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## Florida's Baker Act Laws: How Florida's Excessive Use of Baker Acts Can Be Harmful to Children

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**Gator TeamChild Juvenile Law Clinic**  
**Spring 2023**

**FLORIDA'S BAKER ACT LAWS:**  
**HOW FLORIDA'S EXCESSIVE USE OF BAKER ACTS**  
**CAN BE HARMFUL TO CHILDREN**



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# **Florida’s Baker Act Laws: How Florida’s Excessive Use of Baker Acts Can be Harmful to Children**

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The goal of this White Paper is to provide an overview of Florida’s Baker Act Laws. Additionally, this White Paper will show how the excessive use of Baker Acts in Florida can have harmful effects on children, especially those in the dependency system, and potential solutions to reform the Baker Act process.



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### I. INTRODUCTION

Florida is an outlier for Baker Acts because the state involuntarily evaluates and commits children at a rate much higher than any other state in the country.<sup>2</sup> In Florida, more than 37,000 children are Baker Acted each year.<sup>3</sup> Not all states collect data on Baker Acts, but out of the twenty-five states that do collect data, Florida’s rate is at least twice the rate of eighty percent of the states that track this data.<sup>4</sup> Florida involuntarily commits more than 800 people per 100,000 people per year and is the only state to have rates that high.<sup>5</sup> Colorado and Massachusetts are the only two other states that have rates exceeding 600 per 100,000 and only three states exceed 400.<sup>6</sup> Young children can be handcuffed by law enforcement officers, driven in the back of a police car, and traumatized as they stay for days at a time in psychiatric facilities for an involuntary psychiatric exam, where they may have limited ability to call and talk to their family.<sup>7</sup> Baker Acts can be

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<sup>2</sup> Southern Poverty Law Center, *Costly and Cruel How Misuse of the Baker Act Harms 37,000 Florida Children Each Year*, (2021), [https://www.splcenter.org/sites/default/files/com\\_special\\_report\\_baker\\_act\\_costly\\_and\\_cruel.pdf](https://www.splcenter.org/sites/default/files/com_special_report_baker_act_costly_and_cruel.pdf)

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Bacardi Jackson, *COSTLY AND CRUEL: THOUSANDS OF FLORIDA CHILDREN SUFFER THE HARM AND INDIGNITY OF INVOLUNTARY, AND OFTEN ILLEGAL, COMMITMENT TO PSYCHIATRIC FACILITIES*, SOUTHERN POVERTY LAW CENTER (Mar. 24, 2021),

helpful in the sense that children can meet other people that are going through similar problems and can better relate to them.<sup>8</sup> However, Florida's excessive use of Baker Act's on children is causing unnecessary harm in many cases.

The Baker Act, passed in 1971, regulates involuntary commitments based on mental health.<sup>9</sup> Every state in America has laws that allow for short, involuntary mental commitments.<sup>10</sup> A person committed under the Baker Act can be held against their will for up to seventy-two hours.<sup>11</sup> Seventy-two hours is often not enough time for children to implement coping mechanisms for when they get out of the Baker Act, which is why children can be Baker Acted multiple times.<sup>12</sup>

Long-term mental health care is not realistic for a lot of people because it costs too much money.<sup>13</sup> Therefore, children in crisis are forced to rely on emergency short-term care instead through a Baker Act.<sup>14</sup> Florida was ranked forty-eighth in the nation on access to mental health care, due to many individuals being uninsured and unable to get treatment.<sup>15</sup> Facilities that provide Baker Act services can be public or private.<sup>16</sup> Public facilities in Florida receive funding from the state and are under contract with the Department of Children and Families ("DCF").<sup>17</sup> Patients can be forced to pay for care that they did not give their consent for.<sup>18</sup> Payments for care can come from insurance companies, charity care, public programs including Medicare and Medicaid, and out-of-pocket costs from the patient.<sup>19</sup> The cost of a week of in-patient psychiatric treatment on average is just over \$7,000.<sup>20</sup>

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<https://www.splcenter.org/news/2021/03/24/costly-and-cruel-thousands-florida-children-suffer-harm-and-indignity-involuntary-and-often>.

<sup>8</sup> VICE NEWS, *There's a Mental Health Crisis Among Florida's Kids*, (May 17, 2019),

<https://www.youtube.com/watch?v=tBIWDyFZ-so>.

<sup>9</sup> FLA. STAT. § 394 (2022).

<sup>10</sup> VICE NEWS, *supra* note 6.

<sup>11</sup> FLA. STAT. § 394.463 (2022).

<sup>12</sup> VICE NEWS, *supra* note 6.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Anne Swerlick, *Funding for Behavioral Health Services in Florida: Frequently Asked Questions*, FLORIDA POLICY INSTITUTE, (Aug. 19, 2022), [https://uploads-ssl.webflow.com/5cd5801dfdf7e5927800fb7f/63050cac7086102b7b5e11af\\_FS\\_Behavioral-Health\\_Funding\\_FINAL.pdf](https://uploads-ssl.webflow.com/5cd5801dfdf7e5927800fb7f/63050cac7086102b7b5e11af_FS_Behavioral-Health_Funding_FINAL.pdf).

