Law Enforcement
(See also Involuntary Examination)
(See also Transportation)
(See also Weapons & Contraband)

Definition of Law Enforcement Officer

Q. How does the Baker Act define a "law enforcement officer?"

A law enforcement officer means a law enforcement officer as defined in s. 943.10, F.S. Therefore, as Chapter 943 is revised in future legislative sessions, the Baker Act will not have to be revised further.

Q. I am the Chief of Police at a VA Hospital. Can you define who is a "law enforcement officer" under the Baker and Marchman Acts?

Florida law defines a law enforcement officer for purposes of the Baker Act and Marchman Act as follows:

- **Baker Act:** 394.455(16) "Law enforcement officer" means a law enforcement officer as defined in s. 943.10.
- **Marchman Act:** 97.311(17) "Law enforcement officer" means a law enforcement officer as defined in s. 943.10(1).

Chapter 943.10, FS referenced in the above definitions reads as follows:

> 943.10 Definitions; ss. 943.085-943.255.--The following words and phrases as used in ss. 943.085-943.255 are defined as follows:
> (1) "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed…

Even if a VA law enforcement officer can't initiate an involuntary examination under the Baker Act, either a circuit court judge or any number of mental health professionals are also authorized to initiate instead. Just because the VA police can't initiate doesn't mean all the other mental health professionals on the campus can't initiate. The AG Opinion also didn't mention the **secondary transfer** of a person from a hospital setting that has certain responsibilities under the federal EMTALA law.

The Marchman Act has some differing provisions governing involuntary admission. Such involuntary admission for an adult can be initiated by a circuit court judge, an array of folks as long as there is a certificate of a physician attached, or by a law enforcement officer. A law enforcement officer is the only one who can initiate "protective custody"

and the officer may take the person in protective custody to home, a hospital, a detox center or to jail – whichever the officer determines is most appropriate.

Q. Can VA and other federal law enforcement officers initiate a Baker Act or Marchman Act?

No, VA Police cannot initiate an involuntary examination or provide primary transport for a person on involuntary status. Attorney General Opinion Number: AGO 99-68 dated November 8, 1999 that states:

> Federal law enforcement officers do not constitute law enforcement officers for purposes of Florida's Baker Act, and thus possess no authority under the act to initiate the involuntary examination of a person or to transport such person as law enforcement officers.

The opinion is based on the definition of a law enforcement officer in the Baker Act:

> **394.455(16)"Law enforcement officer**" means a law enforcement officer as defined in s. 943.10.

This, of course, relies on the definition of a law enforcement officer in 943.10, FS as follows:

> **943.10 Definitions; ss. 943.085-943.255.**
> The following words and phrases as used in ss. 943.085-943.255 are defined as follows:
> (1)"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

This would probably exclude all other federal law enforcement officers such as FBI, Secret Service, Parks Department, Military Police, police on Native American Reservations, etc as well. For the most part state certified law enforcement officers ask a federal officer for a witness affidavit to attach to the officer's incident/event report when the Florida officer initiates the BA-52a form, relying on the federal officer's observations.

Q. Does a law enforcement officer have to be acting in his or her official capacity or "on duty" to initiate an involuntary examination or to transport a patient for such an examination?

The statute doesn't distinguish between official and off-duty actions but the Florida Administrative Code requires that an officer must be working in the course of his or her

official duties to initiate an involuntary examination under the Baker Act [Chapter 65E-5.280(2)(a), F.A.C.]. Department legal counsel should be consulted where the officer is considered to be "on duty" 24 hours per day, 7 days per week.

Jurisdiction

Q. I am the former CIT coordinator at our Police Department. We had two Detectives called out for an individual that was depressed over a recent lawsuit judgment against him and sent a suicidal text to his girlfriend. So he became a missing endangered adult. The Detectives observed the text and entered him in the computer. The next morning they were able to track him to a nearby city in our county. That city's Police told us that we needed to do the Baker Act because the man made the text messages in our city, but they would transport him. Our administration's interpretation was that we don't have jurisdiction to Baker Act in a city outside of our jurisdiction. Eventually the other city's officer said if we write out a statement they would Baker Act him. By then the guy said he was just upset and didn't mean the text. The police from that city then refused to Baker Act him as he is no longer a danger. Are Baker Acts bound by jurisdiction or can any state law enforcement officer do a Baker Act in another jurisdiction if the statements or messages were made in their jurisdiction? What if there was a disagreement between the officers in the two jurisdictions and they felt from their investigation that he was a danger to himself, but the next morning officers from the other city didn't think he was.

The Baker Act places a duty on a certified law enforcement to initiate an involuntary examination under the Baker Act if the officer believes the criteria is met. It is discretionary on the part of a circuit court judge or a mental health professional to initiate in the same circumstance. The difference between "shall" and "may" is significant in the law. It is this non-discretionary duty that is cited in several appellate cases that increases your authority for warrantless entry during certain exigent circumstances as well as immunity for liability during transport of involuntary persons. The transport case is as follows:

> **Donald Pruessman v. Dr. John T. MacDonald Foundation**, 589 So. 2d 948 (Fla. 3d DCA 1991). The Third District Court of Appeals held that where a patient was discharged from a hospital and the patient refused to leave, and the hospital administrator contacted an outside doctor to evaluate the patient regarding Baker Acting the patient, the hospital was not legally responsible for any action taken by the outside doctor involved in Baker Acting the patient. The Third District Court of Appeals also held that the actions of the city police officers who were called to the hospital to take the patient into custody, remove the patient from the hospital, and transport the patient to a Baker Act receiving facility based on a doctors certification the patient needed to be Baker acted**, were not discretionary under the Baker Act and the city was not liable for the actions for the city police officers in transporting the patient to a receiving facility.**

With regard to jurisdiction, the law requires law enforcement transport to the "nearest" receiving facility, regardless of city or county lines. However, the law is silent as to jurisdiction of the officer doing the initiation. The definition of a law enforcement officer is

defined in the Baker Act [394.455(16)] as a law enforcement officer as defined in s. 943.10. Chapter 943 reads as follows:

> 943.10 Definitions; ss. 943.085-943.255.--The following words and phrases as used in ss. 943.085-943.255 are defined as follows:
> **(1) "Law enforcement officer"** means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

Chapter 943 doesn't appear to limit an officer's authority to his/her own department's jurisdiction. However, your own department may limit the authority of an officer acting outside his/her city or county.

The Baker Act doesn't require an officer to personally observe the action leading up to initiation of an involuntary examination (as it does for a mental health professional) – the officer must describe the circumstances under which the person is taken into custody. This means you can rely on the statements of a credible witness. When this is done, the officer may want to use a witness affidavit to protect his/her good faith should people's statements change over time.

Finally, an officer from either department could have initiated the involuntary examination if that officer had reason to believe the criteria was met, even over the objections of another officer from his/her own or another department. Two persons with the same authority and the same training may have vastly different opinions as to whether the criteria are met and both may be correct under the law.

Voluntary Admissions

Q. It is the policy of some Police Departments to offer transportation to someone who voluntarily wants to go for an evaluation and doesn't have transportation. Officers go to the extent of escorting them in and making contact with a nurse. At this point, hospital staff informs officers that if they are going to walk the person in, they must initiate an involuntary examination and complete form. Is this appropriate?

Most attorneys for law enforcement agency advise officers not to perform "voluntary" Baker Acts. Appellate cases have found law enforcement to be immune from any criminal or civil liability in carrying out their non-discretionary duties. This suggests that there may be some liability (within sovereign immunity) when they take on discretionary roles in Baker Act for which they have no duty. However, other departments permit officers to do voluntary transport if they cannot find a basis for initiating an involuntary examination.

A receiving facility isn't statutorily required to accept a person on voluntary status or to have the person examined by a psychiatrist or psychologist. For this reason as well, many officers believe the involuntary process provides more protection to the person with an acute mental illness. However, the facility can't require the officer to initiate an involuntary – it can just refuse to accept the person. In situations where the facility is willing to accept the person on a voluntary basis, the officer may be delayed until the person is assessed as able to provide express and informed consent to the admission and treatment and signs the proper forms. This allows the facility to hold the person for up to 24 hours after the person may request release or refuses treatment.

Q. Is there any case law or information concerning the issue of "refused voluntary examination" as it relates to Baker Acts? Our deputies are still confused about how to handle a person who meets all other Baker Act criteria but agrees to a voluntary admission. If the person agrees to voluntary treatment, but we Baker Act involuntarily because we are concerned about the person's ability to give "informed consent", where does the greater liability lie?

With regard to "agreeing" to admission, many people may say "yes" but aren't making well-reasoned, willful and knowing decisions about their care. This is the definition of competence to consent. If officers believe the person isn't making well-reasoned decisions or are manipulating them to get out of the situation, they can feel free to check mark the "unable to determine" box instead of the "refusal" box. Most law enforcement legal advisors state that if the officer believes the person to meet criteria, he/she should initiate on the basis that there is greater liability for not acting than for acting under these circumstances

A law enforcement officer "shall" initiate an involuntary examination if he/she believes the criteria to be met; whereas a circuit judge or mental health professional "may" initiate. As a result of the "shall" language, if an officer doesn't initiate, he/she might be wise to document in the incident report a reason why it was not. The officer can also recommend that the family or others go to the courthouse to file a petition for an ex parte order or have the person be evaluated by a physician or other mental health professional.

If the officer simply provides transport for a "voluntary" person, this becomes a discretionary decision. In this situation, there is a case titled DONALD PRUESSMAN V. DR. JOHN T. MACDONALD FOUNDATION 589 So. 2d 948 (Fla 3rd DCA 1991) that stated law enforcement officers aren't liable because of their non-discretionary role to transport under the Baker Act.

Q. An officer from our Police Department was stopped one night by a citizen at a local park. The citizen expressed to him that he felt despondent over a recent relationship ending. He told the Officer that he felt no reason for living, but said he did not want to harm himself at that moment. The Officer Parks didn't feel that the man met Baker Act criteria. The Officer told him he could speak with a professional at the CSU if he wanted to. The person agreed and was transported voluntarily to the CSU by the Officer. Once there, they were greeted by the nurse. The Officer explained that it was not a Baker Act, but the person wanted to speak with someone voluntarily. After the nurse heard why the person was feeling

despondent, he told the Officer that it was a domestic issue and they don't do domestics. The nurse asked the person if he wanted to hurt himself now and he said no. The man told the nurse that he just wanted someone to talk to. The nurse replied that there were no counselors there now and that if he went inside the building he would have to stay until the next day. The nurse then gave the person a card with the crisis intervention hotline phone number on it and told him to call the number should he start feeling bad. The Officer had no choice but to return the man back to our city. I am very disappointed in the way this was handled by the CSU nurse and would like to know if there is anything that can be done so we don't run into this sort of situation in the future.

The Baker Act only requires a Crisis Unit to accept a person on involuntary status. This would occur regardless of whether the CSU had space available. However, there is no such statutory requirement to accept persons on voluntary status, especially those who may not be experiencing a severe crisis. The only way to be assured that a person is accepted at a CSU is if he/she is placed on involuntary status.

Involuntary status doesn't always mean a person has refused the examination. If the officer believes the person is unable to determine the exam is necessary and otherwise meets criteria for having a mental illness and is either self-neglectful or overtly harmful to self or others, the person will be admitted for examination. This CSU doesn't have an outpatient program where people can come for counseling. This type of service is provided on a 24/7 basis by the 2-1-1 Program.

A CSU doesn't have licensed staff available on a 24/7 basis to provide professional examinations and generally, the CSU has minimum staffing available at night. If the man had been accepted into the facility, he would have had to wait until the next morning to speak with a physician or psychologist. If he had changed his mind about staying at the program after admission, he would not have been able to leave until after being seen by a physician or psychologist the next day once his examination was completed.

I regret that your officer was placed in the position of taking the man to the CSU only to have to return him to your city. Please work with the CIT (Crisis Intervention Team) coordinator for your area to get more training as well as having a forum in which law enforcement agencies can coordinate their efforts with Baker Act receiving facilities.

Q. If a person takes 40-50 pills over a 2 day period and then says he will go for a voluntarily examination at the local ER and appears to have his thoughts together, but a law enforcement officer still initiates an involuntary examination under the Baker Act, is this wrong since the person agreed to voluntarily go for an exam? Is an officer obligated to initiate such an exam? Does such an overdose imply a person is unable to determine for themselves whether the exam is necessary (per 1b of Form 52a)?

There is no easy answer to this question. If the person is suicidal or even is so confused that he is taking accidental overdoses, the important thing is that he gets to a receiving facility and gets examined by a physician or psychologist. The only way to ensure that he will go and will be accepted once there and that he will be seen by a psychiatrist or psychologist is when he is on involuntary status. Otherwise, he could be turned away or

might change his mind and the facility staff would have no way of keeping him if he hasn't made such threats in their presence. A law enforcement officer is required to initiate when he/she believes the criteria is met, based on the circumstances, while a mental health professional may only initiate when he/she has observed the criteria being met during examination.

The other consideration is that law enforcement has no legal responsibility to transport a person on voluntary status – one presumes that the person can go anywhere he or she wants, whenever and by whatever means. However, many officers are so concerned that they provide this transport anyway as a community service. There are a couple of appellate cases that have found that there is no liability on law enforcement officers when carrying out their non-discretionary duties. An involuntary would be non-discretionary; transport of a person on voluntary status would be discretionary.

If you believe that taking overdoses of 40-50 pills is reflective of a person making well-reasoned, willful, and knowing decisions (definition of competence to consent), then the willing person may well meet criteria for voluntary status. However, if you believe that if would take a physician to determine whether the person in this situation is competent and able to make this determination, an involuntary examination initiation would be appropriate.

Q. What if a person voluntarily wants to be evaluated and a law enforcement officer decides to transport and deliver person, is the receiving facility obligated to accept person from the officer for an evaluation or does the officer have to initiate an involuntary evaluation?

Chapter 394.462 governing Baker Act transportation requires that "the nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination". Therefore, a non-hospital receiving facility is not required by law to accept a person on voluntary status from a law enforcement officer.

However, any hospital-based facility must accept any person brought to the hospital by law enforcement or others for a medical screening examination to determine if the person has an emergency medical condition, even of a psychiatric or substance abuse nature, absent any other medical condition. If such psychiatric or substance abuse emergency exists, the hospital is responsible for arranging a safe and appropriate transportation of the person to another facility if it doesn't have the capability and capacity to provide care to the person. Federal law requires medical transport of such a patient from one hospital to another.

Q. Some of our deputies are taking people into custody for involuntarily examination even when the person asks for assistance and wants treatment. This has been done even when the parents of a minor voluntarily ask for medical treatment. Should the Baker Act be employed by law enforcement if the person is requesting voluntary assistance? If the request is voluntary and medical assistance is being provided, can a deputy initiate a Baker Act without meeting the criteria outlined in 394.463, FS? Can a law enforcement officer initiate a Baker Act when it involves a juvenile, the parents and the child both are requesting voluntary examination and the treatment is being sought at the hospital? My concern is when the criteria are not present and a deputy initiates a Baker Act

anyway. Some of our commanders are ordering their deputies to Baker Act all subjects and not allow transport of any voluntary admissions to mental health services. What is the best course of action for the affected person and the family involved in a mental health crisis?

Your questions are not easy to answer. A person must be able to provide express and informed consent for admission and treatment in order to be on voluntary status. Only a person who is competent can provide this consent and that is defined in the law as being able to make well-reasoned, willing and knowing decisions about his/her medical and mental health care. Many people may be compliant, but their mental illness leaves them unable to make well-reasoned decisions.

It becomes even more complicated with minors who are unable to provide express and informed consent due to age. Only their legal guardians can apply for their voluntary admission (usually natural or adoptive parents) and the admission can only occur after a judicial hearing to verify the voluntariness of the consent. With the parent's application and the agreement of the child, voluntary admission can be sought. However, the law requires the hearing to take place prior to the child's admission to a facility.

With regard to involuntary examination, the law doesn't require that a person refuse voluntary exam. Even if a person doesn't refuse, the person authorized to initiate an involuntary examination may decide the person isn't able to determine whether the examination is necessary. This can often happen when the person seems confused, ambivalent, manipulative, unable to control their impulsive behavior, or isn't likely to follow through on going to a receiving facility as they may have agreed to do. Sometimes the person with the impairment either cannot or will not follow through with needed treatment, despite their statements to the contrary.

