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The Baker Act: Time for Florida to Get Its Act Together

*Alexander E. Lemieux**

I. INTRODUCTION

Imagine you are a seven-year-old in the second grade, and it is the first day at your new school. The bullies at school are ruthlessly making fun of you. Part out of anger and part out of fear you tell the bullies to “leave you alone or else.” Or perhaps it is your fourteen year-old daughter who was diagnosed with autism at a young age, and the condition is known to both the teachers and administration. Your daughter is experiencing one of her episodes in class and is crouched in the corner with her eyes closed and hands clasped over her ears. The teacher tries to calm her down, but your daughter brushes the teacher’s hand away, frustrating the teacher even more. In both situations, school authorities call the police.

You, the seven-year-old, explain to the police how you were getting picked on, that it is your first day at a new school, and you honestly did not mean anything by “or else.” Your 14-year-old daughter cannot muster up the words to say anything to the police because the autism inhibits her social skills. Can both of these children be involuntary committed by police without either their or their parents’ consent and taken to a mental facility for 72 hours? The true and scary answer is yes – they can be “Baker Acted” and it happens about 7,260 times per year in Florida just at schools alone.¹

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¹State of Florida Department of Children and Families Mental Health Program 1, *History of the Baker Act Its Development & Intent*, May 2002 available at <https://www.myflfamilies.com/service-programs/samh/crisis-services/laws/histba.pdf> (last visited Nov. 1, 2018).

II. BACKGROUND

Florida enacted its first statute governing the treatment of mental illness in 1874.² Then in 1971, the Florida Legislature made a complete overhaul when it passed the Florida Mental Health Act (“Act”) commonly referred to as the “Baker Act” in recognition of Maxine Baker, a state representative from Miami who sponsored the bill.³ Prior to the Act, the law only required three people to sign affidavits attesting that a person was exhibiting a mental illness and approval from a county judge to involuntarily admit a person in a state hospital.⁴ Other than this initial determination by a judge there was little judicial oversight and no legal procedure for the person to be heard before a judge to reconsider their confinement.⁵ For almost 100 years in Florida: men, women, and most disturbingly children, have been stripped of their fundamental rights to liberty and due process, based on the recommendation of three lay people and a judge, with no medical background which made the Act’s passage in 1971 all the more desirable.

The legislative intent of the 1971 Act was to make “a major revision of hearing procedures to maximize and safeguard patient rights” in an effort to correct the injustices so many Floridians faced in the past.⁶ However, even when the 1973 legislature extensively revised the Act, it still allowed for a “noncriminal mentally ill person” to be jailed for up to five days, but at least gave them the right to consent to shock therapy.⁷ As you will see, the Act was far from perfect when it was enacted just as it is today, albeit the fact it is one of the most modified statutes in Florida. The sad reality for some of these modifications is that it takes a gross injustice to occur before the legislators make commonsense changes.

For example, it was not until 2015 that the Act was modified to require parental notification when a child is taken from school and involuntarily admitted to a facility.⁸ The reason for this modification

²*Id.*

³*Id.*

⁴*Id.*

⁵*Id.*

⁶Joint Legislative Management Committee Of The Florida Legislature 107, *Summary of General Legislation*, April 31, 1973 available at <https://fall.law.fsu.edu/collection/FISumGenLeg/FISumGenLeg1973.pdf> (last visited Nov. 1, 2018).

⁷*Id.*

⁸*Editorial: Florida Legislature should reform Baker Act*, TAMPA BAY TIMES (July 3, 2015), <http://www.tampabay.com/opinion/editorials/editorial-florida-legislature-should-reform-baker-act/2236045>.

finds its roots in the story of fifteen-year-old Alishia Montelongo, a high school student attending Wolfson High School in Jacksonville, Florida. Ms. Montelongo went to school as usual on March 9, 2015, and what occurred thereafter was anything but usual. It was reported that Ms. Montelongo had been the object of bullying at school and out of frustration uttered to a friend while walking down the hall, “I don’t care if I live or die.”⁹ Apparently, this comment was overheard by someone who reported the comment to someone in authority and ultimately Ms. Montelongo was rapidly routed from the high school to a psychiatric hospital.

