# THE BAKER AND MARCHMAN ACTS

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## THE FLORIDA MENTAL HEALTH ACT ( PART I, CHAPTER 394 F.S.)

Practice Guidelines and Introduction to the Baker Act

Welcome to the portion of the module which reviews practice guidelines and provides an introduction to the Baker Act. We hope this training will provide you with a better understanding of the purpose, intent, and procedures involved with the application of the Baker Act.

**General History of the Baker Act, Patient Rights, and Confidentiality**

In this section you will review the history of the Baker Act, including important amendments. You will also review patient rights and explore issues surrounding confidentiality and the client/therapist relationship.

**Learning Objectives for Section 1**

1. You will learn who sponsored the Baker Act, the intent of the legislation, and two important amendments to the Baker Act.

2. You will learn the Patient Rights under the Baker Act.

3. You will learn the limits to maintaining confidentiality of clinical records under the Baker Act.

**What do you already know?**

1.• The Baker Act was passed in 1971, and went into effect on July 1, _____.

a. 1969
b. 1971
c. 1972
d. 1973

2.• The Baker Act formally established _____ in the state of Florida for consumers of mental health services.

a. limited authority of law enforcement
b. patient rights
c. federal funding
d. medical services

3.• _____ guarantee the right to ask the court to review the cause and legality of their detention or unjust denial of a legal right, privilege, or unauthorized procedure.

a. Habeas Corpus

b. Carpe Diem

c. Attorney privilege

d. Florida's "Sunshine Laws"

Laws addressing mental illness have been in existence in Florida since the late 19th century. The United States Congress passed the Community Mental Health Act of 1963, which focused on providing a range of treatment alternatives in the community for persons in need of services. In response to these federal laws, Maxine Baker, a representative from Miami, sponsored **The Florida Mental Health Act**. This act, passed in **1971**, went into effect **July 1, 1972**. Focusing on the specific needs of the state, Ms. Baker's intent was to:

- encourage voluntary (versus involuntary) commitment,
- separate the process of hospitalization from the process of legal competency, and
- increase care of consumers and to facilitate their transition to the community.

Prior to the passage of the bill, Representative Baker, referring to persons receiving mental health treatment, stated “In the name of mental health, we deprive them of their most precious possession - liberty.”

There have been a number of legislative amendments strengthening patients’ civil and due process rights since The Baker Act went into effect. One significant amendment occurred in 1979, which insures the least restrictive means of treatment available and appropriate.

Also, substantial reforms occurred in 1996 when amendments were passed which provided greater protection for persons seeking voluntary admission, consumers being discharged from state treatment facilities, strengthened informed consent, guardian advocacy provisions, and expanded notice requirements (Baker Act Handbook and User Reference Guide/2000, FLDCF).

The Baker Act formally established patient rights in the state, which was included in the legislation. The Baker Act can only be used in cases where a person has a mental illness and meets all criteria for voluntary or involuntary admissions. Thus, the Baker Act strengthened due process and civil rights of persons in mental health facilities.

## PATIENT RIGHTS UNDER THE BAKER ACT (S. 394.459, F.S. CHAPTER 65E-5.140, F.A.C)

- Individual dignity
- Treatment
- Express and informed consent
- Quality of treatment
- Communication, abuse reporting, and visits
- Care and custody of personal effects
- Voting in public elections
- Habeas Corpus
- Treatment and discharge planning

1. **Individual dignity**: Ensures all constitutional rights and requires that persons be treated in a humane way while transported or treated for a mental illness.

2. **Treatment**: Prohibits the delay or denial of treatment due to the inability to pay and requires prompt physical examination after arrival; requires treatment planning to involve the patient; and requires the least restrictive appropriate available treatment be based on the individual needs of each patient.

3. **Express and Informed Consent**: Encourages people to voluntarily apply for mental health services when competent to do so, to choose their own treatment, and to decide when they want to stop treatment. The law requires that consent be voluntarily given in writing after sufficient explanation to enable the person to make a willful and knowing decision without any coercion.

4.• **Quality of Treatment**: Requires medical, vocational, social, educational, and rehabilitative services suited to each patient;s needs to be administered skillfully, safely, and humanely. Use of restraints, seclusion, isolation, emergency treatment orders, physical management techniques, and elevated levels of supervision are regulated. Complaint resolution is required.

5. **Communication, Abuse Reporting, and Visits**: Guarantees persons in mental health facilities the right to communicate freely and privately with persons outside the facility by phone, mail, or visitation. If communication is restricted, written notice must be provided. No restriction of calls to the Abuse Registry or to the patient's attorney is permitted under any circumstances.

6.• **Care and Custody of Personal Effects**: Ensures that patients may keep their own clothing and personal effects, unless they are removed for safety or medical reasons. If removed, a witnessed inventory must be kept.

7. **Voting in Public Elections**: Patients are guaranteed the right to register and vote in any election for which they are qualified voters.

8. **Habeas Corpus**: Guarantees patients the right to ask the court to review the cause and legality of their detention or unjust denial of a legal right or privilege or an authorized procedure.

9.• **Treatment and Discharge Planning**: Guarantees the opportunity to participate in treatment and discharge planning and to seek treatment from the professional or agency of their choice upon discharge.

Every patient admitted to a designated receiving or treatment facility at the time of their admission shall be given a written description of their rights. A copy of the rights statement, signed by the patient, shall be placed in the clinical record. If necessary, a signed copy of the statement shall be given to the patient's guardian, guardian advocate, representative, health care surrogate or proxy. Patient rights posters shall be placed next to telephones which are available for client use and in other prominent, accessible areas.

## CONFIDENTIALITY OF CLINICAL RECORDS (S.394.4615 F.S., CHAPTER 65E5.250, F.A.C.)

Clinical records shall be released when:

- The patient,guardian, or guardian advocate authorizes the release of information
- The court orders such release
- The patient is represented by counsel and records are needed for representation

- The patient is committed to, or is to be returned to Dept. of Corrections from Dept. of Children and Family Services, provided DOC requests records

The Baker Act requires a clinical record be kept for each patient. This record includes information pertaining to the admission of the patient. A clinical record is confidential unless waived by express and informed consent by the patient, patient's guardian or guardian advocate or, if the patient is deceased, by the patient's personal representative or the family member who stands next in line in the absence of a will.

A court can order the release of a person's clinical record if the court has determined there is good cause for disclosure after weighing the need for disclosure against possible harm of disclosure to the person to whom such information pertains. Also if a patient is represented by counsel and the records are needed to provide adequate representation, then the records shall be released.

If the person is committed to, or is to be returned to, the Department of Corrections (jail, detention, etc.) from the Department of Children and Family Services (receiving or treatment facility), and the Department of Corrections requests the patient's clinical records, the records of that person shall be provided to the DOC.

Clinical records may be released when (Note: "may" ):

- A patient has made statements of intent to harm other persons (to provide adequate warning to the person threatened)
- Records are requested for the purpose of statistical research
- An authorized researcher requests records for audit purposes

If a patient has made statements with an intent to harm someone, the administrator of a facility may authorize the release of relevant information from the patient's clinical record for the purpose of providing adequate warning to the person being threatened with harm by the patient (duty to warn/protect).

Information from the clinical records may also be accessed for statistical and research purposes as long as the information is obtained in a way to protect the identity of persons in treatment. A facility administrator or Secretary of the Department may authorize information to be released to a qualified researcher, an aftercare treatment provider, or an employee or agent of the Department for the purposes of treatment, maintenance of patient records, compilation of treatment data, aftercare planning, or evaluation of programs.

