

CCHR: Why Florida Needs to Revisit and Reform the Mental Health Law

There is the equivalent of one hundred Baker Acts initiated on children every day of the year. It is no wonder that parents are incensed. Where did it go wrong?

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/EINPresswire.com/ -- Florida's Mental Health Act of 1971 was designed and meant to protect an individual's rights and due process. Prior to this piece, of what was considered to be extremely forward-thinking legislation, statutes governing mental health treatment dated almost 100 years were considered barbaric. Individuals could be confined to a state hospital with just three signatures and the approval of a county judge. According to numerous different sources, the [Baker Act](#) was originally aimed at preserving the rights of those who were taken into custody against their will. It replaced the state's previous mental health law originating in 1874, frequently referred to as draconian. [1]



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President for the Florida chapter of CCHR, Diane Stein

But according to the Florida chapter of the [Citizens Commission on Human Rights](#) (CCHR), this law is once again long overdue for a complete overhaul.

“Over the past 50 years, the Baker Act has become a great source of abuse, fraud and infringement on civil liberties and parental rights,” states the president of CCHR Florida Diane Stein. “An overhaul of the mental health law is long overdue.”

History of the Baker Act

The Florida Supreme Court stated in a summary of the Baker Act, "Chapter 394 of the Florida Statutes, known as 'The Baker Act,' governs mental health services, including voluntary admissions (section 394.4625), [involuntary examination](#) (section 394.463) and involuntary placement (section 394.467). Enacted in 1971, the law was designed to protect the rights and liberty interests of citizens with mental illnesses and ensure public safety." [2]

The Baker Act was named after Maxine Baker, the former state representative who sponsored push for reformation. Representative Baker spent three years doing her research on mental hospitals. Literally, traveling around the world in order to put together the criteria for the law she would eventually pen. "The idea was that families could voluntarily check in loved ones who needed care without worrying about losing them to a state hospital. It also provided an involuntary examination process that would be conducted only as a last resort." [3]

Prior to the Act, children as young as 12-years old could be incarcerated in a state (mental) hospital. "This Act brought about a dramatic and comprehensive revision of Florida's 97-year-old mental health laws. It substantially strengthened the due process and civil rights of persons in mental health facilities." [3]

Currently there is the equivalent of one hundred Baker Acts initiated on children every day of the year. Many of these children never met the criteria established to protect the rights and liberties of citizens imprisoned by the Baker Act and many who are taken into custody are 10 years of age and younger. It is no wonder that parents are incensed. Where did it go wrong? [4]



As reported by the Baker Act Reporting Center, an astounding 36,078 involuntary psychiatric examinations were initiated on children across the state.



The mental health law currently allows for individuals of all ages, including children, to be taken into custody and sent for an involuntary psychiatric examination.

Four Key Points to the Baker Act

It is important to note that while whether or not a person of any age is suffering from a mental illness is subjective since there are no medical tests, the definition of mental illness is clearly defined in Florida law:

“Mental illness - means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. For the purposes of this part, the term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by dementia, traumatic brain injury, antisocial behavior, or substance abuse.” [5]

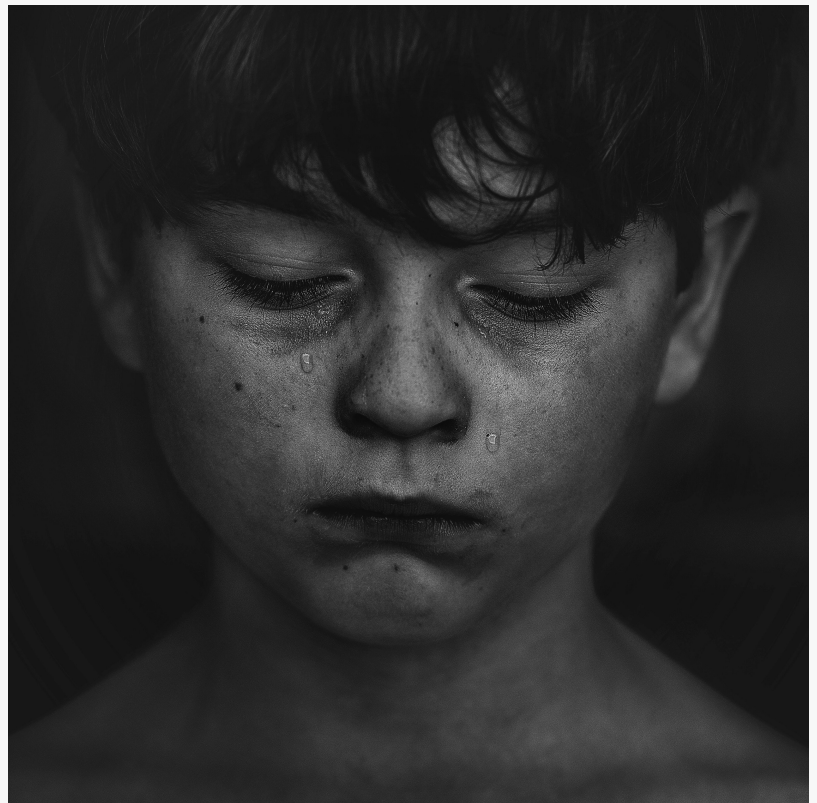
There are four key points to enacting the Baker Act and the individuals authorized to take a person into custody are not always using the full set of criteria. This includes schools, which based on the number of inappropriate Baker Acts from school settings, should not be in the position to make this adjudication, especially without parental consent.

