The Practical And Procedural Repercussions of Short-Sighted, Underfunded Reforms And The Prohibition Of Teleconferencing In Baker Act Hearings: WILL DOE V. STATE BE The Straw That Breaks Judges’ Backs?

Clarisa Monde’jar*
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Abstract

On May 11, 2017, the Supreme Court of Florida held in Doe v. State that a judicial officer must be physically present at hearings that involuntarily commit individuals to mental health facilities pursuant to section 394.467 of the 2016 Florida Statutes, otherwise known as the Baker Act.
THE PRACTICAL AND PROCEDURAL REPERCUSSIONS OF SHORT-SIGHTED, UNDERFUNDED REFORMS AND THE PROHIBITION OF TELECONFERENCING IN BAKER ACT HEARINGS: WILL *DOE v. STATE* BE THE STRAW THAT BREAKS JUDGES’ BACKS?

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I. INTRODUCTION

On May 11, 2017, the Supreme Court of Florida held in Doe v. State$^1$ that a judicial officer must be physically present at hearings that involuntarily commit individuals to mental health facilities pursuant to section 394.467 of the 2016 Florida Statutes,$^2$ otherwise known as the Baker Act.$^3$ Fifteen mental health patients brought this case through their public defenders in response to an email sent on behalf of a judge and magistrate from Lee County, Florida, announcing that Baker Act hearings would be held by teleconference from the courthouse, instead of in-person.$^4$

Patient advocates and patients argued that holding Baker Act hearings through teleconferences created a myriad of problems that violated
patients’ procedural and substantive due process rights. These violations would affect the fairness of these hearings and could create, or perpetuate, abuses sought to be remedied by costly reforms that had been implemented by the legislature since the late 1990s. Adversely, the respondents, judges, and court personnel in favor of holding Baker Acts via teleconferences argued that involuntary commitment is a civil process—as opposed to a criminal process—which means that “no rule, statute, or constitutional prohibition” exists banning the use of teleconferences in Baker Act hearings. Respondents also argued that trial court judges had the discretion to administer hearings, as they feel most appropriate and effective in the absence of an express legal right or constitutional prohibition. The respondents claimed—given the funding limitations of an already indebted system—only conducting in-person Baker Act hearings was excessively arduous, inefficient, and hindered patients’ treatment and reintroduction into society. The use of teleconferences in Baker Act proceedings provides a judge to work within a failing mental health reform system by limiting costs, lessening wait time, improving services to the community, and increasing efficiency in the rehabilitation and treatment of mental health patients.

This Comment will examine the public policy and historical development of the Baker Act, the debate over the Act’s constitutionality, practicability, and the cost-benefits of the Baker Act’s community-based treatment programs for the mentally ill. This Comment will also examine calls to reform the Baker Act and the effectiveness of those reforms. Part IV will analyze the practical and procedural repercussions of the holding in Doe v. State that prohibited the use of teleconferencing in Baker Act hearings. Finally, this Comment will conclude with recommendations that acknowledge the legitimacy of the judges’ concerns within an underfunded, short-sighted, reactionary—rather than proactive—mental health care system.

5. Id. at 1026.
6. See infra Parts IV–V.
8. Id. at 2.
9. See id. at 9, 20.
10. Id. at 9–10, 14–15.
11. See infra Part I.
12. See infra Parts I–II.
13. See infra Parts II–III.
14. See infra Part IV.
15. See infra Part V.
A. The Public Policy Behind the Baker Act

The Baker Act was named after State Representative Maxine Baker, who served as chairperson on the House Committee on Mental Health in the 1960s and into the early 1970s. The Florida Legislature passed the act into law as the Florida Mental Health Act in 1971. The Act was an overhaul revision of the standing mental health laws that had been in existence for ninety-seven years. The Baker Act came of age when government officials began to consider patients’ civil rights and protect patients’ rights, while also submitting to the necessity and authority of states’ parens patriae. The intent was to provide mental health patients with the choice to voluntarily seek treatment and to provide them with their constitutional rights to liberty and due process.

Before the Baker Act passed, the statutes governing mental illness could place a patient into an institution for an undetermined amount of time. Patients could easily be institutionalized into a state hospital arbitrarily if “three people signed affidavits and secured the approval of a county judge.” Children could be placed with adults in these institutions, hospitals could request and require payments from the friends or families of the patients, and patients were limited to corresponding with only one person while institutionalized.


17. Id.

18. See id.; Parens Patriae, BLACK’S LAW DICTIONARY (10th ed. 2014). Black’s Law Dictionary defines parens patriae as the “state in its capacity as provider of protection to those unable to care for themselves.” Parens Patriae, supra.

19. STATE OF FLA. DEP’T OF CHILDREN & FAMILIES MENTAL HEALTH PROGRAM OFFICE, supra note 16, at 1; see also MENTAL HEALTH PROGRAM OFFICE & DEP’T OF MENTAL HEALTH LAW & POLICY, supra note 16, at 22 (quoting FLA. STAT. § 394.459) (explaining that patients must be accorded individual dignity, and it provides that “[a] person who is receiving treatment for mental illness shall not be deprived of any constitutional rights.”).

20. Id.


22. Id.

23. Id.
Emblematic of the deprivations and abuses of the mental health system in Florida before the Baker Act, is the United States Supreme Court decision in *O’Connor v. Donaldson*. Respondent, Kenneth Donaldson, brought his original action against J.B. O’Connor, the superintendent of the Florida State Hospital at Chattahoochee in 1957. Donaldson was institutionalized by his father, who believed he was suffering from delusions. After a court proceeding in Pinellas County, Donaldson was confined for fifteen years for care, maintenance, and treatment against his will after he “was found to be suffering from paranoid schizophrenia.” Throughout the fifteen years, Donaldson repeatedly demanded his release without success. While the superintendent denied Donaldson’s demands and claimed it was because he was a danger to society, Donaldson stated that the hospital was not providing him treatment for his illness. Testimony at the trial court level provided no evidence that Donaldson posed a danger to others while he was confined. Donaldson never showed he was suicidal or thought of committing an injury against himself. Further, Donaldson’s demands for relief were supported by responsible individuals who were willing to care for him and help him after his release. Donaldson’s college classmate, John Lembcke, wrote the superintendent requesting Donaldson’s release, and stated he would take care of the patient, but was refused. Even a representative of the Helping Hands, a halfway house, wrote on behalf of Donaldson in 1963 and said they would take on his care upon release. The Supreme Court stated that, at the trial level, “[t]he evidence showed that Donaldson’s confinement was a simple regime of enforced custodial care, not a program designed to alleviate or cure his supposed illness.” “O’Connor described Donaldson’s treatment as *milieu therapy*,” which the

25. *Id.* at 564.
26. *Id.* at 565.
27. *Id.* at 565–66. The Mayo Clinic defines paranoid schizophrenia as “a severe mental disorder in which people interpret reality abnormally.” *Schizophrenia, MAYO CLINIC*, http://www.mayoclinic.org/diseases-conditions/schizophrenia/home/ovc-20253194?p=1 (last visited Dec. 31, 2017). “Schizophrenia may result in some combination of hallucinations, delusions, and extremely disordered thinking and behavior that impairs daily functioning, and can be disabling.” *Id.* “Schizophrenia is a chronic condition, requiring lifelong treatment.” *Id.*
29. *Id.* at 565.
30. *Id.* at 568.
31. *Id.*
32. *Id.* at 569.
33. *O’Connor*, 422 U.S. at 569.
34. *Id.* at 568.
35. *Id.* at 569.
hospital staff later described as a polite way of describing Donaldson’s unstructured confinement within the hospital.\textsuperscript{36} Hospital staff confirmed that his treatment consisted of being kept in a large room with sixty other patients, including many who were criminally committed.\textsuperscript{37}

**B. The Historical and Systematic Overhaul of the Mental Health System: Deinstitutionalizing the Mentally Ill**

As previously mentioned, the Baker Act was a product of an evolving philosophy regarding the treatment of the mentally ill.\textsuperscript{38} Ninety-seven years came and went where mentally ill patients were locked up in hospitals and watched over, as described in Donaldson’s case.\textsuperscript{39} Patients who were perhaps arbitrarily institutionalized by friends, family, or doctors could be placed with other patients who were ostensibly ill and those who were criminally and homicidally insane.\textsuperscript{40} The mentally ill were not considered patients who could be rehabilitated.\textsuperscript{41} Individualized treatment with a goal of recovery was overlooked and, instead, public safety was prioritized.\textsuperscript{42}

Deinstitutionalization was introduced in the mid-1950s as a response to an outcry by mental health advocates and politicians; they argued that patients’ civil rights were being violated and that the system was both ineffective and a heavy cost burden on the federal and state governments.\textsuperscript{43} The primary goal of deinstitutionalization was to move treatment out of commitments in hospitals and provide treatment through community-based outpatient treatment centers.\textsuperscript{44} This movement gained steam because state mental hospitals were extremely underfunded, outdated, and excessively crowded.\textsuperscript{45} The Baker Act encourages patients to voluntarily admit

\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} See State of Fla. Dep’t of Children & Families Mental Health Program Office, supra note 16, at 1, 3.
\textsuperscript{39} See id. at 1.
\textsuperscript{42} See Gutterman, supra note 40, at 2402.
\textsuperscript{43} Steven Strang, Note, *Assisted Outpatient Treatment in Ohio: Is Jason’s Law Life-Saving Legislation or a Rash Response?*, 19 Health Matrix: J.L. Med. 247, 250–51 (2009); see also Bianchi, supra note 41, at 102–03.
\textsuperscript{44} Gutterman, supra note 40, at 2406–07; Strang, supra note 43, at 250–51.
\textsuperscript{45} Gutterman, supra note 40, at 2407; Strang, supra note 43, at 251.
themselves into psychiatric care if they are competent, but also allows individuals to be involuntarily committed and examined if specific criteria are met. The revolution of new medications and newly created monetary incentives by the federal government also promoted this shift.