At no time was there any independent determination made by a skilled medical provider that Ms. Montelongo was a danger to herself or others, and, in fact, when queried by an individual at the hospital she denied that she was ever serious about hurting herself. Instead of using good reason or critical reflection by authorities at her high school the latter rushed to judgment and caused Ms. Montelongo to be whisked off to a psychiatric hospital for four days.¹⁰ As egregious, unfounded, and aberrant as this behavior was, the treatment that her family received was even more outrageous. No person at any time sought to notify the parents of Ms. Montelongo of their intentions to divest her of her freedom and civil rights, and when her parents arrived at the school by car that day to pick her up they became alarmed that she was nowhere to be found. It was only through the parents’ due-diligence and investigation that they learned their daughter was being confined at a psychiatric hospital, due to a comment that someone overheard secondhand that proceeded to pass downstream to a person with purported authority who in turn sent her away for four long and lonely days.

It is critical to note that no one involved in this transgression appeared to have any particular knowledge or specialty concerning the mental health profession, nor was Ms. Montelongo provided with any notice or opportunity to be heard before a court of competent jurisdiction before being subjected to the prevarications of a state psychiatric hospital. Once Ms. Montelongo’s story became public Floridians became outraged. In a swift response, the Florida Legislature effectuated House Bill 291 on July 1, 2015, requiring “each county school health services plan to provide for immediate notification to a student’s parent or guardian if the student is

⁹*Florida School Sends Bullying Victim To Mental Hospital*, CITIZENS COMMISSION ON HUM. RTS., <https://www.cchrflorida.org/florida-school-sends-bullying-victim-to-mental-hospital/> (last visited Nov. 1, 2018).

¹⁰*Id.*

removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination.”¹¹ However, this modification like many of the others is a temporary fix to a much more needed comprehensive overhaul to get some of Florida’s neediest children the help they deserve.

The Florida Legislature continues to revise the Act and in doing so it also revises the Act’s legislative intent. The 2018 legislative intent was to “reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders.”¹² The statute also states that “[i]t is the policy . . . 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.”¹³ In other words, the purpose of the Act is to provide mental healthcare safeguards by limiting its application to those situations where there is an imminent threat of a child hurting themselves or others due to a mental illness. The 2018 legislative intent seems to align with the original intent of the Act to “encourage voluntary commitments as opposed to involuntary.”¹⁴ However, there were 199,944 involuntary examinations between 2016 and 2017, and almost 33,000 of those were of children less than 18 years of age.¹⁵ To put this into perspective, in the last five years the overall number of involuntary examinations jumped 22% while the amount of involuntarily examined children increased 21% in that same period – clearly the numbers are not aligning with the legislative intent of taking steps to reduce involuntary examinations.¹⁶

III. BAKER ACT CRITERIA AND PROCEDURE FOR INVOLUNTARY ADMISSION

Section 394.463 of the Act lays out the criteria for an involuntary examination. The involuntary examination may only be initiated by a judge, law enforcement officer, or a mental health

¹¹*HB 291 Involuntary Examinations of Minors*, HOUSE OF REPRESENTATIVES STAFF ANALYSIS 1 (July 1, 2015), <https://www.flsenate.gov/Session/Bill/2015/291/Analyses/h0291c.CFSS.PDF>.

¹²FLA. STAT. § 394.453(1)(a) (2018).

¹³FLA. STAT. § 394.453(d)(2) (2018).

¹⁴*History of the Baker Act Its Development & Intent*, *supra* note 1.