<sup>16</sup> Florida Association of Counties, *HSJ-PP-09: BAKER ACT SERVICES*, <https://www.fl-counties.com/sites/default/files/2021-09/HSJ%2009%20-%20Baker%20Act%20Services.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> Nathaniel Morris & Robert Kleinman, *Involuntary Commitments: Billing Patients for Forced Psychiatric Care*, THE AMERICAN JOURNAL OF PSYCHIATRY, (Dec. 1, 2020), <https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp.2020.20030319>.

<sup>19</sup> *Id.*

<sup>20</sup> Javier Rizo, *Billing Psychiatric Patients for Involuntary Treatment is Unethical*, Mad in America, (Feb. 18, 2021), <https://www.madinamerica.com/2021/02/billing-psychiatric-patients-involuntary-treatment-unethical/>.

This white paper will first focus on the history of Baker Act's in Florida including what the Florida law says and how Baker Acts are used on children. Next, this paper will focus on the harm that Baker Acts can have on young children. Next, this paper touches on different solutions to help reform the Baker Act process in Florida including what different organizations can do to help and what needs to be changed. Lastly, this paper will identify the unique challenges of children in foster care.

## II. HISTORY OF BAKER ACTS IN FLORIDA

Florida, especially throughout the past several years, has placed a large emphasis on the parental right to control the upbringing of their children. This includes aspects such as where your child goes to school, what religion they learn, and what medical care they receive.<sup>21</sup> However, this right is not absolute.<sup>22</sup> Parents can initiate Baker Acts on their children, or others concerned for a child's well-being can initiate the procedure, even without parental consent. The Baker Act's legislative intent was revised in 2018.<sup>23</sup> The new legislative intent is “. . . to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders.”<sup>24</sup> The statute also states that “[i]t is the policy of this state that the use of restraint and seclusion on clients is justified only as an emergency safety measure to be used in response to imminent danger to the client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving persons with mental illness.”<sup>25</sup>

However, the Baker Act's legislative intent is contradictory to the data that is available about Florida Baker Acts. The College of Behavioral and Community Sciences at the University of South Florida runs the Baker Act Reporting Center.<sup>26</sup> The reporting center has organized and analyzed involuntary examination data, including of minors.<sup>27</sup> From 2020 to 2021, ages eighteen and younger made up 19.81% of the total population that was involuntarily examined and there was a 7.21% year-to-year percent change.<sup>28</sup> To look over time, from the 2001-2002 fiscal year to the 2018-2019 fiscal year, the percentage of children who were Baker Acted increased by 152.6%.<sup>29</sup> This shows that minors are being Baker Acted increasingly more often in Florida, ahead of any other state, and Florida is not meeting the legislative intent of the state's Baker Act laws.

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<sup>21</sup> Victoria Langley, *Florida Baker Act Laws for Minors*, LAW FOR FAMILIES (Aug. 18, 2021), <https://www.lawforfamilies.com/6887055-florida-baker-act-laws-minors.html>.

<sup>22</sup> *Id.*

<sup>23</sup> Alexander Lemieux, *The Baker Act: Time for Florida to Get Its Act Together*, Child and Family Law Journal: Vol. 8: Iss. 1, Article 5 (2020), <https://lawpublications.barry.edu/cgi/viewcontent.cgi?article=1045&context=cflj>.

<sup>24</sup> FLA. STAT. § 394.453 (2022).

<sup>25</sup> *Id.*

<sup>26</sup> Langley, *supra* note 19.

<sup>27</sup> *Id.*

<sup>28</sup> Annette Christy, et al., *The Baker Act Florida Mental Health Act Fiscal Year 2020/2021 Annual Report*, UNIVERSITY OF SOUTH FLORIDA, DEPARTMENT OF MENTAL HEALTH LAW AND POLICY, BAKER ACT REPORTING CENTER (2022), [https://www.usf.edu/cbcs/baker-act/documents/usf\\_bar\\_c\\_fy\\_20\\_21\\_annual\\_report.pdf](https://www.usf.edu/cbcs/baker-act/documents/usf_bar_c_fy_20_21_annual_report.pdf).

<sup>29</sup> Southern Poverty Law Center, *supra* note 2.