Law enforcement officers have no responsibility to transport persons to facilities for voluntary examination and receiving facilities have no responsibility to accept a person brought by law enforcement or others on voluntary status. It is very common for a person to be taken to a receiving facility on "voluntary status" and refuse to sign any paperwork, demanding to be released. Unfortunately, a mental health professional can't initiate an involuntary examination without observing each of the involuntary examination criteria, whereas a law enforcement officer only has to describe the circumstances under which the person was taken into custody. Persons have had to be released in these cases even without an examination by a psychiatrist or psychologist.

As you may know, a law enforcement officer has a duty under the law to initiate when he/she believes the criteria for involuntary examination is met, while a court or authorized mental health professional have no such duty –it is discretionary on their part. Because transport by law enforcement of persons on involuntary status is non-discretionary, the appellate courts have found that officers can't be held civilly or criminally liable. No specific immunity is identified when transport is provided on a discretionary basis for persons on voluntary status. However, sovereign immunity still applies. Because of the duty and immunity issues, some law enforcement legal advisors have instructed officers not to transport persons on voluntary status.

However, an involuntary examination under the Baker Act should not be initiated unless the officer "has reason to believe" the person meets the criteria above. The Baker Act cannot be used by anyone to authorize any medical examination/treatment or to prevent

a person from leaving a health care facility against medical advice. The Baker Act is nothing more and nothing less than Florida's Mental Health Act that governs psychiatric examination and short-term psychiatric treatment. Other statutes have to be used instead of the Baker Act to access medical care. The Sheriff's general counsel may need to review the issue and give legal advice on how to proceed.

Q. Please advise what a law enforcement officer should do when a person makes a real threat to harm himself, but then requests help. Can a person who voluntarily requests help meet the criteria for involuntary examination? Our department has officers who believe that these persons don't meet the criteria for involuntary examination. Is this correct?

A person must be able to provide express and informed consent for admission and treatment in order to be on voluntary status. Only a person who is competent can provide this consent and that is defined in the law as being able to make well-reasoned, willing and knowing decisions about his/her health and mental health care. Many people may be compliant, but their mental illness leaves them unable to make well-reasoned decisions. With regard to involuntary examination, the law doesn't require that a person refuse voluntary examination. Even if a person doesn't refuse, the person authorized to initiate an involuntary examination (judge, law enforcement, or mental health professional) may decide the person isn't able to determine whether the examination is necessary. This can often happen when the person seems confused, ambivalent, manipulative, unable to control their impulsive behavior, or isn't likely to follow through on going to a receiving facility as they may have agreed to do. Sometimes persons with serious impairment either can't or won't follow through with needed treatment, despite their statements to the contrary.

Law enforcement officers have no responsibility to transport persons to facilities for voluntary examination and receiving facilities (non-hospital) have no responsibility to accept a person brought by law enforcement or others on voluntary status. It is very common for a person to be taken to a receiving facility on "voluntary status" and refuse to sign any paperwork, demanding to be released. Unfortunately, a mental health professional can't initiate an involuntary examination without observing each of the criteria for involuntary examination, whereas a law enforcement officer only has to describe the circumstances under which the person was taken into custody. Persons have had to be released in these cases even without an examination by a psychiatrist or psychologist.

A law enforcement officer has a duty under the law to initiate when he/she believes the criteria for involuntary examination is met, while a court or authorized mental health professional has no such duty – it is discretionary on their part. Because transport by law enforcement of persons on involuntary status is non-discretionary, the appellate courts have found that officers can't be held civilly or criminally liable for events that may occur while transporting a person on involuntary status. No specific immunity is identified when transport is provided on a discretionary basis for persons on voluntary status. Because of the duty and immunity issues, some law enforcement legal advisors have instructed officers not to transport persons on voluntary status.

However, an involuntary examination under the Baker Act should not be initiated unless the officer "has reason to believe" the person meets the criteria of having a mental illness, has refused or is unable to determine the examination is needed, and is either self-neglectful or likely to become actively harmful to self of others. The attorney representing your department may need to review the issue and give legal advice on how to proceed.

Initiation of Involuntary Examination

Q. What are the criteria for initiating an involuntary examination under the Baker Act?

A person may be taken to a receiving facility for involuntary examination if there is reason to believe that he or she has a mentally illness and because of his or her mental illness:

a. The person has refused a voluntary examination or is unable to determine that an voluntary examination is necessary after conscientious explanation and disclosure of the purpose of the examination; and

b. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

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

Q. How is a law enforcement officer supposed to diagnose mental illness?

Law enforcement officers, in the course of their duties, probably have more day-to-day interaction with persons who have serious mental illness than many mental health professionals. However, officers are not expected to diagnose mental illness. Mental illness is defined in the Baker Act to mean:

> An impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in Chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment. [s. 394.455 (18), F.S.]

It is important for officers not to unnecessarily invoke the Baker Act for persons who seem to be intoxicated, have retardation, or are antisocial unless there is reason to believe they also have co-occurring serious mental illness, as it is defined in the law.

Q. Does a law enforcement officer have to personally see the behavior to justify taking a person into custody under the Baker Act?

No. Taking a person into custody under the Baker Act is a civil procedure, not requiring the same probable cause required under criminal law. An authorized person may initiate the involuntary examination by having "reason to believe" "a person appears to meet the criteria." A law enforcement officer may consider the statements of other credible persons who have seen the behavior. The Baker Act requires the officer to detail the "circumstances" under which the person was taken into custody, which may include but does not require description of the officer's personal observations. An officer may wish to have witnesses to behavior write and sign a statement to be attached to the incident report in case the witness's statement changes in the future. This will, uphold the officer's "good faith" in initiating the involuntary examination.

Q. If a law enforcement officer brings a person who has overdosed and meets Baker Act criteria to an ER, should appropriate staff at the ER complete involuntary initiation form or must the officer complete the initiation form?

If there is no time for the officer to complete the Baker Act involuntary examination initiation form before the person is taken by ambulance to an emergency department, it is possible that the examination can be initiated by the emergency physician at the hospital. However, the law is clear that if the officer believes the person to meet the criteria, he/she "shall" initiate the examination – an authorized mental health professional "may" initiate the exam. If left to the physician, it may not be initiated and further, the physician may not have actually observed the statements/behavior essential to initiating such an examination. While the mental health professional must base his/her conclusion that the criteria is met on his/her own observations, the officer is only required to describe the circumstances under which the person was taken into custody. The officer can rely on credible hearsay; the mental health professional cannot.

Q. Can a law enforcement officer refuse to initiate an involuntary examination if a licensed mental health professional refuses to initiate, although he/she called police requesting that the person be Baker Acted? Law enforcement is concerned as to why a licensed mental health professional would not complete required paperwork if they made the call.

If a law enforcement officer believes a person to meet the criteria for involuntary examination under the Baker Act, he/she **shall** initiate the examination. The law indicates that a judge or mental health professional **may** initiate such an examination under the same conditions. As a result, only the law enforcement officer has a duty to initiate if it appears the criteria is met. Further, the mental health professional must base the conclusion that the person actually meets the criteria on his/her own observations, while the law enforcement officer is only required to describe the circumstances under which he/she took the person into custody, allowing the officer to rely on information from credible third party sources.

It is possible that the mental health professional obtained information about the person's threats or actions from family members, case managers, or other persons, but didn't actually see or hear the information personally. In such circumstances, a call for law enforcement initiation in real emergencies may be appropriate. However, if the mental health professional is simply dumping this on the officer instead of initiating it on his/her

own, it might be appropriate to report the professional to the Department of Health/Medical Qualify Assurance for investigation.

Q. An ALF called our law enforcement agency about an elderly resident who refused her medications for a couple of days (diabetic and blood pressure) and became belligerent with staff and other residents. ALF staff contacted the resident's physician, who said he couldn't sign the BA-52 because he hadn't seen the person recently. The resident didn't want to see the doctor. EMS found the resident competent so when she refused treatment they left. When the officer asked why she wasn't taking her medications, she said she didn't need them. She finally decided to accompany the ALF tech to the hospital to see the doctor. Does she fall under the Baker Act guidelines for law enforcement purposes?

People have the right to refuse medications or any kind of medical intervention as long as they have the capacity to make their own decisions. Just because this woman lives in an ALF doesn't change her right to refuse. In the absence of any apparent mental illness, the Baker Act is an inappropriate intervention for her. If the ALF believed her to be suffering from self-neglect, the staff could report her to the Abuse Registry for DCF Adult Protective Investigators to determine whether voluntary or involuntary intervention under chapter 415, FS is warranted. If she lacks capacity to make such decisions for herself, DCF could have her examined and, if necessary, get a court order for treatment.

ALF's aren't medical facilities like nursing homes. They often don't have regular, much less immediate access to physicians or other health care professionals. As a result, the woman's refusal to take prescribed medications required to maintain her life and health could result in her being discharged from the ALF. It sounds like the ALF did the right thing in finding ways to encourage her to visit her physician – hopefully this resulted in her agreement to take the medications and avoid a transfer.

In any case, your officer's decision to avoid the Baker Act was probably correct. Given her right to refuse medications and the finding by EMS that she had the capacity to make such decisions, this doesn't seem to be appropriate for the Baker Act. Further, she had no diagnosis of mental illness and it's a medical issue as to whether missing her blood pressure and diabetes medication for two days constitutes a real, present, and substantial harm to her well-being. Agitation doesn't necessarily cause serious bodily harm to herself or others. The criteria doesn't appear to be met.

Q. What is the law enforcement procedure for a person who meets the Baker Act involuntary examination criteria and is also intoxicated?

If the person otherwise meets the criteria for involuntary examination under the Baker Act, being intoxicated from alcohol or other drugs should not be a barrier. Often persons with serious thought or mood disorders also have a co-occurring substance abuse problem. Hospitals and non-hospital/non-medical CSU's are capable of assisting a person with detoxification and generally don't need to have the person sent to an ER for medical intervention. However, if a person is so intoxicated that he/she is unable to walk, talk, or has a known history of seizures, a law enforcement officer should have the person taken to the nearest ER instead of to the nearest receiving facility. However, if such a person is brought to a CSU or other non-medical receiving facility, the facility

must “accept” the person from law enforcement if on involuntary examination status, and should then refer the person to an ER via EMS transport if an acute physical problem is present. No receiving facility can refuse a person on involuntary status from law enforcement and should never ask the officer to further transport a person with potential medical issues. This is a medical role that should be handled by medical personnel.

Q. Recently my officers were involved in a call where the family complained of Subject “Shooting up drugs”, making suicidal statements, and having a history of violence. When units arrived at the incident location, they found Subject in the bathroom. He was shooting up medication for which he had a prescription. (the script was not for injection -- this manner of ingestion is typical of prescription medication abusers). Subject never made any suicidal statements or showed any signs of hostility in front of deputies. In fact, he said that he has never been happier in his life.. The family insisted that he made statements to them earlier saying he would kill/harm himself. It’s always been my understanding that for a deputy to use the Baker Act that he has to see or hear the statements/actions himself. I re-read some of the curriculum from the course that cast doubt on my understanding. Judging from the above information, could a LEO take someone into custody under the Baker Act?

You could have taken this young man into custody under either the Baker Act or the Marchman Act based on your having “reason to believe” he met the criteria under one of these protective statutes. Neither of these laws requires you to have seen or heard the person do or say anything, as long as you have credible witnesses to the event. Chapter 394.463(2)(a) states:

> 2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record…
> 3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute 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 and stating the observations upon which that conclusion is based…

While the criteria for a judge, a law enforcement officer, and a mental health professional to initiate an involuntary examination under the Baker Act is identical, the basis for that initiation differs. A mental health professional must have actually witnessed the behavior, while a law enforcement professional only is required to describe the circumstances under which the person was taken into custody. You as a law enforcement officer would not have actually had to witness the behavior. If you have credible witnesses to the behavior, you might want to have them complete witness affidavit forms to provide the documentation of your good faith in relying on them to take the person into custody. If you don’t believe the alleged witnesses and decide not to take the person into custody, you may want to note this in your incident report because

of the word “shall” that applies to law enforcement vs. “may” for judges and mental health professionals.

If you believe that the reason for the person’s suicidal threat is due to substance abuse impairment instead of a psychiatric disorder, the Marchman Act would be more appropriate. The criteria for involuntary admission is as follows:

> A person meets the criteria for involuntary admission if there is good faith reason to believe the person is substance abuse impaired and, because of such impairment:
> (1) Has lost the power of self-control with respect to substance use; and either
> (2)(a) Has inflicted, or threatened or attempted to inflict, or unless admitted is likely to inflict, physical harm on himself or herself or another; or
> (b) Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the person is incapable of appreciating his or her need for such services and of making a rational decision in regard thereto; however, mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services.

As a law enforcement officer, you can take the person into Protective Custody as follows:

> **397.677 Protective custody;** circumstances justifying.--A law enforcement officer may implement protective custody measures as specified in this part when a minor or an adult who appears to meet the involuntary admission criteria in s. 397.675 is:
> (1) Brought to the attention of law enforcement; or
> (2) In a public place.
>
> 397.6771 Protective custody **with consent.--**A person in circumstances which justify protective custody, as described in s. 397.677, may consent to be assisted by a law enforcement officer to his or her home, to a hospital, or to a licensed detoxification or addictions receiving facility, whichever the officer determines is most appropriate.
>
> 397.6772 Protective custody **without consent**.--
> (1) If a person in circumstances which justify protective custody as described in s. 397.677 fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:
> (a) Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force; or
> (b) In the case of an adult, detain the person for his or her own protection in any municipal or county jail or other appropriate detention facility.
>
> 397.6775 Immunity from liability.--A law enforcement officer acting in good faith pursuant to this part may not be held criminally or civilly liable for false imprisonment

You are not expected to be a diagnostician. If you don't know whether the basis of the person's behavior is mental illness or substance abuse impairment, use your best judgment as to which law to use. Persons with serious mental illnesses often have a co-occurring substance abuse disorder.

Execution of Involuntary Examination

Q. I'm a sheriff's deputy. I followed EMS to the hospital ED for an elderly Baker Act who had made suicidal threats. Hospital staff asked me to stay to guard the man in the hospital due to a battery on hospital staff the previous day. The man was loud but not violent and needed to be cleared medically before he could be transported to the CSU. I explained that I would not be staying because the man was not violent -- just loud. Hospital staff stated that an unidentified police officer stated the previous day that a deputy should guard their Baker Acts. Staff stated that they would not try to detain the man if he decided to leave. The hospital staff also expressed concern that the man might disrupt the care of other patients due to his volume. The hospital staff contacted their supervisor who again requested me to stay. I informed her what staff had said and she called a hospital security guard to sit with the man. How should this have been handled?

There is little or no connection between a battery on hospital staff the previous day by a different person and the need for the officer to stay with this man while in the ED. The Baker Act specifies the duties of a law enforcement officer; none of these duties involve an officer remaining at the hospital with a patient brought for medical examination or treatment. If this man had been brought to the hospital without the officer following EMS, there would have been no issue.

Hospital staff threatening to take no action should the man attempt to exit the ED should be reminded of their duty under EMTALA for stabilization of patients as well as for liability should one exit and experience injury or death as a result. The hospital's Risk Manager could attest to this.

Hospitals have many patients – medical as well as psychiatric in nature – who are disruptive. They are in pain, disoriented, under anesthesia in post-surgery, and otherwise vocalize in inappropriate ways. Hospital staff members are (or should be) trained to deal with these situations and shouldn't expect a law enforcement professional to do their jobs for them. What methods do law enforcement officers have to keep patients quiet that aren't available to trained medical personnel?

The Assistant Director bringing in a security guard employed by the hospital was the appropriate response – it should have been the first recourse once the patient and the paperwork was presented to admission staff. Many hospitals contract for a certified law enforcement officer to be present In their ED's. Perhaps they should consider this practice.

Q. If a patient leaves AMA (elopes) who has agreed to voluntary admission and upon consideration from the psychiatrist who evaluated the patient decides that patient does meet BA criteria, who should be called? The process that happened here was that BA was signed in one county where the elopement took place. Law

enforcement in another county was notified of the BA since it was assumed that the patient was going home, (she actually said that as she walked out). That LEO was asked to do a check on her, but were also informed that a BA 52b had already been signed. The LEO did a wellness check and refused to pick her up. The BA forms were then faxed to the LEO. The patient eventually was seen in the clinic a few days later. We did not get the cooperation expected from LEO and the patient was at home for 3 days w/ an active BA although in a different county. What could/should we have done differently. We apparently couldn't force the LEO to take the patient to the nearest receiving facility.

