April 25, 2018

To: Florida Bar President Michael J. Higer;
Florida Bar President-Elect Michelle R. Suskauer;
Florida Bar President-Elect Designate John M. Stewart;
Florida Bar Executive Director Joshua E. Doyle; and
The Florida Bar's Board of Governors

From: The Florida Bar's Special Committee on Mental Health

Re: Interim Report & 2019 Legislative Proposals

OVERVIEW

In 2017, the Florida Bar ["Bar"] created a special mental health committee ["Committee"] with a two-fold mandate: 1) review Florida's mental health laws and recommend changes; and 2) create educational materials for lawyers and judges to better identify the signs of mental illness and increase awareness of the standards that should be followed in mental health cases. The Committee spent the past year crafting the following seventeen legislative proposals for the 2019 session. It will spend the 2018-19 bar year working on its educational directive.

As to legislation, the Committee proposes several changes to Chapter 394, Florida Statutes,[1] which is more commonly known as the Baker Act. It also recommends building upon the Legislature's 2018 efforts to prevent people with mental illnesses or substance abuse issues from accessing firearms. Most of the Committee's recommendations, though, focus on improving the Marchman Act. Chapter 397's involuntary commitment sections have not been significantly modified since 1993, and as shown below, the procedures are very cumbersome. In light of the opioid epidemic, this inefficiency must be removed from the legal process so that the courts can respond to the growing number of substance abuse cases. See Exhibit A.

This report provides the rationale(s) for each of the Committee's recommended changes. The proposals are in the attached documents: 1) "New Marchman Procedures," and 2) "Legislative Proposals."[2] The former details a restructuring and streamlining of the Marchman Act's involuntary commitment procedures by merging the assessment and treatment sections into one process. This change eliminates the need to file and serve two similar petitions on related subjects. The latter document lists the Committee's other proposed changes.

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[1] Unless stated otherwise, all statutory references are to the 2017 version of the Florida Statutes.

[2] The "New Marchman Procedures" file contains most of this document's Marchman Act suggestions.

ATTACHMENT 1: "New Marchman Procedures"

Enacted in 1971 and formally named the Marchman Act in 1993, Chapter 397 serves as the legislative vehicle for people struggling with substance abuse issues to be involuntarily assessed and treated if they meet statutory criteria. As illustrated in Exhibit B, the involuntary process begins with the filing of an assessment petition. A hearing is then held, and if the respondent reasonably appears to meet the statute's involuntary treatment criteria, the court can order an assessment. Should treatment be recommended, a services petition is filed, and after a hearing, the person can be ordered into care for up to 90 days.

This process, though, contains many flaws and inefficiencies because unlike the Baker Act, the State Attorney is not the "real party of interest" in Marchman cases. Individuals and family members unfamiliar with the legal system must consequently navigate a complex and intimidating justice system. These individuals are typically proceeding on a pro se basis and are easily frustrated because a loved one is in crisis and the system is not user-friendly. It is not uncommon for the court to receive incorrect paperwork—such as assessment petitions filed when a treatment petition is required and vice versa—or petitions filed but not properly served resulting in unnecessary delays for treatment and multiple court hearings. Moreover, because there are insufficient service facilities for involuntary patients, people frequently leave treatment early, which requires the court to hold contempt proceedings to enforce their orders. As a result, it often takes three to five hearings to get one person into involuntary care.

The fact that two petitions need to be filed and served in Marchman cases is another source of the system's inefficiencies. The allegations in each petition, after all, are basically the same, and it costs $40 to serve each document, which is a hardship for many pro se litigants in these hearings. To streamline the process, the Committee recommends reinstating certain involuntary commitment provisions of the Marchman Act's predecessor: Chapter 396. Known as the Myers Act, this law required petitioners to file a treatment petition with either the assessment attached to the petition, or the court would order said exam if it reasonably believed the respondent qualified for care. While the assessment was occurring, the respondent's case would be continued, and a treatment order would then be entered at the rescheduled hearing. Thus, if the Myers Act's involuntary procedures replaced the Marchman Act's, petitioners would only have to file and serve ***one*** treatment petition rather than separate assessment and treatment petitions. Marchman cases would then travel under one case number, and service costs to all

petitioners would be reduced by 50%, which helps increase access to the courts as it pertains to substance abuse matters. It would also make the process easier for public use because the forms that the courts utilize could be simplified.

This document also contains three Marchman Act proposals that are not included in the "Legislative Proposals" attachment. The first is the creation of section 397.6753, which enables law enforcement officers to seize a potential Marchman respondent's firearms while acting in accordance with the Act's involuntary admissions procedures or a related court order. This proposal mirrors a Senate Bill 7026 provision that was recently enacted into law and permits law enforcement officers to seize the firearms of potential Baker Act respondents. For purposes of consistency, the Committee recommends this change for the Marchman Act as well.[3]

The second recommendation is made in response to Lund v. Project Warm, 177 So. 3d 283 (Fla. 5th DCA 2015) in which the Fifth DCA held that even though section 397.6975 used the permissive word "may," a treatment extension petition must be filed at least 10 days before original's service order's expiration. The Committee seeks to remove this arbitrary deadline by allowing continued care petitions to be filed at any time before the original order's expiration but preferably at least ten days in advance. This preference is included so that the courts have an opportunity to hear the extension petition without having to detain the respondent while the petition is pending. Said detention power is included because it is often costly and difficult to locate Marchman respondents once they are released from treatment, and people still needing care should not be prematurely released. These additional days, though, would be deducted from the court's extended treatment order.

