

FLORIDA'S DEPENDENCY BENCHBOOK

BENCHCARD: MARCHMAN ACT

Items in **bold font** are required by Florida Statutes.

Introductory remarks.

- Explain the purpose of the hearing. State the number of days the child has been in care and the number of placements to date.
- Swear in the parties, participants, and relatives. (*See Parties and Participants, Tab 8*)
- Have all of the above identify themselves for the record and verify that the court has the parents' current address.

Representation and appointment of counsel.

- Upon receipt and filing of the petition for the ***involuntary assessment and stabilization*** of a substance abuse impaired person or a petition for ***involuntary treatment***, ascertain whether the respondent is represented by an attorney, and if not, whether, on the basis of the petition an attorney should be appointed. §§ 397.6815, 397.6955.
- If the respondent does not have counsel, advise the respondent that he/she has the right to counsel at every stage of a proceeding relating to a petition for involuntary assessment and a petition for his or her involuntary treatment for substance abuse impairment. §§ 397.501(8), 397.681(2).
- If the court believes that the respondent needs the assistance of counsel, appoint counsel for the respondent without regard to the respondent's wishes. § 397.681(2).
- Determine if the individual is a minor. If so, then the parents, legal guardian, or legal custodian may apply immediately to the court to have an attorney appointed if he or she cannot afford one. § 397.501(8).
- Immediately appoint a guardian ad litem to act on the minor's behalf, if the respondent is not otherwise represented. § 397.681(2).

Criteria for *involuntary admissions*.

- Determine whether the respondent meets the criteria for involuntary admission. § 397.675.

Procedure for *involuntary assessment and stabilization*.

- Provide a copy of the petition and notice of hearing 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 notice personally delivered to the respondent if he or she is a minor. § 397.6815.

- Issue a summons to the person whose admission is sought and conduct a hearing within 10 days; § 397.6815(1); OR
- If the respondent is without the appointment of an attorney and the court relies solely on the contents of the petition, enter an *ex parte* order authorizing the involuntary assessment and stabilization of the respondent. § 397.6815(2).
- If necessary, 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. § 397.6815(2).

Hearing on petition for involuntary *assessment and stabilization*.

- Hear all relevant testimony. § 397.6818.
- The respondent must be present unless the court has reason to believe that the respondent's presence is likely to be injurious to him or her, in which case appoint a guardian advocate to represent the respondent. § 397.6818.
- Afford the respondent the right to examination by a court-appointed qualified professional. § 397.6818.
- After hearing all the evidence, determine whether there is a reasonable basis to believe the respondent meets the criteria for involuntary admissions. § 397.6818.

Court order for *involuntary assessment and stabilization*.

- Based on the determination above, either dismiss the petition or immediately enter an order authorizing the involuntary assessment and stabilization of the respondent; OR if in the course of the hearing, the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to injure himself or herself or another if allowed to remain at liberty, initiate involuntary proceedings under the provisions of Part I of Chapter 394. § 397.6818(1).
- If the court enters an order authorizing involuntary assessment and stabilization, the order shall include findings with respect to the availability and appropriateness of the least restrictive alternatives and the need for the appointment of an attorney to represent the respondent, and may designate the specific licensed service provider to perform the involuntary assessment and stabilization of the respondent. The respondent may choose the licensed service provider to deliver the involuntary assessment where possible and appropriate. § 397.6818(2).
- If necessary, order the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order or, if none is specified, to the nearest appropriate licensed service provider for involuntary assessment. § 397.6818(3).

Procedure for *involuntary treatment*.

- Upon the filing of a petition for the involuntary treatment, immediately determine whether the respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. § 397.6955.
- Hold a hearing on the petition within 10 days. § 397.6955.
- Make sure that a copy of the petition and notice of the hearing were provided to the respondent; the respondent's parent, guardian, or legal custodian; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may have directed, and that such petition and order were personally delivered to the respondent, if he or she is a minor. § 397.6955.
- Issue a summons to the person whose admission is sought. § 397.6955.

Hearing on petition for *involuntary treatment*.

