Weapons & Contraband
(See also Law Enforcement)

Weapons in Field

Q. Under what provisions of law are we allowed to return firearms to people that we've Baker Acted?

The following is a summary of statutory provisions applying to persons with mental illness, incapacity, or substance abuse in relationship to gun ownership or possession:

790.06 License to carry concealed weapon or firearm.
(2)The Department of Agriculture and Consumer Services shall issue a license if the applicant:
(f)Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under chapter 397 or under the provisions of former chapter 396 or has been convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
(i)Has not been adjudicated an incapacitated person under s. 744.331, or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
(j)**Has not been committed to a mental institution under chapter 394**, or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
(10)A license issued under this section shall be suspended or revoked pursuant to chapter 120 if the licensee:
(e) Is committed as a substance abuser under chapter 397, or is deemed a habitual offender under s. 856.011(3), or similar laws of any other state;
(g) Is adjudicated an incapacitated person under s. 744.331, or similar laws of any other state; or
(h) **Is committed to a mental institution under chapter 394,** or similar laws of any other state.

790.065 Sale and delivery of firearms.
(2)(a)4.**Has been adjudicated mentally defective or has been committed to a mental institution by a court** and as a result is prohibited by federal law from purchasing a firearm.
a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a

criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, “committed to a mental institution” means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. Clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject.

d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the circuit court that made the adjudication or commitment for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner’s reputation, the petitioner’s mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

f. The department is authorized to disclose the collected data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose any collected data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a non-approval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

790.17 Furnishing weapons to minors under 18 years of age or **persons of unsound mind** and furnishing firearms to minors under 18 years of age prohibited.
(1)A person who sells, hires, barters, lends, transfers, or gives any minor under 18 years of age any dirk, electric weapon or device, or other weapon, other than an ordinary pocketknife, without permission of the minor's parent or guardian, or sells, hires, barters, lends, transfers, or gives to any person of unsound mind an electric weapon or device or any dangerous weapon, other than an ordinary pocketknife,

790.175 Transfer or sale of firearms; required warnings; penalties.
(1)Upon the retail commercial sale or retail transfer of any firearm, the seller or transferor shall deliver a written warning to the purchaser or transferee, which warning states, in block letters not less than 1/4 inch in height:
"IT IS UNLAWFUL, AND PUNISHABLE BY IMPRISONMENT AND FINE, FOR ANY ADULT TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR A **PERSON OF UNSOUND MIND**."
(2)Any retail or wholesale store, shop, or sales outlet which sells firearms must conspicuously post at each purchase counter the following warning in block letters not less than 1 inch in height:
"IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM IN ANY PLACE WITHIN THE REACH OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM TO A MINOR OR **A PERSON OF UNSOUND MIND**."

790.25 Lawful ownership, possession, and use of firearms and other weapons.
(2)USES NOT AUTHORIZED.—
(b)The protections of this section do not apply to the following:

1.A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or who is a habitual or chronic alcoholic, or a person using weapons or firearms in violation of ss. 790.07-790.115, 790.145-790.19, 790.22-790.24;
2.Vagrants and other undesirable persons as defined in 1s. 856.02;
3.A person in or about a place of nuisance as defined in s. 823.05, unless such person is there for law enforcement or some other lawful purpose.

Much of the above language is very vague and imprecise. Words or phrases such as "commitment", "adjudication", "unsound mind", etc are unclear and not consistent with the Baker Act or other mental health statutes. A simple voluntary or involuntary examination under the Baker Act may not be sufficient – it may actually require an adversarial hearing before a judge resulting in a finding by clear and convincing evidence that the person meets involuntary inpatient or involuntary outpatient placement, along with an order for placement or treatment.

Finally, the following issue might be of interest regarding 933.14, FS that governs Search & Inspection.

933.14 Return of property taken under search warrant.
(3)No pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a trial court judge.

