

# EX PARTE ORDER - MARCHMAN ACT

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*ACTS Program (813) 367-2317*

**IMPORTANT - PLEASE READ!**

**IF YOUR PETITION IS NOT PROPERLY COMPLETED YOUR ORDER WILL NOT BE GRANTED!**

**WHAT IS A MARCHMAN ACT?** A Marchman Act is the procedure for providing a person with emergency services and temporary detention for substance abuse assessment and treatment when required, who is impaired because of his/her substance abuse, and who is unable to determine his or her need for such services is necessary; has lost the power of self-control with respect to substance use; and who is likely to inflict, or threatened or attempted to inflict harm to themselves or others.

Marchman Acts in DeSoto County can be initiated by a Circuit Court Judge's ex parte order through the enclosed **PETITION FOR INVOLUNTARY ASSESSMENT AND STABILIZATION** executed by **any three (3) adults** who have personal knowledge of the person's substance abuse impairment; and a Law Enforcement Officer may take a person to the treatment facility if there is reason to believe that the person's behavior meets admission criteria.

**KNOWINGLY MAKING A FALSE STATEMENT IN A SWORN PETITION IS A MISDEMEANOR OF THE FIRST DEGREE PUNISHABLE AS PROVIDED IN F. S. 775.082.**

Before proceeding with a Marchman Act, consider the use of alternatives that may be more appropriate for the situation. The other alternatives are: Baker Act for mental illness (F.S. 397); developmental disabilities (F.S. 393); adult abuse, neglect and exploitation (F.S. 415.1051); guardianship (F.S. 744); and advance directive (F.S. 765) (for information on Alzheimer's, area agencies on aging, elderly services throughout the state and other resources, visit the Florida Department of Elder Affairs website. (<http://elderaffairs.state.fl.us>))

**A MARCHMAN ACT CAN BE EITHER VOLUNTARY OR INVOLUNTARY.**

A **voluntary** Marchman Act is when a person makes application to a facility for assessment or treatment for themselves. A minor may seek voluntary admission for substance abuse services without parental or guardian consent.

An **involuntary** Marchman Act is when a person's substance abuse impairment has caused them to refuse voluntary assessment or the person is unable to determine for himself/herself whether assessment is necessary because of said substance abuse and you have reason to believe that the person has inflicted or is likely to inflict harm on himself or herself or others unless admitted.

In these instructions, the alleged impaired person will be referred to as the "Respondent".

**PETITION FOR INVOLUNTARY ASSESSMENT AND STABILIZATION.** Before completing the petition, you will need to contact a service provider and confirm that a bed is available for the Respondent before the Court will enter the order authorizing involuntary assessment and stabilization of the Respondent. **All paragraphs of the petition must be completed.** You must provide proper identification for your acknowledgment before a Notary Public or Deputy Clerk.

You must swear in the petition that you have witnessed the Respondent causing harm to themselves or others and all other facts that will show the Judge that the Respondent is impaired by their substance abuse. You must also show that you have tried to convince the Respondent to take a voluntary assessment but that their judgment is 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.

As soon as you file the petition with the Clerk of Court, they will bring it to the Judge's Office for review, which will normally be completed by 4:00 P.M. the same day, so long as the petition is filed before 2:00 P.M.

**COURT DETERMINATION.** Relying solely on the contents of the petition, the Court will either: (1) enter an ex parte order authorizing the involuntary assessment and stabilization of the Respondent (2) set a hearing without entering an ex parte order, or (3) deny your petition.

Unless your petition is denied, the Court shall determine whether or not an attorney should be appointed for the Respondent. If the Court believes that the Respondent needs the assistance of counsel, the Court may appoint counsel for the Respondent without regard to the Respondent's wishes.

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.

1. If the Court determines that the person meets the criteria for involuntary assessment, it shall enter an **EX PARTE ORDER FOR INVOLUNTARY ASSESSMENT AND STABILIZATION – MARCHMAN ACT, an ORDER APPOINTING ATTORNEY, and in the case of a minor, an ORDER APPOINTING GURADIAN A LITEM.** At the time the ex parte order is entered, the Court will enter

an **ORDER AND SUMMONS TO APPEAR AT HEARING ON PETITION FOR INVOLUNTARY ASSESSMENT/STABILIZATION** setting a hearing within ten (10) days to be attended by Petitioners, Respondent, Respondent's attorney, if any, and such other persons as the Court may direct.