## A. WHAT DOES FLORIDA’S CURRENT LAW SAY?

Under Florida Statute § 394.463, the law does not differentiate between children and adults for involuntary examination criteria.<sup>30</sup> The involuntary examination may only be initiated by a judge, law enforcement officer, or a mental health professional.<sup>31</sup> For a child to be Baker Acted the following requirements must be met:

“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:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
- The person is unable to determine for himself or herself whether examination is necessary; **and**
- 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**
- 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.”<sup>32</sup>

Children are usually involuntarily Baker Acted under the “likely to cause harm to self or others” prong.<sup>33</sup> Harm to self is the most common reason for approximately seventy-one percent of children being involuntarily examined.<sup>34</sup> Minors are not in charge of caring for themselves, and therefore will likely not be Baker Acted under the neglect prong.<sup>35</sup> This means that evaluators do not have to consider the willingness and ability of family or friends to help the child avoid harm, which could help prevent the child from ultimately being Baker Acted.<sup>36</sup>

In 2021, Florida passed the School Safety Bill, which amended Florida law to require parental or guardian notification **prior** to the initiation of a Baker Act on a minor child.<sup>37</sup> Baker Acts are often initiated in schools, which has been historically problematic because parents were not always a part of the school’s decision-making process when initiating a Baker Act. However, the School Safety Bill gave more control to parents. The intent was to reduce the number of

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<sup>30</sup> FLA. STAT. § 394.463 (2022).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Southern Poverty Law Center, *supra* note 2.

<sup>34</sup> Lemieux, *supra* note 21.

<sup>35</sup> Southern Poverty Law Center, *supra* note 2.

<sup>36</sup> *Id.*

<sup>37</sup> FLA. STAT. § 381.0056 (2022).

inappropriate Baker Acts on children by giving parents the ability to help their children.<sup>38</sup> This helps to give the parents a chance to explain anything in their child's health background including any history of disabilities or outpatient mental health treatment that the child is currently attending.

Florida Statute § 381.0056 requires that:

“A reasonable attempt is made to notify a student's parent, guardian, or caregiver before the student is removed from school, school transportation, or a school-sponsored activity to be taken to a receiving facility for an involuntary examination.”<sup>39</sup>

“A reasonable attempt to notify” means the exercise of reasonable diligence and care by the principal or the principal's designee to make contact with the student's parent, guardian, or other known emergency contact whom the student's parent or guardian.<sup>40</sup> The methods of communication should include but are not limited to telephone calls, text messages, e-mails, or voicemails.<sup>41</sup>

The Florida Legislature has made some efforts to minimize trauma during the Baker Act process. Florida's Baker Act laws were recently amended regarding police transport.<sup>42</sup> It is common for minors to be transported in the back of a police car while handcuffed, which can be a traumatic experience.<sup>43</sup> The law states, “A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination.”<sup>44</sup> Now, the law added, “[a] law enforcement officer transporting a person pursuant to this subparagraph shall restrain the person in the least restrictive manner available and appropriate under the circumstances.”<sup>45</sup>

Florida Statute § 394.4625 authorizes minors to receive voluntary inpatient services.<sup>46</sup> Although, it is harder for minors to receive voluntary inpatient services than adults because it requires their parent or guardian's consent and a clinical review to determine the voluntariness of that consent.<sup>47</sup> In *Parham v. J.R.*, the Court held that “the risk of error inherent in the parental decision to have a child institutionalized for mental health care is sufficiently great that some kind

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<sup>38</sup> Citizens Commission on Human Rights Florida, *Baker Act? Protect Your Children with 5 Simple Steps!*, (July 1, 2021) <https://www.cchrflorida.org/baker-act-rights/>.

<sup>39</sup> FLA. STAT. § 381.0056 (2022).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> FLA. STAT. § 394.463(2)(a)(2) (2022).

<sup>43</sup> Tom McLaughlin, *Rep. Patt Maney's Baker Act reform package gets gutted in the Florida Senate*, NWF DAILY NEWS, (Mar. 3, 2022), <https://www.nwfdailynews.com/story/news/politics/2022/03/03/representative-patt-maney-baker-act-reform-package-gutted-florida-senate/9330103002/>.

<sup>44</sup> FLA. STAT. § 394.463(2)(a)(2) (2022).

<sup>45</sup> *Id.*

<sup>46</sup> FLA. STAT. § 394.4625 (2022).

<sup>47</sup> FLA. STAT. § 394.4625(1)(a) (2022).



of inquiry should be made by a "neutral factfinder" to determine whether the statutory requirements for admission are satisfied."<sup>48</sup> The review should include all relevant information about the child including speaking with parents, schools, and the child.<sup>49</sup> The decisionmaker then has the authority to refuse to admit a child that does not meet the criteria.<sup>50</sup> However, this does not have to be done in a formal hearing as it would place parents against their children as adversaries.<sup>51</sup>

## B. HOW ARE BAKER ACTS USED ON CHILDREN?

Baker Acts can be used on children in many different situations. As a hypothetical, imagine Sarah a young girl with autism. She has trouble acting out at school and the school is working on how to best suit her needs. She gets into a verbal argument and threatens her teacher. A Baker Act could be initiated in this setting by the school. Another situation is Brett, a young boy at a residential home. There are many different kids living in the home. He is working on his anger management and is upset with another child at the home. He physically assaults the child, and the home calls the police. Instead of arresting Brett and taking him into custody, the police initiate a Baker Act. A former lieutenant in the Duval School Board Police Department admitted to this practice.<sup>52</sup> "I have said Baker Act them and don't put them in jail. ... when a problem student is placed under the Baker Act, statistically, it's not counted as an arrest at school."<sup>53</sup> Instead of arresting some children, the police department would Baker Act them.<sup>54</sup>

A third situation is Zach. Zach does not like the rules that his foster parents are implementing. He knows if he acts out in a certain way, he can leave the home. A Baker Act could also be used in this situation, for a child that would rather be Baker Acted, than stay at their current placement.

