.270, FAC

- Have a mental illness (same definition as for adults)
- Be suitable for treatment
- **Guardian** applies by express and informed consent for minor's admission
- Minor must agree (assent) to the admission. If not, release or transfer to involuntary status.
- Judicial hearing **in advance** of admission to confirm voluntariness



# Mental Illness Means...

394.455(18), FS

- Impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality.
- Impairment substantially interferes with a person's ability to meet the ordinary demands of living,
- **Excludes** developmental disabilities as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse. (Dementia and traumatic brain injury added to exclusions as of 7/1/20)

## Co-occurring Disorders?

## **Express and Informed Consent**

- Consent voluntarily given in writing by a **competent** person after sufficient explanation
- To enable the person to make a knowing and willful decision
- Without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

## **Incompetent to Consent**

- That a person's judgment is so affected by his or her mental illness or substance abuse impairment
- That the person lacks the capacity
- To make a **well-reasoned, willful and knowing decision**
- Concerning his or her medical, mental health, or substance abuse treatment.

# Voluntary Admissions Selected Procedures

394.4625, FS and 65E-5.270, FAC

- Notice of right to “request” release given at time of admission
- Incapacitated or incompetent with a guardian – must be involuntary
- Incapacitated with health care surrogate / proxy making decisions -- must be involuntary
- Certification of adult’s competence by physician within 24 hours of arrival
- Request for discharge or refusal / revocation of consent to treatment – discharge within 24 hours unless transferred to involuntary status.
- Petition for involuntary **placement** filed with the circuit court within 2 court working days after request for discharge or refusal of treatment is made. Hearing within 5 court working days. State Attorney represents the state as “real party in interest” and Public Defender represents the patient’s wishes. Patient can be court ordered for up to 90 days of placement / services.

# Involuntary Examination Criteria

394.463(1),FS

**Reason to believe** person has a mental illness **and** because of mental illness, person has refused **or** is unable to determine if examination is necessary,

**and either:**

Without care or treatment, is likely to suffer from **neglect** or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to one's well-being and it is not apparent that such harm may be avoided through the help of willing family members, friends, or the provision of other services; **or**

There is substantial likelihood that without treatment person will cause in the near future **serious bodily harm** to self or others, as evidenced by recent behavior.

**Must meet all criteria**

# Initiating Involuntary Examinations

384.463(2), FS and 65E-5.280, FAC

Upon determination that person **appears to meet** criteria for involuntary examination, the exam may be initiated by any one of the following three means:

1. Court Order - A circuit or county court **may** enter an ex parte order based on **sworn testimony**; or
2. A law enforcement officer **shall** take into custody a person who appears to meet the criteria, describing **circumstances**; or
3. A mental health professional **may** execute a certificate stating that s/he has examined the person within the preceding 48 hours and found the person met the criteria and stating the **observations** by that professional upon which that conclusion is based.

# Ex Parte Order

- Petition form
- Based on sworn testimony
- Filed with Clerk of the Court (Probate) -  
- No fee charged
- Time limit for execution of order
- When/how law enforcement can execute
- Transportation to receiving facility (see Pinellas Transportation Plan)

# Law Enforcement Initiation

- Law enforcement officer defined
- Observation or circumstances?
- Transportation to facility designated in County's approved Transportation Plan or nearest receiving facility
- Report of Law Enforcement Officer -- Form (3052a)

# Certificate of a MH Professional

- Examination within 48 hours prior to initiation
- Conducted by an authorized professional (physician, psychologist, social worker, mental health counselor, marriage & family therapist, or psychiatric nurse)
- Citing observations on which the professional's conclusion is based
- Observations must relate to the criteria
- Transportation to receiving facility (see Pinellas Transportation Plan)
- Certificate of a MH Professional (3052b)



# Certificate of a Mental Health Professional

394.455(2), (4), (21), (23) and (24), FS

## **Mental Health Professional defined...**

**Psychiatrist**: A medical practitioner licensed under chapter 458 or 459 who has primarily diagnosed/treated mental/nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

**Physician**: A medical practitioner licensed under chapter 458 or 459 who has experience in the diagnosis/treatment of mental and nervous disorders **or** a physician **employed by** a facility operated by the U.S. Dept of Veterans Affairs or the Department of Defense.

