



# **Baker Act**

## **The Florida Mental Health Act**

**Florida  
Suicide Prevention Symposium  
Orlando  
October 1, 2008**



## **Alternatives to the Baker Act**

### **Mental Illness Only**

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

### **Psychiatric – Not Medical**

- Emergency Examination & Treatment of Incapacitated Persons Act, Chapter 401
- Access to Emergency Services & Care, Chapter 395.1031, F.S.
- Federal EMTALA – Emergency Medical Treatment and Active Labor Act
- Probate Rule 5.900 Expedited Judicial Intervention Concerning Medical Treatment Procedures

### **Intervention Alternatives**

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

### **Not a Discharge Destination**



# Receiving Facilities

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

Receiving facilities must:

- Provide onsite emergency reception, screening & inpatient treatment services 24 hours a day, 7 days a week, regardless of ability to pay
- Accept persons of all ages, unless exempted through a Transportation Exception Plan approved by Board of County Commissioners & DCF
- Must comply with all EMTALA requirements, if a hospital
- See attached statewide list of designated Baker Act receiving facilities



*Voluntary Admissions*



# **Voluntary Admission**

394.4625, FS and 65E-5.270, FAC

## **Adults**

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

## **Minors**

- Have a mental illness (same definition as for adults)
- Be suitable for treatment
- Guardian applies by express and informed consent for minor's admission
- Judicial hearing to confirm the voluntariness of the admission



# **Mental Illness Means...**

394.455(18), FS

- Impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality.
- Impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology.
- Does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

## **Co-occurring Disorders?**



# Express and Informed Consent

## Means...

394.455(9), FS

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



# Incompetent to Consent to Treatment Means...

394.455(15), FS

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



# **Voluntary Admission Selected Procedures-Adults**

394.4625, FS and 65E-5.270, FAC

- Incapacitated or incompetent with a guardian and those Incapacitated with health care surrogate / proxy making decisions -- must be on involuntary status, but substitute decision-maker can decide on treatment (not admission).
- Certification of competence by physician within 24 hours of arrival.
- Special protections for selected elders – should never be sent from a nursing home to an ER for psychiatric assessment without initiating voluntary or involuntary status first!



# Discharge of Persons on Voluntary Status

394.4625(2), FS and 65E-5.270, FAC

- Notice of right to request release given at time of admission
- Request for discharge -- notice within 12 hours to physician or psychologist & release within 24 hours
- Refusal or revocation of consent to treatment – discharge within 24 hours
- Petition for involuntary placement filed with the circuit court within 2 court working days after request for discharge is made

# *Involuntary Examination*





# Involuntary Examination Criteria

394.463(1),FS

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

**and either:**

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

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

**Must meet all criteria**



# Initiating Involuntary Examinations

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

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

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



# **Involuntary Examinations Initiated by the Court**

384.463(2)(a)1, FS and 65E-5.280(1), FAC

- Petition form (#3002)
- Filed with Clerk of the Court (Probate) – No fee charged
- Based on sworn testimony
- Time limit for execution of order

## **Involuntary Examinations Initiated by Law Enforcement**

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

- No need to be diagnosticians
- Observation or circumstances?




# Certificate of a Mental Health Professional

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

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

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

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



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

**Psychiatric Nurse:** A registered nurse licensed under chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.



**Clinical Social Worker:** A person licensed as a clinical social worker under chapter 491.

**Licensed Mental Health Counselor:** Means a mental health counselor licensed under chapter 491, F.S.

**Licensed Marriage and Family Therapist:** Means a marriage and family therapist licensed under chapter 491, F.S.



# Certificate of a MH Professional

384.463(2)(a)3, FS and 65E-5.280(3), FAC

- Examination within 48 hours prior
- By an authorized professional
- Citing **observations** of the professional on which his/her conclusion is based
- Observations must relate to the criteria
- Transportation to nearest receiving facility – transfer later if appropriate
- Certificate of a MH Professional (3052b)



## Baker Act

### Involuntary Examinations

Any receiving facility accepting person for involuntary examination must send to BA Reporting Center cover sheet (#3118) and copy of completed initiating form:

	<u>State</u>
1999	75,945
2000	80,888
2001	91,468
2002	100,158
2003	104,600
2004	110,697
2005	122,206
2006	120,506
Rate 1,000	6.5
Court	4%
MHP	49%
LEO	47%
Minors	15.3%
Elders	8.9%



# Outpatient Management of Suicidal Persons

- A skilled clinician can often avoid involuntary admission of a suicidal person to a facility.
- Goal of Crisis management is to keep the person safe & alive throughout the crisis.
- Depends on Safety Planning – not a “No Harm Contract”. Research shows “no harm” contracts not effective in reducing suicidal behavior.



# Safety Planning

Specifically addresses suicidal thoughts & behaviors and is a formal part of the treatment plan already in place

It is personalized, developed collaboratively, and is specific to target behaviors.

The safety plan has an action focus (what person is expected to do) rather than an avoidant focus (what person promises not to do) and is regularly reviewed.