## C. THE SEVENTY-TWO HOUR HOLD IN A MENTAL HEALTH FACILITY

Florida Statute § 394.463 lays out the criteria for starting an involuntary examination and after they are met, allows for authorized officials to transfer the child to a mental health facility. Florida is required to designate one or more law enforcement officials to drive the child to a mental health facility.<sup>55</sup> These facilities may vary depending on age guidelines for child, adolescent, and adult units. Once the child is transported to the facility, they can either be released or required to

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<sup>48</sup> 442 U.S. 584 (1979).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Clark Fouraker, *Former cop says district uses Baker Act to reduce arrests*, FIRST COAST NEWS, (Aug. 17, 2016), <https://www.firstcoastnews.com/article/news/education/former-cop-says-district-uses-baker-act-to-reduce-arrests/295152933>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Lemieux, *supra* note 21.

stay in the mental health facility.<sup>56</sup> The law only allows for a physician or clinical psychologist to release the child.<sup>57</sup> If one is not present the child may be forced to wait longer.<sup>58</sup> The facility has up to 12 hours to begin the examination process.<sup>59</sup>

Under Florida Law, any child who is fourteen years of age or older is eligible to share a room with an adult who is suffering from a mental health condition based on the attending physician's review.<sup>60</sup> This law can put vulnerable children at risk in a room with adults with mental health disorders. The rooms at mental health facilities also are not monitored at all times which can result in times the child may be left alone with the adult. However, Florida law differs regarding jail facilities.<sup>61</sup> No child is allowed to share a cell with an adult inmate under any circumstances.<sup>62</sup>

The mental health facility shall attempt to notify the minor's parent or guardian until the receiving facility receives confirmation by phone call or another form of electronic communication from the parent or guardian that the notice has been received.<sup>63</sup> Attempts to notify the parent or guardian **must** be repeated at least once every hour during the first twelve hours after the minor's arrival **and** once every twenty-four hours after and **must** continue until such confirmation is received unless the minor is released at the end of the seventy-two-hour examination period.<sup>64</sup>

What comes next is an examination that must be initiated within twelve hours of the child's arrival at the mental health facility.<sup>65</sup> The involuntary holds typically only last for seventy-two hours, however, if the examination period falls on a weekend or a holiday then the child can be held even longer until the next working day for the examination period.<sup>66</sup> The seventy-two-hour hold involves evaluating and monitoring the child.<sup>67</sup> The child will go through an intake process, have vital signs checked, be asked questions about their symptoms, and can be drug tested.<sup>68</sup> The child's belongings will be searched and anything that can be used as a weapon will be taken.<sup>69</sup> The child will likely be prescribed medication by a doctor or psychiatrist.<sup>70</sup> The child will likely have

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<sup>56</sup> Southern Poverty Law Center, *supra* note 2.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> FLA. STAT. § 394.4785 (2022).

<sup>61</sup> FLA. STAT. § 985.265 (2022).

<sup>62</sup> *Id.*

<sup>63</sup> FLA. STAT. § 394.4599 (2022).

<sup>64</sup> *Id.*

<sup>65</sup> FLA. STAT. § 394.463 (2022).

<sup>66</sup> FLA. STAT. § 394.463(g) (2022).

<sup>67</sup> MedCircle, *What is a 72-Hour Psychiatric Hold?*, (Aug. 16, 2022), <https://medcircle.com/articles/what-is-a-72-hour-psychiatric-hold/>.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

a structured schedule and most facilities offer different therapies during the day including, group therapy, art therapy, and music therapy.<sup>71</sup>

After the examination period ends, one of four actions is taken.<sup>72</sup> Three actions are directly related to the child; the child is either released, released subject to voluntary outpatient treatment, or asked to consent to switch to a voluntary inpatient treatment program and admitted under that.<sup>73</sup> The final action rests with the courts; a petition for involuntary services is filed in the circuit court if inpatient treatment is deemed necessary by a physician.<sup>74</sup>

Some problems that arise under the Baker Act are that two of the three statutorily authorized individuals to apply the criteria are not licensed mental health professionals.<sup>75</sup> Judges can decide on a child's mental illness without any mental health training.<sup>76</sup> Law enforcement officers, who typically initiate the involuntary examinations, also have no formal training relating to mental health, unless the police department itself implements a training program.<sup>77</sup> Law enforcement officers make up the majority of initiations because they are the first person who can be contacted when a person believes there is an emergency regarding a child who may be suffering from a mental illness and who may imminently harm themselves or others.<sup>78</sup> There has been intense debate over whether police officers should be the ones handling these Baker Act calls. One of the solutions to reform the Baker Act is to require formal training so law enforcement officers can better apply the criteria and prevent unnecessary Baker Acts.

