

Transportation under the Baker Act
(See also *Law Enforcement*)
(See also *Involuntary Examination*)

General

Q. Why do law enforcement officers have the responsibility to transport people with a mental illness? Isn't this a health function?

The criteria for involuntary examination requires that the person be refusing examination or be unable to determine that the examination is necessary. For anyone other than those authorized by law to take a person against his or her will or without informed consent to a receiving facility could be a criminal offense. In addition, law enforcement is specifically trained in the transportation of persons who are either violent, resisting transportation, or are otherwise unwilling to comply with directions. Others without that training may either injure the person or be injured by the person.

Q. Our outpatient urgent care centers are under a corporate entity, but come under our hospital license. If a patient is eligible to be Baker Acted, the procedure now is to call an ambulance to transfer to our Emergency Department where the doctor will sign the Baker Act and the social worker will find a receiving facility. Does this sound right to you? Should they be calling the police? If so, where would the police take the patient, to us or to a receiving facility?

If a person is eligible to have an involuntary examination initiated, one would question the purpose served in first transporting to the ED, assuming one of the qualified professionals is present at the urgent care center and has personally observed the statements/behavior necessitating the exam. If the person isn't willing and able to consent to the transport from the urgent care center to the ED, there could be some liability in such transport. Further, by bringing to your ED first, the person would have to wait until a designated receiving facility accepted the person's transfer vs. the facility being required to accept the person if taken directly to the receiving facility by law enforcement.

Unless there is a non-psychiatric medical condition present, you may want to have your staff initiate the exam and call law enforcement for transportation directly to a receiving facility, bypassing your hospital. It would be the same as if the exam was initiated at a physician office. If the person wasn't medically cleared to be psychiatrically examined in a non-hospital or non-medical setting, initiation of the exam and transport to a medical setting might be appropriate. If the urgent care center is physically located on the premises of a hospital and perceived by the public as being part of the hospital, there could be EMTALA considerations.

Q. Can a law enforcement agency bill an insurance company for transportation of Baker Acts/Marchman Acts? I would think LE could not as the BA statute says we transport?

No, the duty for primary transport to a receiving facility for persons on involuntary status lies with law enforcement. If the officer determines medical transport is necessary for the safety of the officer or the individual, EMS or other medical transporter can provide that service and bill an insurance company if the person has such public or private insurance coverage.

Some folks confuse LEO duty to transport to a receiving facility for involuntary examination and the county's duty to assure transport to treatment facilities for involuntary placement when the patient has no other method of providing this. It also gets a little confusing when medical transport is under contract with the county to provide this service for LEO or when EMS is used in case of medical emergencies experienced by a person under involuntary examination status.

Below are the provisions of the Baker Act governing transport under various circumstances:

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.

3. The jurisdiction designated by the county may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From an insurance company, health care corporation, or other source, if the person receiving the transportation is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(b) Any company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than \$100,000 in liability insurance with respect to the transportation of patients.

(c) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of the patients.

(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.
(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.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the governing board of the county in which the patient is hospitalized shall arrange for such required transportation and shall ensure the safe and dignified transportation of the patient. The governing board of each county is authorized to contract with private transport companies for the transportation of such patients to and from a treatment facility.

(4) 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.

As you can see above, a LEO has the authority and responsibility to provide the transport and can decline only under limited circumstances specified in the law.

However, if the county has a contract with a medical transporter to provide this transport on behalf of law enforcement, it can seek reimbursement from the patient or an insurer. If EMS is transporting, it is generally as a result of a potentially serious medical issue and the EMS firm can bill for that transport in the same way it does for any other individual needing the same service, regardless of whether an involuntary examination has been initiated. The person is being transported by EMS for the medical issue, not the psychiatric condition.

Bottom line on the Baker Act:

1. Law enforcement probably isn't authorized to bill an insurer or the individual for the transport of an individual under the Baker Act to a receiving facility or a hospital.
2. The EMS provider isn't authorized to bill the law enforcement agency for the transport of a person under the Baker Act to a hospital, but could bill the county when there is no other source of payment.
3. A medical transporter under contract with the county to provide transport of persons under the Baker Act could possibly bill an insurer if the contract allowed for it and the individual and the service was eligible under the insurance plan.

The above applies to the Baker Act. The Marchman Act doesn't require law enforcement to perform the transport except as follows:

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.

Such detention is not to be considered an arrest for any purpose, and no entry or other record may be made to indicate that the person has been detained or charged with any crime. The officer in charge of the detention facility must notify the nearest appropriate licensed service provider within the first 8 hours after detention that the person has been detained. It is the duty of the detention facility to arrange, as necessary, for transportation of the person to an appropriate licensed service provider with an available bed. Persons taken into protective custody must be assessed by the attending physician within the 72-hour period and without unnecessary delay, to determine the need for further services.

397.6795 Transportation-assisted delivery of persons for emergency assessment.

An applicant for a person's emergency admission, or the person's spouse or guardian, a law enforcement officer, or a health officer may deliver a person named in the physician's certificate for emergency admission to a hospital or a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization.

The Florida Attorney General issued the following opinion (AGO 74-108):

In view of the plain language of the amendment, it is my opinion that s. 394.459(11), supra, applies only to the transportation of patients to treatment facilities and does not have any application to the transportation of patients to receiving facilities. Further, I am of the opinion that s. 394.459(11) does not require any patient or any patient's guardian or representative to pay for being transported to a receiving facility. (*transportation provisions subsequently moved to its own section 394.462*)

Thus, in all those instances when a law enforcement officer is ordered to take a patient into custody, a law enforcement officer takes a patient into custody independently, or a law enforcement officer takes a patient into custody on a physician's certificate, the costs incurred in transporting such a patient to a receiving facility are simply a part of the budgeted operating expenses of the municipal police department -- as are expenses incurred in the detection or prevention of violations of the law and in the apprehension and detention of violators of the law.

There have been several other AG opinions issued related to Baker Act transport, but each relates to other contingencies such as to "treatment" facilities, to forensic clients from jail, and to the interstate compact. The above AGO clearly states that the cost of transport done directly by law enforcement should be considered part of the operating expense of the law enforcement agency. Where conflict in responsibilities occurs, attorneys and DCF may need to provide resolution.

Q. I have received information that our police department believe they don't have to be notified when a resident is Baker-Acted. Is this correct? I am not aware of any recent Baker Act Law changes.

This isn't correct. Your county has contracted with a medical transport company to provide the primary transportation from the field to a receiving facility for what would otherwise be a law enforcement duty. However, this only deals with the transport itself -- it doesn't totally relieve law enforcement of its duty regarding persons on involuntary status. The section of the Baker Act that deals with this issue is 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:**

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.
(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.

Each involuntary examination initiated by a law enforcement officer or a mental health profession requires a report by a law enforcement officer be completed and accompany the individual to a receiving facility for retention in the clinical record is follows:

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. The ex parte order for involuntary examination must be based on sworn testimony, written or oral..

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 summary, law enforcement is required to complete the front side of the mandatory CF-MH 3100 form titled "Transport to Receiving facility" for every individual on involuntary status. if the county contracts with a medical transport company for the primary transport of persons under the Baker Act, the law enforcement officer is still required to complete the form, but the back side of the form must also be completed by law enforcement and the transporter to document that the continued presence of law enforcement is not needed for the safety of the person or others.

No one except law enforcement has the authority to take a person against his/her will or without express and informed consent to a facility under the Baker Act unless there is a specific exception under the law. Only after an officer has determined a lack of dangerousness can the individual be “consigned” to the care of a medical transporter.

Q. I have read the statute on transportation and understand that once a patient is on a BA that LEO must be called to transport to our central receiving center. The question I have is #1. How is it that other VA Hospitals that have Community Based Outpatient Clinics (CBOC) can transport via ambulance to the VA hospital/mother facility? Are they going against the statute since the CBOCs are in different counties? Should they be calling LEO and sending those patients to the local receiving facility? And #2. If the above is possible, then what would we need to do transport a BA in our county to a VA hospital which is in a separate county? Would we require a Transportation Exception Plan that would permit us to use an ambulance to transport to the other county?

Only law enforcement is authorized to take persons against their will or without their informed consent under the involuntary provisions of the Baker Act. The officer can only decline to transport if one of the specified exceptions identified in the Baker Act is met.

There are 4-5 counties in the state that have contracted (at the sole cost of the county) for medical transport of persons under the Baker Act. In addition, if an officer believes for the safety of the officer or person in custody EMS is required, the officer can request assistance – this often results in EMS conducting the transport. In any case, the officer is required to report to the scene and must complete the BA-3100 Transport form. The officer can assess whether medical transport is needed and if so, co-sign the back of the form with the medical transporter documenting that the continued presence of law enforcement personnel isn't necessary for the safety of the person or others as required by law.

If other VA outpatient clinics around the state aren't following the law, this should be corrected and shouldn't be a basis for you to do likewise. The law requires that a person under involuntary examination status be taken to the nearest receiving facility. Your county has a legally sanctioned exception to this provision approved by the Board of County Commissioners and the Secretary of DCF that allows adults to be taken to the Central Receiving Center instead of the nearest receiving facility. This is the only legal exception that has been approved in your County. You can see the various exceptions approved around the state on page P-6 of the 2011 Baker Act Handbook.

You could seek another Transportation Exception Plan for veterans to be taken to a VA hospital once the law enforcement officer had completed the transport form. However, this isn't a quick process and may not be needed by the time your new VA hospital is completed. For the time being, you may want to collaborate with the CRC to see if the transfer from the CRC to the out of county VA hospital can be expedited. You might want to investigate whether a “virtual” transfer might work, if legally sufficient to meet the requirements of the law.

One of the authorized reasons for a Transportation Exception Plan is for a “specialized transportation system that provides an efficient and human method of transporting patients to receiving facilities, among receiving facilities, and to treatment facilities” (see bottom of page 89 and top of page 90 in the 2011 Baker Act Handbook. This would

permit VA to arrange and pay for ambulance transport from your county to the out of county VA hospital if the law enforcement officer had completed the 3100 form with concurrence from the ambulance driver and the Board of County Commission/DCF Secretary had formally approved the Plan.

Q. The Baker Act appears very clear in its requirement that law enforcement respond to and transport Baker Acts. In our county, the Sheriff has instituted a policy in which they only respond to and transport violent Baker Acts. When Staff try to place a call to "911," the dispatcher asks detailed questions about the individual being Baker Acted. If the dispatcher determines they are not violent at that moment, they instruct the caller to call non-emergency transport. We have attempted to explain the law to dispatchers, EMS, and law enforcement officers, to no avail. Once, a "911" dispatcher hung up on us. Our clinicians only initiate a Baker Act if the individual is mentally ill, an imminent risk to self or another, as a direct consequence of their illness and refusing voluntary treatment. We do not have the authority to physically restrain someone if they choose to elope. We continue to follow the law and call our local law enforcement agency when we Baker Act someone, but frequently struggle with this issue.

Your information about the Baker Act is correct. Law enforcement, like a circuit court judge and mental health professionals have the discretion about whether to initiate an involuntary examination under the Baker Act. However, when any of these three types of initiators have acted, law enforcement is statutorily mandated to transport the individual to the nearest receiving facility.

It is up to each Board of County Commissioners to determine which law enforcement agency has that duty within the county or any part of the county. The general policy adopted around the state is that the Sheriff is obligated to execute all ex parte orders of the court within the county limits. The Sheriff generally transports persons whose involuntary examinations were initiated by mental health professionals and who are in unincorporated areas of the county or in cities that contract with the Sheriff to provide law enforcement coverage within their municipalities. Otherwise, it is generally the responsibility of city police departments.

Criteria for involuntary examination under the Baker Act is based on either severe self neglect or active harm to self or others as a result of a mental illness. It makes no difference as to whether the harm is passive or active as to whether law enforcement is responsible for the transportation.

The provisions of the Baker Act that govern this situation are as follows:

394.463 Involuntary examination.

(1)CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- (a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or
2. The person is unable to determine for himself or herself whether examination is necessary; and

- (b)1. Without care or treatment, the person is likely to **suffer from neglect** or refuse to care for himself or herself; 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**
2. There is a substantial likelihood that without care or treatment the person will cause serious **bodily harm** to himself or herself or others in the near future, as evidenced by recent behavior.

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.

(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.

(j)The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination.

