

FAQ

FREQUENTLY ASKED QUESTIONS: TRANSPORTATION

CHAPTER 394, FLORIDA STATUTES – THE BAKER ACT

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

HYPERLINKS:

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

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




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




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


The full list of online courses can be found on Florida Certification Board's Online Education Platform at <http://fcbonline-ed.mrooms3.net/>.



#	Question	Response	Statutes & Administrative Rules
Responsibility of and Authority to Transport			
1.	What is a transportation plan?	A transportation plan is a formal document that identifies how a county will provide transportation to a designated receiving facility when an involuntary examination is initiated. Each Florida county is responsible for having a transportation plan identifying how individuals are transported when an involuntary examination is initiated.	s. 394.462 , F.S.
2.	How does an individual get transported for an involuntary examination?	<p>Once an involuntary examination is initiated, law enforcement is contacted for transportation to the appropriate facility within the designated receiving system (often the nearest receiving facility) unless:</p> <ol style="list-style-type: none"> 1. There is a specific exception in the county's transportation plan. 2. The law enforcement officer is concerned about the safety of the individual due to acute medical symptoms or overall physical health requiring emergency medical personnel assistance. 3. The petition for involuntary examination is completed by a professional working for a mobile crisis response service or mental health overlay program who is comfortable providing the transport. 4. The involuntary examination was executed by an ex parte order and the court has designated another agent of the court to complete transport. <p>For more information on law enforcement's role in transporting individuals petitioned for involuntary examination, please refer to Module 2 of the online course Law Enforcement and the Baker Act.</p> 	<p>s. 394.462, F.S. s. 394.463(2)(a)2, F.S. s. 394.462(1)(a), F.S. s. 394.462(1)(f), F.S. s. 394.463(2)(a)2, F.S. s. 394.462(1)(b)1a, F.S. s. 394.462(1)(e), F.S. s. 394.462(1)(f), F.S. s. 943.10(1), F.S. ch. 65E-5.400(6)(e), F.A.C.</p>
3.	Does the receiving facility have any responsibility to provide transportation?	Receiving facilities may need to transport individuals who require additional services (e.g. medical needs, primary care appointments, and court hearings) to other facilities or organizations as needed. They also must provide transportation to other facilities when a transfer is arranged. Receiving facilities must develop policies and procedures for transport that are compliant with the law.	<p>s. 394.463(2)(i), F.S. ch. 65E-5.310(5), F.A.C.</p>

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Responsibility of and Authority to Transport			
4.	What forms are needed by the receiving facility when an individual is transported for an involuntary examination?	<p>There are two forms that are required when transporting an individual to a receiving facility for involuntary examination including:</p> <ol style="list-style-type: none"> One of the following forms: <ul style="list-style-type: none"> Report of a Law Enforcement Officer Initiating Involuntary Examination (may not be initiated by a federal officer) (Form CF-MH <u>3052a</u>), Certificate of Professional (Form CF- MH <u>3052b</u>), or Ex Parte Order for Involuntary Examination (state circuit or county court only – federal courts <u>cannot</u> initiate an involuntary examination) (Form CF-MH <u>3001</u>), and The transportation form (Form CF-MH <u>3100</u>). It is the responsibility of law enforcement to complete the front side of the form <u>transportation to a receiving facility</u> even if law enforcement calls medical personnel to provide the transportation. 	<p>ch. <u>65E-5.280</u>, F.A.C. ch. <u>65E-5.260</u>, F.A.C. ch. <u>65E-5.260(1)</u>, F.A.C. ch. <u>65E-5.260(1)</u>, F.A.C. ch. <u>65E-5.310(4)</u>, F.A.C.</p>
5.	What is the procedure once the transporter and individual reach the Baker Act receiving facility?	<p>When an individual is transported to a Baker Act receiving facility or medical emergency department under involuntary status, the facility must accept the individual even if the facility does not have the capacity or the capability to provide needed services. It is the responsibility of the transporter to transfer custody of the individual along with all mandatory and supplementary documentation to a responsible staff member at the receiving facility.</p> <p>It is customary for the transporter to give all the individual's belongings to the staff at the receiving facility. The facility will provide the individual with the belongings they may keep with them per facility policy and secure the remainder of the belongings until the individual is discharged from the facility.</p>	<p>42 CFR <u>489.24(a)(1)</u> 42 CFR <u>489.24(d)(1)</u> s. <u>394.462(1)(k)</u>, F.S. s. <u>394.462(3)</u>, F.S. ch. <u>65E-5.200</u>, F.A.C.</p>

