MEMORANDUM OF LAW

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MARCHMAN ACT REQUIREMENTS

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ISSUE PRESENTED

What are the proper procedures for involuntary assessment, stabilization, and treatment of minors under the Marchman Act?

BRIEF ANSWER

The statutory requirements for involuntary **assessment and stabilization** differ markedly from those for involuntary **treatment**. While the criteria for both procedures include a petitioner's good faith reason for believing the respondent has a substance abuse problem, involuntary treatment requires a hearing at which the court must find that the conditions necessary for involuntary treatment have been proved by clear and convincing evidence. Involuntary assessment and stabilization requires no such hearing, but involuntary commitment for these purposes is not to exceed 12 days.

DISCUSSION

1. Purpose of Act and Definitions

The Marchman Act is "designed to provide for substance abuse services." Fla.Stat. § 397.305. "*Substance abuse*" is defined as "the use of any substance if such use is unlawful or if such use is detrimental to the user or to others, but is not unlawful." Fla.Stat. § 397.331(a). "*Substance abuse programs and services*…applies generally to

the broad continuum of prevention, intervention, and treatment initiatives and efforts to limit substance abuse and also includes initiatives and efforts by law enforcement agencies to limit substance abuse." Fla.Stat. § 397.331(b).

The Act defines "assessment" as "the systematic evaluation of information gathered to determine the nature and severity of the client's substance abuse problem and the client's need and motivation for services. Assessment entails the use of a psychosocial history supplemented, as required by rule, by medical examinations, laboratory testing, and psychometric measures." Fla.Stat. § 397.311(2). "Stabilization" means "(a) Alleviation of a crisis condition; or (b) Prevention of further deterioration, and connotes short-term emergency treatment." Fla.Stat. § 397.311(30).

2. Criteria for Involuntary Assessment, Stabilization, and Treatment

The procedures for involuntary *assessment and stabilization*, described in Subpart F of the Marchman Act, differ markedly from the procedures for involuntary *treatment*, described in Subpart G. Both sets of procedures, however, are governed by the criteria outlined in Subpart A of the Act, Fla.Sta. § 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, or threatened or attempted to inflict, or unless admitted is likely to inflict, physical harm on himself or herself or another; **or**
>
> (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 or her need for such services.
> (emphasis added)

The term "good faith reason" is not defined in the Act, and the Florida Statutes Annotated do not reveal any case law concerning further definition of "good faith reason." "Substance abuse impaired" is defined in the Act as "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." Fla.Stat. § 397.311(15).

3. Involuntary Assessment and Stabilization

a. Petition

A petition for involuntary assessment and stabilization of a minor may be filed with the court by a parent, legal guardian, legal custodian, or licensed service provider. Fla.Stat. § 397.6811(2). The content requirements of the petition are quite specific, per Fla. Stat. § 397.6814:

> A petition for involuntary assessment and stabilization must contain the name of the respondent; the name of the applicant or applicants; the relationship between the respondent and the applicant; the name of the respondent's attorney, if known, and a statement of the respondent's ability to afford an attorney; and must state facts to support the need for involuntary assessment and stabilization, including:
>
> (1) **The reason for the petitioner's belief that the respondent is substance abuse impaired**; ***and***
>
> (2) **The 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***
>
> (3) (a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
>
> (b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her

> need for care and of making a rational decision regarding that need for care. If the respondent has refused to submit to an assessment, such refusal must be alleged in the petition.
> (emphasis added)

b. Procedure

The court must find that the person to be assessed meets the criteria of Fla.Sta. § 397.675, *supra*, and upon so finding the court may order that the person "be admitted for a period of 5 days to a hospital or to a licensed detoxification facility or addictions receiving facility, for involuntary assessment and stabilization or to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition." Fla.Sta. § 397.6811.

c. No Hearing Required

A court may choose to hold a hearing upon the filing of a petition for involuntary assessment. Fla.Stat. § 397.6815(1). The requirements of such a hearing are outlined in detail in Fla.Stat. § 397.6818. However, the court may also, "relying solely on the contents of the petition, enter an ex parte order authorizing the involuntary assessment and stabilization of the respondent." Fla.Stat. § 397.6815(2). (See also comments of court in Cole v. State, *infra* p. 8)

d. Time Period

The time granted for involuntary assessment and stabilization under the Marchman Act is not to exceed 12 days total, as detailed in Fla.Stat. § 397.6821:

> If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of a client within 5 days after the court's order, it may, within the original time period, file a written request for an extension of time to complete its assessment, and shall, in accordance with confidentiality requirements, furnish a copy to all parties. With or without a hearing, the court may grant additional time, not to exceed 7 days after the date of the renewal order, for the completion of the involuntary assessment and

stabilization of the client. The original court order authorizing the involuntary assessment and stabilization, or a request for an extension of time to complete the assessment and stabilization that is timely filed pursuant to this section, constitutes legal authority to involuntarily hold the client for a period not to exceed 10 days in the absence of a court order to the contrary.

4. Involuntary Treatment

a. Initial Requirements

The requirements for involuntary treatment are more rigorous than those for involuntary assessment and stabilization, beginning with Fla.Stat. § 397.693:

> A person may be the subject of a petition for court-ordered involuntary treatment pursuant to this part, if that person meets the criteria for involuntary admission provided in s. 397.675 and:
>
> (1) Has been placed under protective custody pursuant to s. 397.677 within the previous 10 days;
>
> (2) Has been subject to an emergency admission pursuant to s. 397.679 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 pursuant to s. 397.6818 within the previous 12 days; or
>
> (5) Has been subject to alternative involuntary admission pursuant to s. 397.6822 within the previous 12 days.

b. Petition

A petition for involuntary treatment of a minor may be filed by a parent, legal guardian, or service provider. Fla.Stat. § 397.695. The contents of the petition must be

that same as the petition for involuntary assessment and stabilization, Fla.Stat. § 397.6814, quoted *supra*. Fla. Stat. § 397.6951. [1]

c. Hearing Required

A court cannot impose involuntary treatment without the court's first having issued notice and held a hearing. Fla.Stat. § 397.6955. Further,

> The court shall schedule a hearing to be held on the petition within 10 days. A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct, and have such petition and order personally delivered to the respondent if he or she is a minor. The court shall also issue a summons to the person whose admission is sought.

The hearing is described in further detail at Fla.Stat. § 397.6957:

> (1) At a hearing on a petition for involuntary treatment, the court shall hear and review all relevant evidence, including the review of results of the assessment completed by the qualified professional in connection with the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act in behalf of the respondent throughout the proceedings.
>
> (2) **The petitioner has the burden of proving by clear and convincing evidence**:
>
> (a) **The respondent is substance abuse impaired**, ***and***
>
> (b) **Because of such impairment the respondent has lost the power of self-control with respect to substance abuse;** ***and either***
>
> 1. The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

[1] The wording of Fla. Stat. § 397.6951 regarding content of the petition is exactly the same as that of Fla. Stat. § 397.6814, except that the word "treatment" is used in place of the words "assessment and stabilization," and the last sentence of § 397.6814 (3)(b) is omitted.

2. The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(3) At the conclusion of the hearing the court shall either dismiss the petition or order the respondent to undergo involuntary substance abuse treatment, with the respondent's chosen licensed service provider to deliver the involuntary substance abuse treatment where possible and appropriate.
(emphasis added)

This standard of "clear and convincing evidence" of substance abuse appears again in the next section, Court Determination, Fla.Stat. § 397.697:

(1) 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 by a licensed service provider for a period not to exceed 60 days. If the court finds it necessary, it may direct the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order, or to the nearest appropriate licensed service provider, for involuntary treatment. (emphasis added)

d. Time Period

Involuntary treatment can go on indefinitely, provided the court continues to order involuntary treatment every 90 days after the initial 60-day period. "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 pursuant to s. 397.6975 prior to the end of the 60-day period." Fla.Stat. § 397.697(1). However, the court *must hold a hearing*, conducted pursuant to Fla.Stat. § 397.6957, prior to ordering continued involuntary treatment. Fla.Stat. § 397.6975.

5. Case law

There is remarkably little appellate case law concerning the Marchman Act.[2] The Act has been discussed most extensively in Cole v. State, 714 So. 2d 479 (Fla. 2nd DCA 1998). In Cole, the appellate court found the defendant not to be in contempt for failure to complete a substance abuse treatment program because (a) no petition for involuntary treatment had ever been filed with the court, (b) the defendant had never received notice of a treatment hearing, and (c) the defendant was unrepresented at the hearing. Id. at 488, 490.