A local policy adopted by a law enforcement agency cannot be in conflict with state statutes governing the issue. Further, the 4th District Court of Appeals found that only a law enforcement officer may transport a Baker Act patient to a receiving facility. I've included a summary of that decision below:

Administrator, Retreat Hospital v. Honorable W. Clayton Johnson of the Seventeenth Judicial Circuit In and For Broward County, FL, Alan Schreiber, Broward County Public Defender, and Fredrick A. Goldstein, Special Assistant Public Defender, Respondents, 660 So. 2d 333 (Fla. 4th DCA 1995). In this case, four separate individuals were transported by private individuals to a receiving facility for involuntary placement under the Baker Act. **Circuit Court Judge Johnson found that the four individuals being transported by private individuals to a receiving facility did not comport with the requirements of section, 394.463(2), Fla. Stat. which requires that only law enforcement officer may transport a Baker Act patient to a receiving facility.** Judge Johnson ordered the Broward County Sheriff to devise a transportation plan and set a hearing ninety (90) days after the order to discuss the Sheriff's transportation plan. Judge Johnson also entered an administrative order regarding Baker Act transports in Broward County, FL and regarding the necessity of having pre-hospitalization orders. The Fourth District Court of Appeals held that Circuit Court Judge Johnson's administrative order went beyond the petitions filed in the case and beyond the Judge's jurisdiction by requiring a trial court order before a patient is hospitalized. **The Fourth District Court of Appeals affirmed that only a law enforcement officer may transport a Baker Act patient to a receiving facility.**

DCF staff can follow up with you to see if the law enforcement policy can be addressed to bring it into compliance with the law.

Q. I'm with a university Counseling & Psychological Service department and unfortunately throughout the year several of our students are Baker Acted. Is there a policy/contract between the transportation company and receiving facilities in our circuit whereby those who are transported will not incur the cost of that transportation?

Briefly, the law requires such a contract to be at the sole cost of the county. However, it also provides the following:

394.462 Transportation.

(1)TRANSPORTATION TO A RECEIVING FACILITY.—

(a) 3.The jurisdiction designated by the county may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From an insurance company, health care corporation, or other source, if the person receiving the transportation is covered by an insurance policy or

subscribes to a health care corporation or other source for payment of such expenses.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

Clearly if law enforcement provided the transport directly there would be no associated costs because the Attorney General has issued an opinion that such costs are an integral part of the law enforcement agency's budget. However, if this transport is deferred to medical transporters, the law permits the company to see reimbursement from the person or their insurer.

Q. How can someone find out which Baker Act receiving facilities are in a community and their addresses?

The Circuit Office of the Department of Children and Family Services can provide you with a list of the names and addresses of all Baker Act receiving facilities in a locale.

Q. Is the Sheriff's Office responsible for Baker Act transport? If not, which law enforcement agency is responsible for transporting persons on involuntary examination status to a receiving facility?

Sheriff deputies are not the law enforcement officers doing most of the LEO transport. As I commented in my earlier message, the Baker Act specifies the following:

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:

When this section of law was adopted by the Legislature back in the mid 1980's, each Board of County Commissioners was to designate one or more of the local law enforcement agencies to provide custody and transport for persons under involuntary examination status. I've only actually seen the formal documents created by the Pinellas and Pasco BCC's, but the pattern is quite similar throughout the state.

- The Sheriff's office executes all ex parte orders, regardless of location in the county
- The Sheriff's office executes all mental health professional certificates in unincorporated areas of the county and in cities where the city contracts with the Sheriff for all law enforcement duties (doesn't have its own police department)
- Municipal police departments execute all mental health professional certificates in their cities
- Any law enforcement officer can initiate in and transport from any location to the nearest receiving facility.

Q. How does a law enforcement officer know which agency in the county is responsible for transporting people for involuntary examinations under the Baker Act?

The 1984 Florida Legislature required that each county designate a single law enforcement agency within the county, or portions thereof, to take persons into custody upon 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. This might result in the Sheriff's Office being responsible for certain transportation and municipal police responsible for others. A copy of the formal action taken by the Board of County Commissioners should be available through the County Attorney.

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. 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?

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.

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. I work at an outpatient facility. Once the paperwork for a Baker Act has been completed, do I call the police to transport the client? What are the appropriate protocols?

Law enforcement should be called to do the transport of any person requiring involuntary examination. Law enforcement is the only entity authorized to perform this function unless the officer determines EMS should do the transport due to safety reasons or the presence of an emergency medical condition. One other exception allowed by law is when an alternate transportation plan is solely funded by county government to provide this transport –Hillsborough, Sarasota, Broward, and Brevard have such a plan. Family or others are not authorized to provide transport for a person under involuntary examination status. It would be an unacceptable risk anyway due to the fact that the person has been found to have either refused or be unable to determine the examination is needed.

Q. Our community mental health center initiated an involuntary examination of a person and called our city’s police department to transport the person to the receiving facility. The Police Department said that they would no longer be transporting Baker Act clients. Has there been some new legislative development that I am not aware of? What is the responsibility for the Police Department to transport these clients?

There has been no revision to the Baker Act affecting law enforcement responsibility for persons whom an involuntary examination has been initiated. The Baker Act is quite clear that law enforcement must provide primary transport of a person for involuntary examination under the Baker Act, regardless of whether the initiation was done by a court, a mental health professional, or a law enforcement officer. Since each person for whom an involuntary examination is initiated has either refused the exam or is unable to give informed consent, transport by anyone other than those statutorily authorized would be unacceptable.

Chapter 394.463(2), FS states how an involuntary examination can be initiated. For both the courts and for mental health professional initiation, the law requires that a law enforcement officer take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination.

Chapter 394.462, FS describes how transportation to receiving facilities for involuntary examinations is to be provided, as follows:

(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.

(e) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(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.

(k) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to receiving facilities, such service or company shall be given preference for

transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

The statute provides certain exceptions to law enforcement transport as reflected above. No other exceptions are permitted. This information should be shared with the law enforcement agency's legal advisor to remedy the situation quickly, to avoid risk of harm to persons with acute mental illnesses and liability for the law enforcement agency.

Q. Where is the statutory authority for mobile crisis teams to provide transport for involuntary examinations under the Baker Act?

The Transport section of the Baker Act provides the following:

394.462 Transportation.--

(1) TRANSPORTATION TO A RECEIVING FACILITY.--

(e) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

Many providers/hospitals have mobile crisis services, but the above only is authorized when the mobile service meets the following definition, including being a part of a public receiving facility.

(19) "Mobile crisis response service" means a nonresidential crisis service **attached to a public receiving facility** and available 24 hours a day, 7 days a week, through which immediate intensive assessments and interventions, including screening for admission into a receiving facility, take place for the purpose of identifying appropriate treatment services.

Q. Our local police department refused to transport someone evaluated by the Mobile Crisis Team. An involuntary examination was initiated by the Team as the man was dangerous and presented problems in his current environment. The officers reported that they received a directive that they are not to transport Baker Acts that they do not initiate. Could this be correct?

Law enforcement legal responsibilities under the Baker Act are clear, as follows:

394.463(2) Involuntary Examination.--

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

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.

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.

The Baker Act mandates are clear that, but for specific exceptions, law enforcement is responsible for transportation of persons to receiving facilities for involuntary examination. Appellate courts and the Florida Attorney General have also ruled on this subject:

Administrator, Retreat Hospital v. Honorable W. Clayton Johnson of the Seventeenth Judicial Circuit In and For Broward County, FL, Alan Schreiber, Broward County Public Defender, and Fredrick A. Goldstein, Special Assistant Public Defender, Respondents, 660 So. 2d 333 (Fla. 4th DCA 1995). The 4th DCA affirmed that only a law enforcement officer may transport a Baker Act patient to a receiving facility.

Donald Pruessman v. Dr. John T. MacDonald Foundation, 589 So. 2d 948 (Fla. 3d DCA 1991). The 3rd DCA affirmed that law enforcement transport of 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.

AGO 2001-73 Regarding the responsibility for Transportation of mentally ill person to Treatment Facility. If a person is the subject of an ex parte order or certificate requiring involuntary examination and treatment under Florida's Baker Act, the single law enforcement agency designated by the county for this purpose is responsible for transporting that person to the nearest receiving facility.

Q. Can a law enforcement agency charge for transportation to a receiving facility? I thought the intent of 394.462(1)(a)(3) was that EMS could charge, but not law enforcement. I got a call from a lawyer who says his client was picked up on involuntary status by law enforcement and held two days for exam at a private receiving facility then released. Law enforcement is sending a bill for transportation and the hospital is as well- for \$10k. Who is responsible for paying the hospital and the transportation?

While the Baker Act doesn't specify who is responsible for the payment of the hospital bill for a person on involuntary examination status, the Florida Attorney General has issued opinion 93-49 that deals with this. A summary is below:

Attorney General Opinion 93-49 Regarding Who is Responsible for the Payment of an Involuntary Baker Act Placement, 1993 WL 384795 (Fla. A.G.)

Attorney General Robert A. Butterworth advised the Board of County Commissioners for Lafayette County, FL that the county is not primarily responsible for the payment of hospital costs, however, a county may be liable for hospital costs in the event a person is arrested for a felony involving violence to another person, and the arrested person is indigent. Depending upon the Baker Act patient's ability to pay, the patient is responsible for the payment of any hospital bill for involuntary placement under the Baker Act, however, if the patient is indigent, the Department of Health and Rehabilitative Services (HRS) is obligated to provide treatment at a receiving facility and HRS provides treatment for indigent Baker Act patients without any cost to the county.

With regard to the cost of primary transportation to a receiving facility, this is clearly the statutory responsibility of law enforcement. In addition, the Florida Attorney General also issued the following opinion:

AGO 2001-73 Regarding the responsibility for Transportation of mentally ill person to Treatment Facility.

If a person is the subject of an ex parte order or certificate requiring involuntary examination and treatment under Florida's Baker Act, the single law enforcement agency designated by the county for this purpose is responsible for transporting that person to the nearest receiving facility. If a person is taken into custody by a law enforcement officer for minor criminal behavior or noncriminal behavior that meets the statutory guidelines for involuntary examination under the act, the law enforcement officer taking the person into custody is responsible for transporting the person to the nearest treatment facility. If a law enforcement officer arrests a person for commission of a felony and believes that the person meets the guidelines for involuntary examination or placement, the person arrest shall be processed through the criminal justice system as any other criminal suspect and is entitled to examination and treatment in the facility where he or she is held.

The above AG Opinion is problematic because it confuses the term treatment facility with that of receiving facility. The statute places the responsibility on law enforcement for transport to receiving facilities and on the county for transport to treatment facilities. Only when the law enforcement jurisdiction designated by the board of county commission contracts for transport services to receiving facilities (Hillsborough,

Sarasota, Broward, Miami-Dade), does the Baker Act speak to recovery of costs, as follows:

- 394.462(1)(a)3.** The jurisdiction designated by the county may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:
- a. From an insurance company, health care corporation, or other source, if the person receiving the transportation is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses.
 - b. From the person receiving the transportation.
 - c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

Q. When clients have court dates (other than their BA hearings) such as civil, criminal, dependency, etc. is the receiving facility obligated by law to transport or who would be responsible? This does not come up very often for us.

The issue you raise isn't governed by the Baker Act law or rule. However, people are expected to show up at their court dates on their own. If they are locked in your facility, you would probably have the responsibility to assist the person in advance to postpone a court hearing if possible since a "failure to appear" could result in criminal charges. If no postponement is possible and the person is still on involuntary status, you should probably arrange staff to provide the transport and accompany the person, just as you probably do for certain outside medical appointments.

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 person shall be respected at all times and upon all occasions, including any occasion when the person 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 person 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. Can a person transport a family member or friend to a hospital for involuntary examination instead of calling law enforcement?

If the involuntary examination has already been initiated by a Judge, law enforcement officer, or a mental health professional, the Baker Act generally only permits law enforcement officers to perform the transport, unless the officer delegates the responsibility for the transport to emergency medical personnel.

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 (CIT) 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) 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.

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.

Voluntary Status

Q. Does a law enforcement officer have any responsibility to transport persons for voluntary examinations?

No. There is nothing in the Baker Act to require law enforcement officers to transport persons for voluntary examinations, since they are both willing and able to provide consent to the examination. However, there is nothing to prohibit such transportation if officers and their Departments (including legal counsel) concur. However, providing such discretionary courtesy transport may not provide the same level of immunity from liability as offered in transporting persons for involuntary examinations.

