

History of the Baker Act It's Development & Intent

History

In 1971 the Florida Legislature passed into law the Florida Mental Health Act, which went into effect July 1 of the following year. 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.

Statutes governing the treatment of mental illness in Florida date back to 1874. Before the Baker Act was enacted, a person could be placed in a state hospital if three people signed affidavits and secured the approval of a county judge. The law stated that the committing judge was required to have any destitute person with mental illness committed to the sheriff for safekeeping until transferred to the hospital. Children as young as 12 years old could be placed into state hospitals with adults. Payment could be required from friends, parents or guardian for the person's care. Persons hospitalized in private or public hospitals were allowed only one individual with whom he or she could openly and privately correspond. There was no specific period of commitment before a person's confinement would be reconsidered by a judge.

The Baker Act prohibited the indiscriminate admission of persons to state institutions or the retention of persons without just cause. The Baker Act mandated court-appointed attorneys to represent each person for whom involuntary placement was sought and provided for independent reviews every six months of all involuntary placements. The new law established a patients' bill of rights, protecting persons' rights to communicate with whomever they wished, to receive and send unopened mail, to use their own possessions, and to vote, among many other rights. The law also prohibited the placement of persons with mental illnesses in jails, unless they had committed criminal acts.

The Act, usually referred to as the "Baker Act," was named after Maxine Baker, former State Representative from Miami who sponsored the Act, after serving as chairperson of the House Committee on Mental Health. According to Representative Baker, the intent of the Act was to encourage voluntary commitments as opposed to involuntary (when the person was competent to consent), to separate the process of hospitalization from the process of legal incompetency, to increase community care of persons with mental illnesses, and to facilitate persons' return to normal community life. Referring to the treatment of persons with mental illness before the passage of her bill, Representative Baker stated "In the name of mental health, we deprive them of their most precious possession – liberty."

Since the Baker Act became effective in 1972, a number of legislative amendments have been enacted to further protect persons' civil and due process rights. The most substantial reform occurred in 1996 when greater protections were extended to persons seeking voluntary admission, informed consent and guardian advocacy provisions were strengthened, notice requirements were expanded, and suspension and withdrawal of receiving and treatment facility designations was specified, among many other revisions.

Related Legislation

It is important that the Baker Act only be used in cases where the person has mental illness and meets all remaining criteria for voluntary or involuntary admission. The Baker Act is the Florida Mental Health Act and it does not serve any other purpose. For many persons, the use of other statutes may be more appropriate. Alternatives may include:

- Developmental Disabilities, Chapter 393, F.S.
- Marchman Act, (Substance Abuse Impairment), Chapter 397, F.S.
- Emergency Examination and Treatment of Incapacitated Persons Act, Chapter 401.445, F.S.
- COBRA/EMTALA Federal "Anti-Dumping" law, 42 USC 1395dd
- Access to Emergency Services and Care, Chapter 395.1041, F.S.
- Adult Abuse, Neglect, and Exploitation, Chapter 415.1051, F.S.
- Advance Directive, Chapter 765, F.S.
- Guardianship, Chapter 744, F.S.

Intent of the Baker Act

The Baker Act is intended to

- Provide comprehensive services for persons requiring intensive short-term and continued treatment
- Provide emergency service and temporary detention for evaluation when required
- Admit persons to treatment facilities on a voluntary basis when extended or continuing care is needed and unavailable in the community
- Ensure that any involuntary examination or treatment 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
- Guarantee that the individual dignity and human rights of all persons who are admitted to mental health facilities for examination or placement are protected.
- Employ the least restrictive means of intervention based on the individual needs of each person, within the scope of available services.

Protections of the Baker Act

The Baker Act protects all persons with serious mental illnesses in the State of Florida. These include:

- Persons on voluntary and involuntary status
- Persons of all ages, including children and elders.
- Persons who are competent and those who have been determined to be incompetent or incapacitated
- Persons who are poor and those who can afford private care
- Persons who are hospitalized in a facility and those treated on an outpatient basis.

The Baker Act was considered by many persons around the country as landmark legislation at the time of its enactment. The movement to deinstitutionalize persons from large mental hospitals back to their home communities became prominent since the 1970's and many newer psychiatric medications have made it possible for persons to avoid or reduce the need for long-term hospitalization. Since the passage of the Act, the rights of individuals to live freely and without the same degree of deprivation of liberty has been more accepted by the public. The Baker Act has been continuously revised to recognize these trends and to protect the rights of persons with mental illnesses.