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Responsibility of and Authority to Transport			
6.	<p>What happens if it appears that the individual needs medical clearance at a local emergency department?</p> 	<p>Law enforcement may transport an individual who appears to be experiencing a physical emergency medical condition to a local emergency department. Transportation may also be arranged with medical personnel if the officer believes that the individual needs medical transport for the safety of the individual or others. Emergency medical services (EMS) or law enforcement can transport the individual to a local emergency department, even if it is not a designated receiving facility.</p> <p>More information about individuals who meet criteria for an involuntary examination who are experiencing a physical emergency medical condition can be found in the online course Emergency Medical Treatment: Florida's Baker Act and Marchman Act and the Emergency Medical Conditions Frequently Asked Questions.</p>	<p>s. 394.462(1)(e), F.S.</p>
7.	<p>Can a law enforcement officer refuse to transport an individual who has been petitioned for involuntary examination?</p>	<p>Yes, under specific circumstances.</p> <p>While law enforcement officers are the identified mode of transportation when an involuntary examination is initiated, an officer can decline to transport an individual when:</p> <ol style="list-style-type: none"> 1. The county's transportation plan identifies an emergency medical or private transport service to provide transportation instead of law enforcement, and 2. The law enforcement officer and transport company personnel agree that law enforcement presence is not necessary to preserve the safety of the individual being transported or the safety of others during transport. 	<p>s. 394.462, F.S.</p> <p>s. 394.462(1)(b), F.S.</p> <p>ch. 65E-5.260(2), F.A.C.</p>

#	Question	Response	Statutes & Administrative Rules
Responsibility of and Authority to Transport			
8.	<p>What happens if an individual is transported to a receiving facility that is at capacity or does not have the capability to provide adequate services?</p> 	<p>Designated receiving facilities must accept individuals transported by law enforcement or the county's designated transportation company who have had an involuntary examination initiated. While the facility is not required to admit an individual under these circumstances, the facility is required to accept the individual and provide triage services. The receiving facility can complete the examination and either release the individual, if they do not meet the criteria, or transfer the individual to another receiving facility, if admission is indicated. This transfer, under certain circumstances, can be completed without the individual's consent.</p> <p>Receiving facilities that are designated as hospitals and accept Medicare are also subject to the Emergency Medical Treatment and Labor Act (EMTALA). Per EMTALA, when an individual arrives at a hospital for evaluation or treatment of an emergency medical condition the hospital must provide triage and any necessary stabilization services regardless of capacity. This includes emergency behavioral health conditions that would qualify for an involuntary examination.</p> <p>More information about EMTALA can be found in the online course Emergency Medical Treatment: Florida's Baker Act and Marchman Act and the Emergency Medical Conditions Frequently Asked Questions.</p>	<p>42 CFR 1395dd(g) 42 CFR 1395dd(h)</p> <p>s. 394.462(1)(k), F.S. s. 394.462(1)(l), F.S. s. 395.002(25), F.S.</p> <p>ch. 65E-5.310, F.A.C.</p> <p>form CF-MH 3046</p>
9.	<p>Can an individual be transported to a receiving facility outside of the jurisdiction of the law enforcement officer providing transport?</p>	<p>Yes. The individual must be transported to the nearest or most appropriate receiving facility (or hospital emergency room if the individual needs emergency medical attention) within the designated receiving system identified in the county's transportation plan. It does not matter if the facility is within the officer's jurisdiction.</p>	<p>s. 394.463(2)(a), F.S.</p>

