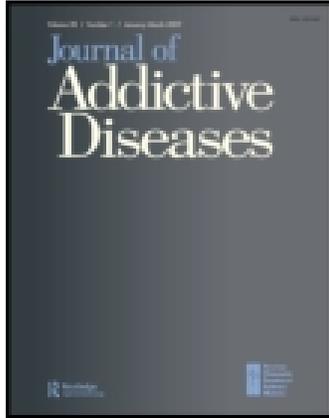


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On: 20 August 2015, At: 19:34

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London, SW1P 1WG



Journal of Addictive Diseases

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/wjad20>

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Accepted author version posted online: 07 Jan 2013. Published online: 12 Mar 2013.

To cite this article: Timothy J. Sweeney JD CCJAP, Michael P. Strolla DO MRO ABAM & David P. Myers MD CAP FSAM (2013) Civil Commitment for Substance Use Disorder Patients Under the Florida Marchman Act: Demographics and Outcomes in the Private Clinical Setting, *Journal of Addictive Diseases*, 32:1, 108-115, DOI: [10.1080/10550887.2012.759873](http://dx.doi.org/10.1080/10550887.2012.759873)

To link to this article: <http://dx.doi.org/10.1080/10550887.2012.759873>

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CIVIL COMMITMENT FOR SUBSTANCE USE DISORDER PATIENTS UNDER THE FLORIDA MARCHMAN ACT: DEMOGRAPHICS AND OUTCOMES IN THE PRIVATE CLINICAL SETTING

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The Florida Marchman Act, a statutory process for civil commitment of persons with substance use disorders. The paper describes the various methods by which the Act may be employed, and examines the demographics and outcomes of 100 patients admitted to a private treatment setting pursuant to Marchman Act authority.

KEYWORDS. Substance use disorder, civil commitment, involuntary commitment, Marchman Act, involuntary treatment, treatment outcomes

INTRODUCTION

The Florida Civil Commitment statute, known as the Hal S. Marchman Alcohol and Other Drug Services Act, was established by the Florida legislature in 1993.¹ The statute's mission was to provide a way to require individuals abusing substances to undergo assessment and, when appropriate, treatment for their addiction regardless of self-motivation or willingness. The effectiveness of the statute and outcomes derived in treatment calls into question an age-old argument regarding recovery from addiction: Do you have to want recovery for it to work?¹ In 12-Step circles, the answer to this question is most likely yes, although there are certainly many instances in which people are required to attend Alcoholics Anonymous or Narcotics Anonymous by court order, and some maintain their recovery after expiration of the court-ordered compulsion to attend.² However, the same cannot be said for treatment where there exists no evidence of correlation between voluntariness and outcomes. After all, patients regularly commence treatment for reasons having little to do with recovering; they go to save a

marriage or job, to stay out or get out of jail, and to avoid being cut off financially from family members. An effective clinical regimen can mold patients with poor recovery motivation and, over the course of the treatment program, help them gain the insight that recovery must be a priority in their lives, if not the only priority. Because they generally are the most resistant entrants to the treatment setting, examining patients treated under the constraints of civil commitment offers an opportunity to truly refute the claim that willingness to recover affects outcomes.

METHODS

This study was conducted in the Spring 2012 and examined 100 clinical charts of patients treated at the HealthCare Connection of Tampa, Inc., (HCC) between 2003 and 2012. The HCC is a private, for-profit, dual-diagnosis program specializing in the care of primarily, but not exclusively, impaired professionals. Each of the 100 patients either entered treatment under civil commitment or had civil

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commitment foisted upon them shortly after entering the program when they revealed intention to terminate treatment. All of the patients' care was managed either directly by David P. Myers, MD, CAP, FASAM, the Program's founder and Medical Director, or by one of his subordinate physicians under his supervision. Most were also evaluated by the Program's consulting psychiatrists and psychologist, except when treatment was prematurely terminated prior to opportunity for consultation.

The Marchman assessments were predominantly initiated in Hillsborough County, Florida, although seven of the cases commenced in counties other than Hillsborough. All Marchman treatments were overseen by the Hillsborough Court.