Q. Last week police responded to a man who wanted to go to a receiving facility to be psychiatrically assessed. He had no way of getting there and police did the courtesy of transporting him. Since it is the procedure of this LEO to handcuff the individual before placing him in the police unit and transported him. Once they arrived, the officer escorted him inside the facility made contact with a nurse and informed him that he was a voluntary. The nurse felt that since the LEO brought the person in handcuffed and escorted him in that the officer needed to initiate an involuntary examination. The LEO insisted that this person was voluntary and he was only bringing him in as a courtesy. The nurse then asked why he was handcuffed -- the officer responded that it was his PD's policy. When I spoke with the administrator, he informed me that they know this person, that he can become violent, that they were afraid he would flee as soon as the officer left. The officer felt that he shouldn't have to do an involuntary if he was volunteering. Valid points on both sides, however, I know that transporting a voluntary could be a liability, but then not transporting is another although there is no legal duty under voluntary. As you can see, I am at a fork in the road, any guidance you can provide here will be greatly appreciated.

The Baker Act prohibits the use of any restraining devices used for persons accused of crime for persons with mental illnesses, except for the protection of the patient or others, as follows:

394.459 Rights of patients.

(1) RIGHT TO INDIVIDUAL DIGNITY.—It is the policy of this state 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.** Persons who have a mental illness but who are not charged with a criminal offense shall not be detained or incarcerated in the jails of this state. A person who is receiving treatment for mental illness shall not be deprived of any constitutional rights. However, if such a person is adjudicated incapacitated, his or her rights may be limited to the same extent the rights of any incapacitated person are limited by law.

A law enforcement agency can't have a policy that is in direct conflict with the law. However, if the officer documents on his/her incident report that such restraint was used because of a belief the restraint is necessary to protect the person, it wouldn't be

contrary to law. The only problem is how to explain why an involuntary examination wasn't initiated by the officer.

Regarding issues related to law enforcement officers taking persons to receiving facilities on a voluntary basis instead of for involuntary examination, there are a number of FAQ's that address this issue posted on the DCF website that might help:

Q. We recognize that for an involuntary examination, the police officer will be the source of transportation. However, if the person agrees to be voluntary at our VA hospital, what would be the role of a police officer? Is it he/she may or shall provide transportation if I ask for assistance with a voluntary person?

If the person is on involuntary examination status, he/she has either refused the examination or is unable to determine the exam is needed, resulting in the need for law enforcement transport. However, law enforcement has no role in the transport of persons on voluntary status – they can go wherever they want and use whatever method of transport they desire. Most law enforcement agencies won't allow their officers to provide voluntary transport, but some still do if the person has no other method of getting to a facility.

Q. I drive a government van when I go out on home visits. Is it wise for me to give a voluntary person a ride in the van?

You providing transport to a person on voluntary status should be based on your facility's policies and procedures. If the policies permit you to transport and you know the person well and you have confidence that he/she won't do anything unpredictable, there may be no problem with you providing the transport. However, if any of these conditions aren't present, your agency would probably not want you to provide the transport.

Q. A patient was being transferred from a hospital to the VA on voluntary status. When he started the trip, he became insistent that he be released and his wife would come and pick him up. The MHT was able to get him to the VA where the staff there dealt with the problem. However, the question becomes, does a voluntary patient have the right to be let out if they want? Or, do they fall under the same "right to release" protocol as do inpatient clients?

The sending hospital was probably taking a great risk in sending the person on voluntary status, since the hospital is ultimately responsible under the federal EMTALA law for the patient until admitted at the destination facility. However, once the transporter accepted the man for transport for psychiatric examination, it should never allow the person to exit until a mental health professional at the destination facility has examined the person to confirm the patient was competent to refuse the care. Sometimes one just has to "pick their law suit" -- an allegation of false imprisonment compared to the risk of a wrongful death suit. An attorney may want to determine when "voluntary" transportation is appropriate. The safest alternative is to assume some type of diminished capacity exists in mental health situations until an expert determines no such incapacity exists.

Mandatory Transportation Form (3100)

Q. If a LEO fills out the 3052a, does he/she also need to complete the transportation form (3100) as well or is the 3052a sufficient? Also, if patient is received via ambulance, do ambulance personnel provide a 3046?

The Baker Act statute and rules require that the initiation form (BA-52a/b or ex parte order accompany the patient as well as the 3100 Transport form completed by the law enforcement officer.

65E-5.260 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.

The 3046 "Application for and Notice of Transfer to Another Receiving or Treatment Facility" is transmitted directly from the transferring facility to the facility to which the person is being transferred. Rule 65E-5.310, FAC

65E-5.310 Transfer of Persons Among Facilities.

(1) Recommended form CF-MH 3046, Feb. 05, "Application for and Notice of Transfer to Another Facility," which is incorporated by reference and may be obtained pursuant to Rule 65E-5.120, F.A.C., of this rule chapter may be used to request the transfer of a person to another receiving or treatment facility. This application, or its equivalent, shall be completed and filed with the facility

administrator or designee. A copy of the completed application shall be retained in the person's clinical record.

(2) The administrator of the facility or designee at which the person resides shall, without delay, submit an application for transfer to the administrator of the facility to which a person has requested transfer. Upon acceptance of the person by the facility to which the transfer is sought, the administrator of the transferring facility or his or her designee shall mail the statutorily required notices to the person, the person's attorney, guardian, guardian advocate or representative, retaining a copy in the person's clinical record. Recommended form CF-MH 3046, "Application for and Notice of Transfer to Another Facility," as referenced in subsection 65E-5.310(1), F.A.C., may be used for this documentation.

(3) If the proposed transfer of a person originates with the administrator of the facility or his or her designee or with the treating physician a notice of transfer is required. The notice shall be completed by the administrator or designee of the transferring facility, after acceptance of the person by the facility to which he or she will be transferred, with copies provided prior to the transfer to those required by law, with a copy retained in the person's clinical record. Recommended form CF-MH 3046, "Application for and Notice of Transfer to Another Facility," as referenced in subsection 65E-5.310(1), F.A.C., may be used for this purpose.

(4) All relevant documents including a copy of the person's clinical record, shall be transferred prior to or concurrent with the person to the new facility.

(5) Each facility shall develop and implement policies and procedures for transfer that provide for safety and care during transportation.

The 3046 form is only used for inter-facility transfer from one designated receiving facility to another. If the person is transferred from residence or from an ER that isn't designated as a receiving facility, the form isn't appropriate. Transfer from an ER would use recommended form #3102 that would be sent by the ER to the receiving facility in advance of the transfer.

Nearest Receiving Facility

Q. I work at an outpatient VA mental health clinic. There are times our veterans are placed on a BA52 status. We work closely with a VA hospital in another part of the state to take our patients. My question is are they able to take our patients who are on a BA52, if the patient is calm, cooperative, medically stable for transfer, transported via secure transport, and a psychiatrist accepts the patient for admission? I believe patients who are placed on BA52's do not have to be transported via the police, if other arrangements are made. My understanding has been that patients can be transported across county lines when they are on a BA52, but not be moved across county lines when they are on a BA32.

If a person is on a BA52, it means they must be transported by certified law enforcement to the nearest receiving facility. In your county, there is an approved Transportation Exception Plan in which adults are taken by law enforcement to a central receiving facility. From the CRC, the person can be transferred by any safe method to a receiving facility, within or outside the county. If the person is calm and cooperative, he/she may be able to be transported on voluntary status. In that case, the transportation can be provided by your staff directly to the VA hospital in the other county.

The appellate courts have confirmed that only a law enforcement officer (with limited exceptions) is authorized to transport a person on involuntary status. The Florida Attorney General has also determined that VA law enforcement is not authorized to initiate an involuntary examination or to provide primary transportation to persons on involuntary status. Patients have the right to request a transfer from one receiving facility to another, even across county lines. It is irrelevant as to whether the person is on a BA 52 or BA 32 status. The only problem is when a person is awaiting an involuntary placement hearing, the logistics of having one of the initiating psychiatrists available to testify can be difficult to overcome until after the hearing is completed.

Q. Is it true that if law enforcement is transporting a person for involuntary examination under the Baker Act, they must transport the person to the nearest receiving facility, regardless of whether the facility is public or private or if the client has insurance?

Yes, law enforcement is required to transport the person to the nearest receiving facility, regardless of whether it is public or private and regardless of whether the person has any insurance or not. The only exceptions are when a transportation exception plan has been approved by the Board of County Administrators and DCF or when the officer believes the person has an emergency medical condition as defined in chapter 395, F.S.

Q. Does a law enforcement officer have to take the person to the nearest Baker Act receiving facility or can the officer take them to another facility where the person, caregiver, or mental health professional has asked me to take them?

The Baker Act requires you to take all persons to the nearest receiving facility, unless the person is suffering from an emergency medical condition, in which case they should be taken to the nearest emergency room. The person can be later transferred to another facility if requested by the person or their guardian. If your Board of County Commissioners and the Secretary of the Department of Children & Families have approved a Transportation Exception Plan (See next set of FAQ's), you may be permitted to by-pass the nearest receiving facility for purposes stated in the Plan.

Q. What if a law enforcement officer is transporting a person under an ex parte order specifying a receiving facility (which is not the nearest receiving facility) and in route, the person becomes violent. Can the officer at his/her discretion transport person to the nearest receiving facility instead of the facility specified in the court order?

If the circuit court uses the model form developed by the state, the form doesn't have space to include the name of a receiving facility because the law requires the person to be taken to the nearest receiving facility. This was intentional so that law enforcement officers would never be in the position of having to choose whether to follow the law or follow the terms of a court order. If the court has modified the form to specify a particular receiving facility, the court should be encouraged to delete such specification.

An officer should always follow his/her department's policies as well as any order of a commanding officer or legal counsel, that would generally instruct the officer to take a

violent person directly to the nearest receiving facility for the safety of the officer and others. The person could then be appropriately transferred from the nearest facility to the facility specified in the court order when stabilized for transfer.

Q. Judges occasionally order law enforcement officers to transport people out-of-county to receiving facilities. Is this in compliance with the law?

Not if the out-of-county facility isn't the nearest facility. The Baker Act requires law enforcement to deliver a person under an ex parte order to the nearest receiving facility, as follows:

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.

The CF-MH 3001 form (Ex Parte Order for Involuntary examination) intentionally doesn't leave space on the form to specify the name of a receiving facility so there wouldn't be conflict between the law and a court order. However, some courts modified the model forms to include the name of a facility. When this happens, law enforcement officers are forced to decide whether to comply with the law or a judge's order – they generally follow the order. Your Sheriff's General Counsel may want to meet with any judges who are entering such orders. Compliance with the law would require the person be taken to the nearest receiving facility and then be transferred under the transfer provisions of the law, as follows:

394.4685 Transfer of patients among facilities.--

(1) Transfer Between Public Facilities.--

(a) A patient who has been admitted to a public receiving facility, or the family member, guardian, or guardian advocate of such patient, may request the transfer of the patient to another public receiving facility. A patient who has been admitted to a public treatment facility, or the family member, guardian, or guardian advocate of such patient, may request the transfer of the patient to another public treatment facility. Depending on the medical treatment or mental health treatment needs of the patient and the availability of appropriate facility resources, the patient may be transferred at the discretion of the department. If

the department approves the transfer of an involuntary patient, notice according to the provisions of s. 394.4599 shall be given prior to the transfer by the transferring facility. The department shall respond to the request for transfer within 2 working days after receipt of the request by the facility administrator.

(b) When required by the medical treatment or mental health treatment needs of the patient or the efficient utilization of a public receiving or public treatment facility, a patient may be transferred from one receiving facility to another, or one treatment facility to another, at the department's discretion, or, with the express and informed consent of the patient or the patient's guardian or guardian advocate, to a facility in another state. Notice according to the provisions of s. 394.4599 shall be given prior to the transfer by the transferring facility. If prior notice is not possible, notice of the transfer shall be provided as soon as practicable after the transfer.

(2) Transfer From Public To Private Facilities.--A patient who has been admitted to a public receiving or public treatment facility and has requested, either personally or through his or her guardian or guardian advocate, and is able to pay for treatment in a private facility shall be transferred at the patient's expense to a private facility upon acceptance of the patient by the private facility.

(3) Transfer From Private To Public Facilities.--

(a) A patient or the patient's guardian or guardian advocate may request the transfer of the patient from a private to a public facility, and the patient may be so transferred upon acceptance of the patient by the public facility.

(b) A private facility may request the transfer of a patient from the facility to a public facility, and the patient may be so transferred upon acceptance of the patient by the public facility. The cost of such transfer shall be the responsibility of the transferring facility.

(c) A public facility must respond to a request for the transfer of a patient within 2 working days after receipt of the request.

(4) Transfer Between Private Facilities.--A patient in a private facility or the patient's guardian or guardian advocate may request the transfer of the patient to another private facility at any time, and the patient shall be transferred upon acceptance of the patient by the facility to which transfer is sought.