DCF has been asked to follow up with local law enforcement. If an authorized mental health professional from your VA outpatient clinic believed the individual met criteria and initiated the examination, it would have been best to immediately inform the local law enforcement agency – the one closest to the clinic. If that agency had reason to believe the individual had gone to an adjoining county, it could have alerted LEOs in that county to be on the lookout for the individual as well. In either case, once the involuntary examination had been initiated by a court, a mental health professional, or another law enforcement agency, the law enforcement officer had the absolute duty to take the person into custody and deliver to the nearest receiving facility for the examination to take place. The officer may have discretion as to whether or not to initiate the exam, but no discretion as to whether to transport or arrange transport once initiated by another authorized party.

Q. Can a LEO executing an Ex parte with specific instructions from a Judge/magistrate to transport to a specific receiving facility take person to nearest facility instead or must they go to the facility specified in the court order? I understood that they must follow the Judge's orders unless of course, person became violent and remaining in vehicle or ambulance is escalating person? Is an Ex parte order still valid if the envelope is unsealed?

The officer is required by law to take the person under involuntary status to the nearest receiving facility. A problem arises when a judge specifies a different facility in a court order. This is why the state's model form doesn't include space for a facility name – it relies on the officer's knowledge of the facility locations. This issue creates a dilemma for the officer in following the law or following a court order. Most will opt to follow the court order contrary to law. The attorney representing that law enforcement agency or another responsible party should communicate with the judges to discourage them from specifying a facility that may not be the nearest facility.

This is somewhat altered by the adoption of the Transportation Exception Plan by your Board of County Commissioners and DCF. This allows a statutory deviation from the "nearest" facility to certain other facilities more able to meet the specialized needs of persons under involuntary examination status.

The validity of an ex parte order is valid even if its envelope has been opened. There is no reason why such an order wouldn't continue to be valid as long as it hasn't expired. If the court has adopted through an administrative order a requirement that the order remain confidential and someone violates that administrative order, this should be reported back to the court. However, it doesn't invalidate the order itself.

Q. One of our police officers did a welfare check on a man and determined he did not meet Baker Act criteria. However, we later learned that an ex parte order was issued a couple days earlier in the next county ordering the man be taken to a receiving facility. The sheriff's Office in that county faxed over the order. What our obligation and how should this have been handled.

Your police officer can execute the order and take the person to the nearest receiving facility in your county. If the ex parte order has expired or if it specifically orders the person to be taken to a receiving facility in the adjacent county, you may have a problem. In that case, your officer may want to see the man again to determine if he/she still believes the man doesn't meet criteria. If the officer has changed his/her mind, the officer can initiate it under criteria (a)2 and take the man to a local receiving facility. Whether done by an ex parte order or by a BA 52a, the local facility can arrange a transfer of the man back to the next county.

Q. How long is an ex parte court order initiating an involuntary examination good for?

The Baker Act states that an ex parte order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order is valid for seven days after the date that the order was signed. This means that if the person is taken to a receiving facility, examined, and released, he or she cannot be picked up on the original court order again within the seven day period after the order was signed by a judge. A judge can designate a longer or shorter period in which law enforcement can search for the person to be taken into custody.

Q. Does the Baker Act let a law enforcement officer execute an ex parte order anytime, even at night or on weekends?

The Baker Act states that a law enforcement officer acting in accordance with an ex parte order may serve and execute such order on any day of the week, at any time of the day or night. It further states that a law enforcement officer acting in accordance with an ex parte order issued may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

Q. Can a law enforcement officer serve an ex parte order entered in another state?

This is a question that a law enforcement attorney may want to address. However, orders entered by a court in another state are generally recognized and given full faith and credit in the courts of this state. Attorneys have advised in the past that a facility could and should comply with out-of-state court orders and arrange return of the person to that state. Law enforcement execution of an ex parte order from another state, if consistent with the laws of Florida, would generally be appropriate.

Transportation

(See Separate Transportation FAQ's)

Q. I am with our local police department. Please provide advice on the following, especially in light of the new legislation and the requirement for law enforcement agencies to have a Memorandum of Understanding with a receiving facility. My concern is the reference that persons taken for involuntary examination shall deliver those persons to the nearest receiving facility. In our case, the nearest facility for everyone that we would transport would be a private receiving facility although the public receiving facility is only 0.3 miles further. I'm sure the legislative intent is that the person is not transported miles and miles out of the way, but, the Memorandum of Understanding would have to be signed by the Chief, and as police, we're always looking at the technicalities.

The Baker Act repeatedly states that a person under involuntary examination status shall be taken to the nearest receiving facility. However, s394.462(3), FS describes a local Transportation Exception Plan that can be developed subject to approval by the Board of County Commissioners and the DCF Secretary for other options than the nearest facility. This might be for a central receiving facility or to a specialized receiving facility for persons with specialized needs such as hearing impairments, children, elders, etc. Quite a number of counties have such Plans approved -- as long as what is proposed isn't controversial, it shouldn't be a big problem to get approved.

The purpose of the "nearest" receiving facility requirement in the statute is to prevent demands on law enforcement to take persons to more distant facilities where their doctor may have privileges, where their particular insurance will pay, etc. This requirement was reinforced in the 1996 Baker Act reform after much abuse was uncovered with certain facilities around the state providing kick-backs for paying patients.

While you may want an officer to use his/her discretion to take a person to the public receiving facility when that isn't the nearest receiving facility, it wouldn't be consistent with the law, as follows:

> **394.462 Transportation.--**
> (1) TRANSPORTATION TO A RECEIVING FACILITY.--
> (a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the nearest receiving facility for examination. The designated law enforcement agency may decline to transport the person to a receiving facility only if:
> (3) EXCEPTIONS.--An exception to the requirements of this section may be granted by the secretary of the department for the purposes of improving service coordination or better meeting the special needs of individuals. A proposal for an exception must be submitted by the district administrator after being approved by the governing boards of any affected counties, prior to submission to the secretary.
> (a) A proposal for an exception must identify the specific provision from which an exception is requested; describe how the proposal will be implemented by participating law enforcement agencies and transportation authorities; and provide a plan for the coordination of services such as case management.

(b) The exception may be granted only for:
1. An arrangement centralizing and improving the provision of services within a district, which may include an exception to the requirement for transportation to the nearest receiving facility;
2. An arrangement by which a facility may provide, in addition to required psychiatric services, an environment and services which are uniquely tailored to the needs of an identified group of persons with special needs, such as persons with hearing impairments or visual impairments, or elderly persons with physical frailties; or
3. A specialized transportation system that provides an efficient and humane method of transporting patients to receiving facilities, among receiving facilities, and to treatment facilities.
(c) Any exception approved pursuant to this subsection shall be reviewed and approved every 5 years by the secretary.

394.463(2) INVOLUNTARY EXAMINATION.--
(a) An involuntary examination may be initiated by any one of the following means:
1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based…. a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination.
2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record.
3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute 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 and stating the observations upon which that conclusion is based… a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody.

DCF Circuit Office may assist if you're interested in a Transportation Exception Plan for establishing a central receiving facility at the public receiving facility

Q. The MOU template provided by DCF states that, "The officer will complete a mandatory written report (form CF-MH 3100)…" In all the Crisis Intervention Team and Baker Act training I have attended, form CF-MH 3100, "Transportation to Receiving Facility" is used when an officer transports an individual who is being "Baker Acted" by someone other than the law enforcement officer (LEO). When a LEO initiates the Baker Act him/herself, form CF-MH 3052a, "Report of Law Enforcement Officer Initiating Involuntary Examination" is completed. Our police department doesn't transport a Baker Act unless an officer of the Department is

the one initiating the Baker Act. For the past five or more years, we have only had to complete form CF-MH 3052a for every Baker Act we have done, never using form CF-MH 3100. So my questions are Which form(s) does our officer have to complete? Does the MOU need to be changed or can we note the change of form in the "Other Issues" section of the MOU to clarify?

You may have been provided incorrect information about the responsibilities of law enforcement under the Baker Act. I'll provide some citations from the law so you'll have them as reference (some sections omitted for simplicity):

> **394.462 Transportation.--**
> (1) TRANSPORTATION TO A RECEIVING FACILITY.--
> (a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the nearest receiving facility for examination. The designated law enforcement agency may decline to transport the person to a receiving facility only if:
> 1. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and
> 2. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.
> (d) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.
> (f) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to the nearest receiving facility for examination.
> (g) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person shall first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the nearest public receiving facility, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide mental health examination and treatment to the person where he or she is held.
> (h) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.
> (j) The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination.
>
> **394.463 Involuntary examination.--**

(2)(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute 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 and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record.

Your County has funded the Sheriff's Office to contract for provision of some of the Baker Act transportation, while municipal police provide some transport as well. The statutory reference above requires, even when a contract provider actually provides the transport, the law requires that a law enforcement officer certify that the "continued presence of law enforcement personnel is not necessary for the safety of the person or others". The mandatory transportation form (CF-MH 3100 form) has been promulgated under Florida Administrative Code to document this transfer of custody (back side of the form). The front side of the form is completed by law enforcement regardless of whether the Baker Act was initiated by a court, a law enforcement officer, or by a mental health professional.

Regardless of whether the officer or a contract firm actually conducts the transport of a person for whom the involuntary examination was initiated by a mental health professional, the statute requires that the officer "execute a written report detailing the circumstances under which the person was taken into custody". The same form (3100) is used to meet this legal requirement.

If a law enforcement officer initiates the involuntary examination, the 3100 form is required in addition to the 52-B Report form.

65E-5.260, FAC Transportation.

(1) Each law enforcement officer who takes a person into custody upon the entry of recommended form CF-MH 3001, Feb. 05, "Ex Parte Order for Involuntary Examination," which is incorporated by reference and may be obtained pursuant to Rule 65E- 5.120, F.A.C., of this rule chapter, or other form provided by the court, or the execution of mandatory form CF-MH 3052b, Feb. 05, "Certificate of Professional Initiating Involuntary Examination," which is hereby incorporated by reference and may be obtained pursuant to Rule 65E-5.120, F.A.C., of this rule chapter or completion of mandatory form CF-MH 3052a, Feb. 05, "Report of a Law Enforcement Officer Initiating Involuntary Examination," which is incorporated by reference and may be obtained pursuant to Rule 65E-5.120, F.A.C., of this rule chapter shall ensure that such forms accompany the person to the receiving facility for inclusion in the person's clinical record.

(2) The designated law enforcement agency shall transport the person to the nearest receiving facility as required by statute, documenting this transport on mandatory form CF-MH 3100, Feb. 05, "Transportation to Receiving Facility," which is hereby incorporated by reference and may be obtained pursuant to Rule 65E-5.120, F.A.C., of this rule chapter. The designated law enforcement agency may decline to transport the person to a receiving facility only if the provisions of Section 394.462(1), F.S., apply. When the designated law enforcement agency and the medical transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others. Part II of mandatory form CF-MH 3100, "Transportation to Receiving Facility," as referenced in subsection 65E-5.260(2), F.A.C., reflecting the agreement between law enforcement and the transport service shall accompany the person to the receiving facility. The completed form shall be retained in the person's clinical record.

By state law and Florida Administrative Code, an officer initiating an involuntary examination must complete the BA-52a form. In any case in which an officer transports a person or authorizes a contract company to transport, the 3100 form is required, regardless of who initiates the examination.

The MOU template you received is only a model. You are able to modify it to meet local needs. However, it can't be modified to be in conflict with Florida law or code. The DCF circuit staff may be able to further assist. They may also want to review the Baker Act related information being provided to law enforcement officers as part of CIT training to ensure that it is correct and complete.

Q. A patient was brought into our ER with an Ex-Parte Order to transport to one hospital, but it was stamped "If deemed violent, transport to ____." Law enforcement officers brought the patient to our facility because the patient was not violent. Of course, we treated the patient but the transporting officer stated that he always transports to the nearest facility regardless of what is written on the Ex-Parte. Could you please clarify?

The model ex parte court order doesn't specify the name of a receiving facility because the Baker Act law requires that persons be taken to the nearest receiving facility, unless a Transportation Exception Plan has been approved by your Board of County

Commissioners and the Secretary of DCF. No such Exception plan has been approved and no provision for bypassing receiving facility with violent persons has even proposed.

It is surprising that the court has included this additional provision to the model form. It creates a conflict for the law enforcement officers responsible for executing the order. However, it appears that the officer involved in this case ignores such provisions of orders. Law officers shouldn't be placed in this situation that implies a hospital or other receiving facility wouldn't have the responsibility to accept a person presented for involuntary examination.

It looks as if the officer and your hospital carried out the law appropriately, despite the provisions of the order. All receiving facilities should be prepared to deal with persons who are "dangerous to self or others".

Criminal Charges & Jails

Q. Our jail medical staff wonder if they could give ETO's to those clients in the jail that are being seen by their psychiatrist who met the criteria for ETO. In this case they were speaking specifically about a client who is very familiar to all of us but is there on a felony charge and because he has been refusing meds, has decompensated, and is now quite violent. They feel that medication instead of restraints would be better but they do not think they can give and ETO when he does something that is imminently dangerous. Is this an option to them?

The Baker Act prohibits jails from being designated as receiving facilities and provisions of the Baker Act governing treatment and express and informed consent don't directly apply:

> **(26)"Receiving facility"** means any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. ***The term does not include a county jail.***

It is really critical that law enforcement personnel who have taken a person into custody for a misdemeanor offense who also meets criteria for involuntary examination take the person to a receiving facility instead of to jail [394.462(1), FS]:

> (f)When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to the nearest receiving facility for examination.

Those inmates with felony charges must be taken first to the jail for processing, but can later be sent to the public receiving facility for the examination.

> (g)When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person shall first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the nearest public receiving facility, which shall

be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide mental health examination and treatment to the person where he or she is held.

When the arresting officer hasn't identified the person in custody to have a serious mental illness and to further meet the other criteria for involuntary examination, it is also common for jail inmates to have an involuntary examination initiated by the mental health professionals (or a law enforcement officer) at the jail and be delivered to the local public receiving facility for stabilization. Once stabilized, the inmate can be returned to the jail and is often able to provide informed consent to treatment.

Most courts believe that there is no basis for treating inmates of the jail without consent except in emergency situations -- that they can only be treated without consent once they are admitted to DCF under chapter 916 (felony cases NGI or ITP). However, it is common for a single ETO to be ordered when a jail inmate is at imminent risk – more of a chemical restraint than a treatment intervention.

I believe at one time the jail in Palm Beach County routinely obtained court orders for continued treatment for persons in the jail. This was atypical, but it worked for them and apparently didn't ever end up in litigation.

The jail may wish to consider the use of Health Care Proxies for inmates who are incompetent to consent to treatment, but who have family or friends who would be willing to provide substitute judgment for medical and mental health care on his/her behalf. There isn't any prohibition in chapter 765, FS against a health care provider in a jail situation from relying on a Health Care Surrogate or Proxy's authorization to treat a person found by a physician to be "incompetent or incapacitated". I think this would work great for many of the inmates – just not those without family or friend to serve in this capacity. You would want to run this by the Public Defender's Office to ensure the attorney representing the inmate had no objection as well as the Sheriff's General Counsel.

Q. One of the Chief's here at the Sheriff's Office asked me if a judge may order a psychiatrist (who is under contract with the jail) to medicate an inmate, based upon the observations of Detention staff, or the Master's Level Forensic Specialist (a MSW, but not LCSW), if the inmate is refusing to take medications?

Most judges believe they have no authority to order an inmate to receive psychotropic medications. If the inmate charged with a felony is too ill to be willing or able to consent to treatment, a petition for "incompetent to proceed" under chapter 916 if filed and the inmate eventually gets the needed treatment after transfer to DCF custody. A physician can generally order and ETO administration on a single dose basis for dangerousness based solely on his/her medical license – no court order is usually entered. However, if an inmate is simply refusing medications and no imminent danger exists from that refusal, I would think there is no basis for forcing medications on the inmate – people have the right to refuse medical (including psychiatric) treatment in such situations.

Physicians often order emergency medications for patients in Baker Act receiving facilities based solely on the observation of registered nurses. I would think relying on the observations of personnel other than nurses might expose the physician to substantial civil and administrative liability. Even then the Florida Administrative Code limits. I've enclosed the Code related to emergency treatment orders below – they only apply in Baker Act receiving facilities – not jails. However, they might give you some idea of what is acceptable in treatment settings. Please note section (9) below that states " To assure the safety and rights of the person, and since emergency treatment orders by a physician absent express and informed consent are permitted only in an emergency, any use of psychotropic medications other than rapid response psychotropic medications requires a detailed and complete justification for the use of such medication. Both the nature and extent of the imminent emergency and any orders for the continuation of that medication must be clearly documented daily as required above"

65E-5.1703 Emergency Treatment Orders.

(1) An emergency treatment order shall be consistent with the least restrictive treatment interventions, including the emergency administration of psychotropic medications or the emergency use of restraints or seclusion.