¹⁵Annette Christy, *The Baker Act The Florida Mental Health Act*, FISCAL YEAR 2016/2017 ANN. REP. 5 (June 2018),

<http://www.dcf.state.fl.us/programs/samh/publications/202018.pdf>.

¹⁶*Id.*

professional.¹⁷ Before any of these permitted individuals can apply the criteria, it must first be determined that the minor has a mental illness. As defined by the Act, a mental illness is:

[A]n 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 antisocial behavior or substance abuse.¹⁸

Once it has been determined that the child has a mental illness, the next step is to apply a two-prong test to determine whether the child will be involuntarily examined. The first prong requires that “[t]he person . . . refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; *or* [t]he person is unable to determine for himself or herself whether examination is necessary.”¹⁹ Under the second requirement of this prong, section 394.463 requires the additional criteria:

(1) 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*

(2) 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.²⁰

“Harm” as required under the second requirement falls into the following categories: (1) harm to self only; (2) harm to self and harm to others; and (3) harm to others only.²¹ Harm to self is the most cited reason among the three categories and encompasses approximately 71% of the children being involuntary examined.²² The finding of mental illness and harm to themselves or others, or self-neglect, “requires more than mere suspicion of mental illness or

¹⁷FLA. STAT. § 394.463 (2018).

¹⁸FLA. STAT. § 394.455 (2018).

¹⁹FLA. STAT. § 394.463 (2018).

²⁰*Id.*

²¹Christy, *supra* note 15, at 11.

²²*Id.*

potential risk” by the authorized official, but rather “substantial evidence, which is [a] much higher bar than simple suspicion.”²³

Only after the child has met all the criteria of section 394.463 are authorized officials permitted to send or transfer the child to a receiving facility. Each county in Florida is required by law to designate at least one law enforcement agency to transport the child to a receiving facility.²⁴ The facility the child is taken to may not be state-owned or state-operated but otherwise may be public or private.²⁵ More importantly are the accommodations for children in these facilities. Any child that is fourteen years of age or older may have to share a room with an adult who is suffering from a mental health condition.²⁶ Although this determination is ultimately up to the attending physician, parents may have reasonable concerns for the safety of their children sharing rooms unattended with adults suffering from a mental illness.

After being involuntary admitted to a mental health facility, the facility must provide “immediate notice” to the child’s parents or guardians of their arrival.²⁷ This means the facility, at the very least, must attempt to contact the child’s parent or caregiver once every hour after the child has arrived “in person or by telephone or other form of electronic communication, or by recorded message, that notification has been received.”²⁸ If the facility cannot reach the child’s parents after the first twelve hours then they must continue to attempt to do so once every 24 hours, unless the child is released following their 72-hour examination.²⁹ The only exception to immediate notice is when the facility believes the child has been abused, then the facility may suspend notification up to 24 hours so long as they have contacted the appropriate abuse hotline.³⁰

Once the child has been involuntarily admitted to a facility an examination must be initiated within 12 hours of the child’s arrival.³¹ The facility may hold the child for up to 72 hours, but if the examination period ends on a weekend or holiday the child has to wait until the next working day for the examination period to end

²³*What Happens When you Baker Act Someone*, FAMILY CENTER FOR RECOVERY (Sept. 27, 2017), <https://fcfrmd.com/happens-baker-act-someone>.

²⁴FLA. STAT. § 394.462(1)(a) (2018).

²⁵FLA. STAT. § 394.4785(1) (2018).

²⁶*Id.*

²⁷See FLA. STAT. § 394.4599 (2018).

²⁸*Id.* § 394.4599(1)(c)(2).