Lastly, to further align the Marchman and Baker Acts by having the former recognize a difference between individuals frequently needing involuntary care and those that do not,[4] this document revives another provision of the Myers Act: section 397.6976. Here, people that qualify as "habitual abusers"—i.e. individuals that have been involuntary committed at least three times over a 24-month period if each prior commitment order was initially for a period of 90 days—would have a modified commitment process. Specifically, a habitual abusers' history could be used in lieu of an assessment to order him or her into care if they otherwise meet the

[3] Many of this document's other revisions are made to better assimilate these two laws as that reduces confusion, especially among the law enforcement officers involved in the commitment process.

[4] See § 394.4655(2)(e)1 (limiting the Baker Act's involuntary outpatient process to those individuals who, in the preceding 36 months, have been involuntarily committed at least twice).

Marchman treatment criteria. In other words, this provision would only apply to people who have spent at least 270 days—which is approximately one-third—of a 24-month period in care. Ninety days, after all, is the most amount of time someone can be ordered into care unless an extension is subsequently granted.

ATTACHMENT 2: "Legislative Proposals"

In addition to restructuring the Marchman Act's involuntary commitment procedures, the Committee makes sixteen (16) other proposals that are detailed in the "Legislative Proposals" attachment.[5]

- *State Attorney as "Real Party of Interest" & Access to Records*

The first of these recommendations is to make the State Attorney the "real party in interest" in Marchman cases, have them notified by the Clerk of Court when cases are filed, and have access, via subpoena if necessary, to all people and records relevant to presenting the case. This change is needed because cases are currently prosecuted by pro se litigants, and their unfamiliarity with the law and court rules creates problems. Assessment and treatment petitions are often misfiled and not served, and without proper service of process, hearings must generally be rescheduled because the court lacks jurisdiction over the respondent. Moreover, it is well-known that the public is confused and/or intimidated by the court system. Asking pro se litigants to navigate the Marchman Act process is often stressful and intimidating. They are unfamiliar with the rules of evidence and thus do not have the proper documents or witnesses. They instead expect the judge to ask the required questions to have the respondent committed, but the court cannot provide this assistance and appear impartial. The frustration of pro se litigants consequently rises, and their trust and faith in the judiciary decreases.

Accordingly, the State Attorney's presence in these cases will tremendously improve the adjudicatory process as it will remove the evidentiary problems so that more cases are resolved on their merits. The administration of justice will thus be greatly improved as people in need of care will receive it more quickly with fewer trips into court because earlier petitions were denied. However, as seen in Exhibit A, the Committee recognizes that making the State Attorney the

[5] The Marchman restructuring is noted on this list as Proposal 15, but given the extensive nature of this procedural reform, it needed a separate attachment.

"real party in interest" for Marchman cases will require additional personnel and resources, and therefore, this proposal is conditioned on the Florida Legislature providing the requisite funding.

- *Ten Days for Court Hearings*

The Committee's second change is to increase and standardize[6] the amount of time the courts have to hold Baker and Marchman Act hearings after a petition is filed from five to ten days. This uniform standard will minimize confusion about the time deadlines in each act, and while some committee members voiced concern that the additional time will keep the respondent in the hospital for a longer period of time before he or she receives a hearing, respondents remain hospitalized when they continue a case unless the physician choses to discharge. Further, five days is often not enough time to effectuate service of process, affecting witness availability. This extra time may also reduce the need for continuances as well as increase judicial efficiency by providing the courts with more case scheduling flexibility, which is particularly important in jurisdictions with large caseloads. Few circuits are currently able to conduct involuntary outpatient Baker Act hearings—a lesser restrictive alternative to inpatient treatment—because of their other constitutional and statutory duties.

- *Tele-appearance of Witnesses & Best Interest/Injurious/Knowing, Intelligently, and Voluntary Waiver of Respondent's Presence at Hearings*

The Committee's third proposed change consists of two-related parts. First, it recommends that witnesses be able to appear at Baker and Marchman hearings through teleconference technology unless good cause is shown for their physical presence. Second, it standardizes the scenarios for which the respondent's presence at the hearing can be excused. With respect to the latter, if the respondent's presence is not in his or her best interests, or likely to be injurious to the respondent, or he or she knowingly, intelligently, or voluntarily [KIV] waived his or her presence, the respondent does not need to attend the hearing. However, the Baker Act uses the "best interest" standard; the Marchman Act uses "injurious;" and neither mentions the KIV test even though case law permits said waiver. Mouliom v. N.E. Fla. State Hosp., 128 So. 3d 979 (Fla. 1st DCA 2014). Therefore, to reduce confusion, the Committee put all three standards into each section. This broader exemption range may also help the respondent because in some cases, forcing the respondent to a hearing can be traumatic and dangerous. For

[6] The Marchman Act currently permits assessment hearings to be held up to ten days after the petition is filed but only five days after the treatment petition. Cf. § 397.6815(1) [Assessments, 10 days] with § 397.6955(2) [Treatment, 5 days]).

example, some respondents must be tied to a gurney and transported by police if he or she does not want to appear voluntarily.

With regard to teleconferencing, some committee members argued it: 1) violates Doe v. State, 217 So. 3d 1020 (Fla. 2017); 2) conflicts with Florida Judicial Administration Rule 2.530; and 3) is injurious to the respondent, and the law requires these hearings to be held in settings unlikely to harm the respondent. Doe, however, only held that judges must be physically present at court hearings. It was silent as to witnesses and is therefore distinguishable. Similarly, while Rule 2.530 requires all parties to consent to testimony being taken through telecommunication equipment, Florida Civil Procedure Rule 1.451(a) states that witnesses must be physically present to testify at a hearing "unless otherwise provided by law or rule of procedure." This law will thus not conflict with any court procedural rule. See Looney v. State, 803 So. 2d 656, 676 (Fla. 2001); Caple v. Tuttle's Design-Build, Inc., 753 So. 2d 49, 54 (Fla. 2000).