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".

Q. Is the Sheriff's office allowed to change a transportation form for a Baker Act that is initiated by a hospital ER? We have already had a few situations in which the ER staff initiated Baker Acts to be brought to our facility that were re-routed by the Sheriff's office to another facility. We have heard that law enforcement has been told to only bring Baker Acts to our facility when the other facility is full, but we are the closest receiving facility for all three hospitals in our county. Is law enforcement obligated to take Baker Act patients to the closest receiving facility?

The law enforcement officer is the entity that completes and signs the transportation form (3100), not the hospital ER. It isn't clear why they would be "changing" a form that they completed in the first place. It is also unclear why law enforcement is doing the transport from an ER to your hospital or any other hospital. Once a person with an emergency psychiatric condition or any other emergency medical condition is at an ER and requires transfer to a specialty hospital, it is the hospital's obligation under the federal EMTALA law to provide for a safe and appropriate method of transport. AHCA staff has stated that law enforcement transport under such circumstances could be considered an EMTALA violation for the sending hospital. While law enforcement is responsible for primary transport of a person on involuntary examination to the nearest receiving facility (or an ER when the officer believes an emergency medical condition exists), they have no further obligation for secondary transfer. By eliminating law enforcement from this secondary transfer role, the problem would be solved. The ER could send the person to the most appropriate receiving facility.

Law enforcement shouldn't be called in to provide this secondary transfer from ER's to receiving facilities. If this concerned primary transportation, a law enforcement officer is obligated to deliver a person on involuntary examination status to the nearest receiving facility unless a Transportation Exception Plan has been approved by the Board of County Commissioners and the DCF Secretary. There is no such Transportation Exception Plan approved in your area of the state.

Q. If there is a receiving facility in another county closer than the three receiving facilities in my county, under the language of the Baker Act, could the patient, theoretically, be transported to the closer out-of-county facility?

Yes. The Baker Act requires that the person be taken to the **nearest** receiving facility; making no reference to remaining in one's jurisdiction. This position was verbally clarified by the DCF General Counsel's office some years ago. However, if a transportation exception plan is approved by your Board of County Commissioners and the Secretary of the Department of Children and Families for a given county, the plan may result in jurisdictional boundaries.

Q. I need clarification about transporting involuntary (52b) patients from our VA outpatient setting to a receiving facility. According to how I read the statutes (394.462) it seems that all patients who are on involuntary status for examination must be transported by law enforcement. Does this mean that law enforcement must be called for every 52b (assuming the patient is non-violent & medically stable)? What if either our facility, the patient, or patient's insurance will pay for the cost of secure ambulance, does law enforcement still have to be called and escort? I know that large hospital systems with multiple ER locations will do 52b on patients in one location and then transport by ambulance to another location within their system which is a receiving facility. Do they have to apply for an exception? 4. Could our outpatient clinic contract with a secure ambulance company to transport non-violent, medically stable patients on 52b to a local receiving facility? And, would this mean that we would not have to involve law enforcement?

You have read the transport provisions of the Baker Act correctly. A person on involuntary status is one who is refusing the examination or is unable to determine the examination is needed (see criteria). As a result, transport by anyone not authorized by law to provide such transport could be subject to allegations of kidnapping, false imprisonment or abduction – perhaps battery as well.

All persons transported for involuntary examination must be transported by law enforcement unless one of the exceptions cited in the law occur. These exceptions involve a law enforcement officer identifying a safety issue or an emergency medical condition or when the county has contracted with a medical transport firm at the sole cost of the county for this transport.

Your VA law enforcement officers do not meet the definition of “law enforcement officers” in the Baker Act and the Florida Attorney General has issued an opinion that VA officers can't initiate an involuntary examination or provide primary transportation for persons under involuntary examination. I've included the summaries of some appellate cases and AG opinions on this issue below:

Administrator, Retreat Hospital v. Honorable W. Clayton Johnson of the Seventeenth Judicial Circuit In and For Broward County, FL, Alan Schreiber, Broward County Public Defender, and Fredrick A. Goldstein, Special Assistant Public Defender, Respondents, 660 So. 2d 333 (Fla. 4th DCA 1995). In this case, four separate individuals were transported by private individuals to a receiving facility for involuntary placement under the Baker Act. Circuit Court Judge Johnson found that the four individuals being transported by private individuals to a receiving facility did not comport with the requirements of section, 394.463(2), Fla. Stat. which requires that only law enforcement officer may transport a Baker Act patient to a receiving facility. Judge Johnson ordered the Broward County Sheriff to devise a transportation plan and set a hearing ninety (90) days after the order to discuss the Sheriff's transportation plan. Judge Johnson also entered an administrative order regarding Baker Act transports in Broward County, FL and regarding the necessity of having pre-hospitalization orders. The Fourth District Court of Appeals held that Circuit Court Judge Johnson's administrative order went beyond the petitions filed in the case and beyond the Judge's jurisdiction by requiring a trial court order before a patient is

hospitalized. The Fourth District Court of Appeals affirmed that only a law enforcement officer may transport a Baker Act patient to a receiving facility.

AGO 2001-73 Regarding the responsibility for Transportation of mentally ill person to Treatment Facility. If a person is the subject of an ex parte order or certificate requiring involuntary examination and treatment under Florida's Baker Act, the single law enforcement agency designated by the county for this purpose is responsible for transporting that person to the nearest receiving facility. If a person is taken into custody by a law enforcement officer for minor criminal behavior or noncriminal behavior that meets the statutory guidelines for involuntary examination under the act, the law enforcement officer taking the person into custody is responsible for transporting the person to the nearest treatment facility. If a law enforcement officer arrests a person for commission of a felony and believes that the person meets the guidelines for involuntary examination or placement, the person arrest shall be processed through the criminal justice system as any other criminal suspect and is entitled to examination and treatment in the facility where he or she is held.

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.

AGO 99-68 Regarding Who May Take a Person who Appears to Meet the Criteria for Involuntary Examination into Custody, State Law Enforcement, Federal Law Enforcement, or Both 1999 WL 1020723 (Fla. A.G.) Attorney General Robert A. Butterworth advised a Veterans Affairs Police Officer that federal law enforcement officers do not constitute law enforcement officers for purposes of Florida's Baker Act, and possess no authority under the Baker Act to initiate the involuntary examination of a person or to transport such person to a receiving facility. The Baker Act provisions imposing certain transportation responsibilities on law enforcement officers are not applicable to federal veterans affairs police officers, unless under the Florida Mutual Aid Act, state and local law enforcement agencies in Florida enter into a mutual aid agreement with a law enforcement agency of the United States.

Regarding your second question, see above. Only the law officer can consign the responsibility of transport to alternate transportation.

394.462(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.

(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.

Regarding your third question, a “transfer” from one hospital to another is considered a secondary transfer, not primary transportation. Secondary transfers of a person with a psychiatric emergency from a hospital ER to another facility are governed by the federal EMTALA law.

Regarding your fourth question, since your VA outpatient clinic isn’t licensed as a hospital, it isn’t subject to the EMTALA law – it is subject to the state’s Baker Act law for primary transport by law enforcement. I don’t know how you could avoid this statutory requirement unless you obtain a Transportation Exception Plan as provided in (3)(b)3 below that governs “an efficient and humane method of transporting patients to receiving facilities”:

394.462 Transportation to a Receiving Facility

(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.

There currently is a Transportation Exception Plan in place for your County in which all persons under involuntary status are taken by law enforcement to a central receiving facility instead of the nearest receiving facility. There is no reason why a second exception plan couldn't be approved for the purpose you suggest. The Circuit DCF office should be notified of your interest.

Q. When transporting a juvenile for an involuntary examination we, law enforcement, have to transport to the nearest receiving facility unless there is a Transportation Exception Plan. I would rather transport a juvenile to a receiving facility that is properly equipped to handle the juvenile, rather than transport a juvenile, who is in crisis, to an adult center and have them wait there for further transportation. As it stands the closest facility (approximately 10 minutes away) does not have the facilities for juveniles. A different facility approximately 15 - 20 minutes away and is a juvenile receiving facility. Who defines the Transportation Exception Plan and is it something that a local agency can write?

The good news is that a Transportation Exception Plan for law enforcement to take minors to the nearest facility licensed with pediatric psychiatry beds has been approved by your Board of County Commissioners and the DCF Secretary.

Q. Customarily the University police have taken persons under the Baker Act to the University ER even if there was not clearly a medical issue. We request that persons be taken to the nearest RF rather than to the ER unless they clearly needed immediate medical care. The nearest receiving facility is the community CSU. The Chief is very adamant that officers not transport off campus which is why they have used the ER. In turns out that the SO is willing to transport off campus. Since the ER is not a receiving facility, LEO needs to transport to the nearest receiving facility. It is not clear to me in the statute that they cannot transport to the ER, although it is only a short term solution, since they are making the medical judgment. Could you clarify this ER issue with me? Another question is the issue of LEO transport. It doesn't seem to be our call on which LEO agency transports to the RF. Please advise.

DCF considers the entire premises at the address on the designation letter to be the receiving facility. This would include the ER, ICU, and all other parts of the hospital.

Since 1984, the Board of County Commissioners has been the entity with the responsibility of determining which law enforcement agency does which part of the primary transport.

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: *(exclusions listed)*

(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.

The general method chosen around the state is for the Sheriff's Office to transport all persons on ex parte orders as well as those initiated by mental health professionals where the person is located in unincorporated areas of the county or in cities that contract with the Sheriff for law enforcement duties. Otherwise, the municipal police departments transport on Professional Certificates in their jurisdictions.

The law (the transport section in 394.462 and the initiation section in 394.463) requires the person be taken to the nearest receiving facility unless a Transportation Exception Plan has been approved by the BCC and the DCF Secretary. One other exception is when the officer believes the person to have an emergency medical condition.

Avoidance of unnecessary use of ER's for persons who don't have emergency medical conditions is critical. Inappropriate use of ER's results in a delay in getting people with acute psychiatric conditions their psychiatric examination, can delay their release, and places them in an unsuitable setting which lacks security. This is no favor.

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, s.394.462(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

Transportation Exception Plan

Q. Regarding the "Transportation Waiver" that a hospital may apply for, if the hospital gets it approved, law enforcement "may" elect to bypass the nearest BA receiving facility when transporting a BA and take the person to the next nearest facility if the nearest BA facility does not treat that particular population. We have a receiving facility close to us that admits only persons over 55. They have a "Transportation Waiver" approved. Shouldn't this nearest facility take the patient even if under 55 and they should be the facility pursuing further transfer?

A Transportation Exception Plan as provided in the Baker Act is not a product of a single hospital. It is a community plan, requiring input from law enforcement and other stakeholders, that must be approved by the Board of County Commissioners and the Secretary of DCF. It can only be developed to meet any one of three specific purposes allowed in the law. One of those purposes is "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".

Your statement about where a person must be sent after medical clearance at an ER isn't quite correct. This is the only circumstance in which the term "nearest" receiving facility is not used. The law specifies "a" designated receiving facility in which appropriate medical treatment is available. This means that the person might be transferred to a more remote facility that has the capability and capacity to meet the person's needs. Even chapter 395.1041(3) governing hospital licensure and emergency services that requires transfer to the geographically closest hospital that has the capability and capacity to meet the person's needs unless another prior arrangement is in place.

Since the whole basis of the federal EMTALA law is that transfers of persons with emergency medical conditions (including psychiatric and substance abuse emergencies) are inherently dangerous, they should be minimized whenever possible. A senior attorney with AHCA has clearly written that once a hospital has met its requirements under EMTALA, it should send the patient to the receiving facility that can best meet the patient's needs even if it isn't the closest. This avoids subsequent transfers.

Q. When a Transportation Exception Plan is in place and a private transport service is in use, does a receiving facility still has the responsibility to accept the patient? I only see it explicitly written that they must accept when transported by law enforcement. Do you know of any receiving facilities ever balking at accepting Baker Act individuals transported by a private service? It seems to me they still must accept the person.

The involuntary examination provisions of the law place an absolute duty on law enforcement, except as provided below, to provide transport to the nearest receiving facility.

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. The ex parte order for involuntary examination must be based on sworn testimony, written or oral... 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.

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...

The Baker Act does permit the County to fund an alternate transport as follows:

394.462(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.
- (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.

While it might take attorneys to argue this out, the duty of law enforcement, when legally consigned to medical transporters, would result in a receiving facility being required to accept the person as though directly presented by a law enforcement officer.