MECHANICS OF THE MARCHMAN ACT

The Marchman Act involves a two-step process: assessment first, then treatment. Assessments are commenced in one of three ways: by law enforcement using the concept of protective custody;ⁱⁱ by a physician executing an emergency certificate;ⁱⁱⁱ or by a relative, spouse, or three unrelated adults filing a petition for assessment with the Marchman Court of the county where the impaired person is currently located.^{iv} All assessments, regardless of the nature of their initiation, must meet the following criteria:

(1) There must exist a good faith belief that the person is substance abuse impaired, *and*, (2) because of that impairment, the person has lost self control over his substance use, *and* either (a) has inflicted, or threatened or attempted to inflict, physical harm on himself or others or (b) has judgment so impaired that he cannot appreciate the need for treatment services (hereafter known as the Involuntary Admission criteria).^v

Protective Custody

Law enforcement officers may initiate an assessment by either directly transporting an impaired individual for assessment and stabilization to a hospital, licensed detoxification facility, or addictions receiving facility or, if no beds are currently available, taking the person to any municipal or county jail. When jailed, the deten-

tion is not considered an arrest and no records are compiled. The substance abuser must be moved to an appropriate service provider as soon as a bed is available and must be assessed by the attending physician within 72 hours. Unless a petition for assessment or treatment is filed or the individual consents to stay in treatment, someone taken into protective custody must be released either within 72 hours or when he or she no longer meets the Involuntary Admission criteria, whichever occurs first.^{vi} The statute provides immunity for law enforcement acting in good faith.^{vii} None of the 100 cases of this study commenced under protective custody.

Physician's Emergency Certificate

A physician, on his own initiative or at the request of a spouse, relative, legal guardian, or other responsible adult with knowledge of a person's impairment, may commence a Marchman assessment by executing a physician's emergency certificate.^{viii} The certificate must set forth the Involuntary Admission criteria and advise of the physician's relationship to the patient, to the person requesting the assessment, and to the treatment provider to whom the patient is being referred.^{ix} Although law enforcement members under a protective custody referral may only deliver a patient to a licensed detoxification facility, hospital, or addictions receiving facility, a physician may refer individuals to a less restrictive licensed treatment provider if assessment but not stabilization is required.^x Ten of the patients in this study commenced their treatment via a physician's certificate. These cases started either with the patient initially being committed psychiatrically under the Florida Baker Act or with admittance to a hospital after an overdose. When the attending physician determined the nature of the substance impairment, they executed a certificate and, on medical clearance, the patients were transported to HCC by either ambulance or HCC clinical staff.

On admission of a patient pursuant to a physician's certificate, the treatment provider has 5 days to conduct a qualified professional's assessment.^{xi} At the conclusion of the assessment, the provider must either release the

individual with appropriate referral for follow-up care or retain the person in treatment, either with the patient's consent or by filing a petition with the court for assessment or treatment re-asserting the Involuntary Admission criteria.^{xii} Filing a petition allows the treatment provider to keep the patient in treatment pending further court order.^{xiii} Although the physician's certificate can be executed in any Florida county, the petition for assessment or treatment should be filed in the county where the patient was referred. All 10 of the physician certificate cases were ultimately followed by filing of treatment petitions in Hillsborough County, where HCC is located.

Petition for Assessment

The third, and most common, way Marchman cases are started is with the filing of a petition for assessment in the county where the substance abuser is located.^{xiv} Interestingly, the law does not require legal residency be established in the county where the petition is filed. Families have filed and successfully established Marchman cases for visiting relatives and even out-of-state relatives. A petition for assessment may be filed by a spouse, relative, or three unrelated adults with personal knowledge of the substance abuser's impairment. As with all other methods of Marchman initiation, the Involuntary Admission criteria must be set forth in the petition.^{xv} The petition is typically filed with the clerk of the mental health division at the county courthouse. In some counties, Marchman cases are folded into the probate or guardianship clerk's office. Usually, the forms for filing the petition are available at the clerk's office.

In most cases, on receipt of a petition for assessment, the court will initiate a case, set a hearing date for the petition for assessment, and serve notice of the same to the alleged substance abuser (in Marchman court proceedings, called the "respondent") and the petitioner(s).^{xvi} At the hearing, which must occur within 10 days from service of the petition on the respondent, the respondent is entitled to legal counsel, either private or via the public defender's office or the Office of Regional Counsel.^{xvii} All relevant testimony is heard, and the respondent is enti-

led to examination by a court-appointed qualified professional.^{xviii} At the conclusion of the hearing, if the court determines that a reasonable basis exists to believe that the respondent meets the Involuntary Admission criteria, an order is entered requiring the respondent to immediately commence an assessment.^{xix} Transport by law enforcement is available if deemed necessary.^{xx}