Contains goals & objectives to address:

- Social/emotional isolation
- Poor treatment compliance
- Poor self-care
- Hopelessness



# Safety Planning

## Legal Considerations:

- Refer out if beyond your capability
- Seek consultation from peers/supervisor
- Be familiar with the literature
- Seek formal training
- Take a complete psychosocial history
- Obtain releases & prior treatment records
- Develop a complete diagnostic and treatment plan
- Assessed suicide risk and management plan documented in plan
- What you've done to address risk factors
- Risk/benefit analysis documented in plan
- If attempt made, notify insurer and legal counsel.



# Safety Planning

- If “moderate risk”:
  - Increase outpatient visits
  - Involve family in treatment
  - Increase your availability
  - Regularly monitor suicide risk
  
- If “high risk” – hospitalize

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## Outpatient Management and Safety Planning material provided by:

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# Transportation

394.462, FS and 65E-5.260, FAC

- Why law enforcement?
- Mandated duty for **all** Involuntary exams, regardless of how initiated (court, law enforcement or MH professional, except transfers from a hospital)
- Which law enforcement agency?
- Exceptions/delegation of responsibility
- Nearest facility must accept (394, 395, and EMTALA) – Can then transfer
- Right to Individual Dignity-- Procedures, facilities, vehicles, and restraining devices used for criminals not used with persons who have a mental illness, **except** for protection of the person or others.



# Involuntary Examination

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

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

- Once an Involuntary Exam is initiated, the Initial Mandatory Involuntary Examination must be conducted without unnecessary delay by a physician or licensed clinical psychologist at a receiving facility or a hospital and documented in the clinical record
- Minimum standards for Initial Mandatory Involuntary Examination...



# Minimum Standards for Initial Mandatory Involuntary Examination

394.463(2)(f), FS

65E-5.2801, FAC

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



# Involuntary Examination

(continued)

- Disposition within 72 hours of arrival at first hospital or receiving facility
- “Approval” for release from receiving facility can only be done by a psychiatrist or a clinical psychologist or an emergency department physician (#3111)
- At hospital providing examination or treatment of emergency medical condition, conduction of examination and approval for release can be done by a physician or clinical psychologist



# Discharge or Release Involuntary Examination

394.463(2)(I), FS

## Within the 72-hour examination period:

- Person shall be released, unless charged with a crime. If so, returned to law enforcement, or
- Person, unless charged with a crime, shall be asked to give express and informed consent to voluntary placement, or
- Petition for involuntary placement filed with clerk of circuit court for period of up to 6 months.



*Rights of Persons with Mental  
Illnesses*



# Rights of Persons

394.459, FS and 65E-5.140, FAC

- Individual dignity
- Treatment
- Participation in treatment & discharge planning
- Express and informed consent
- Emergency orders
- Communication & abuse reporting
- Care and custody of personal affects
- Voting in public elections
- Habeas corpus
- Separation of children from adults
- Sexual misconduct prohibited
- Florida Patient's Bill of Rights
- **Confidentiality**



# Confidentiality

394.4615, FS      65E-5.250, FAC

Variety of federal/state statutes and case law governing confidentiality:

- Baker Act
- Psychotherapist/patient privilege
- Substance Abuse
- HIPAA (treatment, operations and payment exempted)
- Communicable Diseases
- Duty to report abuse, neglect & exploitation of children & vulnerable adults
- Foreign Nationals – Consular Notification & Access



## **Confidentiality** (continued)

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

Information from record can be released:

- Court order after good cause hearing? **Yes**
- Declaration of intent to harm – may release sufficient information to adequately warn person threatened – **Yes**
- Tarasoff? **No**
- Inform guardians of minors? **Yes**
- Confessions of past crimes? **No**
- Testimony for criminal conviction? **No**
- Testimony for civil commitment? **Yes**



## **Baker Act Immunity**

394.459 (10), 394.4615(8), and 394.460, FS

- Any person who acts in good faith in compliance with the Baker Act is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a person to or from a facility. However, this section does not relieve any person from liability if such person commits negligence. (394.459)
- Any agency or private mental health practitioner who acts in good faith in releasing information is not subject to civil or criminal liability for such release. (394.4615)
- No professional is required to accept persons for treatment of mental, emotional, or behavioral disorders. Such participation is voluntary (394.460)



# Training Opportunities

## Online Training

[www.bakeracttraining.org](http://www.bakeracttraining.org)

- On demand-at your convenience
  - Up-to-date material
- Consistent, statewide information
- No fee Certificate of Achievement
  - CEC's offered @ low cost

## Copies of

### 2008 Baker Act Handbook

Download at no charge from DCF website.

<http://www.dcf.state.fl.us/mentalhealth/>

Or purchase Handbook for \$12.95 per book. Total cost approx. \$19 with shipping and tax.

<http://mhlp.pro-copy.com>



## Department of Children & Families Website

<http://www.dcf.state.fl.us/mentalhealth/>

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

- Copy of Baker Act law (394, Part I, FS) and rules (65E-5, FAC)
- Baker Act forms – mandatory and recommended
- Selected forms in Spanish & Creole
- 2008 Baker Act Handbook
- Baker Act monitoring/survey instruments
- Frequently Asked Questions (FAQ's) on 20 subject areas
- List of all public and private receiving facilities throughout the state
- Mental Health Advance Directives
- Other relevant materials



## Department of Children & Families Website

<http://www.dcf.state.fl.us/mentalhealth/sa/>

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

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



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