²⁹*Id.*

³⁰*Id.*

³¹FLA. STAT. § 394.463.

because the statute does not include weekends or holidays.³² Thus, if a child is involuntarily admitted to a facility on a Wednesday afternoon and the following Monday is an observed holiday such as Memorial Day, then the child technically can be held for six days. After the examination period ends, one of the following actions must be taken under section 394.463(g) of the Act:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;

3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or

4. A petition for involuntary services shall be filed in the circuit court if inpatient treatment is deemed necessary or with the criminal county court, as defined in s. 394.4655(1), as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s.394.4655(4)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.³³

There are numerous problems that arise from interpreting and applying the Act's criteria. For instance, two of the three statutorily permitted persons who apply the criteria are not licensed health professionals. On one hand you have a judge making a medical determination on a child's mental illness without any formal training or certification related to mental health. However, judges make up a rather insignificant amount of initiating involuntary examinations; under 1% in 2017.³⁴ On the other hand, law enforcement officers, who make up the majority of those initiating involuntary examinations have no formal training relating to mental health, unless the department itself implements a training program such as the Crisis Intervention Team ("CIT").

³²*Id.* § 394.463(4)(g).

³³*Id.*

³⁴Christy, *supra* note 15, at 10.

A. LAW ENFORCEMENT INITIATING INVOLUNTARY
EXAMINATIONS

Police comprise the majority of those authorized under the statute to initiate the involuntary examinations. The application of the criteria seems to give these officials broad power to decide who should or should not be involuntarily examined. Between 2016 and 2017, 66.96% of involuntary commitments of children were initiated by law enforcement officials.³⁵ The main reason why law enforcement officials make up the majority is most likely because they are the first, and in most instances the only permitted officials under the statute, that can be readily contacted when a person believes there is an emergency regarding a child who may be suffering from a mental illness, and is thought to be at imminent risk of causing harm to themselves or others. Thus, it would appear reasonable for Floridians to conclude that law enforcement officials have extensive training in order to make competent and informed decisions of whether a child meets the criteria – but they do not.

In fact, the only requirement for law enforcement officials under the Act is to take a child who meets the criteria into custody, deliver them to a facility, and create a written report explaining why the child was taken.³⁶ There is no formal training, certification, or procedure required under the Act to instruct the police on how to apply the criteria in a reasonable manner that protects the child's rights and meets the legislative intent. Astonishingly, the only required procedure for police under the Act is that "[l]aw enforcement agencies must develop policies and procedures relating to the seizure, storage, and return of firearms or ammunition held under this paragraph."³⁷ Moreover, the only mention of specialized training refers to using, when applicable, a law enforcement officer who has completed CIT to serve and execute ex parte orders.³⁸ Why would the Act instruct a police officer to use a CIT to deliver ex parte orders that comprise less than 1% of involuntary commitments, but not when it's the police themselves who are the officials making the initial decision? Especially when it is these officials who make up the greatest number of those initiating involuntary examinations.

³⁵*Id.*

³⁶*See* FLA. STAT. § 394.463.

³⁷*Id.* § 394.463(2)(d)(4).

³⁸*Id.* § 394.463(2)(c)(2).

It is entirely up to each department individually to determine whether or not they will implement specialized training such as CIT. Some examples of departments that do implement specialized training for its law enforcement personnel include Broward County, Florida, and the Lake City Police Department (“Lake City”) located in Columbia County, Florida. In Broward County, the CIT program requires that officers complete 40 hours of intensive training “on recognizing and intervening with individuals with behavioral health problems.”³⁹ This crisis team can provide immediate intervention and, if needed, can write an involuntary certificate for admission.⁴⁰

Lake City also provides certain law enforcement officers with CIT training. Lake City defines CIT as “[a] voluntary designation of members who have received enhanced training in the recognition of mental illness, crisis intervention and the assessment of persons experiencing a mental health crisis.”⁴¹ Unlike Broward County, Lake City goes a step further in that “[n]ewly hired officers shall receive entry-level training regarding general guidelines in interacting with mentally ill persons.”⁴² Lake City also requires that “[o]fficers shall receive refresher training concerning mentally ill persons at least every three years,” and, “[n]on-sworn members will receive entry-level training and refresher training at least every three years regarding interact[ion] with mentally ill persons.”⁴³