Most petitioners seeking access to public treatment resources are subject to the foregoing procedure. However, in certain instances, the law provides for the filing of an *ex parte* pick-up order, where circumstances and immediate bed availability dictate that the assessment must start immediately, without a court hearing on the merits of the petition for assessment.^{xxi} The grounds typically necessary to justify entry of an *ex parte* pick-up order include allegations of the likelihood that the alleged substance abuser will flee the jurisdiction, wreak havoc on the family member/petitioners, or put himself or herself in serious harm (e.g., overdose) if not immediately committed to an assessment. Nineteen of the 100 cases in this study commenced pursuant to an *ex parte* pick-up order. Under these circumstances, on receipt of an *ex parte* petition for assessment, the court enters an order directing the county sheriff to pick up the alleged substance abuser and take him or her to treatment for assessment. Often, the pick-up can be accomplished on the same day the petition is filed. Based on their experiences, the sheriff's department does not treat these pick-up orders as typical warrants and will exercise discretion in dealing with these patients; they often will allow the patients to be transported unrestrained and sometimes in the front seat of the squad car if the patient acts reasonably. Unfortunately, sometimes patients are highly agitated when picked up and arrive for assessment handcuffed.

Whether the assessment starts after an *ex parte* order or from a court hearing, the provider has 5 days to complete the assessment and make a treatment determination, although a time extension is available under the statute.^{xxii} At the conclusion of the assessment, the provider must either release the patient with an appropriate referral or may retain the

patient, either voluntarily or involuntarily, after filing a petition for treatment.^{xxiii} The petition for treatment can be filed by the provider or initial petitioner. In either case, filing the petition for treatment extends the court hold and requires the substance abuser to remain in treatment until the court hearing on the petition, which must occur within 10 days.^{xxiv} At this hearing, as with the hearing on the petition for assessment, the respondent/substance abuser is entitled to legal counsel.^{xxv} At this hearing, the petitioner must prove the existence of the Involuntary Admission criteria by clear and convincing evidence.^{xxvi} If this burden is met, the court will enter a 60-day treatment order, commencing from the date of the hearing (and not, as most patients wish, from the date of their initial assessment by the provider).^{xxvii} If grounds continue to exist for involuntary treatment, the order may be renewed for subsequent 90-day periods provided a petition for renewal (or subsequent renewal) is timely filed at least 10-days prior to the expiration of the existing order.^{xxviii} Alternatively, once the patient no longer meets Involuntary Admission criteria, the treatment provider can release the patient without a further court order, although a formal order dismissing the case is ultimately entered.^{xxix}

Contempt Power

Underlying the Marchman court's authority is the power to hold noncompliant respondents in contempt of court and place them in jail. Of the 100 cases of this study, this has occurred five times, twice each with two patients and once with a third, who absconded and were later caught by law enforcement officials. Based on our experience, the criteria for contempt amount to serial, willful refusal to follow the court's treatment order. A relapse during Marchman treatment usually results in an admonition to take recovery seriously, and often an extension of the Marchman treatment time but not jail time. The jail cases referenced above resulted from not only repeated relapses, but also disruptive behavior deemed harmful to other patients in the treatment community. In these cases, the judge will enter a 6-month sentence for contempt of court but allow early

release, usually after a few or several weeks, if the treatment provider, after consultation with the incarcerated patient, believes a change in behavior and attitude has occurred. However, without question, the threat of incarceration keeps patients in compliance until the spiritual awakening or psychic change occurs and the patients become self-motivated to protect and grow their recovery.

DEMOGRAPHICS AND OUTCOMES

Of the 100 patients, 63 were men, and 37 women. Men ranged in age from 18 to 67 years old, with a median age of 37.2 years. Women ranged in age from 19 to 61 years old, with a median age of 37.6 years old. The marital status of the women was 14 married, 19 single, and 4 divorced. The men's marital status was 17 married, 32 single and 14 divorced. The patients included 88 Caucasians, 1 African American, 1 Asian American, 4 Native Americans, and 6 Hispanics. Two patients were homeless and three were lawyers. A total of 93 patient cases originated in Hillsborough County and 7 from other Florida counties. Ten cases originated from physician certificates, 19 from *ex parte* petitions for assessment, and 14 started with treatment petitions. The remainder commenced with standard petitions for assessment.

The cases commenced as follows: before 2006 (n = 11), 2006 (n = 8), 2007 (n = 11), 2008 (n = 16), 2009 (n = 14), 2010 (n = 18), 2011 (n = 21), and 2012 (n = 1). Drug of choice for patients was alcohol (n = 38), opiates (n = 25), cocaine (n = 10), benzodiazepines (n = 5), methamphetamine (n = 4), methadone (n = 1), and GHB (n = 1), and 16 patients were poly-addicted.

