



BAKER ACT
ATTORNEY

A Guide to
**Dealing with the
Florida Baker Act**

By Mark G. Astor, Esquire
Founder of Baker Act Attorneys and
Drug and Alcohol Attorneys

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By Mark G. Astor, Esquire Founder of Baker Act Attorneys and Drug and Alcohol Attorneys

A law firm dedicated to securing a loved one's release when they've been improperly Baker Acted.

<https://bakeractattorneys.com>

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Introduction

This book is dedicated to all the moms, dads, sister, brother, and spouses who found themselves and/or a loved one trapped in the Florida mental system. Thank you for allowing us to help you and to protect the statutory and constitutional rights that have been given to all of us by elected legislators and the creator.

In this book you'll find answers to the most commonly asked questions and concerns about the Baker Act. You should also check out the Q and A section to our website, it is updated with video content on a weekly basis (<https://bakeractattorneys.com/faq/>). If you have a question that you want answered feel free to email me at mark@bakeractattorneys.com, I'll make a video if it's a question that others need answered.

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What is the Baker Act?

The Baker Act was created in 1971 and is commonly known as the Florida Mental Health Act of 1971. It was created in order to allow the State of Florida to take care, custody and control of an individual who is suffering from a possible mental illness and presents as a danger to themselves and/or others. The Baker Act can be found in Section 394, of the Florida Statutes.

How does someone get Baker Act?

Just like in a criminal case where someone is being arrested, in order to get Baker Acted it only takes two (2) things, a finger and someone to point it. That finger can be pointed three (3) different ways:

- 1) By a police officer who comes upon the person (typically it's a result of a 911 call) and the officer(s) have grounds to believe that the individual meets criteria.
- 2) A qualified professional. A clinician or doctor are examples of this, and simply require the execution of a professional's certificate which authorizes law enforcement to take the person to a designated county Baker Act receiving facility.
- 3) A judge. An individual can go a local courthouse in the county in which the intended subject is located, and request the issuance of an emergency ex parte pick up order which mandates law enforcement to collect the person and take them to a designated county Baker Act receiving facility.

How long can someone be held

An individual (minors and adults) can be held up to seventy-two (72) hours for a period of assessment and stabilization. If an individual needs to be medically cleared, that toll (stops) the 72-hour clock from running. The 72-hour period is extended if the last day falls on a weekend or holiday. Once the 72-hour period expires the Baker Act receiving facility must either release the individual, or file a Petition for Involuntary Placement with the Court requesting an extension of the assessment and stabilization period, potentially up to six (6) months. The facility can thereafter file a petition seeking an extension of a commitment order.

What are my rights

The Baker Act statute grants many rights, but the truth of the matter is that there are only two (2) rights that are of consequence; 1) The right to hope and pray that the Baker Act facility releases your loved one; and 2) The right to take action and fight for your loved one's right to freedom.

Will my family get notified if I am Baker Acted?

In theory, the Baker Act facility is supposed to notify your emergency contact. In reality, that is frequently not the case. This one of the many signs that the facility has no intention of releasing your loved one.

Should I wait to take action

It is our experience from speaking to hundreds of families and handling lots of these cases, that Baker Act cases are typically won or lost by the party who gets to the Courthouse first. If wait to take action, you risk the Baker Act facility filing a Petition for Involuntary Placement and asking for an order to keep your loved one potentially up to six (6) months. That means you have to respond to allegations from facility's doctors that you loved one continues to meet Baker Act criteria and should not be released. If you retain us to petition the Court for your loved one's release, now the facility has to respond to allegations of improper conduct and/or violation of statutory and constitutional rights. Better to play offense than defense, if you want to win.

What are the signs that the Baker Act facility plans to keep my loved one?

Based on the many cases we have handled we've noticed a pattern and practice of facilities that abuse the Baker Act. Here are the factors you should be on the look for:

- 1) My loved one has health insurance. Baker Act facilities love people with health insurance, and they will seek reimbursement every day that your loved one is there, every pill they prescribe and/or every therapy session attended.
- 2) Your loved is being forced to take medications they have never previously been prescribed. These are typically anti-depressant type medications that can make someone appear drowsy, sick, and sometimes even catatonic.
- 3) Your loved one is being denied medications their doctor has previously prescribed them such as anti-depressants and/or blood pressure meds. This can cause an individual to appear unstable and/or unbalanced and/or anxious, and help the facility to build a case for further detention.
- 4) You have been cut off from your loved one. Clients frequently tell us that despite multiple calls to their loved one, no one will allow them to speak to them, even though they signed a release of information. During the Covid-19 pandemic facilities were preventing anyone from entering the facility under the guise it was a health risk even though they were not following CDC guidelines within the facility.
- 5) Your loved one has been cut off from you. Individuals we have been able to secure release for, frequently tell us that while they were held in the facility, they were prevented from contacting anyone despite making repeated requests to speak to their family.