(a) The issuance of an emergency treatment order requires a physician's review of the person's condition for causal medical factors, such as insufficiency of psychotropic medication blood levels, as determined by drawing a blood sample; medication interactions with psychotropic or other medications; side effects or adverse reactions to medications; organic, disease or medication based metabolic imbalances or toxicity; or other biologically based or influenced symptoms.

(b) All emergency treatment orders may only be written by a physician licensed under the authority of Chapter 458 or 459, F.S.

(c) The physician must review, integrate and address such metabolic imbalances in the issuance of an emergency treatment order. The use of an emergency treatment order, consistent with the least restrictive treatment requirements, for persons must include:

1. Absent more appropriate interventions, an emergency treatment order for immediate administration of rapid response psychotropic medications to a person to expeditiously treat symptoms, that if left untreated, present an immediate danger to the safety of the person or others.

2. Absent more appropriate medical interventions, an emergency treatment order for restraint or seclusion of a person to expeditiously treat symptoms that if left untreated, present an imminent danger to the safety of the person or others.

(d) An emergency treatment order, as used in this chapter, excludes the implementation of individualized behavior management programs as described and authorized in Rule 65E-5.1602, F.A.C., of this rule chapter.

(2) An emergency treatment order for psychotropic medication supersedes the person's right to refuse psychotropic medication if based upon the physician's assessment that the individual is not capable of exercising voluntary control over his or her own symptomatic behavior and that these uncontrolled symptoms and behavior are an imminent danger to the person or to others in the facility. When emergency treatment with psychotropic medication is ordered for a minor or an incapacitated or incompetent adult, facility staff shall document attempts to promptly contact the guardian, guardian advocate, or health care surrogate or proxy to obtain express and informed consent for the treatment in advance of administration where possible and if not possible, as soon thereafter as practical.

(3) The physician's initial order for emergency treatment may be by telephone but such a verbal order must be reduced to writing upon receipt and signed by a physician within 24 hours.
(4) Each emergency treatment order shall only be valid and shall be authority for emergency treatment only for a period not to exceed 24 hours.
(5) The need for each emergency treatment order must be documented in the person's clinical record in the progress notes and in the section used for physician's orders and must describe the specific behavior which constitutes a danger to the person or to others in the facility, and the nature and extent of the danger posed.
(6) Upon the initiation of an emergency treatment order the facility shall, within two court working days, petition the court for the appointment of a guardian advocate pursuant to the provisions of Section 394.4598, F.S., to provide express and informed consent, unless the person voluntarily withdraws a revocation of consent or requires only a single emergency treatment order for emergency treatment.
(7) If a second emergency treatment order is issued for the same person within any 7 day period, the petition for the appointment of a guardian advocate pursuant to the provisions of Section 394.4598, F.S., to provide express and informed consent shall be filed with the court within 1 court working day.
(8) While awaiting court action, treatment may be continued without the consent of the person, but only upon the daily written emergency treatment order of a physician who has determined that the person's behavior each day during the wait for court action continues to present an immediate danger to the safety of the person or others and who documents the nature and extent of the emergency each day of the specific danger posed. Such orders may not be written in advance of the demonstrated need for same.
(9) To assure the safety and rights of the person, and since emergency treatment orders by a physician absent express and informed consent are permitted only in an emergency, any use of psychotropic medications other than rapid response psychotropic medications requires a detailed and complete justification for the use of such medication. Both the nature and extent of the imminent emergency and any orders for the continuation of that medication must be clearly documented daily as required above.

A legislative bill has been filed a couple of times in the last decade to address just this issue, but it never seems to get any momentum. It is a great bill that still provides for the inmate's attorney to be notices and to intervene if necessary. Jails could partially address this problem within existing law by requesting a relative or close friend of the inmate to serve as a health care proxy to provide express and informed consent for needed treatment (that the inmate would have consented to if he/she were competent to do so) once a physician determined the inmate lacked capacity/competence to consent. There should be no reason why it wouldn't work for those that had a relative or close friend.

Q. We are looking for some information regarding any statutory regulations that pertain to law enforcement officers serving warrants or other papers to psychiatric inpatients.

The HIPAA website has extensive information on law enforcement access to persons in health care facilities. What most facilities do when someone tries to serve a warrant to hospitalized person is to ask the person if he/she is willing to accept the warrant or subpoena. If so, the person can be brought to the reception area and given service. If not, the Baker Act statute requires the facility to release persons with criminal charges to law enforcement at the time the person is discharged:

> **394.463(2)(i)** Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:
> 1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;
>
> **394.469(1)** POWER TO DISCHARGE.--At any time a patient is found to no longer meet the criteria for involuntary placement, the administrator shall:
> (a) Discharge the patient, unless the patient is under a criminal charge, in which case the patient shall be transferred to the custody of the appropriate law enforcement officer;

Q. A consumer has complained about being taken to jail and never getting an examination even though he was under the Baker Act and at the same time charged with a misdemeanor.

The Baker Act requires that a person on involuntary exam status in the custody of a law enforcement officer for a non-criminal or minor criminal behavior must go to the nearest receiving facility instead of to jail. A receiving facility would be required to accept such a person, perform the exam, and release only back to law enforcement personnel. This language doesn't actually use the term "misdemeanor", however an AG Opinion deals with this issue:

> **AGO 85-86 Regarding the definition of minor criminal behavior (**October 25, 1985). Words in statutes should be given the meaning accorded to them in common usage unless a different connotation is expressed in or necessarily implied from the context of the statute in which they appear. As no definition of "minor" or "minor criminal behavior" has been provided in the Baker Act from which guidance may be obtained, the term must be construed in its plain and ordinary sense. The language of the Baker Act distinguishes minor criminal behavior or noncriminal behavior from behavior which constitutes a felony. However, in the absence of any legislative or judicial determination to the contrary, the phrase "minor criminal behavior" refers to criminal behavior which is not dangerous or not as serious as other criminal behavior and is not limited to crimes chargeable as misdemeanors but may include felonies which do not involve violence against another person.

One additional issue to consider is that there are a couple of misdemeanor offenses that may not fit. Domestic Violence and DUI are misdemeanors for which the Legislature has established "0 Tolerance", requiring booking at the jail if there is probably cause to believe these offenses took place. Nothing would keep the Baker Act involuntary examination from being executed post-booking. Competing state laws and public policy

like this needs to be sorted out by attorneys and courts. Law enforcement personnel should consult with their attorney regarding these circumstances to know whether a receiving facility or jail should be the first stop.

Q. Have you ever heard of Jails being told that they cannot send inmates to Baker Act Receiving Facilities? On a few occasions, when the local CSU hears the name of the inmate we want to send over, they tell the medical staff here that they will not accept the patient. Is there anything in the law that would allow them to reject Baker Act clients being referred by any Law Enforcement Officer?

This is incorrect. The nearest receiving facility cannot refuse to accept a person brought by law enforcement for involuntary examination. If the facility doesn't have the space or capability, it must accept the person, even a jail inmate, and arrange a transfer to another willing receiving facility.

The only exception is in the following transportation provisions of the law and the CSU may be confused over its responsibilities.

> **394.462 Transportation.--**
> (1) TRANSPORTATION TO A RECEIVING FACILITY.--
> (f) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to the nearest receiving facility for examination.
> (g) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person shall first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the nearest public receiving facility, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide mental health examination and treatment to the person where he or she is held.
> (j) The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination.

The above sections have to do with where the officer initially takes the person who has any type of charges. Once a person who has been arrested for a felony offense is booked at the jail, the jail staff is obliged by law to refer the person to the nearest public receiving facility that is then required to conduct the examination by a physician or clinical psychologist. If the public receiving facility believes if cannot provide adequate security for the inmate charged with this felony offense, facility staff can then refuse the admission, but must then provide the examination and treatment to the inmate at the jail. The issue isn't whether or not a person is an inmate of the jail – it is a combination of a felony offense and documentation by the facility of its inability to provide security.

Even if a public receiving facility doesn't have the space or capability of serving an otherwise eligible person, it remains responsible for coordinating the care needed, as follows:

65E-5.351, FAC Minimum Standards for Designated Receiving Facilities.
(5) A public receiving facility that is affiliated with a publicly funded community mental health center shall ensure the centralized provision and coordination of acute care services for eligible individuals with an acute mental illness.

Q. I have a question about persons charged with a felony who meet Baker Act criteria, – the section of the law that states a receiving facility is required to provide mental health exam and treatment in the jail (s. 394.462.(1)(g)) m). How is this working in other parts of the state? Who decides if there is proper security or not? Right now the local jail doesn't want to send anyone to us because we are not a jail. While there are cases we certainly can't handle, I want the ability to take them here rather than sending to the jail where there isn't a physician and the drug formularies are very different. What can you tell me on how this works and when do I have to send staff to the jail?

While the law requires the receiving facility to provide the initial mandatory involuntary examination (by a physician or psychologist) wherever the person charged with a felony is held (jail or receiving facility), I'm not aware of anywhere in the state where this is actually provided at the jail by the receiving facility. Generally, if a person is charged with a serious violent felony, law enforcement doesn't usually initiate an involuntary examination on the person – just the criminal charges followed by booking at the jail. At that point, if the medical personnel at the jail believe the person meets criteria for Baker Act involuntary examination, the examination can then be initiated.

It is always the decision of the receiving facility as to whether it has the capability of providing adequate security for the inmate.

"A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide mental health examination and treatment to the person where he or she is held. "

If you have the ability to provide this security, the jail has no standing to demand that you provide the examination and/or treatment on-site at the jail. Should the jail and the receiving facility believe that the inmate should be held at the receiving facility, the following provision of Florida Administrative Code also applies:

65E-5.150 Person's Right to Individual Dignity.
(2) …Prison or jail attire shall not be permitted for persons admitted or retained in a receiving facility except while accompanied by a uniformed law enforcement officer, for purposes of security.

Q. Can a law enforcement officer take a person who meets the criteria for involuntary examination to jail instead of a Baker Act receiving facility if they have committed a misdemeanor?

NO. The Baker Act states that any law enforcement officer who has custody of a person based on either non-criminal or minor criminal behavior that meets the statutory

guidelines for involuntary examination, shall transport the person to the nearest receiving facility for examination. [s. 394.462(1)(f), F.S.] However, when a person who has charges is ready for discharge, he/she can only be released to law enforcement.

Q. We've recently been getting a lot of transfers from jail to our public receiving facility. On the one hand that's good because we're getting people out of jail and appropriately treated, but the trickle is becoming a flood and creating capacity problems. The people being transferred are all charged with misdemeanors and we don't doubt that they actually meet Baker Act criteria. Is there anything in the Baker Act or rules pertaining to jail services?

The Baker Act doesn't specifically address involuntary examinations initiated for persons who are inmates of the jail. The only references in the civil Baker Act to such issues are when the person is taken into custody:

> **394.462 Transportation.--**
> (1) Transportation to a Receiving Facility.--
> (f) When any law enforcement officer has custody of a person based on either **noncriminal or minor criminal behavior** that meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the person to the nearest receiving facility for examination.
> (g) When any law enforcement officer has arrested a person for a **felony** and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person shall first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the nearest public receiving facility, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide mental health examination and treatment to the person where he or she is held.
> (i) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

Persons who are taken to jail for criminal offenses and are later determined by a judge, LEO, or mental health professional to meet the criteria under the civil Baker Act can still be eligible for involuntary examination at a receiving facility. The process would be the same as any other involuntary examination, other than the person would have to be returned to law enforcement at the time of discharge/release because of the pending charges and a person with criminal charges is ineligible to transfer to voluntary status.

Q. The census on our CSU is often over its licensed capacity. The jail staff calls insisting we have to take inmates regardless of not having any available beds, even if they have to sleep on the floor. Do we have to take their clients when in overflow or can the inmate stay in the jail over night while coming to our facility for examination and treatment during the day?

As the nearest designated receiving facility, you are required to "accept" any person brought to your facility by law enforcement officers for involuntary examination. The Baker Act requires that persons charged with non-criminal or minor criminal behavior that meets the statutory criteria for involuntary examination be brought to a receiving facility instead of to jail. However, the transportation provisions of the Baker Act state that if the person meets the criteria for involuntary examination and has a felony charge and you have determined and documented that you are unable to provide adequate security, you are required to provide mental health examination and treatment to the person where he or she is held. The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state, county, or municipal law/ordinance can be recovered by the receiving facility as provided in s.901.35, FS.

A law enforcement officer is specifically defined in 943.10 and is not the same as any other Sheriff's Office employee, such as correctional, detention, or transport officer. However, if a certified law enforcement officer brings a person to your facility with a valid BA-52 completed, you cannot refuse the person, assuming you can provide adequate security.

If a facility can't provide adequate security to a person on felony charges, the law permits the facility to refuse the admission but it must have a plan to examine the person at the jail. If the jail staff agrees to transport the person back and forth between the jail and the receiving facility, that would be acceptable. However, transport is inherently risky for the person and treatment in one place or another may be preferable.

Q. A patient at our community's only receiving facility attacked a psychiatrist resulting in injuries. Hospital staff called the police to take the patient to the jail. Jail staff believes that the individual meets Baker Act criteria and belongs in the hospital. When the jail staff talked to the hospital staff and indicated this, the staff were extremely upset by the situation and said they are going to bring charges against the individual (equal to a felony), and the jail has to keep him. The hospital refused to readmit because there was no psychiatrist available to treat him (one being on medical leave and the other in the ER getting treated for his injuries). The individual was being kept in a restraining chair with a spit mask on, asking for medications and food. What could / should have transpired in this situation - legally and clinically?

If the psychiatrist wishes to bring charges against the man, he certainly can. If law enforcement doesn't believe they have probable cause to charge the man due to his incapacity to form the intent necessary to commit a crime, the psychiatrist could contact the state attorney's office directly and ask that charges be brought. However, if law enforcement doesn't think it has probable cause, the State Attorney may feel the same way.

The following provisions in the Transportation section of the Baker Act apply when the person has criminal charges [394.462(1),FS]

> (f) When any law enforcement officer has custody of a person based on <u>either noncriminal or minor criminal behavior</u> that meets the statutory guidelines for

involuntary examination under this part, the law enforcement officer shall transport the person to the nearest receiving facility for examination.
(g) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person shall first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the nearest public receiving facility, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide mental health examination and treatment to the person where he or she is held.

The hospital must be prepared to provide medical care for any person meeting the criteria for emergency medical conditions, including psychiatric and substance abuse emergencies, even absent any other medical conditions. What is happening to all their other patients? If there is no psychiatric care available for them, there could be a moratorium from AHCA due to inability to provide care. Or is it just this one patient who is being denied care? They can't deny care on this basis. They may try to negotiate a transfer of the patient to a receiving facility in a nearby community.

This means that while the hospital can refuse to accept a person with felony charges under state law because of security issues, the jail could send an officer to the hospital to provide the security. However, if the hospital refuses to accept him for examination, it is still responsible as it is the nearest public receiving facility to send a physician or psychologist to the jail to conduct the Mandatory Initial Involuntary Examination to determine if he meets criteria for involuntary placement and to provide short-term treatment while he is held in the jail. Subsection (i) of the same provision above provides for the following recovery of costs:

> (i) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

This refers to trying to collect from the patient, his insurance, or any settlement. If no recovery results from these sources, the hospital could then bill the County. If the jail initiates an involuntary examination and brings the person to the hospital, the hospital must accept and perform the medical screening examination required under the federal EMTALA law. When the state law is in conflict with EMTALA, the federal law takes precedence. Failure to comply with EMTALA could cost the doctor and the hospital up to $50,000 each and potential loss of Medicare and Medicaid certification.

In any case, when a person with criminal charges is held at a receiving facility for involuntary examination for "up to 72 hours" and found not to meet the criteria for involuntary placement, he/she must be released back to law enforcement.

> 394.463(2)(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;
2. The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;
3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or
4. A petition for involuntary placement shall be filed in the circuit court when outpatient or inpatient treatment is deemed necessary.

That's the statutory/regulatory side of the issue. You asked also about the clinical side -- it is inappropriate to leave the man who may have an acute psychosis in a restraint chair and a spit mask, without any treatment. Assuming his actions were uncontrollable and simply part of his illness -- not just antisocial behavior, a denial of treatment by the jail psychiatrist or by the receiving facility appear unacceptable. Even the jail might face sanctions from its accrediting body if it denies what it may know is necessary treatment of a detainee, not to mention the jail medical staff from the DOH MQA licensing board.