As to the notion that teleconferencing is harmful to the patient, this argument assumes the court did not excuse the patient from being present at the hearing and is primarily based on a Florida Supreme Court study from 2002. More recent studies, however, have proven this 2002 finding to be dated.[7] In addition, many states utilize videoconferencing technology in these hearings without issue. Miami has experienced similar results with its videoconference pilot program. Relatedly, the Houston Police Department is expanding its successful pilot program[8] where officers arrive on scene of a mental health crisis with iPads through which the person in crisis has a "telepsychiatry appointment." Further, while some patients may be delusional, studies have shown the doctor's use of videoconferencing technology is likely to have a minimal adverse impact.

Moreover, since mental health hearings are often held in a hospital and not an actual courtroom, videoconferencing will likely increase public safety. Similarly, by enabling doctors to testify from their hospitals, it will improve the mental health system's efficiency and ensure greater adjudication of cases on their merits. Currently, unless the parties stipulate on their reports' admissibility, doctors must appear at hearings to verify the contents. This often-critical piece of evidence would otherwise be inadmissible hearsay. Coming to court, though, can take

[7] http://theworkspacetoday.com/2014/07/01/south-carolina-sees-success-savings-telepsychiatry-program/ (noting the success of South Carolina's mental health telepsychiatry program) (last visited Apr. 4, 2018).
[8] https://thecrimereport.org/2018/03/06/how-ipads-are-changing-one-police-forces-response-to-the-mentally-ill/ (last visited Apr. 4, 2018).

an entire day. In large urban communities like Miami-Dade, treating facilities are upwards of 45 miles apart, and while the hearing location is centralized, some facilities are still 25 miles away. High case volume means doctors can wait more than four hours to testify and then deal with traffic. Hospitals consequently and understandably resist sending doctors to court because their absence is costly. Doctors cannot bill during this time, and these institutions are already underfunded. Doctors thus face the conundrum of missing work or subjecting themselves to contempt of court. Technology, though, can solve this problem by enabling doctors to see other patients while waiting to testify, and because their testimony can permit courts to reach the merits of a case, people in need may have better access to care. Petitioners may also have to file fewer petitions because their initial efforts are more successful, and fewer court visits is beneficial to the respondent. The need to continue cases due to witness availability can likewise be reduced. Accordingly, the law should enable the court system to utilize technology.

- *Restoring Baker Act Treatment Length to Six Months & Guidance on Where to Send "individuals with traumatic brain injury or dementia but no co-occurring mental illness"*

Fourth, the Committee recommends undoing a 2016 legislative change that reduced the amount of time Baker Act patients can be treated local residential centers to 90 days while retaining the six-month treatment cap at state-owned facilities. This change has caused local hospitals to file more petitions for continued treatment, or results in patients needing long-term care being sent to state facilities that are often outside their local areas. The Committee therefore suggests restoring the uniform, six-months maximum on Baker Act treatment. The statute, after all, provides no guidance on when patients should be sent to either facility, and this reduction is not supported by any studies. Nevertheless, the Committee expressly notes the patient's actual amount of time in treatment is tied to his or her progression. More specifically, facilities are required to regularly examine the patient to ensure that he or she still meets involuntary treatment criteria, and that any adequate lesser restrictive treatment alternatives are still unavailable. When combined with a patient's habeas corpus rights and the change below that allows the public defender to access its clients in these facilities, hospitals should not be able to hold patients for solely financial reasons.

Relatedly, in 2016, the Legislature prohibited "individuals with traumatic brain injury or dementia who [lack] a co-occurring mental illness" from being "involuntarily placed in a state treatment facility," but it did not provide any guidance on where to place these people, who often

are most in need of help and subject to abuse. The Committee, therefore, suggests they be referred to the Agency for Persons with Disabilities and/or the Department of Elder Affairs.

- *Baker Act Continuances & State Attorney Access to Records*

Next, the Committee recommends granting the State Attorney 1) the right to a seven court-working day continuance in Baker Act cases if it can establish "good cause" for the delay and that the State acted diligently before requesting a continuance; and 2) express access to all relevant records because some state agencies currently resist the State's information requests. As to the former, this change has been recommended in two Grand Jury Reports of the Eleventh Judicial Circuit, and since the State bears the burden of proof, this continuance is a matter of procedural fairness. The good cause and due diligence conditions should prevent unreasonable delay that would only keep the patient hospitalized, yet the law must recognize that witnesses have other responsibilities and thus cannot always come to court on any given day. The State, therefore, needs some scheduling flexibility. Otherwise, a new petition must be filed against the respondent, which restarts the process. The committee's other recommended changes (10 days to schedule hearings; teleconferencing) should also minimize the need for State continuances.