There are other situations that can limit the confidentiality of clinical records:

- Abuse reporting
- Access to patient records by office staff
- Access to patient records by supervision/treatment team members
- When a therapist is sued by a client

Office staff and treatment team members have access to the records of a patient, as they have to handle papers and documents within the agency and share information and records in order to provide services. If a therapist is sued, the court may order the release of records for evidentiary review.

Note: Nothing in the Baker Act is intended to prohibit parents or next of kin from requesting and receiving information of a person in treatment. However, verification of the relationship must be established and disclosure can be limited to a general summary of the patient's current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.

# THE BAKER ACT

Chapter 2: Express and Informed Consent and Surrogate Decision-Makers

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## EXPRESS AND INFORMED CONSENT AND SURROGATE DECISION-MAKERS

In this section you will define **express consent, informed Consent**, and disclosure. You will also define and examine the role of **surrogate decision-makers**.

**Learning Objectives for Section 2**

1. You will learn the intent and definition of Express and Informed Consent

2. You will learn what constitutes disclosure and how it relates to Express and Informed Consent.

3. You learn the definition of incompetent to consent to treatment.

4. You will identify five Surrogate Decision-Makers and define the role of each.

**What do you already know?**

1.• If a person's judgement is negatively affected by symptoms of mental illness or substance abuse to the point they lack the capacity to make a well-reasoned, willful and knowing decision on treatment, that person may be determined to be _____ to consent to treatment.

a. too resistant
b. incompetent
c. competent
d. too ill

2.• _____ is/are appointed to make health-related decisions once a person has been determined to be unable, incapacitated, or incompetent to consent to treatment.

a. Surrogate decision-makers
b. Facility administrators
c. A designated representative
d. A case managers

**Express and Informed Consent:**

- Encourages voluntary admission
- Disclosure of subject matter involved to enable the person to make a knowing and willful decision
- Consent given voluntarily in writing by a competent (legally competent/ capable) person

- Without any element of force, deceit, duress, or coercion

Prior to seeking written consent to admission or treatment, the facility must provide “complete disclosure” to the patient/guardian/guardian advocate, or the person and guardian if the person is a minor. Complete disclosure means providing the appropriate person(s) with the following information:

1. Reason for admission
2. Proposed treatment
3. Purpose of treatment
4. Common side effects of such treatment
5. Alternative treatment modalities
6. Approximate length of care
7. Person must be informed that any consent given may be revoked orally or in writing

By providing the individual with this information, the person can make an informed (knowing) decision without being threatened, coerced, or forced (willful). Consent can only be provided by someone competent (to consent to treatment).

Incompetent to consent to treatment means a person’s judgement is so affected by their mental illness or substance abuse, they lack the capacity to make a well-reasoned, willful and knowing decision regarding medical or mental health treatment.

If an adult or minor with a court appointed guardian is admitted for treatment, it must first be determined the authority of the guardian. It is important to determine whether the guardianship pertains to the person, or to the property, or both, of the ward.

The letters of guardianship (issued to the guardian by the court) state whether the guardianship is plenary or limited, and if limited, the duties and powers of the guardian. The guardian should only be permitted to perform those duties that have been expressly removed from the ward and delegated to the guardian.

Once a person has been determined to be unable, incapacitated, or incompetent to consent to mental health treatment, Surrogate Decision-Makers are appointed to make health-related decisions.

Legislation related to the **Surrogate Decision-Makers/Baker Act**:

- Guardian (Chapter 744, F.S.)
- Guardian Advocate (s.394.4598, F.S.)
- Health Care Surrogate (Chapter 765, Part II, F.S.)
- Health Care Proxy (Chapter 765, Part IV, F.S.)
- Representative (s. 394.4597, F.S.)

**Guardianship (Chapter 744, F.S.)**

The following persons can assume the role of guardian:

- Natural guardians of a minor (Parents)
- A person appointed by a court to act on behalf of a minor without a natural guardian

- A person appointed by a court to act on behalf of an adult adjudicated incapacitated

Under the Baker Act, a guardian is either a natural parent of a minor, a person appointed by the court to serve as guardian for a minor, or a person appointed by a court to act on behalf of an adult adjudicated incapacitated.

Since parents are considered the natural guardians of their children, a guardian may be appointed by a court for a minor if the parents have died or are unavailable. Before an adult can have a guardian appointed to act in their behalf, the court must find by clear and convincing evidence that the person lacks the capacity to make decisions regarding issues brought before the court and that granting the authority being requested is in the best interest of the incapacitated person.

**Guardian Advocates (s. 394.4598, F.S)**

Important points to remember regarding guardian advocates:

- Appointed by the court for persons determined incompetent to consent to treatment
- Makes decisions regarding mental health treatment for patients on involuntary placement status
- Duties end when patient is discharged or transferred to voluntary status

Under the Baker Act, a guardian advocate is a person appointed by the court to make decisions regarding mental health treatment on behalf of a person who has been found incompetent to consent to treatment involuntarily placed for treatment. The person who is appointed as guardian advocate must agree to the appointment and be informed of the duties and responsibilities, including the ethics of surrogate decision-making.

When selecting a guardian advocate, the court shall give preference to a health care surrogate if one has been designated by the patient. Employees of the treatment facility providing services, a Department of Children and Families (DCF) employee, the facility administrator, a Florida Local Advocacy Committee (FLAC) member, or any professional referred to in the Baker Act are prohibited from serving as a guardian advocate.

The guardian advocate's duties begin when he or she is appointed by the court and has completed the required training, and ends when the person is transferred to voluntary status, thus able to make their own treatment decisions, or discharged.

**Health Care Surrogate/Proxy (Chapter 765, Part II, F.S., Chapter 765, Part IV, F.S.)**

Important points to remember about the health care surrogate/proxy:

- Surrogate selected by the person in an advance directive
- Selection made when competent
- In the absence of an advance directive, selection made by proxy

On an interim basis, between the time a person is determined to be incapacitated to consent to mental health treatment and the time a guardian advocate is appointed by the court, a health care surrogate or proxy may make decisions for the person that the person would have made if competent to do so.

The health care surrogate or proxy can make health care decisions including mental health, apply for benefits, have access to the

person's clinical record, and authorize the release of information and clinical records.

The health care surrogate is selected by the person when he or she is competent in an advance directive.

In the absence of an advance directive or if the surrogate is unavailable, selection may be made by proxy in priority order from the statutory list:

1. Guardian
2. Spouse
3. Adult child
4. Parent
5.Adult sibling
6. Adult relative
7. Close friend

**Designated Representative (s.394.4597, F.S.)**

A Designated Representative is selected to receive notice of proceedings if a person has not selected a health care surrogate.

Designated representatives are persons selected to receive notice of involuntary placement proceedings during the time a person is held in or admitted to a facility. When the facility selects a representative, first preference shall be given to a health care surrogate, if one has been previously selected by the patient.

If there is no surrogate selected by the patient, or if the patient is unable or unwilling to select a representative, the facility shall select a representative in the following order:

1. Spouse
2. Adult child
3. Parent
4. Adult next of kin
5. Adult friend
6. A member of the Florida Local Advocacy Committee

Any licensed professional providing direct services, a DCF employee, anyone providing other substantial services to the person, or a creditor of the person shall not be designated.

The designated representative does not have actual decision making authority, but can file a Petition for Habeas Corpus if it is believed the patient is being held improperly or are denied a right or a privilege.