Facility staff should have such a patient immediately examined by a psychiatrist to determine the person's capacity to form intent to commit the crime in order to avoid criminalizing what would otherwise just be uncontrollable behavior by a person with a severe mental illness. There should be an immediate analysis of the circumstances to determine what, if anything, could have predicted the violence and to de-escalate the person's behavior. Finally, staff should review the Personal Safety Plan completed on the person if one is available and to determine if sufficient safety measures and staffing were in place at the time of the event.

Q. Is it a felony offense for a patient in a Baker Act facility to assault one of the staff?

The issue of assault on a heath care professional has come up periodically as a result of a hospitalized person causing harm on staff. The following law addresses this issue:

901.15 When arrest by officer without warrant is lawful.--A law enforcement officer may arrest a person without a warrant when:
(9) There is probable cause to believe that the person has committed:
(a) Any battery upon another person, as defined in s. 784.03.
(15) There is probable cause to believe that the person has committed assault upon a law enforcement officer, a firefighter, an emergency medical care provider, public transit employees or agents, or other specified officers as set forth in s. 784.07 or has committed assault or battery upon any employee of a receiving facility as defined in s. 394.455 who is engaged in the lawful performance of his or her duties.

784.07 Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.--
(1) As used in this section, the term:

(c) "Emergency medical care provider" means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, medical director as defined in s. 401.23, or any person authorized by an emergency medical service licensed under chapter 401 who is engaged in the performance of his or her duties. The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in chapter 395, who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof.

Staff of receiving facilities occasionally wants to have persons charged with criminal offenses when they attempt to harm a staff member. This gets persons moved from the health care facility where they were originally brought because they were believed to be "dangerous to self or others" as a result of mental illness to confinement in a jail. Staff frequently doesn't even have the person examined to determine if he/she is even competent to form the intent to commit the crime – an element that would have to be proved beyond a reasonable doubt to convict. While very aggressive people are sometimes admitted to receiving facilities, a punitive response by staff to persons whose behavior is solely a result of their mental illness may be inappropriate.

If the person is still under the involuntary examination provisions of the Baker Act and if the examination hasn't yet been conducted or if it has been conducted and the person is found to meet the criteria for involuntary inpatient placement, the facility needs to identify the continuing responsibility of the receiving facility for the person. The person may be at the receiving facility under an ex parte order from a court or a BA-52. A receiving facility only has the power to discharge a person when he/she no longer meets the criteria for involuntary examination or placement.

Restraining Devices

Q. Can a law enforcement officer use handcuffs and other restraints when transporting persons with mental illness to a Baker Act receiving facility?

The Baker Act states that the individual dignity of the patient shall be respected at all times and upon all occasions, including any occasion when the patient is taken into custody, held or transported. Procedures, facilities, vehicles, and restraining devices utilized for criminals or those accused of crime shall not be used in connection with persons who have a mental illness, **except** for the protection of the patient or others. Where the dangerous circumstances are clearly documented, such restraints may be used in accord with the law enforcement agency's written policies s. 394.459(1), F.S.

Q. Is the use of law enforcement to provide transport for hospital transfers appropriate? What about the use of restraints in such transports?

The responsibility is that of the hospital, not of law enforcement to perform this transfer duty. Law enforcement has no duty to do this and their liability may be much increased if they do take on this discretionary activity.

The federal EMTALA law requires among other things for a transfer to be appropriate, that the sending hospital be responsible for arranging safe and appropriate transportation to the destination facility. If the person is under an involuntary status and remains suicidal or homicidal, EMTALA continues to apply as the person continues to have an "emergency medical condition". Transfer cannot take place until the person is stabilized -- meaning the person's condition is not likely to deteriorate during or as a result of transfer. EMTALA requires that the transfer be done through qualified personnel and transportation equipment. This may mean use of mechanical, chemical or legal restraints, if ordered by a physician due to safety reasons. Obviously this would entail meeting EMTALA and Medicare/Medicaid Conditions of Participation.

Mechanical and chemical restraints are governed by federal regulations and accreditation standards. Legal restraints are governed by the Baker Act -- if a person meets the criteria for involuntary examination, he or she should generally be transferred on voluntary status due to the ability of the person to change his or her mind prior to arriving at the destination facility. The sending facility is liable for the person's safety until securely in the destination facility, regardless of the method of transportation used.

Receiving Facility Responsibilities

Q. A response to a question in the Baker Act Handbook about <u>Receiving Facilities Responsibilities</u> states that the officer's duty is only to transport and to stay with the individual ONLY IF "...acting in a dangerous manner, beyond the ability of the hospital to manage...", otherwise one can assume that the officer does not need to stay. This is clear; however, the section makes <u>no</u> reference to children under a BA, MA or on police hold. There are times when children under the age of 14 are brought into the children's ED under a BA,MA and/or police hold (which means I can't take them in Psy ED) and they have to wait for admission to the children's unit. Most of the time officers are willing to stay with the child, sometimes not. Is it the responsibility of the children's emergency department to secure the child that is on a police hold?

It is the responsibility of the hospital ER to stabilize any person, regardless of age. This includes prevention of elopement as well as any other type of harm while in the custody of the hospital or a receiving facility.

Even the Handbook reference to the officer staying during an emergency is citing standard practice; not any requirement from the Baker Act, EMTALA, or other local, state, or federal standard. It shouldn't be used to transfer responsibilities from the staff of the hospital to maintain the safety of its patients to law enforcement whose only legal responsibility is to take a person into custody and deliver to the nearest receiving facility (or hospital).

Q. We have a local hospital (that is not a receiving facility) that is trying to get law enforcement officers to stay with the client or will later call LE to transport the client to the receiving facility after medical clearance. This LE agency is going to be approaching the hospital administrator to address these issue and they would like to quote some statutes. I have provided them with 394.462 (1a), 394.462. (h), and 65-E 5.260 (2). However, none of these really outline that once the LEO turns

over the client to the hospital, the LEO responsibilities are done. Do you know what statute/rule I could give them that states they don't have to stay?

Demanding the officers stay with a patient who has no criminal charges solely as a substitute for hospital security is a misuse of valuable law enforcement time and talent – hospitals sometimes want officers to use their restraining devices so the facility doesn't have to justify the use in accordance with federal and state standards and impose on the officer to transfer a patient from the ER to a receiving facility once medically cleared.

The Baker Act statute and administrative rules are very specific as to the duties of law enforcement. On the flip side, if not specified in the law, law enforcement has no duty.

This situation is further defined by the federal EMTALA law (Emergency Medical Treatment and Active Labor Act) that places the responsibility for dealing with persons at an ER with an emergency medical condition (including psychiatric and substance abuse emergencies even absent any other medical complication). Once the required "medical screening examination" is performed by ER personnel and a psychiatric emergency is documented, the hospital is responsible for a series of duties including

- Stabilizing the patient, which would include preventing the patient from departing from the hospital AMA
- Providing all needed medical records and information to a destination facility that has the capability and capacity to manage the patient's specialized needs.
- Arranging for safe and appropriate method of transfer of the patient after obtaining the prior consent of the destination facility to accept the transfer
- Transferring the patient to a designated receiving facility within 12 hours after medical stabilization if the patient's emergency needs cannot be met at the sending hospital.

Any conflict between the federal EMTALA law and the State's Baker Act or Marchman Act requires a hospital to comply with the federal law. If there is no conflict between the federal and state laws, the facility must follow both. If a patient has criminal charges pending, the officer may be required by state law enforcement statutes and his/her own department's policies and procedures to remain with the subject until booked into a jail or transported to a secured psychiatric facility.

The hospital may be trying to use certified law enforcement as free security guards and free medical transport to reduce its cost. It may even do this in attempting to reduce its exposure to liability by spreading the liability to the law enforcement agency involved. When an officer has no duty to remain with the patient, to restrain in a medical setting, or to transfer a patient from one hospital to another, the law enforcement agency's liability might be greatly increased.

Q. Can a Baker Act receiving facility refuse to accept the person a law enforcement officer brings to them?

No. The Baker Act states that the nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination. If the receiving facility believes the patient should be "medically cleared" the facility can arrange appropriate medical

transport for this purpose. If the receiving facility is at capacity, it should accept the patient and arrange an appropriate transfer.

Q. Does a law enforcement officer have to wait at a hospital for the patient to be medically screened, treated, or have their insurance verified?

No. The officer's only duties are to present the patient and the required completed paperwork as part of the responsible hand-off of the person to hospital personnel. However, if the patient is acting in a dangerous manner, beyond the ability of the hospital staff to manage, the officer should stay to assist for a very temporary period until hospital clinical or security staff can arrive. However, if the person has criminal charges, the officer may be required by his/her department's policy to remain with the person.

Q. What is the responsibility of a receiving facility when a person refuses to leave a receiving facility after discharge? Police have been dispatched to remove people from the premises at the request of the hospital.

Presuming that the hospital has performed all of its obligations under the federal EMTALA law, under the federal Conditions of Participation, under the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and under the state's hospital licensure/kaw, and the Baker Act law/rules, it certainly has the right to discharge a person who doesn't meet the criteria for involuntary status. The facility's attorney or risk manager should be involved before calling law enforcement to evict the person from the premises.

Q. Does the Baker Act require a law enforcement officer to physically remain with a patient in the ED for medical clearance? If so, which part of act states this so I can discuss it with them (law enforcement), as most of the time they bring the person in and leave or even more often send the paper in with EMS who brings the person in.

No. Law enforcement is only required to take persons under involuntary examination status to the nearest designated receiving facility. They can be taken to the nearest ER only if the officer believes the person to have an emergency medical condition. In such cases, the officer or EMS on behalf of the officer would be required to present the person and the paperwork (initiating form and the transport form) to ER personnel and leave, assuming there aren't any criminal charges against the person. The Baker Act specifies what the officers' responsibilities are – it doesn't specify what they are not. The federal EMTALA law places responsibility on the ED to stabilize the patient's condition as well as to arrange safe and appropriate transport for the person when transfer is required. There wouldn't be any reason for the officer to stay in the hospital once a responsible handoff of the patient occurs.

Q. I have a friend who is a Sheriff's deputy and he was telling me that sometimes when he takes a person under the BA to a receiving facility, the facility staff asks him to stay with the patient until admission. I was under the impression that the responsibility of the officer ends once he or she delivers the patient and that it is

the responsibility of the receiving facility to provide security if needed. Is this correct, or did I misunderstand your explanation.

This is correct. It is regrettable that certain receiving facilities may continue to treat law enforcement officers in this way. The only time it would be appropriate to ask an officer to stay is:

1. At an ER is when the person is being treated for medical issues prior to transfer to a receiving facility and there are serious criminal charges, or
2. At any receiving facility if the person is actively assaultive for a very temporary period until such time as staff can take measures to secure the safety of the person and others.

The law enforcement officer's job is to deliver the person under involuntary status to the nearest receiving facility and transfer custody of the person and the required paperwork to staff.

Q. Why do the hospitals or crisis stabilization units release people with mental illness so soon?

A Baker Act receiving facility is only permitted to hold a person against his or her will or without informed consent for examination and treatment for a maximum period of 72 hours. However, as soon as an examination is conducted that shows that the patient does not meet the more stringent criteria for involuntary placement, the person must be released or a petition filed with the court for a hearing. This means that persons who may have a severe mental illness, but who are neither self-neglectful nor dangerous to self or others, will often be released. [s. 394.463(2)(i), F.S.]

Forms & Required Paperwork

Q. Are we required to continue sending out the notices to law enforcement when a patient who was brought in by police leaves the hospital?

The whole issue of release notices has come under some scrutiny in the last few years. Chapter 394.463, FS governing involuntary examination has the following provision:

> (3)NOTICE OF RELEASE.—Notice of the release shall be given to the patient's guardian or representative, to any person who executed a certificate admitting the patient to the receiving facility, and to any court which ordered the patient's evaluation.

This speaks to a person who has "executed a certificate", but law enforcement officers don't do this. Law enforcement completes "reports" so I don't think the law ever actually required notices to law enforcement, although many facilities have done so over the years. I checked back on form 3038 that I revised in 2005 and confirmed that I removed law enforcement from the form. It still lists "initiating person" on the bottom table of this recommended form, as well as the circuit court.

A few years back, a Baker Act receiving facility consulted with its legal counsel about sending notices to mental health professionals who completed the Certificate leading to the person's admission as required by state law. They were advised not to send such notices without the consent of the patient or it could result in a federal HIPAA violation. If federal and state law are in conflict, the law most protective of the patient's privacy would prevail.

Everyone accepts that notice to a court is required, but only about two percent of all involuntary examinations are initiated by courts, versus 98% initiated by law enforcement and mental health professionals. Unfortunately, there is variation in compliance with court notification around the state.

Q. What forms do law enforcement officers have to present to the Baker Act receiving facility staff? Where does the officer get copies of the forms?

The Baker Act form entitled "Transportation to a Receiving Facility" (CF-MH 3100) must be presented each time a law enforcement officer takes a person to a receiving facility for involuntary examination, regardless of whether the examination is initiated by a judge, a mental health professional, or by the officer. In addition, the Baker Act form entitled "Report of Law Enforcement Officer Initiating Involuntary Examination" (CF-MH 3052a) must be completed when the officer, as opposed to the judge or mental health professional, initiates the examination. These forms, as well as all other Baker Act forms can be obtained from the district office of the Department of Children and Families or from the DCF website.

Q. Attached is a copy of the current Baker Act form our law enforcement agency is using. One of our officers took a client to the hospital after he swallowed some glass and tried to kill himself. The hospital provided us a "new" Baker Act form from February 2005 that had a section of boxes to check if the officer attending the 40 hour CIT Training or Baker Act training through FMHI. First question, what is FMHI and second question which is the appropriate form to use.

The form your department is using is the current form – the hospital's form is obsolete. When new state forms are developed, including updates, notation is always at the bottom of each form as to whether it's a recommended or a mandatory form as well as the form's effective date. As you can see from the bottom of the BA-52a form you sent me, it's effective date is September 2006 and it obsoletes any previous editions (CF-MH 3052a, Sept 06 (obsoletes previous editions) (Mandatory Form)

FMHI is the Florida Mental Health Institute, a department of the University of South Florida. DCF contracts with FMHI to conduct Baker Act training. FMHI hires me to actually conduct the training as well as other services specified in the contract. FMHI had asked that certain information be included on the form for data collection purposes. However, after the general counsel for one County Sheriff indicated that having such a question on the form may establish an expectation of CIT as the state standard and as a result, expose actions of non-CIT officers to greater liability, it was decided to delete that and other data questions. Officers have a lot of paperwork to do on each call – we don't need to add to their burden.

Officers are also required to complete the mandatory transport form. The front side is for all Baker Act transports regardless of whether it was initiated by the officer, the court, or by a mental health professional. The back is only used when the officer consigns the patient's transport to EMS.

Q. A subject who was Baker Acted by one of our police officers and transported to a hospital ER. The officer left a copy of the BA52 and took the original with him by mistake. The subject was transferred to another hospital based receiving facility with the copy. The destination hospital called the police department and advised they were sending the subject back to the first hospital because they had a copy and needed the original. One our supervisors made arrangements to have the original BA52 delivered to the second hospital; however they still placed the subject on an ambulance knowing the officer was en route. When the officer arrived at at that second hospital with the original of the form, the ambulance, which was now halfway back to the first hospital, was contacted to return. This is not my idea of keeping the consumer's best interest in mind. Can you provide some input on the copy issue and the hospital's obligation?

It is really regretable that this very inappropriate event occurred. The Baker Act has never required original documents. The Florida Administrative Code and all Baker Act related forms were modified in 2005 to eliminate any reference to originals to prevent the very type of problem you've described. While a hospital might prefer to have originals, its policies cannot be out of compliance with law and rule. Many hospitals have no hard copies of any documents in their conversion to electronic medical records and even the courts are shifting over to electronic filings. No originally signed documents are required unless there is some belief that the copy has been falsified in some way. Even so, a patient's life and safety should never be risked for administrative reasons.

The first hospital in this case is not a designated receiving facility and it has no psychiatric beds. It has no capability or capacity to manage a person's psychiatric emergency. It apparently fulfilled its obligation under the federal EMTALA law to transfer the patient with an emergency medical condition (of a psychiatric emergency nature) to the second hospital. One presumes that second hospital provided prior approval of the transfer was provided to Ed White.

To refuse acceptance of a patient with an emergency medical condition upon arrival due to a paperwork issue, especially after providing prior approval of the transfer, is unacceptable. Please thank your officer for transporting the original document, no matter how unnecessary it was. It helped to secure the patient's safety. However, it shouldn't have ever happened. This incident has been referred to DCF the agency responsible for the designation and monitoring of Baker Act receiving facilities.