In 1955, Smith, Kline, and French Laboratories developed the first antipsychotic medication to land on the market, Thorazine. Before the introduction of Thorazine, the treatment of diseases, “such as schizophrenia, [was] long-term confinement” because no medication proved effective. Thorazine led to mentally ill patients being prone to less violent episodes because it relieved mental health symptoms, such as psychosis, delusion, paranoia, hallucinations, and irritability. Mentally ill patients were now considered capable of being reintroduced and integrated into society because there was a possibility they could function within their communities. In that year, an estimated 560,000 mentally ill patients from state-run hospitals were released with no follow-up care provided. These new medicines, coupled with the political environment of the 1960s and its specific focus on civil rights, provided patients a voice. Concerns grew throughout the mental health community that patients’ rights to seek and refuse treatment were being violated.

But the most effective and influential push away from institutionalization of mental health patients towards deinstitutionalization came in 1965. The federal government began Medicaid in 1965 and hospitals could receive payments from patients who had Medicaid. However, hospitals realized that discharging mentally ill patients had monetary benefits because patients institutionalized in state psychiatric

47. See Bianchi, supra note 41, at 103–04; Gutterman, supra note 40, at 2406; Strang, supra note 43, at 251.
49. Id.
50. Id.
51. Id. at 250–51.
52. Bianchi, supra note 41, at 103.
53. See Gutterman, supra note 40, at 2406–07; Strang, supra note 43, at 251.
56. See Watnik, supra note 55, at 1184–85.
hospitals were excluded from the Medicaid payment system.\textsuperscript{57} This was not an accidental outcome of the changes made to mental health laws and its funding made by the legislature; excluding mentally ill patients from the Medicaid payment system was done to shift the burden and costs of individualized medical care for patients from the federal government to the individual states.\textsuperscript{58} By discharging patients out of state hospitals and into community-based treatment programs, the states were able to receive Medicaid reimbursements.\textsuperscript{59}

C. \textit{The Supreme Court’s Historical Declarations Regarding the Constitutionality of the Baker Act and the Current Law}

Florida does not specifically prohibit the use of teleconferencing to conduct Baker Act hearings.\textsuperscript{60} However, the use of teleconferences during these proceedings arguably works in direct opposition to case law precedent that aims to ensure that the mentally ill are provided their constitutional right of liberty when not dangerous to themselves or others.\textsuperscript{61} In order to commit an individual under the Baker Act to a state mental health facility, the State must prove specific criteria.\textsuperscript{62} When met, this criteria shows that the

\begin{itemize}
\item 57. Id.
\item 58. See id.
\item 60. See FLA. STAT. § 394.467(6)(a)(2) (2016); Doe v. State, 210 So. 3d 154, 157 (Fla. 2d Dist. Ct. App. 2016), rev’d, 217 So. 3d 1020 (Fla. 2017); Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 5.
\item 62. FLA. STAT. § 394.467(1). To commit a patient involuntarily into inpatient mental health facilities, the finding of the court must meet the following criteria by clear and convincing evidence:
\begin{enumerate}
\item (a) He or she has a mental illness and because of his or her mental illness:
\begin{enumerate}
\item He or she has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or
\item He or she is unable to determine for himself or herself whether inpatient placement is necessary; and
\end{enumerate}
\item (a) He or she is incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or
\end{enumerate}
\end{enumerate}
individual is *incapable of surviving alone*, or that there is significant cause to believe that the individual would *inflict serious bodily harm* upon himself, and all less restrictive means and treatment alternatives were judged inappropriate.\(^{63}\) This is because once the patient is involuntarily committed, he or she is deprived of his or her liberty as provided by the Due Process Clause of the Constitution.\(^{64}\)

D. The 1970s: Establishing a “Clear and Convincing Evidence” Standard to Involuntarily Commit Patients

In the 1970s, Florida courts were preoccupied with determining the burden of proof necessary to involuntarily commit a mentally ill patient and were also concerned with validating the constitutionality of depriving private citizens of their liberty while they were in such vulnerable health states.\(^{65}\) A patient can be involuntarily committed through a showing of *clear and convincing evidence* that they meet the requirements as set forth in the Baker Act.\(^{66}\) In 1977, in *In re Beverly*,\(^{67}\) the Supreme Court of Florida held that given that the standard of proof of civil commitment hearings was clear and convincing evidence, the Baker Act was not unconstitutionally overbroad or vague, as long as all the elements of the Baker Act were met by the burden of proof described by the court.\(^{68}\) Strict adherence to the rules was imperative given the serious nature of the deprivation of liberty.\(^{69}\) The balance between state interests and the individual’s interest\(^{70}\) must be constantly evaluated and

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b. There is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive treatment alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

*Id.*

63. *Id.*

64. U.S. CONST. amends. V, XIV, § 1; *see also* FLA. STAT. § 394.467(1); Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, *supra* note 7, at 4; MENTAL HEALTH PROGRAM OFFICE & DEP’T OF MENTAL HEALTH LAW & POLICY, *supra* note 16, at ix.


66. FLA. STAT. § 394.467(1)(a)–(b).

67. 342 So. 2d 481 (Fla. 1977).

68. *See id.* at 486, 490.

69. *Id.* at 489.

70. *Id.* at 489–90. The state’s interest is to protect society from individuals who are dangerous either to themselves or to others, while protecting the individual interest pertains to providing individuals with their basic constitutional right of freedom without the undue imposition of a state’s governmental restraints. *Id.*
weighed. Neff v. State reiterated what the Donaldson case had already established and held that in Florida, if an individual is mentally ill and unable to recognize their illness, they still cannot be held against their will if they are considered non-dangerous, capable of caring for themselves, and ultimately able to survive despite their mental illness without help.

E. The 1980s and 1990s: Explicit Examinations to Determine, Case-by-Case, if Involuntary Commitment Is Necessary

By the 1980s and into the 1990s, Florida courts began to define case-by-case what clear and convincing evidence meant regarding the elements of the Baker Act. They also began defining on a case-by-case basis whether involuntary commitment was the appropriate and least restrictive measure needed by the patient to meet his or her needs while ensuring the safety of the public. Schexnayder v. State held that, even if a person was severely mentally ill, the state would not meet the clear and convincing burden of proof if a person had a place to live, had financial resources, and had knowledge they needed medication but would periodically forget their medication, which often led to the patient’s hospitalization. Despite the patient’s mood changes and hospitalizations, the court held that these instances did not show clear and convincing evidence that she was dangerous to herself or the public or that these events led to substantial harm to her well-being.

The Everett v. State case, in 1988, demonstrated the incredible and detrimental impact an incorrectly imposed court order of involuntary commitment against an individual can have on the liberty rights of that patient within the Baker Act system. The patient appealed the finding by the circuit court that held that she be involuntarily committed at a treatment facility to the First District Court of Appeal. The First District Court of

71. In re Beverly, 342 So. 2d at 489–90.
73. O’Connor v. Donaldson, 422 U.S. 563, 576 (1975); Neff, 356 So. 2d at 903.
76. 495 So. 2d 850 (Fla. 1st Dist. Ct. App. 1986).
77. Id. at 851–52.
78. Id.
79. 524 So. 2d 1091 (Fla. 1st Dist. Ct. App. 1988).
80. See id. at 1092–93.
81. Id. at 1092.
Appeal reversed the decision of the circuit court because it found that the State did not provide evidence that showed involuntary placement was necessary and that she refused voluntary placement for mental health treatment. The devastating result in this case was that the appeal process endured beyond the original court order and, when the original court order expired, she had already been ordered to continue her involuntary placement. While the district court agreed that the State had not met its burden of proof in the original hearing, the order for continuing involuntary placement was not automatically considered null and void. Further, the patient’s liberty and time spent involuntarily committed while waiting for the appeal to be heard by the court could not be undone or recovered.