As soon as the orders are entered, the Court will deliver them to the Clerk of Court for preparation of a packet for you to pick up.

The packet will consist of a copy of the petition, the ex parte order, the order and summons to appear at hearing, the order appointing attorney, if any, and the order appointing guardian ad litem, if any, which you must deliver to the Sheriff's Office for service on the Respondent. Additional copies of the petition, ex parte order, order and summons to appear at hearing, order appointing attorney, if any, and order appointing guardian ad litem, if any, are to be provided to the Petitioner, Respondent, Respondent's attorney, if any, Respondent's parent, guardian or legal custodian in the case of a minor, the Respondent's spouse or guardian, if applicable, and such other persons as the court may direct.

In the ex parte order the Court will order the Sheriff to take the Respondent into custody and deliver him or her to the service provider (facility). You will need to deliver the packet to the Sheriff's Office. You must provide the Sheriff's Office with the location of the Respondent so they may immediately pick the Respondent up and transport him or her to the assessment and stabilization facility where the bed is reserved. Please complete the enclosed **LAW ENFORCEMENT INFORMATION SHEET** to give to the Sheriff's Office to assist them in identifying the Respondent. If the Sheriff's Office cannot locate the Respondent, the order will be returned to the Clerk of Court as unserved.

2. If an ex parte order is not entered and only a hearing is set, a copy of the petition and a copy of the **ORDER AND SUMMONS TO APPEAR AT HEARING AND DENYING EX PARTE ASSESSMENT/STABILIZATION** shall be provided to the Respondent; the Respondent's parent, guardian, or legal custodian, in the case of a minor; to the Respondent's attorney, if known; the Petitioner; the Respondent's spouse or guardian, if applicable; such other persons as the court may direct; and a copy of the petition and the order and summons to appear at hearing are to be personally served to the Respondent if he or she is a minor.

At the hearing, the Court shall hear all relevant testimony. The Respondent must be present unless the Court has reason to believe that his or her presence is likely to be injurious to him or her, in which case the Court shall appoint a guardian advocate to represent the Respondent. After hearing all of the evidence, the Court shall determine whether there is a reasonable basis to believe the Respondent meets the involuntary admission criteria.

Based on its determination, the Court shall either dismiss the petition or immediately enter an **ORDER FOR INVOLUNTARY ASSESSMENT AND**

**STABILIZATION – MARCHMAN ACT.** If the Court believes that the Respondent suffers from mental illness rather than substance abuse, it may enter a Baker Act Ex Parte Order instead.

3. If the Court denies your petition by entering the **ORDER DISMISSING ACTION – MARCHMAN ACT**, and you have additional evidence that you can present to the Court, you may have your petition presented to the Court again with the additional evidence presented.

**ASSESSMENT:** The service provider may admit the Respondent for involuntary assessment and stabilization for a period not to exceed five (5) days unless the service provider (facility) petitions the court for an extension of time.

If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of a Respondent within five (5) days after the courts order, it may file a written request for an extension of time for its assessment. The court may grant additional time, not to exceed seven (7) days after the date of renewal order, for the completion of the involuntary assessment and stabilization of the Respondent.

**NOTE:** If the Respondent is in jail, a Marchman Act petition filed by an individual will not take precedence over their criminal charge. A Marchman Act service provider is not required to admit a person charged with a crime for whom the provider determines and documents that it is unable to provide adequate security for.

#### **RESPONSIBILITIES OF SERVICE PROVIDER REGARDING INVOLUNTARY ADMISSION.**

1. Ensure that Respondent meets the admission criteria;
2. Ascertain whether medical and behavioral conditions of Respondent are beyond safe management capabilities of service provider;
3. Provide for admission of Respondent to service component that is least restrictive available setting that is responsive to Respondent's treatment needs;
4. Verify that admission of Respondent does not result in a census in excess of its licensed service capacity;
5. Determine whether the cost of services is within financial means of Respondent or those who are financially responsible for Respondent's care; and
6. Take all necessary measures to ensure that each client in treatment is provided with a safe environment, and to ensure that each client whose medical condition or behavioral problem becomes such that he or she cannot be safely managed by the service facility is discharged and referred to a more appropriate setting for care.

