



Marchman Act



The Marchman Act was passed and implemented in 1993 as Florida's Substance Abuse Impairment Act. It may be appropriate for individuals when voluntary or other methods are not successful. The judge must accept that the impaired person has lost the power of self-control with respect to substance use; and either has inflicted, threatened or attempted to inflict, physical harm on himself or another; and is *incapable* of making a rational decision to seek help for themselves (does not include refusal to receive services).

The summary of the steps families might expect include:

1. 1 family member or 3 non-family members file a petition in the county where the respondent resides.
2. The hearing is scheduled within 10 days or the court orders an ex-parte order to have the sheriff take him/her into custody and deliver the respondent directly to a licensed provider.
3. The respondent receives notice and copies of the petition to appear at the hearing and is given counsel if they are not able to afford it.
4. A civil hearing is held to hear the evidence and testimony of the petitioner, respondent and witnesses.
5. The judge determines whether to dismiss the case or order involuntary assessment & stabilization for up to 5 days. Although the judge may feel the statutes 397.675 have not been met, she may still encourage the respondent to seek voluntary treatment.
6. If the detox facility has determined a need for treatment, the respondent may voluntarily attend treatment, or the petitioner(s) may seek a court order for involuntary treatment for up to 60 days, which require a similar court hearing process as above.
7. When the facility has determined that the respondent is clear for release, the process is complete.

Implications for Counselors

Understanding that substance abuse affects families in various ways, the Marchman Act is usually that last ditch effort to getting their loved one help. While it has been abused by battling spouses or angry family members, the courts intervene to ensure the respondent meets the criteria in F.S. 397.675.

Concerns of the respondent

- Denial of the substance abuse problem
- Shattered family relationships
- Cost of obtaining counsel if they choose to not use a court-appointed counsel
- Feelings of anger, betrayal & loss

Concerns of the family

- Determining who should be involved in the intervention/court-hearing
- Realization that the respondent will receive copies of *all* paperwork submitted
- Need to document dates, times and behaviors for evidence in court
- Second-guessing decision if the process does not go as planned
- Parental guilt & blame for taking what they feel is their final option
- Decision whether to sever ties with the respondent
- Potential split in other family relationships from taking sides & differing opinions
- Need to understand enabling versus supportive behavior

Alternatives to the Marchman Act

In working with family members that feel they need to get help for their loved one, exploring options outside of the courts can be helpful. Exhausting alternative methods (i.e., seeking professional help from a trained addictions counselor, orchestrating a family intervention) will not only offer the opportunity for voluntary treatment at an earlier stage, but it can also provide useful evidence in court in the event that the Marchman Act is pursued.

Helpful Resources

- Florida Statutes (www.leg.state.fl.us/Statutes)
- www.intervention.com
- www.drugfree.org
- www.hubplace.com/addictions

Highlights from the 2007 Florida Statutes (<http://www.leg.state.fl.us/Statutes/>) include:

- 397.675** • A person meets the criteria for involuntary admission if there is good faith reason to believe the person is substance abuse impaired and, because of such impairment:
 - (1) Has lost the power of self-control with respect to substance use; and either
 - (2)(a) Has inflicted, threatened or attempted to inflict, physical harm on himself or another;
 - (b) Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the person is incapable of appreciating his or her need for such services and of making a rational decision in regard thereto; however, mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his/her need for such services.
- 397.681** • Involuntary assessment and stabilization petitions must be filed with the clerk of the court in the county where the person is located.
 - A respondent (alleged impaired person) has the right to counsel (or guardian ad litem if they are a minor) at every stage of a proceeding.
- 397.6811** • A person determined by the court to appear to meet the criteria for involuntary admission under s. 397.675 may be admitted for a period of 5 days to a hospital or to a licensed detoxification facility or addictions receiving facility.
- 397.6814** • A petition must contain the names and relationship of all parties and must state facts to support the involuntary assessment points in 397.675.
- 397.6815** • Upon receipt and filing of the petition, the court shall
 - (1) Provide a copy of the petition and notice of hearing to the respondent; and conduct a hearing within 10 days; or
 - (2) Without the appointment of an attorney and, relying solely on the contents of the petition, enter an ex parte order authorizing the involuntary assessment and stabilization of the respondent. The court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.
- 397.6818** • At the hearing, the court shall hear all relevant testimony. The respondent must be present unless the court has reason to believe that his or her presence is likely to be injurious to him or her, in which event the court shall appoint a guardian advocate to represent the respondent. The respondent has the right to examination by a court-appointed qualified professional. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the respondent meets the involuntary admission criteria of s. 397.675.
 - (1) Based on its determination, the court shall either dismiss the petition or immediately enter an order authorizing the involuntary assessment and stabilization of the respondent.
 - (2) The respondent may choose the licensed service provider to deliver the involuntary assessment where possible and appropriate.
 - (3) If the court finds it necessary, it may order the sheriff to take the respondent into custody and deliver him or her to the court-ordered or nearest licensed service provider.
- 397.6819** • A licensed service provider may admit a client for up to 5 days. The client must be assessed without unnecessary delay by a qualified professional.
- 397.6822** • Based upon the involuntary assessment:
 - (1) Release the client and, where appropriate, refer the client to another treatment facility or service provider, or to community services;
 - (2) Allow the client, if the client has consented, to remain voluntarily at the licensed provider; or
 - (3) Retain the client when a petition for involuntary treatment has been initiated, the timely filing of which authorizes the service provider to retain physical custody of the client pending further order of the court.
- 397.693** • A person may be the subject of a petition for court-ordered involuntary treatment if that person meets the criteria for involuntary admission provided in s. 397.675 and:
 - (1) Has been placed under protective custody within the previous 10 days;
 - (2) Has been subject to an emergency admission within the previous 10 days;
 - (3) Has been assessed by a qualified professional within 5 days;
 - (4) Has been subject to involuntary assessment and stabilization within the previous 12 days; or
 - (5) Has been subject to alternative involuntary admission within the previous 12 days.
- 397.695** • Involuntary treatment; persons who may petition:
 - (1) If the respondent is an adult, a petition may be filed by any relative or service provider, or any three adults who have personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.
 - (2) If the respondent is a minor, a petition for involuntary treatment may be filed by a parent, legal guardian, or service provider.
- 397.697** • When the court finds that the conditions for involuntary substance abuse treatment have been proved by clear and convincing evidence, it may order the respondent to undergo involuntary treatment for up to 60 days. When the conditions justifying involuntary treatment no longer exist, the client must be released. When the conditions justifying involuntary treatment are expected to exist after 60 days of treatment, a renewal of the involuntary treatment order may be requested prior to the end of the 60-day period.