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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 this document. 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.

This document will focus solely on the rules and regulations of the Baker Act that are specific to minors. The rules and regulations that are the same for both minors and adults are not covered here.

HYPERLINKS:

This document contains hyperlinks to State Statute, administrative rules, and Attorney General Opinions that support specific questions. Additional supplemental material may be found on the Florida Department of Children and Families mental health website at <http://www.myflfamilies.com/service-programs/samh>.

A full list of online courses, including Minors and the Baker Act, may be found on the Florida Certification Board's Online Education Platform at <https://fcbonline.remote-learner.net/>.



#	Question	Response	Statutes & Administrative Rule
Definitions			
1.	Who is a minor?	A minor is an individual under the age of eighteen who has not had the disability of nonage removed by the court.	s. 394.455(29) , F.S. s. 744.102(13) , F.S.
2.	What is the disability of nonage?	The disability of nonage is the legal term used to describe the inability of minors, because of their age, to independently engage in certain activities and decisions. For example, minors may not enter into a legal contract with another party on their own, but must have a legal guardian do so on their behalf.	
3.	Who is considered the legal guardian of a minor?	<p>The legal guardian is the adult(s) or institution with the legal authority to make decisions and provide consent on behalf of a minor. Often the minor’s biological or adoptive parent(s) serve as the minor’s legal guardian(s). For the purposes of this document, the term “parent” will be used to refer to the adult(s) or institution that are legally authorized to make decisions on behalf of the minor.</p> <p>In some cases, the Department of Children and Families or the Department of Juvenile Justice may be granted guardianship of a minor. When the Department of Children and Families has a minor in temporary custody it has limited decision-making ability, even when the minor is in an out-of-home placement. In this case, some rights of the parent(s) are preserved. When the Department of Children and Families has permanent custody of a minor, all parental rights have been terminated and the Department of Children and Families is considered the legal guardian. In this case, the Department makes all parental decisions on the minor’s behalf.</p> <p>The Department of Juvenile Justice (DJJ) is granted guardianship of a minor for the time a minor is in its custody. In these circumstances, DJJ makes all parental decisions on the minor’s behalf.</p>	<p>s. 744.102, F.S.</p> <p>s. 39.407, F.S. s. 39.812(3), F.S. ch. 65C-35, F.A.C.</p> <p>s. 985.18, F.S.</p>
4.	Can the disability of nonage be removed?	Yes. A petition can be filed with the local circuit court to have the disability of nonage removed for sixteen- and seventeen-year-olds. If court approves the petition, the disability of nonage is removed and that individual will have all the legal rights and responsibilities of an eighteen-year-old.	ch. 743 , F.S.

#	Question	Response	Legislation & Forms
Confidentiality, Consent, and Disclosure			
5.	Can a minor be voluntarily admitted to a designated Baker Act receiving facility?	<p>Yes, a minor may be voluntarily admitted under the following conditions</p> <ol style="list-style-type: none"> 1) The minor’s parent must agree to voluntary admission. 2) The minor must agree to voluntary admission. 3) A court must hold a hearing and determine that the minor is capable of providing consent for admission <p>If any of these criteria are not met, a minor may only receive inpatient Baker Act services under involuntary status.</p>	<p>s. 394.459(3), F.S. s. 394.4625(1), F.S. ch. 65E-5.270, F.A.C. form CF-MH 3097</p>
6.	Can a minor consent to his or her own services?	<p>Yes, minors can provide their own consent for certain outpatient services. Even when a minor is receiving services voluntarily, however, they are not allowed to provide consent to receive mental health treatment in an inpatient or residential setting. Nor can they provide consent to receive psychotropic medication in an inpatient or outpatient setting.</p> <p>A minor may provide consent to receive limited outpatient services without parental approval. A minor who is at least 13 years old may access up to two (2) outpatient visits per week for crisis counseling without parental consent or notification. The parents are not responsible for payment of sessions for which they have not provided consent.</p>	<p>s. 394.459(3)(a)1, F.S. s. 394.4784, F.S.</p>
7.	Can a minor receive treatment without consent if he or she is receiving services under involuntary status?	<p>Yes, but only when emergency treatment is being provided to preserve physical health or safety. This includes completing the legal obligations of an involuntary examination including transportation, admission, and required evaluations. Under all other circumstances, the minor’s parent must provide consent for treatment if the minor is receiving services under involuntary status.</p>	<p>s. 394.459(3)(a)1, F.S.</p>