_Welk v. State_ established that if there is insufficient evidence to show that a person poses real and current harm to themselves or others, then involuntary commitment is not justified even if an expert testifies that without supervision problems with the mentally ill patient will continue to arise. The Fifth District Court of Appeal held in _Hedrick v. Florida Hospital Medical Center_ that even if the State can prove that the patient shows potential for poor judgment, without the evidence of a present and current threat to substantially harm himself or herself or someone else, the statutory test of clear and convincing evidence was not met. Conclusory statements that a patient had potential to cause substantial harm to himself and a potential for aggression did not meet the clear and convincing evidence standard to substantiate a court ordered continued involuntary placement under the Baker Act. Even the testimony of a psychologist stating that a patient should be institutionalized through the Baker Act—because she was incapable of taking care of herself and surviving alone, and would cause her own suffering through neglect and a refusal to take care of herself—did not pass the clear and convincing evidence standard according to the First District Court of Appeal in the _Archer v. State_ case. The test was not met because the psychologist conceded that the patient had not threatened to hurt
herself or others, and the patient testified that she would take her medication.93

To this end, the First District Court of Appeal in Lyon v. State,94 held that a schizophrenic woman, who refused to care for herself and was “likely to suffer from neglect,” did not show signs of a “real [or] present threat of substantial harm” to herself or anyone else and did not meet the requirements of involuntary commitment under the Baker Act.95 In this case, a doctor stated that the woman would become incoherent in her speech, would be unable to take care of herself, and would need supervision and structure when and if she did not take her medications.96 Still, despite these statements in the trial court hearing, the appellate court reversed the involuntary commitment order and found that the trial court’s holding did not meet the clear and convincing evidence burden.97 In Adams v. State,98 a petition for the involuntary placement of a patient for treatment was not granted because it did not meet the clear and convincing evidence burden, since a witness mentioned in the original Baker Act petition was not present at the hearing.99 This highlighted the ever-important issue of ensuring that the liberty of a patient is not deprived, without confirmation that all information and facts within the petition are confirmed by the judge, and rendered presently clear and convincing that the patient meets all the Baker Act requirements.100

F. The Role of Teleconferences in Baker Act Hearings: State’s Interests Versus Mental Health Patients’ Constitutional Rights

Historically, there are court proceedings that occur by video, such as arraignments.101 On November 12, 1998, video hearings were suggested as a means for involuntary commitment hearings to be held in a more convenient and cost-effective manner.102 While some judges commented that the videoconferences would lessen the need for patients to be transported to the courthouse, other mental health professionals pointed out several issues regarding mental health patients being provided their court hearings through

93. Id. at 301.
94. 724 So. 2d 1241 (Fla. 1st Dist. Ct. App. 1999) (per curiam).
95. Id. at 1241–42; see also FLA. STAT. § 394.467 (2016).
96. Lyon, 724 So. 2d at 1242.
97. Id. at 1243.
98. 713 So. 2d 1063 (Fla. 1st Dist. Ct. App. 1998).
99. See id. at 1063–64.
100. See id.
101. FLA. DEP’T OF CHILDREN & FAMILIES, supra note 61, at 9.
102. Id.
videoconferences. Many mental health patients suffer from paranoia and will react negatively to video hearings. Mental health patients can be confused and unable to understand that the videoconference was a formal court hearing. Representatives from the Mental Health Program Office of the Department of Children and Families were concerned that the use of videos to conduct court hearings would deter mental health patients from participating in their involuntary placement proceedings. Judge Winifred Sharp, from the Fifth District Court of Appeal, admitted that it would be difficult to make a video proceeding feel like a formal court hearing, making it more difficult to ensure that a patient understands the proceeding was a formalized court proceeding which determines stakes as serious as their liberty and possible involuntary commitment. While the legislature never enacted the recommendations of the Supreme Court Commission, the Commission did recommend that to improve administrative justice during Baker Act hearings the use of videoconferences for involuntary placement hearings should not be used.

The Supreme Court of Florida cited to Ibur v. State, which stated, “[b]ecause involuntary commitment is a substantial deprivation of liberty at which fundamental due process protections must attach, the patient cannot be denied the right to be present, to be represented by counsel, and to be heard.”

Part of the specified criteria in the Baker Act is that an evidentiary hearing must be conducted for involuntary inpatient treatment. The court must also conduct the hearing within five court-working-days, except for when a continuance is granted. And unless otherwise represented, the individual will be appointed a public defender by the court within one court-working-day. The Baker Act requires that, unless for good cause, the hearing would be held in the county or facility where the patient was located, as deemed appropriate. The hearing would need to be “convenient [for] the patient [and] consistent with orderly procedure,” and would need to be in

103. See id.  
104. See id.  
105. See id.  
107. Id.  
108. Id.  
112. Id. § 394.467(6)(a)1.  
113. Id. § 394.467(4).  
114. Id. § 394.467(6)(a)2.
a physical setting that is not dangerous to the patient’s condition.\textsuperscript{115} Magistrates, along with judges, are allowed to preside over these hearings.\textsuperscript{116}

These procedural safeguards were established by the legislature to protect and recognize that individuals who fell under the auspices of the Baker Act were some of “the most vulnerable individuals of . . . society.”\textsuperscript{117} No doubt, the safeguard spelling out that hearings must be held by judges physically present was not in the statute.\textsuperscript{118}

II. RECIDIVISM AND THE PUSH FOR REFORM

Before twenty years had passed since the Baker Act’s initial implementation, calls for reform were prevalent throughout Florida.\textsuperscript{119} Reformers and civilians alike began to question the effectiveness of the Baker Act system at providing patients with treatment without depriving them of their constitutional rights.\textsuperscript{120} In many cases, mentally ill patients could not recognize they were ill and needed services.\textsuperscript{121} The Baker Act’s aim was to promote families and patients to voluntarily seek help at outpatient community centers, yet patients consistently lacked the insight to know they were ill.\textsuperscript{122} The Baker Act was originally drafted to authorize law enforcement officers and agents to provide emergency services through

\begin{itemize}
  \item \textsuperscript{115} Id.
  \item \textsuperscript{116} FLA. STAT. § 394.467(6)(a)3.
  \item \textsuperscript{117} Doe v. State, 217 So. 3d 1020, 1025 (Fla. 2017).
  \item \textsuperscript{118} Id.; see also FLA. STAT. § 394.467.
  \item \textsuperscript{120} See Killian, supra note 119 (explaining that in the 1990s, while the law required a Baker Act hearing to occur within four to five days after the initial seventy-two-hour involuntary commitment time had passed and a petition was filed, only 40–50% of Baker Act hearings would occur within that time frame). Thus, 50–60% of Baker Act hearings were not occurring within the statutory time frame, and individuals were being effectively held against their will without committing a crime and without recourse to combat their detainment. Id. Hence, these individuals were denied their constitutional right to due process during this time. See id.
  \item \textsuperscript{121} See South Florida Sun-Sentinel Editorial Board, supra note 119.
\end{itemize}
inpatient involuntary commitments to stabilize persons dangerous to themselves or others for only seventy-two hours. These two elements combined led to individuals being repeatedly involuntarily committed. From 1965 until 1995, involuntary commitments increased dramatically, and in 2002, over 900 Florida adult patients were admitted to hospitals through the Baker Act over four times. In one extreme case, a patient received forty-one examinations, and cost the State of Florida in excess of $81,000.

Reforms attempting to overhaul the Baker Act in 1996 and 1999 did not rid Florida’s Mental Health system of the constitutional abuses against patients. The overhaul, from as recently as 1996, attempted to lessen inappropriate commitments, such as vulnerable elderly individuals who were committed despite not needing psychiatric treatment. These abuses continued because patients became vulnerable once they were placed in the seventy-two hour hold and unable to voluntarily make any decisions until either released from the hospital or released by a judge. Further, while the law guarantees that involuntary commitment will be imposed upon an individual when all other methods are exhausted and the commitment is considered the least restrictive means for that patient to receive help, the definition of least restrictive is in itself up for interpretation. Receiving facilities and hospitals are allowed to hold a patient for seventy-two hours if the patient meets the involuntary commitment criteria. However, they may also ask a judge to allow them to hold a patient for longer periods if the facility feels that the person is a harm to themselves or others. In these

123. South Florida Sun-Sentinel Editorial Board, supra note 119.
124. See id.
125. See Torrey, supra note 59.
126. South Florida Sun-Sentinel Editorial Board, supra note 119.
127. Id.
129. Miller, supra note 128.
130. Id.; see also STATE OF FLA. DEP’T OF CHILDREN & FAMILIES MENTAL HEALTH PROGRAM OFFICE, supra note 46, at 3.
131. See Miller, supra note 128; South Florida Sun-Sentinel Editorial Board, supra note 119.
132. Id.; see also FLA. STAT. § 394.467(1)–(2) (2016) (referring to the criteria a patient must meet by clear and convincing evidence in order to be involuntarily committed under the Baker Act).
133. Miller, supra note 128.
instances, the facility receives Medicaid money to cover the cost of treatment—putting a price tag on each Baker Act patient’s head.\textsuperscript{134}

A. Unfunded and Short-Sighted Reforms Lead to a Resurgence of Old Abuses and Re-Institutionalization via Criminalization and Incarceration

In 1997, the Supreme Court of Florida Commission on Fairness organized and evaluated whether the 1970s Baker Act was providing treatment, access, and opportunities to participate and receive services through the state court system in an equal manner.\textsuperscript{135} The chair of the Commission was Eleventh Circuit Judge Gill S. Freeman, and she wrote that Florida “failed to develop . . . adequate . . . community programs [that met] the needs of its people.”\textsuperscript{136} In 1997, the Commission reported that over half a million people in the State of Florida suffered from mental illness—more than 300,000 from Alzheimer’s; that “more than 70,000 [people] were involuntarily examined [by] the Baker Act;” and close to “20,000 petitions for involuntary civil commitment [were filed requesting] psychiatric treatment.”\textsuperscript{137} The Commission focused on the idea that inadequate funding was the main problem in meeting the goals and purpose described by the 1970s Baker Act.\textsuperscript{138} The system was slowed down and, as a result, detentions in involuntary civil commitments became lengthier, and abuses began to increase because monetary gains could be achieved by holding individuals for longer than necessary, especially with regard to the elderly.\textsuperscript{139} “[T]he tension between fiscally driven policy and clinically desirable outcomes” has been named the key cause of these issues.\textsuperscript{140} The switch from treating mentally ill patients with federally funded money to providing them treatment through state-funded programs has caused a major shift in how treatment is provided to patients and what patients qualify for state-funded help.\textsuperscript{141}

\begin{flushright}
134. \textit{Id.; see also Killian, supra note 119.}
135. \textit{See Killian, supra note 119.}
136. \textit{Id.}
137. \textit{Id.}
138. \textit{See id.}
139. \textit{See id.}
141. \textit{See id. at 1399; Derek Gilliam, Panel Looks at Mental Health Reform; Proper Treatment and Funding Could Help Many More in Need, FlA. TIMES-UNION, Jan. 30, 2015, at B8 (explaining that this tension in 2015 was a result of Medicare only reimbursing 60% of treatment provided to patients who qualified for Medicare funds, and the lack of funds coupled with a “lack of uniformity [between] mental health courts, . . . a shortage of