# THE BAKER ACT

Chapter 3: Voluntary Admission Under the Baker Act

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## VOLUNTARY ADMISSION UNDER THE BAKER ACT

In this section, you will learn the criteria for voluntary admission and discharge under the Baker Act. In addition, you will learn the definition of mental illness.

Learning Objectives for Section 3

1. You will learn the criteria for Voluntary Admission under the Baker Act for adults and minors.
2. You will learn the definition of mental illness.
3. You will learn the criteria and procedure for discharge of persons admitted on a voluntary basis.
4. You will examine the procedures for an elopement of a voluntary admission.

**What do you already know?**

1. The definition of mental illness includes retardation and intoxication.

True
False

2. In order to apply for voluntary admission under the Baker Act, a person must show evidence of a mental illness.

True
False

3. A minor seeking voluntary admission under the Baker Act does not need the consent of their guardian.

True
False

Voluntary Admission/Baker Act
(s. 394.4625, F.S. Chapter 65E-5.270, F.A.C.)

An adult may apply for voluntary admission if:

- Shows evidence of a mental illness
- Is competent to provide express and informed consent
- Is suitable for treatment

A facility may receive for observation, diagnosis, or treatment any person 18 years of age or older. That person must be competent to make application by express and informed consent and show evidence of a mental illness. Any person admitted on a voluntary basis must be evaluated within 24 hours after arriving to a receiving facility by a physician to document the person's competence to provide for admission.

A minor may apply for voluntary admission if:

- there is evidence of a mental illness
- the minor consents to admission without coercion or misrepresentation
- the guardian of the minor applies on behalf of the minor by express and informed consent
- a hearing to confirm the voluntariness of the admission if the application by the guardian is unavailable

Every person entering a facility must be asked to provide express and informed consent to admission and treatment. If the person is a minor, express and informed consent to admission and treatment must also be requested from the minor's guardian. Therefore, the willingness of the minor and the application by the guardian is required for a minor's voluntary admission, with a hearing to verify the minor's consent was voluntary .

**Defining Mental Illness**

- An impairment of the mental or emotional processes that controls behavior and understanding reality
- Impairment substantially interferes with a person's ability to meet the ordinary demands of living
- Does not include mental retardation or developmentally disabled, intoxication, antisocial behavior or substance abuse impairment

Under the Baker Act, mental illness is defined as an impairment of the mental or emotional processes that exercise conscious control of one's actions or the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology (cause or origin of disease or condition). This does not include retardation or developmentally disabled, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

**Discharge of Voluntary Admissions/Baker Act**

If a person requests discharge or refuses treatment:

- They must be discharged from a receiving facility within 24 hours, or
- They must be discharged from a treatment facility (generally a state hospital) within 3 working days…
- … unless the facility administrator files a petition for the patient's involuntary placement

A person in treatment on voluntary status who requests discharge or refuses treatment must be discharged from a community-based Baker Act receiving facility within 24 hours, and from a state treatment facility within 3 working days (72 hours), unless a petition for involuntary placement is filed by the facility administrator. If the end of the 72 hours is on a weekend, the petition for involuntary placement must be filed at the circuit court by the end of the next working day.

Part of the discharge planning process includes assistance in arranging aftercare and follow up treatment. If the person being

discharged does not wish assistance in making these arrangements, it is recommended the facility request the person sign a waiver stating he or she will be responsible for making their own aftercare appointments and document in the clinical records.

**Elopement of a Voluntary Admission**

1. Notify law enforcement if:

- A criminal charge is pending,
- A hold order from the court is pending OR
- If the person appears to meet the criteria for involuntary placement

2. Minor's guardian notified as soon as possible
3. Document the incident

For someone who is admitted to a facility on a voluntary basis and elopes, the concern is whether or not the person meets the criteria for involuntary placement (We will discuss involuntary placement criteria in later).

If the person does not meet involuntary placement criteria, the episode is documented in the person's clinical record. If the person is determined to meet criteria for involuntary placement, then law enforcement is to notified and a pick up order is initiated.

If there are criminal charges pending, law enforcement is to be notified and the person is to be returned to the facility. If the person is a minor, the guardian of the minor shall be notified as soon as possible. Whatever the scenario, accurately document the circumstances surrounding the elopement, what the facility actions were after the elopement, who was contacted, and if there is a decision regarding discharge.

# THE BAKER ACT

Chapter 4: Involuntary Examination under the Baker Act

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## INVOLUNTARY EXAMINATION UNDER THE BAKER ACT

In this section, you will learn the criteria for involuntary examination under the Baker Act, as well as how involuntary examinations are initiated.

**Learning Objectives for Section 4**

1. You will learn the criteria for involuntary examination under the Baker Act.
2. You will learn three ways involuntary examinations are initiated.
3. You will learn how an involuntary examination is initiated by a court order (Ex Parte), through law enforcement initiation (protective custody), or a certificate of a professional.
4. You will learn the discharge procedures for persons admitted for involuntary examination under the Baker Act.

**What do you already know?**

1. Check the ways involuntary admissions can be initiated (note: there may be more than one):

a. Protective custody (law enforcement)
b. Ex Parte (court order)
c. Habeas Corpus
d. Express and Informed Consent
e. Certificate of a professional
f. Special request of Department of Children and Families

**Involuntary Examination Criteria/Baker Act** (s.394.463, F.S. Chapter 65E-5.280, F.A.C.)

- Reason to believe the person is mentally ill
- The person has refused voluntary examination or is unable to determine if examination is necessary
- Without care or treatment, person is likely to suffer from neglect
- There is substantial likelihood that without care or treatment the person will cause serious bodily harm to self, others, as evidenced by recent behavior

An involuntary examination involves the detainment of a person without their consent because it is believed the person meets the criteria under the Baker Act for an involuntary examination. In order for an examination to take place, there must be a reason to believe the person being examined has a mental illness and has refused or is unable to consent to a voluntary examination. It should also be determined that without care or treatment the person is likely to suffer from neglect, will be unable to care for themselves, or may cause harm to themselves or someone else based on the person's recent behavior.

A person brought to a receiving facility shall undergo an initial examination by a physician or clinical psychologist without

unnecessary delay. The examination process should rule out non-psychiatric medical illnesses, injuries, or substance abuse symptoms that mimic psychiatric symptoms.

**Initiating Involuntary Examinations under the Baker Act**

- A circuit court may issue an Ex Parte order based upon sworn testimony given in an affidavit
- Law Enforcement Officer shall take a person into protective custody who appears to meet criteria for involuntary examination
- A qualified professional may execute a certificate stating that the person has been examined within the preceding 48 hours and finds the person appears to meet criteria

An involuntary examination may be initiated by any one of the following means:

1) A circuit court may enter an Ex Parte order, based upon sworn testimony, directing a law enforcement officer to take the person to the nearest receiving facility (court involved procedure).

2) If a law enforcement officer has reason to believe a person meets the criteria for involuntary examination, the officer shall take a person into protective custody and deliver the person to the nearest receiving facility. The officer shall complete a written report detailing the circumstances under which the person was taken into protective custody, and the report shall be made part of the clinical record. This is a non court involved procedure.

3) A physician, clinical psychologist, psychiatric nurse , or clinical social worker, may execute a certificate stating that he or she has examined the person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including the observation upon which the conclusion is based. Law enforcement shall take the person into custody and deliver the person to the nearest receiving facility, providing a written report of the circumstances under which the person was taken into custody.

