

Seizing Firearms and Ammunition in Baker Act Situations F.S. 394.463

Miami-Dade CIT Community Collaborative Training Florida Firearm Review

Lourdes F. Roberts, Assistant State Attorney

June 28, 2018

BAKER ACTS:

1. The Role of the State Attorney's Office:

- a. Real party in interest per statute
- b. Work with hospitals, families, officers to involuntarily commit for psychiatric treatment.
- c. Have 5 days from the time the petition is filed until it MUST have a hearing.
 - i. No continuances – no matter what.
 - ii. Do not get access to the hospital chart.
 - iii. Usually find out the day before which cases will result in hearings.

2. For Law Enforcement:

a. The Reports of Law Enforcement

- i. Write legibly - name and badge.
- ii. If report writer is NOT first responder, SAY SO and include name and ID of the officer(s) who got there before you on the Transportation Form.
- iii. Include names of any civilians present, along with contact information on the Transportation Form.
 - a. Helps me find potential witnesses
 - b. Helps hospital locate family quickly to start medications
- iv. Be as detailed as possible as to dangerousness – Dr. can rely on your report when filing the Firearm Prohibition Petitions, which will be reported to FDLE

b. Exceptional Cases– Communicate via BakerAct@MiamiSAO.com – Subject line should read – “POLICE BAKER ACT”

- i. Use above e-mail address for the following situations:
 - a. A barricaded individual or SWAT/Hostage negotiators were involved.
 - b. You removed weapons from the location AND/OR you intend to seek a subsequent RPO.
 - c. The individual became violent or aggressive and your agency uses body cams – I'll need to know this as soon as you transport.

Transportation to Receiving Facility

Part I: General Information

The circumstances, under which (Name of Person) _____ was taken into custody are as follows:

Time: _____ am pm

Date: _____

Place or Facility Name: _____

Pick Up Address: _____

Family members or others present when person was taken into custody

Name	Address	Relationship	Phone Number
Next of Kin (if known)			

Indicate personal knowledge by family members and others about the person's condition.

Delivered to (Nearest Receiving Facility): _____

Basis for Custody: (Check one) ☐ Ex Parte Order ☐ Certificate of Mental Health Professional ☐ Report of Law Enforcement Officer

Signature of Law Enforcement Officer

Date

Time _____ am pm

Printed Name of Law Enforcement Officer

Full Name of Law Enforcement Agency

Badge or ID Number

Law Enforcement Case Number

CONTINUED OVER

1 ☐ **F.S. 790.404****Risk Protection Orders**

Marjorie Stoneman Douglas HS Public Safety Act

Judge Carroll Kelly

2 ☐3 ☐ **Risk Protection Order**

- Prohibits the person from having in their care, custody or control any firearm, ammunition and concealed weapons permit
- Criteria: When a person is found to be a significant danger of harming himself or others

4 ☐ **F.S. 790.401- Risk Protection Orders**

- Law enforcement can petition court for Ex-parte and Final Order (1 year final order)
- Venue: County where law enforcement agency is located or where Respondent resides

5 ☐ **Procedure**

- Petition must contain an affidavit that includes:
- Specific statements, actions or facts, based on personal knowledge why Respondent is a danger to himself or others;
- ID, types, quantities and locations of firearms/ammo;
- ID whether there is a DV injunction or 784 injunction or any other applicable statute.

6 ☐ **Procedure**

- Petition must provide notice to family/household members and to people known to be at risk

7 ☐ **Procedure**

- Within 1 business day after filing day court must hold an ex-parte hearing in person or telephonically
- If Petition issued, court must hold a hearing within 72 hours (after service) to ensure Respondent has complied with surrender
- Within 14 business days after issuance of temporary order, court must hold a final hearing

8 ☐ **Burden of Proof for Ex-Parte Temporary RPO**

- If court finds a "reasonable cause to believe that the Respondent poses a significant danger"
- *"This exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it"*

9 ☐ **Burden of Proof- Final RPO**

- Clear and convincing evidence:
- More compelling than greater weight of the evidence.
- *"Precise, explicit, lacking in confusion and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue"*

10 ☐

18 Discovery

- If discovery is requested, court may extend the temporary injunction.

19 OSCA has until January 2019

To have

Standard forms

Informational brochures

20 Reporting Requirements

- Court and Clerk and Law enforcement have specific reporting requirements and timelines

OSCA has the responsibility to create forms, educational material and resource material by January 2019.

But, because they are so diligent, drafts forms have been created.

21 Thank You

Print legibly

x Required

**Finding and Certification by an Examining Physician
Of Person's Imminent Dangerousness**

I, Physician Name, a physician licensed pursuant to chapter 458 or 459,
Florida Statutes, examined Patient Name, a patient in
Receiving Facility (name of receiving or treatment facility) on
x (date) at x a.m./p.m.