\url{https://nsuworks.nova.edu/nlr/vol42/iss1/6}
Other major issues that the Commission cited as to why the Baker Act needed reform were: (1) time frames were not defined and up to interpretation—five days could mean “five working days or five consecutive days;” (2) no due process was afforded to a patient until the court hearing occurred; (3) “justice system participants [were] not always . . . trained on [the] mental health issues” they were either representing or making judgments; (4) almost exclusively, mental health patients were only represented by public defenders; (5) the quality of representation was not uniform, despite most being represented by their county’s public defender office; (6) resources to public defenders were not uniform; (7) communication about the priority which these cases were to take in public defender offices was not uniform; (8) compliance by state attorneys’ offices to represent and participate at every involuntary commitment hearing did not always occur, leading to the release of dangerous patients; (9) law enforcement officials and agencies lacked training on mental health as well; and (10) persons were, and could be, involuntarily committed because of the vindictiveness of an enraged spouse or neighbor given some officials were not trained properly.142 Beyond these issues cited by the Commission, the deinstitutionalized system depended on patients who lacked self-recognition and insight by mental health patients that they were sick and needed help.143

Mental health advocates argued that as the system stood in 2004, a reform was needed because the system “deinstitutionaliz[ed] . . . persons with mental illness [away] from . . . mental health hospitals” and, ultimately, led them to “their re-institutionalization [within] the criminal justice system.”144 In 1992, a Public Citizen Survey found that sometimes individuals with no charges against them are incarcerated because they are waiting for a psychiatric evaluation, a hospital bed, or transportation to the hospital.145 One sheriff in Florida stated, “I have had mentally ill inmates in paper gowns in holding cells for close observation for up to six weeks before we could find a hospital bed for them.”146
B. The Disastrous Failures of Deinstitutionalization and the Move to Implement New Reforms in 2004

In July 1998, forty-three year old Alan Singletary of Seminole County, Florida, killed Deputy Eugene Gregory after a thirteen-hour standoff ensued over a simple landlord-tenant dispute. Singletary had untreated schizophrenia, and his family had sought help for him for years without success. The landlord-tenant dispute quickly plummeted into a confusing and unsettling “standoff between Singletary, Seminole [Florida] Sheriff’s deputies, and SWAT team members.” Ultimately, Singletary died after killing Deputy Gregory and wounding two other law enforcement officers. Politicians and law enforcement agents would state that this incident was emblematic of a growing “law enforcement and humanitarian issue” regarding the treatment of mentally ill patients. While Florida was considered a pioneer in mental health law, heavy burdens induced upon law enforcement, the court system, and hospital crisis units made the practicalities of enforcing the 1971 Baker Act exceedingly difficult. Loopholes in implementing the law existed and continuing care was not provided. If an inpatient bed was not readily available, that patient was released, and the continued care they needed was not always provided.

By 2004, a call for Baker Act reform headed by Seminole County Sheriff Don Eslinger, made it to the State Legislature calling for sustained outpatient commitment orders combined with intensive mental health services. On the session’s last day, a major rewrite of the Baker Act was instituted. The reform was enacted into law by Governor Jeb Bush in 2004. The push was to begin to enact reforms; to create avenues which

148. Id.
149. Id.
150. Id.
152. Lilac, Editorial, Sensible Help: Our Position: Continuing Treatment Should Be Required for Violent Mental Patients., ORLANDO SENTINEL (Fla.), Jan. 25, 2004, at G2; see also FLA. STAT. § 394.467 (2016); In Memoriam..., supra note 147, at 9; Killian, supra note 119.
153. Lilac, supra note 152; see also In Memoriam..., supra note 147, at 9.
154. TORREY, supra note 145, at 10; Lilac, supra note 152.
155. See Pudlow, supra note 151.
156. Id.
provide mental health patients with the resources they need—while keeping the public safe: to not create confusion in an underfunded mental health system; and to not overburden the court system. Mental health advocates believed that people with serious mental illness could avoid hospitalization if they received early interventions and treatments that were appropriate before their mental health deteriorated.

Mental health advocates began to look at other states’ mental health systems and eventually fixated on New York’s Kendra’s Law. The law in New York authorized court ordered assisted outpatient treatment to individuals with mental illness. Kendra’s Law, developed after a man with severe mental illness who was unable to comply with doctor’s orders and medical prescriptions, pushed thirty-two-year-old Kendra Webdale into a New York City subway train and killed her. Many Baker Act reforms were passed in 2004, intending to solve the problems that were discussed above. However, the amount allotted to institute these reforms was devastatingly under the estimated $150 million needed to institute Kendra’s Law in its first five years. Citing only a 25% government match and one additional administrator at each mental health location to input additional data, the bill only loosely defined its financial terms and reforms.

Judges and other legal personnel in Florida’s criminal system argued that persons with mental illness often committed misdemeanors and would cycle in and out of county jails. This was attributed by judges and legal professionals in the criminal legal community as resulting from persons with mental illness not being diagnosed correctly; the lack of management of mental health patients outside inpatient facilities, and that for some individuals treatment only occurred when in jail, but was discontinued, along with their use of medications, once released from imprisonment. Some even argued that the newest rewrite of the Baker Act would save money by

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158. See Pudlow, supra note 151.
160. See South Florida Sun-Sentinel Editorial Board, supra note 119.
161. Id.
162. Id.
163. Id.; see also Fla. H.R. Comm. on Mental Health, HB 463 (2004) Staff Analysis 1.
keeping patients out of a revolving door of expensive hospitals and jails.\textsuperscript{168} While others predicted oppositely and believed that the legislation that came with no funding would, in fact, overburden courts and create confusion; and the workload cost, while not determined, would undoubtedly be excessive.\textsuperscript{169} The legislation was deemed by many as a mandate without resources, both in physical and monetary support.\textsuperscript{170} Even the House of Representatives’ Staff Analysis Report stated that HB 463 would create a \textit{recurring fiscal impact}, but only estimated the impact to be at $636,608 to $954,912.\textsuperscript{171}

Given that the laws put into place in 2004 were modeled after New York’s \textit{Kendra’s Law}, the recurring estimated amount to fund SB 700/HB 463 was grossly underestimated over the actual cost of $150 million to institute \textit{Kendra’s Law} in New York.\textsuperscript{172} The $150 million was only allotted to pay for the first five years of its implementation.\textsuperscript{173} Beyond the considerable discrepancy between the amount used to fund \textit{Kendra’s Law} and the amount estimated to institute the 2004 reforms, the workload cost was described as the most detrimental in the 2000 Commission on Fairness Report, which stated that more training on mental health issues was needed and more thorough efforts by those representing and involuntarily committing patients needed to be provided to both protect the patient and the state’s interests.\textsuperscript{174} Judge Mel Grossman from the Seventeenth Circuit pointed to the fact that the legislation entitled patients to resources that the State did not currently have.\textsuperscript{175} “[T]he statute talks about entitlements to guardian advocates. In most areas of the state, there are very few people. [You are] talking about people committing to multi-year supervision, because mental illness is not something that is cured overnight. I think there will be some difficulty there.”\textsuperscript{176} President of the Florida Public Defender Association, Nancy Daniels, stated that the new legislation would very likely “bring a lot of new cases into the system.”\textsuperscript{177}

A major problem that \textit{Kendra’s Law} faced in New York, and persists as a major concern in Florida, is that the mentally ill will become incarcerated, homeless, and loiter in public spaces.\textsuperscript{178} Laws focused on

\begin{thebibliography}{99}
\bibitem{168} Pudlow, \textit{supra} note 151.
\bibitem{169} Id.
\bibitem{170} Id.
\bibitem{172} Id.; \textit{see also} South Florida Sun-Sentinel Editorial Board, \textit{supra} note 119.
\bibitem{173} See South Florida Sun-Sentinel Editorial Board, \textit{supra} note 119.
\bibitem{174} See Fla. H.R. Comm. on Mental Health, HB 463 (2004) Staff Analysis 12; Killian, \textit{supra} note 119; South Florida Sun-Sentinel Editorial Board, \textit{supra} note 119.
\bibitem{175} Pudlow, \textit{supra} note 151.
\bibitem{176} Id.
\bibitem{177} Id.
\bibitem{178} \textit{See id.}; Watnik, \textit{supra} note 55, at 1186–87.
\end{thebibliography}
deinstitutionalizing mental health, such as *Kendra’s Law*, moved away from traditional notions of mental illness treatment that institutionalized patients in hospitals where they received structured, guided, and controlled care.\textsuperscript{179} *Kendra’s Law* was a move towards deinstitutionalization of mental health treatment for patients.\textsuperscript{180} The move to deinstitutionalize allowed patients to gain liberty in exchange for treatment.\textsuperscript{181} However, those who are imminently at danger often qualify for outpatient treatment until an actual danger, risk, or harm occurs.\textsuperscript{182} While patients gain their liberty and freedom through this process, the discharge of thousands of mentally ill patients from psychiatric hospitals, without providing a means to ensure that those same patients receive and take the medications they need to stay healthy, creates a crisis produced by deinstitutionalization.\textsuperscript{183}

