

**Baker Act  
Consent for  
Admission &  
Treatment of Minors**

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# Minors & the Baker Act

A variety of state laws, case law, and court rules of juvenile procedures governing the admission and treatment of minors often are in conflict:

- Dependent or delinquent youth vs. those with their own families
- Inpatient vs. residential vs. outpatient
- Voluntary vs. involuntary
- Admission vs. treatment

Because the Baker Act contains few references to minors, it must be carried out in the context of other coexisting statutes and case law.

# General & Specific Laws

- When a general law and a specific law governing the same subject are in conflict, the specific law takes precedence over the general law.
- Specific laws limit how the general law can be applied. The Baker Act as Florida's Mental Health Act (specific law) takes precedent over licensure and many other statutes (general laws) .
- However, Chapter 39, FS governing child dependency takes precedence over other laws that apply to minors when in conflict.



# Minors & the Baker Act

In each circumstance in which consent to admission and/or treatment is sought for a minor, it is essential that the professional consider the nature and context of the consent in determining whether the consent is legally sufficient.

Before considering the Baker Act, it is important to understand who is a minor and who has the legal authority to consent to various things on behalf of that minor.

# Who is a Minor?

Persons under 18 generally can't consent because they are presumed to be legally incompetent as a result of their age or presumed immaturity of judgment.

Various laws governing different circumstances determine who has the authority to provide consent for a minor's treatment.

The Baker Act uses the term "minor" as well as persons "age 17 and under". However, these aren't the same as some teens under the age of 18 may be considered adults

Here are some definitions used in the various Florida laws where persons under the age of 18 may be considered adults – not minors:

# Who is a Minor?

**Minority Defined:** A person under 18 whose disabilities haven't been removed by marriage or emancipation [s. 744.102(13) FS]

**Married minors.--** The disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed, is removed. The minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could do if not a minor.[s.743.01 FS]

# Who is a Minor?

## **Unwed Pregnant Minors or Minor**

**Mothers** -- An unwed pregnant minor may consent to the performance of medical or surgical care or services relating to her pregnancy by a hospital or clinic or by a licensed physician and such consent is valid and binding as if she had achieved her majority. She may consent to the performance of medical or surgical care or services for her child by a hospital or clinic or by a licensed physician and such consent is valid and binding as if she had achieved her majority. However, this doesn't affect the provisions of s. 390.0111 which governs Termination of Pregnancy. [s.743.065, F.S.]

# Who is a Minor?

**Minors adjudicated as adults.--**The disability of nonage of a minor adjudicated as an adult and in the custody or under the supervision of the Department of Corrections is removed, as such disability relates to health care services, except in regard to medical services relating to abortion and sterilization. [s.743.066, F.S.]

**Circuit Court --** A circuit court has jurisdiction to remove the disabilities of nonage of a minor age 16 or older residing in this state upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem. The court shall consider the petition and, if satisfied that the removal of the disabilities is in the minor's best interest, shall remove the disabilities of nonage and shall authorize the minor to perform all acts that the minor could do if he or she were 18 years of age. [s.743.015, F.S.]



# Natural Guardianships

[744.301, FS]

Natural guardians of a child have the authority to make decisions for their children. Because of death, divorce, or other circumstances, the following priorities have been established in law:

- Mother/father jointly are guardians during a child's minority
- Surviving parent is guardian if other dies
- If divorced, guardianship goes to the parent awarded "custody"
- If parents are given "joint custody", both are guardians
- If neither parent is given "custody", neither is guardian
- A guardian can be appointed by the court
- The mother of a child born out of wedlock is guardian unless a court order states otherwise.

# Dissolution of Marriage, Support & Time Sharing

Chapter 61, F.S. (Amended by SB 2532 (2008))

Chapter 61, Florida Statutes governs all issues dealing with the dissolution of marriage, child support, and sharing of the child's time with parents. This law, rewritten by the Legislature in 2008 provides for:

- **Parenting Plan** that governs all circumstances among the parties including decision-making and time sharing
- **Time Sharing Schedule:** A time table included in Parenting Plan that specifies the time the child will spend with each parent.

# Dissolution of Marriage, Support & Time Sharing

Chapter 61, F.S. (Amended by SB 2532 (2008))

- **Shared Parental Responsibility:** court-ordered relationship in which both parents retain full parental rights/responsibilities and shared decision-making. Certain decisions may be assigned to one parent.
- **Sole Parental Responsibility:** court-ordered relationship in which one parent makes decisions (with or without visitation)
- **Access to information/records** available to either parent unless court specifically revokes this right.



