



# The Florida Mental Health Act

“The Baker Act”

Florida Statute 394

Administrative Code 65E-5

# Purpose:

- To provide that persons experiencing enhanced disabling aspects of mental, emotional and behavioral disorders be provided with emergency service and temporary detention for evaluation when required.
- To provide protection of a persons civil rights and right to due process.
- To ensure the safety and protection to the individual and the community.

# Definitions:

- Mental illness- for the purpose of the law is defined as an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive **Or** understand reality.

AND

- which impairment substantially interferes with a person's ability to meet ordinary demands of living, regardless of etiology.

# Voluntary Vs Involuntary

- A person can sign voluntarily for evaluation only if:
  - ✓ There is evidence of a mental illness
  - ✓ The person is competent to give expressed and informed consent.
  - ✓ The person is not expressing or there is no evidence of dangerousness.
  - ✓ The person is able to understand their rights and treatment as they are explained to them.

# A person cannot sign Voluntary if:

- The person does not meet the definition of having a Mental illness as defined under chapter 394( the term does not include retardation or developmental disabilities, intoxication or conditions manifested only by antisocial behavior or substance abuse impairment.)
- The person is over age 60 with a primary diagnosis of Dementia and the behavioral symptoms being exhibited are a direct result of the diagnosis.
- The person is over the age of 60 and being transferred from a nursing home who have not had an assessment that established their ability to provide expressed and informed consent.

# Exclusions continued

- Has been declared incapacitated and has been assigned a court appointed guardian.
- Is a minor without the application being made by the parents or legal guardian.

# Involuntary Admissions:

1. The person exhibits evidence of a mental illness  
AND
2. Refuses examination or is unable to determine for themselves that an examination is necessary
3. And either:
  - A. Without care or treatment , is likely to suffer from neglect or refuses to care for self , and such neglect or refusal poses a real and present threat of substantial harm to ones 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
  - B. There is a substantial likelihood that without treatment will cause in the near future serious bodily harm to self or others, as evidenced by recent behavior.

# Types of Involuntary Examination:

- Ex-Parte Order initiated by the court
- Certificate of a Mental Health professional
- Law Enforcement Officer

All Involuntary Evaluations are to be transported by law enforcement unless arrangements are made with medical transport by Law enforcement.

# Involuntary Examination by the court:

- Petition to the probate court.
- Based on sworn testimony (written or oral) of individuals who have personally observed the person and have no personal gain from the person being admitted involuntarily for examination.
- Once order is issued the individual is to be transported to the nearest receiving facility by the SCSO ASAP but at the least within the time constraints of the order.

# Certificate of a Medical Professional

- May be executed by a physician, clinical psychologist, psychiatric nurse or clinical social worker.
- The individual must have been examined by the professional within the last 48 hours.
- Transportation to the receiving facility by Sheriff's Office.

# Law Enforcement

- To be executed when there is:
  - ✓ Evidence of a mental illness
    - AND one of the following:
      1. Refuses exam or can't determine on their own that one is needed.
      2. Self neglect or danger to self or others

# Law Enforcement cont.

- Transported to nearest receiving facility.
- The receiving facility cannot refuse a Baker Act. (i.e. “we’re full”, needs medical clearance).
- Need to complete two forms:  
CF-MH 3052a  
CF-MH 3100

# Field determination of Involuntary Criteria

## ■ Key Points to remember:

1. You are not expected to diagnose the person. You only need to believe that the person may be presenting sufficient evidence of a mental illness and is putting themselves or others in danger. You need only to see evidence to support the need for an examination by a professional.



2. You do not need to witness the behaviors yourself. You can consider credible eyewitnesses from others. It is a good idea to get written witness statements when possible. The Baker Act is a civil procedure and does not need to be held to the same level of probable cause as under a criminal law. You may initiate the involuntary exam by having a reason to believe the person meets the criteria.

3. Initiating an involuntary examination does not mean the person is incompetent. They are at that time unable to determine for themselves that an exam is necessary. Incompetence is a legal definition that is determined after examinations. Therefore a person is not necessarily exempt from facing criminal charges solely because they are “Baker Acted”.

4. You are not legally obligated to wait at the receiving facility to provide security.
5. Weapons are not permitted in psychiatric facilities unless specifically authorized by the administrator of that facility.

# Things to Look For:

Thought /speech disturbances:

Rapid speech, switching topics frequently, poor concentration, disorganized thoughts, responding to internal stimuli (appears to be listening to voices).

Hallucinations: Sees people not seen by others, hears voices telling them to harm themselves or others, inanimate objects giving them instructions.

- Failure to care for self: not sleeping and or eating, not taking medications, neglecting personal care and household responsibilities, unsafe environment in the home which might put the individual or others at risk.
- The individual reports feelings of hopelessness or helplessness.
- Facial expression and body posture: Flat affect, no facial responsiveness.

- Dangerousness: weapons or access to weapons, voices suicidal ideas, speaks of a specific plan, evidence of past attempts or report of past attempts.

# Where to Go:

- By law a person is to be taken to the nearest Baker Act receiving facility. There are two in Seminole County:
  - Seminole Community Mental Health CSU  
919 E. 2<sup>nd</sup> Street  
Sanford, FL 32771  
(407)321-4357



- South Seminole Hospital

555 W. SR 434

Longwood, FL 32750

(407)767-1200

# After the Baker Act

- Initially a Baker Act is for an involuntary examination. The person can be held for UP TO 72 hours on the initial hold.

After the initial exam:

- The person can be released.
- The person can sign in voluntarily for continued treatment.
- The treating psychiatrist can petition the court for involuntary treatment either in the CSU or at the State Hospital.

- The person must still meet the criteria to be held involuntarily at the CSU or at the State Hospital.
- Unless there are pending criminal charges, confidentiality laws preclude the facility from notifying law enforcement of the persons release (without written permission from the person themselves).



# ■ Assisted Outpatient Treatment or Baker Act Reform

# Baker Act Reform

- 2004 Florida Legislature revised the Baker Act to add provisions for Involuntary Outpatient Placement effective January 1, 2005.
- Allows court-ordered outpatient treatment for adults who have serious mental illnesses and meets the criteria laid out in the law.



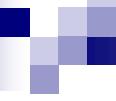
# Criteria must be met by clear and convincing evidence and include:

- Person has either been admitted twice within the last 36 months involuntarily to a receiving facility or received mental health services in a correctional facility; or engaged in one or more serious acts of serious violent behavior toward self or others within the preceding 36 months.

- Person is unlikely to voluntarily participate in the treatment plan and has either refused voluntary treatment or is unable to determine whether treatment is necessary.
- Persons medical history reveals that the person is in need of treatment and without treatment a relapse or deterioration that would result in serious bodily harm to his well-being.

- It is likely the person will benefit from involuntary placement; and
- All available less restrictive alternatives have been exhausted or judged inappropriate or unavailable.

- The person must meet all criteria and a service provider must agree to provide services before the court can order the treatment.
- Court-ordered treatment can be for a periods of 6 months, but the court can consider periods of continued treatment if all the criteria above are still met.



# Questions:

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