

The Privacy of the Victim – Baker Act



Know Your Rights

by Atty. Jay C. Howell

In our state, the legal procedure for the involuntary evaluation or commitment of persons suffering from mental, emotional, and behavioral disorders is known as the "Baker Act." Simply stated, an individual may be involuntarily evaluated and even committed if two examining physicians determine that the person constitutes a danger to himself or others. We would expect the medical and clinical records associated with Baker Act commitments to be confidential. What happens when the child victim of an alleged act of molestation has been previously involuntarily examined or committed?

In a recent Florida case, the defendant was charged with one count of lewd or lascivious battery on a person 12 of years of age or older but less than

16, and two counts of lewd or lascivious molestation. During the pre-trial depositions, the defendant learned that the child victim had a history of mental health difficulties, including a prior commitment pursuant to the Baker Act, and was taking various medications as part of her treatment.

The defendant sought to obtain her mental health records, asserting that this was necessary to evaluate her capacity to observe, to remember, and recount the events that gave rise to the criminal charges. The judge ordered an inspection, conducted by the judge, of these mental health records in order to determine if their disclosure to the defendant was warranted. The State appealed.

The appeals court centered its opinion on the Florida Statute which governs Baker Act proceedings. That law requires the medical records associated with the evaluation or commitment to be confidential, except under very limited circumstances. The law provides

that these clinical records shall be released only when the patient authorizes the release, the patient is represented by an attorney and the records are needed by the patient's attorney for adequate representation, or where a court orders such release.

The procedure for seeking court approval is that the party seeking the records must first make a threshold showing that the privileged records are likely to contain relevant evidence. Previous court decisions have ruled that the defendant must have an actual good faith factual basis for the request and not simply a fishing expedition. The records are then examined by the judge in what is called an in-camera inspection. If the judge concludes that the records contain relevant information, the court may allow the party's access to them.

Based upon these provisions of the Florida Baker Act statute, the Florida appellate court ruled in this case that an in-camera inspection by the judge and

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...Almethia Davis,
JSO's Citizen of the Year.

Known as "Mama" Davis, this energetic 72-year-old Jacksonville native has demonstrated her unselfish commitment to the community and the Jacksonville Sheriff's Office for many years. She retired from the City of Jacksonville's Parks and Recreation Division, but continues to serve the city with her involvement in CPAC and the Mayor's Commission on Elderly Affairs.

She fought for the creation of the Lincoln Villa Community Center, which serves as the home of the Sheriff's Advisory Council (ShAdCo), "N" Sector, of which she is the Chairperson. In addition, she maintains membership in the Sector "K" ShAdCo.

Mama Davis is very active in community service, investing many volunteer hours to help citizens of Jacksonville. She has brought attention to transportation issues for senior citizens above 90 years of age during the past year. No request is too great and she serves with vigor and enthusiasm.

Some of her accomplishments during this past year are:

Lincoln Villa – In an area plagued with prostitution and drug activity (which affects citizens who use the center), she provided information that resulted in numerous arrests. She refuses to let criminals thwart her goal of making this area crime-free.

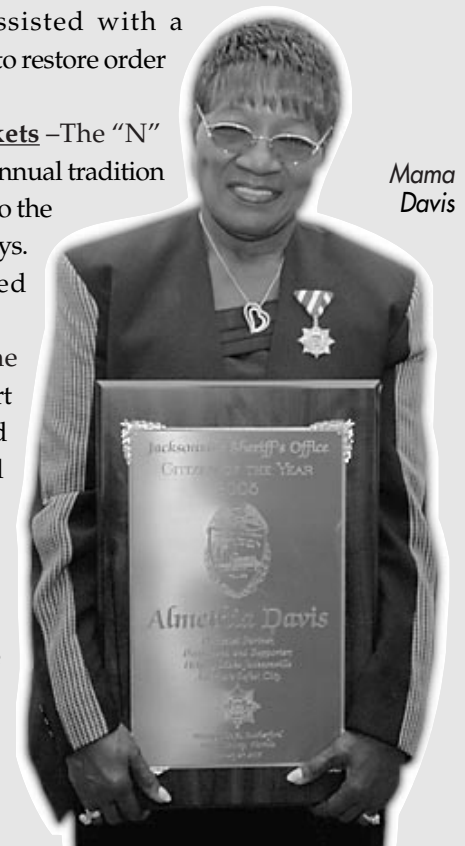
Hurricanes and tornados – She used her ShAdCo influence to affect the recovery and relief effort at Lincoln Villa. Additionally, her many government and community contacts were valuable in deploying officers to assist with the effort.

Mama Davis also assisted with a neighborhood cleanup to restore order to that area.

Thanksgiving baskets – The "N" Sector ShAdCo has an annual tradition of distributing baskets to the needy during the holidays. Mama Davis helped distribute 24 baskets.

Sheriff's Walk – She made phone calls to alert area citizens and participated in several walks, even those in other ShAdCo sectors.

Hats Off to Mama Davis for being honored as JSO Citizen of the Year.



Mama Davis



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JOHN WOODY, INC.

P.O. Box 60218
Jacksonville, FL 32236

Phone: (904) 783-2411
Fax: (904) 695-0881
MWoodall@aol.com

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