**Clinical Psychologist**: A psychologist as defined in s. 490.003(7) with **3 years** of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, **or** a psychologist employed by a facility operated by the United States Department of Veterans Affairs **that qualifies** as a receiving or treatment facility.

**Psychiatric Nurse**: an ARNP certified under s.464.012 with **a master's or doctoral degree** in "psychiatric nursing", holding a national advanced practice certification as a psychiatric mental health advance practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician.

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**Clinical Social Worker:** A person licensed as a clinical social worker under s. 491.005 or s.491.4006.

**Licensed Mental Health Counselor:**  
Means a mental health counselor licensed under s. 491.005 or s.491.006

**Licensed Marriage and Family Therapist:**  
Means a marriage and family therapist licensed under s.491.005 or s.491.006

(Physician Assistants not eligible in statute, but recognized by Florida Attorney General in May 2008 Opinion to initiate involuntary exam, but not to perform other duties of a physician)

# Notice of Baker Act by Schools

1002.20(3)(l), FS *Notification of involuntary examinations.*—The public school principal or the principal's designee shall **immediately notify** the parent of a student who is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to s. 394.463. The principal or the principal's designee may delay notification for no more than 24 hours after the student is removed if the principal or designee deems the delay to be in the student's best interest and if a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect. Each district school board shall develop a policy and procedures for notification under this paragraph

# Notice of Minor's Admission

394.4599(2)(c)

A **receiving facility** shall give notice of the whereabouts of a minor who is being involuntarily held for examination to the minor's parent, guardian, caregiver, or guardian advocate, in person or by telephone or other form of electronic communication, **immediately** after the minor's arrival at the facility.

The facility may delay notification for no more than 24 hours after the minor's arrival if the facility has submitted a report to the central abuse hotline, based upon knowledge or suspicion of abuse, abandonment, or neglect and if the facility deems a delay in notification to be in the minor's best interest.

Receiving facility shall attempt to notify until it receives confirmation verbally, by phone or other electronic communication, or recorded message, that notification was received.

# Notice of Minor's Admission

394.4599(2)(c)

Attempts to notify must be repeated at least once an hour during first 12 hours after minor's arrival and once every 24 hours thereafter and continuing until confirmation is received, unless minor is released at the end of the 72-hour exam period, or until a petition for involuntary services is filed with the court.

The receiving facility may seek assistance from law enforcement to make notification if the facility has not received within the first 24 hours after the minor's arrival a confirmation that notification has been received. The receiving facility must document notification attempts in the minor's clinical record.

# Baker Act

## Involuntary Examinations

	<u>Pinellas</u>	<u>State</u>
1999	5,782	75,945
2000	5,779	80,888
2001	6,584	91,468
2002	7,802	100,458
2003	7,961	104,600
2004	7,869	110,697
2005	8,380	122,206
2006	7,469	120,506
2007	7,677	122,454
2008	8,747	132,026
2009	7,934	136,120
2010	8,765	143,347
2011	9,861	150,466
2012	9,800	157,352
2013	10,286	171,744
2014	10,359	181,471
2015-16	11,914	194,354
2016-17	13,250	199,944
2017-18	13,058	205,781
Rate per 1,000	13.6	10.0
BA Rate – Minors	20.6	11.9
BA Rate – Elders	4.8	3.8
Suicide Rate	.185	.155
Court	1.5%	2.0%
MHP	50.8%	47.8%
LEO	47.8%	50.3%