The attorney for the Miami Dade Police Department issue the following advice:

LEGAL NOTE 2005-4 by Miami-Dade Police Legal Bureau May 5, 2005. Chapter 933.14 states that no pistol or firearm taken by any officer with or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a trial court judge. Breach of the peace is a generic term which includes disturbances of public peace or order. Use of a firearm or a threat or reference to use of a firearm would constitute a breach of the peace. An incident which resulted in taking a person into custody pursuant to the Baker Act would also constitute a breach of the peace. As a general rule, when an officer impounds a firearm for safekeeping only, this is an indication that no breach of the peace occurred. With every case, review of the police report should indicate whether the incident was a breach of the peace, and if the narrative so indicates, the firearm should not be returned without a court order. (see AGO below)

However, the above legal advice was contradicted by the Attorney General in 2009 as follows:

AGO 2009-04 Regarding Confiscation and return of firearms by law enforcement agencies when firearm owner is subject to Baker Act Evaluation. In the absence of an arrest and criminal charge against the person sent for evaluation under the Baker Act, the Sheriff may not retain firearms confiscated at the time of the event. Baker Act proceedings are not criminal proceedings. The AG suggested the Sheriff seek legislation to address the problem.

Q. I'm a law enforcement attorney –As the Swat team commander this is something we encounter regularly. We continue to take the weapons for safekeeping but are obligated to return them upon request? Please clarify what the Florida guns laws say about people with serious mental illnesses?

The Florida Attorney General's Opinion **AGO 2009-04 Regarding Confiscation and return of firearms by law enforcement agencies when firearm owner is subject to Baker Act Evaluation.** is as follows:

> You have asked for my opinion on substantially the following question:
> Is the Sheriff of Bay County required to return firearms that have been confiscated from persons who are sent for evaluation under Florida's Baker Act?
>
> In sum:
>
> In the absence of an arrest and criminal charge against the person sent for evaluation under Florida's Baker Act, the Sheriff of Bay County may not retain firearms confiscated from such persons and retained by that office.
>
> According to your letter, officers from the Bay County Sheriff's Office are frequently dispatched to calls involving an individual who threatens suicide or behaves in a manner that results in the person being sent for evaluation under Florida's Baker Act, Part I, Chapter 394, Florida Statutes. These individuals frequently possess firearms which are taken into custody by the officer who responds to the call. You are concerned that when these individuals are released following mental evaluation and no further official action is taken, these weapons are returned.
>
> Part I, Chapter 394, Florida Statutes, is the Florida Mental Health Act, also known as the Baker Act.[1] The Florida Legislature has expressed its intent with regard to the provisions of the Baker Act as follows:
>
> "It is the intent of the Legislature to authorize and direct the Department of Children and Family Services to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders. It is the intent of the Legislature that treatment programs for such disorders shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that such persons be provided with emergency service and temporary detention for evaluation when required; that they be admitted to treatment facilities on a voluntary basis when extended or continuing care is needed and unavailable in the community; that involuntary placement be provided only when expert evaluation determines that it is necessary; that any involuntary treatment or examination be accomplished in a setting which is clinically appropriate and most likely to facilitate the person's return to the community as soon as possible; and that individual dignity and human rights be guaranteed to all persons who are admitted to mental health facilities or who are being held under s. 394.463. It is the further intent of the Legislature that the least restrictive means of intervention be employed based on

the individual needs of each person, within the scope of available services. It is the policy of this state that the use of restraint and seclusion on clients is justified only as an emergency safety measure to be used in response to imminent danger to the client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness."

The act provides for voluntary or involuntary examination and treatment of mentally ill persons. Pursuant to section 394.463(1), Florida Statutes, a person may be taken to a receiving facility[2] for involuntary examination if there is reason to believe that he or she is mentally ill and because of that mental illness has refused voluntary examination or is unable to determine for himself or herself whether examination is necessary. A determination must be made that, without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself or that there is substantial likelihood that without care or treatment, serious bodily harm to that person or others may result in the near future as evidenced by recent behavior.[3]