What if my loved one really needs help?

If your loved one needs help, due to a substance use and/or a mental health disorder, it should be you and not the State of Florida (the facility is authorized to act as agent of the State) who makes that decision. Check out <https://drugandalcoholattorneys.com> for the ways in which we can help you to get your loved one the help they need.

A word of caution, if you don't get your loved one help, the State will do it for you either by placing your loved in the criminal justice system or by placing them in the mental health system. And that's presuming that their substance use or mental health disorder hasn't resulted in their death.

What happens at a Baker Act hearing?

A Baker Act hearing takes place after the facility has filed a Petition for Involuntary Placement. Unfortunately, because the filing is confidential (secretive) you likely won't know that there's going to be a hearing until the hearing has already occurred and your loved told they can't go home.

Baker Act hearings are very much like a criminal case, there will be a prosecutor (from the State Attorney's Office), a public defender and judge/magistrate. The prosecutor will prosecute this just like a criminal case and they will present the State's witnesses (who work for the facility) and ask the judge for an order of placement (either on an inpatient or outpatient) basis.

The hearing will likely take place in the Baker Act facility and is not open for public viewing, unlike a criminal case. The petition and all of the associated pleadings and filings cannot be viewed, or even found, by anyone not a party to the proceeding.

Can my loved one still be held if I have a Health Care Proxy and/or Power of Attorney

I say this with all disrespects, your Health Care Proxy and/or Power of Attorney are not worth the paper they're written on unless you're prepared to go to court and enforce them. The facility has the weight, power, and resources of the state behind them, so they don't care about these documents. The State's power overrides any power your loved one may have granted you.

If you want to enforce your rights, we need to go to Court as soon as possible.

What is the Bogus Baker Act (BBA)?

I wish I could take credit for this term (I will be taking credit on the next page), but this is a term which was coined inside of the Baker Act community. In short, it's a term used when someone is Baker Acted, even though they don't meet criteria, but are being held, usually in order to take advantage of their health insurance, or because the facility is being reimbursed from some other source (such as the County with whom they have contracted to accept Baker Act patients.)

What is the Constructive Baker Act (CBA)?

This is a term I have coined, and it means that even though the facility is not invoking an involuntary commitment (wherein the individual is being held against their will), and/or has not filed a Petition for Involuntary Placement, it's "as if" they have. This typically occurs when a person agrees to remain voluntarily at facility under the bogus threat that the facility will involuntarily commit them. In other words, their agreement to stay voluntarily is not actually voluntary, they've only agreed to do so because they are scared that they may never leave. It's a great way for the facility to avoid the scrutiny of a judge, that is until we get involved.

What's the difference between a Voluntary Baker Act and an Involuntary Baker Act?

A voluntary Baker Act occurs when someone agrees to be at the facility. As you're already read, many times this part and parcel of a Bogus Baker Act (BBA), and done under threat of involuntary commitment. Once voluntary consent is given, it remains in effect until the individual revokes consent and then the facility has twenty-four (24) hours to either release them or involuntarily commit them.

An involuntary Baker Act occurs when the facility invokes their right to hold an individual up to seventy-two (72) hours, and/or has filed a Petition for Involuntary Placement, and obtained a court order to hold an individual, potentially up to six (6) months.

What 's the difference between inpatient and outpatient treatment

Inpatient treatment means that the individual is residing (eating and sleeping) at the facility, and receiving treatment while they are there.

Outpatient treatment means that the person resides at home, or some other place of their choosing, and goes to the facility to receive treatment. Outpatient is typically less intensive than inpatient and may follow a period of inpatient treatment.

Can a minor (under 18 years old) be Baker Acted

Yes, anyone can be Baker Acted, regardless of age. We have seen individuals as young as six (6) years old who have been Baker Acted. A minor typically gets Baker Acted when they complain to a school counsellor that they are having mental health issues (the Covid-19 pandemic has caused many children to suffer from anxiety and depression), and/or the child posts something on social media which results in law enforcement being alerted.

I have been interviewed by two (2) different news networks about the abuse of the Baker Act and minors (see the front page of our website: <https://bakeractattorneys.com>) due to this increasing problem.

Are all Baker Act facilities bad?