#	Question	Response	Statutes & Administrative Rules
Responsibility of and Authority to Transport			
10.	Can anyone other than law enforcement and emergency medical personnel transport an individual under involuntary status to a receiving facility?	<p>Yes, under specific circumstances. The only time a professional can provide transportation to a Baker Act facility is when that professional:</p> <ul style="list-style-type: none"> • Is qualified to initiate an involuntary examination and • Is either a member of a mental health overlay program or a member of a mobile crisis response service. <p>Under those circumstances, the professional may use their clinical judgment to transport the individual themselves, call law enforcement, or use another means of transportation that best meets the needs of the individual.</p>	s. 394.462(1)(f) , F.S.
11.	What is the procedure for transporting an individual to a receiving facility when the individual is in an outpatient office of a health care provider?	<p>When an individual is in the office of an outpatient health care provider and it is determined that initiating an involuntary examination is appropriate, here are the options for initiation and transportation to a receiving facility:</p> <ol style="list-style-type: none"> 1. A qualified professional at the outpatient office can complete a Certificate of a Professional Initiating an Involuntary Examination and contact law enforcement for transport. 2. If a qualified professional is not available to initiate an involuntary examination, law enforcement may be called to complete a Report of a Law Enforcement Officer and provide transportation. <p>If the individual is experiencing a medical emergency, call 9-1-1 or follow office policies and procedures.</p>	<p>ch. 65E-5.350(5)(e), F.A.C.</p> <p>CF-MH 3052b CF-MH 3052a</p>
12.	Is the officer required to remain at the receiving facility if the individual is acting belligerently upon arrival?	<p>Upon arrival to the facility, officers are not required to stay and assist with individuals acting belligerently.</p> <p>The receiving facility staff should be trained in the use of verbal de-escalation, bodily control, and physical management techniques for individuals displaying belligerent behavior. If less restrictive verbal de-escalation interventions are unsuccessful, the staff should refer to their organization's protocols used for emergency situations.</p>	<p>s. 394.453(2), F.S.</p> <p>ch. 65E-5.330, F.A.C.</p>

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Responsibility of and Authority to Transport			
13.	Does law enforcement or the county have any responsibility to provide transportation for a transfer between facilities or at discharge?	No. Law enforcement or a medical transport company contracted with the county is only responsible for the initial transportation for an individual under involuntary examination unless otherwise specified in the county's transportation plan. It is the sending facility's responsibility to make arrangements for the safe and appropriate transportation of the individual between facilities or at discharge.	42 U.S.C. <u>1395dd(c)(1)(B)</u> s. <u>394.462</u> , F.S.

#	Question	Response	Statutes & Administrative Rules
Individual Rights during Transport			
14.	What standards are there to preserve safety and individual rights during transport of an individual under involuntary examination?	<p>Each individual has a right to safe and secure transport. Every law enforcement agency that is designated to provide transportation to a Baker Act receiving facility is mandated to have a single set of protocols that reflect the safe and secure transport of individuals. These protocols are to be submitted to the Managing Entity for that county.</p> <p>When an individual is transported to a receiving facility, the county's transportation plan must be followed and the <u>individual's rights</u> must be maintained.</p> <p>Baker Act receiving facilities must have policies and procedures in place that protect the individual rights of those being transported between facilities.</p>	<p>s. 394.462(1)(c), F.S. s. 394.459(1), F.S. s. 394.462(1)(m), F.S. s. 394.462(1)(d), F.S.</p> <p>ch. 65E-5.310(5), F.A.C.</p> <p>form CF-MH 3103</p>
15.	Can a law enforcement officer or transport company change the facility they transport to based on an individual's request?	<p>No. When an individual is being transported to a Baker Act receiving facility following the initiation of an involuntary examination, the individual will be delivered to the nearest or most appropriate receiving facility per the county's transportation plan. This transportation may occur regardless of the individual's or their family's requests, capacity of the receiving facility, or financial considerations.</p> <p>Once an individual arrives at a receiving facility the individual may request transfer to another Baker Act facility.</p>	<p>ch. 65E-5.260(2), F.A.C. ch. 65E-5.310, F.A.C.</p> <p>form CF-MH 3046</p>
16.	Who has a right to know to which location the individual is being transported?	<p>Individuals receiving health care have increased privacy protections when receiving behavioral health services. The individual (or their substitute decision-maker) is the primary source for identifying who can receive information regarding the individual's location and admission for services. Substitute decision-makers, such as parents, guardians, and guardian advocates, must be notified when an individual is admitted or transferred to a facility and have a right to receive the same information that the individual would receive. For more information about the rights of substitute decision-makers please refer to the <u>online courses</u> Guardian Advocate and the Baker Act and Minors and the Baker Act.</p> <p>According to the Health Insurance Portability and Accountability Act (HIPAA), health providers are not allowed to disclose if an individual is currently at a facility receiving services without the individual's, or their substitute decision-maker's, explicit consent. Law enforcement officers, however, are not subject to HIPAA and can disclose information at their discretion and per departmental policy.</p>	<p>s. 394.4599(2)(a)2, F.S.</p>



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Individual Rights during Transport			
17.	Does the individual have a right to refuse transport?	No. Individuals may not refuse the initial transport or, in many cases, a transfer to another facility.	s. 394.462 , F.S. s. 394.4685 , F.S. ch. 65E-5.260 , F.A.C.