A relevant aspect of Florida's Baker Act is its strong position that those who suffer from mental, emotional, and behavioral disorders should not, on the basis of their mental health, be treated as criminals. The act specifically requires that procedures 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."[4] The act provides that a person who is being treated for mental illness shall not be deprived of any constitutional rights.[5] However, if the 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."[6] Thus, section 394.458, Florida Statutes, provides that it is unlawful to "introduce into or upon the grounds of [a hospital providing mental health services under the Baker Act], or to take or attempt to take or send therefrom" any firearms or deadly weapons.[7]

With regard to the return of personal effects of patients in a facility, section 394.459(6), Florida Statutes, provides in part:

"A patient's right to the possession of his or her clothing and personal effects shall be respected. The facility may take temporary custody of such effects when required for medical and safety reasons. . . . All of a patient's clothing and personal effects held by the facility shall be returned to the patient immediately upon the discharge or transfer of the patient from the facility, unless such return would be detrimental to the patient. If personal effects are not returned to the patient, the reason must be documented in the clinical record along with the disposition of the clothing and personal effects, which may be given instead to the patient's guardian, guardian advocate, or representative."

Thus, those patients who are admitted to a facility under the Baker Act may have their personal effects retained if a determination is made that the return would be detrimental to the patient. No similar provision in the Baker Act authorizes a law enforcement agency to retain custody of personal property such as firearms of those discharged after evaluation pursuant to Part I, Chapter 394, Florida Statutes.

This office has issued a number of Attorney General Opinions over the years relating to various aspects of the Baker Act including the duties and responsibilities of law enforcement officers under the provisions of the act.[8] However, a review of Part I, Chapter 394, Florida Statutes, does not reveal any statement providing direction to law enforcement regarding the disposition of weapons and firearms confiscated from persons being treated under the act. The Baker Act does provide that if a person is arrested and charged with a felony and it appears that the person comes within the statutory guidelines for involuntary examination or placement under the Mental Health Act, "such person shall first be processed in the same manner as any other criminal suspect."[9] Thus, to the extent weapons could be confiscated and retained when taken from other felony suspects, firearms confiscated from felons also subject to the Baker Act would be subject to the same treatment. The applicability of this provision depends on the person being arrested and charged with a felony and would not be helpful in the situations you have described which do not involve an arrest.

Several other statutes provide for the disposition of firearms that have been confiscated under various provisions of state law. Section 933.14(3), Florida Statutes, provides that:

"No pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a trial court judge."

In addition, section 790.08, Florida Statutes, provides authority for law enforcement officers to take possession of weapons and firearms found upon persons arrested for various crimes. Again, each of these statutes requires the individual to be charged with a criminal offense and, as the Baker Act makes clear, Baker Act proceedings are not criminal proceedings.[10]

In sum, it is my opinion that in the absence of an arrest and criminal charge against the person sent for evaluation under Florida's Baker Act, the Sheriff of Bay County may not retain firearms confiscated from such persons and retained by that office. You may wish to suggest to your local legislative delegation that this issue is problematical for local law enforcement and work with them to craft amendatory legislation to address these matters.

Sincerely,

Bill McCollum
Attorney General

Q. I am the General Counsel for the Sheriff. We took a firearm from a guy who'd been Baker Acted. Now the guy wants his weapon back. There is a provision in federal law in 18 *United States Code* section 922(d) which lists disabilities from a person buying, selling, possessing a firearm. One of those disabilities is that nobody can possess a firearm who's been adjudicated mentally defective or has ever been committed to any mental institution. I know that a 72 hour Baker Act does not qualify as a "commitment," but my question is this: Is there any place

you know of where a law enforcement agency could check (at least in regards to returning a firearm) to see if a person has been formally committed? My guess is that there is some sort of central registry, but I also figure that there are a ton of confidentiality laws associated with it.

There isn't a central registry. The form initiating each involuntary examination must be submitted to the Agency for Health Care Administration within one working day after the person's arrival at the facility. These are submitted to the Florida Mental Health Institute at USF for inputting into the Baker Act reporting system. As you point out, these are examinations, not commitments. Since 1/1/05, receiving facilities have also been required to submit involuntary placement orders of the court – what probably would be considered "commitments", although this terminology isn't used in Florida. Submission of these orders has been inconsistent. Most people are either released prior to their involuntary placement court hearing or are transferred to voluntary status and never have the hearing at all.

