



# FAQ

## FREQUENTLY ASKED QUESTIONS:

## LAW ENFORCEMENT

### CHAPTER 394, FLORIDA STATUTES – THE BAKER ACT

# Table of Contents

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<b>Definitions and Jurisdiction</b>	<b>1</b>
<b>Criteria, Initiation, and Execution of Involuntary Examinations</b>	<b>2 - 3</b>
<b>Execution of Ex Parte and Risk Protection Orders</b>	<b>4 - 5</b>
<b>Transportation</b>	<b>5 - 8</b>
<b>Legal Charges and Jails</b>	<b>8 - 9</b>
<b>Forms, Confidentiality, Baker Act Violations, and Public Records</b>	<b>10 - 11</b>

This document has no legal authority and cannot be used as legal advice. Statutes and rules can be modified and have many nuances that may not be covered in their entirety. Additionally, there are many special considerations and interpretations of the law. If you have a specific legal question, it is recommended that you speak with legal counsel.

#### HYPERLINKS:

Throughout this document are hyperlinks to State Statute and Florida Administrative Rules.



Links are also provided for supplemental material that supports a specific question.

Many of these materials can be found on the Florida Department of Children and Families mental health website at <http://www.myflfamilies.com/service-programs/mental-health>.



Links are also provided for online courses that support a specific question.

The full list of online courses can be found on Florida Certification Board's Online Education Platform at <https://fcbonline.remote-learner.net/>.



**# Question Response**

**Definitions and Jurisdiction**

<b>1.</b>	Who is considered as a “law enforcement officer” under the Baker Act?	<p>A law enforcement officer is a person who:</p> <ul style="list-style-type: none"> <li>● Works for a municipality or political subdivision,</li> <li>● Has the primary responsibility of prevention and detection of crimes or enforcement of state laws, and</li> <li>● Has the authority to bear arms and make arrests.</li> </ul> <p>This does not include Federal law enforcement officers such as those who work for the Veterans Administration (VA) or law enforcement officers who are employed by a university. These officers cannot initiate an involuntary examination or provide primary transport for a person on involuntary status.</p>	<p>s. <a href="#">394.455(24)</a>, F.S. s. <a href="#">943.10(1)</a>, F.S.</p> <p>AGO <a href="#">99-68</a> AGO <a href="#">85-98</a></p>
<b>2.</b>	Does a law enforcement officer have to be “on duty” to initiate an involuntary examination and/or transport an individual for such an examination?	<p>No. <u>If at any time</u> a law enforcement officer who is authorized to initiate an involuntary examination believes that criteria for an involuntary examination is met, that officer must initiate and execute the <u>Report of a Law Enforcement Officer (CF-MH 3052a)</u> and the <u>Transportation to Receiving Facility (CF-MH 3100)</u>.</p>	<p>s. <a href="#">943.10(1)</a>, F.S. s. <a href="#">394.463(2)(a)2</a>, F.S.</p>
<b>3.</b>	Can law enforcement officers initiate an involuntary examination in a jurisdiction other than their own?	<p>Yes. The Baker Act law does not identify geographical boundaries. Officers who are authorized to carry out law enforcement duties under the Baker Act are still mandated to initiate an involuntary examination if criteria appear to be met.</p>	<p>s. <a href="#">394.455(24)</a>, F.S. s. <a href="#">943.10</a>, F.S.</p>

# Question Response

**Criteria, Initiation, and Execution of Involuntary Examinations**

4.	<p>What are the criteria for initiating an involuntary examination under the Baker Act?</p>	<p>The criteria stipulates if there is reason to believe the individual has a mental health condition and, as a result:</p> <ul style="list-style-type: none"> <li>• without care or treatment the individual poses an imminent physical danger to self or others or will suffer from neglect</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>• either the individual is refusing care after proper explanation of reason for examination or the individual is unable to determine if examination is needed.</li> </ul>	<p>s. <a href="#">394.463(1)</a>, F.S.</p>
5.	<p>Once an individual is admitted to a facility for involuntary examination, are they automatically held for 72 hours?</p> 	<p>No. The involuntary examination period is <b>up to</b> 72 hours. Individuals can be held for a shorter or longer period of time depending on the outcome of the psychiatric assessment. This time frame can also be interrupted with the evaluation and treatment of a physical emergency medical condition thus extending the 72-hour period.</p> <p>For additional information on the 72-hour examination period, please refer to FAQs on Involuntary Examination.</p>	<p>s. <a href="#">394.463(2)(g)</a>, F.S.</p>
6.	<p>Can an involuntary examination be initiated by law enforcement if an individual is seeking voluntary admission under the Baker Act?</p>	<p>Yes. While the Baker Act allows for voluntary admissions, if a law enforcement officer has reason to believe the criteria for an involuntary examination is met, the law requires that the officer initiate an involuntary examination.</p>	<p>s. <a href="#">394.463(2)(a)</a>, F.S.  CF-MH <a href="#">3052a</a></p>

