

EX PARTE ORDER - BAKER ACT

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IMPORTANT - PLEASE READ!

THIS IS NOT TO BE USED IF PERSON IS ABUSING DRUGS.

IF NOT PROPERLY COMPLETED, YOUR ORDER WILL NOT BE GRANTED!

WHAT IS A BAKER ACT? A Baker Act is the procedure for providing persons with emergency psychiatric services and temporary detention for mental health evaluation and treatment when required, who are mentally ill and because of the illness, refuses or is unable to determine examination is necessary; and who are likely to suffer from self-neglect or inflict harm to themselves or others.

Mental illness means an impairment of the mental or emotional processes that controls an individual's actions or the ability to perceive or understand reality and to meet the ordinary demands of living. This does not include retardation or developmental disability, intoxication or substance abuse.

Baker Acts can be initiated by a Circuit Court Judge's ex parte order through the enclosed **PETITION AND AFFIDAVIT SEEKING EX PARTE ORDER REQUIRING INVOLUNTARY EXAMINATION**; by designated health care professionals; and a Law Enforcement Officer may take a person to the Baker Act facility if there is reason to believe that the person's behavior meets statutory guidelines.

MAKING A FALSE STATEMENT IN A SWORN PETITION AND AFFIDAVIT CAN RESULT IN PENALTIES OF FINES OR IMPRISONMENT, OR BOTH.

Before proceeding with a Baker Act, consider the use of alternatives that may be more appropriate for the situation. The other alternatives are: Marchman Act for substance abuse (F.S. 397); developmental disabilities (F.S. 393); adult abuse, neglect and exploitation (F.S. 415.1051); guardianship (F.S. 744); and advance directive (F.S. 765) (for information on alzheimer's, area agencies on aging, elderly services throughout

the state and other resources, visit the Florida Department of Elder Affairs website. (<http://elderaffairs.state.fl.us>)

A BAKER ACT CAN BE EITHER VOLUNTARY OR INVOLUNTARY.

A **voluntary** Baker Act is when a person makes application to a facility for observation, diagnosis or treatment for themselves. The person must be 18 years of age or older to make application, or the parent or guardian of a person 17 years of age or younger to make application. If a person is not competent to give informed consent, they must be examined under the involuntary procedure.

An **involuntary** Baker Act is when a person has refused voluntary examination or 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 refuses to care for himself or herself and such refusal could pose a threat of harm to his or her well being, and there is a substantial likelihood that without care and treatment, the person will cause serious harm to himself or herself or others in the near future as evidenced by recent behavior and that person is taken to a mental health facility by means of an ex parte order.

PETITION AND AFFIDAVIT SEEKING EX PARTE ORDER REQUIRING INVOLUNTARY EXAMINATION. The petition and affidavit can be filed by any person who has first hand knowledge of the person's recent behavior. You must provide proper identification for your acknowledgment before a Notary Public or Deputy Clerk.

You must swear in the petition and affidavit that you have witnessed the person causing harm to themselves or others and all other facts that will show the Judge that the person is mentally ill. You must also show that you have tried to convince the person to take a voluntary examination.

BE SURE TO ANSWER ALL QUESTIONS IN THE PETITION. IF YOU DO NOT KNOW THE ANSWER TO A QUESTION, WRITE IN "UNKNOWN".

As soon as you file the petition with the Clerk of Court, they will bring it to the Judge's Office for review, which will normally be completed by 4:00 P.M. the same day, so long as the petition is filed before 2:00 P.M.

COURT DETERMINATION. Relying solely on the contents of the petition, the Court will either: (1) enter an ex parte order authorizing the involuntary examination of the Person (2) set a hearing without entering an ex parte order, or (3) deny your petition.

(1) If the Court determines that the person meets the guidelines for involuntary examination, it shall enter an Ex Parte Order for Involuntary Examination. As soon as the order is entered, it will be delivered back to the Clerk of Court for preparation of a

packet for you to pick up and deliver to the Sheriff's Office. You must provide the Sheriff's Office with the location of the person so they may immediately pick that person up and transport them to the nearest examination and treatment facility. Please complete the LAW ENFORCEMENT INFORMATION SHEET and deliver to the Sheriff's Office to assist them in identifying the person. If the person cannot be located by the Sheriff's Office, they will hold the order for seven (7) days and continue attempts to take the person into custody. If they cannot locate the person after the seven day period, the order will be returned to the Clerk of Court as unserved.

Unless your petition is denied, the Court shall determine whether or not an attorney should be appointed for the Person. If the Court believes that the Person needs the assistance of counsel, the Court may appoint counsel for the Person without regard to the Person's wishes.

If the Person is a minor not otherwise represented in the proceeding, the Court shall immediately appoint a guardian ad litem to act on the minor's behalf.