Another issue that arises under Florida law is that medical professionals and law enforcement officers are held to different standards when initiating a Baker Act.<sup>79</sup> Law enforcement officers may take someone into custody who appears to meet the criteria for involuntary examination and deliver them to a facility.<sup>80</sup> Many law enforcement officers rely on witnesses who observed the child's behavior when the officer themselves did not witness any of this behavior.<sup>81</sup> This means that many law enforcement officers will initiate a Baker Act on a child just because the school contacted them about the child.<sup>82</sup> Florida Department of Children and Families has also declared that officers should always "err on the side of initiating an exam."<sup>83</sup> However, the law treats medical professionals differently.<sup>84</sup> Medical professionals cannot initiate

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<sup>71</sup> Arlin Cuncic, *Psych Ward: What Happens If You Are Admitted?*, VERYWELLMIND, (Mar. 30, 2023), <https://www.verywellmind.com/what-is-a-psych-ward-5217423>.

<sup>72</sup> FLA. STAT. § 394.463(g) (2022).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Lemieux, *supra* note 21.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

an involuntary examination unless the professional personally witnessed, within the past forty-eight hours, someone that meets the statutory criteria.<sup>85</sup> Therefore, law enforcement officers who do not have mental health training have more capability to initiate an involuntary examination than a mental health professional. This leaves room for misuse in the Baker Act process because law enforcement officers rely on the word of others when deciding to initiate a Baker Act on a child.

### III. TYPES OF HARM THAT BAKER ACTS CAN HAVE ON CHILDREN

A 2017 task force report on the involuntary referrals of children under Florida's Baker Act found that one-third of them were not necessary.<sup>86</sup> This puts children at risk of the unnecessary harm that Baker Acts can cause. Imagine a child being handcuffed and put in the back of a police car in front of their friends at school. Then, the child is driven to stay at a hospital, filled with white walls, none of their belongings, and surrounded by strangers they have never met. On top of this, the child is put on new medication with side effects that they are not used to. These hospitals can also be far away, depending on what facility has an open bed at that time. This can be a very traumatic experience for anyone, especially children. This can also worsen conditions that may already be present in children, such as anxiety or depression.<sup>87</sup> Yes, Baker Acts may be necessary for some, but for others, Baker Acts are misused and can cause more harm than good.

Baker Acts can be inappropriately used on three main types of children that would not benefit from hospitalization:

- (1) those who manifest developmentally appropriate behaviors, for example, sadness, which may require counseling, but not to the extent of inpatient hospitalization;
- (2) those who have a disability; and
- (3) those who have bad behavior where a Baker Act is used as a form of punishment or an effort to get the child out of school.<sup>88</sup>

Children in the first category can include those who are already in outpatient counseling for a certain diagnosis.<sup>89</sup> A Baker Act may not be appropriate for them because they may only require a lower level of care. In these situations, the child can be Baker Acted without first speaking to their therapist or other doctors to gain more insight into the child's condition.<sup>90</sup>

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<sup>85</sup> *Id.*

<sup>86</sup> Lynn Hatter, *Committed: Improving Florida's Baker Act For Children A Challenge*, WUSF PUBLIC MEDIA, (Dec. 18, 2020), <https://wusfnews.wusf.usf.edu/health-news-florida/2020-12-18/committed-improving-floridas-baker-act-for-children-a-challenge>.

<sup>87</sup> Frank Gluck, *Florida kids are getting sent to psychiatric units under the Baker Act in record numbers*, NEWS-PRESS, (Dec. 15, 2019), <https://www.news-press.com/in-depth/news/2019/08/21/florida-children-baker-act-record-numbers-mental-health/3247904002/>.

<sup>88</sup> Southern Poverty Law Center, *supra* note 2.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

Children in the second category are also unique because a disability is not allowed to be the basis for a Baker Act.<sup>91</sup> For example, a child with autism cannot be Baker Acted for that alone because the Baker Act applies to mental illnesses, and developmental disabilities are excluded from that criteria.<sup>92</sup> There must be some mental condition in addition to autism.<sup>93</sup> School officials may have a hard time distinguishing between behavior due to a disability and behavior from a mental condition. This is why mental health and special education training is very important for school officials to better understand a child's behaviors.

Children in the third category can be unnecessarily Baker Acted for causing problems in the classroom. However, these children are rarely a danger to anyone, and mental hospitalization would not benefit them.<sup>94</sup> These Baker Acts can also disproportionately harm students of color because there are disparities in discipline in Florida schools.<sup>95</sup> Twenty-five percent of all children who were Baker Acted between 2016-2017 were Black, despite Black children comprising only fifteen percent of the juvenile population.<sup>96</sup> The rise of Baker Acts can also be correlated with increased police presence in schools over the past few years.<sup>97</sup> Additionally bias can be an issue with this problem as there are behaviors that cause children of color to be Baker Acted that do not cause white children to be Baker Acted.

