

The Baker Act

By: [Stephanie L. Langer, Esq.](#)

DIG is honored to be a part of the Education Justice Collaborative working on a grant with Legal Services of Greater Miami to prevent illegal and unnecessary Baker Acts of children from school by providing individual representation for at risk students in Miami-Dade and Monroe County. So what is the Baker Act and who is at risk? More often than not, the children who are most at risk of being Baker Acted are those with invisible disabilities, including developmental and intellectual disabilities.

The Baker Act is a law that governs the *involuntary* examination, admission, and treatment of persons for mental illnesses. The Baker Act provides a process for the involuntary examination of a person for either inpatient or outpatient treatment. [Fla. Stat. § 394.463](#). The Baker Act, named for its primary author and sponsor, Representative Maxine Baker, provides due process to persons who were determined to be mentally ill and in need of emergency evaluation or treatment. The statute provides for emergency admission for evaluation of persons who because of a mental illness were likely to physically injure self or others. The Baker Act distinguished between admissions for emergency examination purposes and admission to a state mental health treatment facility (state hospital) and required the filing of a petition in circuit court before an individual could be involuntarily hospitalized for an extended period of time.

There is little difference in the law regarding how children are treated and how adults are treated. Anyone who has or is suspected of having a mental illness and is determined to be a danger to themselves or others, can be involuntarily taken and held in a hospital for up to 72 hours. During that 72 hours, the person (adult or child) is to be evaluated and a determination made that person needs to remain hospitalized or can be released with services or released without services. If the person is to be held after 72 hours, the state must file a petition and a present facts that establish that the person remains a danger to themselves or others and that a least restrictive option is not available to treat this person.

What is a mental illness? It is an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's

ability to meet the ordinary demands of living, regardless of etiology. Fla. Stat. § 395.455 (28). Autism is **not** a mental illness. Autism is a diagnosis under chapter 393 governing developmental disabilities that is excluded from the legal definition of mental illness. See Fla. Stat. [§ 393.063](#)(5) for definition of autism.

So why are so many children being Baker Acted, especially those with an intellectual or developmental disability? I believe there are a few reasons. First, intellectual and developmental disabilities are often invisible disabilities. When a person looks typical, you expect them to act typical. When they do not respond in an appropriate manner or as expected, then they are at risk of being mislabeled mentally ill rather than having a developmental or intellectual disability. Second, in schools, students who misbehave are hard to educate. Children who are hard to educate are often pushed out of the school. Children with disabilities often have problem behaviors that are a manifestation of their disability, not mental illness. However, one of the ways of removing problem children from school is through the Baker Act process. When there was an outcry to stop arresting so many children from schools, school arrests slowed down, but at the same time as arrests were going down, Baker Acts were going up. Baker Acting a student from school is an effective way of pushing them out of that school, if not the whole school system. Baker Acting students is just as traumatic to a child as an arrest of that child. Similar to an arrest, the student is often times handcuffed and transported in the back of a police car, they have no contact with their parents until after the process has been completed and they are traumatized by the experience. It is a tremendous act and must only be utilized in the most narrow situations.

The goal of this grant is to slow down and stop children from being Baker Acted at schools. Through individual representation we are able to get children the services and supports that are needed to ensure the child feels safe at school and when there is unwanted behavior that it is addressed appropriately and effectively. Baker Acting a children for a behavior that is a manifestation of his developmental or intellectual disability is wrong and in direct violation of the Baker Act. It is a practice that needs to end immediately. Educators need better supports and services at their disposal so that the over use of the Baker Act can end.