This is also a non court involved procedure.

**Ex Parte Order/Baker Act**

- Based on sworn testimony (written or oral)
- Filed with the Clerk of the Court
- Time limited for execution of order
- Law enforcement officer executes order at any time on any day
- Transports person to nearest receiving facility

The statutes states that an Ex Parte order shall be valid only until executed or, if not executed , for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for seven days after the date the order was signed. This means that if a person is taken to a receiving facility, examined, and released, the person cannot be picked up on the original court order again within the seven day period after the order was signed by a judge.

A judge can designate a longer or shorter period in which law enforcement can search for the person to be taken into custody.

Under the Baker Act, the person is taken to the nearest Baker Act receiving facility for assessment.

**Law Enforcement Initiation Protective Custody**
(i.e., Report of Law Enforcement Officer Initiating Involuntary Examination)

- Person refuses voluntary examination
- Person must appear to meet the criteria for involuntary examination
- Based on observations, witnesses, and/or person's report
- Transportation to nearest receiving facility (only in non-felony situations)

A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into protective custody. Evidence of the likelihood of harm to self or others is defined solely by the person's recent behavior. This evidence can be based on circumstances under which the person was taken into protective custody, including observations of the law enforcement officer, other witnesses, and statements by the person in question. The person is taken to the nearest designated Baker Act receiving facility.

**Certificate of Professional Initiating Involuntary Examination**

The following professionals are qualified to execute a certificate:

- Physician
- Clinical Psychologist
- Psychiatric Nurse
- Clinical Social Worker

Under the Baker Act, a "qualified professional" is defined as a **physician**, **a clinical psychologist**, **psychiatric nurse**, or **clinical social worker**. A qualified professional may execute a certificate stating that they have examined the person in question within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which the conclusions are based.

A Physician is defined as a medical practitioner licensed under Chapter 458 or 459 F.S. who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the Department of Veteran's Affairs which qualifies as a receiving or treatment facility.

A C**linical Psychologist** refers to psychologist a defined in s. 490.003(3) with 3 years of post doctoral experience in the practice of clinical psychology, or a psychologist employed by the Department of Veteran Affairs that qualifies as a receiving or treatment facility.

A **Psychiatric Nurse** refers to a registered nurse licensed under Chapter 464 who has a master's degree or a doctorate in psychiatric nursing and two years of post-master's clinical experience under the supervision of a physician.

A **Clinical Social Worker** is a person licensed as a clinical social worker under Chapter 491.

**Discharge or Release of Persons**

( Involuntary Examination)

- A person shall be released, unless charges are pending or he/she is court ordered to return to jail
- A person shall be asked to give express and informed consent to voluntary placement **OR** petition for involuntary placement shall be filed

Under the Baker Act, the person shall not be released by the receiving facility without the documented approval of a psychiatrist or clinical psychologist. However, **a person may not be held in a receiving facility for involuntary examination longer than 72 hours.**

Within the 72 hour period, one of the following must happen:

1. The person shall be released, unless there is an order from the court for the person to return to jail;

2.• The person shall be asked to provide express and informed consent to placement as a voluntary patient, and if consent is given, admitted as a voluntary patient;

OR

3. A petition for involuntary placement shall be filed by the facility administrator when criteria for involuntary placement is met.

This must be done within the 72 hour period, or if the 72 hours end on a weekend or holiday, no later than the end of the next working day.

**Notice or Discharge or Release**
(Involuntary Examination Baker Act)

Notice of release shall be given to:

- Guardian or representative
- Any person who executed a certificate admitting the person to the receiving facility, and
- Any court which ordered the person's evaluation

Generally, there are questions as to who needs to be contacted if the person is being released. Under the Baker Act, when a person is discharged after being brought to a facility for an involuntary examination, notice of the release shall be given to the person's representative, whoever executed the certificate admitting the person to the facility, and to any court which ordered the person's evaluation.

# THE BAKER ACT

Chapter 5: Involuntary Placement Under the Baker Act

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## INVOLUNTARY PLACEMENT UNDER THE BAKER ACT

In this section you will learn the criteria for involuntary placement and how involuntary placement is initiated. You will examine the process from the point of initiating the process to discharge or change of status.

**Learning Objectives for Section 5**

1. You will learn the criteria for involuntary placement under the Baker Act.
2. You will learn the limits of the order for involuntary placement under the Baker Act.
3. You will learn the criteria for discharge for persons involuntarily placed for treatment under the Baker Act.

**What do you already know?**

1. Involuntary placement under the Baker Act is a court involved procedure.

True
False

2. When a person no longer meets the criteria for involuntary placement, they can be transferred to voluntary status, returned to jail (if ordered by the court), or discharged.

True
False

3. During an involuntary placement hearing, the state attorney represents the facility and the facility administrator.

True
False

**Involuntary Placement Criteria**

- Person is mentally ill
- Person refused voluntary placement or is unable to determine if placement is necessary, and
- Person is incapable of surviving alone or with help of family, friends, or
- There is likelihood person will inflict serious harm to self or others, as evidenced by recent behavior
- All available less restrictive alternatives are inappropriate

Under the Baker Act, a person may be involuntarily placed for treatment upon a finding of the court by clear and convincing evidence that he or she is mentally ill and because of their mental illness, the person is unable to the determine whether or not

placement for further treatment is necessary, are unable to care for themselves even with supports form, family, friends, etc., or the person is likely to hurt themselves or others.

If that is the case, and all available less restrictive treatment alternatives which would provide an opportunity for improvement is judged to be inappropriate, then the facility administrator can petition the court for involuntary placement (court involved procedure).

# THE BAKER ACT

Chapter 6: The Role of Law Enforcement

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## THE ROLE OF LAW ENFORCEMENT

In this section, you will learn the duties and responsibilities of law enforcement under the Baker Act.

**Learning Objectives for Section 6**

1. You will learn three main duties of law enforcement under the Baker Act.
2. You will learn the transportation duties of law enforcement under the Baker Act
3. You will examine law enforcement's responsibilities for elopements under the Baker Act.
4. You will learn how law enforcement manages situations involving persons taken into protective custody for an involuntary examination who have committed a crime.

**What do you already know?**

1.• Law enforcement has the authority to initiate _____.

a. involuntary examinations
b. habeus corpus
c. voluntary examinations
d. treatment

2.• Law enforcement also has the responsibility to transport persons meeting criteria for involuntary examination to the nearest _____.

a. police station
b. receiving facility
c. Salvation Army facility
d. medical treatment facility

3.• When an officer has custody of a person that meets criteria for involuntary examination and who has also _____, that person shall be taken to jail.

a. committed a felony
b. refused a voluntary examination
c. committed a misdemeanor OR a felony
d. verbally threatened physical violence

4.• An officer can bring a weapon into a facility only after authorization from _____

_____ due to a dangerous situation.

a. any facility staff member
b. the highest ranking medical staff member
c. his superior
d. the facility administrator

**The Role of Law Enforcement:**

- Protection of the public
- Protection of the individual
- Caretaker of last resort

Law enforcement officers often serve as the front line for mental health problems that occur in the community, as these problems are often individual as well as public safety issues.

Law enforcement has been granted certain authority and responsibilities under the Baker Act. These include the authority to initiate involuntary examination of people when they meet certain criteria or are unwilling or unable to consent to an examination themselves. Law enforcement also has the responsibility to transport persons to the nearest receiving facility for involuntary examinations, whether the examinations were initiated by the courts, professionals, or law enforcement. Generally, when there is a situation involving a person in crisis due to symptoms of a mental illness, law enforcement is considered to be the caretaker of last resort.