- *Baker Act Standards*

Like the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts, the Committee strongly believes the Baker Act criteria must be modernized and brought into line with the majority of states that permit medical intervention before tragedy is imminent. Accordingly, there is now a proposed section providing guidance on what "neglect or refuse to care for himself or herself" and "real and present threat of substantial harm" mean. Further, the proposed changes permit the court to consider the patient's entire, rather than just recent, history as seen by his or her actions, omissions, and behavior, not just behavior. The law's dangerous analysis will also include more than just bodily harm, a change the Third District Court of Appeal supports. See Craig v. State, 804 So. 2d 532, 534 (Fla. 3d DCA 2002) (noting that "the civil commitment system [is] unable to act in cases of stalking or harassment of a citizen unless there is a threat of serious physical injury"). Miami's State Attorney, for instance, informed the Committee that it has many cases with only significant property damage. In summary, these proposed changes can greatly increase public safety and provide needed treatment for the respondent. Relatedly, both Baker and Marchman Acts will afford patients

with serious mental illness(es) or addiction(s) the right to continued care upon discharge, which should reduce the number of individuals who are habitually in treatment.

- *Confidentiality of Baker Act Cases*

Seventh, in 2017, the Legislature enacted section 397.6760, which made Marchman court records confidential; and the Committee seeks to further align the Baker and Marchman Acts by extending this protection to the Baker Act. Section 394.4616 is thus mostly a carbon copy of 397.6760, but the Committee slightly modified each provision. One such change is to give law enforcement agencies access to these records, and another is to make the respondent's name confidential. Given the sensitive nature of these cases, one's identity must be safeguarded against unintended consequences. Someone, for instance, wrote the Committee to state that the Marchman Act enabled him to reconnect with his son, but because a public record search links his name with this law, it is hard for him to secure employment. Baker and Marchman Act cases must therefore be completely confidential and exempt from public record so that individuals can better reenter society.

- *Guardian Advocates – Unfunded Mandate*

Circa 2002, the Florida Legislature required courts to appoint a guardian advocate in inpatient Baker cases when the respondent could not consent to treatment. At some point, this requirement was extended to Assisted Outpatient Treatment [AOT] Baker cases, and in 2016, it was added to the Marchman Act, which previously only required said appointment if the respondent was not present at the hearing. These mandates, though, were never funded, and thus, few guardian advocates are appointed.[9] However, even if funding existed guardian advocates add little to these hearings. Counsel, after all, represents the respondents at all times, and as detailed below, the public defender and regional counsel represent these clients when in treatment or in AOT misdemeanor cases. These attorneys protect their clients' interests even if the respondent is not present. Similarly, the respondent's inability to consent to care is part of the Baker and Marchman Act analysis.

[9] In Miami, guardian advocates are available for inpatient Baker cases because hospitals have agreed to fund these positions. These volunteers, however, refuse to do outpatient Baker or Marchman cases because that requires visiting a person's home, which can be dangerous. Inpatient Baker, in contrast, only involves going to the hospital. Thus, even if these positions were funded, it would likely be difficult to find volunteers, and many of these patients do not have friends or family members.

Moreover, in Marchman cases, once the withdrawals have passed, patients mostly receive therapy, and thus, it is unclear what medical care guardian advocates must content to, especially when section 397.697(3) authorizes the facility to give the respondent all beneficial treatment. Likewise, in outpatient Baker cases, respondents have agreed to comply with their treatment plans. Failure to do so disqualifies them from the program and possibly results in inpatient care. Guardian advocates are thus largely a redundancy, and the Committee's eighth suggestion is to remove them from Baker and Marchman cases, including AOT, with two exceptions. First, the confidentiality provisions should allow guardian advocates to have access to these records, and second, guardian advocates should be appointed in involuntary Baker cases when the patient cannot consent to care. It, after all, is common for other medical issues to arise while the patient is hospitalized, and the presence of these advocates removes the courts from having to review a patient's day-to-day medical issues.

- *Clarifying Marchman Petition, Admission, and Treatment Hearing Standards*

Next, the Committee proposes that the differences in the Marchman Act's admission criteria, the required contents of its petitions, and the court's treatment finding be removed. Currently, each of these contains parts the others do not. Thus, the petitions do not plead all the admission elements, nor do courts make all the required findings. For instance, s.397.675 states that someone cannot be committed if a willing friend is available, but this point is not a required finding in involuntary assessment or treatment (s.397.6814 and s.397.6957) hearings.

- *Elopement from Involuntary Treatment Facilities*

The Committee's tenth proposal addresses a major flaw in Florida's substance abuse treatment system: the paucity of locked facilities for involuntary Marchman patients. Here, the Committee spoke with John Dow, President of the South Florida Behavioral Health Network, and learned that facilities are not locked because they would be considered "secure facilities" under the law, which are governed by a different set of rules. Meeting these other requirements is too costly for most treatment providers. Thus, while recognizing this change will have a fiscal impact, the Committee recommends requiring all facilities to have the requisite security features to detain involuntarily committed person and exempting these installations from qualifying them as "secure facilities." See Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993) ("As we have noted previously in construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting

provisions of any other section. Likewise, the Courts of Appeals generally have 'interpreted similar "notwithstanding" language . . . to supersede all other laws, stating that ' "[a] clearer statement is difficult to imagine." ' "). This change is particularly important because currently, involuntary patients just leave treatment, which raises questions as to why the involuntary process was ever initiated. It also requires the court to hold another hearing to enforce its treatment order through its contempt powers, yet the Marchman Act is supposed to help divert people from jail. Facilities, though, would need to enact policies that enable them to readily identify their involuntary and voluntary patients because the latter are free to leave at any time.