I determined that this individual is an imminent danger to self or others based on the following:

*legible justification that meets criteria of imminent
danger as defined by 394. "There is substantial likelihood
that in the near future he or she will inflict serious bodily harm
on himself or herself or another person, as evidenced by
recent behavior causing, attempting or threatening such harm"
Examples needed

Please Check One

- ☐ I certify that if the person had not agreed to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed.
- ☐ I certify that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.
- ☐ Not Applicable.

I have found that this person has the capacity to make well-reasoned, willful, and knowing decisions concerning his or her medical or mental health treatment and therefore is competent to transfer to voluntary status and to consent to treatment.

x
Signature of Examining Physician

x x
Date Time

x
Printed Name of Examining Physician

x
License Number

Printed Name of Patient: x

Gender: x

Date of Birth: x

Race: x

Social Security Number: x

See s. 790.06 and 790.065 Florida Statutes
Confidential Information
Revised 11/4/13

Print legibly

~~X~~ Required

Application for Voluntary Admission of an Adult
(Receiving Facility)

I, Patient Name do hereby apply for admission to
Full printed name of person whose admission is being requested

Receiving Facility
Fill in name of facility

for observation, diagnosis, care, and treatment of a mental illness, and I certify that the information given on this application is true and correct to the best of my knowledge and belief.

I am making this application for voluntary admission after sufficient explanation and disclosure to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion. The reason for my admission to this facility is:

X

I am a competent adult with the capacity to make well-reasoned, willful, and knowing decisions concerning my medical or mental health treatment. I do not have a guardian, guardian advocate, or currently have a health care surrogate/proxy making health care decisions for me.

→ I ☐ have ☐ have not provided a copy of advance directive(s).

→ If so, the advance directives include my:

- ☐ Living Will
- ☐ Health Care Surrogate,
- ☐ Mental Health Care Surrogate,
- ☐ Other as specified:

I have been provided with a written explanation of my rights as a person on voluntary status and they have been fully explained to me. I understand that this facility is authorized by law to detain me without my consent for up to 24 hours after I make a request for discharge; unless a petition for involuntary inpatient placement or involuntary outpatient placement is filed with the Court within two (2) court working days of my request for discharge in which case I may be held pending a hearing on the petition.

I understand that I may be billed for the cost of my treatment.

~~* Lack of patient signature will result in automatic return by court~~

X
Signature of Competent Adult

X
Date

X am pm
Time

X
Printed Name of Witness

X
Signature of Witness

X
Date

X am pm
Time

No notice of this admission is to be made without the consent of the person except in case of an emergency. The use of this form for a voluntary admission requires that a "Certification of Person's Competence to Provide Express and Informed Consent" be completed within 24 hours and if the form is used for a transfer of a person from involuntary to voluntary status, the "Certification" must be completed prior to the "Application". The "Application" and "Certification" must be placed in the person's clinical record.

See s. 394.455(9), 394.459, 394.4625, Florida Statutes
CF-MH 3040, Feb 05 (obsoletes previous editions) (Recommended Form)

BAKER ACT

~~* This is a recommended form, any altered version needs to include patient signature~~

Attachment H

Case No: _____

above-described finding, certification and notice is missing or incomplete; and/or

_____ The above-named person's written acknowledgment that he/she understands the above-described finding, certification and notice contains the notation that the acknowledgment was refused; and/or

_____ Other: _____

Based upon the above findings of fact, it is hereby **ORDERED**:

1. That the above-named person's voluntary commitment procedure has not met the requirements of Section 790.065, Florida Statutes, so as to require that he/she be prohibited from purchasing a firearm and ineligible to apply for or retain a concealed weapon or firearms license.

2. That the examining physician's file with this Court adequate documentation of the voluntary commitment procedure within three (3) court working days.

3. That the Court reserve jurisdiction to enter further orders in this matter.

4. That failure to timely file the documentation requested will result in:

- a. A dismissal of the matter without further order of this court; and
- b. The person's record will not be submitted to the FDLE database; and
- c. The person will not be precluded from purchasing a firearm or being eligible to apply for a concealed weapon or firearms license because of a transfer to voluntary status at a mental institution.

DONE and **ORDERED** in Chambers this _____ day of _____, 20____, Miami-Dade County, Florida.