Additionally, the Cole court made a number of interesting observations concerning the language of the Marchman Act regarding the ex parte hearing and the right to counsel:

> [W]e note that the statute prescribes no criteria to govern the court's choice between holding a hearing on the petition and entering an ex parte order granting the petition. (Interestingly, the statute does not appear to authorize an ex parte order denying the petition.) Moreover, the provision in section 397.6815(2), Florida Statutes (1997), that the court may enter an ex parte order involuntarily admitting the client for assessment and stabilization without the appointment of counsel seemingly conflicts with the direction in section 397.681(2) that a respondent has the right to counsel "at every stage" of an involuntary admission proceeding.

The only other case to discuss the Marchman Act in any depth is Hillsborough County v. Albrechta, 841 So. 2d 644 (Fla. 2nd DCA 2003), which held that the appointment of counsel is constitutionally required for hearings under the Marchman Act.

[2] Lexis research as of July 17, 2003.

6. Additional Aspects of the Marchman Act in Regard to Minors

There are several provisions of the Marchman Act that address minors specifically.

a. Right to Guardian and/or Counsel

The Act is ambiguous as to whether the right to counsel extends to minors. A respondent "has the right to counsel at every stage of a proceeding relating to a petition for his or her involuntary assessment and a petition for his or her involuntary treatment for substance abuse impairment." Fla.Stat. § 397.681. However, Fla.Stat. § 397.681 states, "If the respondent is a minor not otherwise represented in the proceeding, the court shall immediately appoint a guardian ad litem to act on the minor's behalf." Nevertheless, Fla. Stat. § 397.501(8) states:

> *RIGHT TO COUNSEL.* --Each client must be informed that he or she has the right to be 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.

Thus, the statutory language would seem to indicate that the child has a right to counsel in addition to having the right to a guardian ad litem, but § 397.501(8) is a bit unclear as to exactly *for whom* the counsel is to be appointed: for the child, or for the parent, legal guardian, or legal custodian.

b. Right to Education

A minor receiving substance abuse treatment in a residential service component is entitled to "receive education and training appropriate to his or her needs." Fla. Stat. § 397.501(6).

c. Parental Participation

A parent, legal guardian, or legal custodian who seeks involuntary admission of a minor pursuant to §§ 397.675-397.6977 is required to participate in all aspects of treatment as determined appropriate by the director of the licensed service provider. Fla. Stat. § 397.6759.

d. Alternative Involuntary Assessment

Fla.Stat. § 397.6798(1) reads as follows:

> In addition to protective custody, emergency admission, and involuntary assessment and stabilization, an addictions receiving facility may admit a minor for involuntary assessment and stabilization upon the filing of an application to an addictions receiving facility by the minor's parent, guardian, or legal custodian. The application must establish the need for involuntary assessment and stabilization based on the criteria for involuntary admission in s. 397.675. Within 72 hours after involuntary admission of a minor, the minor must be assessed to determine the need for further services. Assessments must be performed by a qualified professional. If, after the 72-hour period, it is determined by the attending physician that further services are necessary, the minor may be kept for a period of up to 5 days, inclusive of the 72-hour period.

A minor is also entitled, upon completion of the assessment, to disposition pursuant to Fla.Stat. § 397.6799. ("A minor who has been assessed pursuant to s. 397.6798 must, within the time specified, be released or referred for further voluntary or involuntary treatment, whichever is most appropriate to the needs of the minor.")

CONCLUSION

The Marchman Act is to be used for the involuntary assessment, stabilization, and treatment of people who can be demonstrated to suffer from substance abuse impairment. While the standard of proof for involuntary assessment and stabilization is not statutorily

defined beyond a petitioner's "good faith reason" to believe the respondent is substance abuse impaired, the standard of proof for involuntary *treatment* is "clear and convincing evidence" of such impairment. Involuntary assessment and stabilization is a temporary measure that is meant to last no longer than 5 days, with a possible 7-day extension. A hearing and notice is required prior to the issuance of an involuntary treatment order.