#	Question	Response	Statutes & Administrative Rules
Emergency Medical Conditions			
18.	Can emergency medical services(EMS) personnel request the assistance of law enforcement to accompany them to the facility?	Yes. An individual who is being sent by EMS for medical clearance and is under involuntary status can be sent without the presence of law enforcement. However, if EMS personnel do not feel safe transporting the individual, they may request assistance from a law enforcement officer.	ch. 65E-5.260(2) , F.S.

#	Question	Response	Statutes & Administrative Rules
Transfers between Facilities			
19.	Can an individual be transported from an assisted living facility or nursing home?	<p>Yes. Individuals in assisted living facilities or nursing homes may be transported from residential placement to a designated receiving facility for involuntary examination after the report of a law enforcement (Form CF-MH 3052a), the certificate of professional (Form CF- MH 3052b), or the ex parte order (Form CF-MH 3001) is completed. If one of the above-mentioned forms do not accompany the individual to the receiving facility, the receiving facility must notify the Department by certified mail or email no later than the next working day.</p> <p>Individual transported by the family members or guardian are not required to present those forms to a receiving facility.</p> <p>Individuals who are living in an independent living community are <u>not</u> considered to be residents of a long-term care facility under the Baker Act.</p>	<p>s. 394.463(2)(b), F.S.</p> <p>s. 394.4625(1), F.S.</p> <p>s. 395.1055(5), F.S.</p> <p>s. 394.4574(2)(g), F.S.</p> <p>form CF-MH 3099</p>

#	Question	Response	Statutes & Administrative Rules
Transportation and Legal Charges			
20.	Where are individuals transported if they meet the criteria for involuntary examination and are charged with a misdemeanor?	When an individual meets the criteria for an involuntary examination and has a misdemeanor criminal charge the officer must complete a Report of a Law Enforcement Officer and transport the individual to the receiving facility identified in the county's transportation plan.	s. 394.462(1)(g) , F.S. AGO 73-133 form CF-MH 3052a
21.	Where are individuals transported if they meet the criteria for involuntary examination and are charged with a felony?	<p>If an individual meets the criteria for an involuntary examination, but is also being arrested on a felony charge, the law enforcement officer must process the individual in the same manner as they would any other individual being charged with a felony. Once the individual is booked and processed at the local jail, law enforcement must immediately notify the appropriate receiving facility within the designated receiving system as specified in the county approved transportation plan.</p> <p>If the facility documents that they do not have the capability to provide proper supervision or security for an individual with a felony charge then the facility does not have to admit the individual. The facility must, however, provide all examination and treatment onsite at the jail where the individual is being held. The receiving facility can accept the individual for evaluation and admission if they determine that they have the capability to provide supervision and security. If this is the case, law enforcement will provide transportation from the jail to the receiving facility.</p>	s. 394.462(1)(h) , F.S.
22.	Can an individual be transported to a receiving facility if the individual has an involuntary examination initiated while incarcerated?	Yes, in some circumstances. The individual may be transported to a designated receiving facility if that facility can provide proper security during the individual's admission. An incarcerated individual who meets criteria for an involuntary examination, however, will often receive an examination and services within the correctional facility.	s. 394.462(1)(h) , F.S.

#	Question	Response	Statutes & Administrative Rules
Transportation and Legal Charges			
23.	What is the procedure for a Baker Act receiving facility if they are discharging an individual who has an existing legal charge?	If an individual with an existing legal charge is discharged from the receiving facility, law enforcement must be contacted to transport the individual from the treatment facility to the custody of the appropriate law enforcement entity.	s. 394.469(1) , F.S.

#	Question	Response	Statutes & Administrative Rules
Transporting Individuals for Voluntary Services			
24.	Can a law enforcement officer provide transportation to a receiving facility for an individual who is seeking voluntary admission?	Yes. There are no laws either mandating or prohibiting law enforcement from providing transport for an individual seeking voluntary services. However, a law enforcement officer should reference departmental policies and procedures for guidance. If the officer is uncomfortable with <u>not</u> providing transportation for the individual to get to a receiving facility under voluntary status, then criteria for involuntary status should be reviewed.	