Q. In a recent case, a law enforcement officer insisted on taking the original signed copy of the Certificate of Professional for a resident of our nursing home being taken for involuntary examination under the Baker Act. Who maintains the original copy of Baker forms used in the process? Other than the Certificate of Professional form, are there any additional forms required of the sending facility?

The original of the involuntary examination form should go with the law enforcement officer to deliver with the patient to the receiving facility. Many receiving facilities require the original, although they are required to accept the person from law enforcement regardless of whether the form is an original or a copy. A nursing facility should retain a copy of the initiation form in the resident's record. The facility should obtain a copy of the Transportation to a Receiving Facility form (#3100) completed by a law enforcement officer whenever possible because AHCA will check for the presence of this form when surveying. If the officer doesn't provide a copy, the facility should document its efforts to obtain the copy and record how the resident was transported.

These are the only two mandatory forms for involuntary examination. Of course, if the resident is to be sent on a **voluntary** basis, the facility would have had to obtain an independent professional assessment of the resident's competence to consent to treatment prior to sending the resident out of its facility. (Form #3099).

Q. With our new law enforcement in-car computer system we now have the ability to type and print our BA52 forms in our cars. The possible issue is that the paper is thermal paper, and my records supervisor wanted to know if these facilities would accept that paper.

As long as the BA-52a Report of a Law Enforcement Officer is retained in its correct format, it doesn't matter whether it is on hard copy or your thermal paper. If it cuts your paper workload down by completing the forms on your computer, that's OK. Many facilities are converting to electronic medical records anyway so the fragile nature of the thermal paper won't make a difference to them. It is possible that the facilities might ask to make a copy of the thermal paper form and have the officer re-sign.the copy.

Public Records

Q. I am a law enforcement officer and need to know whether our Baker Act records are public?

You expressed about how your incident reports have been mis-used against persons who have undergone an involuntary examination under the Baker Act. Summaries of two Florida Attorney General Opinions are listed below that may assist you.

> **AGO 93-51** Regarding Whether Law Enforcement Records under the Baker Act are Public Records. A law enforcement officer's event or incident report prepared after a specific "crime" has been committed which contains information given during the initial reporting of the crime, and which is filed with the law enforcement agency as a record of that event, is not confidential and is a public record subject to inspection and copying pursuant to ch. 119, F.S. However, the written report detailing the circumstances under which the person was taken into custody and is made a part of the patient's clinical record is confidential and exempt from the provisions of the Public Records Law.
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> **AGO 86-101** Regarding whether the statutorily required report of law enforcement officer under the Baker Act are exempt from disclosure. A law

enforcement agency prepares an “event form”, and “incident report narrative form,” and a separate “Report of Law Enforcement Officer” form when a person is taken into custody under the Baker Act. Only the latter “Report of Law Enforcement Officer” form, which is statutorily required to be included in the clinical record of a patient is confidential and statutorily declared not to be a public record. Other event forms or incident reports which appear to be analogous to crime and arrest reports are public records.

While the following AG Opinions (summaries only) and appellate case don’t relate specifically to law enforcement, they do address the issue of public records vs. confidential records under the Baker Act:

AGO 91-10 Regarding the inspection and copying requirements of Baker Act and Marchman Act records possessed by the clerk of court. 1991 WL 528139 (Fla. A.G.) Attorney General Robert A. Butterworth advised the Clerk of the Court for Lee County, FL that Baker Act patients' clinical records produced pursuant to section 394.459(9), Fla. Stat. are specifically made confidential and are exempt from being inspected and copied by the public pursuant to section 119, Fla. Stat. Generally, when materials are filed with the clerk of court, such records are open to the public. AGO 89-94 concluded that in the absence of a specific statutory provision or court rule making a record confidential or dictating the manner of its release and absent a court order closing a particular court record, probate records filed with the clerk of court are subject to Ch. 119, F.S. The records created pursuant to the Baker and Marchman Acts are confidential and exempt from s. 119.07(1), F.S., when placed in the possession of the clerk of court.

AGO 97-67 Regarding the clerk’s authority to maintain confidentiality of confidential information contained in the official records. It is the clerk’s responsibility to devise a method to ensure the integrity of the Official Records while also maintaining the confidential status of information contained within. Nothing in the Public Records Law or the statures governing the duties of the clerk authorizes the clerk to alter or destroy Official Records. However, the statute does impose a duty on the clerk to prevent the release of confidential material that may be contained in the Official Records. There is nothing that precludes the clerk from altering reproductions of the Official Records to protect confidential information. The manner in which this is to be accomplished rests within the sound discretion of the clerk.

The Tribune Company v. In re D.M.L, patient and Anclote Manor Hospital, Appellees, 566 So. 2d 1333 (Fla. 2d DCA 1990). The Second District Court of Appeals held that a Baker Act hearing is a closed hearing where the media and the public can not attend the hearing due to the Baker Act hearing containing the clinical record of the patient which is not a public record and which is deemed confidential pursuant to section, 394.459(9), Fla. Stat. The policy purpose for having a closed Baker Act hearing is to avoid substantial injury to patient’s liberty interest and to their individual dignity.

Q. Could you tell me more on what "police in-house reporting" is? Do you have any input on 'police in-house reporting' and public records issues when the incident in the in-house police report relates to a Baker Act? I have a question

regarding our reporting of Baker Acts. Are there any requirements or regulations regarding our method of reporting for these types of incidents? Where do we fall as far as confidential medical or law enforcement public record? If there are regulations or guidelines, I need to know where they are referenced so that I can provide them to my administration so that any necessary changes can be made.

Any Baker Act or Marchman Act form completed by a law enforcement officer if confidential and exempt from the public records law. However, any incident report (some call it an event report) is a public record even though it may contain the same information as is on the confidential documents.

Summaries of two Attorney General Opinions are noted below that deal with confidentiality of certain law enforcement records below:

> **AGO 93-51** Regarding Whether Law Enforcement Records under the Baker Act are Public Records. A law enforcement officer's event or incident report prepared after a specific "crime" has been committed which contains information given during the initial reporting of the crime, and which is filed with the law enforcement agency as a record of that event, is not confidential and is a public record subject to inspection and copying pursuant to ch. 119, F.S. However, the written report detailing the circumstances under which the person was taken into custody and is made a part of the patient's clinical record is confidential and exempt from the provisions of the Public Records Law.
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> **AGO 86-101** Regarding whether the statutorily required report of law enforcement officer under the Baker Act are exempt from disclosure. A law enforcement agency prepares an "event form", and "incident report narrative form," and a separate "Report of Law Enforcement Officer" form when a person is taken into custody under the Baker Act. Only the latter "Report of Law Enforcement Officer" form, which is statutorily required to be included in the clinical record of a patient is confidential and statutorily declared not to be a public record. Other event forms or incident reports which appear to be analogous to crime and arrest reports are public records.

Q. I am the legal advisor for a city Police Department and have a question about records generated by my agency regarding Baker Acts. I know that the form 52 itself is not disclosable, as it is included within the definition of clinical record. However, the other records we generate here are clearly not included within this definition and so far a cursory examination of public records law has yet to disclose an exemption. What is your understanding of their public records status and, if they are exempt, which specific statute permits such exemption?

You are correct about the Baker (and Marchman) Act forms being exempt from disclosure under Florida's public records laws. However, the Florida Attorney General has determined that law enforcement generated incident reports are public records and must be released upon request. The following two summaries may assist you.

> **AGO 93-51** Regarding Whether Law Enforcement Records under the Baker Act are Public Records. A law enforcement officer's event or incident report prepared after a specific "crime" has been committed which contains information

given during the initial reporting of the crime, and which is filed with the law enforcement agency as a record of that event, is not confidential and is a public record subject to inspection and copying pursuant to ch. 119, F.S. However, the written report detailing the circumstances under which the person was taken into custody and is made a part of the patient's clinical record is confidential and exempt from the provisions of the Public Records Law.

AGO 86-101 Regarding whether the statutorily required report of law enforcement officer under the Baker Act are exempt from disclosure. A law enforcement agency prepares an "event form", and "incident report narrative form," and a separate "Report of Law Enforcement Officer" form when a person is taken into custody under the Baker Act. Only the latter "Report of Law Enforcement Officer" form, which is statutorily required to be included in the clinical record of a patient is confidential and statutorily declared not to be a public record. Other event forms or incident reports which appear to be analogous to crime and arrest reports are public records.

Q. One of my students told me that a newspaper cited that his sister was admitted to the hospital under the Baker Act. He thought this would be information that would be protected under HIPAA. My first reaction was that because the Act refers to a legal action, it may not have protection under health care law, but I'm really not sure how to respond to the student.

Actually HIPAA defers to any state law that might be more protective of a person's privacy. Of course, what you describe would not be more protective. However, law enforcement is not a covered entity under HIPAA because it is not a health care provider, except the medical units located in county jails that provide treatment to inmates. While HIPAA is not the governing factor as it relates to law enforcement, the Baker Act alludes to some privacy and the Attorney General on several occasions has rendered formal written opinions on the subject. The Baker Act states:

> **394.4615(7)** Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. 119.07(1).

A summary of two Florida Attorney General Opinions addressing this issue are found below. They generally state that while the official Baker and Marchman Act forms completed by law enforcement officers are confidential and exempt from the public records law, the incident reports completed by the officers associated with taking the person into custody are not exempt – these are public records. While law enforcement couldn't refuse to release such incident reports in response to a specific request, a law enforcement agency should not casually including them in with all other reports for public review

> **AGO 93-51** Regarding Whether Law Enforcement Records under the Baker Act are Public Records. A law enforcement officer's event or incident report prepared after a specific "crime" has been committed which contains information given during the initial reporting of the crime, and which is filed with the law enforcement agency as a record of that event, is not confidential and is a public record subject to inspection and copying pursuant to ch. 119, F.S. However, the

written report detailing the circumstances under which the person was taken into custody and is made a part of the patient's clinical record is confidential and exempt from the provisions of the Public Records Law.

AGO 86-101 Regarding whether the statutorily required report of law enforcement officer under the Baker Act are exempt from disclosure. A law enforcement agency prepares an "event form", and "incident report narrative form," and a separate "Report of Law Enforcement Officer" form when a person is taken into custody under the Baker Act. Only the latter "Report of Law Enforcement Officer" form, which is statutorily required to be included in the clinical record of a patient is confidential and statutorily declared not to be a public record. Other event forms or incident reports which appear to be analogous to crime and arrest reports are public records.

Rights of Persons

Q. I'm a deputy with the County sheriff's office. I have a question about HIPAA and law enforcement. At one time we had found medical personnel could release information about clients to law enforcement. This if I'm not mistaken was in reference to violent felony and domestic violence crimes. Have you heard of this and if so where could I find this again?

There are several documents that would help:

1. An extensive document written by John Petrila, J.D., a professor at the Department of Mental Health Law & Policy at USF/Florida Mental Health Institute for the Federal Bureau of Justice Assistance3 and the National Council of State Governments on the issue of release of health information to the justice system, including law enforcement.
2. An article also written by John Petrila titled "Dispelling the Myths about Information Sharing Between the Mental Health and Criminal Justice Systems" for the federal Center for Mental Health Services
3. Information downloaded directly from the FAQ's on the HIPAA.gov website about what can be released by health care providers to law enforcement. You'll notice that there is a difference between information released on a warrant signed by a judge and an administrative warrant.

The federal law generally defers to state laws if state statutes are more protective of a person's privacy than the federal law. Even though HIPAA allows a great deal of information to be shared, there are a few other laws governing the issue. If the information is about a person's substance abuse condition, 42 CFR and the State's Marchman Act is more restrictive in limiting information that can be released to law enforcement.

The Marchman Act limits release of substance abuse information to law enforcement to situations when related to client's commission of a crime on premises of the provider or against provider personnel or to a threat to commit such crime. Information released is limited to client name/address, client status, circumstances of the incident, & client's last known whereabouts. If additional information is required for criminal investigation or

prosecution, a circuit court judge can (after a good cause hearing) authorize some or all of the information only if all the following are met:

- Extremely serious crime
- Likelihood records will be of substantial value
- Other ways of obtaining information not available or effective.
- Potential injury to client & provider is outweighed by public interest and need for disclosure.

You should run all this information by the ESO General Counsel to be sure that you get a legal opinion on how this information applies to any given situation and your own policies and procedures.

One more document containing information that may be helpful to you with **substance abuse** confidentiality was provided by a major substance abuse agency in Florida has the following information in its policies and procedures governing disclosure of information to law enforcement:

Court Orders:
Disclosure of patient identifying information is permitted if a court order is issued. Such a court order authorizes the disclosure of information that would ordinarily be prohibited by 42 U.S.C. 290ee-3, 42U.S.C. 290dd-3, and 42 CFR Part 2. The court order must be accompanies by a subpoena or a similar legal mandate to compel disclosure.

Incompetent Patients
In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his/her own affairs, any consent which is required may be given by the guardian or other person authorized under State law to act on the patient's behalf.

Disclosure to Law Enforcement Officers Possessing Arrest Warrants
If a law enforcement officer comes to the program with an arrest warrant and is seeking a patient on program premises, staff must not interfere with or impede the said patient's arrest. The law enforcement officer is allowed to enter the facility. Staff, however, is prohibited by federal regulations from aiding or identifying the patient unless the law enforcement officer is in possession of a court order. The officer is allowed to stand on the premises and serve the arrest warrant on anyone he/she believes is the person sought. If the law enforcement officer is serving a subpoena, the staff and patients are not authorized to accept it. The officer should be directed to serve the subpoena on the Chief Administrative Officer of the program.

Disclosures related to the Initiation or Substantiation of a Crime
Information from alcohol and drug abuse patient records shall not be disclosed for the purpose of initiating or substantiating any criminal charges against a patient. Patient records or other identifying information shall not be disclosed in response to a law enforcement request that is related to the investigation or prosecution of a crime unless such disclosure is authorized by a court order.

Q. What does a law enforcement officer do if he or she thinks someone is trying to have a person Baker Acted in a malicious or vindictive way, without the legal criteria being met?

If it is in response to an ex parte order, immediately contact the judge who signed the order. If it is in response to a mental health professional's initiation, immediately contact your department's legal counsel. Filing a sworn false affidavit with the court leading to an ex parte order may constitute perjury. Further, any person who intentionally violates or abuses any rights or privileges of patients provided in the Baker Act is liable for damages as determined by law.

Escapes / Elopements

Q. Since the Baker Act is silent on elopements from involuntary examination (and doesn't even use the word elopement or anything like it), what is the legal basis of law enforcement taking a person into custody who has eloped from examination? It would seem to me that it would be necessary to initiate a new examination in order to do this.

While the Baker Act is silent as to a law enforcement officer taking a person into custody after an elopement from a receiving facility (other than under an involuntary placement order), the following transportation and involuntary examination provisions of the Baker Act address the law enforcement transport issue.

> **394.462 Transportation.--**
> (1) TRANSPORTATION TO A RECEIVING FACILITY.--
> (a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional **and to transport that person to the nearest receiving facility for examination**.
>
> **394.463 Involuntary examination.--**
> (2) INVOLUNTARY EXAMINATION.--
> (a) An involuntary examination may be initiated by any one of the following means:
> 1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, **shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination**. The order of the court shall be made a part of the patient's clinical record. No fee shall be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and **deliver the person or have him or her delivered to the nearest receiving facility for examination**. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute 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 and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall **take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination**. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

In none of these citations is the officer's responsibility specifically over after the first execution of the order or certificate. The key point is that the involuntary examination has not ended simply because the person has eloped - it is still in effect, because the person has not been released.

Consular Notification & Access

Q. If a foreign national is detained by a law enforcement officer or in a hospital, do we have to provide consular notification?

Yes, if the foreign national is detained pursuant to governmental authority (law enforcement, judicial, or administrative) and is not free to leave. He/she must be treated like a foreign national in detention, and appropriate notification must be provided.

Q. What is a "consular officer?"

A consular officer is a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country. Consular officers are generally assigned to the consular section of a foreign government's embassy in Washington, DC, or to consular offices maintained by the foreign government in locations in the United States outside of Washington, DC.

Q. Who is responsible for notification of arrests and detentions?

The law enforcement officers who actually make the arrest or who assume responsibility for the alien's detention ordinarily should make the notification.

Q. What kinds of detentions are covered by this obligation?

The VCCR provides for informing the foreign national of the right to consular notification and access if the national is "arrested or committed to prison or to custody pending trial or is detained in any other manner." While there is no explicit exception for short detentions, the Department of State does not consider it necessary to follow consular notification procedures when an alien is detained only momentarily, e.g., during a traffic stop. On the other hand, requiring a foreign national to accompany a law enforcement officer to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight. The longer a detention continues, the more likely it is that a reasonable person would conclude that the obligation is triggered.