- *Firearm Possession & Mental Health*

In 2018, the Legislature enacted several laws designed to bar people with mental illnesses from accessing or possessing guns, and the Committee's eleventh recommendation involves strengthening those laws. For instance, s.790.064 prevents individuals "adjudicated mentally defective" or "committed to a mental institution," as those terms are defined in s.790.065, from having guns. This section closed a major loophole in Florida's mental health laws because prior to its enactment, the law only prohibited firearm sales and purchases, or obtaining a concealed carry license. However, while banning a person with mental illness from possessing guns is important, s.790.064 does not provide a process for removing the guns they have. The Committee, therefore, recommends requiring law enforcement to investigate any individual with a firearm disability to determine if they have any weapons, and if so, remove them pursuant to s.790.401, which was also enacted in 2018. Similarly, s.790.064 references s.790.065, but the latter only deals with firearm sales and purchases. Therefore, to avoid a legal challenge and/or confusion, the Committee recommends modifying s.790.065 so that it encompasses possession and impoundment of firearms.

Second, the Committee expands s.790.065's procedures that add people to the firearm prohibition databases that meet the Baker Act's dangerousness criteria but voluntarily entered treatment. Specifically, these procedures will now apply to voluntary Marchman patients as that law has the same dangerousness analysis as the Baker Act. In addition, the law will require law enforcement officers to investigate individuals unable to buy weapons to determine if they possess any firearms, and if so, remove them under s.790.401. Given that only 1% of mental health cases result in an adjudication, these changes ensure that Florida's firearm prohibitions are not avoided simply because someone volunteered for care. Relatedly, the Committee seeks to

improve the low rate of service providers submitting names into the firearm databases by adding penalties—fines and possible loss of licensure—for non-compliance with the law.[10]

Finally, the Committee adds firearms to the list of rights that can be removed in guardianship proceedings, and it entrusts the guardian with removing any weapons in the Ward's possession. These individuals, after all, have been found to be incapacitated, yet the current law does not permit the probate court to remove their weapons. Closing this loophole is consistent with the Legislature's 2018 response to the Marjory Stoneman Douglas shooting.

- *PD/Regional Counsel's Access to Patients in Mental Health & Treatment Facilities*

The Committee's twelfth proposal grants the public defender and regional counsel the right to access their respective clients that are hospitalized or in a treatment facility. This change should provide the respondents with meaningful protections such as preventing facilities from retaining people that no longer meet the involuntary commitment criteria.

- *Replacing the Word, "Services" with "Treatment" in Chapters 394 & 397*

In 2016, the Legislature substituted the word, "services," for "treatment," in the Baker and Marchman Acts. Treatment, however, is the commonly used term by litigants, and thus, to make the system less confusing for the public, the Committee's thirteenth recommendation is a purely stylistic one: substitute the word "treatment," for "services."

- *Waive Marchman Act Service of Process Fees if Indigent*

Finally, it currently costs Marchman litigants $80 to serve the assessment and treatment petitions. While the aforementioned restructuring of this law reduces that amount to $40, the Committee aims to make this system more accessible to the general public by authorizing the court or clerk of court to waive all service fees for those that qualify as legally indigent.

The Two Tabled Proposals

The remaining proposals have been tabled for the time being because the Committee wanted feedback from the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts as to the exact language of each proposal. However, the Committee believes that each area needs reform.

[10] http://www.sun-sentinel.com/news/florida/fl-reg-baker-act-law-guns-20170505-story.html (last visited Apr. 4, 2018).

- *Juvenile Non-Compliance (Possible Solution)*

The first of these areas involves juvenile non-compliance with Marchman treatment orders. As noted above, there are few locked treatment facilities, and thus, patients often leave prematurely, which forces the court to hold a contempt hearing to enforce their orders. However, that course of action only works for adults because Chapters 984 and 985 prohibit the courts from jailing minors for more than five days for violating a court order. Consequently, the system is essentially powerless to address child substance abuse until the minor turns eighteen because when faced with five days in jail, or up to ninety days in treatment that the minor does not want to do, he or she chooses jail. Because five days is generally seen as insufficient to provide adequate treatment, the juveniles resume using upon their release.

While it will likely have a fiscal impact for the Department of Juvenile Justice, one possible solution that can be easily implemented is to exempt a court's *civil* contempt powers in Marchman Act cases from Chapters 984 and 985. Instead, the court would be able to incarcerate a minor for however long they have been ordered into care. For example, if the minor was ordered into care for 50 days, he or she could be jailed for 50 days if he or she does not comply with the order. The maximum sentence would therefore be 90 days, and when faced between 90 days in jail, or 90 days in treatment, the minor will more than likely choose treatment.

The Committee nonetheless recognizes the undesirability of incarcerating minors, but since the Marchman Act is ultimately a remedial statute as opposed to a penal one, the "non-punishment" rationale for limiting the court's contempt powers in cases involving minors does not readily apply to this law. The Marchman Act, after all, seeks to remedy addiction, not punish, and the current system is actually doing tremendous harm to children needing substance abuse treatment. Specifically, with the courts unable to truly enforce their orders, the treatment system and recovery becomes meaningless. This contempt exemption for Marchman cases can thus assist in a minor's treatment, save lives, and improve public safety.

Nevertheless, to protect the minor, the Committee recommends the following safeguards on this proposal. First, before sending the child to jail, the court must clearly inform him or her that the contempt will be immediately purged if the minor enters treatment. Second, the court must hold a status conference every 2-4 weeks to assess the minor's well-being and willingness to go to, and remain in, treatment. Third, should the minor agree to comply with the court's treatment order(s), all service providers must prioritize his or her placement into care. Finally,

the Committee's aforementioned requirement mandating locked treatment facilities throughout Florida should reduce the need to hold minors in contempt because they will not be able to prematurely leave treatment as easily as they can now.