One major contribution to the predicted workload increase was a new requirement that all Baker Act cases be reviewed every six months, making for heavy traffic within the court system without any resources or means to meet the excess demands on the court system.\textsuperscript{184} Predicting these difficulties, a prosecutor and chair for the House Appropriations Committee, Republican Bruce Kyle put in an amendment that funds would be provided to “state attorneys and public defenders” to assuage the predicted increase workload.\textsuperscript{185} However, the amendment was later taken off, before the bill was actually passed in the House by final vote 100 to 15.\textsuperscript{186} Ultimately, the bill was passed and predictions were that hearings would double or even triple, yet few resources were offered by politicians to alleviate implementing laws through practical procedures.\textsuperscript{187} Judge Grossman stated the frustration felt by many: “They gave us no money to go with this. They [did not] give us any new judges. It is an unfunded mandate.”\textsuperscript{188}

\begin{thebibliography}{99}
\bibitem{180} See South Florida Sun-Sentinel Editorial Board, \textit{supra} note 119.
\bibitem{181} Watnik, \textit{supra} note 55, at 1185–86; \textit{see also} Torrey, \textit{supra} note 145, at 8, 10.
\bibitem{182} See Watnik, \textit{supra} note 55, at 1187 n.29; Torrey & Zdanowicz, \textit{supra} note 179.
\bibitem{183} See Torrey & Zdanowicz, \textit{supra} note 179.
\bibitem{184} Pudlow, \textit{supra} note 151.
\bibitem{185} \textit{See id.}
\bibitem{186} Id.
\bibitem{187} Id.
\bibitem{188} Id.
\end{thebibliography}
C. The Curious Case of Cindy Mertz: Abuses Recalling Back to Florida’s Mental Health System Pre-Baker Act Still Exist

A systematic upheaval, the deinstitutionalization of a system, and a revolving door of reforms have not rid Florida’s Mental Health System of the abuses and problems that the Baker Act promised and aimed to resolve since 1971. The case of Cindy Mertz is one case that typifies this abuse. Mertz was an intellectually disabled twenty-one-year-old who was held under the Baker Act in 2015. She was a child of abuse, placed into the foster system, and eventually adopted by a family in 2008. Against the wishes of her adopted family who became her legal guardians, Mertz was locked into North Tampa Behavioral Health Hospital instead of the state-funded group home where staff and her family had placed her originally. North Tampa Behavioral Health is owned by Acadia Healthcare—a conglomerate that runs 225 health facilities in thirty-seven states. North Tampa Behavior Health came into trouble, only a year earlier, when a woman admitted herself into the hospital voluntarily and was then refused release. The hospital was also criticized in 2014 for not ensuring that patients were competent to consent when admitting themselves pursuant to what the Baker Act laws in Florida require. At the time the article was printed, August 18, 2015, Mertz had been locked up for three weeks in the North Tampa Behavioral Health Hospital, well beyond the seventy-two hour hold prescribed by the Baker Act. Nikki Drake, a board member of the National Association for Mental Illness, wrote an email to hospital staff on August 13, 2015, asking what needed to be done in order for Mertz to leave the hospital. She stated in the email, “[s]he can[not] live there. You [cannot] cure her developmental disability.” Two days after the original article was published in the Miami Herald, Mertz was sent back to her group

190. See Miller, supra note 128.
191. Id.
192. Id.
193. Id.
194. Id.
195. Miller, supra note 128.
196. Id.
197. Id.
198. Id.
199. Id.
home.\textsuperscript{200} The original arguments for keeping her in the hospital no longer appeared to apply as reasons for keeping her in the facility.\textsuperscript{201} Mertz’s case is not unique, and it is possible under the Baker Act to be taken against one’s will legally.\textsuperscript{202} Richard Smith’s seven-year-old son was involuntarily committed into a mental institution by officers and school officials when he threw a temper-tantrum in his second-grade class.\textsuperscript{203} After reporting to the boy’s elementary school, seeing a classroom torn apart, hearing he stepped on a teacher’s foot, and battered another school official, the officers decided that the boy needed to be evaluated for his mental health.\textsuperscript{204} While school officials and officers believe that their decision to have the boy involuntarily committed under the Baker Act was valid, other legal officials, and the boy’s parents, believe that this was an abuse of the mental health system, given that the most harm caused was stepping on a teacher’s foot.\textsuperscript{205} In Pinellas County alone, in the school year of 2008 to 2009, between August and early February, the Pinellas School Police reported that it Baker Acted eighty-three children within its system alone.\textsuperscript{206}

\section{III. Reform Failure Within Florida’s Baker Act System and the Causes of Systemic Abuse}

The numerous allegations of abuse and the general overbreadth of those alleged abuses have many causes.\textsuperscript{207} The 2004 reforms were instituted as a humane measure that would prevent the mentally ill from hurting

\begin{itemize}
\item \textsuperscript{201} See id.; Miller, supra note 128.
\item \textsuperscript{202} See Fla. STAT. § 394.467 (2016); Abel, supra note 128.
\item \textsuperscript{203} Abel, supra note 128.
\item \textsuperscript{204} id.
\item \textsuperscript{205} See id.
\item \textsuperscript{206} id. (comparing this number to the fact that the figure of eighty-three children, in less than six months, excludes all other legal agencies in the area and is specific to the Pinellas School Police Force); see also Laura C. Morel, \textit{Numbers Show Surge in Baker Act Exams of Kids in Tampa Bay Area}, TAMPA BAY TIMES: NEWS (Dec. 19, 2016, 10:55 AM), http://www.tampabay.com/news/publicsafety/numbers-show-surge-in-baker-act-exams-of-kids-in-tampa-bay-area/2306799 (referring to the fact that children are being committed involuntarily by the school system and parents because there is no oversight of the initial commitment by the court system and patient/minor child confidentiality prevents further investigation into the matter).
themselves or others. Yet, a Times-Union editorial declared—as recent as November 2015—the 2004 reforms had not solved the problems they set out to resolve.

A. Misuse and Abuse of the Baker Act System: Ever-Increasing Involuntary Commitments

From 2004 to 2015, involuntary commitments in Florida increased by 64%. The Times-Union reported that involuntary commitments were often misused and abused. The article referenced reported Baker Act hospitalizations by schools and parents who cannot or will not care for their difficult children. Meanwhile, the frail, elderly population—who suffer from dementia and act out as a symptom of the disease or other illnesses—are also often Baker Acted rather than placed where their needs would be better addressed. While mental health advocates applauded the Baker Act in the 1970s, they are now concerned with the Baker Act being a dumping ground used to commit and institutionalize individuals when the system has nowhere else to place them.

Continuous increases in involuntary commitments also reflect mental health advocates’ concerns regarding the validity of research used to promote the status-quo and subdue the call for more reforms of the current Baker Act system. While Baker Act patients are in contact with substance abuse services, mental health advocates question the validity of that research and state real concerns about a missing connection or coordination between those Baker Acted and substance abuse services. This problem becomes compounded in situations where the mentally ill are homeless or without resources and help once released. Once released, the revolving door

208. See Editorial, supra note 189.
209. See id.
210. Id.
211. Id.
212. Id.
213. Miller, supra note 128; see also Voices on Baker Act Reform, TREATMENT ADVOC.
CTR., http://www.treatmentadvocacycenter.org/storage/documents/voices_on_baker_act_reform.pdf (last visited Dec. 31, 2017). It is generally understood and accepted that if someone is Baker Acted, he or she has been involuntarily committed under the Baker Act. Voices on Baker Act Reform, supra.
214. See Editorial, supra note 189.
215. Id.
216. See id.
217. Id.
218. Id.
becomes almost inevitable as patients leave with only pills, a prescription, and no easy access to continued mental health care.\textsuperscript{219} The Baker Act Reporting Center reported that thirty-one mental health patients were Baker Acted sixteen or more times in one year alone.\textsuperscript{220} From 2004 to 2013, close to 350 patients were involuntarily committed over thirty-six times or more.\textsuperscript{221} This problem worsened when each institution and the bodies of professionals who were required to act in involuntary civil commitments acted independently and disjointedly.\textsuperscript{222} The Times-Union Editorial Board opined and warned that these issues were a product of a broken system and an obvious result of legislators passing reforms without providing the necessary funding to enact the reforms.\textsuperscript{223} Florida ranks forty-ninth out of fifty states regarding the amount of money it spends on mental health.\textsuperscript{224} Annette Christy, who was in charge of Florida’s Baker Act Reporting Center in 2015, stated that there was a need for funds and that, unfortunately, tragedy appears to be one of the few triggers that will stimulate the funds needed.\textsuperscript{225}

B. Competing Authorities and Interests: Who Prevails? How Can Information Be Communicated to Meet the Needs of the Patient and Competing Authorities?