Law Enforcement Transportation of Persons for Involuntary Examination:

- Law enforcement bears **no responsibility for voluntary admissions**
- Transports persons to the nearest designated receiving facility for examination
- Nearest receiving facility must accept persons brought by law enforcement for involuntary examination

If a person wishes to be admitted to a receiving facility on a voluntary basis, law enforcement is not obligated to transport the person to the receiving facility for evaluation. However, there is nothing to prohibit transporting persons who voluntarily wish to undergo an examination, as long as the officer is willing and their department allows for such discretion.

A law enforcement officer may decline to transport a person to a receiving facility for involuntary examination only if the county has contracted for transportation and the officer and medical transport service agree that the officer's presence for safety purposes is not expected to be necessary.

The officer can also request assistance from emergency medical personnel if the officer believes there may be an emergency medical condition and the person needs to be transported to a hospital for medical treatment, even if the hospital is not a designated receiving facility.

If the officer delivers the person to a hospital for emergency medical treatment, the officer's responsibility to transport the person is over and transport to the receiving facility is now the responsibility of the hospital, unless other appropriate arrangements have been made.

Transporting Persons with Criminal Charges:

- Persons committing a misdemeanor may be taken to the nearest receiving facility
- Persons committing a felony shall be processed the same as any criminal suspect and transported to jail
- If it is beyond the safe management capabilities of of the facility, person shall be examined in jail

When an officer has custody of a person that does not involve a felony and meets the criteria for involuntary examination, the person shall be taken to the nearest receiving facility for examination. If the person has committed a felony and meets the criteria for involuntary examination, the person shall be taken to jail. If there are safety concerns or the facility is unable to provide adequate security, the examination shall take place where the person is being held.

Note: If an officer has to enter a receiving or treatment facility, the officer cannot bring weapons into the facility, unless authorized by the facility administrator due to a dangerous situation.

Law Enforcement Responsibility for Elopements or Escapes:

- Voluntary persons who meet the criteria for Involuntary Placement
- Persons who elope while on Involuntary Examination status who meet the criteria for Involuntary Placement
- Petition for Involuntary Placement has been filed with the court
- Person under court order for Involuntary Placement

If a person elopes who is on voluntary status and does not meet the criteria for involuntary placement, law enforcement will not be notified. However, if the person is on voluntary status and appears to meet the criteria for involuntary placement, a certificate for petition for involuntary placement shall be initiated and law enforcement will be requested to take the person into protective custody and transported to the nearest receiving facility.

If a person elopes while on involuntary examination status prior to the petition for involuntary placement has been filed, law enforcement shall be notified and requested to take custody of the person and transported to the nearest receiving facility.

If the petition has already been filed with the court, law enforcement shall take custody of the person and transport the person back to the facility which filed the petition. Finally, if any person court ordered for treatment leaves without authorization, the administrator may authorize a search for the person to return them to the facility.

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## OTHER ISSUES: COBRA, SPECIAL PROTECTION FOR VOLUNTARY ELDERS, SECLUSION AND RESTRAINT

In this section you will learn about the role of COBRA in the delivery of services, special protections for voluntary elders under the Baker Act, and seclusion and restraint issues under the Baker Act.

Learning Objectives for Section 7

1. You will learn about the role of COBRA in the delivery of emergency services.

2. You will examine the special protections for voluntary Elders under the Baker Act.

3. You will learn the parameters of the application of Seclusion and Restraint under the Baker Act.

# THE BAKER ACT

Chapter 7: Other Issues: COBRA, Special Protection for Voluntary Elders, Seclusion and Restraint

Please read this page then continue using the NEXT button above..

## ISSUES RELATED TO COBRA/CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT:

- Emergency Medical Treatment and Active Labor Act (EMTALA/Anti-Dumping Statute)
- Provides guidelines for emergency treatment and transfers of patients
- Focuses on hospitals

**COBRA Consolidated Omnibus Budget Reconciliation Act:**
**Emergency Medical Treatment and Active Labor Act (EMTALA/Anti-Dumping Statute)**

Originally enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, the Anti-Dumping Statute (Emergency Medical Treatment and Active Labor Act), imposes emergency care guidelines on hospitals that participate in the Medicare or Medicaid program. Hospitals that operate emergency department must provide appropriate medical screenings to any individual who comes seeking emergency treatment. If the examination reveals an emergency medical condition, the hospital must provide for further examination and stabilization or arrange a transfer of the patient to another facility if appropriate.

**COBRA Consolidated Omnibus Budget Reconciliation Act:**
**Guidelines for emergency treatment and transfers of patients**

If the emergency department receives persons from law enforcement for any reason, including Baker Act, the emergency department must comply with the guidelines provided in COBRA and Baker Acts.

If the facility does not have the capacity to treat the psychiatric condition of the person, the hospital is responsible for arranging an appropriate transfer of the person to a facility having the capacity to provide proper evaluation, stabilization, and treatment, such as a designated receiving facility for persons who have an involuntary examination initiated under the Baker Acts (with prior approval from the facility which patient is being transferred to).

**COBRA Consolidated Omnibus Budget Reconciliation Act:**
**Focus on hospitals**

When persons are brought to an emergency room hospital setting for medical clearance, it is basically referring to the hospital's initial triage process that addresses the highest priority emergency medical condition (acute or volatile life-threatening situations).

This process also attempts to rule out non-psychiatric causes for symptoms that mimic symptoms of psychiatric illnesses. Since Crisis Stabilization Units and Addictions Receiving Facilities are prohibited from admitting persons they cannot provide appropriate medical care, the role of hospital emergency services in the landscape of services is vital indeed.

**Other Considerations: Special Protection for Voluntary Elders**
The Baker Act specifically states that the following persons cannot be sent on a voluntary basis to a receiving facility until an initial assessment of the person's ability to provide express and informed consent is conducted at the sending facility by an authorized independent professional:

1. Persons 60 years of age or older for whom an emergency transfer is being sought from a nursing home.
2. Persons 60 years of age or older with a diagnosis of dementia for whom a transfer is being sought from nursing home, Assisted Living Facility, Adult day care center, or an Adult family care home.
3. A person for whom all decisions concerning medical treatment are currently being lawfully made by a designated health care surrogate or proxy.

The assessment should be done within 2 hours after the request is made. If it cannot be done within the 2 hours, the requesting facility may arrange for an assessment by a licensed professional authorized to initiate an involuntary examination who is not employed by, under contract or have a financial interest with the facility.

If the assessment determines that the person does have the capacity to consent to treatment, the person may be transported to the facility of their choice. If the person is determined not to have the capacity to consent to treatment, an involuntary examination must be initiated if transported on an involuntary basis by law enforcement or a contracted emergency medical transport service, and the person must be taken to the nearest receiving facility. The nursing home is responsible for the notification of the person's legal guardian or representative by phone or in person before the transfer, or as soon as possible thereafter.

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## SECLUSION AND RESTRAINTS

(s. 394.459(4), F.S. Chapter 65E-5.180, F.A.C.)