No, not all Baker Act facilities are bad, it's just that we've come across a cluster of facilities that seemed determined to abuse a statute that was created to help people in need, in order to line their own pockets. When we have a client in crisis, we often turn to a good facility because it's a way to secure the person before they hurt themselves or someone else.

Can a Baker Act be sealed and/or expunged?

No, unlike a criminal case, there is no process for sealing and/or expunging a Baker Act. Such filings are confidential in nature and therefore, there's be no reason for it to be sealed and/or expunged. That being said, the confidentiality afforded Baker Act filings is not absolute, so if a previously Baker Acted individual applies for employment or a concealed weapons permit, the Baker Act filing may be found.

Can I file my own habeas petition?

The Florida state constitution guarantees everyone access to the Courts, so you have a right to file your own habeas petition. If you try to file a habeas petition on behalf of someone else there's a chance you may be accused of the Unlicensed Practice of Law, only a lawyer can file on behalf of someone being detained in a Baker Act facility.

If your loved one is being detained in a Baker Act facility, they may be told they can file their habeas petition. However, as they are unlikely to have legal training, and are not familiar with Section 394, Florida Statutes (the Baker Act: http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0394/0394ContentsIndex.html), they do not know what legal arguments to make.

Additionally, these petitions are usually only a few pages in length and sometimes don't even get submitted to a judge. Our habeas petitions are typically eight (8) to twelve (12) pages long, they contain legal arguments and case law, will be served on the facility within hours of drafting, and will be filed with the Courts on an emergency basis.

In short, trying to do this on your own is a recipe for disaster and likely to fail.

Can I sue for an illegal Baker Act?

As a general rule the answer is no. The Baker Act statute does not provide for a cause of action for an illegal Baker Act, and the facilities know that (which is why they can get away with their horrific conduct). Unless you have been physically injured, you're probably not getting any money. Feel free to file a complaint with the local health department and/or notify your State and Federal legislators.

Conclusion

When used correctly, the Baker Act is a great tool for helping individuals in need of emergency mental health services. The cases that come across our desk typically involve a facility that's trying to abuse the statute, in part, because they know that no one is watching (they report to no one). If your loved one has been Baker Acted, time is of the essence, and we need to move fast in order to secure your loved one's release.

Ignore this advice at your peril because once a judge has ordered your loved one to stay (or worse yet, orders them to reside at a state mental health hospital), it's very difficult for us to secure their release.

About us

Mark G. Astor (Founder and Managing Partner)



Born and raised in the United Kingdom until the age of twenty-one, Mark has been an attorney since 1994. Before entering private practice, Mark began his legal career as a Palm Beach County Assistant State Attorney, a position he held until 1999. During his career as a government lawyer, Mark served as Chief of two different County Court Divisions and, thereafter, was promoted to a felony trial division. He has handled thousands of cases ranging from first-degree misdemeanors to Capital Murder.

Mark was admitted to the Florida Bar in 1994 and, in 1995, was admitted to practice before the U. S. District Court for the Southern District of Florida. In 2005, he was admitted to the District of Columbia Bar. He received his Bachelor of Arts Degree from the University of Michigan in 1990, his Juris Doctorate from Nova Southeastern University College of Law in

1994, and his Master of Laws Degree (L.L.M.) from American University, Washington College of Law in 2005.

Mark formed Drug and Alcohol Attorneys (<http://drugandalcoholattorneys.com>) in February of 2016 focusing on helping families and individuals who's loved one's are suffering from substance use and mental health disorders. In 2020, not long after the Covid-19 pandemic began, Mark noticed a disturbing trend of individuals who were relapsing, suffering from anxiety and depression, and calling for help. Many of these individuals found themselves being involuntary committed and held against their will, under the Baker Act. Now in the care, custody and control of the State, these individuals were being abused, mistreated, forced to take medications, and unable to secure their release.

Mark discovered that many hospitals and Baker Act facilities only cared about making money, not helping people. Prior to forming Baker Act attorneys, facilities were free to violate rights and the Baker Act statute itself, because no one was watching. That changed in 2020, Mark has successfully litigated against many hospitals and facilities and is now feared in that community. "I believe we can get everyone out of a hospital or facility provided the family doesn't delay calling us. I'll drop everything, day or night, to help an individual being held unlawfully."

When he's not working in his law practice, Mark empowers members of the community by teaching Krav Maga (the Israeli system of hand to hand taught to the military, special forces, and anti-terror units). He also enjoys an early morning work-out believing that a healthy body leads to a healthy mind.