\textit{W.M. v. State}\textsuperscript{226} established that multiple divisions and courts representing the State can have concurrent jurisdiction overseeing the involuntary inpatient placement hearings of patients involuntarily committed.\textsuperscript{227} This can result in what is seen in the \textit{W.M.} case: A patient can be committed for a short period of time and then be mandated by a facility administrator to stay a longer term than the circuit court’s initial determination.\textsuperscript{228} The facility administrator only needed to determine the patient was incompetent to act on his or her own behalf.\textsuperscript{229} Further, given the confidential nature of the patients and separate oaths of confidentiality between the patient, psychiatrists, lawyers, guardians, and mental health

\begin{itemize}
\item \textsuperscript{219} Editorial, \emph{supra} note 189.
\item \textsuperscript{220} \emph{Id}.
\item \textsuperscript{221} \emph{Id}.
\item \textsuperscript{222} See \emph{id}.
\item \textsuperscript{223} \emph{Id}.
\item \textsuperscript{224} Editorial, \emph{supra} note 189.
\item \textsuperscript{225} \emph{Id}.
\item \textsuperscript{226} 992 So. 2d 383 (Fla. 5th Dist. Ct. App. 2008).
\item \textsuperscript{227} \emph{Id} at 384, 388.
\item \textsuperscript{228} \emph{Id} at 384–86.
\item \textsuperscript{229} FlA. STAT. § 394.467(1)–(2) (2016); \textit{W.M.}, 992 So. 2d at 384; Miller, \emph{supra} note 128.
\end{itemize}
advocates, necessary oversight over each patient, case, the facilities, and treatment becomes almost impossible without inherently violating a patient’s right to privacy.\footnote{230}{See Miller, supra note 128 (discussing how doctors referred to the patient’s confidentiality as a reason why they would not be able to provide more reasons as to why they were not releasing Mertz as requested).}

Referring back to the case of the Cindy Mertz, a major cause of her alleged kidnapping resulted from competing authorities, interests, and an inability to communicate clearly.\footnote{231}{See id.} Communication between judges, mental health advocates, and the hospital was not handled in-person and primarily done through varying forms of technology—either email or the phone.\footnote{232}{See id.} These technological communications prevented immediate actions from being taken, and allowed for delays, as the allegations of Mertz’s advocates and guardian—based primarily on their communications over phone and email with hospital staff and Mertz—were weighed against the alleged observations of hospital staff and administrators;\footnote{233}{See id.} The Miami Herald reported, “[l]ong email threads among Drake, [Mertz’s advocate], Mertz’s guardian, her behavior analyst, and hospital staffers beg[a]n on Aug[ust] [third], and bec[a]me increasingly frantic.”\footnote{234}{Id.} J. Rob Phillips, the Director of Clinical Services at North Tampa Behavioral Health, validated the hospital’s decision to keep the developmentally impaired woman in the hospital by stating in an email that Mertz had shown “suicidal ideation[s] and suicidal gestures” and that it would be sending Mertz to court to keep her in its facility.\footnote{235}{Id.} Meanwhile, Drake wrote back that the woman was not psychotic and, when he spoke to her over the phone, she sounded over-medicated causing her speech to be severely slurred.\footnote{236}{Id.} Access to the patient was regulated by the hospital, and the patient’s access to the court was dependent upon the facility or hospital where they are admitted.\footnote{237}{Id.} This holds true until the patient is deemed by a judge to have met the criteria for release, and he or she is released by the judge from the facility’s control.\footnote{238}{F.L.A. STAT. § 394.467(7)(d) (2016); Miller, supra note 128.}
IV. **DOE V. STATE: DOES TELECONFERENCING BAKER ACT HEARINGS PROVIDE A NECESSARY REMEDY OR VIOLATE AN INDIVIDUAL’S CONSTITUTIONAL RIGHTS?**

Video technology developed and advanced at the same time that Florida’s judiciary confronted many financial limitations. Budget cuts forced courts and the judiciary to create new and efficient ways to meet the rigorous demands of their judicial obligations, and ultimately led to an inquiry into how technology could be used for efficient and effective change. Statutory prohibitions and rule-based prohibitions do not exist regarding the use of video conferencing during Baker Act proceedings. At the time that the Supreme Court of Florida considered this case, case law did not exist stating that Baker Act hearings by videoconferences were prohibited by the Constitution.

On March 30, 2016, two seemingly innocuous email lines began a firestorm of legal debate, questioning the procedural validity, constitutionality, decision-making, and duties of judges with regard to using videoconferencing during Baker Act Hearings. As part of her daily routine, Judicial Assistant for the Honorable Judge Swett, Kate Hroncich, sent an email to Public Defender Kathleen Smith with the subject of Baker Acts on Friday. The email stated: “Per Judge Swett, he will be doing Baker Acts beginning this Friday via Polycom. Thank you.”

These two lines began a legal battle between mental health officials, attorneys for the mentally ill, and trial judges who presided over Baker Act hearings. The debate would highlight the problematic procedural structure of the Baker Act, showcase how the mentally ill’s due process rights can be easily violated, re-emphasize the importance and need for reform, and underscore the continued lack of effective reform. Beyond whether the judge’s email violated an established legal procedure, petitioners questioned whether the patients’ constitutional and due process rights were violated as a result of this procedure.

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239. Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 20.
240. Id.
241. Id. at 2.
242. Id.
243. See Doe v. State, 217 So. 3d 1020, 1023 (Fla. 2017); Petitioners’ Initial Brief at 5–6, Doe v. State, 217 So. 3d 1020 (Fla. 2017) (No. SC16-1852).
244. Petitioners’ Initial Brief, supra note 243, at 5.
245. Doe, 217 So. 3d at 1023; Petitioners’ Initial Brief, supra note 243, at 5.
246. See Doe, 217 So. 3d at 1023.
247. See id. at 1022; infra Part IV (A)–(C).
248. Petitioners’ Initial Brief, supra note 243, at 1–2, 15.
A. The Practical and Procedural Costs of the 2004 Baker Act Reforms: Insufficient Resources and the Advent of Teleconferencing for Baker Act Hearings

In order to understand the significance of Doe, the historical and legal context of the judges’ plight must be understood and considered.\textsuperscript{249} Despite the legislature passing Baker Act reforms in 2004, the Florida Legislature had not added circuit or county judgeships in ten years to support the enactment of those reforms.\textsuperscript{250} Only in 2016, were twelve new judgeships recommended and announced by the Supreme Court of Florida.\textsuperscript{251} Yet, these recommendations came ten years behind schedule as reforms from 2004 increased judges’ workloads regarding Baker Act hearings.\textsuperscript{252} From 2010 until 2015 alone, some counties reported a 50% or more increase in Baker Act evidentiary hearings for minors alone.\textsuperscript{253} With no new judgeships added, judges were required to meet the needs of these patients and conduct the hearings at the courthouse or at patients’ facilities.\textsuperscript{254} When judges commuted to patient facilities, they would often have to wait as patients met with their attorneys.\textsuperscript{255} Wait time and time lost in travel backed up the hearing schedule in an already bogged down system.\textsuperscript{256} Costs accumulated as a result of the travel and wait time incurred by judges traveling from facility to facility.\textsuperscript{257} Yet, the travel and wait time was not limited to judges—all legal and medical authorities involved in the case were also required to attend the hearings, imparting more fees on the state through the presence and appearance of state, medical, and law enforcement officials.\textsuperscript{258}

\textsuperscript{249} See Florida Supreme Court Justices Ask for More Judges, supra note 207 (discussing how Florida lawmakers have not added judgeships in a decade and how judgeships have been impacted by heavy burdens on the state’s fiscal health because of crises such as the mortgage crisis).


\textsuperscript{251} Florida Supreme Court Justices Ask for More Judges, supra note 207.

\textsuperscript{252} See Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 13; Florida Supreme Court Justices Ask for More Judges, supra note 207; Morel, supra note 206.

\textsuperscript{253} Morel, supra note 206.

\textsuperscript{254} Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 13–15.

\textsuperscript{255} Id. at 14 n.15.

\textsuperscript{256} See id. at 14.

\textsuperscript{257} Id. at 14–15.

\textsuperscript{258} See id.
Meanwhile, judges would argue that the courthouse did not provide patients with a proper and safe setting to hold Baker Act evidentiary hearings. Patients traveled to locations that were unfamiliar to them and followed strict protocols that were usually used to control “criminals or those accused of crime[s].” “The Baker Act mandates that the patients’ individual digniti[es] be upheld and respected at all times,” and these procedures were in direct opposition of that humane mandate. Holding cells were the only location where patients involuntarily committed could wait for their evidentiary hearings as no private or secure holding areas existed for patients. Meanwhile, placing patients in open and public areas caused a new host of problems as the patient presumably was involuntarily committed because he or she posed a danger either to himself or herself or the public. By placing him or her in an open and public place, the respondent judges argued that this could cause the patient more harm and expose the public to unnecessary risks within the courthouse.

Further, medical facilities become responsible for relocating the patients to the courthouse, causing the state to incur more costs. “[T]ransport service employees [would] not [necessarily] be law enforcement” officers properly trained to handle the risks of transporting such vulnerable patients. Escapes, medical emergencies, risk to the transport service employees, and increased costs to the state would all be the basis of the judge’s reasoning that teleconferences were appropriate and applicable to Baker Act hearings and could substitute the statutory in-person hearings held at the courthouse.