# Question Response

**Criteria, Initiation, and Execution of Involuntary Examinations**

7.	<p>Can a law enforcement officer refer a minor for voluntary services under the Baker Act?</p>  	<p>Yes, as long as the minor does not meet criteria for an involuntary examination. The minor cannot go directly to the receiving facility for voluntary admission, however, and must undergo additional procedures. If an individual 17 years old and under (a minor) seeks voluntary admission to a receiving facility: 1) the parent or legal guardian must submit the application for the admission; and, 2) a hearing is conducted to verify the minor is truly seeking voluntary admission.</p> <p>For more information you may refer to the online course <a href="#">Minors and the Baker Act</a> as well as the <a href="#">Frequently Asked Questions for Minors</a>.</p>	s. <a href="#">394.4625(1)(a)</a> , F.S.
8.	<p>Do an individual’s behaviors need to be personally observed by the law enforcement officer initiating the involuntary examination?</p>	<p>No. Only professionals completing a certificate have to personally observe the individual’s behaviors before initiating an involuntary examination. Law enforcement officers and courts can base their findings on third party testimony. Law enforcement officers are mandated to initiate an involuntary examination as long as the individual “appears to meet the criteria.” These circumstances must also be documented in the <a href="#">Report of a Law Enforcement Officer (CF-MH 3052a)</a>.</p>	<p>s. <a href="#">394.463(1)</a>, F.S. s. <a href="#">394.463(2)(a)</a>, F.S. s. <a href="#">394.463(2)(a)2</a>, F.S.</p>

# Question Response

**Execution of Ex Parte and Risk Protection Orders**

9.	<p>What is an ex parte order and who is responsible for executing it?</p>	<p>An ex parte order is a court order for involuntary examination. It is based on written or oral testimony that supports the findings that an individual is in need of involuntary examination.</p> <p>Once an ex parte order for involuntary examination is issued by the court, ex parte orders are executed by law enforcement officers or other designated agents of the court who can take an individual into custody and deliver them to the appropriate facility identified in the county’s transportation plan. Whenever practicable, an officer who has received Crisis Intervention Team (CIT) training should execute an ex parte order.</p>	<p>s. <a href="#">394.463(2)(c)</a>, F.S.</p>
10.	<p>How long after an ex parte order is issued can a law enforcement officer execute the order?</p>	<p>An ex parte order is valid until the individual is delivered to the receiving facility or until the date specified on the order. If there is not a specified date on the order, it is valid for seven (7) days after the date of the order and can be executed at any time during that time period.</p>	<p>s. <a href="#">394.463(2)(a)1</a>, F.S.</p>
11.	<p>When serving an ex parte order, is law enforcement allowed to seize weapons?</p> 	<p>Yes. Law enforcement can seize weapons an individual has in their possession when executing an ex parte order providing the individual has physically threatened self or others.</p> <p>For more information on this please refer to the <a href="#">Weapons and Contraband FAQs</a>.</p>	<p>s. <a href="#">394.463(2)(d)</a>, F.S.</p>
12.	<p>What is a risk protection order?</p>	<p>A risk protection order is a mechanism by which law enforcement can petition the court to temporarily remove or restrict firearms from an individual who may pose a risk to themselves or others.</p>	<p>s. <a href="#">790.401</a>, F.S.</p>

#	Question	Response	Statutes and Administrative Rules
<b>Execution of Ex Parte and Risk Protection Orders</b>			
13.	What is the procedure for initiating and executing a risk protection order?	Many law enforcement agencies, judicial circuits, and courts have developed procedures for initiating and executing risk protection orders. It is best to consult your agency or the local courts to ascertain the procedures to be followed in your jurisdiction.	
14.	Can law enforcement serve an ex parte order entered in another county? 	Yes. The law does not speak to geographical boundaries in the execution of an ex parte order. A law enforcement officer, or other designated agent of the court, can take the individual into custody and transport to the designated receiving facility identified in the county's transportation plan.  For more information on transportation under the Baker Act, please refer to the <a href="#">Transportation Frequently Asked Questions</a> .	s. <a href="#">394.463(2)(a)(1)</a> , F.S.

