

**Baker Act
Involuntary Examination
Criteria, Processes and Timeframes
s. 394.463, F.S. Ch. 65E-5.280, FAC**

Intent

The Baker Act encourages the voluntary admission of persons for psychiatric care, but only when they are able to understand the decision and its consequences and are able to fully exercise their rights for themselves. When this is not possible due to the severity of the person's condition, the law requires that the person be extended the due process rights assured under the involuntary provisions of the Baker Act.

Criteria

A person may be taken to a receiving facility for involuntary examination if the following three criteria are met:

1. There is reason to believe that he or she is mentally ill. This means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in Chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
2. Because of his or her mental illness the person has refused voluntary examination or is unable to determine whether examination is necessary; and
3. Without care or treatment, the person is likely to suffer from neglect resulting in real and present threat of substantial harm that can't be avoided through the help of others; or there is substantial likelihood that without care or treatment the person will cause serious bodily harm to self or others in the near future, as evidenced by recent behavior.

Initiation

An involuntary examination may be initiated by any one of the three following means:

- A circuit court may enter an ex parte order, based upon sworn testimony, directing a law enforcement officer to take the person to the nearest

receiving facility. A law enforcement officer may serve and execute an ex parte order on any day of the week, at any time of the day or night and may use such reasonable physical force as is necessary to gain entry to take custody of the person.

- A law enforcement officer shall take a person who appears to meet the above criteria into custody and deliver the person to the nearest receiving facility.
- A physician, clinical psychologist, psychiatric nurse, or clinical social worker, each as defined in the statute, 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 into custody and deliver him or her to the nearest receiving.

Transportation

Designated receiving facilities must accept persons brought by law enforcement officers for involuntary examination. If appropriate under state and federal law, the person may later be transferred to another facility.

An 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 officer believes that a person has an emergency medical condition as defined in law, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

When a law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory criteria for involuntary examination, the officer must transport the person to the nearest receiving facility for examination. When an officer has arrested a person for a felony and it appears that the person meets the statutory criteria for involuntary examination, the person must first be processed in the same manner as any other criminal suspect.

Examination at Hospital after Emergency Medical Condition

A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition must be examined by a receiving facility within 72 hours. The 72-hour period begins when the person arrives at the hospital and ceases when the attending physician documents that the person has an emergency medical condition. One of the following must occur within 12 hours after the person's attending physician

documents that the person's medical condition has stabilized or that an emergency medical condition does not exist:

- The person can be examined by a physician or clinical psychologist at the medical hospital, and if found not to meet the criteria for involuntary placement, released or transferred to voluntary status; or
- The person must be examined by a physician or clinical psychologist from a designated receiving facility and released; or
- The person must be transferred to a designated receiving facility in which appropriate medical treatment is available.

Examination at a Receiving Facility

Upon arrival at a receiving facility, a person must be examined without unnecessary delay by a clinical psychologist or a physician experienced in the diagnosis and treatment of mental and nervous disorders. The person shall not be released by the receiving facility without the documented approval of a psychiatrist or clinical psychologist.

Reporting

Receiving facilities must send a copy of the court order, law enforcement officer's report, or professional's certificate initiating the involuntary examination (with the required cover sheet) to the Agency for Health Care Administration (AHCA) on the next working day after the person's arrival at the facility.

Discharge or Release

A person may not be held for involuntary examination longer than 72 hours. Within the 72-hour examination period, one of the following must take place:

- The person must be released unless charged with a crime;
- The person must be released for outpatient treatment;
- The person must be asked to give express and informed consent to voluntary placement; or
- A petition for involuntary placement must be filed with the circuit court by the facility administrator.

Involuntary Placement

394.467 F.S. 65E-5.290, F.A.C.

Criteria:

If a petition for involuntary placement is filed by the receiving facility with the circuit court, there must be clear and convincing evidence that the person is mentally ill and because of his or her mental illness:

- She/he has refused voluntary placement or is unable to determine whether placement is necessary; and
- She/he is incapable of surviving alone or with the help of others and without treatment is likely to suffer from neglect which poses a real and present threat of substantial harm to his or her well-being; or
- There is substantial likelihood that in the near future she/he will inflict serious bodily harm on self or other person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

Initiation

Within 72 hours of the person's arrival at the facility, or if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, a petition for involuntary examination, must be filed by the receiving facility administrator and supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the person within the preceding 72 hours, that the criteria for involuntary placement are met (in certain rural counties the second opinion may be provided by a physician or psychiatric nurse, both with special training and experience as defined in the statute).

Court Hearing

The person will have the public defender appointed by the court to represent him or her unless otherwise represented by counsel. The state attorney shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding. The person has the right to an independent expert examination provided by the court.

The court must hold the involuntary placement hearing within 5 days, unless a continuance is requested by the person and granted by the court. The court may appoint a master to preside at the hearing. One of the professionals who executed the involuntary placement petition must be a witness. At the hearing, the court must consider testimony and evidence regarding the person's

competence to consent to treatment. If the court finds that the person is incompetent to consent to treatment, it must appoint a guardian advocate. If the court concludes that the person meets the criteria for involuntary placement, it must order that the person be retained at or transferred to, or treated at an appropriate receiving or treatment facility on an involuntary basis, for a period of up to 6 months. The administrator of a treatment facility may refuse admission to any person directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied at the same time by adequate orders and documentation.

Continued Involuntary Placement

s. 394.467(7), F.S. Ch. 65E-5.300, FAC

If a person continues to meet the criteria for involuntary placement, the administrator must, prior to the expiration of the period during which the treatment facility is authorized to retain the person, file a petition requesting authorization for continued involuntary placement. The request must be accompanied by a statement from the person's physician or clinical psychologist justifying the request, a brief description of the person's treatment during the time he/she was involuntarily placed, and an individualized plan of continued treatment.

Hearings on petitions for continued involuntary placement are administrative rather than judicial hearings and are conducted by an administrative law judge. Unless the person is otherwise represented by counsel, he/she must be represented at the hearing by the public defender. If at a hearing it is shown that the person continues to meet the criteria for involuntary placement, the administrative law judge must sign the order for continued involuntary placement for a period not to exceed 6 months. The same procedure must be repeated prior to the expiration of each additional period the person is retained.

Discharge of Persons on Involuntary Status

s. 394.469, F.S. Ch. 65E-5.320, FAC

Receiving and treatment facilities must discharge a person at any time the person no longer meets the criteria for involuntary placement, unless the person has transferred, by express and informed consent, to voluntary status. This discharge does not require consent of the court.