In any case, these records are as you suspected, highly confidential. A court could order the information released, after a good cause hearing, weighing the public's need to know the information vs. the person's right to privacy. Even the Florida AG has a couple of opinions out adding to the statutory protection indicating that the records of the Clerk's of Court related to Baker Act and Marchman Act are confidential.

Q. Has there been discussion about how Tasers are classified under the Baker Act? I understand that our public receiving facilities are asking police officers to remove their firearms/weapons, including tasers, before entering the building with a patient. Some of the officers are questioning the need to remove the taser.

The Baker Act prohibits bringing any firearm or deadly weapon into a **hospital** providing mental health services unless authorized by law or by the person in charge (394.458). There is no rule providing additional direction.

However, the following two statutory provisions apply to law enforcement officers maintaining their firearms, not to mention their Tasers (legislation refers to these as Dart Firing Stun Guns in s.943.1717)

> 790.25 Lawful ownership, possession, and use of firearms and other weapons.--
> (3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:
> (d) Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
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> 790.052 Carrying concealed firearms; off-duty law enforcement officers.--
> (1) All persons holding active certifications from the Criminal Justice Standards and Training Commission as law enforcement officers or correctional officers as

> defined in s. 943.10(1), (2), (6), (7), (8), or (9) shall have the right to carry, on or about their persons, concealed firearms, during off-duty hours, at the discretion of their superior officers, and may perform those law enforcement functions that they normally perform during duty hours, utilizing their weapons in a manner which is reasonably expected of on-duty officers in similar situations.

The reference in the Baker Act is specific to hospitals -- doesn't mention CSU's because CSU's didn't even exist at the time the Baker Act was enacted. As a result, it is questionable if a CSU actually has the right to exclude any weapons carried by a law enforcement officer who is authorized under the above statutes to carry weapons. A policy or procedure of a receiving facility can't contradict statute. Even a hospital can only exclude firearms or deadly weapons. Only guns are defined as firearms or deadly weapons -- the other devices are alternatives to firearms such as pepper spray, extendable batons, Tasers, etc.

Q. We have a patient with a long history of mental illness. He claims to have guns in his home. He was inpatient for homicidal ideation; however he denies this ideation toward any one individual. Do we need to report to law enforcement or other regulatory agency that he is claiming to possess guns?

The only occasion in which you would have the authority to inform law enforcement about a patient is when he/she has declared an intention to harm other persons, as follows:

> **394.4615 Clinical records; confidentiality.**
> (3)Information from the clinical record may be released in the following circumstances:
> (a)When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

An Attorney General's Opinion 2009-04, states that in the absence of an arrest and criminal charge against the person sent for evaluation under Florida's Baker Act, law enforcement may not retain firearms confiscated from such persons and retained by that office. This opinion continued with

> A relevant aspect of Florida's Baker Act is its strong position that those who suffer from mental, emotional, and behavioral disorders should not, on the basis of their mental health, be treated as criminals. The act specifically requires that procedures utilized for criminals or those accused of crime shall not b e used in connection with persons who have a mental illness, except for the protection of the patient or others. The act provides that a person who is being treated for mental illness shall not be deprived of any constitutional rights.

Weapons at Psychiatric Hospitals

Q. Our law enforcement agency continues to have problems negotiating carrying of weapons into Baker Act receiving facilities. Can you clarify?

The Baker Act provision is as follows:

> **394.458 Introduction or removal of certain articles unlawful; penalty.**
> (1)(a)**Except as authorized by law or as specifically authorized by the person in charge** of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:
> 1.Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;
> 2.Any controlled substance as defined in chapter 893; or
> 3.Any firearms or deadly weapon.
> (b)It is unlawful to transmit to, or attempt to transmit to, or cause or attempt to cause to be transmitted to, or received by, any patient of any hospital providing mental health services under this part any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such hospital, except as authorized by law or as specifically authorized by the person in charge of such hospital.
> (2)A person who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Policies always relied on the phrase “or as specifically authorized by the person in charge”. However, the phrase “except as authorized by law” is an alternative. There are specific provisions of law governing the right of law enforcement officers to carry weapons without restriction, as follows:

> **943.10Definitions; ss. 943.085-943.255**.—The following words and phrases as used in ss. 943.085-943.255 are defined as follows:
> (1)“Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; **who is vested with authority to bear arms** and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

> **790.001Definitions.—**As used in this chapter, except where the context otherwise requires:
> (6)“Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.