#	Question	Response	Legislation & Forms
Confidentiality, Consent, and Disclosure			
8.	Can the court appoint a guardian advocate for a minor if the parent does not provide consent to treatment?	No, not based on that criterion alone. A minor's parents have the right to decline treatment for their child if the parent does not believe the treatment is necessary or in the child's best interest. The court cannot appoint a guardian advocate based solely on the opinion of a professional that the parent was making the wrong treatment decision. If a concern exists that a parent is not caring properly for their child, this concern may be reported to the Department's Central Abuse Registry for further investigation. A court may also provide authorization for necessary treatment or appoint a guardian advocate to make medical decisions for the minor.	s. 394.459(3)(a)1 , F.S. s. 39.201 , F.S.
9.	Can a minor sign his or her own release of information forms?	No, not under most circumstances. Most minors cannot provide consent for the release of information from their clinical record. Only minors who are able to consent to their own treatment, such as substance use or outpatient crisis services, can determine who to authorize the release of their own clinical information.	45 C.F.R. 164.502(g)(3)(i)
10.	Can a minor receive electro-convulsive therapy (ECT) treatment?	Yes, but only with parental approval that specifically authorizes ECT treatments since it is a medical procedure that has a direct impact on the physical body.	s. 394.459(3)(b) , F.S. s. 458.325 , F.S.
11.	Can a power of attorney authorize the voluntary admission or treatment of a minor?	No. Only a parent, legal guardian, or guardian advocate can provide authorization for the voluntary admission or inpatient mental health treatment of a minor. Emergency treatment is allowed only with an emergency treatment order and until express and informed consent can be provided by a parent, legal guardian, or guardian advocate. An emergency treatment order only may be used to prevent or reduce physical harm; it cannot be used to override parental wishes.	s. 394.459(3) , F.S. s. 743.0645 , F.S.

#	Question	Response	Legislation & Forms
Involuntary Examination			
12.	Can a minor or minor's parent initiate an involuntary examination?	No. While a minor or their parent can make a recommendation or request for an involuntary examination, neither can make the decision on whether to initiate an involuntary examination. This decision must be made by the person who has the authority to initiate an involuntary examination.	s. 394.463 , F.S.
13.	Are there any differences between initiating an involuntary examination for a minor and an adult?	No. The same criteria and requirements must be met whether initiating an involuntary examination for a minor or an adult. Minors, however, must be admitted to a facility specifically licensed to provide services to minors.	s. 394.459(3) , F.S. s. 394.4785 , F.S. s. 395.003(6)(a) , F.S.
14.	Can a designated receiving facility refuse to accept a minor?	No. Regardless of the current capacity and capability, a designated receiving facility must accept all individuals who are transported to their facility under involuntary status by a law enforcement officer or medical transportation company. If the facility does not have capacity or capability to provide services to the minor, a transfer may be pursued.	s. 394.462(1)(k) , F.S.
15.	How long does a designated receiving facility have to complete the involuntary examination of a minor?	Minors must be seen for an involuntary examination within 12 hours of their arrival to a designated receiving facility, versus 72 hours for adults.	s. 394.463(2)(g) , F.S.

#	Question	Response	Legislation & Forms
Involuntary Examination			
16.	What specific notifications must a designated receiving facility make when an involuntary examination is initiated for a minor?	<p>When an involuntary examination has been initiated for a minor, the designated receiving is required to make several standard notifications, such as those to the Baker Act Reporting Center. In the case of a minor, several additional notifications are required:</p> <ul style="list-style-type: none"> • The minor’s parent must be immediately notified of the involuntary examination. If contact is not made on the initial contact, efforts to notify the minor’s parent must continue every hour for the first 12 hours, then once every 24 hours, until contact is confirmed. If the parent is a subject of an active to the Central Abuse Registry, notification may be delayed for up to 24 hours. • The parent and the minor are both required to receive copies of all forms and documentation that are required to be provided to individuals receiving services. • A parent must be notified as soon as possible and no later than 24 hours after the application of seclusion or restraint to a minor. 	<p>s. 394.4599(2)(c), F.S.</p> <p>ch. 65E-5.180(7)(d)10, F.A.C.</p>
17.	Can a school initiate an involuntary examination of a minor without notifying a parent?	<p>Yes. An involuntary examination of a minor may be initiated and the minor may be transported to a designated receiving facility without prior consent or notification of the parent. If the involuntary examination is initiated at the school then the school’s principal or designee must immediately notify a parent. This notification can be delayed up to 24 hours if a report has been made to the Central Abuse Registry where the parent is being investigated.</p>	<p>s. 1002.20(3)(l), F.S.</p>
18.	Can a minor be admitted to a designated receiving facility without first having an involuntary examination initiated?	<p>Yes, but only with the approval of the court following a hearing. Having a court hearing prior to admission is often not practical for a minor who needs immediate inpatient care, however, since a court hearing can take days to occur. Minors, as a result, are almost exclusively admitted to a designated receiving facility under involuntary status. A minor can receive examination and treatment in a safe and secure setting until a court hearing to determine voluntariness can be held. The minor and his or her parent can both agree to sign paperwork transferring the minor to voluntary status if the court agrees that the minor is competent to provide express and informed consent.</p>	<p>s. 394.4625, F.S.</p>