Primary  
Transportation  
And other  
Law Enforcement  
Requirements



# Primary Transportation

- Why law enforcement?
- Which law enforcement agency?
- Mandated duty for all involuntary initiated by law enforcement, courts and MH professionals (except secondary transfers from hospitals), unless county approved transportation plan permits EMS or private medical company.
- Exceptions/Delegation of responsibility
- Nearest facility must accept (394, 395, and EMTALA)
  - -Emergency medical conditions
  - -Medical clearance
- Jail vs. receiving facility

# Primary Transportation (continued)

- Facility at capacity?
- Security at facilities?
- Secondary transfers from hospital ER's?
- Medical or insurance screening at ER?
- Right to Individual Dignity-- Procedures, facilities, vehicles, and restraining devices used for criminals not used with persons who have a mental illness, except for protection of the person or others

New Transportation Plans developed by all counties as of 6/30/2017 designate “most appropriate” facility(s) for individuals to be taken under the Baker and Marchman Acts.

# Transfers among Facilities

394.3685, FS and 65E-5.310

All transfers from hospitals to other facilities must comply with EMTALA. Otherwise:

## **Public to Private Facilities**

- Requested by patient or representative
- With approval by private facility
- At patient's expense

## **Private to Public Facilities**

- Requested by patient or representative and acceptance by public facility
- Requested by private facility and acceptance by public facility, at cost to transferring facility. 2 working days for public facility to respond

## **Between Private Facilities**

- Requested by patient or representative and acceptance by facility to which transfer is sought

# Transfers in Legal Status

394.4625(4)and(5), FS and 65E-5.270(1)(b), FAC

## **Voluntary → Involuntary**

- File Petition for Involuntary Placement within 2 court working days.

## **Involuntary → Voluntary**

- All requirements of voluntary admission must be met
- Initial Mandatory Involuntary Examination completed by physician or clinical psychologist
- Certification of Competency to Consent to Treatment (adults) completed by physician.
- Only then can transfer to voluntary status be made.

# Involuntary Examination

394.463(2)(f) and 65E-5.2801(1), FAC

A “Baker Act” is not lifted, rescinded, overturned, reversed, or abrogated!

Once an Involuntary Exam is initiated, the Initial Mandatory Involuntary Examination **must** be conducted **without unnecessary delay** by a physician or psychologist or, in some cases a psychiatric nurse, at a receiving facility or a hospital and documented in the clinical record.

The involuntary examination of a minor must be “initiated” within 12 hours of arrival at the receiving facility. There is still a maximum of 72 hours to complete the exam.

# Minimum Standards for Initial Mandatory Involuntary Examination

394.463(2)(f), FS

65E-5.2801, FAC

## Minimum standards for Initial Mandatory Involuntary Examination...

- Thorough review of any observations of the patient's recent behavior;
- Review "Transportation to Receiving Facility" form (#3100) **and**
- Review one of the following:
  - ✓ Ex Parte Order for Involuntary Examination or
  - ✓ Report of Law Enforcement Officer Initiating involuntary Examination or
  - ✓ Certificate of Professional Initiating Involuntary Examination
- Conduct brief psychiatric history; and
- Conduct face-to-face examination in a timely manner to determine if patient meets criteria for release.

# Involuntary Examination

(continued)

- Disposition within 72 hours of arrival at receiving facility
- “Approval” for release from receiving facility can only be done by a psychiatrist or a clinical psychologist or an emergency department physician. Also under some circumstances by a psychiatric nurse as defined in the Baker Act. (#3111)

# Discharge or Release Involuntary Examination

394.463(2)(I), FS

## Within the 72-hour examination period:

- Patient shall be released, unless charged with a crime. If so, returned to law enforcement, or
- Patient, unless charged with a crime, shall be asked to give express and informed consent to voluntary placement, or
- Petition for involuntary placement filed with clerk of circuit court and hearing conducted within 5 court working days unless continuance is granted.