**SUBSTANCE ABUSE TREATMENT.** If the licensed service provider recommends that the Respondent receive substance abuse treatment and Respondent will not

impaired and 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 (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 need or her need for care and of making rational decisions regarding the need for care.

At the conclusion of the hearing, the Court shall either deny the petition or order the Respondent to undergo involuntary treatment, which may be in-patient or out-patient, with Respondent's chosen licensed service provider. Court ordered treatment cannot exceed 60 days.

When the Court finds that the conditions for involuntary substance abuse treatment have been proven by clear and convincing evidence, it may find it necessary to have the Sheriff take the Respondent into custody and deliver him or her to the treatment facility rather than Petitioner. In addition, the Court may order the Respondent to deliver himself/herself to the treatment facility.

Renewal of the involuntary treatment order may be requested pursuant to F. S. 397.6975 ten (10) days prior to the end of the 60 days treatment period with copies provided to all parties. A hearing will then be held on that petition. If the Court finds that the petition for renewal of the involuntary treatment order should be granted, it may order the Respondent to undergo treatment for an additional 90 days.

When conditions justifying involuntary treatment no longer exist, the Respondent must be released from the treatment facility.

If a petition to extend the treatment is not filed, the Respondent shall be released at the end of the 60 day treatment.

**PATIENT'S RIGHTS. (F.S. 394.459)** A patient has the right to individual dignity; right to nondiscriminatory services; quality of treatment; communication and visits with persons outside of the facility; confidentiality of client records; right to counsel; habeas corpus (the right to ask the court to review the cause and legal right or privilege or an authorized procedure); and liability and immunity by service provider.

**THIS PACKET IS PROVIDED FOR YOUR USE BY:**

<b>HONORABLE DON T. HALL</b>	<b>NADIA K. DAUGHTREY</b>
<b>COUNTY JUDGE</b>	<b>CLERK OF COURT</b>
<b>DESOTO COUNTY, FLORIDA</b>	<b>DESOTO COUNTY, FLORIDA</b>
<b>115 East Oak Street, Suite 201</b>	<b>115 East Oak Street, 1<sup>st</sup> Floor</b>
<b>Arcadia, Florida 34266</b>	<b>Arcadia, Florida 34266</b>

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF  
THE STATE OF FLORIDA, IN AND FOR DESOTO COUNTY

IN RE: \_\_\_\_\_

CASE NO. \_\_\_\_\_

D/O/B: \_\_\_\_\_  
Respondent.

**PETITION FOR INVOLUNTARY  
ASSESSMENT AND STABILIZATION  
(SUBSTANCE ABUSE)**

We, \_\_\_\_\_,  
\_\_\_\_\_, Petitioners, being duly sworn,  
hereby request a court order for involuntary assessment and stabilization of \_\_\_\_\_  
\_\_\_\_\_, Respondent.

I understand that by filling out this form, Respondent may be taken by law enforcement to a substance abuse assessment facility, which may be located in another county.

I swear that the answers to the following questions are given honestly, in good faith, and to the best of my knowledge.

1. The Respondent lives at, or can be found at, the following address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
2. My relationship to Respondent is: \_\_\_\_\_.
3. I have known Respondent for \_\_\_\_\_ (how long).
4. The name of Respondent's attorney (if any) is: \_\_\_\_\_  
\_\_\_\_\_.
5. (Check one) Respondent \_\_\_ can \_\_\_ cannot afford an attorney.
6. a. I live at (street address): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
- b. I work as a (occupation): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.  
Employer name and address: \_\_\_\_\_  
\_\_\_\_\_. Work Phone: \_\_\_\_\_.

7. (Check the one that applies)

- a. The Respondent has only recently displayed behavior related to substance abuse.
- b. The Respondent has, over a period of time, had a substance abuse problem. Specify how long: \_\_\_\_\_.

8. I believe that Respondent is substance abuse impaired for the following reason:

\_\_\_\_\_  
\_\_\_\_\_

(Substance abuse is 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.)

9. I believe that Respondent has lost the power of self-control with respect to substance abuse for the following reason: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_;

and either:

a. I have seen the following behavior, which causes me to believe that the Respondent has inflicted, or threatened or attempted to inflict, physical harm on himself or herself or someone else. On \_\_\_\_\_, I saw the Respondent: \_\_\_\_\_

\_\_\_\_\_, or

b. I believe the Respondent is in need of substance abuse services because 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 about service for the following reason: \_\_\_\_\_

\_\_\_\_\_.