- Hear and review all relevant evidence, including the review of results of the assessment completed by the qualified professional in connections with the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. § 397.6957(1).
- Ensure that the respondent is present. If the court finds that the respondent's presence is likely to be injurious to himself or herself or others, appoint a guardian advocate to act in behalf of the respondent throughout the proceedings. § 397.6957(1).
- The petitioner has the burden of proof by clear and convincing evidence. § 397.6957(2).
- At the conclusion of the hearing, 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. § 397.6957(3).

Effect of court order for *involuntary treatment*.

- If the conditions for involuntary substance abuse treatment have been proved by clear and convincing evidence, consider ordering the respondent to undergo involuntary treatment by a licensed service provider for a period not to exceed 60 days. § 397.697(1).
- If necessary, 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. § 397.697(1).
- If 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 § 397.6975 prior to the end of the 60-day period. § 397.697(1).

- In all cases resulting in an order for involuntary substance abuse treatment, retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require. § 397.697(2).
- The court's requirements for notification of proposed release must be included in the original treatment order. § 397.697(2).
- An involuntary treatment order authorizes the licensed service provider to require the individual to undergo such treatment as will benefit him or her, including treatment at any licensable service component of a licensed service provider. § 397.697(3).

Procedure for extension of *involuntary treatment* period.

- Immediately schedule a hearing to be held not more than 15 days after filing of a petition for renewal of the involuntary treatment order. § 397.6975(1).
- Provide the copy of the petition for renewal and the notice of the hearing to all parties to the proceeding. § 397.6975(1).

Hearing on extension of *involuntary treatment* period.

- Conduct the hearing pursuant to § 397.6957; (see Hearing on Petition for Involuntary Treatment above). § 397.6975(1).

Court order on extension of *involuntary treatment* period.

- If the petition for renewal of the involuntary treatment order should be granted, order the respondent to undergo involuntary treatment for a period not to exceed an additional 90 days. § 397.6975(2).
- If the conditions justifying involuntary treatment no longer exist, the individual must be released as provided in § 397.6971. § 397.6975(2).

Complete a written order.

MARCHMAN ACT SUPPLEMENT

Generally.

➤ Representation and appointment of counsel.

What should I do after swearing in the parties? The court should inform the respondent that he or she has the right to be represented by counsel in any involuntary proceeding for assessment, stabilization, or treatment. § 397.501(8).

What may I do if the individual is a minor? If the individual is a minor, then the parents, legal guardian, or legal custodian may apply immediately to the court to have an attorney appointed if he or she cannot afford one. § 397.501(8). Also, immediately appoint a guardian ad litem to act on the minor's behalf, if the respondent is not otherwise represented. § 397.681(2).

What if the respondent does not want counsel? The court may appoint counsel for the respondent without regard to the respondent's wishes, if the court believes that the respondent needs the assistance of counsel. § 397.681(2).

What if the respondent is unable to afford counsel? A respondent who desires counsel and is unable to afford private counsel has the right to court-appointed counsel and to the benefits of section 57.081, Florida Statutes. § 397.681(2).

➤ Criteria for involuntary admission.

How do I know if an individual meets the criteria for involuntary admission? An individual meets the criteria if there is a good faith reason to believe the individual is substance abuse impaired and, because of such impairment:

- Has lost the power of self-control with respect to substance use; and either
 - Has inflicted, or threatened or attempted to inflict, or unless admitted is likely to inflict, physical harm on himself or herself or another; OR
 - 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. § 397.675.

➤ Habeas Corpus.

Can a person being involuntarily retained petition for a writ of habeas corpus? At any time, and without notice, an individual involuntarily retained by a provider, or the individual's parent, guardian, custodian, or attorney on behalf of the individual, 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 individual's release. § 397.501(9).

➤ **Petition for involuntary assessment and stabilization.**

What should be in a petition for involuntary assessment and stabilization? A petition must contain the name of the respondent; name of the applicant(s); 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:

- The reason for the petitioner's belief that the respondent is substance abuse impaired; and
- 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
 - 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
 - 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. § 397.6814.