(2) If an ex parte order is not entered and a hearing is set, a copy of the petition and a copy of an **ORDER AND SUMMONS TO APPEAR AT HEARING AND DENYING EX PARTE EXAMINATION** shall be provided to the Person; the Person's parent, guardian, or legal custodian, in the case of a minor; to the Person's attorney, if known; the Petitioner; the Person's spouse or guardian, if applicable; such other persons as the court may direct; and a copy of the petition and the order and summons to appear at hearing are to be personally served to the Person if he or she is a minor.

At the hearing, the Court shall hear all relevant testimony. The Person must be present unless the Court has reason to believe that his or her presence is likely to be injurious to him or her, in which case the Court shall appoint a guardian advocate to represent the Person. After hearing all of the evidence, the Court shall determine whether there is a reasonable basis to believe the Person meets the involuntary examination criteria.

Based on its determination, the Court shall either dismiss the petition or immediately enter an **ORDER FOR INVOLUNTARY EXAMINATION - BAKER ACT**. If the Court believes that the Person suffers from substance abuse rather than mental illness, it may enter a Marchman Act Ex Parte Order instead.

If, after hearing all the evidence at hearing, the Court denies your petition by entering the **ORDER DISMISSING ACTION - BAKER ACT**, and you have additional evidence that you can present to the Court, you may have your petition presented to the Court again with the additional evidence presented.

(3) If the Court denies your petition it will immediately enter an **EX PARTE ORDER DENYING PETITION FOR INVOLUNTARY EXAMINATION (BAKER ACT)**.

If the person is in jail, a Baker Act petition filed by an individual will not take precedence over their criminal charge. A Baker Act Receiving Facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security.

MANDATORY COMPONENTS OF AN INVOLUNTARY EXAMINATION.

1. To determine whether the person is medically stable and that abnormalities of thought, mood and behavior due to non-psychiatric causes have been ruled out.
2. A thorough review and documentation of any observations of the persons recent behavior.
3. Review and/or completion of the appropriate involuntary examination form.
4. A brief psychiatric history and face-to-face examination of the person to determine if the person meets criteria for placement or release.

The involuntary examination can be performed by any licensed physician with experience in the diagnosis and treatment of mental and nervous disorders (such as a psychiatrist) or a clinical psychologist.

A person must be examined within 72 hours. If the person is committed for treatment, a facility may retain the person for a period not to exceed six (6) months. A person assigned to less restrictive alternatives will usually undergo an average treatment period of about four (4) weeks.

If a person is released by the Baker Act facility before the expiration of 72 hours, you may not re-petition for another Baker Act until the expiration of the 72 hours.

A Baker Act cannot be rescinded or lifted before the examination is completed.

It is important to know that a Judge **cannot** order a person to take medicine once the person has been discharged from the treating facility.

PATIENT'S RIGHTS. (F.S. 394.459) A patient has the right to individual dignity, treatment; expressed and informed consent; quality of treatment; communication, abuse reporting, and visits with persons outside of the facility; care and custody of personal effects; voting in public elections; habeas corpus (the right to ask the court to review the cause and legal right or privilege or an authorized procedure); and treatment and discharge planning.

THIS PACKET IS PROVIDED FOR YOUR USE BY:

**HONORABLE DON T. HALL
COUNTY JUDGE
DESOTO COUNTY, FLORIDA
115 East Oak Street, Suite 201
Arcadia, Florida 34266**

**NADIA K. DAUGHTREY
CLERK OF COURT**

**DESOTO COUNTY, FLORIDA
115 East Oak Street, 1st Floor
Arcadia, Florida 34266**

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN AND FOR DESOTO COUNTY

IN RE: _____ CASE NO. _____
Date of Birth: _____
_____ /

**PETITION AND AFFIDAVIT SEEKING EX PARTE ORDER
REQUIRING INVOLUNTARY EXAMINATION**

(Please Print)

I/WE, _____,

being duly sworn, am filing this sworn statement requesting a court order for the involuntary examination of (Printed Name) _____ (hereinafter referred to as PERSON).

This petition and affidavit will be included in the PERSON's clinical record and may be viewed by the PERSON.

I understand that by filling out this form, the PERSON may be taken by law enforcement to a mental health facility for an examination.

I SWEAR that the answers to the following questions are given honestly, in good faith, and to the best of my knowledge.

1. a. I live at (street address): _____

City: _____ State & Zip: _____ Phone: _____

b. I work as a (occupation) _____ Work Phone: _____

Employer Name & Address: _____

c. My relationship to the PERSON is: _____.

