

What Can We Do When Others Hurt Themselves?

(An introduction to the Baker and Marchman Acts)

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What Can We Do When Others Hurt Themselves?

Sooner or later, it happens to almost everyone. Someone you love, at some point in their life, will suffer from harmful mental illness or addiction to substances. These issues can manifest in many forms, from the veteran suffering from PTSD, to the widow who cannot cope, to the teenager whose choices are destroying his/her future. Friends, family and acquaintances can feel lost, not knowing where to turn or how to help. Often loved ones feel helpless when sufferers refuse assistance--struggling with the knowledge that involuntary placement may be the only way to break their dangerous cycle, especially when less restrictive means have failed.

In Florida, we have the benefit of The Florida Mental Health Act (a/k/a the Baker Act) and the Marchman Act. Each of these laws provides for the involuntary placement of an individual into a medical or treatment facility, provided they meet the criteria for placement.

The Baker Act was created to provide emergency examination of individuals suffering from "mental illness," as defined by the Act. When a person suffering from a mental illness is a danger to themselves, to others, or is self-neglectful, the possibility of involuntary placement arises. The process can begin by speaking with a doctor, psychiatric/psychological professional, law enforcement officer, or by filing a lawsuit. Thereafter, the patient can be evaluated involuntarily for 72 hours at a designated receiving facility. The patient may need to be "stabilized" before evaluation can begin, which may require medication or that an impaired person "sober up." Ultimately, the goal is to make the patient understand the nature of his/her mental illness, recommend treatment, and to put them on a path to further treatment, if warranted.

While the Baker Act is a broad "catch all" for many forms of short-term treatment, the Marchman Act is specifically geared toward substance abuse. Since several court-related and non-court procedures exist to place under Marchman, one should consult with an attorney to consider the best method to pursue. If involuntary substance abuse treatment is sought, one must establish that the patient has lost the power of self-control regarding substance use and either (a) has or is likely to inflict physical harm on themselves or others or (b) needs substance abuse services, and their impairment makes them incapable of appreciating their need for services. It is not unusual that placement under the Marchman Act to last for 3 to 6 months or more, which makes it much more effective than the Baker Act in confronting addiction; however, many individuals begin placement under the Baker Act, then remain in long-term treatment under the Marchman Act.

If you or someone you know is suffering from mental illness or substance abuse, please consider speaking with an attorney about your options.

Quick Reference Guide To Related Statutes (Does not substitute for consulting the statutes)

	Baker Act – The Florida Mental Health Act	Developmental Disabilities	Marchman Act	Emergency Medical Services	Adult Abuse, Neglect, and Exploitation	Guardianship	Health Care Surrogate & Proxy
Authorizing Statute	Chapter 394, Part I, FS	Chapter 393.11, FS	Chapter 397, F.S.	s. 401.445, F.S.	s. 415.1051, F.S.	Chapter 744, FS	Chapter 765, F.S.
Definitions	Mental illness is an impairment of the mental or emotional processes that exercise conscious control of one's actions or of 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. The term does not include retardation or developmental disability, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.	Developmental disability is a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Self Injurious behavior is any chronic behavior that results in injury to the person's own body, which includes but is not limited to, self-hitting, head banging, self-biting, scratching, and the ingestion of harmful or potentially harmful nutritive or nonnutritive substances.	Substance abuse Impaired: means a condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance to such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior.	EMS means the activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and pre-hospital emergency medical transportation to sick, injured, or otherwise incapacitated persons. A person is incapable of providing informed consent if he cannot generally understand the procedure, the alternatives, and the substantial risks and hazards of the proposed treatment or procedures.	A vulnerable adult is a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.	An incapacitated person is one who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of such person. A health care surrogate is any competent adult expressly designated by a person to make health care decisions on behalf of the person upon the principal's incapacity. Proxy is a competent adult who has not been designated to make health care decisions for an incapacitated person, but who, is one of the authorized persons eligible to make health care decision for the individual.	Incapacity or incompetent means the patient is physically or mentally unable to communicate a willful and knowing health care decision A health care surrogate is any competent adult expressly designated by a person to make health care decisions on behalf of the person upon the principal's incapacity. Proxy is a competent adult who has not been designated to make health care decisions for an incapacitated person, but who, is one of the authorized persons eligible to make health care decision for the individual.
Initiation	Ex parte order of a circuit judge or a certified law enforcement officer acting in his or her official capacity, or a specified professional (MD, DO, clinical psychologist, clinical social worker, or psychiatric nurse – all as defined in 394).	Petitioning Commission of 3 persons , one must be a physician, file petition with circuit court.	3 forms of court involved initiation and 3 forms of non-court . Protective custody by LEO or emergency with physician's certificate, or petition to circuit court.	EMS personnel may treat without informed consent if the patient at the time of exam or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent	Court order upon petition by DCF in non-emergency cases. DCF and LEO may forcibly enter and may remove incapacitated person who is likely to incur a risk of death or serious physical injury.	Court petition to determine incapacity filed by an adult. Order of circuit judge stating the nature of the guardianship as either plenary or limited. If limited, order states the rights that have been removed and delegated to guardian.	Determination by attending physician , that principal lacks capacity to make own health care decisions. Health care facility notifies surrogate or proxy in writing that authority under advance directive has begun