> **790.25 Lawful ownership, possession, and use of firearms and other weapons.—**
> (3)LAWFUL USES.—The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it **is lawful for the following persons to** own, **possess**, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(d)**Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers,** game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;

There has also been a reliance in the past on the legal principle that a "special" law prevails over a "general" law, when in conflict. The issue becomes which is the general law and which is the special law in this circumstance. Many people believe that the 394 provision never was intended to apply to law enforcement – just to the general public. Others believe the 943 and 790 provisions governing certified law enforcement personnel would be the more specialized law, rather than the Baker Act.

Most receiving facilities have policies prohibiting carrying of firearms when the officer is bringing a person to the facility for a Baker Act examination. However, those same facilities generally don't maintain this position when calling law enforcement for assistance or to report a crime on the premises.

This is an issue that needs to be negotiated by attorneys for the receiving facilities and law enforcement agencies as well as well-reasoned policies and procedures that work for both.

Q. In reviewing the Baker Act statute I hoped to clarify whether or not Tasers are considered a weapon and would need to be removed and checked by law enforcement or security officers prior to entering a receiving facility.

Chapter 394.458, FS prohibiting weapons on the grounds of a mental health facility states:

(1)(a)Except as authorized by law or as specifically authorized by the person in charge of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:
1.Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;
2.Any controlled substance as defined in chapter 893; or
3.Any firearms or deadly weapon.

As you can see, it only refers to firearms or deadly weapon. Only a gun is usually referred to as a firearm or deadly weapon – the other items such as Tasers, pepper spray, batons, etc are considered to be alternatives to a firearm or deadly weapon.

Q. A CSU called police for service due to a potentially dangerous situation in their psych unit, but then did not permit police to enter with firearms. I know an administrator can waive the prohibition of weapons in the facility depending on circumstances.

You are correct that a hospital administrator can waive the prohibition on law enforcement officers bringing their firearms into a hospital providing mental health services. The current law wouldn't permit a non-hospital CSU administrator to prohibit the presence of firearms by law enforcement.

> **394.458 Introduction or removal of certain articles unlawful; penalty.--**
> (1)(a) Except as authorized by law or as specifically authorized by the person in charge of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:
> 1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;
> 2. Any controlled substance as defined in chapter 893; or
> 3. Any firearms or deadly weapon.
> (b) It is unlawful to transmit to, or attempt to transmit to, or cause or attempt to cause to be transmitted to, or received by, any patient of any hospital providing mental health services under this part any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such hospital, except as authorized by law or as specifically authorized by the person in charge of such hospital.

A "hospital" is defined in the Baker Act as a facility licensed under chapter 395. It is not a facility licensed under chapter 394.

If a facility administrator believes a situation in a facility is imminently dangerous enough to call in law enforcement assistance, it is probably dangerous enough for the officers to carry whatever weapons are essential to restore order. This would also apply when law enforcement comes to the facility to investigate a crime on the premises. To bar their admission to the unit under such circumstances could result in an "obstruction" charge against the administrator.

Q. I have a question regarding law enforcement bringing weapons on to the unit. Am I correct that law enforcement officers do not have to relinquish their weapons when entering a free standing psychiatric CSU? I am hearing conflicting answers and want to be clear in our policy. Can law enforcement officers bring their weapons (gun, taser, pepper spray, baton) on the unit? Or, must they be locked up prior to entry on the unit?