2. The PERSON lives at, or may be found at, the following address(es):

Street Address: _____ City: _____

Street Address: _____ City: _____

Street Address: _____ City: _____

3. I have known the PERSON for _____ (How long).

4. (Check the ones that apply)

a. I or a family member ___ have or ___ have not previously made allegations to law enforcement involving this PERSON on (date) _____ such as domestic violence, trespassing, battery, child abuse or neglect, Baker Act, etc. Please

describe: _____

b. This PERSON ___ has or ___ has not previously made allegations to law enforcement about me or my family on (date) _____ such as domestic violence, trespassing, battery, child abuse or neglect, Baker Act, etc. Please describe:

5. (Check the one that applies)

___ a. I or a family member are not now, and have not in the past, been involved in a court case with the PERSON.

___ b. I or a family member are now, or was, involved in a court case with the PERSON. This case is/was a (type case) _____
filed in _____ County, (State) _____. When: _____
Explain: _____

6. I am on good terms with the PERSON at the present time.

(Check one box) ___ Yes ___ No If "no", please explain: _____

7. (Check one only)

___ a. The PERSON has only recently displayed unusual kinds of behavior.

___ b. The PERSON has, over a period of time, always acted in a strange manner.

___ c. The PERSON's behavior has developed over a period of time.

8. I have seen the following behavior, which causes me to believe that there is a good chance that the PERSON will cause serious bodily harm to himself or herself or others. On (date) _____ at approximately (time) _____ .m., I saw the PERSON: _____

9. Other similar behavior I have personally seen is as follows: _____

10. To my knowledge or belief, I ____ do ____ do not believe these actions were a result of retardation, developmental disability, intoxication, or conditions resulting from antisocial behavior or substance abuse impairment.

11. Check and/or answer applicable sections:

____ a. I have attempted to get the PERSON to agree to seek assistance for a mental or emotional problem(s). I explained the purpose of the examination (described when, who was present, and whether you or another person explained the need for the examination): _____

____ b. I did not try to get the PERSON to agree to a voluntary examination because: _____

____ c. The PERSON refused a voluntary examination because: _____

12. The following steps were taken to get the PERSON to go to a hospital for mental health care: _____

13. I believe that the PERSON is unable to determine for himself or herself why the examination is necessary because: _____

14. I believe that the PERSON suffers from a mental illness which will keep the PERSON from being able to meet the ordinary demands of living because: _____

15. The PERSON has been treated in the past for mental illness. Yes No
16. The PERSON has previously or is presently being prescribed medication for mental illness. Yes No
17. I believe that without care or treatment the PERSON is likely to suffer from neglect or refuse to care for himself or herself because: _____

18. I believe that this lack of care or neglect will lead to the PERSON hurting himself or herself because: _____

19. Can family or close friends now provide enough care to avoid harm to the PERSON? Yes No If no, why? _____

PPROVIDE THE FOLLOWING IDENTIFYING INFORMATION ABOUT THE PERSON (if known) IF IT IS DETERMINED NECESSARY TO TAKE THE PERSON INTO CUSTODY FOR EXAMINATION:

County of residence: _____ Social Security No. _____

Date of birth: _____ Sex: Male Female Race: _____

Height: _____ Weight: _____ Hair color: _____ Eye Color: _____

Does the PERSON have access to any weapons? Yes No

If yes, describe: _____

GUARDIANSHIP:

Does the PERSON have a legal (court appointed) guardian? Yes No

Is there a pending petition to determine the PERSON's capacity and for appointment of a guardian? Yes No

If YES to either of the above, provide the name, address and phone number of the current or proposed guardian. Name: _____

Address: _____ City: _____ State & Zip: _____

Physician's Name: _____ Phone: _____

I understand that this sworn statement is given under oath and will be treated as through it was made before a judge in a court of law. I understand that any information in this sworn statement which is not to the best of my knowledge and done in good faith may expose me to a penalty for perjury and other possible penalties under the statutes of the State of Florida.

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Signature of Affiant/Petitioner

Printed Name of Affiant/Petitioner

Address

Phone

SWORN TO and subscribed before me this _____ day of _____, 20__.

Notary Public/Deputy Clerk

____ Personally known

____ Produced identification

Type of identification produced: _____

LAW ENFORCEMENT INFORMATION SHEET

FOR ORDER REQUIRING INVOLUNTARY EXAMINATION – BAKER ACT

NAME OF PERSON: _____

A/K/A: _____

VEHICLE: _____ TAG: _____

IDENTIFYING MARKS: _____

SPOKEN LANGUAGE: _____

PREVIOUS SUBSTANCE ABUSE HISTORY (if any): _____

PHYSICAL DISABILITIES: _____

CURRENT PROBLEM: _____

NEXT OF KIN OR PERSON TO BE CONTACTED IN CASE OF EMERGENCY:

NAME: _____ RELATIONSHIP: _____

ADDRESS: _____

PHONE (DAYS): _____ EVENINGS: _____

COMMENTS: _____