#	Question	Response	Statutes and Administrative Rules
<b>Transportation</b>			
15.	What is a transportation plan and where can I find it?	A transportation plan is an outline of how individuals in a designated receiving system are to be transported for involuntary examination.  Each county in Florida is required to develop such a plan in conjunction with their <a href="#">Managing Entity</a> .  To locate a copy of the transportation plan for your area check with your County Administration, your area's managing entity, or the <a href="#">Department of Children and Families' Office of Substance Abuse and Mental Health</a> .	s. <a href="#">394.4573(2)(c)</a> , F.S.  s. <a href="#">394.462(1)(m)</a> , F.S.  s. <a href="#">394.9082(5)(e)</a> , F.S.



**# Question Response**

**Transportation**

19.	Can a receiving facility refuse to accept an individual that law enforcement presents for involuntary examination?	<p>No. Receiving facilities must accept and assess individuals for involuntary examination 24 hours a day, 7 days a week and cannot refuse an individual transported under involuntary status from law enforcement or a medical transport company contracted with the county.</p> <p>While receiving facilities are not required to admit all persons, they are required to screen and evaluate them.</p>	<p>s. <u>394.462</u>(1)(k), F.S. ch. <u>65E-5.351</u>(3), F.A.C.  s. <u>394.462</u>(1)(l), F.S.</p>
20.	Is law enforcement required to remain at a receiving facility after transporting an individual for services?	<p>No. Law enforcement is not required to serve as security for a receiving facility. After presenting the receiving facility staff with the individual and completing the appropriate paperwork, law enforcement has no further obligation to remain at the receiving facility or medical hospital.</p>	
21.	Is law enforcement required to transport involuntary examination transfers between facilities?	<p>No. Law enforcement is not required or expected to conduct transports between facilities, unless specifically outlined in the county’s transportation plan. It is the responsibility of the sending facility to arrange transportation for individuals from one facility to another. This includes transports between two receiving facilities or between a receiving facility and a medical hospital.</p>	<p>s. <u>394.462</u>, F.S. s. <u>394.4573</u>(2)(c), F.S. s. <u>394.4685</u>, F.S. 42 U.S.C. <u>1395dd</u>(c)(1)(B)</p>
	Can a law enforcement officer use handcuffs or other restraints when transporting individuals to a Baker Act receiving facility?	<p>The only times restraints, including handcuffs, can be used when transporting an individual under involuntary examination is under one of the following circumstances:</p> <ol style="list-style-type: none"> <li>1) If it is deemed necessary for safety and security,</li> <li>2) The individual is charged with a felony, or</li> <li>3) The individual is in the legal custody of the Department of Corrections or the Department of Juvenile Justice.</li> </ol>	<p>s. <u>394.459</u>(1), F.S.</p>

			Statutes and Administrative Rules
#	Question	Response	
<b>Transportation</b>			
22.	When responding to a call for service from within a receiving facility, is law enforcement required to leave their weapons outside of the facility?	<p>Yes, unless there are specific circumstances specifying otherwise. It is unlawful to introduce firearms into a receiving facility unless it is authorized by law or by the person in charge of the facility.</p> <p>Many law enforcement agencies have established protocols with receiving facilities to address this situation. Please check with your agency to see if such policies or procedures exist or if they need to be developed.</p>	s. <a href="#">394.458(1)(a)3</a> , F.S.
23.	What is law enforcement's duty if an individual under involuntary status elopes from the facility?	<p>If an individual under an involuntary examination elopes from a facility and is found by law enforcement, the officer should return the individual to the designated receiving facility. This may not be the facility from which the individual eloped; however, any subsequent transfers can be done between the facilities if necessary.</p> <p>If a petition for involuntary placement was filed with the court and law enforcement finds the individual, the individual will be returned to the facility from which they eloped.</p>	<p>s. <a href="#">394.462(1)(a)</a>, F.S.</p> <p>s. <a href="#">394.463(2)(a)</a>, F.S.</p>