- Brief isolation attempted prior to order for seclusion or restraints
- Requires written order by physician
- Person shall be informed of behavior that required seclusion or use of restraints
- Person shall be informed of conditions for their exit from seclusion or release from restraints

The use of seclusion or restraints should only be initiated when the safety of the individual, the safety of others, or the safety of the treatment environment becomes an issue. The Baker Act requires facilities that utilize seclusion or restraints to have a policy which clearly states the criteria and procedures for the use of seclusion or restraints. A facility may not use seclusion or restraint for punishment, to compensate for inadequate staffing levels, or for the convenience of staff.

Prior to the use of seclusion or restraints, other less restrictive types of interventions should be utilized, such as verbal de-escalation interventions or the use of physical management techniques based on a team approach.

The Baker Act requires all staff with patient contact to be trained in these interventions and procedures. Use of brief isolation

should be attempted if appropriate prior to the use of seclusion or restraints. The person shall be informed of the behavior exhibited that required the use of seclusion or restraints. Each episode involving the use of seclusion or restraints requires the order of a physician.

A physician may provide verbal orders for the use of seclusion, but must sign the order within 24 hours. If seclusion or restraints is initiated by someone other than a registered nurse practitioner or registered nurse, an RN or ARNP shall assess the need for seclusion and document within 15 minutes of initiation.

Orders for seclusion or restraints may only be ordered for periods of up to 1 hour for minors under nine years of age, 2 hours for minors over nine but under 18, and up to 4 hours for adults. The order for the use of restraints shall include the specific behavior of the person which required the use of restraints, the time limit, any physical or medical safety concerns, and the behavioral criteria for release.

# THE MARCHMAN ACT

Chapter 1: General History of the Marchman Act, Patient Rights, and Confidentiality

Please read this page then continue using the NEXT button above..

## THE ALCOHOL AND DRUG SERVICES ACT

(Parts I through V, Chapter 397 F.S.)

**Practice guidelines and introduction to the Marchman Act**

Welcome to the portion of the module which introduces and reviews practice guidelines for the Marchman Act. We hope this training will provide you with a better understanding of the purpose, intent, and procedures involved with the application of the Marchman Act.

**General History of the Marchman Act, Patient Rights, and Confidentiality**

In this section, you will learn who the Marchman Act was named for and the intent of the legislation. You will also learn the patient rights as well as the limits to confidentiality under the Marchman Act.

**Learning Objectives for Section 1**

1. You will learn who the Marchman Act was named for, the intent of the legislation, and what the legislation accomplished.
2. You will learn the Patient Rights under the Marchman Act.
3. You will learn the limits to confidentiality under the Marchman Act

**What do you already know?**

1.• The Marchman Act pertains to the treatment of _____.

a. organic brain syndrome
b. pedophilia
c. prisioners with a mental illness
d. substance abuse

2.• The Marchman Act covers _____ , involuntary assessment, stabilization and treatment for persons severely impaired due to substance abuse.

a. medical emergencies
b. the arrest
c. housing
d. voluntary admission

3.• The Marchman Act formalized _____ for persons receiving substances abuse services.

a. medical procedures

b. the arrest procedure

c. patient rights

d. disability status

4.• Under the Marchman Act, information in client records may be released to medical personnel _____.

a. in a medical emergency

b. of public hospitals only

c. only for intrusive procedures

d. only with voluntary admissions

**Marchman Act Alcohol and Drug Services Act**

(Part V Chapter 397 F.S.)

- Formalized patient rights for persons receiving substance abuse services
- Voluntary admission, involuntary assessment, stabilization and treatment for persons severely impaired due to substance abuse
- Established framework for the comprehensive provision of substance abuse services in a coordinated system

There have been various pieces of legislation addressing the treatment of substance abuse in Florida. However, Rev. Hal. S. Marchman, a tireless advocate for persons who suffer from alcoholism and drug abuse, was recognized by the legislature for his contributions addressing the delivery of substance abuse services in the state by naming Florida's addiction statutes the Hal S. Marchman Alcohol and Other Drug Abuse Services Act of 1993.

The Marchman Act replaced the Myers Act and consolidated statutes governing the delivery of alcohol and substance abuse services. Rev. Marchman served on the Governor's Task Force on Narcotics, Dangerous Drugs, and Alcohol for Region 4. He helped establish the Leon F. Stewart Center in 1970, which was later renamed the Stewart-Marchman Center for Chemical Dependency.

When passed in 1993, the Marchman Act formalized patient rights for persons receiving substance abuse services as well establishing a framework for the comprehensive provision of substance abuse services in a coordinated system in the state. The Marchman Act also covers voluntary admission, involuntary assessment, stabilization and treatment for persons severely impaired due to substance abuse.

**Patient Rights/Marchman Act** (s. 397.501 Part III, F.S.)

Clients receiving substance abuse services from any service provider are guaranteed protection of the rights specified in the statutes:

- Individual dignity
- Nondiscriminatory services
- Quality services
- Right to communication

- Care and custody of personal effects
- Education of minors
- Confidentiality of clinical records
- Right to counsel
- Right to Habeas Corpus
- Liability and immunity

Clients receiving substance abuse services from any service provider are guaranteed protection of the rights specified in the statutes, and service providers are obligated to ensure the protection of such rights.

1.• **Right to Individual Dignity**: The individual dignity of the client must be respected at all times and upon all occasions, including admission, being retained, or transported. Substance abuse clients who are not accused of a crime or delinquent act may not be detained or incarcerated in jails, detention centers, or training schools of the state, except for the purposes of protective custody in strict accordance with this chapter. A client may not be deprived of any constitutional right.

2.• **Right to Nondiscriminatory Services**: Service providers may not deny a client access to substance abuse services solely on the basis of race, gender, ethnicity, age, sexual preference, HIVstatus, prior service departures against medical advice, disability, or number of relapse episodes. Service providers may not deny a client who takes medication prescribed by a physician access to substance abuse services solely on that basis. Service providers receiving state funds to provide substance abuse services may not, provided that space and sufficient state resources are available, deny a client access to services based solely on inability to pay.

3. **Right to Quality Services**: Each client must be delivered services suited to his or her needs, administered skillfully, safely, humanely, with full respect for his or her dignity and personal integrity, and in accordance with all statutory and regulatory requirements

4.• **Right to Communication**: Each client has the right to communicate freely and privately with other persons within the limitations imposed by the service provider policy. It is the duty of the service provider to inform the client and his or her family if the family is involved at the time of admission about the provider's rules relating to communications and correspondence.

5. **Right to Care and Custody of Personal Effects**: A client has the right to possess clothing and other personal effects. The service provider may take temporary custody of the client's personal effects only when required for medical or safety reasons, with the reason for taking custody of items and an inventory of the items placed in the clinical record.

6.• **Education of Minors**: Each minor client in a residential service component is guaranteed education and training appropriate to his or her needs. The service provider shall ensure that the education and training is provided to each minor client in accordance with other applicable laws and regulations, including parental responsibilities associated with such training.

7. **Right to Confidentiality of Client Records**: The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual client are confidential in accordance with this chapter and with the code of federal regulations.

8. **Right to Counsel**: Each client must be informed that he or she has the right to to represented by counsel in any involuntary proceeding for assessment, stabilization, or treatment and that he or she, or if the client is a minor his or her parent, legal

guardian, or legal custodian, may apply immediately to the court to have an attorney appointed if he or she cannot afford one.

9. **Habeas Corpus**: At any time, and without notice, a client involuntarily retained by a provider, or the client's parent, guardian, custodian, or attorney on behalf of the client, may petition for a writ of habeas corpus to question the cause and legality of such retention and request that the court issue a writ for the client's release.