Training

Q. Where can we get training for law enforcement officers on the Baker Act?

A. The website for the online Baker Act training is www.bakeracttraining.org One of the current choices is for law enforcement officers. The training is free, it can be taken at any time with the officer starting and stopping as needed. It offers consistent, statewide information and a certificate of completion upon passing the test. Most officers can finish the interactive course in a little over an hour – feedback has been good. While all communities and all departments should adopt CIT as the standard, not every officer needs to be CIT trained.

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Warrantless Entry / Exigent Circumstances

I found a Florida case about the entry of law enforcement into a person's home in a Baker Act situation. It's *Estes v. State,* 960 So.2d 873 (Fla. 5th D.C.A. 2007). Police responded to a "disturbance call, possible suicide. Somebody who was potentially suicidal was at the house." When they arrived they saw a man, standing in his doorway. He was angry, clutching a beer with one hand with the other hand clenched to his side. He was bleeding from his forearms to his fingers. The cops also observed from the doorway that the inside of the house was damaged and in disarray. The man wouldn't provide information. The cops decided to Baker Act him, entered the residence, the man resisted and wound up being arrested for Battery on a Law Enforcement Officer and Resisting Arrest with Violence. He sought to suppress everything, based on an illegal entry by police. The court held that an officer can enter a home when he "reasonably believes that a person within is in need of immediate aid." Essentially the court rules that a reasonable belief of a medical emergency to protect human life trumps the sanctity of the home. Further, it's immaterial if the officer is correct. As long as he/she reasonably believes that the emergency exists, that's enough. If he/she's wrong, then once satisfied that no emergency exists, the entry must cease." It doesn't speak specifically to the use of force, but I'm sure the answer is the same,

use the force reasonably necessary to gain entry to determine if a medical emergency situation exists. Turned out that the guy's injuries were minor and, because he was arrested, he was never taken to a Baker Act receiving facility but was turned over to the jail's medical unit which had mental health staff. The real key is 1) reasonable belief of a medical emergency to a person and 2) entry is not predicated on a desire to make an arrest or perform a search related to a crime. The case never says "Baker Act" but does say the cops wanted to take him to a mental health facility for a "mental health evaluation."

The above information was provided by a general counsel for a sheriff

Q. I am a Lieutenant with the Police Department and for nearing 22 years I have been in charge of our Hostage Negotiation Team. We have CIT trained Officers in our Uniform Patrol component too. If we have a possible suicidal person in a home alone and they may or may not admit to being suicidal but they will not cooperate with those contacting them and come outside. Thus my questions: We have in a couple of scenarios just left a small contingent of Officers to safe guard the neighborhood and watch for trouble and pulled our SWAT Team and HNT negotiations team. Other times we have tear gassed the house, done entries, etc. Naturally there are worries both ways, leaving and entry. Do you have any case law particularly for Florida or know of any protocols that are recommended in this type of event. I realize all situations have to be evaluated but looking for insight.

The Baker Act statute only mentions warrantless entry as a result of an ex parte order, as follows:

> **394.463(2) Involuntary examination.--**
> (c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may serve and execute such order on any day of the week, at any time of the day or night.
> (d) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

However, over the last three years case law has addressed exigent circumstances in such cases. One of these is a US Supreme Court case that isn't based on a mental health issue, but nonetheless held that police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. :

> **No.05-502 BRIGHAM CITY, UTAH V. STUART** ET AL. SUPREME COURT OF THE UNITED STATES ARGUED 4/24/06 – DECIDED 6/22/06
>
> Four officers responding to 3 a.m. call about a loud party saw juveniles drinking in the yard and saw through a screen door a fight in the kitchen between 4 adults and a juvenile who punched one of the adults, causing him to spit blood in a sink. An officer opened the screen door and announced the officers' presence.

Unnoticed in the fight, the officer entered the kitchen and again cried out, when the fight finally stopped. The officers arrested the participants and charged them with an array of misdemeanor offenses.

The trial court, a state appellate court, and the Utah Supreme Court found the officers had violated 4th amendment of the US Constitution protecting against unreasonable search and seizure, saying the juvenile's punch was insufficient to trigger the "emergency aid doctrine" and didn't fall within the exigent circumstances exception to warrant requirements.

A basic principle of the 4th Amendment is that searches and seizures inside a home without a warrant are presumptively unreasonable. In past cases, the U.S. Supreme Court has found reasonableness to include entry onto private property to fight a fire and investigate its cause, to prevent imminent destruction of evidence, or to engage in hot pursuit of a fleeing suspect.

One exigency that removes the need for a warrant is the need to assist persons who are seriously injured or threatened with injury.

The U.S. Supreme Court held that police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.

The 4th Amendment requires a "knock and announce"; once the announcement was made the officers were free to enter. The court found that nothing in the 4th amendment required them to wait until further danger was done before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties.

The following Florida appellate cases may also interest you and your legal counsel:

JOHNATHAN EASTES, Appellant, v. STATE OF FLORIDA, Appellee. Case No. 5D06-3583 Opinion filed July 13, 2007, Appeal from the Circuit Court for Brevard County. Eastes was convicted, after a jury trial, of battery of a law enforcement officer, resisting an officer with violence and resisting an officer without violence. The charges stem from an incident where officers were dispatched to Eastes' apartment; the officers were advised: "Disturbance call, possible suicide. Somebody who was potentially suicidal was at the house." Upon their arrival, officers observed Eastes standing in the doorway of his apartment, appeared angry and was clenching a beer in one hand. The other hand was clenched to his side. He had blood from his forearms down to his fingers on both arms. He refused to respond to the officers' inquiries as to whether there was anything wrong. Furthermore, the officers were unable to determine the cause of the blood on his arms. Officer was able to look into apartment and observed broken glass on the floor as well as furniture in a state of disarray. Eastes then walked into his apartment and the officer followed. At that time, Officer observed that Eastes had fresh blood dripping from his arms. The microwave looked as though it had been punched as there was a hole the size of a fist in the middle of the door. There was blood on the microwave door, on a table, and on the floor. Officer also concluded Eastes was very intoxicated. At this point, officer decided to take Eastes to a local mental health facility. Officer explained to Eastes that he was

not under arrest. Eastes refused to cooperate with officer and he eventually began to swing his arms at the officers; and hit the officer. He was transported to the Police Department for booking. He was not taken to the Baker Act receiving facility because that facility wouldn't take an arrested person. In his police report, Officer did request that Eastes be sent to the jail's "physician unit." because it had mental health staff to treat suicidal individuals.

Eastes was charged with battery of a law enforcement officer, resisting an officer with violence, and resisting an officer without violence as a result of his refusal to cooperate with police during booking. On appeal, Eastes first argues that the trial court erred in failing to exclude any evidence obtained subsequent to Officer's warrantless entry into his apartment. The Fourth Amendment doesn't bar a police officer from making a warrantless entry into a residence when the officer reasonably believes that a person within is in need of immediate aid. Our decisions therefore confirm that authorities may enter a private dwelling based on a reasonable fear of a medical emergency. In those limited circumstances, the sanctity of human life becomes more important than the sanctity of the home. It was immaterial whether an actual emergency existed. The test is whether the officer reasonably believed an emergency existed at the time of the warrantless entry. The officer's search must be "strictly circumscribed by the exigencies which justify its initiation." Thus, an officer must cease a search once it is determined that no emergency exists. The evidence amply supported the trial court's conclusion that Officer had legally entered Eastes' apartment.

Eastes contended the trial court erred in denying his motion for judgment of acquittal claiming the evidence was insufficient to establish that he met the criteria for an involuntary examination, and therefore, the officers were not engaged in the lawful execution of a legal duty. The Supreme Court rejected this argument. In non-arrest cases, the State must prove that the officer was engaged in the lawful execution of a legal duty in order to convict a defendant of battery of a law enforcement officer or resisting an officer with violence. The Florida Mental Health Act authorizes a law enforcement officer to take a person who appears to meet the criteria for involuntary examination into custody. Here, the evidence supports a determination that Eastes met the criteria for an involuntary examination. His behavior, his physical condition, and the condition of his apartment suggested a substantial likelihood that, without care or treatment, Eastes would cause serious injury to himself in the near future. The evidence further supported a conclusion that Eastes was possibly suicidal and unable to determine for himself whether an exam was necessary. Under these circumstances, the officers were justified in placing him in protective custody for involuntary examination. AFFIRMED.

MICHAEL SEIBERT, Appellant, vs.STATE OF FLORIDA, Appellee.Supreme Court of Florida No. SC03-800 [February 16, 2006] Police officers testified that they were operating under the impression that Seibert was suicidal. At no point did they have any reason to believe that a crime was occurring—their stated purpose in entering was to ensure that Seibert was not attempting to commit suicide. A roommate's 911 call about the possible suicide established the necessary exigent circumstance because the officers reasonably believed that Seibert's life was in danger. Although it was eventually determined that there was no suicide attempt, it was objectively reasonable for the officers to believe that

there was something wrong with Seibert. Moreover, the officers had a sufficient basis to corroborate the 911 call. The roommate was at the apartment building when the officers arrived and confirmed that he had placed the 911 call and that his roommate was suicidal. Seibert argues that the police could have established that Seibert was all right by asking him to come out of the apartment or by giving him another chance to open the door all the way so that they could observe him and ensure that he was in fact all right. However, given Seibert's strange behavior in not answering the door for four or five minutes after the officers first knocked, after which he immediately slammed the door, we find no error in the trial court finding that the officers' entry was justified by the exigent circumstances. The officers could have reasonably thought that they would not get another opportunity to assist Seibert if they allowed him to slam the door again and that other means of entry (e.g., obtaining a key to the apartment) might take too long. The officers had no reason to doubt the roommate's statement that the defendant was suicidal. From the officers' perspective at the time of these events, walking away, allowing Seibert to stay in his apartment without ensuring that he was okay, or even spending any more time trying to gain entry could have been considered a dereliction of their duty to protect Seibert. We affirm the finding of the trial court that this search was constitutional.

A warrantless search of a home is per se unreasonable and thus unconstitutional under the Fourth Amendment. However, several exceptions to this rule have developed. One exception is the presence of an emergency situation which requires the police to assist or render aid. The Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Under this exception, police may enter a residence without a warrant if an objectively reasonable basis exists for the officer to believe that there is an immediate need for police assistance for the protection of life or substantial property interests. It is immaterial whether an actual emergency existed in the residence; only the reasonableness of the officer's belief at the time of entry is considered on review. However, this search must be "strictly circumscribed by the exigencies which justify its initiation." Thus, an officer must cease a search once it is determined that no emergency exists.

"The most urgent emergency situation excusing police compliance with the warrant requirement is, of course, the need to protect or preserve life." [United States v. Holloway], We have stated that "the 'emergency exception' permits police to enter and investigate private premises to preserve life . . . or render first aid, provided they do not enter with an accompanying intent either to arrest or search." Exigent circumstances have been determined to exist when 911 calls were received, even in cases when the callers did not identify a life-threatening emergency, when the officers arrived at the source of the 911 call to find suspicious circumstances at the residence. [Campbell v. State], after defendant's 911 call that she had overdosed on cocaine, police were permitted to enter even though she only requested paramedics and told the police to leave; [State v. Barmeier], entry was permitted after 911 call from defendant about problems with his tenant, when responding officers found front door open and received no response when they called out to the residents, because the officers were concerned the people inside the residence might have been injured; In re J.B., entry permitted after 911 call received from address though caller hung up;

defendant, a juvenile, told officer to leave and that everything was okay, but officer observed place in disarray and so was concerned for defendant. It has also been determined that an emergency situation did not exist, however, when officers, after responding to a BOLO call, entered an apartment because the officers observed that one of the individuals inside had a metal object in his hand, which the officers thought might be a weapon. [See Alvarez v. State]; see also Hornblower, search not permitted because sounds of "scurrying" in residence that officers heard when they knocked did not create sufficient exigent circumstances to justify entry; Lee v. State, officers' mere speculation that sting operation would get out of control and put lives of officers in danger was not sufficient exigent circumstance to justify entry.

"As to what may be done by the police or other public authorities once they are inside the premises, this must be assessed upon a case-by-case basis, taking into account the type of emergency which appeared to be present." The subsequent search following a warrantless entry must be "strictly circumscribed by the exigencies which justify its initiation." Thus, as the Fifth District Court of Appeal stated, "if the police enter a home under exigent circumstances and, prior to making a determination that the exigency no longer exists, find contraband in plain view, they may lawfully seize the illegal items." "However, if the police determine the exigency that initially allowed their entry into the residence no longer exists, any subsequent search is illegal and any contraband discovered pursuant to the illegal search is inadmissible."

EDWARD ZAKRZEWSKI, Appellant, vs. STATE OF FLORIDA, Appellee. Supreme Court of Florida No. SC02-1734 [November 13, 2003]. Edward Zakrzewski was sentenced to death for the murder of his wife and two young children. This Court affirmed his death sentences on appeal. In postconviction proceedings, Zakrzewski appeals the trial court order denying his motion for postconviction relief after an evidentiary hearing on several issues including ineffective assistance of counsel for failing to move to suppress evidence; Zakrzewski's Air Force Sergeant at the time of the murders testified that he became concerned when Zakrzewski failed to report for class. After attempting to locate Zakrzewski by calling his home, the hospitals, the Sheriff's Office and the local police, the Sergeant went to Zakrzewski's home, where he noticed a broken window and accumulated mail. After speaking with neighbors, who gave differing accounts of when they had last seen Zakrzewski, the Sergeant called the Okaloosa County Sheriff's Office and requested that a deputy meet him at the home. When Deputy arrived, the Sergeant related his attempt to locate Zakrzewski and indicated that that he "was going to enter the house through the broken window to check on the welfare and see if there had been any kind of burglary inside." The Deputy did not enter Zakrzewski's home with the intent to seize evidence or make an arrest. The Court concluded that no error occurred in the trial court's denial of postconviction relief in this case and therefore affirmed the trial court's order.

NORRIS RIGGS, JR., Petitioner, vs. STATE OF FLORIDA, Respondent. Supreme Court of Florida No. SC05-133 [December 15, 2005]. In the middle of a January night, two sheriff's deputies were summoned to an apartment complex. A four-year-old girl had been seen wandering there, naked and alone. When the deputies arrived at 3 a.m., they found the girl in the company of local residents.

She was disoriented and “had no idea where she had wandered out of.” The deputies decided to search the complex door by door for her caretakers. The apartment complex stood three stories high, and contained as many as fifty apartments. Upon reaching the second floor, the deputies noticed that every door on that level appeared closed, except for one. According to one deputy, “that door was standing slightly ajar, and it was just obvious that somebody had come out of there or somebody had left it open, and that was possibly where the child had come out of.” Through a small opening, the deputies could see light inside the apartment. They pounded loudly on the door at least three dozen times, identifying themselves as police officers. Although some neighbors stepped outside during the commotion, no one inside the apartment responded. Concerned that “something had happened to the child’s caregiver and that maybe there was a medical concern in there,” the deputies entered the apartment. Once inside, they continued calling out, again without response. On a coffee table in the living room, they noticed a plastic cigar tube containing some seeds (later determined to be marijuana). They then entered three rooms in succession. The first contained nothing unusual. The second contained seven potted marijuana plants with a fluorescent light suspended above them. In the third was the petitioner Norris Riggs, along with a woman later identified as the girl’s babysitter. After his arrest, Riggs pled not guilty and moved to suppress the evidence, claiming it was the fruit of an unreasonable search. At the suppression hearing, the State argued that exigent circumstances justified the warrantless entry.

The Second District explained that “[t]he officers believed it was their duty to see that the child’s caregiver was not incapacitated and justifiably entered the residence.” The district court accepted that belief as reasonable under the circumstances. It therefore reversed the trial court’s order granting Riggs’s motion to suppress.

When the government invokes this exception to support the warrantless entry of a home, it must rebut the presumption that such entries are unreasonable. To do so, it must demonstrate a “grave emergency” that “makes a warrantless search imperative to the safety of the police and of the community.” An entry is considered “imperative” when the government can show a “compelling need for official action and no time to secure a warrant.” As is often the case under the Fourth Amendment, “the reasonableness of an entry by the police upon private property is measured by the totality of existing circumstances.”