Q. Today I discovered that our local police department has a policy that every Baker Act transport must be taken to the local CSU. I had to Baker Act a High School student and both the school resource officer and the officer who did the transport were insistent that this is what they always do and that it is the correct procedure. One of them did read this directly to me from the police department policy. Do you have any suggestions on how this can best be handled?

The Baker Act requires persons be taken by law enforcement to the nearest receiving facility for involuntary examination. However, the law permits communities to develop exceptions to what would otherwise be required by law through a "Transportation Exception Plan" approved by the Board of County Commissioners and the DCF Secretary.

Your county has two such Plans approved. One of these is for minors who may be taken to the nearest receiving facility which serves minors. This means either the CSU or one general hospital that has a pediatric psychiatry unit, whichever is nearest to where the child is picked up. They do not all have to go to the CSU.

There is a second approved plan for adults age 18-64 that requires all go to the CSU, unless experiencing a medical emergency. The Police may have confused the two plans.

Criminal Charges

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?

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.]

Q. Recently we have had two cases where the jail got court orders to have clients charged with felonies transferred from jail to the CSU to return to the jail following treatment. It has been our procedure to only accept clients from the jail who are released on their own recognizance (ROR). Generally these clients are at the end of their time in jail and meet the criteria for involuntary evaluation. They are placed under the 52 in jail and transported to the receiving facility. This we believe is an appropriate use of the receiving facility. We have become concerned about the transport of inmates who have been in jail for some time then 52'd to return to the jail. First, while we are locked, the facilities are not secure and can't guarantee that the inmate does not elope. Second, if the nearest receiving facility doesn't have capacity, the inmate could potentially be sent to a different county, which may be against the desire and explicit order of the judge. We have made the provision in the past that in exceptional cases, jail inmates may be transferred to a receiving facility with the agreement of the facility administrator and treating psychiatrist, in cases that are psychiatrically very fragile. The jail then sends guards if requested and pays for the inpatient care. (This has occurred 2-3 times in the past 5 years). The Judges in this circuit have been in agreement with the practice of only ROR clients being released from jail to the receiving facility. We are in the process of re-circulating this memo to the jails and public defenders office. I have re-read the transportation statute as it relates to individuals with previous criminal charges. It appears to assume that misdemeanor and felony clients are coming from the community not from the jails, however is somewhat vague.

If you have a court order to accept the inmates, you need to do so or potentially risk contempt. You should have your organization's attorney discuss the issue with the judge. The judge shouldn't be sending anyone to you as a Baker Act receiving facility except as provided under terms of the Baker Act:

394.462(1), FS 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.

While the transportation section above does seem to imply that persons with misdemeanor charges are first brought to the receiving facility prior to booking, the

section governing felony charges suggests that the person be brought to jail first for booking, followed by transfer to the receiving facility for examination and treatment.

Capacity isn't an issue under the Baker Act when delivered by law enforcement for involuntary examination. You've handled capability by having detention deputies accompany the inmate to your facility. Felony charges alone are not enough to constitute a barrier to admission – it is the felony charge tied to your inability to provide adequate security. As a locked facility, you are presumed to be a “secure” facility. If an involuntary examination is initiated, the inmate must be sent to the nearest public receiving facility via law enforcement and you would be unable to decline acceptance of the person due to lack of capacity. Rather than transfer a person specifically court ordered to your facility because of capacity issues, you might want to consider the transfer of another patient if this is needed.

There isn't any reason why a person who is currently an inmate of the jail can't undergo a civil Baker Act examination at a receiving facility and return to the jail after the exam documents that he/she doesn't meet the criteria for involuntary inpatient placement. While subsection (i) above deals with recovery of costs, most counties consider the 25% matching provided for Baker Act funding to be sufficient to purchase occasional inpatient care for inmates.

Delegation of Transportation to Medical Transport

Q. If a psychiatrist from an ALF completed a PC for a resident and then the ALF called an ambulance to take the resident to the nearest receiving facility (CSU), is the receiving facility obligated by law to accept the person? I have read the transportation area of the BA law and some of the questions in appendix G and I still need clarification. My understanding is that the ALF should have contacted law enforcement and then if they believed the person could be transported by ambulance, they should have completed the appropriate forms for the ambulance to present at the receiving facility and then the receiving facility is obligated to accept. Is this correct?

This answer isn't specifically addressed in the Baker Act law or rules. The Baker Act requires law enforcement to provide the transport unless one of the delineated exceptions exists. One of those exceptions is, after the officer and transporter agree the continued presence of the officer is not needed, the contracted transporter fully funded by the County can carry out the officer's duty. As a result of the above, it can only be concluded that the custody of the individual is being consigned by law enforcement to the medical transporter -- a transfer of custody -- but still using the authority of law enforcement to take the person into custody for delivery to a receiving facility. As a result, the nearest receiving facility (or the one designated in the approved TEP) must accept the individual who is on involuntary status.

394.463(2) INVOLUNTARY EXAMINATION.—

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

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.**

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.**

(j)The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination.

The 3100 is the form designated for use by law enforcement whether the officer provides the transport directly (page one only) or through contract transport (also page 2). The top of page 2 refers to the “contractual” agreement between the officer and the transporter to carry out the officer’s duty. This form is a mandatory one, required by the Baker Act. If the receiving facility is a licensed hospital, it would have to accept the individual on voluntary or involuntary status for screening. However, a CSU would only have to accept an individual on involuntary status.

Q. I understood that no VA hospital is designated as a Baker Act receiving facility. Also, If someone requires ambulance transportation under a Baker Act, does law enforcement need to accompany also?

DCF isn’t designating VA hospitals as receiving facilities any more as they believe another section of the law provides for them, as follows:

394.4672 Procedure for placement of veteran with federal agency.

(1)Whenever it is determined by the court that a person meets the criteria for involuntary placement and it appears that such person is eligible for care or treatment by the United States Department of Veterans Affairs or other agency of the United States Government, the court, upon receipt of a certificate from the United States Department of Veterans Affairs or such other agency showing that facilities are available and that the person is eligible for care or treatment therein,

may place that person with the United States Department of Veterans Affairs or other federal agency. The person whose placement is sought shall be personally served with notice of the pending placement proceeding in the manner as provided in this part, and nothing in this section shall affect his or her right to appear and be heard in the proceeding. Upon placement, the person shall be subject to the rules and regulations of the United States Department of Veterans Affairs or other federal agency.

(2)The judgment or order of placement by a court of competent jurisdiction of another state or of the District of Columbia, placing a person with the United States Department of Veterans Affairs or other federal agency for care or treatment, shall have the same force and effect in this state as in the jurisdiction of the court entering the judgment or making the order; and the courts of the placing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so placed. Consent is hereby given to the application of the law of the placing state or district with respect to the authority of the chief officer of any facility of the United States Department of Veterans Affairs or other federal agency operated in this state to retain custody or to transfer, parole, or discharge the person.

(3)Upon receipt of a certificate of the United States Department of Veterans Affairs or such other federal agency that facilities are available for the care or treatment of mentally ill persons and that the person is eligible for care or treatment, the administrator of the receiving or treatment facility may cause the transfer of that person to the United States Department of Veterans Affairs or other federal agency. Upon effecting such transfer, the committing court shall be notified by the transferring agency. No person shall be transferred to the United States Department of Veterans Affairs or other federal agency if he or she is confined pursuant to the conviction of any felony or misdemeanor or if he or she has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court placing such person enters an order for the transfer after appropriate motion and hearing and without objection by the United States Department of Veterans Affairs.

(4)Any person transferred as provided in this section shall be deemed to be placed with the United States Department of Veterans Affairs or other federal agency pursuant to the original placement.

With regard to the definitions of physician, psychiatrist, and clinical psychologist, these refer to VA hospitals that “qualify” to be receiving or treatment facility – they don’t actually need to be designated. Regarding primary transport of persons under the involuntary examination provisions of the Baker Act, such transportation must be provided by law enforcement to a receiving facility unless a Transportation Exception Plan has been approved or another exception exists. In your county, law enforcement must transport adults on involuntary status to the Central Receiving Facility. Once at a receiving facility, the person can be transferred to another more appropriate facility.

Q. I’m a Sergeant with the Sheriff’s Office. We have a problem with transporting persons with special needs that are considered "non ambulatory" meaning that the rear of a patrol car is not an acceptable way to transport the person who either has a cast, is wheel chair bound, or in some other way cannot or should not be put into the rear of a police car. The handbook says that the county commission is responsible for the transport of these persons in a manner that best suits the

patient's needs. Fire Rescue refuses to transport Baker Act patients unless there is and "acute medical need" and they will only transport to a hospital and not to any other receiving facility. We have used a private ambulance company who was nice enough to provide courtesy transports in the rare cases where this becomes an issue, but obviously we cannot continue to use a for profit company for this issue. We are considering using a transport van for these transports, but I thought I read somewhere that a transport van could not be used. Am I remembering correctly?

The Board of County Commissioners is only responsible for designating which law enforcement agency has the duty to provide transportation of a person on involuntary examination status to the nearest "receiving" facility. The county is also responsible to provide transport to "treatment" facilities – state hospitals.

The Baker Act clearly authorizes law enforcement to involve EMS for the safety of the officer or the person in custody, not just when the officer believes the person to have an emergency medical condition, as follows:

394.462 Transportation.--

(1) TRANSPORTATION TO A RECEIVING FACILITY.--

(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.

(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.

It is the law enforcement officer's decision as to whether the person can be safely transported in the officer's vehicle or requires medical transport. You should have your agency's attorney speak with the county attorney's office about the refusal by Fire Rescue to transport someone without an "acute medical need". A psychiatric emergency is an emergency medical condition as defined by the federal CMS for purposes of the federal EMTALA law (Emergency Medical Treatment and Active Labor Act)

There is no prohibition against using a law enforcement transport van to transport a person to a receiving facility. There is a provision in the Baker Act governing the rights of persons, as follows:

394.459 Rights of patients.--

(1) RIGHT TO INDIVIDUAL DIGNITY.--It is the policy of this state 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.** Persons who have a mental illness but who are not charged with a criminal offense shall not be detained or incarcerated in the jails of this state. A person who is receiving treatment for mental illness shall not be deprived of any constitutional rights. However, if such a person is adjudicated

incapacitated, his or her rights may be limited to the same extent the rights of any incapacitated person are limited by law.

The section above references "vehicles" used to transport persons under the Baker Act. However, law enforcement vehicles are routinely used throughout the state for transporting persons under the Baker Act for the protection of persons and no distinction is made between a car and a van.

Q. Our police department has received a couple of calls lately from a partial hospitalization program in the area that is issuing Professional Certificates with an ambulance on standby to transport the consumers with restraints. The PD is called simply to be on the scene in case they run into any problems. We were under the assumption that Law Enforcement Officer is the only entity that can transport, unless they deem it is appropriate for the ambulance to transport and they give the ambulance the forms, etc... Is this correct?

You are correct. Only law enforcement is authorized to provide transport of a person on involuntary status to a receiving facility. The officer can call EMS in for the safety of the officer or person. In such cases, medical transporters can take a person designated by law enforcement to an ER even if it isn't a designated receiving facility, subject to transfer once the medical emergency is stabilized.

The law allows a county to contract with medical transport firm (at the sole cost of the county) to transport, but only after a law enforcement officer had completed the 3100 form and the person was taken to the nearest receiving facility unless a Transportation Exception Plan designated a different facility.

A Mobile Crisis Program funded by DCF is authorized by law to transport, but isn't required to do so. No such programs to my knowledge provide the transport, but rely on law enforcement for this function.

The only other alternative is if the Transportation Exception Plan approved by the BCC and DCF incorporates a "specialized transportation system? Providing an efficient and humane method of transporting patients to receiving facilities.

The Partial Hospitalization Program should be advised ASAP that its actions violate the law.

Q. Can any exceptions in transportation be made?

YES. Besides the discretion of the law enforcement officer to decide when to delegate this responsibility to EMS for the safety of the patient, the officer, or others, the community can request a Transportation Exception Plan. This plan, if approved by the Board of County Commissioners and the Secretary of the Department of Children and Families can result in a number of exceptions. These might include transporting all persons to a take all persons to a single receiving facility for examination, provide specialized receiving facilities to serve persons with special needs, or provide for a specialized transportation system.

Q. Is a law enforcement officer required to sign the transportation form when transportation is delegated to a transportation company? Does this form as well as the involuntary examination initiation form have to be sent to the Baker Act Reporting Center by the receiving facility?