# **Involuntary Inpatient Placement** **Criteria**

394.467(1), FS and 65E-5.290, FAC

## **Finding of the court by clear and convincing evidence that:**

- S/he has a mental illness **and** because of the mental illness:
- S/he refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; **or** was unable to determine whether placement is necessary; **and**

(continued)

# Involuntary Inpatient Placement Criteria (continued)

- S/he is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from **neglect** or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; **or**
- There is substantial likelihood that in the near future s/he will inflict **serious bodily harm** on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; **and**
- All available **less restrictive treatment** alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

**All criteria must be met**

# Involuntary Inpatient Placement Petition

394.467(2) and (3), FS and 65E-5.290(1) and (2), FAC

- Petition may only be filed by the administrator of a receiving or treatment facility after patient's admission and examination
- Recommend placement by psychiatrist and a psychologist or 2<sup>nd</sup> psychiatrist, both of whom examined the patient within preceding 72 hours
- Petition (#3032) completed and filed within 72 hours of patient's arrival at facility or filed on next court working day if 72-hour period ended on weekend or legal holiday – no exception for weeknights
- No fee charged.
- Clerk of Court – provides required copies to patient, DCF, guardian, or representative, state attorney and public defender

# Involuntary Placement Process

394.467(4), (5) (6)(a)2, FS and 65E-5.290(3) and (4), FAC

- Appointment and notification of Public Defender within 1 working day / role?
- State Attorney participation & role as “real party in interest”
- Access to patient, witnesses and records by Public Defender
- Patient’s right to request at least 1 continuance, with concurrence of counsel, for up to 4 weeks
- Independent expert examination – provided by court (costs?). Confidential and not discoverable unless expert is called as patient’s witness.

# Involuntary Placement Hearing

s.394.467(6), FS      65E-5-290(6), FAC

- Hearing held within 5 court working days unless continuance requested by patient, with concurrence of counsel
- Judge or magistrate presides
- Held as convenient to patient as consistent with orderly procedure and not likely to be injurious to patient's condition. Florida Supreme Court case (Doe) requires presiding officer to be physically present at hearings.
- Patient's attendance at hearing -- any waiver of right to be personally present at hearing must be knowing, intelligent, and voluntary. No waiver of hearing.

# Involuntary Placement -- Hearing

Testimony, under oath – proceedings recorded

## **Burden of Proof by Clear and Convincing Evidence:**

Evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter at issue (Fla. Stand. Jury Instr. (Civil) 405.4.

Factual substantiation of each criteria alleged in the petition for involuntary inpatient placement – not just opinions, conclusions, or hearsay

# Involuntary Placement Hearings

## Witnesses:

- 1 of the 2 examining professionals who executed placement certificate must be a witness
- Staff
- Family
- Case Manager
- Others?

Patient may refuse to testify at the hearing

Confidentiality of hearing

Consideration of competence to consent required  
– If incompetent and no guardian exists, a guardian advocate must be appointed

# Involuntary Inpatient Placement Court Order

394. 463(6)(b), FS and 65E-5.290(7), FAC

If a court concludes patient meets all criteria for involuntary inpatient placement, it shall order patient, for a period of **up to maximum of 90 days** (as of 7/1/16), **except to State Hospitals that remains maximum of 6 months**):

- Transferred to a treatment facility or, if the patient is at a treatment facility, that the patient be retained there, or
- Treated at any other appropriate receiving or treatment facility, or
- Receive services from a receiving or treatment facility





# Discharge or Release

## Involuntary Inpatient Placement

394.469, FS and 65E-5.320, FAC

At any time a patient is found to no longer meet the criteria for involuntary placement, the administrator **shall**:

- Discharge patient, unless under a criminal charge, in which case the patient shall be transferred to LEO.
- Transfer patient to voluntary status if willing and competent to provide express and informed consent, unless patient is under criminal charges or adjudicated incapacitated; or
- Place improved patient, unless under a criminal charge, on convalescent status in the care of a community facility.