B. Doe v. State: Petitioners Argue Baker Act Hearings Via Teleconferences Are a Violation of Patients’ Rights

The issue at the heart of Doe was whether a judicial officer should be required to be physically present with the petitioners when Baker Act hearings were held—either by law or legal duty. The case was initiated

259. Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 15–16.
260. Id. at 15 (quoting FLA. STAT. § 394.459(1) (2016)).
261. Id.
262. See id. at 15–16.
263. Id. at 16.
264. See Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 16.
265. Id. at 14–15.
266. Id. at 16.
267. See id. at 14–17, 20.
and filed with the Second District by fifteen petitioners, including John Doe, seeking relief from a seemingly off-the-cuff and without notice decision made by Judge Swett in Lee County that declared all involuntary commitment hearings would be held remotely.\textsuperscript{269} The Second District questioned the judgment of holding these hearings remotely, but held that conducting Baker Act hearings through teleconferences were “within the discretion of the court.”\textsuperscript{270} The Baker Act did not establish that judicial officers had a ministerial or indisputable legal duty to be physically present when they “presid[ed] over involuntary inpatient placement hearings.”\textsuperscript{271} The majority of the district court panel reviewing the briefs submitted by both parties concluded that there was no “express legal right to have the judicial officer be physically present with the petitioners” during Baker Act hearings, and that no legal duty was outright expressed.\textsuperscript{272} However, they did determine the law clearly established that necessary mandamus relief “can derive from a variety of legal sources, including . . . rules of court.”\textsuperscript{273}

Judge Wallace wrote a concurring opinion with the majority where he expressed concerns about the law as it stood.\textsuperscript{274} The Second District did state that despite there being no express legal right to have a judge physically preside over Baker Act hearings, two problems did exist in the proceedings of the trial court: (1) a court order supporting the judge’s arguments was not provided; and (2) the trial judge did not provide a reason for his decision to preside over involuntary placement hearings over teleconference.\textsuperscript{275} Even still, Wallace wrote in this opinion that while the majority held correctly, “the manner in which the trial judges . . . exercised [their] authority” over these hearings was unwarranted, inappropriate, and ill-advised.\textsuperscript{276} Despite his concurring opinion, Judge Wallace stated three reasons why conducting Baker Act hearings through teleconferencing equipment was questionable: (1) potential difficulties such as equipment malfunctioning and counsel not being able to approach the bench to speak in private; (2) the Supreme Court of Florida appointed a subcommittee on this topic in 1997, and the circuit court was disregarding the opinion of the subcommittee by continuing to

\begin{itemize}
  \item \textsuperscript{269} Id. at 1023.
  \item \textsuperscript{270} Id.
  \item \textsuperscript{271} Id.
  \item \textsuperscript{272} Doe v. State, 210 So. 3d 154, 157 (Fla. 2d Dist. Ct. App. 2016), rev’d, 217 So. 3d 1020 (Fla. 2017).
  \item \textsuperscript{273} Id. (quoting Nader v. Dep’t of Highway Safety & Motor Vehicles, 87 So. 3d 712, 723 (Fla. 2012)). Established law does not have to only be defined by the legislature, but can also be derived from rules of court, statutes, constitutional law, and controlling case law. \textit{Nader}, 87 So. 3d at 723.
  \item \textsuperscript{274} Doe, 210 So. 3d at 159.
  \item \textsuperscript{275} Id. at 160–62.
  \item \textsuperscript{276} Id. at 159.
\end{itemize}
hold such hearings; and (3) similar procedures for juvenile hearings were used before and ultimately failed.\textsuperscript{277}

This begged the question of whether the silence by the legislature was an oversight or purposely excluded.\textsuperscript{278} The question became whether the silence on this procedure provided judges with a choice in how to handle such hearings, or if it was an oversight and the legislature assumed that longstanding traditions—always compelling the personal attendance of judicial officers at the evidentiary hearings and trials of which they preside—would prevail.\textsuperscript{279}

Judge Lucas of the Second District Court of Appeal offered in his dissent that while no law required the physical presence of a judge in express terms,\textsuperscript{280} Bryant v. State\textsuperscript{281} established that the physical presence of a judge was constitutionally mandated in a criminal trial, unless waived.\textsuperscript{282} The case law held precedent that the physical presence of a judge was a bedrock principle and the reason it was not expressly stated in the law was because the physical presence of a judge or magistrate has always been a standard assumed as an elemental component to preside over trials and evidentiary hearings.\textsuperscript{283} The Baker Act hearings constitute evidentiary hearings; and as

\textsuperscript{277} Id. at 163–65 (discussing Florida’s videoconferencing experiment with juvenile detention hearings). The Second District summarized the difficulties of videoconferencing in juvenile proceedings by referring to the Amendment to Florida Rule of Juvenile Procedure 8.100(A), which states:

Independent observations confirmed the fears expressed by all who have strongly and continuously opposed the adoption of the proposed robotic procedure. Specifically, many observed that there was no proper opportunity for meaningful, private communications between the child and the parents or guardians, between the parents or guardians and the public defender at the detention center, and between a public defender at the detention center and a public defender in the courtroom. The mechanical process produced a proceeding where, on many occasions, multiple parties would speak at once, adding to the confusion. At the conclusion of far too many hearings, the child had no comprehension as to what had occurred and was forced to ask the public defender whether he or she was being released or detained. It was also problematic that the public defender at the detention center often had no access to the child’s court file, and there was absolutely no opportunity to approach the bench to discuss private matters or anything that should not have been openly broadcast. Moreover, perhaps because it was difficult for the children to see, hear, and understand what was taking place, the youth did not behave as those participating in person in a courtroom; that is, the hearings totally lacked the dignity, decorum, and respect one would anticipate in a personal appearance before the court.

\textsuperscript{278} See Doe, 210 So. 3d at 168.

\textsuperscript{279} See id.

\textsuperscript{280} Id. at 166–68.

\textsuperscript{281} 656 So. 2d 426 (Fla. 1995) (per curiam).

\textsuperscript{282} Id. at 428–29.

\textsuperscript{283} Doe, 217 So. 3d at 1024; see also Doe, 210 So. 3d at 168.
such, Judge Lucas argued that these court proceedings must be followed pursuant to the rules of evidence.\textsuperscript{284} Lucas argued that the advent and expansion of teleconferencing does not authorize judges to violate their duties as would otherwise be assigned.\textsuperscript{285} This was something implicitly assumed by the judges and magistrates who chose to use the technology as a substitute for their physical presence during evidentiary hearings.\textsuperscript{286}

C. Doe v. State: Judges Argue that Technology Is a Necessary Remedy for Failed Baker Act Reforms and Increasingly Insurmountable Workloads

The respondents in the \textit{Doe} case argued in their Amicus Brief before the Supreme Court of Florida\textsuperscript{287} that the Supreme Court of Florida’s Task Force on the Management of Cases Involving Complex Litigation Report and Recommendations, published in 2008, stated that the Supreme Court of Florida should promote all courts throughout Florida to use videoconferencing when possible.\textsuperscript{288} The respondents pointed out in the same report that attorneys and judges were encouraged by the Supreme Court Task Force to use videoconferencing to resolve their cases more quickly.\textsuperscript{289}

The respondents argued, referring back to Judge Lucas’s dissent, that the Florida Rules of Evidence provided statutory authority that video recordings could be used to provide substantial testimonial evidence and witness statements.\textsuperscript{290} Important court appearances, such as criminal arraignments and first appearances, are often made by employing the use of technology.\textsuperscript{291} Medical experts testify using videoconferencing technologies during trial proceedings, and children testify during trial proceedings through videoconference calls in order to avoid trauma pursuant to Florida Statute section 92.55.\textsuperscript{292} Much in the same way that children need protecting, the judges argue in their Amicus Brief that the Baker Act provided several protections for the mentally ill and none were impeded upon by the use of

\begin{itemize}
\item \textsuperscript{284} \textit{Doe}, 210 So. 3d at 168.
\item \textsuperscript{285} \textit{Doe}, 217 So. 3d at 1027; \textit{see also} \textit{Doe}, 210 So. 3d at 168–69.
\item \textsuperscript{286} \textit{Doe}, 210 So. 3d at 168; \textit{see also} \textit{Doe}, 217 So. 3d at 1027.
\item \textsuperscript{287} \textit{Answer Brief of Respondent} at 10–11, Doe v. State, 217 So. 3d 1020 (Fla. 2017) (No. SC16-1852); \textit{see also} \textit{Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra} note 7, at 2.
\item \textsuperscript{288} \textit{See Answer Brief of Respondent, supra} note 287, at 10–11.
\item \textsuperscript{289} \textit{See id.} at 10.
\item \textsuperscript{290} \textit{Id.} at 12 (citing \textit{Kelley v. Webb}, 676 So. 2d 538, 539 (Fla. 5th Dist. Ct. App. 1996)); \textit{see also} \textit{Doe} v. State, 210 So. 3d 154, 168 (Fla. 2d Dist. Ct. App. 2016) (Lucas J., dissenting), \textit{rev’d}, 217 So. 3d 1020 (Fla. 2017).
\item \textsuperscript{291} \textit{Answer Brief of Respondent, supra} note 287, at 12.
\item \textsuperscript{292} \textit{See Fla. Stat. § 92.55} (2016); \textit{Answer Brief of Respondent, supra} note 287, at 12.
\end{itemize}
teleconferencing. While the petitioners argued that the use of videoconferencing technology during involuntary commitment procedures infringes upon the due process rights of the mentally ill, the respondents quoted the holding of *M.W. v. Davis*. *M.W.* held that while the purpose of due process in substantive due process claims was to protect the fair treatment of individuals by using proper administrative justice, the purpose and validity of due process claims in procedural due process depended on the nature of the court proceeding.

The Chief Judge Jeffrey Colbath of the Fifteenth District wrote an Amicus Brief citing that the Florida Legislature had not added or created new county or circuit judgeships in a decade but expected the reforms to be enacted. In his brief, he described the specific struggles of judges in Palm Beach County who comprised the Fifteenth Judicial Circuit. The struggles derived from the expanse of the county and the lack of judges and time needed to cover the area; the county is sixty-miles-long and forty-miles-wide, with seven mental health facilities all serviced by only four magistrates who would travel to attend the Baker Act hearings. The public defender, the state attorney, the sheriff deputy, and the judicial officer would all travel to each facility housing patients where they would preside over each of these hearings. The Chief Judge argued that time and resources lost were a waste as these hearings could be easily performed over teleconference.