Law enforcement is expected to always complete the front side of the transportation form, regardless of how the involuntary examination was initiated. In addition, they should complete and sign the back of the form when delegating the transport to medical personnel. Then the transport form as well as the initiation form (BA 52a, BA 52b, or ex parte order) must be sent with the person to the receiving facility. The law only requires the initiation form to be forwarded to the BA Reporting Center by the receiving facility, not the transport form. However, both forms must be retained in the person's medical record at the receiving facility.

Q. Under what conditions can a law enforcement officer delegate the responsibility to someone else to do the transport? How is this documented?

The Baker Act states that the designated law enforcement agency may decline to transport the person to a receiving facility only if:

- a. The jurisdiction designated by the county has contracted 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 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. When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to receiving facilities, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary for the safety of the subject or others.
- b. 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. If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, F.S. the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility. Nothing in this section shall be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with the provisions of s. 401.445.
- c. When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463, F.S. and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law

enforcement agency or other transportation arrangement best suited to the needs of the person.

- d. When a transportation exception plan has been approved by the Board of County Commissioners and the Secretary of the Department of Children and Family Services, among others. [s. 394.462(3), F.S.]
- e. In any case where law enforcement delegates transport to a medical or contract transport provider, the officer must still complete the Transportation to a Receiving Facility form (3100).

Q. A Medicaid-eligible constituent concern has been raised regarding financial liability for Baker Act transports when examination is initiated by law enforcement. The complainant has multiple sclerosis and was subject to involuntary examination in October 2008. Examination was initiated by Police after the report of a concerned friend of suspected suicidal ideation. Because he uses a wheelchair due to multiple sclerosis, the constituent was not transported in police car but instead by ambulance to a Hospital receiving facility. EMS is billing the constituent \$526, claiming that he and not the police is liable. Who is liable for this cost?

While any final determination of responsibility for payment remains with AHCA/Medicaid Program, it appears that Medicaid should pay for the medically necessary transport for this man since it is his medical issue that prevents a law enforcement officer from being able to provide safe primary transport.

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.
3. The jurisdiction designated by the county may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:
 - a. From an insurance company, health care corporation, or other source, if the person receiving the transportation is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses.
 - b. From the person receiving the transportation.

- c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.
- (b) Any company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than \$100,000 in liability insurance with respect to the transportation of patients.
- (c) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of the patients.
- (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.
- (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.

The constituent is correct that he shouldn't be expected to pay for this transport, in the absence of law enforcement transport. If Medicaid doesn't pay for this transport (as it would for any other medically necessary transport to a Medicaid participating provider), the man should contact the billing office for EMS and document that he is indigent. Since he is on Medicaid, that should be sufficient documentation. The Board of County Commissioners provides funding for EMS in just these circumstances.

In any case, once one of the exceptions to law enforcement transport is legally invoked, law enforcement is no longer responsible for the cost of that transport.

Q. When a law enforcement officer arrives at a free-standing psychiatric hospital with a person on involuntary examination status that hospital staff determines to need medical attention (i.e. scrape and bump on head), whose responsibility is it to transport the individual to an ER?

A hospital or other designated receiving facility must "accept" any person brought by law enforcement for involuntary examination. This doesn't necessarily mean "admit" if the facility determines that the person has an "acute physical condition" beyond its ability to treat.

While a law enforcement officer should always take a person he/she believes has an emergency medical condition to the nearest ER instead of a non-medical psychiatric facility, once the person is delivered to the nearest receiving facility, the law enforcement officer's job is over. If the person has an acute physical condition, the receiving facility should then call 9-1-1 for emergency medical transport to transfer the person to the nearest ER for the emergency medical condition to be addressed. In no case should a law enforcement officer take on the liability or place a patient at risk who has been identified as having an "acute physical condition" back into his/her cruiser for medical transport – this is the duty of EMS. With regard to scrapes, bruises, bumps, intoxication, etc., a free-standing psychiatric facility (CSU or psychiatric hospital) should have the capability of managing minor medical issues as addressed in CSU Admission requirements in 65E-5.107(2), F.A.C.

Q. Since law enforcement is statutorily required to transport persons on involuntary status to the nearest Baker Act facility unless an emergency medical condition may exist, where should a person with significant non-acute physical impairments or physical assistance needs such as, paralysis, self care deficits or require wound care for a chronic condition be taken?

The Baker Act requires law enforcement officers to transport a person for whom an involuntary examination has been initiated to the nearest receiving facility unless:

1. For the safety of the officer or person in custody, emergency medical personnel are needed. EMS will generally only deliver persons to hospitals, not to any less acute medical setting.
2. The officer believes the person has an emergency medical condition, in which case the person can be first transported to a hospital for examination and treatment of the condition, regardless of whether the hospital is a designated receiving facility. In such a case, the person can then be transferred after stabilization of his/her condition to a receiving facility that manage any medical condition that may remain.
3. A transportation exception plan has been approved by your Board of County Commissioners and DCF permitting an exception to the legal requirements for transportation to the nearest receiving facility that can manage any medical condition.

Receiving facilities cannot legally refuse to accept persons brought by law enforcement for involuntary examination for any reason. Once the officer brings a person to any receiving facility, that facility must accept the person and then can send the person to an acute care hospital for treatment of an acute medical condition. The facility should never expect an officer to put the person back into his/her cruiser once a person has been found to have a medical condition too acute for a receiving facility to manage. In such a case, the receiving facility must "accept" the person and call 911 or another approved medical service for an ambulance to transport the person to a hospital.

The receiving facility should be able to handle certain conditions. Paralysis, for example, may require a person to be in a wheelchair. The federal ADA would require that a facility make reasonable accommodations to manage the person's care. Every receiving facility is staffed with RN's and should be able to assess persons and provide for most sub-acute medical needs. Each facility has medical staff and the 65E-12 rules require some level of medical care to be provided to persons at the facility -- persons are allowed by rule to be transferred out for "acute medical treatment" only and be "medically cleared" before the person is accepted back to the receiving facility.

Responsibility of Receiving Facilities and Hospitals

Q. What is the law enforcement officer's responsibility/procedure when a person is violent and the receiving facility refuses to accept the person, demanding the officer take the person to a different receiving facility?

No licensed hospital under the federal EMTALA law can refuse to accept a person brought for voluntary or involuntary examination; nor can any designated receiving facility (hospital based or CSU) refuse to accept any person on involuntary status brought by law enforcement under involuntary status. Non-compliance by a hospital should be immediately reported to the Agency for Health Care Administration as a violation of the federal EMTALA law. Non-compliance by a non-hospital CSU should be immediately reported to the Department of Children and Families. The only exception to the above is when a person with current felony charges is brought to a non-hospital receiving facility after booking and the facility, based on its assessment, determines that it is unable to provide adequate security. In such circumstances, a public receiving facility is responsible for providing the examination and treatment of the person where he/she is held. If a hospital or other receiving facility determines it cannot manage the person's condition, the facility is responsible for arranging for the safe and appropriate transfer of the person after the facility meets its due diligence under federal and state laws. Absent current felony charges, a Baker Act receiving facility is licensed and designated to care for persons who are "dangerous to self or others" due to mental illness. If it cannot meet this basic condition of licensure and designation, a referral to DCF and AHCA should be made to determine if the licensure or designation is appropriate.

Q. If a law enforcement officer initiates an involuntary examination for a person who has attempted suicide, is the officer obliged to remain with the patient or at the hospital during the medical stabilization period?

No, the deputy has no responsibility to remain with the patient during examination and medical treatment, unless there are criminal charges. The hospital has the responsibility under the federal EMTALA law to conduct the medical screening and if an emergency medical condition exists (including psychiatric or substance abuse emergencies), to stabilize the person prior to release or transfer. The federal EMTALA law places the responsibility on the sending hospital to arrange safe and appropriate transportation of the patient to a destination facility.

If the patient has pending criminal charges, the law enforcement agency may have policies requiring the officer to remain with the patient. In any case, the officer should follow internal policy governing this issue.

Q. Is the police officer responsible for staying to help facilitate the transfer to a BA facility?

No. If a patient is actively violent, law enforcement officers don't hesitate to remain to assist healthcare professionals. However, short of imminent danger, once a responsible handoff of the patient and the paperwork from officer to hospital takes place, the officer's responsibility is over.

Q. We are being told that unless law enforcement transports a resident to the CSU that the CSU will refuse to accept the person even though they have been Baker Acted. Often this poses a barrier in that we have a person who needs to go to the CSU because they do not have benefits fully restored and unless law

enforcement transports, the admission will be refused. We would like to make sure we get the information straight. Can we resolve this issue by doing a Transportation Exception Plan?

Actually, only law enforcement is legally authorized to transport a person for involuntary examination under the Baker Act statute. This has been confirmed through appellate cases. The law states:

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...**

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...

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 following appellate case affirmed that only a law enforcement officer may transport a "Baker Act" patient to a receiving facility.

Administrator, Retreat Hospital v. Honorable W. Clayton Johnson of the Seventeenth Judicial Circuit In and For Broward County, FL, Alan Schreiber, Broward County Public Defender, and Fredrick A. Goldstein, Special Assistant Public Defender, Respondents, 660 So. 2d 333 (Fla. 4th DCA 1995). In this case, four separate individuals were transported by private individuals to a receiving facility for involuntary placement under the Baker Act. Circuit Court Judge Johnson found that the four individuals being transported by private individuals to a receiving facility did not comport with the requirements of section, 394.463(2), Fla. Stat. which requires that only law enforcement officer may transport a Baker Act patient to a receiving facility. Judge Johnson ordered the Broward County Sheriff to devise a transportation plan and set a hearing ninety (90) days after the order to discuss the Sheriff's transportation plan. Judge Johnson also entered an administrative order regarding Baker Act transports in Broward County, FL and regarding the necessity of having pre-hospitalization orders. The Fourth District Court of Appeals held that Circuit Court Judge

Johnson's administrative order went beyond the petitions filed in the case and beyond the Judge's jurisdiction by requiring a trial court order before a patient is hospitalized. **The Fourth District Court of Appeals affirmed that only a law enforcement officer may transport a Baker Act patient to a receiving facility.**

The Baker Act transportation provisions were amended in 1996 to include the following bolded paragraph:

394.462 Transportation.--

(1) Transportation To A Receiving Facility.—

(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.

(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.

(i) The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination.

This means that if the person is on voluntary status or brought to other than the nearest receiving facility, or transported by other than law enforcement, a CSU would not be legally required to accept. However, if the person were taken to a licensed hospital, the hospital would have to accept under the federal EMTALA law for the purpose of performing a medical screening. A psychiatric emergency, even absent any other medical conditions, is considered by CMS to be an emergency medical condition.

The Florida Administrative Code also contains legally required implementing language, as follows:

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.

The facility can't ignore the statutorily required role of law enforcement in implementing an involuntary examination. It must either have law enforcement officer defer because of safety issues or presence of an emergency medical condition. The only other two statutorily permitted alternatives are the following:

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.

394.462 Transportation.--

(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.

The mandatory 3100 form titled "Transportation to a Receiving Facility" can be downloaded from the DCF website. Neither a Transportation Exception Plan approved by the Board of County Commissioners and the DCF Secretary or a contract by the county to provide such Baker Act transport relieves law enforcement from involvement in the process. However, if the law / rules are followed and the law enforcement officer and medical transport company (authorized by county contract or by a Transportation Exception Plan) complete the second page of the 3100 form, the receiving facility would be required to accept the person even if the person is consigned by law enforcement to the transport company.

EMTALA, Transportation & Transfers

Q. What is EMTALA and how does it affect law enforcement responsibilities?

The federal Emergency Medical Treatment and Active Labor Act places substantial responsibilities on hospitals for persons who have emergency medical conditions, including those that are psychiatric or substance abuse in nature. If this federal law is in conflict with the State's Baker Act, the federal law prevails. This means that if a person is taken to an ER for examination or treatment of a medical condition, the hospital is responsible for conducting a medical screening, stabilization, and arranging for safe and appropriate transport of a person requiring transfer to a receiving facility. Law enforcement has no responsibility for persons at a hospital unless a crime has been committed.

Q. When a county contracts to provide transportation for Baker Acts, is that contract strictly immediate post Baker Act or is for all Baker Acts? For example: If a patient is on a medical floor in an acute hospital but on a Baker Act, after medical clearance are the hospitals still required to use that contractor if they go to the CSU or are hospitals at that point able to use any transportation service?

If an individual is being transferred from your ED to another receiving facility because of an emergency mental health condition, this is governed by the federal EMTALA law and chapter 395, FS both of which govern access to emergency care. The federal law supersedes the state law and any applicable transport contract when in conflict.

EMTALA requires the sending hospital to arrange "safe and appropriate" method of transport, only after the other requirements of an appropriate transfer are met. I don't know what capacity the Coastal contract has to meet the "safe and appropriate" criteria.