#	Question	Response	Legislation & Forms
Transportation and Transfers			
19.	Does a minor have to be transferred to the nearest receiving facility even if that facility is not licensed to provide services to minors?	No. A minor should be transferred to the most appropriate facility, not necessarily the nearest based on the procedures outlined in the county's transportation plan.	s. 394.462 , F.S. ch. 65E-5.260 , F.A.C.
20.	Is a designated receiving facility required to accept a minor from a transporter if it does not have the capacity or capability to provide services to the minor?	Yes. A designated receiving facility must accept a minor who is transported by law enforcement or a medical transport company even if it is not licensed to provide services to minors. The facility, however, is not obligated to admit the individual. The facility must subsequently arrange a transfer to a more appropriate facility with the capability and capacity to meet the minor's needs.	s. 394.462(1)(k) , F.S. ch. 65E-5.260 , F.A.C.
21.	Can the parent of a minor determine which designated receiving facility the child is admitted to?	No. Once an involuntary examination has been initiated, the parent cannot change the routine procedures that must occur as required by law. Such procedures include the transfer of the minor to a designated receiving facility, admission, and the examination of the minor. While a parent may request that the minor to go to a specific facility or remain at a facility, no legal obligation exists to fulfill that request. In addition, if the minor is currently at a private designated receiving facility, he or she may be transferred to a public receiving facility without the consent of the minor or the parent.	s. 394.4685 , F.S.

#	Question	Response	Legislation & Forms
Transportation and Transfers			
22.	Can a minor be denied admission to a designated receiving facility based on insurance or financial status?	No. Individuals cannot be denied admission based on financial status once an involuntary examination has been initiated. If the individual is currently at a private facility but their insurance or financial status is more appropriate for a public facility, the private facility may arrange this transfer without the consent of the minor or their parent. If voluntary admission is being sought, and an emergency medical condition is not present, the individual's ability to pay for services may be a legitimate factor to deny admission.	s. 394.459(2)(a) , F.S. s. 394.4685(3)(b) , F.S.
23.	If a hospital or designated receiving facility requests the transfer of a minor, does the sending facility have to keep the minor until he or she is accepted at destination facility?	Yes. Until a transfer can be arranged to a more appropriate facility, the sending facility must keep the minor safe and provide services within its capability. Once an involuntary examination has been initiated, he or she must remain at the designated receiving facility or a medical hospital until the court or a physician deems release to be safe for the minor. Even if the minor is to be transferred to another facility, until the transfer occurs the minor must receive a medical screening and stabilization services by the designated receiving facility or hospital. Facilities designated as hospitals must comply with additional state and federal regulations.	s. 394.462(1)(l) , F.S. s. 395.1041 , F.S. 42 U.S.C. 1395dd
24.	Can a parent provide transport for a minor once an involuntary examination has been initiated?	No. A minor only may be transported by law enforcement or an approved medical transport company once an involuntary examination is initiated. A member of a mobile crisis response team or mental health overlay program also may provide transportation in some circumstances.	s. 394.462 , F.S.
25.	Can a minor receive services in a county other than the county where the Baker Act was initiated?	Yes. Under the Baker Act a minor may be transported across county lines to receive involuntary services.	s. 395.1041 , F.S. 42 U.S.C. 1395dd

#	Question	Response	Legislation & Forms
Licensing, Capacity, and Capability			
26.	Can minors receiving Baker Act services comingle with adults?	<p>Yes, under some circumstances. Minors receiving services under the Baker Act, regardless of the facility they are in, must be in a specialized unit separate from adults or meet one of the following conditions:</p> <ul style="list-style-type: none"> • If under the age of 14, the minor may share common areas with adults, but only under direct supervision of staff. • If 14 or older, the minor may be admitted to a unit with adults only for medical or safety reasons, and only when justification is documented daily by a physician. 	ch. 65E-12.106(22) , F.A.C.
27.	Where does a minor get evaluated if he or she has had an involuntary examination initiated and also has been charged with a felony?	A minor charged with a felony must first be processed in the legal system the same way as any other minor with felony charges. The minor then may be taken to a designated receiving facility for evaluation. The receiving facility may decline admission, however, if it does not believe it has the capability to keep the minor, or others in the facility, safe. In this case, the minor is taken to a juvenile detention center and the local crisis stabilization unit (CSU) or children’s crisis stabilization unit (CCSU) must provide necessary Baker Act services to the minor at that location.	s. 394.462(1)(h) , F.S.