- *Magistrate Contempt/Custody Authority*

The second area of concern involves the authority of magistrates, who often hear Baker and Marchman cases, to hold someone in contempt or order someone into custody. Specifically, because court rules give each side ten days to take exception to the magistrate's report, the parties must either waive the exemption period and then the order is signed by a judge, or the hearing is paused and a judge rules on the custody/contempt matter. Both solutions are quite inconvenient, and in mental health cases, respondents may disappear if they are not immediately taken into custody. Thus, the Committee proposes authorizing law enforcement to act on a magistrate's contempt and custody finding while the ten-day exemption period is occurring. Moreover, because this procedural matter is "intimately related" to substantive rights and only authorizes the respondent's detention while the court-mandated exemption period is occurring, this change does not appear to conflict with any court rule. See Looney v. State, 803 So. 2d 656, 676 (Fla. 2001); Caple v. Tuttle's Design-Build, Inc., 753 So. 2d 49, 54 (Fla. 2000).

CONCLUSION

In summary, with each proposal working in tandem to improve the system's overall functionality while balancing the individual's liberty interests, need for treatment, and general public safety; these seventeen proposals represent a comprehensive effort to reform and improve Florida's mental health laws.

EXHIBIT A: Case Statistics (Miami-Dade)

Marchman Case Filings	
Year: 2013	Case Total: 1,743
Year: 2014	Case Total: 2,156
Year: 2015	Case Total: 2,652
Year: 2016	Case Total: 2,592
Year: 2017	Case Total: 2,657

MIAMI-DADE COUNTY INVOLUNTARY PLACEMENT (BAKER ACT) CASES

MONTH	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
JANUARY	206	184	191	195	236	240	272	236	236	292	388	353	307	334	332	295
FEBRUARY	217	216	198	190	232	269	228	234	255	329	304	311	341	325	315	
MARCH	186	219	207	213	225	265	284	264	265	334	304	379	377	386	348	
APRIL	186	223	208	189	237	266	244	282	300	335	381	359	391	300	275	
MAY	193	178	231	227	230	226	262	228	312	362	345	344	316	320	378	
JUNE	186	208	197	197	206	238	297	273	262	348	307	374	345	375	295	
JULY	212	187	218	216	255	265	244	261	288	340	354	336	362	294	289	
AUGUST	177	198	239	217	249	228	246	270	308	375	343	347	340	350	302	
SEPTEMBER	234	161	188	218	198	255	285	268	288	309	284	342	340	346	269	
OCTOBER	162	181	204	249	251	289	287	241	329	343	371	389	337	301	297	
NOVEMBER	159	189	211	225	234	205	227	249	288	299	315	286	315	307	277	
DECEMBER	205	188	216	209	237	274	257	280	324	323	382	349	292	333	275	
TOTALS	2,323	2,332	2,508	2,545	2,790	3,020	3,133	3,086	3,455	3,989	4,078	4,169	4,063	3,971	3,652	295

*These figures include involuntary placement petitions as well as Writs of Habeas Corpus filings.

*Updated on February 22, 2018

EXHIBIT B: MARCHMAN PROCESS OVERVIEW

General Process for Petition for Involuntary Assessment (Juvenile)

Start

Petitioner

Petitioner receives Marchman Act Package Reads Instructions. Completes Petition for Involuntary Assessment and Stabilization. When filing your petition, you must include a $40.00 money order or cashiers check for the Sheriff's Office to serve Respondent.

Clerk

Clerk sends Certified Copy of Petition and Original Civil Action Summons to Sheriff for Service or Petitioner can use a Certified Process Server. Clerk provides Petitioner with a copy of the Petition and original Notice of Hearing

Sheriff or Process Server serves Respondent

Respondent Appears at Assessment and Stabilization hearing.

General Master

GM prepares a report and recommendation for Order of Assessment for Judge's signature.

If Petition is granted, Petitioner takes Respondent to Juvenile Assessment Receiving Facility (JARF) for Assessment or paperwork (Ex-Parte Order) to Sheriff for the Sheriff to pick up Respondent and take respondent to JARF for Assessment or Citrus (Ex-Parte Petition). Petitioner should contact JARF first for bed availability.

Physician

Makes Assessment

General Process for Petition for Involuntary Treatment

(Done after Petition and Order of Assessment)

Start

Petitioner

After the Assessment results, Petitioner can proceed to Petition for Involuntary Treatment.

Respondent Appears at Treatment hearing.

General Master

GM prepares a report and recommendation for Order of Treatment for Judge's signature.

If Petition is granted, Petitioner takes Respondent to ordered facility for Treatment or contact Law Enforcement for Law Enforcement to pick up and take respondent to ordered facility for Treatment

Physician

Treatment is given

ATTACHMENT 1

Marchman Act – Part V: Involuntary Admission Procedures
(Note: Some Revisions from "Suggested Bill Language" Attachment Are NOT Incorporated)

Part V. Part A – General Provisions

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) Either i) a person, 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, able, and responsible family members or friends or the provision of other services; or ii) there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, in the near future, as evidenced by his or her behavior, actions, or omissions, will ~~is~~ likely ~~to~~ inflict serious ~~physical~~ harm to self or others, which includes property damage ~~on himself, herself, or another~~.

(c) For purposes of this section, "neglect or refuse to care for himself or herself" includes, but is not limited to, evidence that a person i) is unable to satisfy basic needs for nourishment, medical care, shelter or safety in a manner that creates a substantial probability of imminent death, serious physical debilitation, or disease; or ii) is substantially unable to make an informed treatment choice, or needs care/treatment to prevent deterioration. In addition, "a real and present threat of substantial harm" from said "neglect" includes, but is not limited to, evidence of a substantial probability that the untreated person will lack, refuse, or not receive services for health or safety, or suffer severe mental, emotional, or physical harm that will result in the loss of ability to function in the community or loss of cognitive or volitional control over thoughts or actions.