# **When Parent/Legal Guardian isn't Available Consent to Medical Care/Treatment**

Disability of Nonage of Minors Removed  
s.743.065(1)and(2), FS

In absence of natural/adoptive parent, the following have power to consent for minor's medical care/treatment:

- Power of attorney
- Stepparent
- Grandparent
- Adult sibling
- Adult aunt or uncle

# When Parent/Legal Guardian isn't Available

( s.743.065(1)and(2), FS continued)

**Medical care or treatment** includes ordinary care but **excludes** surgery, general anesthesia, **psychotropic medications** or other extraordinary procedures **requiring a court order.**

Emergency medical care or treatment can be provided by a physician or EMS for an acute illness, disease, or condition when parental consent cannot be immediately obtained.

# Emergency Medical Care

EMS or a licensed physician in a hospital may render emergency medical care or treatment to any minor who has been injured in an accident or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation or provision of emergency medical care or treatment would endanger the health or physical well-being of the minor

This applies only when parental consent cannot be immediately obtained for one of the following reasons [ss. 743.064(1) and (2), F.S.]:

- The minor's condition has rendered him/her unable to reveal the identity of his parents/guardian,
- The parents/guardian cannot be immediately located by telephone at their place of residence or business.



# **Emergency Medical Care**

(Continued)

Notification must be accomplished as soon as possible after the emergency medical care or treatment is administered. Hospital records must reflect the reason such consent was not initially obtained and must contain a statement by the attending physician that immediate emergency medical care or treatment was necessary for the person's health or physical well-being. [s. 743.064(3), F.S.]

# Baker Act

Chapter 394, Part I, F.S.



# Voluntary Admission

394.4625, FS and 65E-5.270, FAC

## Minors

### Criteria:

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

# **Mental Illness Means...**

394.455(18), FS

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

## **Co-occurring Disorders?**

# Consent for Mental Health Admission

A facility may receive for observation, diagnosis or treatment any person age 17 or under and for whom such **application** is made by his or her guardian, only after a **hearing** to verify the voluntariness of the consent. [s. 394.4625(1), F.S.]

Each person entering treatment must be asked to give express and informed consent for admission and for treatment. If the person is a minor, express and informed consent for admission and treatment must also be requested from the guardian, but such consent is required from the guardian. [394.459(3)(a) F.S.]

## **Express and Informed Consent**

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

## **Incompetent to Consent**

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

# Involuntary Examination Criteria

394.463(1),FS

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

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

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

**Must meet all criteria**

# Initiating Involuntary Examinations

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

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

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




# Certificate of a Mental Health Professional

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

## Mental Health Professional defined...

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


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



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

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





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

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

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

(Physician Assistants not eligible in statute, but recognized by Florida Attorney General in May 08 Opinion to initiate involuntary exam but not to perform other duties of a physician)

## Hospital Admission

All hospitals are required to ensure full compliance with the Baker Act as a condition of licensure. "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 chapter 394 Part I." [s.395.003(5)(b)]

**A minor under the age of 14** who is admitted to any hospital...may not be admitted to a bed in a room or ward with an adult in a mental health unit or share common areas with an adult in a mental health unit. However, a minor 14 years of age or older may be admitted to a bed in a room or ward in the mental health unit with an adult if the admitting physician documents in the case record that such placement is medically indicated or for reasons of safety. Such placement must be reviewed by the attending physician or a designee or on-call physician each day and documented in the case record. [s. 394.4785(2), F.S.]

# Admission to Children's Crisis

## Stabilization Units:

The purpose of a CCSU is to stabilize and redirect an individual to the most appropriate and least restrictive community setting available, consistent with the Individual's needs. CCSUs may screen, assess, and admit for stabilization persons on voluntary and involuntary status. They can be provided 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services. CCSUs must provide services regardless of the client's ability to pay, but shall charge fees on a sliding scale, based on ability to pay. CCSUs are limited in size to a maximum of 20 beds. (394.875 (1)(a), F.S.) AHCA can only license a crisis stabilization unit if it receives state mental health funds and is affiliated with a designated public receiving facility.

# Admission to Children's Crisis Stabilization Units

Minors under the age of 14 years cannot be admitted to a bed in a room or ward with an adult. They may share common areas with an adult only when under direct visual observation by unit staff. Minors who are 14 years of age and older may be admitted to a bed in a room or ward in the mental health unit with an adult, if the clinical record contains documentation by a physician that such placement is medically indicated or for reasons of safety. This must be reviewed and documented by the physician on a daily basis. [Chapter 65E-12.106(22), F.A.C.]