10.• **Liability and Immunity**: Service provider personnel who violate or abuse any right or privilege of a client under this chapter are liable for damages as determined by law.

**Limits to Confidentiality of Client Records**
(s.397.501(7) Part III, F.S.)

Exceptions where disclosure of information in client records may be released without consent:

- Medical Emergencies
- Service provider personnel
- Audits and research
- Court orders
- Client commission of a crime at a facility

Under the Marchman Act, client records may not be disclosed without the written consent of the client. However, there are exceptions when disclosure of information in client records may be released without consent:

- To medical personnel in a medical emergency.
- To facility personnel, to carry out duties relating to the provision of services to a client.
- For purposes of scientific research with a written agreement that patient names and other identifying information remain confidential.

Exceptions to confidentiality continued:

- In the course of review of facility records for audit or evaluation purposes
- Upon a court order based on application showing good cause for disclosure (whether the public interest and need for disclosure outweigh the potential injury to the client).
- If there is information directly related to a client during the commission of a crime at a treatment facility, that information may be released to law enforcement for investigative purposes by order of the court (please read statute for restrictions and exemptions on information obtained).

Along with the guidelines for confidentiality outlined in the Marchman Act, there are also federal laws and guidelines for maintaining confidentiality of persons in substance abuse treatment facilities (refer to Federal form 42 CFR). In situations involving federal laws and guidelines versus state laws and guidelines, the more stringent and restrictive laws and guidelines take precedent.

# THE MARCHMAN ACT

## Chapter 2: Voluntary Admission Procedures Under the Marchman Act

Please read this page then continue using the NEXT button above..

## VOLUNTARY ADMISSION PROCEDURES UNDER THE MARCHMAN ACT

Voluntary Admission Procedures under the Marchman Act: This section looks at the criteria for voluntary admission and the status of minors under the Marchman Act. You will also learn the definition of substance abuse impaired.

**Learning Objectives for Section 2**

1. You will learn the criteria for voluntary admission under the Marchman Act.
2. You will learn the definition of substance abuse impaired.
3. You will learn the status of minors under the Marchman Act.

**What do you already know?**

1.• Any person may voluntarily apply to a licensed service provider for substance abuse treatment.

True
False

2.• A person under 18 years of age does not need the consent of a guardian to apply for voluntary admission under the

Marchman Act.

True
False

3.• Substance abuse impairment involves the use of alcoholic beverages and illegal street drugs only.

True
False

**Voluntary Admission Marchman Act**
(s.397.601 F.S)

- Any person may voluntarily apply for substance abuse treatment
- Within financial and space capabilities of service provider
- Disability of age removed for persons under 18

Under the Marchman Act, any person may apply to a licensed service provider for voluntary substance abuse treatment.

Admission is based on the financial and space capabilities of the service provider, sufficient evidence that the person is substance abuse impaired, and that the person is not beyond the safe management capabilities of the service provider. The service provider must utilize the least restrictive setting appropriate for the person's treatment needs.

Generally, a person under 18 does not have the legal capacity to consent to treatment. However, the disability of minority for persons under 18 years of age is removed under the Marchman Act solely for obtaining voluntary substance abuse impairment

services from a licensed service provider. The minor's consent has the same force and effect of that of a person who has reached the age of majority.

**Substance Abuse Impaired defined:**

A condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior. This includes not only illegal street drugs, but any psychoactive or mood altering substance.

# THE MARCHMAN ACT

Chapter 3: Involuntary Admission Under the Marchman Act

Please read this page then continue using the NEXT button above..

## INVOLUNTARY ADMISSION UNDER THE MARCHMAN ACT

In this section, you will learn the criteria for involuntary admissions and the definition of a qualified professional under the Marchman Act. In addition, you will learn the criteria and procedures for protective custody, physician's certificate for emergency admission, and a petition for involuntary assessment and stabilization under the Marchman Act.

**Learning Objectives for Section 3**

1. You will learn the criteria for involuntary admission under the Marchman Act.
2. You will learn the criteria, procedures, and disposition alternatives for protective custody under the Marchman Act.
3. You will learn the definition of a qualified professional under the Marchman Act.
4. You will learn the criteria for a Physician's Certificate for Emergency Admission under the Marchman Act.
5. You will learn the criteria for a Petition for Involuntary Assessment and Stabilization under the Marchman Act

**What do you already know?**

1.• Law enforcement may implement _____ measures when a person appears to meet involuntary admission criteria.

a. Ex Parte

b. least restrictive

c. protective custody

d. incarceration

2.• A court order based on sworn testimony for Marchman Act involuntary assessment and stabilization is also known as _____.

a. an Ex Parte order

b. a least restrictive order

c. a protective custody order

d. an arrest warrant

3.• A physician's certificate must recommend the _____ type of service appropriate for the person's emergency admission.

a. most secure

b. least restrictive

c. least costly

d. most available

4.• A person taken into protective custody under the Marchman Act can only be released by a _____.

a. case manager

b. facility administrator

c. law enforcement officer

d. qualified professional

**Involuntary Admission Criteria**

(s.397.675 F.S.)

the criteria for involuntary admissions is based on whether there is a good faith reason to believe the person is substance abuse impaired, and because of such impairment:

- has lost the power of self-control with respect to substance abuse **AND**
- presents a danger to themselves or others, **OR**
- judgement is so impaired that person is incapable of appreciating the need for care

Under the Marchman Act, types of involuntary admissions include protective custody, emergency admission, other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and stabilization, and for involuntary treatment.

The criteria for involuntary admissions is based on whether there is a good faith reason to believe the person:

- is substance abuse impaired, and because of such impairment the person has lost the power of self-control with respect to substance use and presents a danger to self or others

**or**

- is in need of services, and because of such impairment is incapable of appreciating the need for such services or making a rational decision in regard to treatment.

However, refusing to receive such services does not constitute evidence of a lack of judgement with respect to determining the need for services.

**Law Enforcement Protective Custody/Marchman Act**
(s.397.677 F.S.)

There are three situations where a law enforcement officer may take a person into protective custody if that person appears to meet the criteria for involuntary admission:

1.• **Protective custody with circumstances justifying:** This involves a minor or an adult who appears to meet the involuntary admission criteria and is brought to the attention of law enforcement either by other people or because the person is in a public place. “Circumstances justifying” refers to behaviors brought to the attention of law enforcement or observations made in a public place by law enforcement.

2.• **Protective custody with consent** involves a person in circumstances which justify protective custody and consents to assistance from law enforcement to their home, hospital, or licensed detoxification or addictions receiving facility, whichever the officer determines to be most appropriate.

3.• **Protective custody without consent** is when a person is in circumstances which justify protective custody fails to or

refuses to consent to assistance and a law enforcement officer determines that a hospital or a licensed detoxification or addictions receiving facility is more appropriate. A law enforcement officer may also detain an adult for their own protection in a municipal or county jail,or other appropriate detention facility. Such detention is not considered to be an arrest.

The officer in charge of the detention must notify the nearest appropriate licensed service provider within the first 8 hours after detention. Persons taken into protective custody must be assessed within the 72 hour period by the attending physician.

It is also the duty of the detention facility to arrange, as necessary, for transportation to a licensed service provider with space available. The nearest relative of a minor in protective custody must be notified by law enforcement, as must the nearest relative of an adult, unless the adult requests that there be no notification.