➤ **Admission-involuntary assessment and stabilization.**

How long can the respondent be admitted for involuntary assessment and stabilization? If the respondent meets the criteria for involuntary admission under § 397.675, he or she may be admitted for a period of five days to a hospital or to a licensed detoxification facility or additions 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. § 397.6811.

Who may file a petition if the respondent is a minor? If the person upon whose behalf the petition is being filed is a minor, a petition for involuntary assessment and stabilization may be filed by a parent, legal guardian, legal custodian, or licensed service provider. § 397.6811(2).

What is the responsibility of the licensed service provider? A licensed service provider may admit an individual for involuntary assessment and stabilization for a period not to exceed five days. The individual must be assessed without unnecessary delay by a qualified professional. If an assessment is performed by a qualified professional who is not a

physician, the assessment must be reviewed by a physician before the end of the assessment period. § 397.6819.

If an assessment cannot be completed in five days, can the time be extended? Yes. If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual within five 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. § 397.6821.

Is a hearing required to extend the time for the assessment? No. 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 individual. § 397.6821. 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, constitutes legal authority to involuntarily hold the individual for a period of not to exceed 10 days in the absence of a court order to the contrary. § 397.6821.

➤ **Involuntary treatment.**

Who may file a petition if the respondent is a minor? If the respondent is a minor, a petition for involuntary treatment may be filed by a parent by a parent, legal guardian, or service provider. § 397.695.

What should be in a petition for involuntary treatment? A petition must contain the name of the respondent to be admitted; name of the petitioner(s); the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known, and a statement of the petitioner's knowledge of the respondent's ability to afford an attorney; the findings and recommendations of the assessment performed by the qualified professional; and the factual allegations presented by the petitioner establishing the need for involuntary treatment, including:

- The reason for the petitioner's belief that the respondent is substance abuse impaired; and
- 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
 - 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
 - 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. § 397.6951

What is the burden of proof in a hearing on a petition for involuntary treatment? The petitioner has the burden of proof by clear and convincing evidence. § 397.6957(2).

What must be proven by clear and convincing evidence at a hearing on a petition for involuntary treatment? The petitioner must prove:

- The respondent is substance abuse impaired; AND
- Because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and either
 - The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; OR
 - 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. § 397.6957(2).

What happens at the conclusion of the hearing for involuntary treatment? 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. § 397.6957(3).

When may a person be the subject of a petition for court-ordered involuntary treatment?

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 § 397.675 and:

- Has been placed under protective custody pursuant to § 397.677 within the previous 10 days;
- Has been subject to an emergency admission pursuant to § 397.679 within the previous 10 days;
- Has been assessed by a qualified professional within 5 days;
- Has been subject to involuntary assessment and stabilization pursuant to § 397.6818 within the previous 12 days; OR
- Has been subject to alternative involuntary admission pursuant to § 397.6822 within the previous 12 days. § 397.693.

➤ **Early release from involuntary treatment.**

Is early release from involuntary substance abuse treatment possible? Yes. At any time prior to the end of the 60-day involuntary treatment period, or prior to the end of any extension granted pursuant to § 397.6975, an individual admitted for involuntary treatment may be determined eligible for discharge to the most appropriate referral or disposition for the individual when:

- The individual no longer meets the criteria for involuntary admission and has given his or her informed consent to be transferred to voluntary treatment status;

- If the individual was admitted on the grounds of likelihood of infliction of physical harm upon himself or herself or others, such likelihood no longer exists; or
- If the individual was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by inability to make a determination respective such need, EITHER
 - Such inability no longer exists; OR
 - It is evident that further treatment will not bring about further significant improvements in the individual's condition;
- The individual is no longer in need of services; or
- The director of the service provider determines that the individual is beyond the safe management capabilities of the provider. § 397.6971(1).

What happens when an individual is ready for early release? Whenever a qualified professional determines that an individual admitted for involuntary treatment is ready for early release for any of the reasons listed in § 397.6971(1), the service provider shall immediately discharge the individual, and must notify all persons specified by the court in the original treatment order. § 397.6971(2).