# Co-located Children's Crisis Stabilization Units

**Integrated CCSU/Juvenile Addiction Receiving Facilities** exist in several areas of the state. These behavioral crisis units provide emergency mental health and substance abuse services that are integrated within facilities licensed and designated by the Agency for Health Care Administration for persons under 18 who meet the voluntary or involuntary examination or admission criteria under the Baker Act or Marchman Act, including those having a co-existing mental health and substance abuse disorders. The services must meet all licensure requirements for CSUs. Standards that are implemented specific to substance abuse services must meet or exceed existing standards for addictions receiving facilities. (394.499, F.S.)

# Consent to Psychiatric Treatment

## Treatment in Hospitals and Crisis Stabilization Units:

Each person entering a facility must be asked to give express and informed consent for admission and treatment.

If the person is a minor, express and informed consent for admission and treatment must also be requested from the person's guardian. Express and informed consent for admission and treatment of a person under 18 years of age must be required from the person's guardian, unless the minor is seeking outpatient crisis intervention services [s. 394.459(3)(a), F.S.]

Assent vs. Consent

# Express & Informed Consent

394.459(3), FS and 65E-5.170, FAC

Competence is well reasoned, willful & knowing decision-making

Prior to requesting consent to treatment, the following must be provided and explained in plain language:

- The reason for admission or treatment,
- Proposed treatment, including psychotherapeutic medications
- Purpose of treatment
- Alternative treatments
- Specific dosage range for medications
- Frequency and method of administration
- Common risks, benefits and short-term/long-term side effects
- Contraindications

(continued)

# Express & Informed Consent

(continued)

- Clinically significant interactive effects with other medications,
- Similar information on alternative medication which may have less severe or serious side effects.
- Potential effects of stopping treatment
- Approximate length of care
- How treatment will be monitored, and that
- Any consent for treatment may be revoked orally or in writing before or during the treatment period by the person legally authorized to make health care decisions for the person.





# **Express & Informed Consent to Treatment** (continued)

## **Full Disclosure must be given to:**

- The minor and his/her guardian

## **Who can give consent?**

- Guardian of a child

# Consent to Psychiatric Treatment

## Residential Treatment Centers

Children's rights, as specified in s. 394.459, F.S. must be safeguarded for those in residential treatment centers as well.

Children must be informed of their legal and civil rights, including the right to legal counsel and all other requirements of due process. Therefore, the Baker Act describes the rights of children in residential treatment centers. [394.875 (c), F.S. and Chapter 65E-10.021(3(e), F.A.C]



# **Consent to Psychiatric Treatment**

## **Outpatient Crisis Intervention Services:**

The disability of nonage is removed for any minor age 13 years or older to access services under the following circumstances (s. 394.4784, F.S.):

## **Outpatient Diagnostic and Evaluation Services:**

When any minor age 13 years or older experiences an emotional crisis to such degree that he or she perceives the need for professional assistance, he or she must have the right to request, consent to, and receive mental health diagnostic and evaluative services provided by a licensed mental health professional as defined by Florida Statutes, or in a mental health facility licensed by the state.



# Consent to Psychiatric Treatment Outpatient Crisis Intervention

The purpose of such services must be to determine the severity of the problem and the potential for harm to the person or others if further professional services are not provided. Outpatient diagnostic and evaluative services cannot include medication and other somatic methods, aversive stimuli, or substantial deprivation. Such services cannot exceed two visits during any 1-week period in response to a crisis situation before parental consent is required for further services, and may include parental participation when determined to be appropriate by the mental health professional or facility.

# **Consent to Psychiatric Treatment Outpatient Crisis Intervention**

**Outpatient Crisis Intervention, Therapy and Counseling Services:** When any minor age 13 years or older experiences an emotional crisis to such degree that he or she perceives the need for professional assistance, he or she must have the right to request, consent to, and receive outpatient crisis intervention services, including individual psychotherapy, group therapy, counseling, or other forms of verbal therapy provided by a licensed mental health professional as defined by Florida Statutes, or in a mental health facility licensed by the state. Such services cannot include medication and other somatic treatments, aversive stimuli, or substantial deprivation. Such services cannot exceed two visits during any 1-week period in response to a crisis situation before parental consent is required for further services, and may include parental participation when determined to be appropriate by the mental health professional or facility.