Baker Acts can cause many different types of harm. Many children can be scared due to being alone at a hospital. This can also have the negative effect of causing fear to speak about their emotions again, in fear of being Baker Acted again.<sup>98</sup> Children also miss time at school and can fall behind.<sup>99</sup> Children in foster care risk losing their placement, disrupting their lives.<sup>100</sup> The parents may also have to take time off work and struggle financially due to medical bills.<sup>101</sup> Children can also feel isolated and can struggle to receive phone calls from family if staff fails to follow their protocol. Children can also start to distrust medical professionals if they have a negative experience with the Baker Act. Many children refer to their Baker Act as not "wanting to go to jail again."<sup>102</sup> This puts a big emphasis on the negative experience that many children face when Baker Acted.

Children are often forced to be placed on psychiatric medication when in a mental health facility. Without proper communication with a child's current doctor, if they are seeing one, this can also cause problems. Some children in foster care have even expressed learning ways to answer

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<sup>91</sup> *Id.*

<sup>92</sup> Mary Wozniak, *REVISING the BAKER ACT*, FORT MYERS FLORIDA WEEKLY, (Jan. 26, 2022), <https://fortmyers.floridaweekly.com/articles/revising-the-baker-act/>.

<sup>93</sup> Lemieux, *supra* note 21.

<sup>94</sup> Southern Poverty Law Center, *supra* note 2.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> McLaughin, *supra* note 46.

<sup>98</sup> Jackson, *supra* note 5.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

questions during a Baker Act to avoid placement on psychiatric medication.<sup>103</sup> What is commonly referred to as “booty juice” is a powerful sedative that can be used on patients who “act out” in mental facilities.<sup>104</sup>

Another concern with modern Baker Act practices is that seventy-two hours is not enough time to effectively help and treat most children. Mental illness cannot be treated in such a short time frame and follow-up care is generally needed. However, follow-up care is not feasible for families that cannot afford it.

The Baker Act can cause more harm due to the trauma of the experience. Studies have shown that many patients witness traumatic events while in mental facilities. The study found that “54% of individuals experienced being around frightening or violent patients as a harmful experience, 59% were subject to seclusions, 34% experienced being held in restraints, 29% faced forceful takedowns, 60% were handcuffed during transport, and 20% were threatened with medication as a form of punishment while they were in a mental health facility.”<sup>105</sup> Forty-three percent of patients reported suffering from Post-Traumatic Stress Disorder as a result of their Baker Act.<sup>106</sup> These studies were focused on adults, however, can likely be similar for children as well.<sup>107</sup> Many children are Baker Acted more than once, which shows the initial Baker Act may not have successfully treated children with mental illness.<sup>108</sup> At least thirty percent of all children Baker Acted will have a repeat Baker Act within five years.<sup>109</sup> This reoccurring experience can cause additional trauma to children.

#### IV. WAYS TO REFORM FLORIDA’S BAKER ACT LAWS

It is important to get the children who need help access to it. It is equally as important to prevent those children who do not need in-patient treatment from being subject to the harm of a Baker Act. There is an ongoing lawsuit against Palm Beach County Schools alleging that they have been abusing the Baker Act Process.<sup>110</sup> This shows how timely and prevalent this issue is and how reforms to the process are needed. The issue has also been addressed in the news recently

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<sup>103</sup> *Id.*

<sup>104</sup> Charlotte Huffman & Mark Smith, *Patients say sedative known as 'booty juice' injected against their will*, WFAA, (Apr. 26, 2018), <https://www.wfaa.com/article/news/patients-say-sedative-known-as-booty-juice-injected-against-their-will/287-543222886>.

<sup>105</sup> Southern Poverty Law Center, *supra* note 2.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Pl.’s Opp’n to Defs’ Mot. To Dismiss Pl.’s First Am. Comp., D.P. *et al.*, v. Sch. Bd. of Palm Beach Cnty., No. 21-CIV-81099, S.D. Fla., [https://www.splcenter.org/sites/default/files/documents/opposition\\_to\\_motion\\_to\\_dismiss.pdf](https://www.splcenter.org/sites/default/files/documents/opposition_to_motion_to_dismiss.pdf).

stating, “[t]he law is so deeply enmeshed into the state’s culture that it is widely used as a verb, as in: The 6-year-old was ‘Baker Acted.’”<sup>111</sup>