If to another licensed hospital, it generally means medical transport with medically trained personnel.

EMTALA no longer applies to post-admission patients, however, chapter 395, FS doesn't make this distinction between pre and post admission if an individual still has an emergency medical condition even of just a psychiatric nature, absent any other medical condition. You would have to pose to AHCA your questions about EMTALA and chapter 395 hospital transfers to avoid risk of violations.

The term “transport” or “transportation” pursuant to the Baker Act refers to the initial act of taking a person into custody – generally by law enforcement. The term “transfer” is used to describe the movement of an individual from one facility to another facility.

Transfers from one receiving facility to another receiving facility are governed by the Baker Act, once any EMTALA or chapter 395 requirements are met.

394.4685 Transfer of patients among facilities.

(2)TRANSFER FROM PUBLIC TO PRIVATE FACILITIES.—A patient who has been admitted to a public receiving or public treatment facility and has requested, either personally or through his or her guardian or guardian advocate, and is able to pay for treatment in a private facility shall be transferred at the patient’s expense to a private facility upon acceptance of the patient by the private facility.

(3)TRANSFER FROM PRIVATE TO PUBLIC FACILITIES.—

(a)A patient or the patient’s guardian or guardian advocate may request the transfer of the patient from a private to a public facility, and the patient may be so transferred upon acceptance of the patient by the public facility.

(b)A private facility may request the transfer of a patient from the facility to a public facility, and the patient may be so transferred upon acceptance of the patient by the public facility. The cost of such transfer shall be the responsibility of the transferring facility.

(c)A public facility must respond to a request for the transfer of a patient within 2 working days after receipt of the request.

(4)TRANSFER BETWEEN PRIVATE FACILITIES.—A patient in a private facility or the patient’s guardian or guardian advocate may request the transfer of the patient to another private facility at any time, and the patient shall be transferred upon acceptance of the patient by the facility to which transfer is sought.

As you can see above, once EMTALA requirements are met and you wish to transfer an individual from your hospital to a receiving facility, you must obtain prior approval of the transfer from the receiving facility and your hospital would be responsible for the cost of the transfer, if not arranged through the county funded contract.

You need to obtain a copy of the transport contract to determine the scope of responsibilities of the contractor. If the contract is between transport company and county government – you can contact the County to get a copy if needed. If you don’t use the county funded contractor, your hospital would probably be required to pay for any other necessary transfer expense.

Q. Are hospitals allowed to chemically sedate and subjects to transport subjects who may be violent? We have been asked numerous times to take subjects because they fear that their ambulance drivers are in harm’s way. I feel that by taking a violent subject and placing him in the back of our patrol vehicle and driving 45 minutes to another facility is extremely dangerous and taking on liability that is not ours.

All designated receiving facilities have the capability of using mechanical and chemical restraints if the person is imminently dangerous and such restraints are the least

restrictive method of assuring the safety of the individual and staff. This applies while in the ED as well as during transport.

As indicated above, the transferring hospital is responsible for the transfer of the individual from its ED to any other facility. In fact, if from the ED to another hospital, use of law enforcement rather than appropriately staffed and equipped medical transport could pose a violation of the federal EMTALA law subjecting the hospital to potential loss of Medicare/Medicaid certification and a \$50,000 fine.

Even the Baker Act governs the issue to transfers and when it is from a private receiving facility to a public receiving facility (New Horizon CSU), the responsibility for and cost of the transfer is that of the transferring facility:

394.4685 Transfer of patients among facilities.

(3)Transfer from Private to Public Facilities.—

(a)A patient or the patient's guardian or guardian advocate may request the transfer of the patient from a private to a public facility, and the patient may be so transferred upon acceptance of the patient by the public facility.

(b)A private facility may request the transfer of a patient from the facility to a public facility, and the patient may be so transferred upon acceptance of the patient by the public facility. **The cost of such transfer shall be the responsibility of the transferring facility.**

Q. What is the responsibility of a law enforcement officer under the federal EMTALA law?

EMTALA doesn't compel law enforcement to do anything -- only hospitals. A law enforcement officer transporting a person for involuntary examination should always take the person to the nearest designated receiving facility as required in 394, unless the officer determines en route that the person appears to have an emergency medical condition. At that time, the officer can call for EMS assistance or take the person to the nearest ED, regardless of whether it is designated as a receiving facility. In any case, a hospital must accept any person under federal EMTALA. Any CSU's or hospitals designated as receiving facilities must accept persons brought by law enforcement for involuntary examination under the state's Baker Act law.

Q. We need a little clarification on our Baker Act transport policy. Our county Sheriff's department has been transporting patients after ER medical clearance to our receiving facility. Is there potential hospital liability if a medical issue arises while transporting the patient therefore the mode of transport should be non emergent EMS? Are law enforcement officers required or allowed to transport persons being transferred from our hospital to a receiving facility? We all want to comply with the proper mode of transport and also understand the financial implications this provides for any or all of us. Could you please give us a bit more detail?

A law enforcement officer has no responsibility to transfer persons from hospitals to other health care facilities. Further, if transport is of a person with a psychiatric crisis

from an ER to another hospital, it may actually constitute a violation by the hospital of the federal EMTALA law.

The AHCA Manager over Survey Integrity and Support and key person on the federal EMTALA law, has written:

It is improper to transfer a person by law enforcement who is “unstable and being transferred from a hospital to a hospital”. EMTALA laws state that the hospital must conduct a proper transfer with proper medical personnel. As you know, in many of our areas of the state there are crisis systems for transportation from hospital to CSU’s.

The Manager makes a distinction between law enforcement transfer from a hospital to another hospital (prohibited by federal law) vs. from a hospital to a CSU (not-prohibited by federal law). The free-standing psychiatric facility in your area is a licensed hospital. A psychiatric emergency or substance abuse emergency is included in the federal CMH definition of an emergency medical condition. If the psychiatric condition is still unstable, the EMTALA law applies.

In any case, it is not a duty of law enforcement to provide secondary transport from a hospital to any Baker Act receiving facility. However, it is not a violation on the part of a hospital to use law enforcement to provide this transport from an ER to a CSU – just from an ER to another hospital.

Q. Does a law enforcement officer have to return to a hospital to transfer the patient to another facility?

NO. Once the patient is taken to the hospital, the state’s Baker Act and the federal EMTALA law require the hospital to arrange for safe and appropriate transfer, when necessary.

Q. Our ER Director believes that patients that only have a mental health presenting problem (non-medical) must be brought directly to the “Receiving Facilities” mental health unit by the police/fire rescue. This is a problem because there are no Medical Screening Examinations completed at the MHU. There is no EMTALA log in the MHU. There are no EMTALA signs in the MHU.

This is incorrect. Hospitals have actually been cited in the past for such practices when they’ve tried to do direct admits of patients at the request of certain physicians. Persons should be brought directly to a designated receiving facility, by-passing nearer ER’s. Everything at the premises of a receiving facility is part of the designation, including the ER.

Unfortunately, some law enforcement officers try to drop people under the Baker Act at the nearest ER for convenience reasons, even when the officer has no reason to believe a person has an emergency medical condition. Some officers have been told so many times that a person must be medically cleared before bringing to a receiving facility; they take people to ER’s as a matter of course. Neither of these are correct and I spend time

trying to stop these practices. People under the Baker Act should only be taken to the nearest ER when they think the person has an EMC.

Once at the premises of a designated receiving facility, staff should expedite the transfer of the person (and paperwork) from law enforcement hands to hospital personnel so the officer can leave. The hospital can then process the person in accordance with its policies. Usually this is going to be through it's ED to address any medical issue prior to transferring the person to its own psychiatric unit or requesting a transfer of the person (with consent of patient) to another more appropriate receiving facility.

Q. When the police officer brings in a person that has identified as an Baker Act to be medically cleared to go to a mental health facility, who is responsible for transportation to the mental health facilities?

This is where the federal EMTALA law and the state Baker Act law is contradictory. When this happens, the federal law takes precedence over the state law. EMTALA places the responsibility on the sending hospital to arrange a safe and appropriate method of transport – typically this means paying for the transport as well. AHCA staff has verbally indicated that law enforcement is never an appropriate method of transport in transferring a person with an emergency medical condition from one hospital to another – even it is of a psychiatric nature.

Q. Are law enforcement officers required or allowed to transport persons being transferred from our hospital to a receiving facility?

AHCA staff has verbally indicated that law enforcement transport is not a "safe and appropriate" method of transport of a person under EMTALA -- one of the multiple requirements under the federal law. Law enforcement personnel need to be reminded that they have no responsibility to provide transfers from a hospital to any other facility. Another federal EMTALA requirement is that the consent of the destination facility be obtained before a transfer takes place. A psychiatric or substance abuse emergency is an Emergency Medical Condition under EMTALA and requires the same rights be extended to a patient as in any other EMC. EMTALA violations carry significant financial and administrative consequences.

Q. Our officers have to go back to hospital ER's to pick up Baker Act clients (no criminal charges) and transport these persons to the local CSU. These people either had their involuntary examinations initiated by law enforcement officers in the field followed by transport to the hospital for examination/treatment of potential emergency medical conditions by the officer or EMS, or when the involuntary examination was initiated at the hospital by the ER physician. What is the correct process?

The Baker Act requires officers to take persons on involuntary status directly to the nearest receiving facility. However, it permits the officer to defer to EMS transport of persons for the safety of the officer or person in custody. In such cases, EMS generally takes persons to a hospital instead of a CSU. The law also permits an officer who believes a person to have an emergency medical condition to have the person taken to a

hospital, regardless of whether the hospital is designated as a receiving facility. The state's Baker Act law doesn't place responsibility on the officer to go to the hospital to further transport the person to the receiving facility. In fact, since the person is experiencing a psychiatric emergency, it is considered under the federal EMTALA law as an emergency medical condition, thereby placing the duty for arranging such transportation on the sending hospital.

When there is conflict between the federal EMTALA law and the state's Baker and Marchman Acts, the federal law governing hospitals prevails. An AHCA representative has told me that they would probably not cite the hospital for using law enforcement to transport to a non-hospital setting, but would probably have to do so if it was a hospital-to-hospital transfer.

The issue of duty becomes important in terms of liability. If the officer has the non-discretionary duty to provide primary transportation under the Baker Act (with few exceptions), the appellate courts have given a great deal of immunity from any civil or criminal liability. However, if the duty is that of the hospital, not of law enforcement, does the same immunity apply? Law enforcement attorneys should be addressing these issues.

As an added note, the Florida Legislature prohibited the incarceration of persons with mental illnesses in jail unless charged with a criminal offense. However, the Marchman Act nearly 20 years later still permits this to occur solely for a substance abuse diagnosis.

Q. Is the Sheriff's office allowed to change a transportation form for a Baker Act that is initiated by a hospital ER? We have already had a few situations in which the ER staff initiated Baker Acts to be brought to our facility that were re-routed by the Sheriff's office to another facility. We have heard that law enforcement has been told to only bring Baker Acts to our facility when the other facility is full, but we are the closest receiving facility for all three hospitals in our county. Is law enforcement obligated to take Baker Act patients to the closest receiving facility?

The law enforcement officer is the entity that completes and signs the transportation form (3100), not the hospital ER. It isn't clear why they would be "changing" a form that they completed in the first place. It is also unclear why law enforcement is doing the transport from an ER to your hospital or any other hospital. Once a person with an emergency psychiatric condition or any other emergency medical condition is at an ER and requires transfer to a specialty hospital, it is the hospital's obligation under the federal EMTALA law to provide for a safe and appropriate method of transport. AHCA staff has stated that law enforcement transport under such circumstances could be considered an EMTALA violation for the sending hospital. While law enforcement is responsible for primary transport of a person on involuntary examination to the nearest receiving facility (or an ER when the officer believes an emergency medical condition exists), they have no further obligation for secondary transfer. By eliminating law enforcement from this secondary transfer role, the problem would be solved. The ER could send the person to the most appropriate receiving facility.

Law enforcement shouldn't be called in to provide this secondary transfer from ER's to receiving facilities. If this concerned primary transportation, a law enforcement officer is

obligated to deliver a person on involuntary examination status to the nearest receiving facility unless a Transportation Exception Plan has been approved by the Board of County Commissioners and the DCF Secretary. There is no such Transportation Exception Plan approved in your area of the state.