Dual Diagnosis

Fifty-six patients were diagnosed with dual disorders, including depression (n = 30), generalized anxiety disorder (n = 9), bipolar disorder (n = 10), adjustment disorder (n = 2), schizophrenia (n = 1), cyclothymia (n = 1), attention deficit disorder (n = 2), and Korsikoff's syndrome (n = 1). Twenty-two (59.4%) women and 34 (53.9%) men were diagnosed with dual disorders.

TABLE 1. Outcome Data

Method of discharge	No.				
	18–30 y	31–40 y	41–50 y	51–60 y	61 y and older
Successful completion	26	12	22	7	2
Against medical advice	6	7	9	1	1
At staff request	2	1	2	0	0
Transfer	0	0	2	0	0

Completion Data

The average length of Marchman treatment order was 102 days, ranging from 0 days (one patient who absconded the day the Marchman order was entered) to 544 days (one patient with multiple relapses while under the Marchman order). The average length of treatment was 125 days for women and 88 days for men. Forty-one patients were under the Marchman order for more than 100 days and 7 for more than 200 days, although this time typically included not only full-time, primary treatment, but also a term of stepped down transitional care and, in some instances, aftercare.

Of the 100 patients, treatment at HCC was concluded as follows: successful completion ($n = 69$), left against medical advice ($n = 24$), left at staff request ($n = 5$), and transferred ($n = 2$). A total of 26 (70%) of 37 women and 43 (68%) of 67 men successfully completed treatment. Data by age are presented in the Interestingly, the highest success rate among the three significant data pools was for the youngest population at 76.47% (see Table 1).

Comparison to Voluntary Admissions

In 2011, HCC admitted 240 patients to primary, full-time treatment. Of the 219 voluntary (non-Marchman) patients, the discharge data was as follows: successful completion ($n = 154$), against medical advice ($n = 47$), at staff request ($n = 14$), and transfer ($n = 4$). Seventy percent of the voluntarily admitted patients successfully completed treatment versus the 69% successful completion for the Marchman patients.

CONCLUSION

For the practice at HCC, the Marchman Act is an incredibly effective intervention tool. Although

its use brings about the admission of some of the most resistant and, initially, disruptive patients, the statute is likely the only means by which these patients could be compelled to enter treatment prior to the onset of much more destructive, life-harming consequences. Furthermore, as the outcome data suggest, most of these combatant admissions come to terms with their circumstances and ultimately accept and thrive in treatment.

Notes

- i. Florida Statutes, sections 397.301 *et seq.* (1993).
- ii. Florida Statutes, sec. 397.677 (1993).
- iii. FS, sec. 397.679.
- iv. FS, sec. 397.6811.
- v. FS, sec. 397.675.
- vi. FS, sec. 397.6773.
- vii. FS, sec. 397.6775.
- viii. FS, sec. 397.6791.
- ix. FS, sec. 397.6793.
- x. FS, sec. 397.679.
- xi. FS, sec. 397.6797.
- xii. FS, sec. 397.6797.
- xiii. FS, sec. 397.6797(b).
- xiv. FS, sec. 397.6811.
- xv. FS, sec. 397.6814.
- xvi. FS, sec. 397.6815.
- xvii. FS, sec. 397.6815(1).
- xviii. FS, sec. 397.6818.
- xix. FS, sec. 397.6818(1).
- xx. FS, sec. 397.6818(3).
- xxi. FS, sec. 397.6815(2).
- xxii. FS, sec. 397.6821.
- xxiii. FS, sec. 397.6822.
- xxiv. FS, sec. 397.6822(3).
- xxv. FS, sec. 397.6955.
- xxvi. FS, sec. 397.6957(2).
- xxvii. FS, sec. 397.697(1).
- xxviii. FS, sec. 397.6975.
- xxix. FS, sec. 397.6977.

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1. Sullivan MA, Birkmayer F, Boyarsky BK, et al. Uses of coercion in addiction treatment: clinical aspects. *Am J Addict* 2008; 17(1):36–47.
2. Farabee D, Prendergast M, Anglin MD. The effectiveness of coerced treatment for drug-abusing offenders. *Fed Probation* 1998; 62:3–10.