- Some current successes to reform the process have been the pilot program of the Center for Progress and Excellence Inc.<sup>112</sup> This program received a \$1.2 million state grant for mobile **crisis response units** to respond to Baker Act scenarios in Lee County and Collier County.<sup>113</sup> Mobile response teams serve many different counties in Florida by diverting to school and community resources instead of initiating a Baker Act when possible.<sup>114</sup> Diversion rates have been successful with an average diversion rate of seventy-seven percent.<sup>115</sup> Florida should continue to fund and prioritize mobile response teams.
- Another push to reform the Baker Act process is to allow children who are detained under the Baker Act to have **access to a public defender**, just like how adults have the right to counsel.<sup>116</sup> Unfortunately, the bill for this reform died in the 2019 legislative session.<sup>117</sup> The current law only alerts public defenders if the facility is petitioning to keep the child for longer than the allotted seventy-two hours.<sup>118</sup> The bill proposed changing this to instead immediately alert public defenders.<sup>119</sup> Advocates argued for this change as a form of checks and balances.<sup>120</sup> Public defenders would be able to review the police reports and look for any potential misuse of the process to report for accountability purposes.<sup>121</sup>
- Another major problem with Baker Acts is the **lack of data collection**. School districts compromise the majority of Baker Act referrals of children, however, they are not required to maintain any data on these children.<sup>122</sup> The juvenile dependency system which also

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<sup>111</sup> Donna St. George, *In Florida, showing mental health struggles could get a child detained*, THE WASHINGTON POST, (Mar. 16, 2023),

<https://www.washingtonpost.com/education/2023/03/16/florida-law-child-mental-health/>.

<sup>112</sup> Brent Batten, *Editorial: How to address the rise in juvenile Baker Act committals in Florida*, NAPLES DAILY NEWS, (Aug. 22, 2019),

<https://www.naplesnews.com/story/opinion/2019/08/22/editorial-how-address-rise-juvenile-baker-act-committals/2062915001/>.

<sup>113</sup> *Id.*

<sup>114</sup> FLA. STAT. § 394.495 (2022).

<sup>115</sup> Kathleen Moore, Nickie Zenn, & Cathy Sowell, *State Of Florida Best Practices Response Protocol for Schools to Use Mobile Response Teams*, FLORIDA MENTAL HEALTH INSTITUTE (FMHI), (June 30, 2021),

[https://www.usf.edu/cbcs/fmhi/documents/hb\\_945/fmhi\\_best\\_practices\\_protocol\\_v2\\_063021.pdf](https://www.usf.edu/cbcs/fmhi/documents/hb_945/fmhi_best_practices_protocol_v2_063021.pdf)

<sup>116</sup> Batten, *supra* note 112.

<sup>117</sup> *Id.*

<sup>118</sup> Lemieux, *supra* note 21.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

makes up a fair amount of Baker Acts, is also not required to collect or report any data on the children in the system.<sup>123</sup> The data that is available comes from police and the facilities, whom the Baker Act Reporting Center then compiles and reports.<sup>124</sup> However, the forms that law enforcement officers fill out are very basic and lack detailed questions.<sup>125</sup> These forms do not ask questions such as “. . .how long a child was held at a facility, whether the child was released after they first met with a psychiatrist, or with what mental illness the child is diagnosed or suspected to have.”<sup>126</sup> Data is also not available on whether a least restrictive means was evaluated for the child, which should be an important step to track if Baker Acts are being used as a last resort.<sup>127</sup> The Baker Act Reporting Center often has to list the location the Baker Act was initiated as unknown because police are not required to report this data. The recording of more data is a reform that is needed to better understand the Baker Act process in Florida. Tracking this data can also help lessen the misuse of Baker Acts by holding people more accountable for any abuse in the process. By collecting data, officials can compare school systems to see where there are higher rates to address those districts more specifically.<sup>128</sup> School officials, law enforcement officers, and other actors in the juvenile dependency system should all be required to report more detailed information.

- **Mental health training for law enforcement officers and school officials** is very important to reform the process as well. Crisis Intervention Training should be required in all law enforcement districts, instead of being a decision that is made by each department.<sup>129</sup> Districts could better serve children by following Lake City Police Department’s approach by requiring new officers to undergo mental health training and requiring refreshing training every three years.<sup>130</sup> Law enforcement officers play an important role in Baker Acts, and it is imperative that they can better apply the statutory criteria. Broward County requires officials to undergo forty hours of training regarding mental health.<sup>131</sup> After implementing this requirement, the County saw the number of involuntary examinations on children decrease.<sup>132</sup> Forty hours of training is minimal, but enough to make a difference. Advocates have argued for statewide training that is uniform to all districts.<sup>133</sup> The training can be given by mental health professionals who better understand the Baker Act criteria.<sup>134</sup> Having a school psychologist in every school to defer to before initiating a Baker Act is a good solution as well.<sup>135</sup> These trainings can be

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Lemieux, *supra* note 21.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Southern Poverty Law Center, *supra* note 2.



implemented for school officials as well so that school officials can gain a better understanding of how to deal with the process and implement strategies to de-escalate the situation besides resorting to a Baker Act.<sup>136</sup>