Baker Act  
Patient Rights



# Rights of Persons

394.459, FS and 65E-5.140, FAC

- Individual dignity
- Quality treatment
- Express and informed consent
- Communication & abuse reporting
- Care and custody of personal affects
- Voting in public elections
- Habeas corpus
- Separation of children from adults
- Sexual misconduct prohibited
- Confidentiality

# Rights of Persons

394.459, FS

65E-5.140-220, FAC

- All rights of persons incorporated in 394.459, FS apply to all persons whose services are governed by the Baker Act – voluntary & involuntary / inpatient & outpatient.
- Patient must be notified of his/her rights.
- Right to express and informed consent extended by Legislature from just those entering a facility to those entering treatment.
- Each patient shall receive services, including those under involuntary outpatient service court order which are suited to his or her needs, and which shall be administered skillfully, safely, and humanely with full respect for the patient's dignity and personal integrity.

# Other Required Notices (Continued)

394.4599, FS

Prompt notice to:

- Patient
- Representative
- Guardian Advocate
- Guardian
- Attorney

Notice to patients in facilities must be provided:

- Orally and in writing
- Using language/terminology person can understand
- Using an interpreter if needed

To others by U.S. mail or by hand delivery and documented in chart

# Right to Individual Dignity

349.459(1), FS and 65E-5.150, FAC

- Procedures, facilities, vehicles, and restraining devices used for criminals not be used with persons who have a mental illness, except for protection of the person or others
- Freedom of Movement – no restraint or seclusion except for imminent danger
- Outdoors & Exercise – at least ½ hour per day out of doors unless prohibited by physician's order when suitable area is immediately adjacent to unit
- Special Clothing – prohibited for identification purposes
- All Constitutional Rights



# Right to Treatment

394.459(2), FS and 65E-5.160, FAC

- No denial or delay of treatment due to inability to pay – may collect appropriate reimbursement
- Least restrictive appropriate & available treatment required
- Physical examination within 24 hours by authorized health care practitioner
- Posted schedule of daily activities
- Individualized treatment plan within 5 days. Person must have had opportunity to assist in preparing and reviewing plan. Form must have space for person's comments

# Express and Informed Consent

394.455(9), FS

- Consent voluntarily given in writing by a **competent** person
- After sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision
- Without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

## Incompetent to Consent to Treatment Means...

394.455(15), FS

- When a person's judgment is so affected by his or her mental illness or substance abuse that he/she lacks the capacity
- To make a **well-reasoned, willful and knowing decision** concerning his or her medical, mental health, or substance abuse treatment.



# Express & Informed Consent

394.459(3), FS and 65E-5.170, FAC

Competence is well reasoned, willful & knowing decision-making

Prior to requesting consent to treatment, the following must be provided and explained in plain language:

- The reason for admission or treatment,
- Proposed treatment, including psychotherapeutic medications
- Purpose of treatment
- Alternative treatments
- Specific dosage range for medications
- Frequency and method of administration
- Common risks, benefits and short-term/long-term side effects
- Contraindications

(continued)

# Express & Informed Consent

(continued)

- Clinically significant interactive effects with other medications,
- Similar information on alternative medication which may have less severe or serious side effects.
- Potential effects of stopping treatment
- Approximate length of care
- How treatment will be monitored, and that
- Any consent for treatment may be revoked orally or in writing before or during the treatment period by the person legally authorized to make health care decisions for the person.

## **Express and Informed Consent** (continued)

- If competent to consent, person is competent to refuse or revoke consent!
- If incompetent to consent, person is incompetent to refuse or revoke consent!

- Treatment options:

**Provide Refuse Revoke Negotiate**

- Certification of competence to consent:
  - Voluntary admission
  - Transfer from involuntary to voluntary
  - Each person allowed to consent to own treatment

# Medical Consent

- Neither Baker Act nor Marchman Act authorizes medical examination & treatment, including lab & dx testing without consent of competent patient or legally authorized substitute decision-maker. Must rely on Florida's Medical Consent Act or other alternative laws for authority to administer non-psychiatric medications.
- No psychiatric medications can be administered without the express and informed consent of a competent adult patient **or legally authorized decision-maker**, unless there is documentation in medical record of the nature and extent of immediate danger. In such situations an Emergency Treatment Order can be written for up to 24 hours. If a 2<sup>nd</sup> ETO is written, a petition must be filed with the Clerk of Court for appointment of a Guardian Advocate.