Q. I was contacted today by someone from the "Advocacy Center". I am not sure which one and she is going to call me back tomorrow. She was asking about our DCF and SAMH Program Office Baker Act transport policy. She was asking mainly about who transports individuals placed under a Baker Act at a medical hospital that is not a designated receiving facility to a designated receiving facility. She asked if there is any protocol on how they should be dressed or on who should do the transport. As far as I know, we, DCF, don't have a policy on this. These issues would be included in the Baker Act law and these facilities would be monitored for compliance by AHCA and not DCF. Am I correct?

It appears that this is the Advocacy Center for Persons with Disabilities. This is the federally designated and funded agency to investigate complaints against agencies serving persons with mental illness, developmental disabilities, and vocational rehabilitation. They also provide oversight of the federal Americans with Disabilities law in Florida. The Baker Act law and rules refer to the Advocacy Center:

394.459(12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each facility shall post a notice listing and describing, in the language and terminology that the persons to whom the notice is addressed can understand, the rights provided in this section. This notice shall include a statement that provisions of the federal Americans with Disabilities Act apply and the name and telephone number of a person to contact for further information. This notice shall be posted in a place readily accessible to patients and in a format easily seen by patients. This notice shall include the telephone numbers of the Florida local advocacy council and Advocacy Center for Persons with Disabilities, Inc.

65E-5.140 Rights of Persons.

(3) Posters delineating rights of persons served in mental health facilities and by service providers, including those with telephone numbers for the Florida Abuse Hotline, Florida Local Advocacy Council, and the Advocacy Center for Persons with Disabilities, shall be legible, a minimum of 14 point font size, and shall be posted immediately next to telephones which are available for persons served by the facility or provider.

Regarding your specific question, hospitals licensed under chapter 395, FS are responsible for upholding the rights of persons held under the Baker Act, regardless of whether they are designated as receiving facilities:

395.003(5)(a) governing licensure of all hospitals states "Adherence to patient rights, standards of care, and examination and placement procedures provided under part I of chapter 394 shall be a condition of licensure for hospitals providing voluntary or involuntary medical or psychiatric observation, evaluation, diagnosis, or treatment".

(5)(b) "Any hospital that provides psychiatric treatment to persons under 18 years of age who have emotional disturbances shall comply with the procedures pertaining to the rights of patients prescribed in part I of chapter 394".

395.1041(6) RIGHTS OF PERSONS BEING TREATED.--A hospital providing emergency services and care to a person who is being involuntarily examined under the provisions of s. 394.463 shall adhere to the rights of patients specified in part I of chapter 394 and the involuntary examination procedures provided in s. 394.463, regardless of whether the hospital, or any part thereof, is designated as a receiving or treatment facility under part I of chapter 394 and regardless of whether the person is admitted to the hospital.

395.1055(5) governing rules and enforcement states "The agency shall enforce the provisions of part I of chapter 394, and rules adopted thereunder, with respect to the rights, standards of care, and examination and placement procedures applicable to patients voluntarily or involuntarily admitted to hospitals providing psychiatric observation, evaluation, diagnosis, or treatment".

395.1065(6) governing criminal and administrative penalties states "In seeking to impose penalties against a facility as defined in s. 394.455 for a violation of part I of chapter 394, the agency is authorized to rely on the investigation and findings by the Department of Health in lieu of conducting its own investigation".

DCF doesn't have a separate policy on the transport of persons from medical hospitals to receiving facilities other than what is in the statute and rules.

394.459 Rights of patients.--

(1) RIGHT TO INDIVIDUAL DIGNITY.--It is the policy of this state 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. Persons who have a mental illness but who are not charged with a criminal offense shall not be detained or incarcerated in the jails of this state. A person who is receiving treatment for mental illness shall not be deprived of any constitutional rights. However, if such a person is adjudicated incapacitated, his or her rights may be limited to the same extent the rights of any incapacitated person are limited by law.

The issue of "safe and appropriate transport" of a person with an emergency psychiatric condition from an ER to another hospital is governed by the federal EMTALA law. There are probably provisions in the federal Conditions of Participation about this as well. Both of these laws are overseen by AHCA, not DCF.

**Transport for Involuntary "Placement" and
to State Hospitals (Treatment Facilities)**

Q. Should law enforcement transport someone under a Baker Act to the court house for the involuntary placement hearing? We currently have our

transportation department at the hospital provide transport to court hearings. I have concerns of the person's safety and the safety of others during this transportation process and while at the court house if law enforcement is not present. I have experienced a person jumping out of the transportation van on route back to the hospital and another person confronting public while at court. The Sheriffs office has agreed to take people if we ask them to and have justification, but are there any laws regarding this, especially for such a rural area?

Law enforcement is required to provide primary transportation of persons to designated receiving facilities for involuntary examination, but isn't required to provide any secondary transportation after that point for any purpose. Various options may include:

1. The court could conduct the hearings at the hospital, as do the courts in most areas of the state.

394.467 Involuntary inpatient placement.

(6) Hearing on Involuntary Inpatient Placement.--

(a)1. The hearing shall be held in the county where the patient is located and shall be as convenient to the patient as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the patient's condition.

2. The hospital can request local law enforcement donate a caged vehicle to the facility for purposes of secure transport. If none available, the hospital may want to seek capital outlay budget to purchase such a vehicle.
3. You may want to get advice on how to safely secure an existing vehicle in your transportation department.
4. The hospital can request local law enforcement to provide this transport. While it isn't the law enforcement agency's duty to provide this service, there is no prohibition in the law. Law enforcement liability, should an adverse event occur during such transport, may be higher because it would be a discretionary action on their part, and thus reduces the immunity assured through case law.

You may wish to consult with the hospital's attorney about this issue to see if there are other options. In any case, until other arrangements can be worked out, the hospital should ensure that sufficient staff is always present to prevent a person from elopement during transport or at the courthouse.

Q. Who is responsible for transporting persons to a state hospital?

The county is responsible for arranging this transportation in neither the patient nor any person legally obligated or responsible for the patient is able to pay for this expense.

Q. Why is s. 394.462(2), FS requiring the county to pay for Baker Act transportation not being honored?

394.462(2) applies only to transportation to a "Treatment Facility". Treatment facilities are state hospitals as opposed to "receiving facilities," that are community-based. Again, even on subsection (1) that places responsibility for law enforcement to deliver persons to the nearest receiving facility (or to an ED in cases of an emergency medical condition), the federal EMTALA law prevails when in conflict with the state law.

Juvenile Justice

Q. Our Sheriff's Office transported a juvenile to an adult CSU from a program for pregnant young women which is affiliated with DJJ. The CSU was making arrangements to transport to a different CSU. Due to these juveniles being potentially dangerous; it was felt they require police transportation. We know that law enforcement is bound to transport to nearest facility, but are they responsible for transferring between receiving facilities?

You are correct that law enforcement is required to deliver any person on Baker Act involuntary status to the nearest receiving facility. However, the Transportation Exception Plan approved by the Board of County Commissioners and DCF, permit officers to take these minors directly to a receiving facility serving minors, bypassing nearer facilities that aren't licensed for juveniles.

Law enforcement has no responsibility for transporting persons between receiving facilities, whether the involuntary examination was initiated at the adult CSU or prior to the person's transport to the adult CSU. Law enforcement probably wouldn't willingly consent to provide such transfers. Would the county funded contract ambulance service provide such a transfer? If so, they probably have mechanical restraints if there is a physician's order for restraint use based on imminent danger. There are no restraint/seclusion exceptions for adults or minors served by the justice system once they are in the mental health system unless they have demonstrated imminent danger

Q. I have a question about transportation of juveniles. One of my deputies responded to the Juvenile Detention Center and was asked to transport a kid that was court ordered to serve 20 days. While he was there someone from DJJ initiated a Baker Act. All of the papers were signed and they wanted us to transport him to the receiving center. He was in their care, control and custody. I told DJJ to transport him just like they would if the kid had a Dr.'s appt or other court ordered event. The DJJ supervisor said that the SO does it all the time but agreed that DJJ would do it this time. The deputy said he knew of other times we did transport but only when the kid's sentence was complete. Can you comment on both situations of when he is mid sentence or completed sentence? What if the deputy response to a disturbance and there is no staff there to initiate a Baker Act. If the kid meets the criteria for Baker Act, could or should we remove him from a secure facility?

The criminal/delinquency law and the Baker Act can be used simultaneously, unless there something in the criminal law that directly contradicts the Baker Act. In this case, law enforcement continues to have responsibility to provide the transport of a person from any setting except a hospital (because of the federal EMTALA law) of a person

under involuntary examination status to the nearest receiving facility. The following are some legal citations that might help:

985.115, FS Release or delivery from custody.--

(2) Unless otherwise ordered by the court under s. 985.255 or s. 985.26, and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child as follows:

(d) If the child is believed to be mentally ill as defined in s. 394.463(1), to a law enforcement officer who shall take the child to a designated public receiving facility as defined in s. 394.455 for examination under s. 394.463.

985.18, FS Medical, psychiatric, psychological, substance abuse, and educational examination and treatment.--

(1) After a detention petition or a petition for delinquency has been filed, the court may order the child named in the petition to be examined by a physician. The court may also order the child to be evaluated by a psychiatrist or a psychologist, by a district school board educational needs assessment team, or, if a developmental disability is suspected or alleged, by a developmental disabilities diagnostic and evaluation team with the Agency for Persons with Disabilities. If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedures established in chapter 393, chapter 394, or chapter 397, whichever is applicable, shall be used.

394.462, FS 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:.. *[there are exceptions listed, but none of them are related to juvenile justice]*

394.463(2), FS INVOLUNTARY EXAMINATION.--

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

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.

There are also two appellate cases – one says only law enforcement can transport persons on involuntary examination status and the other says that because such transport is non-discretionary, the officer is immune from any civil or criminal liability.

Marchman Act

Q. I am a city police officer. Recently a circuit judge entered a Marchman Act ex-parte order but for various reasons the sheriff's office asked the police department to pick the person up. Can we as law enforcement officers take a subject that has an active ex-parte order to CSU without the order in hand? Would we also complete the B52 and in the narrative section advise that the subject has an active ex-parte?

It is a little confusing whether the ex parte order in your scenario was subject to the Marchman Act or the Baker Act, so both will be answered. An ex parte order under the Marchman Act doesn't require transport to be provided by law enforcement, but if the court orders it, the transport could be by any law enforcement agency, not just the Sheriff's Office:

397.6815 Involuntary assessment and stabilization; procedure.--

(2) Without the appointment of an attorney and, relying solely on the contents of the petition, enter an ex parte order authorizing the involuntary assessment and stabilization of the respondent. The court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.

The Baker Act defers to the Board of County Commissioners to decide which law enforcement agency is responsible for transporting persons for involuntary examination. There should have been some type of formal action taken by the BCC back in the mid-80's – most counties have designated the Sheriff's Office to do all ex parte orders as well as certificates by mental health professionals for persons in unincorporated areas of the county or in municipalities that contract with the county for law enforcement duties. Otherwise, most counties have designated local police departments to execute the professional certificates within their jurisdictions:

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 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.

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.

As you can see, neither statute prescribe the use of Sheriff's deputies to execute these orders. However, once an order of the court is entered that compels a deputy to take the person into custody, the Sheriff's Office is responsible or it may risk contempt.

While it is always advisable to have a copy of the order before taking a person into custody, one should be able to presume the good faith of the Clerk of Court in assuring the circuit court judge's signature on a valid order. You may want a copy of the order faxed to your location rather than waiting on the originally signed document. If the computer in your car has the capability to receive an emailed copy of the order you could then print it out once at the facility. However, if it is not possible to obtain even a copy of the order in advance of taking the person into custody, your department's attorney should be consulted – it's probably OK. If you have a copy of the Baker Act ex parte court order, you would not also complete the BA-52. Only one or the other of the two documents is needed. However, regardless of the method of initiation (court, law enforcement, or mental health professional) you are required by law to complete the Transport form (#3100).

The other alternative is to take the person into custody under the authority of the officer – either protective custody under the Marchman Act or involuntary examination under the Baker Act. In either case, the laws require the officer to have "reason to believe" the involuntary criteria is met and the Baker Act requires you to describe the "circumstances" under which you took the person into custody. You are not expected to be a diagnostician – just to know what a well-trained officer should know. In this case, if you believe the person's behavior is due to substance abuse, you would take the person under protective custody to a licensed detox center, a hospital, an addiction receiving facility, or to a jail. If you believe the person's behavior is due to a severe thought or mood disorder (instead of substance abuse), you would be required to take the person to the nearest designated Baker Act receiving facility.

Mutual aid agreements exist between law enforcement agencies serving a geographic area. Your department's attorney could advise you as to whether such an agreement would allow you to execute such an order even if it specified the Sheriff's Office.