- Another change to the current law should be **allowing mental health professionals to initiate the Baker Act process** in the same manner that law enforcement officers can.<sup>137</sup> Mental health professionals are limited in their ability to initiate a Baker Act because they must have personally witnessed within the past 48 hours, someone that meets the statutory criteria.<sup>138</sup> However, law enforcement officers can rely on witnesses who observe the behavior to initiate a Baker Act.<sup>139</sup>
- There are also solutions to make the process less traumatic for children. This can include **limiting police restraints such as handcuffs** unless it is absolutely necessary to prevent a child from harming themselves.<sup>140</sup> If parents consent to the Baker Act, then allowing the child to ride in the car with their parents is a good solution to prevent more harm to the child.<sup>141</sup> Allowing children to ride with their parents could give the children a better sense of security.
- **Implementing strict age guidelines for mental health facilities** is important so that children and adults are placed separately.<sup>142</sup> Keeping anyone over the age of eighteen in a separate adult facility should be required as well as having an exception for eighteen-year-olds that are still in high school to allow them to be placed with other adolescents. Having separate child units and adolescent units is good to keep children with those of similar age to lessen exposure to inappropriate behavior for the child's age.<sup>143</sup>
- **Having a more collaborative approach** between all actors in the child's life is important for the Baker Act process. This can include school officials, therapists, psychiatrists, parents/guardians/foster caregivers, law enforcement officers, etc. Ensuring communication between all the adults in the child's life is important so that everyone has the necessary information to better help the child. This approach can start from the very beginning of initiating a Baker Act all the way until discharge. Law enforcement officers and school officials can better communicate by sharing information if a child is on an individualized education plan so that the child is not wrongfully Baker Acted due to a disability and not a mental illness.<sup>144</sup> The school can also better communicate with parents if the child is dealing with a mental illness and the parent is addressing it with outpatient treatment. This is important knowledge for the school to have, so that parents have more

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Lemieux, *supra* note 15.

<sup>139</sup> *Id.*

<sup>140</sup> Southern Poverty Law Center, *supra* note 2.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

input, and the school is more informed about the child's treatment. The mental health facilities can also better communicate with parents to answer any questions they have during the process and get any important information to better treat the child.<sup>145</sup> The mental health facilities can also better communicate with the child so the child has accurate expectations regarding what the Baker Act process can look like. The mental health facility should also attempt to contact any of the child's mental health professionals to get records from them if applicable so that the child's current, ongoing treatment is continued.<sup>146</sup>

- The state can help by **prioritizing more funding** to implement mental health resources.<sup>147</sup> Schools can implement programs to educate children about mental health symptoms and effective coping strategies. This includes speaking to parents about how to find services for their child and alerting children of their ability to talk with a school counselor or therapist.<sup>148</sup>

## V. The Unique Challenges of Children in Foster Care

Children in foster care are at a higher risk of being Baker Acted.<sup>149</sup> Twenty-eight percent of Medicaid spending on inpatient mental hospitals is made up of children in foster care.<sup>150</sup> Baker Acts can be used on children in foster care when there are no other options for the caregiver.<sup>151</sup> Baker Acts can also be used as a respite when a child perceives a Baker Act as a better option than their current placement.<sup>152</sup> This is similar to Zach from the earlier hypothetical, acting a certain way to leave his current placement. Baker Acts are also reported to be used by foster caregivers in situations where parents would not have Baker Acted their own children.<sup>153</sup> This was shown through the earlier example of Brett. Many parents would not Baker Act their children for fighting with each other, but foster children can often be Baker Acted for this type of behavior.

Foster children in Baker Acts are also unique because they can suffer upon discharge if they disrupt their placement and have nowhere to go afterward.<sup>154</sup> Many caregivers are not as willing to care for a foster child who was previously Baker Acted which can make placement for these children harder.<sup>155</sup>

Children in foster care make up a large percentage of those who are Baker Acted, and the Department of Children and Families (DCF) can play a part to help these children as well. DCF

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

can help by always reporting any incident that leads to a Baker Act.<sup>156</sup> DCF can prioritize educating foster caregivers about strategies to deal with mental health disorders to de-escalate the situation instead of making a Baker Act call.<sup>157</sup> This can include DCF making it a habit of always following up with caregivers to make sure they understand medication side effects and can adequately help with follow-up care.<sup>158</sup>

## VI. CONCLUSION

The rise of Baker Acts in Florida is a major issue that needs reform within different systems and changes to Florida's statutes. Children should be protected differently than adults regarding Baker Acts because of the age difference. Many professionals advocate against Baker Acts due to the potential trauma outweighing the lack of evidence of effective treatment.<sup>159</sup> The huge difference between the amount of Baker Acts in Florida compared to other states shows that changes are needed. Hardly any changes have been made by legislators in the past few years, and this issue needs to be prioritized. The Baker Act process is being excessively used and subjecting children to a traumatic experience that is not necessary for many of them.

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<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Southern Poverty Law Center, *supra* note 2.