(A mere refusal to receive such services is not enough to constitute lack of judgment.)

10. Other similar behavior I have personally seen is as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

11. To my knowledge or belief, I do not believe these actions were a result of mental illness, retardation, developmental disability, or conditions resulting from anti-social behavior.

12. I have made arrangements for the Respondent to be admitted to \_\_\_\_\_ Facility located at \_\_\_\_\_, Florida, for involuntary assessment and stabilization.

13. I am on good terms with the Respondent at the present time. (Check one)  
\_\_\_ Yes \_\_\_ No If "no", please explain: \_\_\_\_\_  
\_\_\_\_\_

14. (Check the one that applies)  
\_\_\_ a. I or a family member \_\_\_ have \_\_\_ have not previously made allegations to law enforcement involving the Respondent. (Indicate whether a baker act, domestic violence, trespassing, battery, child abuse or neglect, etc.) The allegation was: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ b. The Respondent \_\_\_ has \_\_\_ has not previously made allegations to law enforcement about me or my family. (Indicate whether a baker act, domestic violence, trespassing, battery, child abuse or neglect, etc.) The allegation was: \_\_\_\_\_  
\_\_\_\_\_

15. (Check the one that applies)  
\_\_\_ a. I or a family member are not now, and have not in the past, been involved in a court case with the Respondent.  
\_\_\_ b. I or a family member am now, or was, involved in a court case with the Respondent. Type of case: \_\_\_\_\_  
What court and where: \_\_\_\_\_  
\_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

16. (Check and answer appropriate sentences.)  
\_\_\_ a. I have attempted to get the Respondent to agree to seek assistance for substance abuse as follows: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ b. I did not try to get the Respondent to agree to voluntary assessment or treatment because: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_ c. The Respondent refused voluntary assessment or treatment because: \_\_\_\_\_  
\_\_\_\_\_

17. The Respondent has been treated in the past for substance abuse. \_\_\_ Yes \_\_\_ No  
When: \_\_\_\_\_ Where: \_\_\_\_\_



Under penalties of perjury, I declare that I have read the foregoing Petition for Involuntary Assessment and Stabilization and that the facts alleged therein are true.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

_____ Petitioner's signature	_____ Petitioner's signature
_____ _____ Petitioner's Name and Address	_____ _____ Petitioner's Name and Address
Phone: _____	Phone: _____
Relationship to Respondent: _____	Relationship to Respondent: _____

\_\_\_\_\_  
Petitioner's signature

\_\_\_\_\_  
\_\_\_\_\_  
Petitioner's Name and Address

Phone: \_\_\_\_\_

Relationship to Respondent: \_\_\_\_\_

STATE OF FLORIDA,  
COUNTY OF DESOTO.

SWORN TO AND SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_  
\_\_\_\_\_  
who are \_\_\_ personally known to me or \_\_\_ presented identification, type of  
identification: \_\_\_\_\_.

\_\_\_\_\_  
Deputy Clerk/Notary Public

A copy of this petition must be attached to the Ex Parte Order for Involuntary Assessment/Stabilization and accompany the Respondent to a licensed hospital or substance abuse facility that has agreed to accept the Respondent.

**LAW ENFORCEMENT INFORMATION SHEET**

**FOR ORDER REQUIRING INVOLUNTARY ASSESSMENT/STABILIZATION**

NAME OF PERSON: \_\_\_\_\_

A/K/A: \_\_\_\_\_

VEHICLE: \_\_\_\_\_ TAG: \_\_\_\_\_

IDENTIFYING MARKS: \_\_\_\_\_

SPOKEN LANGUAGE: \_\_\_\_\_

PREVIOUS SUBSTANCE ABUSE HISTORY (if any): \_\_\_\_\_

\_\_\_\_\_

PHYSICAL DISABILITIES: \_\_\_\_\_

CURRENT PROBLEM: \_\_\_\_\_

\_\_\_\_\_

NEXT OF KIN OR PERSON TO BE CONTACTED IN CASE OF EMERGENCY:

NAME: \_\_\_\_\_ RELATIONSHIP: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE (DAYS): \_\_\_\_\_ EVENINGS: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_