The Baker Act prohibits bringing of firearms or deadly weapons into a hospital providing mental health services unless the **hospital** administrator allows it:

> 394.458 Introduction or removal of certain articles unlawful; penalty.--
> (1)(a) Except as authorized by law or as specifically authorized by the person in charge of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:
> 1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;

2. Any controlled substance as defined in chapter 893; or
3. Any firearms or deadly weapon.
(b) It is unlawful to transmit to, or attempt to transmit to, or cause or attempt to cause to be transmitted to, or received by, any patient of any hospital providing mental health services under this part any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such hospital, except as authorized by law or as specifically authorized by the person in charge of such hospital.
(2) A person who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

As you can see, this only addresses firearms and deadly weapons – not other devices such as Tazers, batons, or pepper spray. The above provision doesn't apply to a CSU -- only to hospitals licensed under chapter 395, FS. Many officers are willing to leave their weapons locked in their vehicle trunk or in a lock box provided by the facility, just as they do when they enter the jail or many courthouses. However, there is no current legal basis for a non-hospital requiring a law enforcement officer to give up his weapons in order to carry out his/her duty to deliver a person on involuntary examination status to a receiving facility. A facility policy cannot be in conflict with statute that would otherwise entitle the officer to carry a weapon.

Q. Can a law enforcement officer take his or her weapon into a hospital providing mental health services?

No. The Baker Act states that except as authorized by law or as specifically authorized by the person in charge of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital any firearms or deadly weapons. The administrator of the facility has the authority to make exceptions to the "no firearms policy" in the case of law enforcement officers while in the performance of their duty. [s. 394.458, F.S.]

Q. Our hospital has a policy that no guns are allowed in the psych ED. Most law enforcement agencies comply without a problem. However, one police department has begun to challenge this policy. As the Director of the ED, I feel strongly about the presence of guns on the unit, for the obvious reason. Is there a clause in the Baker Act regarding the issue of weapons on a psychiatric floor?

The Baker Act prohibits bringing any firearm or deadly weapon into a hospital providing mental health services unless authorized by law or by the person in charge. There is no rule providing additional direction.

394.458 Introduction or removal of certain articles unlawful; penalty.--
(1)(a) Except as authorized by law or as specifically authorized by the person in charge of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:
1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;

2. Any controlled substance as defined in chapter 893; or
3. Any firearms or deadly weapon.

(b) It is unlawful to transmit to, or attempt to transmit to, or cause or attempt to cause to be transmitted to, or received by, any patient of any hospital providing mental health services under this part any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such hospital, except as authorized by law or as specifically authorized by the person in charge of such hospital.

While chapter 790.25(3)(d), FS permits law enforcement officers to carry weapons and 790.052 allows off duty law enforcement officers to carry concealed firearms, utilizing their weapons in a manner which is reasonably expected of on-duty officers in similar situations, law enforcement isn't specifically excluded from the prohibition in the Baker Act. Where a general statute and a specific statute are in conflict, the specific statute will prevail. In this case, it is the Baker Act.

A hospital can only exclude firearms or deadly weapons. Only guns are typically considered firearms or deadly weapons -- the other devices are alternatives to firearms such as pepper spray, batons, Tasers, etc. Some receiving facilities have begun to authorize officers to retain their guns when entering the facilities rather than requiring the weapons to be placed into a lock-box or left in cruisers on the presumption that officers are well trained to keep control of the weapons at all times and have double or triple latch holsters to prevent the weapon from being removed by someone else.

Finally, the prohibition against law enforcement officers bringing weapons onto a unit is generally only enforced by facilities when the officers are bringing a person for involuntary examination under the Baker Act. However, if the officer is called to the facility in response to possible criminal acts or because the staff has lost control of patients on the unit, they are typically allowed to bring whatever devises the officer deems necessary. In fact, in some cases, officers will refuse to respond to the call unless allowed to retain their weapons.

This might be a situation in which you want to consult with your hospital attorney.

Q. Can a law enforcement officer enter a psychiatric facility with his/her firearm if called for service (i.e. violent patient unable to control, patient or staff reporting that they have been assaulted?

The Baker Act [s.394.458(1)(a)] prohibits the entry of any firearm or deadly weapon (gun) onto the premises of a hospital providing mental health services, except as permitted by the facility administrator. A hospital administrator who called law enforcement because of an emergency on the psychiatric unit unable to be controlled by staff would generally want law enforcement to enter as quickly as possible. In such circumstances, many law enforcement officers wouldn't enter without access to their weapons for purposes of their own safety and that of others, as well as the potential that a crime has been committed. In these cases the administrator generally authorizes the officers to enter with their weapons.