The importance of CIT training becomes apparent when applying the Act’s criteria to determine whether a child actually suffers from a mental illness, as well as the second prong of the test, whether the child is in danger of harming themselves or others. Law enforcement officers continue to fail in applying these requirements. For instance, children with autism who are routinely involuntarily admitted are not exhibiting the required mental illness under the Act’s definition. Under section 392.063(5) of Florida Statutes, Autism is defined as:

[A] pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal

³⁹*Baker Act and Marchman Act*, BROWARD BEHAVIORAL HEALTH COALITION <https://bbhcflorida.org/baker-act-marchman-act> (last visited Nov. 1, 2018).

⁴⁰*Id.*

⁴¹LAKE CITY POLICE DEPT. 2, GEN. ORDERS MANUAL (July 20, 2010), <http://www.lcfla.com/documents/Police/Baker%20Act.pdf>.

⁴²*Id.*

⁴³*Id.*

social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.⁴⁴

In sum, a child cannot be involuntarily admitted under the Act for autism alone. The Act requires that law enforcement officers must “have reason to believe the person has a mental illness in addition to autism.”⁴⁵ The issue becomes how is a law enforcement officer supposed to properly conclude an additional mental illness exist, or even that the child suffers from autism, when they lack the proper training to do so? The answer is for the legislature to mandate that all new officer cadets, as well as those who are already officers, complete at least 40 hours of CIT or similar, and to take annual refresher courses.

For example, Broward County, which at least provides some CIT training for its law enforcement officers, saw the number of children being involuntary examined drop from 17.24% between 2013 and 2014, to 12.11% between 2016 and 2017.⁴⁶ Although police departments in different counties may differ in results due to several factors such as population, community outreach programs, school officials and policies, income, etc., the benefits of implementing specialized training (not stripping children of their fundamental rights; stigma) outweighs the cost of doing so (40-hour program with annual refresher course).

IV. SOLUTIONS

Ultimately, the Baker Act needs a complete overhaul and the legislators need to create a commonsense approach that protects individual liberties while aiding Florida’s children by getting them the help they need. There are two jarring aspects of the Act. First, it permits law enforcement officials with no specialized training to encroach on one’s fundamental rights and liberties based on criteria that is overly broad, vague, and unreasonably difficult in application. Second, it pits the complaining party and the concerned party against each other in a he-said-she-said situation with a presumption in favor of the complaining party, which is inherently

⁴⁴FLA. STAT. § 393.063(5) (2016).

⁴⁵*Involuntary Examinations*, STATE OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES MENTAL HEALTH PROGRAM OFFICE, <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/InvoluntaryExamination.pdf> (last visited Nov. 1, 2018).

⁴⁶Christy, *supra* note 15, at 32.

inequitable, prejudicial, and leaves the law enforcement official confused as to whether the concerned party actually suffers from mental illness and is a threat to themselves and others, or whether the complaining party is simply doing just that – complaining. So, the constitutional question becomes how does the state have a compelling interest to confine a child, or any person for that matter, that is not mentally ill? Yet, the misapplication of the Act’s criteria by law enforcement officers corroborated by testimony from lay people leads to the same gross injustice too often – the confinement of a child not suffering from a mental illness.

One solution is for Florida to require each police department to implement CIT training. The state could create a uniform program that is distributed to every state and local law enforcement agency that instructs its personnel on how to properly assess a variety of situations. This program will also focus on defining the criteria and practicing its application in real-world scenarios so that law enforcement officials can be tested on their understanding and application of the criteria. The program should also be administered in part by mental health professionals because their experience and knowledge of mental illnesses will only further the law enforcement officials’ understanding. All officers will be required to take an annual refresher course to test their knowledge, as well as be provided with a forum to share and discuss their different experiences and get feedback.