☐ **GENERAL MAGISTRATE**
☐ **CIRCUIT COURT JUDGE**

Copies furnished to:

☐ Receiving/Treatment Facility Administrator;

☐ [_____] (above-named person))*

☐ SAO

☐ PDO/above-named person's Counsel

** The Receiving /Treatment Facility is to print the above-named person's copy and provide it to the person at the facility.*

Date: March 21, 2018

To: Distribution B+

Memorandum



Erik Morales

From: Erik Morales, Police Legal Advisor
Police Legal Bureau

Subject: Seizing Firearms and Ammunition in Baker Act Situations

Legal Note 2018-01 (Qualifies Legal Note 2016-06)

On March 9, 2018, Governor Rick Scott signed into law Senate Bill 7026 – the Marjory Stoneman Douglas High School Public Safety Act (“MSDHSPA”), which creates and amends a number of Florida statutes. The new laws and changes to existing laws became effective on March 9, 2018. This Legal Note will only discuss the changes made to [Florida Statutes § 394.463, *Involuntary examination*](#) and explain how the changes affect police.

Based on new provisions added to Florida Statutes § 394.463:

- If an officer takes a person into custody for an involuntary examination (commonly referred to as a “Baker Act”); **and**
- The person poses a danger to anyone (himself/herself or others); **and**
- The person has made a ***credible*** threat of violence against ***another person*** (threat of harm to self, including threat of suicide, does not qualify); **then**
- The officer may seize any firearms or ammunition in possession of the person at the time he or she is taken into custody. *See Fla. Stat. § 394.463(d)1.*

An officer must conduct an investigation to determine whether all of the factors are present to allow the seizure of firearm(s) and/or ammunition. If the factors above are not present, then officers must secure and leave any firearms or ammunition on the scene, consistent with Legal Note 2016-06 (attached). Officers are encouraged to use their discretion to make a reasonable determination and shall document the circumstances surrounding the decision to seize any firearms or ammunition, including documenting the credible threat of violence.

The word “credible” is defined in Merriam-Webster’s dictionary as “offering reasonable grounds for being believed.” This means that not all threats of violence against another person are automatically credible. For example, if the person being taken into custody yells, “When I get out, I’m flying to Washington D.C. to punch the President in the face!” This would likely not be a credible threat and may be protected by the First Amendment. Thus, in order to be credible, the person threatening violence must have the intent, ability, and opportunity to do violence.

Memorandum



Date: December 27, 2016

To: Distribution B+

From: *for* Erik Morales, Police Legal Advisor
Police Legal Bureau

[Handwritten signature]

Subject: Seizing or Impounding Firearms in Baker Act Situations

Legal Note 2016-06 (Supersedes Legal Note 2005-4)

Currently, when officers take individuals into custody for an involuntary examination pursuant to the Florida Mental Health Act (commonly referred to as the "Baker Act"), and secure firearms for "safekeeping" due to the apparent mental health issue of the individual, they often impound these firearms pursuant to a "breach of the peace." This should no longer be the practice.

"Breach of the peace" is a generic phrase that includes disturbances and violations of public peace, order, or decorum. A breach of the peace includes violations of any law enacted to preserve peace and good order. Recently, however, Florida's Fourth District Court of Appeal analyzed a case involving the removal of firearms from an individual who was suicidal. *Dougan v. Bradshaw*, 198 So. 3d 878 (Fla. 4th DCA 2016). In its decision, the Court considered whether a Baker Act situation met the criteria of a breach of the peace in order to justify impounding a firearm. The Court held that a person who is taken into custody pursuant to the Baker Act, but is not charged with a criminal offense, should not be treated as a criminal and should not be deprived of any Constitutional rights.

In light of this case, if an officer decides to "Baker Act" someone exhibiting mental health issues in his/her residence (including temporary residences such as hotels, motels, etc.), or in a place where the individual is a guest (e.g., family member's or friend's residence, etc.), and the individual has a firearm, the officer shall not impound it for safekeeping, unless securing and leaving the firearm on the scene is not an option. Officers are encouraged to use their discretion to make a reasonable determination and shall document the circumstances surrounding the decision to impound the firearm, or leave it on scene. In these situations, officers shall not search for, or remove, any other firearms from the location.

Moreover, if an officer decides to "Baker Act" an individual who is exhibiting mental health issues in public (i.e., outside of his/her residence or outside the locations described above), and the individual is in possession of a firearm, the officer shall impound the firearm for safekeeping. Return of firearms in these types of situations is addressed in Legal Note 2016-07, *Releasing Firearms Impounded in Non-Criminal Situations*.

Finally, officers shall no longer label Baker Act incidents as "breaches of the peace" on any Offense Incident or other police report. "Breach of the peace" should be reserved for arrest situations in which criminal charges are brought pursuant to Florida Statutes § 877.03 – *Breach of the Peace; Disorderly Conduct*.

This Legal Note applies only to Baker Act situations and does not change any policy or practice with regard to criminal violations. As always, when making arrests for criminal violations, officers should seize firearms if the firearm is evidence of a crime.