➤ **Extension of involuntary treatment period.**

Can the involuntary substance abuse treatment period be extended? Yes. Whenever a service provider believes that an individual who is nearing the scheduled date of release from involuntary treatment continues to meet the criteria for involuntary treatment in § 397.693, a petition for renewal of the involuntary treatment order may be filed with the court at least 10 days before the expiration of the court-ordered treatment period. § 397.6975(1).

When does the court hear a petition for renewal? The must immediately set a hearing to be held not more than 15 days after filing of the petition. The court must provide a copy of the petition and notice of hearing to all parties to the proceeding. The hearing is conducted pursuant to § 397.6957. § 397.6975(1).

What happens if the court grants the petition for renewal? If the petition for renewal of the involuntary treatment order should be granted, the court may order the respondent to undergo involuntary treatment for a period not to exceed an additional 90 days. § 397.6975(2).

What if the conditions justifying involuntary treatment no longer exist? When the conditions justifying involuntary treatment no longer exist, the individual must be released as provided in § 397.6971. § 397.6975(2).

What if the conditions justifying involuntary treatment continue to exist after 90 days of additional treatment? When the conditions justifying involuntary treatment continue to exist after 90 days of additional treatment, a new petition requesting renewal of the involuntary treatment order may be filed. § 397.6975(2).

➤ **Disposition of individual upon completion of involuntary treatment.**

What happens at the end of the 60-day period of court-ordered involuntary treatment? At the conclusion of the 60-day period of court-ordered involuntary treatment, the individual is automatically discharged unless a motion for renewal of the involuntary treatment order has been filed with the court pursuant to § 397.6975. § 397.6977.

How does the 60 day period operate? In denying a petition for a writ of habeas corpus, the Fourth District Court of Appeal has held that the “automatic discharge [is] at the ‘conclusion of the 60-day period of court-ordered involuntary treatment,’ not merely sixty days after the entry of the order for treatment.” S.M.F. v. Needle, 757 So. 2d 1265 (Fla. 4th DCA 2000)(*quoting* section 397.6977)(denying writ of habeas corpus because the petitioning juvenile ran away before commencing treatment).

➤ **Confidentiality of records.**

What records are confidential? The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with Chapter 397 and with applicable federal confidentiality regulations and are exempt from § 119.07(1) and § 24(a), Article I of the Florida Constitution. Such records may not be disclosed without the written consent of the individual to whom they pertain except that appropriate disclosure may be made without such consent as provided in § 397.501(7)(a), including upon court order based on application showing good cause for disclosure. § 397.501(7)(a).

How do I determine good cause for disclosure of confidential records? In determining whether there is good cause for disclosure, examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself. § 397.501(7)(a)5.

Are there special characteristics of the order? Yes. An order authorizing disclosure and use of confidential information is a unique kind of court order. Its only purpose is to authorize a disclosure or use of identifying information which would otherwise be prohibited. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as, and accompany, an authorizing court order. § 397.501(7)(f).

Who may seek disclosure of records? An order authorizing the disclosure of an individual’s records may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the individual’s records are needed to provide evidence. An application must use a fictitious name, such as John Doe or Jane Doe, to refer to any individual and may not contain or otherwise disclose any identifying information unless the individual is the applicant or has given a written consent to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny. § 397.501(g).

Are there any special notice requirements? Yes. The individual and the person holding the records from whom disclosure is sought must be given adequate notice in a manner which will not disclose identifying information to other persons, and an opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order. § 397.501(h).

Is the hearing held in open court? Not by default. Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that identifying information is not disclosed to anyone other than a party to the proceeding, the individual, or the person holding the record, unless the individual requests an open hearing. The proceeding may include an examination by the judge of the records referred to in the application. § 397.501(7)(i).

Can the court authorize disclosure of records for a criminal investigation or prosecution? A court may authorize the disclosure and use of records for the purpose of conducting a criminal investigation or prosecution of an individual only if the court finds that all of the following criteria are met:

- The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury, including but not limited to homicide, sexual assault, sexual battery, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.
- There is reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.
- Other ways of obtaining the information are not available or would not be effective.

The potential injury to the individual, to the physician-individual relationship, and to the ability of the program to provide services to other individuals is outweighed by the public interest and the need for the disclosure. § 397.501(7)(j).