Another solution is for the state to establish a special magistrate who is a certified mental health professional in every county. This does not mean the special magistrate has to be a medical doctor, but rather has taken and passed a rigorous certification process that qualifies them to make reasonable determinations pertaining to mental health. There are 67 counties in Florida and approximately one-half of these counties do not have, or are not equipped with, a receiving psychiatric hospital. Since each of the 67 counties have a court system in place and most of the fundamental problems arise out of routing people through the system, the most practical and constitutionally sound method for assuring that due process has been served and individual liberties are protected is to create a special magistrate in each county.

The special magistrate will be assigned to hear only one type of case, to wit., candidates who are slated to be Baker Acted. A special magistrate would not only provide the requisite checks and balances called for in the Constitution, but would also provide a substantial cost saving measure by making a finding upon

substantive evidence whether to release the child and avoid the cost of further care. But the solution doesn't have to stop here.

In addition to a special magistrate the state could also require each court to assign a public defender to hear only Baker Act cases, thereby assuring that the fundamental rights guaranteed in the Constitution are being observed and that said rights of the parties are being protected. This measure assures that only those individuals who were intended to be provided with mental health resources shall avail when necessary, and those who are not a threat to themselves or others will not find themselves routed through the system needlessly. It also provides another procedural safeguard discussed by Pinellas-Pasco County Public Defender Bob Dillinger in an interview with the Tampa Bay Times:

[There's] no way to assess whether the 72-hour commitment was appropriate in the first place or whether confusion or coercion might have induced juveniles and parents to sign on for longer stays. The Legislature should change the Baker Act to give public defenders access to juveniles and medical records upon any involuntary admission. Patient privacy should remain paramount in most medical settings, but not when the power of the state forces people into care.⁴⁷

As the Act stands now, the Public Defender's Office is only notified of involuntary commitments when the 72-hour hold is up, and the facility petitions the court to keep the child against their will for an extended period. Mr. Dillinger is proposing that the Public Defender's Office should not have to wait until after the first 72 hours, but rather be notified or at least granted access to the police reports and the child's medical records as soon as any child is involuntarily committed. This concept also aligns with our constitutional concept of checks and balances. By permitting the Public Defender's Office to access records for every involuntary committed child initiated by law enforcement officials, they can ensure that the officers followed proper procedure, reasonably applied the criteria, and are not overstepping their authority and those fundamental rights of the child. The public defender will also be able to report gross applications when appropriate, thus keeping the executive branch in check when it is enforcing the Act.

Finally, the state could allocate the money it spends to pay for each public and private facility. As of 2014, the cost of the state to contract with public facilities is \$300 a day per bed regardless of

⁴⁷*Florida Legislature should reform Baker Act, supra* note 8.

whether a person is actually using a bed or not.⁴⁸ The same agreement applies to private facilities which cost \$1,200 a day per bed.⁴⁹ The policy of this contract between the state and the facilities is to ensure that these facilities will accept patients as needed.

However, the state could instead channel that money and establish community outreach programs in every county in Florida. This funding would allow the community to lease or buy space, set up programs to aid struggling youths, and ultimately create a safe space where children can be brought to under the Act. Because it is in their community the children will be around people they know and trust, who are there for the children's best interest. It is a proactive solution because children can go to these centers at the onset of experiencing mental health issues, without the stigma that attaches when they are involuntarily taken to a mental facility. In turn, as these children in the community grow into adults, they can become volunteers and continue to create relationships within the community. Moreover, these centers will likely have an effect on school bullying, which tends to account for many of the underlying reasons why these children are being Baker Acted in the first place.

There really is no end to the commonsense changes that could be made to the Act. However, no such change will outweigh the benefit of a complete overhaul. If anything, these changes can be implemented into a renewed mental healthcare act. But it is going to take a proactive legislature that is held accountable by its constituents to make these changes. Only one thing is for sure, Florida needs to get its act together.