# **Consent to Psychiatric Treatment Outpatient Crisis Intervention**

The parent or legal guardian of a minor is not liable for payment for any such outpatient diagnostic and evaluation services or outpatient therapy and counseling services described in this section of the Baker Act unless the parent or legal guardian participates in the services and then only for the services rendered with such participation.

Dependent  
Youth  
Chapter 39, F.S.

# Dependent Youth Consent to Treatment

## Examination, Treatment, & Placement

A judge may order a child in an out-of-home placement to be **examined** by a licensed health care professional. The judge may also order such child to be evaluated by a psychiatrist or a psychologist or, if a developmental disability is suspected or alleged, by the developmental disability diagnostic and evaluation team of the department. If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable.

[s.39.407(4) FS]



# Dependent Youth Consent to Treatment

## Examination, Treatment, & Placement

A judge may order a child in an out-of-home placement to be **treated** by a licensed health care professional based on evidence that the child should receive treatment. The judge may also order such child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service provider. **If it is necessary to place the child in a residential facility for such services, the procedures and criteria established in s. 394.467 shall be used. A child may be provided mental health services in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1).** [s.39.407(5), F.S.]

# Dependent Youth Consent to Treatment

Children who are in the legal custody of the department may be **placed** by DCF, without prior approval of the court, **in a residential treatment center** licensed under s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment or may be placed by the court **in accordance with an order of involuntary examination or involuntary placement entered pursuant to s. 394.463 or s. 394.467**. All children placed in a residential treatment program under this subsection must have a guardian ad litem appointed. [s.39.407 (6), F.S.]

# Emergency Care of Youth in DCF or DJJ Custody

The Department of Children and Family Services or the Department of Juvenile Justice caseworker, juvenile probation officer, or person primarily responsible for the case management of the child, the administrator of any facility licensed by the department under s. 393.067, s. 394.875, or s. 409.175, or the administrator of any state-operated or state-contracted delinquency residential treatment facility may consent to the medical care or treatment of any minor committed to it or in its custody under chapter 39, chapter 984, or chapter 985, when the person who has the power to consent cannot be contacted and such person has not expressly objected to such consent. There shall be maintained in the records of the minor documentation that a reasonable attempt was made to contact the person who has the power to consent. [s.743.0645(3), F.S.]

# **Emergency Care of Youth in DCF or DJJ Custody**

The medical provider shall notify the parent or other person who has the power to consent as otherwise provided by law as soon as possible after the medical care or treatment is administered. The medical records shall reflect the reason consent was not initially obtained and shall be open for inspection by the parent or other person who has the power to consent. [s.743.0645(4) FS]

The person who gives consent; a physician, dentist, nurse, or other health care professional licensed to practice in this state; or a hospital or medical facility, including, but not limited to, county health departments, shall not incur civil liability by reason of the giving of consent, examination, or rendering of treatment, provided that such consent, examination, or treatment was given or rendered as a reasonable prudent person or similar health care professional would give or render it under the same or similar circumstances. [s.743.0645(5), F.S.]

# Dependent Youth (Chapter 39, F.S.)

## Consent to Treatment

**Legal custody** is a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care. [s. 39.01(34), F.S.]

When any child is removed from the home and maintained in an out-of-home placement, DCF can have a medical screening performed on the child without authorization from the court and without consent from a parent or legal custodian. Such medical screening shall be performed by a licensed health care professional and shall be to examine the child for injury, illness, and communicable diseases and to determine the need for immunization. **In no case does this subsection authorize the department to consent to medical treatment for such children.** [s.39.407(1), F.S.]

# Dependent Youth Consent to Treatment

When DCF has performed the medical screening or when it is otherwise determined by a licensed health care professional that a child who is in an out-of-home placement, but who has not been committed to the department, is in need of medical treatment, including the need for immunization, consent for medical treatment shall be obtained from a parent or legal custodian of the child, or a court order for such treatment shall be obtained.