Q. Can our hospital security officers, all of whom are certified in the use of Tasers, bring their tasers on our psychiatric unit? The Taser is a non-lethal means to protect our officers and staff, but clinical staff is opposed to this practice.

This issue isn't governed by the Baker Act law or rules. The only reference is as follows:

> **394.458 Introduction or removal of certain articles unlawful;** penalty.--
> (1)(a) Except as authorized by law or as specifically authorized by the person in charge of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:
> 1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;
> 2. Any controlled substance as defined in chapter 893; or
> 3. Any firearms or deadly weapon.

This provision only applies to hospitals (not to CSU's), only restricts firearms or deadly weapons (not alternatives to such weapons), and it permits the hospital administrator to override such restriction. Therefore, the answer to your question is going to defer to hospital policies and procedures. The staff is obviously concerned that the appearance of the Tasers (they look like holstered guns to the casual observer) might be frightening or coercive to patients. They may also fear the use of the devises prematurely when other more appropriate alternatives may be available. However, one would presume that security officers won't be called to the unit unless all clinically approved interventions have been exhausted and the safety of staff and patients is at risk.

Contraband

Q. We have a patient confidentiality vs. legal issue in our receiving facility. What should the procedure be for a patient that is admitted to our unit, either voluntary or involuntary, and has an illegal substance in their possession? What should we do with the substance itself, if it should be destroyed on the unit, given to our security department for disposal, or if the police should be notified to take the substance into their possession? Do the police have the right to the person's name? Also, should firearms, deadly weapons, and intoxicating beverages be treated the same?

The policy of most facilities is to ask law enforcement to take possession of any illegal substances removed from persons admitted to the facility. However, you shouldn't tell law enforcement any identifying information about the patient.

The Baker Act does have two provisions that may apply. Chapter 394.458 governing the Introduction or removal of certain articles, prohibits anyone from bringing firearms, controlled substance or intoxicating beverage onto the grounds of a hospital providing mental health services except as authorized by law or as specifically authorized by the person in charge of such hospital. Further, section 394.459(6) governing Care And Custody Of Personal Effects Of Patients permits the facility may take temporary custody of such effects when required for medical and safety reasons.

Most facilities don't want their own staff to destroy illicit substances because that isn't incorporated into the provision above and for fear that allegations might be made that the substances didn't actually get destroyed. Law enforcement will usually accept custody of illegal substances, but probably wouldn't accept custody of legal intoxicating beverages. These you may have to dispose of rather than taking on the liability of returning such substances to the person upon discharge.

This same issue comes up with firearms or other weapons. If law enforcement is willing to accept custody of the weapons, the person can seek return of the weapons after discharge from your facility from law enforcement. There are few restrictions on the ability of persons to have and bear arms because of federal and state constitutional protections. Even law enforcement officials are sometimes uncomfortable about taking such possession because of subsequent liability if returned weapons are used.

Your attorney may rather you face a complaint of disposing of someone's property than defending you in an action where the patient caused or suffered harm. You may want to refer this matter to your Risk Management and legal counsel.

Q. What does the law says about someone coming into a receiving facility with an illegal substance? What are we required to do?

The policy of most facilities is to ask law enforcement to take possession of any illegal substances removed from persons admitted to the facility. However, law enforcement shouldn't be given any identifying information about the patient. Since the Baker Act doesn't have any specific provisions governing this issue, your legal counsel would probably advise you to follow the laws that are most protective of the person's privacy. The Baker Act does have two provisions that may be helpful, as follows:

> **394.458 Introduction or removal of certain articles unlawful**
> (1)(a) Except as authorized by law or as specifically authorized by the person in charge of each hospital providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such hospital, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:
> 1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;
> **2. Any controlled substance as defined in chapter 893;** or
> 3. Any firearms or deadly weapon.
> (b) It is unlawful to transmit to, or attempt to transmit to, or cause or attempt to cause to be transmitted to, or received by, any patient of any hospital providing mental health services under this part any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such hospital, except as authorized by law or as specifically authorized by the person in charge of such hospital.
>
> **394.459(6) Care And Custody Of Personal Effects Of Patients**.--A patient's right to the possession of his or her clothing and personal effects shall be respected. The facility may take temporary custody of such effects when required for medical and safety reasons. A patient's clothing and personal effects shall be

inventoried upon their removal into temporary custody. Copies of this inventory shall be given to the patient and to the patient's guardian, guardian advocate, or representative and shall be recorded in the patient's clinical record. This inventory may be amended upon the request of the patient or the patient's guardian, guardian advocate, or representative. The inventory and any amendments to it must be witnessed by two members of the facility staff and by the patient, if able. All of a patient's clothing and personal effects held by the facility shall be returned to the patient immediately upon the discharge or transfer of the patient from the facility, unless such return would be detrimental to the patient. If personal effects are not returned to the patient, the reason must be documented in the clinical record along with the disposition of the clothing and personal effects, which may be given instead to the patient's guardian, guardian advocate, or representative. As soon as practicable after an emergency transfer of a patient, the patient's clothing and personal effects shall be transferred to the patient's new location, together with a copy of the inventory and any amendments, unless an alternate plan is approved by the patient, if able, and by the patient's guardian, guardian advocate, or representative.

Most facilities don't want their own staff to destroy illicit substances because that isn't incorporated into the provision above and for fear that allegations might be made that the substances didn't actually get destroyed. Law enforcement will usually accept custody of illegal substances, but they probably wouldn't accept custody of legal intoxicating beverages. These you may have to dispose of rather than taking on the liability of returning such substances to the person upon discharge.

This same issue comes up with firearms or other weapons. If law enforcement is willing to accept custody of the weapons, the person can seek return of the weapons after discharge from your facility from law enforcement. There are few restrictions on the ability of persons to have and bear arms because of federal and state constitutional protections. Even law enforcement officials are sometimes uncomfortable about taking such possession because of subsequent liability if returned weapons are used. This matter should be referred to your organization's Risk Management and legal counsel

Weapons in a Courtroom

Q. Do you know of any precedent for the State Attorney to insist on the presence of a bailiff at BA hearings and packing a Taser? Also, are there any guidelines as to any type of weapon in a hearing room?

The Baker Act has the following provision governing the setting for the involuntary placement hearings:

> **394.467 Involuntary inpatient placement**
> (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.--
> (a)1. The court shall hold the hearing on involuntary inpatient placement within 5 days, unless a continuance is granted. 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**.

While requiring a bailiff hasn't been reported in any other circuits, there is nothing to prohibit the court from requiring a bailiff if it determines one is needed for the **safety of the patient**.

Regarding the presence of a Taser in a receiving facility, the Baker Act states:

> **394.458 Introduction or removal of certain articles unlawful;** penalty.--
> (1)(a) Except as authorized by law or as specifically authorized by the person in charge of each **hospital** providing mental health services under this part, it is unlawful to introduce into or upon the grounds of such **hospital**, or to take or attempt to take or send therefrom, any of the following articles, which are hereby declared to be contraband for the purposes of this section:
> 1. Any intoxicating beverage or beverage which causes or may cause an intoxicating effect;
> 2. Any controlled substance as defined in chapter 893; or
> **3. Any firearms or deadly weapon.**

Since your CSU isn't a licensed hospital, this provision doesn't currently apply, Only a firearm would be considered a deadly weapon – not any of the other items generally carried by law enforcement officers. Unless there is a statutory prohibition or an Administrative Order of a judge prohibiting the carrying of weapons by law enforcement (usually prohibited in jails, prisons, and in some courthouses), certified law enforcement officers are generally permitted to carry their weapons.

The involuntary placement hearing is held in a "courtroom", regardless of which building or setting where the proceeding is held. In this case, your CSU is considered a courtroom for this purpose and any requirement established by the court for such judicial proceedings would apply as long as not being out of compliance with statute.