V. CONCLUSION

The Baker Act may be one of those creations that appears to be so good and purposeful in concept only to be reduced to, when consciously applied, a cumbersome, inconsistent, lugubrious morass substantially causing more problems, hardships, and adversities than it resolves. There are as many reasons for the Act's shortcomings as there are good intentions of the social workers who diligently attempt to undertake and solve the staggering problems of an

⁴⁸Steve Miller, *Bill Would Change Way State Pays for Baker Act Beds*, THE PALM BEACH POST (Apr. 14, 2014), <https://www.palmbeachpost.com/news/state—regional-govt—politics/bill-would-change-way-state-pays-for-baker-act-beds/KmdE9OZ0laFQJxSaTKHGuK/>.

⁴⁹*Id.*

imperfect mental health system and the ever-increasing members of our society that are clearly disenfranchised.

The entire framework of the Baker Act needs to be overhauled. A cursory review of the overwhelmingly increasing number of people who are victims of the well-intended, but nevertheless overreaching and cloying application of the Act, show an astronomical increase year after year. Is this because our society is generating more and more disenfranchised people or individuals with serious mental health issues that present a danger to themselves or others? Or is it due to the failure of those individuals who are assigned with the task of evaluating the eligibility of the person undergoing an exam not being qualified to make a credible factual determination as to whether that person ought to be routed to a receiving facility?

The gravamen of the shortcomings of the Baker Act is founded upon the examination and evaluation process, especially given the influence of the person who makes the initial decision as to whether a child is to be released outright, or referred to the psychiatric hospital for 72 hours or longer. Who are these lifechanging evaluators and what type of training do they have that makes them equipped to have such a drastic change in a person's life? They may be a person with medical training such as a physician, psychiatrist, mental health counselor, or therapist. Given the excessive number of children being shuffled off to receiving facilities it is more than likely that none of these professionals will initially conduct the intake examination.

Judges are also listed as viable authorities to initiate a Baker Act examination and recommend and refer when needed a party to a receiving facility. However, a judge generally has no mental health or medical training and therefore lacks the acumen to make such a recommendation based on medical reasons. Judges are triers of fact who are trained to listen to testimony, consider facts, and give weight and credibility to the evidence presented. They generally do not make *ex parte* rulings except in extreme cases and rely on each party to proffer evidence and cross examine witnesses. Therefore, an evaluation by them is nothing more than an evaluation conducted by a layperson, and they ought not to be placed in a position where, without hearing both sides of a story in an open and competent forum, rule that a person is to be deprived of his liberty without an evidentiary hearing.

Law enforcement officers are also permitted under the Baker Act to initiate involuntary commitments, and render a decision that

routes a party to a receiving psychiatric hospital for further care and treatment. Police, especially without specialized training, are perhaps the last people who should be placed in a position of authority to make a decision on a child's mental health that may result in the child being denied their liberty without the benefit of due process. Police are trained to diffuse a contumacious confrontation, or to get people who would prefer to hangout to move on, or to remove a child from a school where he or she may have said something that alarmed a person in authority, who in turn would prefer to remove that person from the school grounds rather than to resolve any underlying problem.

The Baker Act by today's standards is in many ways no better off dealing with mental healthcare than its predecessor. Similar to the pre-Act requirement that three laypeople report another's mental illness, the Act only requires one person to report another's mental illness. Just like the pre-Act permitted a judge with no mental healthcare background or training to initiate an involuntary commitment, the Baker Act permits a judge or law enforcement officer with no mental healthcare background or training to initiate an involuntary commitment. The only difference being that the Baker Act provides permitted officials with broad criteria to apply in order to initiate an involuntary commitment. However, law enforcement officers often misapply the required criteria, or use it as an excuse to confine a child, who otherwise under the law, could not be confined. As these injustices continue to accrue, Florida is in no better a position and perhaps even worse when managing mental healthcare than it was pre-Act.