If a parent or legal custodian of the child is unavailable and his or her whereabouts can't be reasonably ascertained, and it is after normal working hours so that a court order cannot reasonably be obtained, an authorized agent of the department has the authority to consent to necessary medical treatment, for the child. DCF authority to consent to medical treatment in this circumstance is **limited to the time reasonably necessary to obtain court authorization.**

# Dependent Youth Consent to Treatment

If a parent or legal custodian of the child is **available but refuses to consent** to the necessary treatment, **a court order is required** unless the situation meets the definition of an emergency in s. 743.064 or the treatment needed is related to suspected abuse, abandonment, or neglect of the child by a parent, caregiver, or legal custodian. In such case, DCF can consent to necessary medical treatment. **This authority is limited to the time reasonably necessary to obtain court authorization.**

# Dependent Youth Consent to Treatment Psychotropic Medications

Before DCF provides **psychotropic medications** to a child in its custody, the prescribing physician must attempt to obtain **express and informed consent from the child's parent or legal guardian**. DCF must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, **seek court authorization to provide the psychotropic medications to the child**. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decision-making process regarding the provision of psychotropic medications.





# **Dependent Youth Consent to Treatment Psychotropic Medications**

If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that DCF seek court authorization do not apply to that medication until such time as the parent no longer consents.

Any time DCF seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, DCF must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

# Dependent Youth Consent to Treatment Psychotropic Medications

If a child who is removed from the home under s. 39.401 is receiving prescribed psychotropic medication at the time of removal and parental authorization to continue providing the medication cannot be obtained, the department may take possession of the remaining medication and may continue to provide the medication as prescribed until the shelter hearing, if it is determined that the medication is a current prescription for that child and the medication is in its original container.


If DCF continues to provide the psychotropic medication to a child when parental authorization cannot be obtained, the department shall notify the parent or legal guardian as soon as possible that the medication is being provided to the child. The child's official departmental record must include the reason parental authorization was not initially obtained and an explanation of why the medication is necessary for the child's well-being.



# Dependent Youth Consent to Treatment Psychotropic Medications

If DCF is advised by a licensed physician that the child should continue the psychotropic medication and parental authorization has not been obtained, DCF must request court authorization at the shelter hearing to continue to provide the psychotropic medication and must provide to the court any information in its possession in support of the request. Any authorization granted at the shelter hearing may extend only until the arraignment hearing on the petition for adjudication of dependency or 28 days following the date of removal, whichever occurs sooner.

Before filing the dependency petition, DCF must ensure that the child is evaluated by a licensed physician to determine whether it is appropriate to continue the psychotropic medication. If, as a result of the evaluation, DCF seeks court authorization to continue the psychotropic medication, a motion for such continued authorization shall be filed at the same time as the dependency petition, within 21 days after the shelter hearing.



# **Dependent Youth Consent to Treatment Psychotropic Medications**

DCF must file a motion seeking the court's authorization to initially provide or continue to provide psychotropic medication to a child in its legal custody. The motion must be supported by a written report prepared by the department which describes the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and other treatments considered or recommended for the child.

# Dependent Youth Consent to Treatment Psychotropic Medications

In addition, the motion must be supported by the prescribing physician's signed medical report providing:

- The name of the child, the name and range of the dosage of the psychotropic medication, and that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which such medication is being prescribed.
- A statement indicating that the physician has reviewed all medical information concerning the child which has been provided.
- A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms the medication, at its prescribed dosage, is expected to address.

# Dependent Youth Consent to Treatment Psychotropic Medications

- An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication; drug-interaction precautions; the possible effects of stopping the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child if age appropriate and to the child's caregiver.
- Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the medication; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends.



# Dependent Youth Consent to Treatment Psychotropic Medications

Psychotropic medications may be **administered in advance of a court order** in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. **Within 3 working days** after the medication is begun, the department must seek court authorization. [s.39.407 (3), F.S.]

Delinquent

Youth

Chapter 985, F.S.



# **Delinquent Youth** (Chapter 985, F.S.)

## **Medical, psychiatric, psychological, substance abuse, and educational examination and treatment.**

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. 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, must be used. [s.985.18(1), F.S.]

Whenever a child has been found to have committed a delinquent act, or before such finding with the consent of any parent or legal custodian of the child, the court may order the child to be **treated** by a physician. The court may also order the child to receive mental health, substance abuse, or retardation services from a psychiatrist, psychologist, or other appropriate service provider. If it is necessary to place the child in a residential facility for such services, the procedures and criteria established in chapter 393, chapter 394, or chapter 397, whichever is applicable, must be used [s985.18(2) FS]

# Delinquent Youth

A physician must be immediately notified by the person taking the child into custody or the person having custody if there are indications of physical injury or illness, or the child must be taken to the nearest available hospital for emergency care. A child may be provided mental health, substance abuse, or retardation services, in emergency situations, pursuant to chapter 393, chapter 394, or chapter 397, whichever is applicable. After a hearing, the court may order the custodial parent or parents, guardian, or other custodian, if found able to do so, to reimburse the county or state for the expense involved in such emergency treatment or care.