397.6753 Ability of Law Enforcement to Seize Firearms.—

(1) Whenever a law enforcement officer is acting in accordance with the involuntary admissions procedures of this chapter or a related court-order, he or she may: a) Serve and execute such order on any day of the week, at any time of the day or night; and b) Use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and take custody of the person who is the subject of the order. When practicable, a law enforcement officer who has received crisis intervention team (CIT) training shall be assigned to serve and execute the order.

(2) A law enforcement officer taking custody of a person under the above-criteria may seize and hold a firearm or any ammunition the person possesses at the time of taking him or her into custody if the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person.

(3) If the law enforcement officer takes custody of the person at the person's residence and the criteria in paragraph 2 have been met, the law enforcement officer may seek the voluntary surrender of firearms or ammunition kept in the residence which have not already been seized under paragraph 2. If such firearms or ammunition are not voluntarily surrendered, or if the person has other firearms or ammunition that were not seized or voluntarily surrendered when he or she was taken into custody, a law enforcement officer may petition the appropriate court under s.790.401 for a risk protection order against the person.

(4) Firearms or ammunition seized or voluntarily surrendered pursuant to this section must be made available for return no later than 24 hours after the person taken into custody can document that he or she is no longer subject to involuntary treatment and has been released or discharged from any treatment provided, unless a risk protection order entered under s.790.401 directs the law enforcement agency to hold the firearms or ammunition for a longer period or the person is subject to a firearm purchase disability under s.790.065(2),

or a firearm possession and firearm ownership disability under s.790.064. The process for the actual return of firearms or ammunition seized or voluntarily surrendered under this paragraph may not take longer than 7 days, and law enforcement agencies must develop policies and procedures relating to the seizure, storage, and return of firearms or ammunition held under this section.

397.6760 Court records; confidentiality.—

(1) All petitions for involuntary treatment ~~assessment and stabilization~~, court orders, and related records, including the respondent's name at trial and on appeal, that are filed with or by a court under this part are confidential and exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution. Pleadings and other documents made confidential and exempt by this section may be disclosed by the clerk of the court, upon request, to any of the following:

(a) The petitioner.

(b) The petitioner's attorney.

(c) The respondent.

(d) The respondent's attorney.

(e) The respondent's guardian or guardian advocate, if applicable.

(f) In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

(g) The respondent's treating health care practitioner and treatment program.

(h) The respondent's health care surrogate or proxy.

(i) The Department of Children and Families and law enforcement agencies, without charge.

(j) The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

(k) A person or entity authorized to view records upon a court order for good cause. In determining if there is good cause for the disclosure of records, the court must weigh the person or entity's need for the information against potential harm to the respondent from the disclosure.

(2) This section does not preclude the clerk of the court from submitting the information required by s. 790.065 to the Department of Law Enforcement.

(3) The clerk of the court may not publish personal identifying information on a court docket or in a publicly accessible file.

(4) A person or entity receiving information pursuant to this section shall maintain that information as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5) The exemption under this section applies to all documents filed with a court before, on, or after July 1, 2017, and appeals filed on or after July 1, 2019.

~~(6) This section is subject to the Open Government Sunset Review Act in accordance with s.119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Part E – Court Involved Admissions, Civil Involuntary Proceedings; Generally

397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of ~~involuntary assessment and stabilization petitions and~~ involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the court in the county where the person is located. The clerk of the court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings. The alleged impaired person is named as the respondent.

(2) RIGHT TO COUNSEL.—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. A respondent who desires counsel and is unable to afford private counsel has the right to court-appointed counsel and to the benefits of s. 57.081. If the court believes that the respondent needs the assistance of counsel, the court shall appoint such 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.

(3) STATE REPRESENTATIVE.—For all court-involved, involuntary proceedings under Chapter 397, Florida Statutes, the state attorney for the circuit in which the respondent is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding. The state attorney shall have access, via subpoena if necessary, to the respondent, witnesses, and records—such as, but not limited to, any social media, school records, and contact the respondent may have had with law enforcement officers or other state agencies—relevant to present the State's case. This provision shall take effect only if the Legislature provides the requisite funding to the state attorney for its additional staffing needs.

Part V. Part F – Court Involved Admissions, Involuntary Assessment; Stabilization

397.6811 Involuntary assessment and stabilization.—A person determined by the court to appear to meet the criteria for involuntary admission under s. 397.675 may 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. Involuntary assessment and stabilization may be initiated by the submission of a petition to the court.

(1) If the person upon whose behalf the petition is being filed is an adult, a petition for involuntary assessment and stabilization may be filed by the respondent's spouse or legal guardian, any relative, a private practitioner, the director of a licensed service provider or the director's designee, or an adult who has direct personal knowledge of the respondent's substance abuse impairment.

(2) 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.

397.6814 Involuntary assessment and stabilization; contents of petition.—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, and the name of the respondent's attorney, if known, 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;

(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

(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.

A fee may not be charged for the filing of a petition pursuant to this section.