The circumstances in which the Supreme Court has applied the exigent circumstances exception are “few in number and carefully delineated”. They include pursuing a fleeing felon [Warden v. Hayden 1967)] preventing the destruction of evidence [Schmerber v. California1966], searching incident to a lawful arrest [Chimel v. California1969], and fighting fires [Tyler]. Outside of those established categories, the Supreme Court “has often heard, and steadfastly rejected, the invitation to carve out further exceptions to the warrant requirement for searches of the home.” In applying the exigent circumstances exception, we have explained its general parameters: The kinds of exigencies or emergencies that may support a warrantless entry include those related to the safety of persons or property, as well as the safety of police. A key ingredient of the exigency requirement is that the police lack time to secure a search warrant. . . .

Moreover, an entry based on an exigency must be limited in scope to its purpose. Thus, an officer may not continue to search once a determined is made that no exigency exists. In other words, where safety is threatened and time is of the essence, we have recognized that "the need to protect life and to prevent serious bodily injury provides justification for an otherwise invalid entry."

This case involves a particular kind of exigent circumstance—a feared medical emergency. The United States Supreme Court has not expressly ruled on this issue. However, it has twice discussed medical emergencies in dicta. [Mincey v. Arizona1978] We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries when they reasonably believe that a person within is in need of immediate aid. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."[Wayne v. United States 1963].

Riggs contends that the deputies acted unreasonably. He asserts, first, that the deputies lacked a sufficient objective basis for fearing a medical emergency; and second, that they lacked a sufficient objective basis for connecting any emergency with his apartment. The first question is whether the deputies had reasonable grounds to believe that the girl's caretaker might need medical attention. We conclude that they had sufficient empirical evidence to support their belief. Facts seem to indicate either grossly negligent supervision or an emergency involving the child's caretaker. The second question is whether the deputies had reasonable grounds to connect the feared emergency to the apartment they entered. The girl in this case did not lead the deputies in any particular direction. A search based on a feared medical emergency, however, does not require certainty. The Fourth Amendment, which protects against unreasonable searches, requires only that the police reasonably believe that an emergency exists. The deputies' suspicion of a medical emergency therefore was based on reasonable inferences drawn from the available evidence. Given their reasonable fear of a medical emergency, the deputies did not have time to retreat and weigh their options. Officers fearing emergencies often "need [to make] an on-the-spot judgment based on incomplete information and sometimes ambiguous facts bearing upon the potential for serious consequences." [United States v. Martins 1st Cir. 2005]. The deputies in this case made precisely such a judgment. The resulting invasion of privacy is one that prudent, law-abiding citizens can accept as the fair and necessary price of having the police available as a safety net in emergencies.

We conclude that, in entering Riggs's apartment without a warrant, the deputies acted reasonably and consistent with the Fourth Amendment. We therefore approve the 2nd DCA decision to reverse the trial court's suppression of the evidence and to remand the case for further proceedings. We disapprove the First District's conflicting decision in Eason. We agree with the Second District that exigent circumstances justified the entry in this case and approve that decision. We disapprove Eason to the extent it conflicts with this opinion.

Your attorney needs to review these cases to determine whether exigent circumstances exist in the type of cases you describe that would authorize entry without a warrant.

While these cases apparently allow you to enter under exigent circumstances, they don't guide you on whether you should do a forced entry or whether you should wait and negotiate. This would be left to your own policies and judgment.

Q. I would like clarification on the issue of the limits of a law enforcement officer when a mental health professional has initiated a Baker Act on someone. Specifically, if the individual leaves the office or presence of the mental health professional, and they subsequently notify law enforcement of the actions, does the law enforcement officer have any authority of enter the home of the individual to take them to the nearest receiving facility? If the subject of the Baker Act refuses to go with the law enforcement officer and will not come out of their house, can the law enforcement officer go in and get them without an order from a judge directing to do so? In our area of Florida LEO's are a bit hesitant about entering the home of anyone who has had a Baker Act initiated and they are not cooperating, especially when the subject is known to have weapons and is paranoid.

The Baker Act only addresses this issue in the context of an ex parte order entered by a judge as follows:

> **394.463(2) Involuntary examination**
> (c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may serve and execute such order on any day of the week, at any time of the day or night.
> (d) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

While the Baker Act doesn't address this situation regarding an involuntary examination initiated by a mental health professional or a law enforcement officer, there is case law that governs this. Information from several of these appellate cases below describe "exigent" circumstances when t he officer can do a warrantless entry if he/she believes the person is at imminent risk.

Feel free to share this information with the legal advisors of the law enforcement agencies in your area to see if they can advise their officers.

> **JOHNATHAN EASTES, Appellant, v. STATE OF FLORIDA, Appellee. Case No. 5D06-3583 Opinion filed July 13, 2007,** Appeal from the Circuit Court for Brevard County. Eastes was convicted, after a jury trial, of battery of a law enforcement officer, resisting an officer with violence and resisting an officer without violence. The charges stem from an incident where officers were dispatched to Eastes' apartment; the officers were advised: "Disturbance call, possible suicide. Somebody who was potentially suicidal was at the house." Upon their arrival, officers observed Eastes standing in the doorway of his apartment, appeared angry and was clenching a beer in one hand. The other hand was clenched to his side. He had blood from his forearms down to his fingers on both arms. He refused to respond to the officers' inquiries as to

whether there was anything wrong. Furthermore, the officers were unable to determine the cause of the blood on his arms. Officer was able to look into apartment and observed broken glass on the floor as well as furniture in a state of disarray. Eastes then walked into his apartment and the officer followed. At that time, Officer observed that Eastes had fresh blood dripping from his arms. The microwave looked as though it had been punched as there was a hole the size of a fist in the middle of the door. There was blood on the microwave door, on a table, and on the floor. Officer also concluded Eastes was very intoxicated. At this point, officer decided to take Eastes to a local mental health facility. Officer explained to Eastes that he was not under arrest. Eastes refused to cooperate with officer and he eventually began to swing his arms at the officers; and hit the officer. He was transported to the Police Department for booking. He was not taken to the Baker Act receiving facility because that facility wouldn't take an arrested person. In his police report, Officer did request that Eastes be sent to the jail's "physician unit." because it had mental health staff to treat suicidal individuals.

Eastes was charged with battery of a law enforcement officer, resisting an officer with violence, and resisting an officer without violence as a result of his refusal to cooperate with police during booking. On appeal, Eastes first argues that the trial court erred in failing to exclude any evidence obtained subsequent to Officer's warrantless entry into his apartment. The Fourth Amendment doesn't bar a police officer from making a warrantless entry into a residence when the officer reasonably believes that a person within is in need of immediate aid. Our decisions therefore confirm that authorities may enter a private dwelling based on a reasonable fear of a medical emergency. In those limited circumstances, the sanctity of human life becomes more important than the sanctity of the home. It was immaterial whether an actual emergency existed. The test is whether the officer reasonably believed an emergency existed at the time of the warrantless entry. The officer's search must be "strictly circumscribed by the exigencies which justify its initiation." Thus, an officer must cease a search once it is determined that no emergency exists. The evidence amply supported the trial court's conclusion that Officer had legally entered Eastes' apartment.

Eastes contended the trial court erred in denying his motion for judgment of acquittal claiming the evidence was insufficient to establish that he met the criteria for an involuntary examination, and therefore, the officers were not engaged in the lawful execution of a legal duty. The Supreme Court rejected this argument. In non-arrest cases, the State must prove that the officer was engaged in the lawful execution of a legal duty in order to convict a defendant of battery of a law enforcement officer or resisting an officer with violence. The Florida Mental Health Act authorizes a law enforcement officer to take a person who appears to meet the criteria for involuntary examination into custody. Here, the evidence supports a determination that Eastes met the criteria for an involuntary examination. His behavior, his physical condition, and the condition of his apartment suggested a substantial likelihood that, without care or treatment, Eastes would cause serious injury to himself in the near future. The evidence further supported a conclusion that Eastes was possibly suicidal and unable to determine for himself whether an exam was necessary. Under these circumstances, the officers were justified in placing him in protective custody for involuntary examination. AFFIRMED.

EDWARD ZAKRZEWSKI, Appellant, vs. STATE OF FLORIDA, Appellee. Supreme Court of Florida No. SC02-1734 [November 13, 2003]. Edward Zakrzewski was sentenced to death for the murder of his wife and two young children. This Court affirmed his death sentences on appeal. In postconviction proceedings, Zakrzewski appeals the trial court order denying his motion for postconviction relief after an evidentiary hearing on several issues including ineffective assistance of counsel for failing to move to suppress evidence; Zakrzewski's Air Force Sergeant at the time of the murders testified that he became concerned when Zakrzewski failed to report for class. After attempting to locate Zakrzewski by calling his home, the hospitals, the Sheriff's Office and the local police, the Sergeant went to Zakrzewski's home, where he noticed a broken window and accumulated mail. After speaking with neighbors, who gave differing accounts of when they had last seen Zakrzewski, the Sergeant called the Okaloosa County Sheriff's Office and requested that a deputy meet him at the home. When Deputy arrived, the Sergeant related his attempt to locate Zakrzewski and indicated that that he "was going to enter the house through the broken window to check on the welfare and see if there had been any kind of burglary inside." The Deputy did not enter Zakrzewski's home with the intent to seize evidence or make an arrest. The Court concluded that no error occurred in the trial court's denial of postconviction relief in this case and therefore affirmed the trial court's order.

MICHAEL SEIBERT, Appellant, vs.**STATE OF FLORIDA**, Appellee.Supreme Court of Florida No. SC03-800 [February 16, 2006] Police officers testified that they were operating under the impression that Seibert was suicidal. At no point did they have any reason to believe that a crime was occurring—their stated purpose in entering was to ensure that Seibert was not attempting to commit suicide. A roommate's 911 call about the possible suicide established the necessary exigent circumstance because the officers reasonably believed that Seibert's life was in danger. Although it was eventually determined that there was no suicide attempt, it was objectively reasonable for the officers to believe that there was something wrong with Seibert. Moreover, the officers had a sufficient basis to corroborate the 911 call. The roommate was at the apartment building when the officers arrived and confirmed that he had placed the 911 call and that his roommate was suicidal. Seibert argues that the police could have established that Seibert was all right by asking him to come out of the apartment or by giving him another chance to open the door all the way so that they could observe him and ensure that he was in fact all right. However, given Seibert's strange behavior in not answering the door for four or five minutes after the officers first knocked, after which he immediately slammed the door, we find no error in the trial court finding that the officers' entry was justified by the exigent circumstances. The officers could have reasonably thought that they would not get another opportunity to assist Seibert if they allowed him to slam the door again and that other means of entry (e.g., obtaining a key to the apartment) might take too long. The officers had no reason to doubt the roommate's statement that the defendant was suicidal. From the officers' perspective at the time of these events, walking away, allowing Seibert to stay in his apartment without ensuring that he was okay, or even spending any more time trying to gain entry could have been considered a dereliction of their duty to protect Seibert. We affirm the finding of the trial court that this search was constitutional.

A warrantless search of a home is per se unreasonable and thus unconstitutional under the Fourth Amendment. However, several exceptions to this rule have developed. One exception is the presence of an emergency situation which requires the police to assist or render aid. The Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Under this exception, police may enter a residence without a warrant if an objectively reasonable basis exists for the officer to believe that there is an immediate need for police assistance for the protection of life or substantial property interests. It is immaterial whether an actual emergency existed in the residence; only the reasonableness of the officer's belief at the time of entry is considered on review. However, this search must be "strictly circumscribed by the exigencies which justify its initiation." Thus, an officer must cease a search once it is determined that no emergency exists.

"The most urgent emergency situation excusing police compliance with the warrant requirement is, of course, the need to protect or preserve life." [United States v. Holloway], We have stated that "the 'emergency exception' permits police to enter and investigate private premises to preserve life . . . or render first aid, provided they do not enter with an accompanying intent either to arrest or search." Exigent circumstances have been determined to exist when 911 calls were received, even in cases when the callers did not identify a life-threatening emergency, when the officers arrived at the source of the 911 call to find suspicious circumstances at the residence. [Campbell v. State], after defendant's 911 call that she had overdosed on cocaine, police were permitted to enter even though she only requested paramedics and told the police to leave; [State v. Barmeier], entry was permitted after 911 call from defendant about problems with his tenant, when responding officers found front door open and received no response when they called out to the residents, because the officers were concerned the people inside the residence might have been injured; In re J.B., entry permitted after 911 call received from address though caller hung up; defendant, a juvenile, told officer to leave and that everything was okay, but officer observed place in disarray and so was concerned for defendant. It has also been determined that an emergency situation did not exist, however, when officers, after responding to a BOLO call, entered an apartment because the officers observed that one of the individuals inside had a metal object in his hand, which the officers thought might be a weapon. [See Alvarez v. State]; see also Hornblower, search not permitted because sounds of "scurrying" in residence that officers heard when they knocked did not create sufficient exigent circumstances to justify entry; Lee v. State, officers' mere speculation that sting operation would get out of control and put lives of officers in danger was not sufficient exigent circumstance to justify entry.

"As to what may be done by the police or other public authorities once they are inside the premises, this must be assessed upon a case-by-case basis, taking into account the type of emergency which appeared to be present." The subsequent search following a warrantless entry must be "strictly circumscribed by the exigencies which justify its initiation." Thus, as the Fifth District Court of Appeal stated, "if the police enter a home under exigent circumstances and, prior to making a determination that the exigency no longer exists, find contraband in

plain view, they may lawfully seize the illegal items." "However, if the police determine the exigency that initially allowed their entry into the residence no longer exists, any subsequent search is illegal and any contraband discovered pursuant to the illegal search is inadmissible

No.05-502 BRIGHAM CITY, UTAH V. STUART ET AL. SUPREME COURT OF THE UNITED STATES ARGUED 4/24/06 – DECIDED 6/22/06. Four officers responding to 3 a.m. call about a loud party saw juveniles drinking in the yard and saw through a screen door a fight in the kitchen between 4 adults and a juvenile who punched one of the adults, causing him to spit blood in a sink. An officer opened the screen door and announced the officers' presence. Unnoticed in the fight, the officer entered the kitchen and again cried out, when the fight finally stopped. The officers arrested the participants and charged them with an array of misdemeanor offenses. The trial court, a state appellate court, and the Utah Supreme Court found the officers had violated 4th amendment of the US Constitution protecting against unreasonable search and seizure, saying the juvenile's punch was insufficient to trigger the "emergency aid doctrine" and didn't fall within the exigent circumstances exception to warrant requirements. A basic principle of the 4th Amendment is that searches and seizures inside a home without a warrant are presumptively unreasonable. In past cases, the U.S. Supreme Court has found reasonableness to include entry onto private property to fight a fire and investigate its cause, to prevent imminent destruction of evidence, or to engage in hot pursuit of a fleeing suspect. One exigency that removes the need for a warrant is the need to assist persons who are seriously injured or threatened with injury. The U.S. Supreme Court held that police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. The 4th Amendment requires a "knock and announce"; once the announcement was made the officers were free to enter. The court found that nothing in the 4th amendment required them to wait until further danger was done before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties.

Warrants

Q. I have a question about law enforcement officers serving warrants. If an officer had a person under the Baker Act and he knew they had a warrant, could the CSU let him know when the person was being released so they could pick them up on the warrant? Secondly, if they did bring a Baker Acted person who also had been arrested for a misdemeanor can the center let them know when they are being discharged so they can bring them to booking? Facility staff indicated that both HIPAA and 42 CRF protected this information and they were not able to notify law enforcement. Staff use the federal rules of 42 CRF for their entire Baker Act facility when it comes to confidentiality even though few of their clients are there for substance abuse. I don't believe this is correct. Could you clarify?

You ask about the use of 42 CFR for persons with mental illness. This is intended for protection of substance abuse information and should only be used for that purpose. If a person under the Baker Act is also being assessed or treated for a substance abuse impairment, the information related to the substance abuse issue would be protected by

42CFR and chapter 397, FS, but not the information related to mental illness. The designation status of a facility is not the deciding factor as to which law prevails – the diagnosis and services a person receives is.

Regarding the serving of warrants, HIPAA does make a distinction between warrants issued by a judge and those of an administrative nature. That is incorporated in the document I previously forwarded from the HIPAA website (also attached here) so I won't repeat it again. This seems to be a non-issue since law enforcement already knows the person is in the facility – they brought the person there in the first place. This is no violation of confidentiality as long as no clinical information is shared – just that the person is there and will be released at a specified time. The latter is required by the Baker Act statute and isn't in conflict with other federal or state laws.

A colleague of mine who is a psychiatric hospital administrator has staff inform the individual that an officer is in the lobby asking to serve a warrant. She says that in 90% of the time, the individual agrees to the service and the person is brought off the unit to receive the warrant and placed back onto the unit afterward. If the person is to be taken to jail instead of just being given a notice to appear, the hospital staff notifies law enforcement of the pending release.