Appendix A

Physician Certificate for Emergency Admission

I certify that I have personally examined _____, on _____ at _____ am/pm. Based on my examination, I conclude that the above-named person is **substance abuse impaired and is appropriate for emergency admission for substance abuse. This examination was performed within 5 days of the date of the application for admission.**

My relationship to the person is: _____

My relationship to the applicant is: _____

My relationship to the licensed service provider is: _____

The person named above meets the following criteria for emergency admission:

1. The person named above is substance impaired because:

AND

2. Because of such impairment, the person has lost the power of self-control with respect to substance abuse for these reasons: _____

AND EITHER

3. The person has inflicted or is likely to inflict physical harm on himself or others unless admitted because:

OR

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

Recommended Level of Care:

Hospital Detoxification Center Addiction Receiving Facility Less Restrictive

Signature of Physician: _____ Date: _____ Time: _____ am/pm

Printed Name of Physician: _____ Phone # _____ License # _____

A signed copy of the Physician's Certificate must accompany the person and shall be made a part of the person's clinical record, together with a signed copy of the application.

Appendix B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA MENTAL HEALTH DIVISION

IN RE: CASE NO.:

DIVISION:

Respondent,

PETITION FOR INVOLUNTARY ASSESSMENT & STABILIZATION

(SUBSTANCE ABUSE)

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I, _____, being duly sworn hereby state that I have good faith reason to believe that _____, hereinafter referred to as Respondent, is substance abuse impaired, and because of such impairment has lost the power of self-control with respect to substance abuse, and either:

1. That the Respondent has inflicted or is likely to inflict physical harm on themselves or others unless admitted, **OR**

2. 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 their need for care and of making a rational decision regarding their need for care. **AND**

3. The Respondent has refused to submit to an assessment.

Type of substance abuse: (Choose only **ONE**) Alcohol Drugs

I have personal knowledge of the Respondent's substance abuse as follows:

Petitioner's relationship to Respondent:

Name of Respondent's attorney: unknown

Address/Phone number of Respondent's attorney, if known: unknown

Is Respondent able to afford an attorney?: unknown

Appendix C

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
MENTAL HEALTH DIVISION

IN RE:

Respondent, CASE NO.:

ORDER OF PICKUP TO HEALTHCARE CONNECTION OF TAMPA AND ORDER GRANTING
PETITION FOR INVOLUNTARY ASSESSMENT AND STABILIZATION

This matter came before the Court on an ex parte emergency Petition for Involuntary Assessment and Stabilization, pursuant to Florida Statute 397.6815(2). The Respondent _____, is at risk and in need of Assessment and Stabilization. The Court, upon review of the sworn Petition and statutory authority, finds the Court has jurisdiction pursuant to Section 397.682, Florida Statutes (2001). The Court finds there is a reasonable basis to believe that the Respondent, _____ meets the criteria for involuntary assessment and stabilization.

Based upon the above, it is hereby **ORDERED AND ADJUDGED** that:

The Petition for Involuntary Assessment and Stabilization is hereby **GRANTED**.

It is further **ORDERED AND ADJUDGED** that the Sheriff of Hillsborough County, Florida **PICK UP AND DELIVER** _____ **TO** HealthCare Connection of Tampa, at 825 West Linebaugh Avenue, Tampa, Florida, 33612, where he will be held for an in patient assessment, which is the least restrictive alternative.

DONE AND ORDERED this ___ day of _____, 20_____

CIRCUIT JUDGE

PICK UP ORDER VALID FOR (30) DAYS AFTER SIGNATURE.

Appendix D

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA MENTAL HEALTH DIVISION

IN RE: CASE NO.:

DIVISION:

Respondent,

**PETITION FOR INVOLUNTARY TREATMENT
(SUBSTANCE ABUSE)**

I, _____, request this Court enter an Order granting this Petition for Involuntary Treatment being filed on _____, based on the following facts:

- 1. The Respondent meets the requirements of involuntary treatment pursuant to Section 397.693, Florida Statute in that the Respondent meets the criteria for involuntary admission AND
 ___ has been placed under the protective custody in the previous 10 days
 ___ has been the subject of an emergency admission in the previous 10 days
 ___ has been assessed by a qualified professional within 5 days
 ___ has been the subject of an involuntary assessment and stabilization within the previous 12 days, OR
 ___ has been the subject of an alternative involuntary admission within the previous 12 days, AND

- 2. Petitioner believes that the Respondent is substance abuse impaired because of
 ___ Drugs Alcohol ___ Drugs and Alcohol

AND

- 3. Petitioner believes that Respondent has lost self-control with respect to substance abuse because:
- 4. Petitioner is attaching hereto for filing a copy of the findings and recommendations of the assessment performed by qualified professionals.
- 5. Respondent has refused voluntary substance abuse treatment.
- 6. Petitioner's relationship to Respondent: _____
 Petitioner _____