# Communication, Abuse Reporting & Visitation

394.459(5), FS and 65E-5.190, FAC

Guaranteed regardless of age or development, but facility shall establish reasonable rules governing visitors and use of telephones

**Visits:** Immediate access by family, guardian, guardian advocate, representative, or attorney, unless found to be detrimental

## **Telephone:**

- Free local calls / Access to long-distance
- Private and confidential communication
- Phone located near posters giving advocate phone numbers
- Unlimited telephone for abuse reporting, attorney, & Disability Rights Florida, Inc.

# Communication, Abuse Reporting & Visitation

## Correspondence

- Stationery/stamps/gifts
- Send / receive unopened correspondence without delay
- Reasonable examination of suspected contraband & disposal

## Restriction of Communication (#3049)

- Written notice with reasons to person, attorney, guardian, guardian advocate, or representative
- Reviewed every 7 days

**Waiver:** Competent adults may waive the confidentiality of their presence in a receiving or treatment facility

# Care & Custody of Personal Effects

394.459(6), FS and 65E-5.200, FAC

Right to possess clothing / personal effects except for medical and safety reasons.

Receiving and treatment facilities must develop policies and procedures governing:

- What will be removed for reasons of personal or unit safety
- How it will be safely retained by the facility
- How/when it will be returned
- How contraband will be addressed when not returned

## **Inventory:**

- Witnessed by person and two staff
- At time of admission & when amended

# Separation of Children from Adults

394.4785, FS and 65E-12, FAC

## Hospitals:

- Age 0-13 no contact with adults
- Age 13-17 share common areas with adults but share bedroom with adult only if doctor documents medical or safety issues daily
- Children and adolescents can be mixed

## CSUs:

- Age 0-13 can share common areas with adult when under direct visual observation by staff but cannot share bedroom with an adult
- Age 14-17 share common areas with adults but share bedroom with adult only if doctor documents medical or safety issues daily



# Complaints and Grievances

394.459(4)(b)3, FS

65E-5.180 FAC

Policy/procedures required to receive, review, investigate, track, manage & respond to formal/informal complaints by person or others.

Process explained verbally at orientation and provided in writing:

- How complaints can be addressed informally and formally with staff
- Informed of Abuse Registry, Disability Rights Florida, Inc. or others to request assistance
- Process, including phone numbers for above posted next to phones.

Life-safety issues acted upon immediately

# Complaints and Grievances

(continued)

## **Formal complaints:**

- Person not named in complaint will assist.
- Will include date/time of complaint and detail issue/remedy sought
- Forward to staff assigned to track/monitor

## **All formal complaints must contain:**

- Name of complainant
- Name of person receiving services
- Nature of complaint
- Date/time received by staff
- Date/time received by person who will track
- Name of person assigned to investigate
- Date person notified of who will investigate
- Due date for written response
- Written disposition of formal complaint.

# Complaints and Grievances

(continued)

- Written response provided to person within 24 hours of disposition. If complainant other than patient, not given details of disposition without consent, unless having right to information.
- Disposition can be appealed to administrator who will review and make final decision within 5 working days and provide written response within 24 hours thereafter.

# Habeas Corpus

394.459(8), FA and 65E-5.220, FAC

Each person admitted to a receiving or treatment facility must have written notice of right to petition (#3036) for writ:

- Cause and legality of detention
- Unjustly denied a right or privilege
- Abuse of procedure authorized in law

Petition (#3090) filed any time / without notice by:

Person	Guardian Advocate
Relative	Representative
Friend	Attorney
Guardian	DCF

Facility files petition (any form) with clerk of court on next working day. No fee charged.

