



## Treatment Advocacy Center Briefing Paper

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# Frequently Asked Questions about Baker Act Reform

For more on Baker Act reform, please visit [www.bakeractreform.org](http://www.bakeractreform.org)

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### What are the criteria for involuntary psychiatric exams in Florida?

Florida law permits a mental health professional, law enforcement officer, or judge who issues an ex parte order to initiate an involuntary examination only when a person meets the following criteria:

[I]f there is reason to believe that he or she is mentally ill and because of his or her mental illness:

- (a) 1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or
- 2. The person is unable to determine for himself or herself whether the examination is necessary; and
- (b) 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.

### What happens after the examination?

If the person examined does not meet the criteria for either involuntary inpatient treatment *or* involuntary outpatient placement, he or she must be discharged from the receiving facility.

If the person needs treatment and meets the criteria for involuntary inpatient placement, a petition can be filed with the court. The court holds a hearing; if it determines that the person meets the criteria for involuntary inpatient placement, it can order inpatient placement for up to six months.

If, after an examination or a period of inpatient placement, a person is determined to need involuntary treatment in the community, a petition can be filed for involuntary outpatient placement. The court holds a hearing; if it determines that the person meets the nine-part criteria for involuntary outpatient placement, it can order outpatient placement for up to six months. This lesser restrictive alternative to involuntary inpatient placement became available in Florida on January 1, 2005 as a result of the Baker Act reform.

## **What is Involuntary Outpatient Placement (IOP)?**

IOP is a court order that mandates a treatment plan be followed on an outpatient basis. In other states, it is sometimes called “assisted outpatient treatment” or “outpatient commitment.” Since the mid-1980s, Florida and 41 other states have adopted such laws.

Results from the first five years of New York’s Kendra’s Law, on which Baker Act reform was based, demonstrate that it works. While in the program, 55% fewer recipients engaged in suicide attempts or physical harm to self, 49% fewer abused alcohol, 48% fewer abused drugs, and 47% fewer physically harmed others. Quality of life also improved: 74% fewer experienced homelessness, 77% fewer experienced psychiatric hospitalization, 83% fewer experienced arrest, and 87% fewer experienced incarceration. Individuals were also more likely to regularly participate in services and take prescribed medication. These results echo those found in a randomized control study of involuntary outpatient placement at Duke University.

## **Who can receive IOP?**

The IOP criteria applies only to those who have a history of noncompliance with prescribed treatment, combined with either repeated Baker Act admissions or serious violence—a small subgroup of the people who meet the longstanding criteria for involuntary examination. A person can be considered for IOP only if all of the following nine parts of the criteria are met:

- (a) The person is 18 years of age or older;
- (b) The person has a mental illness;
- (c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- (d) The person has a history of lack of compliance with treatment for mental illness;
- (e) The person has:
  - 1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving facility or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or
  - 2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months;
- (f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment or he or she is unable to determine for himself or herself whether placement is necessary;
- (g) In view of the person’s treatment history and current behavior, the person is in need of involuntary outpatient placement in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1);
- (h) It is likely that the person will benefit from involuntary outpatient placement; and
- (i) All available less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

## **Who can initiate an IOP petition?**

A receiving facility administrator or a treatment facility administrator. A receiving facility administrator may file a petition for IOP if a person is examined at a receiving facility and is determined to meet the nine-part IOP criteria. A treatment facility administrator may initiate a petition for IOP if a person is at a treatment facility (i.e., a state hospital) and no longer needs inpatient placement, but could benefit from involuntary outpatient placement, and is determined to meet the nine-part IOP criteria. The petition is filed in circuit court and must include a proposed treatment plan for the individual, along with a certification from the community service provider that the services in the individual's proposed treatment plan are available. If the services in the individual's proposed treatment plan are not available, the petition cannot be filed.

## **Can family members or friends testify at an IOP hearing?**

Yes. The court shall allow relevant testimony from individuals, including family members, regarding the person's prior history and how that prior history relates to the person's current condition.

## **What if the order is not followed?**

The patient may be brought to a receiving facility in order to determine whether involuntary outpatient placement is still the least restrictive treatment alternative if (1) in the clinical judgment of a physician the patient has failed or has refused to comply with the treatment ordered by the court, (2) efforts were made to solicit compliance, and (3) the patient may meet the criteria for involuntary examination.

## **What safeguards are in the law?**

The reform maintained all safeguards that existed in the mental health treatment law and provided some new patient protections including: (1) before IOP can be ordered, a nine-part criteria that applies to a very small, but specific group of people must be met; (2) the patient is involved in creating the proposed treatment plan; (3) an IOP order can be issued only if the recommended treatment services for the individual are available; (4) the patient gets legal representation at the IOP hearing; and (5) individuals with IOP orders are covered by the patient's bill of rights.