Authority of Decision Maker	Baker Act – The Florida Mental Health Act	Developmental Disabilities	Marchman Act	Emergency Medical Services	Adult Abuse, Neglect, and Exploitation	Guardianship	Health Care Surrogate & Proxy
	Guardian Advocate may be appointed by the court for any person found to be incompetent to consent to treatment. This means that a person's judgment is so affected by his or her mental illness that he lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment.	Guardian Advocate is any person or corporation qualified to act as guardian, with the same powers, duties, and responsibilities required of a guardian pursuant to Chapter 744 or those defined in court order.	Guardian Advocate can be appointed only to represent the person during the court hearing if person cannot attend. Otherwise, no substitute decision-maker provided in 397 other than the parent of a minor. Treatment as authorized by the patient, the court order, or the parent of a minor.		Emergency medical treatment (that doesn't violate an advance directive) without consent for incapacitated person, after admission to a medical facility. Further treatment without informed consent is subject to a DCF petition and a court order.	Limited to authority granted by Circuit Court in Letters of Guardianship. Plenary Guardian exercises all delegable rights while Limited Guardian exercises only those removed from ward in order. Must file reports, plans, inventory, and accounting.	Make written consent to health care decisions the principal would have made if capable of making such decisions. Have access to clinical records, authorize release of records for continuity of care, authorize transfer of principal to or from a health care facility, and apply for public benefits.
Limitations of Authority	Guardian Advocate cannot authorize voluntary admission or consent to treatment for a voluntary patient.	Same as under Chapter 744.				Without first obtaining specific authority from Court (744.3725), guardian cannot commit the ward to facility without formal placement proceeding under Chapter 393 (retardation), 394 (mental illness), or 397 (substance abuse), or to experimental procedures, marriage dissolution, termination of parental rights, sterilization, abortion	May not consent to the psychiatric admission or treatment of a voluntary patient. May not provide consent for abortion, sterilization, ECT, psychosurgery, experimental treatment without Court approval or express authority in an advance directive.
See Also			395.1041, F.S. 42USC 1395dd.	Chapter 825, F.S	s. 394.4625 (1)(d), F.S.	s. 394.4625 (1)(e), F.S	

Baker Act
Involuntary Examination
Criteria, Processes and Timeframes
s. 394.463, F.S. Ch. 65E-5.280, FAC

Intent

The Baker Act encourages the voluntary admission of persons for psychiatric care, but only when they are able to understand the decision and its consequences and are able to fully exercise their rights for themselves. When this is not possible due to the severity of the person's condition, the law requires that the person be extended the due process rights assured under the involuntary provisions of the Baker Act.

Criteria

A person may be taken to a receiving facility for involuntary examination if the following three criteria are met:

1. There is reason to believe that he or she is mentally ill. This means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of 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. For the purposes of this part, the term does not include retardation or developmental disability as defined in Chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
2. 2. Because of his or her mental illness the person has refused voluntary examination or is unable to determine whether examination is necessary; and
3. 3. Without care or treatment, the person is likely to suffer from neglect resulting in real and present threat of substantial harm that can't be avoided through the help of others; or there is substantial likelihood that without care or treatment the person will cause serious bodily harm to self or others in the near future, as evidenced by recent behavior.

Initiation

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

- 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. A law enforcement officer may serve and execute an ex parte order on any day of the week, at any time of the day or night and may use such reasonable physical force as is necessary to gain entry to take custody of the person.

- A law enforcement officer shall take a person who appears to meet the above criteria into custody and deliver the person to the nearest receiving facility.
- A physician, clinical psychologist, psychiatric nurse, or clinical social worker, each as defined in the statute, may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. A law enforcement officer shall take the person into custody and deliver him or her to the nearest receiving.

Transportation

Designated receiving facilities must accept persons brought by law enforcement officers for involuntary examination. If appropriate under state and federal law, the person may later be transferred to another facility.

An officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody. If the officer believes that a person has an emergency medical condition as defined in law, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

When a law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory criteria for involuntary examination, the officer must transport the person to the nearest receiving facility for examination. When an officer has arrested a person for a felony and it appears that the person meets the statutory criteria for involuntary examination, the person must first be processed in the same manner as any other criminal suspect.