The Chief Judge also referred to cost concerns related to Baker Act proceedings. Travel-related costs would no longer be incurred by the judicial officer or the sheriff deputy’s office. The state attorney and the public defender’s offices would also save these travel costs. Furthermore, the facilities would also avoid the travel costs of transporting the patient between the facility and courthouse.

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294. 756 So. 2d 90, 92 (Fla. 2000); see also Answer Brief of Respondent, supra note 287, at 14.
295. *M.W.*, 756 So. 2d at 97.
296. See Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 13.
297. *Id.* at 14.
298. *Id.*
299. See *id.*
300. *Id.*
301. Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 14.
302. *Id.*
303. See *id.* at 14–15.
304. *Id.*
The security of the patient and the public is also cited in the Chief Justice’s Amicus Brief.\textsuperscript{305} Specifically, the judge wrote that the courthouses were not well equipped to hold Baker Act hearings because patients could only be held in criminal holding cells.\textsuperscript{306} He argued that the Baker Act states in plain language that holding cells should not be used and avoided for Baker Act hearings.\textsuperscript{307} Holding a Baker Act patient in an open waiting area, who has been involuntarily committed because he or she is deemed either a danger to themselves or others, is an equally disconcerting idea as it would expose the public to a known and unnecessary risk.\textsuperscript{308} Security protocols are not as easily controlled when a Baker Act hearing is held within the courthouse, given the environment cannot be completely controlled by the security provided by the facility.\textsuperscript{309}

D. The Supreme Court’s Final Decision on Doe v. State: Teleconferences are Unconstitutional

The Supreme Court of Florida in the Doe case ultimately held that the lack of resources and the struggles that the judges described did not outweigh the individuals’ constitutional rights to due process and liberty.\textsuperscript{310} The expediency and problems with workload did not provide sufficient reason to validate holding Baker Act hearings by teleconference.\textsuperscript{311} The Supreme Court of Florida stated that in Baker Act hearings, unlike in criminal proceedings, the use of teleconference technology is not expressly sanctioned against by the statute.\textsuperscript{312} However, the Court did take issue with the way the judge incorrectly used his authority to determine that he would only preside over Baker Act hearings through teleconference technology.\textsuperscript{313} The Supreme Court of Florida described Judge Swett’s actions as misguided wisdom and an overreach of authority.\textsuperscript{314} His decision did not meet the standards intended by the legislature that allows judges to use their discretion as to where and how to hold Baker Act hearings.\textsuperscript{315} Longstanding traditions require that judicial officers be present at trials and the advent of technology

\begin{thebibliography}{9}
\bibitem{305} Id. at 15.
\bibitem{306} Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 15.
\bibitem{307} Id. at 15.
\bibitem{308} Id. at 16.
\bibitem{309} See id.
\bibitem{310} Doe v. State, 217 So. 3d 1020, 1026 (Fla. 2017).
\bibitem{311} Id.
\bibitem{312} Id. at 1025, 1028.
\bibitem{313} Id. at 1031.
\bibitem{314} Id. at 1031–32.
\bibitem{315} See Doe, 217 So. 3d at 1023–25.
\end{thebibliography}
The arguments made in the Amicus Brief of Chief Judge Jeff Colbath, while found to be insufficient to validate Baker Act hearings being teleconferenced, reflect a larger problem with the mental health system in Florida. Deinstitutionalization has created a mental health funding crisis with consistent decreases in funding provided to state-run treatment over the last three decades. In fact, after 2008, states were obligated to cut over $4 billion in mental health spending, equating to the greatest decrease in spending and funding for mental health since deinstitutionalization began. In 2004, seemingly needed calls for reform took place and many were applied, but without the proper funding to support those reforms. The lack of funding allotted to implement these reforms and the decrease in federal funding that justified the move towards deinstitutionalization left mental health facilities to find means—sometimes described as abuses—to pay for the treatments they were meant to provide. As recent as 2015, Governor Rick Scott proposed an increase of $19 million for mental health treatment, which ultimately was passed as a split between mental health and drug

V. RECOMMENDATIONS

316. Id. at 1027.
317. Id. at 1025.
318. Id.
319. Id. at 1026.
320. See Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus Curiae Supporting Respondent, supra note 7, at 1–3, 20.
321. See Deanna Pan, Timeline: Deinstitutionalization and Its Consequences, Mother Jones (Apr. 29, 2013, 10:00 AM), http://www.motherjones.com/politics/2013/04/timeline-mental-health-america/.
322. Id.
323. See Pudlow, supra note 151.
324. See Editorial, supra note 189; Miller, supra note 128.
treatment to be released over two years. This amount, while seemingly large, is dwarfed by the $150 million used by the New York Legislature to implement Kendra’s Law for its first five years in the 1990s.

With the proper funding, more licensed professionals could provide care and services, and the services could be more effective. Without the proper funding, the mental health system in Florida, and those who must orchestrate and provide Baker Act services, will be consistently providing the same services to patients who consistently return to treatment, and will become overworked because they work in an inefficient and, possibly, dangerous system—due to patients not receiving treatment in time, or acting without medicine, or simply living in constant threats of lawsuits. Meanwhile, patients will continue to be misdiagnosed, mistreated, held against their will without due process, negated liberty, and held without treatment until the system can provide them with their court appearance. Patients may even be incarcerated—for acts they commit while being improperly treated or misdiagnosed—by an underfunded and ineffective system. In the past, reforms were consistently made without sufficient and proper funding provided, which has created our present mental health care crisis. When funds were allotted, they were minimal and token amounts, unable to achieve the lofty humanitarian notions the Baker Act and its reforms strived to achieve.

The Supreme Court of Florida questioned the wisdom of the judges’ use of technology and their justifications for its use in Baker Act hearings in Doe. Yet, the Amicus Brief was not an attempt to abscond from the official duties of Baker Act hearings, but rather a diligent attempt to deal


326. See South Florida Sun-Sentinel Editorial Board, supra note 119.

327. See South Florida Sun-Sentinel Editorial Board, supra note 119 (explaining that as early as 2004, calls for reform were made to make the powers of the court more explicit). Periods of patient observations needed to be extended beyond the standard fifteen minutes prescribed, and even with these two changes, major reductions in recidivism and mental illness turning into crime were expected. Id.

328. Editorial, supra note 189.

329. See Gilliam, supra note 141; Killian, supra note 119; Torrey & Zdanowicz, supra note 179.


331. Gilliam, supra note 141; Pudlow, supra note 151.

332. See Pudlow, supra note 151.

with an overwhelming and ever-increasing problem given the documented
surge in involuntary commitments and too few professionals and officials
managing involuntary commitments under the Baker Act within Florida’s
Mental Health System. Reforms should be conceived and approved within
the limits of the funding provided—rather than minimal funding being
promised by legislature to provide token gifts of support to reforms that are
not achievable—otherwise, the increased pattern of incarcerating the
mentally ill will continue to cost the state more than if patients were to
receive proper treatment from the beginning.

VI. CONCLUSION

Given the most recent holding of the Supreme Court of Florida in the
Doe case, the Florida Legislature should begin to rethink their reactive and
token-funding approach to mental health. Proactive action needs to take
place regarding mental health, where feasible reforms are enacted and a
sufficient and healthy amount of funding is provided to ensure the success of
the reforms. Baker Act reforms have consistently been underfunded and a
response to crisis. The clear and convincing standard of dangerousness,
either to one’s self or to others, is another pitfall that must be overcome
because help is too often provided too little and too late. New legal
definitions and grounds need to be created that better distinguish individuals
who need involuntary commitments and those who solely just need mental
health treatment and support. The definition of dangerousness needs to be
expanded to include concerns about patients’ welfare, their ability to manage
themselves healthily regarding self-care and neglect, as well as ensure that
they are living in suitable living environments that promote mental health
and self-care. A system responding to repeated crises without funding has
created a system riddled with issues that make Florida’s Mental Health
System a complex knot that must be untied; concurrent jurisdictions,
disjointed action by competing authorities, a broken communication system,
a concern for patient privacy, and a concern for funding underfunded
hospitals all create a perfect storm where abuse threatens the patient’s liberty

334. See Brief for the Chief Judge of the Fifteenth Judicial Circuit as Amicus
Curiae Supporting Respondent, supra note 7, at 1–2.
335. See Gilliam, supra note 141; Pudlow, supra note 151.
336. See Doe, 217 So. 3d at 1032.
337. See Gilliam, supra note 141; Editorial, supra note 189.
338. See Gilliam, supra note 141.
339. See Editorial, supra note 189.
340. Paul F. Stavis, Why Prisons Are Brim-Full of the Mentally Ill: Is Their
341. Id.
at every turn and the fight between all competing and interested parties ultimately affect the patient whose interest they all allegedly aim to protect. These abuses do not begin in hospitals or courtrooms, but rather have been created on Florida’s Senate floor. The State of Florida needs to stop reacting to crisis and, instead, act to prevent crisis by putting real money into these reforms.

342. See W.M. v. State, 992 So. 2d 383, 386–87 (Fla. 5th Dist. Ct. App. 2008); Stavis, supra note 340, at 198; STATE OF FLA. DEP’T OF CHILDREN & FAMILIES MENTAL HEALTH PROGRAM OFFICE, supra note 16, at 3; Killian, supra note 119. Miller illustrates how competing interests and an inability to communicate clearly and effectively between parties interested in the treatment and status of Mertz ultimately led to a chaotic scene that kept Mertz in treatment or kidnapp[ed] depending on which party was addressing the status and topic of Mertz’s inpatient commitment. Miller, supra note 128.

343. See Pudlow, supra note 151; Editorial, supra note 189.

344. See Pudlow, supra note 151; Editorial, supra note 189.