			Statutes and Administrative Rules
#	Question	Response	
<b>Legal Charges and Jails</b>			
24.	Can individuals receive Baker Act services in a state prison or local jail?	Yes. If the local public receiving facility cannot provide proper security at their facility they must arrange the individual's examination and treatment. State prisons and local jails are not licensed as receiving facilities. Receiving facilities are not required to admit an individual who has been charged with a felony if they do not believe they can provide proper security.	<p>s. <a href="#">394.462(1)(h)</a>, F.S.</p> <p>ch. <a href="#">65E-5.351(5)</a>, F.A.C.</p>

**# Question Response**

**Legal Charges and Jails**

25.	Where is an individual who meets criteria for both legal charges and an involuntary examination transported?	<p>It depends on whether the individual is being charged with a misdemeanor or a felony. An individual who is charged with a felony is transported to and processed at the local jail. The local public receiving facility must be notified of the individual’s arrival at the jail and is responsible for providing the individual with an examination and appropriate treatment.</p> <p>An individual who is the suspect of a minor crime should be transported to a receiving facility if there is reason to believe the individual also meets criteria for an involuntary examination. The law enforcement officer has the option to place a detainer on the individual which would require the facility’s staff to notify law enforcement prior to the individual’s discharge.</p>	<p>s. <a href="#">394.462(1)(h)</a>, F.S.</p> <p>s. <a href="#">394.462(1)(g)</a>, F.S.</p>
26.	Can law enforcement officers serve warrants or subpoenas to individuals who are receiving psychiatric services in an inpatient or residential facility?	<p>Yes. While facility staff is prohibited from releasing information in an individual’s clinical record, they are not prohibited from allowing a warrant or subpoena from being executed while an individual is receiving care. Law enforcement can request that the facility provide a private area to serve these documents to the individual.</p>	<p>s. <a href="#">394.4615</a>, F.S. ch. <a href="#">65E-5.250(1)</a>, F.A.C.</p>
27.	Are facility staff prohibited from notifying law enforcement when an individual on a detainer is being discharged?	<p>No. If an individual is admitted to a receiving facility for an involuntary examination and law enforcement or the court have placed a detainer on the individual due to criminal charges, the facility must notify law enforcement prior to discharging the individual.</p>	<p>s. <a href="#">394.463(2)(g)1</a>, F.S.</p>

# Question Response

**Forms, Confidentiality, Baker Act Violations, and Public Records**

28.	Who maintains the original copy of Baker Act forms?	The original <u>Baker Act forms</u> initiating involuntary examination should be given to the receiving facility where the individual is transported. Law enforcement is required to provide the facility with the form Transportation to Receiving Facility (CF-MH 3100) along with the form initiating the involuntary examination such as the Report of Law Enforcement Officer Initiating Involuntary Examination (CF-MH 3052a) or Certificate of Professional Initiating Involuntary Examination (CF-MH 3052b). If a copy of these forms are brought to the receiving facility instead of the originals, the facility should accept the copy as long as it does not appear to be tampered with.	s. <u>394.463(2)(e)</u> , F.S. s. <u>394.4685(2)(b)</u> , F.S.
29.	Are there any laws that prevent a receiving facility from assisting law enforcement in locating a missing or endangered person?	No. There are no laws that prevent a receiving facility from assisting law enforcement in locating an individual who may be missing or endangered. While federal laws prohibit the sharing of information in the clinical record, it does not prohibit a facility from assisting law enforcement in the search for an individual. While a receiving facility may not confirm or deny if an individual is in their facility, they may choose to assist law enforcement in other ways that may help the investigation.	
30.	Is the Report of Law Enforcement Officer (CF-MH 3052a) and related incident reports protected by privacy and confidentiality laws?	The <u>Report of a Law Enforcement Officer (CF-MH 3052a)</u> initiating an involuntary examination is confidential and submitted to the receiving facility upon delivering the individual. Incident reports generated by law enforcement are public record and are not protected by privacy and confidentiality laws.	AGO <u>86-101</u>

# Question Response

**Forms, Confidentiality, Baker Act Violations, and Public Records**

31.	Can law enforcement share Baker Act information with family members?	Yes. Law enforcement officers can share information related to the initiation of an involuntary examination with family members since law enforcement officers are not bound by the same confidentiality protocols as receiving facilities. Receiving facilities, however, cannot share information without the consent of the individual except in very specific emergency situations.	
32.	What do I do if I believe a violation of Baker Act laws occurred?	Any suspected violations of Baker Act laws should be reported to the <u>Department of Children and Families (the Department)</u> or the <u>Agency for Health Care Administration (AHCA)</u> .	