[s.985.18(6), F.S.]

Nothing eliminates the right of the parents or the child to consent to examination or treatment for the child, except that consent of a parent shall not be required if the physician determines there is an injury or illness requiring immediate treatment and the child consents to such treatment or an ex parte court order is obtained authorizing treatment. [985.18(7), F.S.]

Marchman Act  
Substance Abuse  
Impairment  
Chapter 397, F.S.

# Marchman Act

## Substance Abuse Impairment

The disability of nonage for persons under 18 years of age has been removed solely for the purpose of allowing minors to obtain voluntary substance abuse impairment services from a licensed service provider. The consent by a minor has the same force and effect as if executed by an adult.. [s. 397.601(4)(a), F.S.]

A minor may be taken to a detox facility, hospital or a juvenile addictions receiving facility (JARF) for involuntary admission if there is a good faith reason to believe the minor suffers from a condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior, and who, because of such condition [s. 397.311(15) and s. 397.675, F.S.]:

- Has lost the power of self-control with respect to substance use; and either:
- Inflicted, or threatened or attempted to inflict, or unless admitted is likely to inflict, physical harm on himself or another; or
- Is in need of substance abuse services and, by reason of substance abuse impairment his judgment has been so impaired that he is incapable of appreciating his need for such services and of making a rational decision in regard thereto. However, mere refusal to undergo such services does not constitute evidence of lack of judgment with respect to his or her need for such services

# Marchman Act

## Substance Abuse Impairment

Involuntary admission under the Marchman Act of a minor may be initiated as follows:

- Law enforcement officers can initiate Protective custody under the Marchman Act [397.677,FS].
- A parent or guardian may apply for a minor's emergency admission if a physician's certificate has been obtained [397.6791(2) F.S.], as well as for admission to a Juvenile Addiction Receiving Facility [397.6798, F.S.].
- A parent/guardian or a licensed service provider can petition the court for an involuntary assessment and stabilization order. [(397.6811,FS]

A minor must be released from protective custody, emergency admission, involuntary assessment, involuntary treatment, and alternative involuntary assessment of a minor, upon approval of a qualified professional in a hospital, a detoxification facility, addictions receiving facility, or any less restrictive treatment component. The minor must be released to the minor's parent, legal guardian, or legal custodian or the authorized designee thereof or to the department. [s. 397.6758, F.S.]

# Marchman Act

## Substance Abuse Impairment

**Parental Participation in Treatment:** A parent, legal guardian, or legal custodian who seeks involuntary admission of a minor is required to participate in all aspects of treatment as determined appropriate by the director of the licensed service provider.  
[397.6759, F.S.]

**Parental Participation/Payment:** A parent or legal guardian of a minor is required to contribute toward the cost of substance abuse services in accordance with his ability to pay. The parent or legal guardian isn't liable for payment for any voluntary substance abuse services provided to the minor without parental consent, unless the parent or legal guardian participates or is ordered to participate in the services, and only for the substance abuse services rendered. If the minor is receiving services as a juvenile offender, the obligation to pay is governed by the law relating to juvenile offenders. [s. 397.431(2)(3), F.S.]



# **Marchman Act Substance Abuse Impairment Release of Information**

Since a minor acting alone has the legal capacity to voluntarily apply for and obtain substance abuse treatment, any written consent for disclosure may be given only by the minor client. This restriction includes, but is not limited to, any disclosure of client identifying information to the parent, legal guardian, or custodian of a minor client for the purpose of obtaining financial reimbursement. When the consent of a parent, legal guardian, or custodian is required for a minor to obtain substance abuse treatment, any written consent for disclosure must be given by both the minor and the parent, legal guardian, or custodian.

[ss. 397.501(7)(e) 1 and 2, F.S.]

The background of the slide is a blue sky with a white, diagonal streak of clouds or smoke. The text is centered in the upper half of the image.

# Resources for Baker Act & Marchman Act



# Training Opportunities

## Online Training

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

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

## Copies of

### 2008 Baker Act Handbook

Download at no charge from DCF website.

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

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

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

# Department of Children & Families Website

[www.dcf.state.fl.us/mentalhealth/](http://www.dcf.state.fl.us/mentalhealth/)

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

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



# Department of Children & Families Website

[www.dcf.state.fl.us/mentalhealth/sa/](http://www.dcf.state.fl.us/mentalhealth/sa/)

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

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



# **Baker Act & Marchman Act**

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