

## **The Baker Act**

(The Florida Mental Health Act)

The Baker Act is named after Maxine Eldridge Baker, the former Dade County representative for the Florida House of Representatives who sponsored and championed the legislation for seven years before its passage in 1971 and enactment in 1972. Ms. Baker believed that Florida's previous Mental Health laws (which, prior to 1971, hadn't changed significantly in almost a century) deprived citizens with mental health problems of their freedom by committing them to institutions and diluting the right to due process even when there was no indication they were a danger to themselves or others.

People with mental illnesses are entitled to individual dignity, treatment without delay or without consideration of the person's inability to pay, express and informed consent, humane and skillful treatment (medical, vocational, social, educational and rehabilitative) suited to the person's needs, the right to communicate with others (be it in person, by phone or mail) and report abuse, the right to vote in elections if they are qualified voters, the right to keep their personal things (including clothing) if they are deemed safe and not prohibited for medical reasons, the right to have your case reviewed by the court to determine if your detention or denial of rights or privileges is just (habeas corpus), discharge and treatment planning, the right to be free of sexual misconduct of staff members, the right to a representative, the right to confidentiality and <sup>1</sup>the right to be free of violations of the rights or privileges in the Baker Act.

The Baker Act delineates the conditions under which a mentally ill (or person presumed to be mentally ill) can be forced to undergo an involuntary examination in a local crisis facility or hospital. The patient needing to be Baker Acted must be a danger to himself or others as a result of being mentally ill and be unwilling or not able to give consent for

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<sup>1</sup> Department of Children and Families, Baker Act Manual 2014: The Florida Mental Health Act User Reference Guide

voluntary treatment. Involuntary assessment can take up to 72 hours and can be initiated by:

A spouse, guardian, relative, service provider having personal knowledge of the patient's alleged mental illness willing to file an affidavit/petition explaining why the patient should be involuntarily assessed. If the person completing the petition is not a relative or service provider, the petition must be completed by three adults. If the patient being involuntarily assessed is a minor, the parent, legal guardian/custodian or a service provider must complete the petition. The petition must be filed in the office of the Clerk of Court within the county where the alleged mentally ill person is located.

A healthcare provider who believes the patient meets the Baker Act guidelines and the law enforcement officer who transports the patient to the receiving facility.

A law enforcement officer who believes the patient meets the criteria and takes the person to the crisis facility.

If, at any time during the 72-hour assessment, it is determined that the patient is not a threat to himself or others, he or she must be released. However, the patient can agree to additional inpatient treatment or may be referred for outpatient treatment. If the patient is unable or unwilling to consent to placement and additional inpatient care is needed the healthcare providers can file a petition to continue the patient in involuntary placement and a hearing on the petition will be held within five days. An attorney will be appointed for any patient against whom a Petition for Involuntary Placement is filed. The patient may be held (against his will) in a facility for as long as six months while he or she receives treatment for mental illness if the court, based on expert testimony, determines the patient needs involuntary treatment.

If a patient is found incompetent to consent to treatment, the court will appoint a guardian advocate (Florida Statute 394.4598) to make

decisions pertaining to health and mental health issues if an adjudication of incapacity has not already been entered and the patient does not have anyone who has the authority to make those decisions. The guardian advocate is required to take the court-approved course prior to exercising any authority. The guardian advocate is discharged upon the patient's discharge from involuntary to voluntary treatment or upon discharge from involuntary treatment.