The criteria are simple but not always understood. A person may be taken to a receiving facility for involuntary examination if there is “reason to believe” that the person has a mental illness and because of his or her mental illness:

1. The person has refused voluntary examination after “conscientious” explanation and disclosure of the purpose of the examination; or
2. The person is unable to determine for himself or herself whether examination is necessary;



Involuntary examinations are being initiated on children without parental knowledge. The parent finds out AFTER their child has been Baker Acted.



It was reported during the Baker Act Task Force that an estimated 30% of the children being Baker Acted in Pinellas County alone did not meet the criteria.

and

3. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses “a real and present threat of substantial harm” to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

4. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others “in the near future”, as evidenced by recent behavior. [6]

Unfortunately, it would seem that the Baker Act is being used as a disciplinary tool and a quick solution by the school system as evidenced by the ever-increasing number of children being Baker Acted and the spikes that occur when school is in session. Additionally, parents are cut out of the loop of this very traumatic experience and not being given the opportunity to help their child as is their right. [7]

Baker Act First Ask Questions Later

There is a knee jerk mentality to the current implementation of the Baker Act. “Over the past seven years, children have been taken from public schools in Tampa Bay more than 7,500 times and temporarily placed in mental health facilities. They often leave campus handcuffed in the back of police cruisers. Some are as young as 6.” [3]

The educational system has been using the Baker Act as a quick fix. A Tampa Bay Times investigation “points to glaring weaknesses in the system — from a lack of parental consent to students being wrongly committed, to facilities that put students in harm’s way. The Times found cases of children being improperly housed with adults in mental health centers or being sexually or physically assaulted while in their care. [3]

Finally, A Solution

The solution, as recommended time and time again by both the Florida Supreme Court and the numerous Task Forces created to review the situation, is to amend the law. This year, once again, bills have been filed in the Florida Senate and House which would help prevent children from being taken inappropriately into custody for involuntary psychiatric examinations. During 2018-2019 there were 37,882 involuntary psychiatric examinations initiated on children in Florida according to the Baker Act Reporting Center.

The bills, Senate Bill 590: Involuntary Examinations of Minors and House Bill 383: Involuntary Examinations of Minors, would amend the law so that schools must contact a parent or a legal guardian to notify them that their child is in danger of being sent for an involuntary psychiatric examination so that they may take appropriate measures in time. In creating this protection, the state would be prevented from infringing on the fundamental rights of a parent to be involved in any involuntary examination of their child. This change is also in alignment with a provision in the Baker Act law that the “help of willing family” can be taken into consideration as a solution instead of taken the child into custody. [7,8]

“The bills currently before the House and Senate, if passed, would be a major step in the right direction,” said Diane Stein.

CCHR is dedicated to the protection of children and has been working to restore and protect the mental health human rights of all Floridians for decades. For information on how to protect your rights as a parent or report a Baker Act please visit www.cchrflorida.org or call 1-800-782-2878.

About CCHR: Initially established by the Church of Scientology and renowned psychiatrist Dr. Thomas Szasz in 1969, CCHR’s mission is to eradicate abuses committed under the guise of mental health and enact patient and consumer protections. L. Ron Hubbard, founder of Scientology, first brought psychiatric imprisonment to wide public notice: “Thousands and thousands are seized without process of law, every week, over the ‘free world’ tortured, castrated, killed. All in the name of ‘mental health,’” he wrote in March 1969.

Sources:

[1] Florida’s ‘Baker Act’: 5 Fast Facts You Need to Know <https://heavy.com/news/2018/02/floridas-baker-act-5-fast-facts-you-need-to-know/> History of the Baker Act Its Development & Intent <https://www.myflfamilies.com/service-programs/samh/crisis-services/laws/histba.pdf>

[2] Executive Summary Introduction

<https://www.floridasupremecourt.org/content/download/242846/file/BakerSummary.pdf>

[3] The Baker Act set out to improve care. Now it’s ensnaring more children.

<https://www.tampabay.com/news/education/2019/12/10/the-baker-act-set-out-to-improve-care-now-its-ensnaring-more-children/>

[4] Committed: Children and The Baker Act

<https://wusfnews.wusf.usf.edu/committed-children-and-the-baker-act>

[5] Florida Statutes Chapter 394 MENTAL HEALTH 394.455 Definitions.

http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=an+impairment+of+the+mental+or+emotional+processes&URL=0300-0399/0394/Sections/0394.455.html

[6] Florida Statutes Chapter 394 MENTAL HEALTH 394.463 Involuntary Examinations.

http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=394.463&URL=0300-0399/0394/Sections/0394.463.html

[7] WUSF Series Investigates the Fastest Growing Group Under the Baker Act, Children

<https://www.wfmj.com/story/43094755/wusf-series-investigates-the-fastest-growing-group-under-the-baker-act-children>

[8] SB 590: Involuntary Examinations of Minors

<https://m.flsenate.gov/Bill/00590>

[9] HB 383: Involuntary Examinations of Minors

<https://www.flsenate.gov/Session/Bill/2021/383>

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