#	Question	Response	Legislation & Forms
Rights			
28.	Does a minor residing in a Baker Act facility receive educational services?	Yes. The local school district must ensure that students residing in its district receive educational services regardless of their location, including residential and correctional settings.	s. 1003.52 , F.S. s. 1003.58 , F.S.

#	Question	Response	Legislation & Forms
Rights			
29.	Are the educational records of minors shared when a minor is receiving services in an inpatient or residential setting?	Yes, the current and former educational providers are permitted to share records, but are not required to. These records may be shared without the permission of the student or their parent as long as the disclosure is between two parties that are providing information for legitimate educational interests of the student. This typically means the disclosure will be between a school that has provided services to the student to another school that has taken over instruction on a temporary or permanent basis.	34 C.F.R. 99.31
30.	Does a designated receiving facility need authorization to release information to a school when the minor had an involuntary examination initiated at the school?	Yes, information from a designated receiving facility that is not specific to the minor’s educational instruction may be released to school personnel but only with specific parental consent or a court order.	s. 1002.20(3)(l) , F.S.
31.	Does a parent have a right to be informed of the outcome of the minor’s mental health evaluation or treatment in an inpatient setting?	Yes, under most circumstances. Parents generally have to consent to mental health services for a minor. In this case, these services involve the parent in the service delivery as an active party and the parent is typically treated as the minor’s personal representative. Both parents, even if divorced, retain equal access to their minor child’s records unless a court order states otherwise. Although both parents retain the right to consent to treatment, even when their child is in the temporary custody of the Department of Children and Families, the parents’ wishes can be overridden by a court order.	s. 394.459(3) , F.S. s. 394.4615(2)(a) , F.S. 45 C.F.R. 164.502 s. 61.13(2)(c)3 , F.S. s. 39.407 , F.S.

#	Question	Response	Legislation & Forms
Rights			
32.	Do parents have a right to know the outcome of their minor child's evaluation or treatment in an outpatient setting?	<p>Yes, but only under some circumstances. Minors who are at least 13 years old can access outpatient services such as diagnostic, evaluation, crisis intervention, therapy, and counseling without the consent or notification of a parent as long as both of the following conditions are met:</p> <ul style="list-style-type: none"> • The minor is receiving services in an outpatient setting. • The minor is not accessing services more than twice per week. <p>Parental participation may be requested by the provider when deemed appropriate.</p>	<p>s. 394.4784, F.S</p> <p>s. 394.459(3)(a)1, F.S</p>

#	Question	Response	Legislation & Forms
Involuntary Placement			
33.	Does a parent have to be present at the minor's placement hearing?	No. There are no legal mandates requiring that a parent be present at a hearing for the involuntary placement of a minor.	
34.	Can a minor be ordered to involuntary placement by the court?	Yes. A minor may be ordered to involuntary inpatient placement by the court, but cannot be admitted to a Baker Act treatment facility. Minors must continue to receive services at a designated receiving facility when ordered to involuntary inpatient placement. While minors can be ordered to involuntary inpatient placement, minors cannot be ordered to receive involuntary outpatient services.	s. 394.4785 , F.S.

#	Question	Response	Legislation & Forms
Legal Charges			
35.	What happens if a minor has an involuntary examination initiated while involved with the Department of Juvenile Justice?	A minor in the custody of the Department of Juvenile Justice who has an involuntary examination initiated under the Baker Act must receive services from a public receiving facility. Often a law enforcement officer must transport the minor to the receiving facility where he or she receives services. The minor may receive services outside of the detention facility for up to 90 days. If the designated receiving facility does not have the capability to provide the proper security to keep the minor and others safe, then the public receiving facility must make arrangements to provide services at the location where the minor is being detained.	s. 985.18 , F.S. s. 985.115(2)(d) , F.S. s. 985.195 , F.S. s. 394.462(1)(h) , F.S.
36.	Does the Department of Juvenile Justice need to obtain consent to provide mental health treatment for a minor in its custody?	Yes. The Department of Juvenile Justice must either receive consent from the parent of the minor or obtain a court order allowing the provider to deliver non-emergency treatment.	s. 985.18 , F.S.
37.	Does the Department of Juvenile Justice have to pay the costs of Baker Act services for a minor in its custody?	No. The Department of Juvenile Justice is not responsible for costs associated with the involuntary examination or placement of a minor in its custody. The responsibility for payment remains with the parent of the minor.	AGO 93-49 AGO 74-271