**Disposition Alternatives/Protective Custody**

A person who is in protective custody must be released by a **qualified professional** when:

- the client no longer meets involuntary admission criteria
- the 72 hour period has elapsed, **OR**
- the client consents to voluntary treatment

A person may only be retained in protective custody beyond the 72 hour period when a petition for involuntary assessment or treatment has been initiated. The person will be detained pending further order of the court.

**Qualified Professionals under the Marchman Act**
s397.311(25) F.S.

The following are defined as qualified professionals under the Marchman Act:

- A physician licensed under chapter 458 (medical practitioner) and 459 (osteopathic physician)
- A psychologist licensed under chapter 490
- Clinical Social Worker (chapter 491.003)
- Marriage and Family Therapist (chapter 491.003)
- Mental Health Counselor (491.003)
- Certified Addictions Professional (s397.311[25])

It also includes persons certified through a department-recognized certification process for substance abuse treatment services and who holds at a minimum, a bachelor's degree.

A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed service provider in this state (Florida) may perform the functions of a qualified professional, but must meet certification requirements no later than 1 year after their date of employment.

(**NOTE:** A qualified professional can authorize the admission and discharge of persons meeting criteria for an emergency admission.)

**Physician's Certificate Emergency Admissions**
(s.397.6793 F.S.)

- The physician must believe person meets involuntary admission criteria

- The person has been examined and assessed within the past five days
- The certificate must indicate the need for transportation assistance

A person who meets the criteria for involuntary admission may be admitted to a hospital or to a licensed detoxification facility or addictions receiving facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only.

**Note:** Emergency admissions must be based upon an application filed by an eligible person and an physician's certificate.

The physician must indicate that the person has been examined and assessed within 5 days of the application date and include factual allegations with respect to the need for emergency admission.

The certificate must also recommend the least restrictive type of service appropriate for the person. If transportation is needed, the certificate must indicate the need for assistance.

Emergency admissions must be based upon an application filed by an **eligible person and a physician's certificate**.

Within 72 hours after admission to a residential type facility (hospital, detoxification center, or addictions receiving facility) or 5 days after admission to a non-residential program, person must be released, retained on voluntary status, or a petition for involuntary assessment or treatment filed with the court.

The following are persons eligible to file an application for an emergency admission.

- The certifying physician
- Spouse or guardian

- Any relative, or
- Any adult having personal knowledge of person's impairment
- For minors: parent legal guardian, or legal custodian

**Petition for Involuntary Assessment and Stabilization (ex Parte)**
(s.397.681 F.S. )

- Petitioner's belief that the person in question is substance abuse impaired; **and**
- Petitioner's belief that because of such impairment respondent has lost the power of self-control with respect to substance abuse; **and either**
- Petitioner believes the respondent has or is likely to harm self or others unless admitted; **or**
- Petitioner believes respondent's judgement is so impaired from substance abuse that they are incapable of appreciating the need for care

A petition for involuntary assessment and stabilization (ex Parte order) must contain the name of the person, name of the applicants, the relationship between the applicant and the person, the person's attorney (if known), and if they do not have an attorney, whether or not the person can afford one. A statement must be made supporting the need for involuntary assessment and stabilization, including:

1.• Reason for the petitioner's belief that the person is substance abuse impaired; **and**

2.• Reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; **and either**

3a.• The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm to themselves or others unless admitted; or

3b. Reason the petitioner believes the respondent's refusal to voluntarily receive care is based on judgement so impaired by reason of substance abuse that the respondent is incapable of appreciating the need for care and of making a rational decision regarding the need for care. If the respondent has refused to submit to a voluntary assessment, such refusal must be alleged in the petition.

A person can be ordered by the court to be admitted to an authorized facility for up to 5 days.

# THE MARCHMAN ACT

Chapter 4: Involuntary Treatment Under the Marchman Act

Please read this page then continue using the NEXT button above..

## INVOLUNTARY TREATMENT UNDER THE MARCHMAN ACT

You will learn the criteria for admission and discharge procedures for Involuntary Treatment

**Learning Objectives for Section 4**

1. You will learn the criteria for Involuntary Treatment under the Marchman Act.
2. You will learn the procedures for Involuntary Treatment under the Marchman Act.
3. You will learn the disposition alternatives for persons admitted for Involuntary Treatment under the Marchman Act.
4. You will learn the requirements of notification for minors for emergency admissions and involuntary placement under the Marchman Act.

**What do you already know?**

1.• Under the Marchman Act, a court may order treatment not to exceed seventy-five days.

True
False

2.• The court which issued the order for treatment under the Marchman Act also dictates the course of treatment.

True
False

3.• Whenever a person admitted for involuntary treatment is released, the facility must notify all persons specified by the original court order.

True
False

**Involuntary Treatment Criteria Marchman Act**
(s.397.693 F.S.)

- Protective custody within previous ten days
- Emergency admission within the previous ten days
- Assessed by a qualified professional within the five days
- Subject to involuntary assessment and stabilization within the previous twelve days, **or**
- Has been subject to alternative involuntary admission within previous twelve days

A person who is the subject of a petition for court-ordered involuntary treatment must meet certain criteria. Along with meeting criteria for involuntary admission, additional criteria are:

- The person has been placed in protective custody within the previous ten days;
- The person has been subject to an emergency admission within the previous ten days
- The person has been assessed by a qualified professional within five days;
- The person has been subject to involuntary assessment and stabilization within the previous twelve days; **or**
- The person has been subject to alternative involuntary admission within the previous twelve days.

Involuntary Treatment Procedures Marchman Act

- Court may order treatment not to exceed sixty days
- Court retains jurisdiction over the case
- Requirements for notification of release must be included in the original treatment order
- Service provider authorized to determine the most beneficial course of treatment

When a court finds that the conditions for involuntary substance abuse treatment have been met by clear and convincing evidence, it may order the person to undergo involuntary treatment by a licensed service provider for a period not to exceed sixty days. The court may direct the sheriff to take the person into custody and deliver them to the facility specified in the court order.

When the conditions justifying involuntary treatment no longer exist, the person must be released. If the conditions justifying treatment are expected to exist after sixty days, a renewal of the involuntary treatment order may be requested before the end of the sixty day period.

In all cases resulting in an order for involuntary treatment, the court shall retain jurisdiction over the case. The courts requirements for notification of release must be included in the original treatment order.

An involuntary treatment order authorizes the service provider to determine the most appropriate course of treatment.

**Disposition Alternatives Involuntary Treatment Marchman Act**

At any time before the end of the sixty day period for court ordered treatment, or prior to the end of any extension, a person may be determined eligible for discharge to the most appropriate referral or disposition when:

a. The person no longer meets criteria for involuntary admission and consents to voluntary status;

b. Reason for admittance no longer exists; **or**

c. If the person was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by an inability to make a determination regarding such need, either:

1. Such inability no longer exists; or
2. It is evident that further treatment will not bring about further significant improvements in the person's condition;

d. The person is no longer in need of services; or

e. The director of the facility determines that the person is beyond the safe management capabilities of the service provider.

Whenever a qualified professional determines that a person admitted for involuntary treatment is ready for early release for any of the reasons listed, the facility shall immediately release the person, and must notify all persons specified by the original court order.

**Discharge or Release of Minors**

Notice of release must be provided to the applicant in the case of an emergency admission or an alternative involuntary assessment for a minor, or to the petitioner and the court if the involuntary assessment or treatment was court ordered. In the case of a minor, the release must be given to:

- The minor's parent, legal guardian, or legal custodian,
- The Department of Children and Family Services, OR
- The Department of Juvenile Justice