Examination at Hospital after Emergency Medical Condition

A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition must be examined by a receiving facility within 72 hours. The 72-hour period begins when the person arrives at the hospital and ceases when the attending physician documents that the person has an emergency medical condition. One of the following must occur within 12 hours after the person's attending physician

documents that the person's medical condition has stabilized or that an emergency medical condition does not exist:

- The person can be examined by a physician or clinical psychologist at the medical hospital, and if found not to meet the criteria for involuntary placement, released or transferred to voluntary status; or
- The person must be examined by a physician or clinical psychologist from a designated receiving facility and released; or
- The person must be transferred to a designated receiving facility in which appropriate medical treatment is available.

Examination at a Receiving Facility

Upon arrival at a receiving facility, a person must be examined without unnecessary delay by a clinical psychologist or a physician experienced in the diagnosis and treatment of mental and nervous disorders. The person shall not be released by the receiving facility without the documented approval of a psychiatrist or clinical psychologist.

Reporting

Receiving facilities must send a copy of the court order, law enforcement officer's report, or professional's certificate initiating the involuntary examination (with the required cover sheet) to the Agency for Health Care Administration (AHCA) on the next working day after the person's arrival at the facility.

Discharge or Release

A person may not be held for involuntary examination longer than 72 hours. Within the 72-hour examination period, one of the following must take place:

- The person must be released unless charged with a crime;
- The person must be released for outpatient treatment;
- The person must be asked to give express and informed consent to voluntary placement; or
- A petition for involuntary placement must be filed with the circuit court by the facility administrator.

Involuntary Placement

394.467 F.S. 65E-5.290, F.A.C.

Criteria:

If a petition for involuntary placement is filed by the receiving facility with the circuit court, there must be clear and convincing evidence that the person is mentally ill and because of his or her mental illness:

- She/he has refused voluntary placement or is unable to determine whether placement is necessary; and
- She/he is incapable of surviving alone or with the help of others and without treatment is likely to suffer from neglect which poses a real and present threat of substantial harm to his or her well-being; or
- There is substantial likelihood that in the near future she/he will inflict serious bodily harm on self or other person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

Initiation

Within 72 hours of the person's arrival at the facility, or if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, a petition for involuntary examination, must be filed by the receiving facility administrator and supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the person within the preceding 72 hours, that the criteria for involuntary placement are met (in certain rural counties the second opinion may be provided by a physician or psychiatric nurse, both with special training and experience as defined in the statute).

Court Hearing

The person will have the public defender appointed by the court to represent him or her unless otherwise represented by counsel. The state attorney shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding. The person has the right to an independent expert examination provided by the court.

The court must hold the involuntary placement hearing within 5 days, unless a continuance is requested by the person and granted by the court. The court may appoint a master to preside at the hearing. One of the professionals who executed the involuntary placement petition must be a witness. At the hearing, the court must consider testimony and evidence regarding the person's

competence to consent to treatment. If the court finds that the person is incompetent to consent to treatment, it must appoint a guardian advocate. If the court concludes that the person meets the criteria for involuntary placement, it must order that the person be retained at or transferred to, or treated at an appropriate receiving or treatment facility on an involuntary basis, for a period of up to 6 months. The administrator of a treatment facility may refuse admission to any person directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied at the same time by adequate orders and documentation.

Continued Involuntary Placement

s. 394.467(7), F.S. Ch. 65E-5.300, FAC

If a person continues to meet the criteria for involuntary placement, the administrator must, prior to the expiration of the period during which the treatment facility is authorized to retain the person, file a petition requesting authorization for continued involuntary placement. The request must be accompanied by a statement from the person's physician or clinical psychologist justifying the request, a brief description of the person's treatment during the time he/she was involuntarily placed, and an individualized plan of continued treatment.

Hearings on petitions for continued involuntary placement are administrative rather than judicial hearings and are conducted by an administrative law judge. Unless the person is otherwise represented by counsel, he/she must be represented at the hearing by the public defender. If at a hearing it is shown that the person continues to meet the criteria for involuntary placement, the administrative law judge must sign the order for continued involuntary placement for a period not to exceed 6 months. The same procedure must be repeated prior to the expiration of each additional period the person is retained.

Discharge of Persons on Involuntary Status

s. 394.469, F.S. Ch. 65E-5.320, FAC

Receiving and treatment facilities must discharge a person at any time the person no longer meets the criteria for involuntary placement, unless the person has transferred, by express and informed consent, to voluntary status. This discharge does not require consent of the court.