# Voting in Public Elections

394.459(7), FS and 65E-5.210, FAC

- A person in a facility who is eligible to vote has the right to vote in the primary and general elections
- Receiving and treatment facilities shall have voter registration forms and applications for absentee ballots readily available at the facility (or in accordance with the procedures established by the County supervisor of elections), and shall assure that each person who is eligible to vote and wishes to do so, may exercise his or her franchise
- Each designated facility shall develop policies and procedures governing how persons will be assisted in exercising their right to vote.



# Confidentiality

394.4615, FS and 65E-5.250, FAC

Variety of Federal and State laws must be considered:

- Baker Act
- Substance abuse
- HIPAA (treatment, operations, and payment exempted)
- Communicable diseases
- Duty to report abuse, neglect and exploitation of children **and** vulnerable adults
- Foreign nationals / dual citizenships

# Baker Act Confidentiality

394.4615, FS and 65E-5.250, FAC

Unless patient, guardian, guardian advocate or surrogate/proxy waives by express and informed consent, the confidentiality of the record shall not be lost.

Information from record can be released:

- Court order **after** good cause hearing for BA records—not other psychiatric records
- Declaration of intent to harm – shall release sufficient information to adequately inform law enforcement and warn person threatened
- Duty to Inform guardians of minors - Yes
- Confessions of past crimes? No
- Testimony for criminal conviction? No
- Testimony for civil commitment? Yes
- Missing Persons?

# **Baker Act Confidentiality – Access to Record**

Patient has right of reasonable access to own clinical record unless determined by physician to be harmful. If restricted:

- Recorded, with reasons, in clinical record
- Notice to patient, attorney, and others
- Expires in 7 days but can be renewed

Facility policies should identify:

- What is reasonable access?
- Is this all “patients” – minors? incapacitated?
- Who will review for harmfulness?
- How, where & with whom actual review will take place?



# Immunity

394.459 (10) and 394.460, FS

- No professional shall be required to accept patients for treatment of mental, emotional, or behavioral disorders. Such participation shall be voluntary (394.460, F.S.)
- Any person who acts in good faith in compliance with the Baker Act is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this section does not relieve any person from liability if such person commits negligence. (394.459)

# On-Line Training Opportunities

<http://www.dcf.state.fl.us/programs/samh/mentalhealth/training/bacourses.shtml>

Baker Act Basics

Law Enforcement & Baker Act

Emergency Medical and Baker Act

Long-Term Care Facilities

Consent for Minors

Rights of Persons

Baker Act & Marchman Act Compared

Marchman Act

Suicide Prevention

Why People Die by Suicide

Trauma Series

Seclusion and Restraints

No fee

Certificate of Achievement



## Department of Children & Families Website

<http://www.myflfamilies.com/service-programs/mental-health/baker-act/>

Click on **Baker Act**. Contents include:

- Copy of Baker Act law (394, Part I, FS) and rules (65E-5, FAC)
- Baker Act forms – mandatory and recommended
- Selected forms in Spanish & Creole
- 2014 Baker Act Handbook
- Baker Act monitoring/survey instruments
- Frequently Asked Questions (FAQ's) on 21 subject areas
- List of all public and private receiving facilities throughout the state
- Mental Health Advance Directives
- Other relevant materials

# Department of Children & Families Website

<http://www.myflfamilies.com/service-programs/substance-abuse/marchman-act/>

Click on **Marchman Act**. Contents include:  
2003 Marchman Act User Reference Guide  
includes among other issues:

- Statute & Rules
- History & Overview
- Marchman Act Model Forms
- Law Enforcement and Protective Custody
- Quick Reference Guide for Involuntary Provisions
- Flow Charts for Involuntary Provisions
- Admission & Treatment of Minors
- Where to Go for Help
- Marchman Act Pamphlet
- Substance Abuse Program Standards
- Common Licensing Standards
- Marchman Act PowerPoint Presentation