Quick Reference Guide to the Marchman Act

Admission	How Initiated	Means	Requirements	Length of Stay	Disposition
Protective Custody	Law Enforcement	LEO Report Initiating Protective Custody	Physician Assessment Release by Qualified Professional*	Up to 72 hours	<ul style="list-style-type: none"> Discharge/Refer Voluntarily Remain Retain if petition filed
Emergency Admission	Adult: physician, spouse, guardian, relative, or other responsible adult Minor: parent, guardian, or legal custodian	Application and Physician's Certificate	Physician assessment qualified professional assessment to determine need for further services and approve release	Up to 72 hours or 5 days to a non-residential component	<ul style="list-style-type: none"> Discharge/Refer Voluntarily Remain Retain if petition filed
Alternative Involuntary Admission for Minors	Minor's parent, guardian, or legal custodian	Application by eligible person	Assessment by qualified professional	Up to 72 hours – can be extended to 5 days total upon physician assessment.	<ul style="list-style-type: none"> Discharge to parent, guardian, custodian, DCF, or DJJ Voluntarily Remain Retain if Petition Filed
Court-Ordered Assessment	Adult: spouse, guardian, relative, private practitioner, director of licensed provider, or 3 adults. Minor: parent, guardian, legal custodian or licensed service provider	Civil Order from a Circuit Judge – can be ex parte or following a scheduled hearing. Sheriff may be ordered to transport.	Assessed by qualified professional and by a physician.	Up to 5 days	<ul style="list-style-type: none"> Discharge/Refer Voluntarily Remain Retain if petition filed
Involuntary Treatment	Adult: spouse, guardian, relative, service provider, or any 3 adults Minor: parent, legal guardian, or service provider	Civil Order from a Circuit Judge. Sheriff may be ordered to transport.	Authorizes the provider to require client to undergo treatment that will be beneficial until released by qualified professional.	Up to 60 days	<ul style="list-style-type: none"> Discharge/Refer Voluntarily Remain Retain if extension requested
Extension of Involuntary Treatment	Service Provider at least 10 days prior to end of order	Hearing within 15 days an order from a Circuit Judge	Same as involuntary treatment.	Each extension up to 90 days	Same as involuntary treatment
Habitual Abusers	Agent specified in local ordinance files petition	Hearing within 10 days	Participation in treatment program	Up to 90 days in licensed secure facility with extensions of 180 days each	<ul style="list-style-type: none"> Discharge/Refer Voluntarily Remain Retain if extension requested
Offender Referral	Court	Court order in addition to any other penalty or sentence.	Screening, assessment, and treatment services from licensed service provider	Up to maximum length of sentence for the offense.	
Inmate Programs	Federal and State Departments of Correction		Individualized treatment	Up to maximum length of sentence for the offense	One month before EOS given options for continuing services

* Qualified Professional: Physician licensed under 458 or 459; or Professional licensed under chapter 490 or 491 (Psychologist, Clinical SW, Marriage & Family Therapist or Mental Health Counselor); or Person who is certified through a DCF recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor's degree.

Select Year:

The 2016 Florida Statutes

Title XXIX
PUBLIC HEALTH

Chapter 397
SUBSTANCE ABUSE SERVICES

[View Entire Chapter](#)

397.601 Voluntary admissions.—

(1) A person who wishes to enter treatment for substance abuse may apply to a service provider for voluntary admission.

(2) Within the financial and space capabilities of the service provider, a person must be admitted to treatment when sufficient evidence exists that the person is impaired by substance abuse and the medical and behavioral conditions of the person are not beyond the safe management capabilities of the service provider.

(3) The service provider must emphasize admission to the service component that represents the least restrictive setting that is appropriate to the person's treatment needs.

(4)(a) The disability of minority for persons under 18 years of age is removed solely for the purpose of obtaining voluntary substance abuse impairment services from a licensed service provider, and consent to such services by a minor has the same force and effect as if executed by an individual who has reached the age of majority. Such consent is not subject to later disaffirmance based on minority.

(b) Except for purposes of law enforcement activities in connection with protective custody, the disability of minority is not removed if there is an involuntary admission for substance abuse services, in which case parental participation may be required as the court finds appropriate.

History.—s. 5, ch. 93-39; s. 27, ch. 2009-132.

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Select Year:

The 2016 Florida Statutes

[Title XXIX](#)
PUBLIC HEALTH

[Chapter 397](#)
SUBSTANCE ABUSE SERVICES

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397.675 **Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and stabilization, and for involuntary treatment.**—A person meets the criteria for involuntary admission if there is good faith reason to believe that the person is substance abuse impaired or has a co-occurring mental health disorder and, because of such impairment or disorder:

- (1) Has lost the power of self-control with respect to substance abuse; and
- (2)(a) Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services; or
- (b) Without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.

History.—s. 6, ch. 93-39; s. 737, ch. 95-148; s. 23, ch. 2016-241.

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For Online Reference Materials, see:

- The Baker Act User Reference Guide:
<http://www.dcf.state.fl.us/programs/samh/mentalhealth/laws/BakerActManual.pdf>
- The Marchman Act User Reference Guide:
<http://www.dcf.state.fl.us/programs/samh/SubstanceAbuse/marchman/marchmanacthand03p.pdf>