397.6815 Involuntary assessment and stabilization; procedure. Upon receipt and filing of the petition for the involuntary assessment and stabilization of a substance abuse impaired person by the clerk of the court, the court shall ascertain whether the respondent is represented by an attorney, and if not, whether, on the basis of the petition, an attorney should be appointed; and shall:

(1) 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. The court shall also issue a summons to the person whose admission is sought and conduct a hearing within 10 days; or

(2) Without the appointment of an attorney and, relying solely on the contents of the petition, enter an ex parte order authorizing the involuntary assessment and stabilization of the respondent. The court may 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.

397.6818 Court determination. At the hearing initiated in accordance with s. 397.6811(1), 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 event the court shall appoint a guardian advocate to represent the respondent. The respondent has the right to examination by a court-appointed qualified professional. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the respondent meets the involuntary admission criteria of s. 397.675.

(1) Based on its determination, the court shall 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 court has reason to believe that 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, the court may initiate involuntary proceedings under the provisions of part I of chapter 394.

(2) If the court enters an order authorizing involuntary assessment and stabilization, the order shall include the court's 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.

(3) If the court finds it necessary, it may 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.

(4) The order is valid only for the period specified in the order or, if a period is not specified, for 7 days after the order is signed.

397.6819 Involuntary assessment and stabilization; responsibility of licensed service provider.—A licensed service provider may admit an individual for involuntary assessment and stabilization for a period not to exceed 5 days unless a petition for involuntary services has been initiated and the individual is being retained pursuant to s. 397.6822(3) or a request for an extension of time has been filed with the court pursuant to s. 397.6821. The assessment of the individual must occur within 72 hours 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.

397.6821 Extension of time for completion of involuntary assessment and stabilization. If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual 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 individual. 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 individual for a period not to exceed 10 days in the absence of a court order to the contrary.

397.6822 Disposition of individual after involuntary assessment.—Based upon the involuntary assessment, a qualified professional of the hospital, detoxification facility, or addictions receiving facility, or a qualified professional when a less restrictive component has been used, must:

(1) Release the individual and, where appropriate, refer the individual to another treatment facility or service provider, or to community services;

(2) Allow the individual, with consent, to remain voluntarily at the licensed provider; or

(3) Retain the individual when a petition for involuntary treatment has been initiated, the timely filing of which authorizes the service provider to retain physical custody of the individual pending further order of the court.

Adhering to federal confidentiality regulations, notice of disposition must be provided to the petitioner and to the court.

Part V. Part F ~~G~~ – Court Involved Admissions; Involuntary Treatment

397.693 Involuntary treatment.—A person may be the subject of a petition for court-ordered involuntary treatment pursuant to this part, if that person either reasonably appears to meet ~~meets~~ the criteria for involuntary admission provided in s. 397.675 ~~and~~ or:

(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~~ 30 days; or

~~(4) Has been subject to involuntary assessment and stabilization pursuant to s. 397.6818 within the previous 12 days; or~~

(4~~5~~) Has been subject to alternative involuntary treatment ~~admission~~ pursuant to s. ~~397.6822~~ 397.6957(1)(c) within the previous ~~12~~ 30 days.

397.695 Involuntary services; persons who may petition.—

(1) If the respondent is an adult, a petition for involuntary services may be filed by the respondent's spouse or legal guardian, any relative, a service provider, or an adult who has direct personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.

(2) If the respondent is a minor, a petition for involuntary treatment may be filed by a parent, legal guardian, or service provider.

(3) If a petitioner qualifies as indigent under section 57.082, Florida Statutes, either the court or the clerk of court may waive or prohibit any service of process fees.

397.6951 Contents of petition for involuntary ~~services~~ treatment.—

(1) A petition for involuntary services must contain the name of the respondent; the name of the petitioner or petitioners; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known; ~~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 ~~outpatient~~ services. The factual allegations must demonstrate:

(a~~1~~) The reason for the petitioner's belief that the respondent is substance abuse impaired;

(b~~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

(c)(~~3~~)(~~a~~i) The reason the petitioner believes that either A) the respondent, 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, able, and responsible family members or friends or the provision of other services; or B) there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, in the near future, as evidenced by his or her behavior, actions, or omissions; will likely inflict serious ~~physical~~ harm to self or others, which includes property damage ~~on himself or herself or others unless the court orders the involuntary services~~; or

(ii~~b~~) The reason the petitioner believes that respondent is in need of substance abuse services but refuses ~~respondent's refusal~~ to voluntarily receive care due to ~~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.

(2) The petition should be accompanied by a certificate or report of a qualified professional or licensed physician, who has examined the respondent within thirty days of the involuntary treatment petition's submission. This certificate or report shall set forth the professional's findings from his or her assessment of the patient and his or her treatment recommendations. However, in the event that the respondent refused to submit to an evaluation, such refusal must be alleged in the petition.

397.6955 Duties of court upon filing of petition for involuntary ~~services~~ treatment.—

(1) Upon the filing of a petition for involuntary ~~services~~ treatment for a substance abuse impaired person with the clerk of the court, the clerk must notify the state attorney's office. In addition, the court shall immediately determine whether the respondent is represented by an attorney or whether the appointment of

counsel for the respondent is appropriate. If, based on the contents of the petition, the court appoints counsel for the person, the clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel, created pursuant to s. 27.511, of the appointment. The office of criminal conflict and civil regional counsel shall represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary services. An attorney that represents the person named in the petition shall have access to the person, witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.

(2) The court shall schedule a hearing to be held on the petition within ~~5~~ 10 days unless a continuance is granted. The court may appoint a magistrate to preside at the hearing.

(3) 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. If the respondent is a minor, a copy of the petition and notice of the hearing must be personally delivered to the respondent. The court shall also issue a summons to the person whose admission is sought.

397.6957 Hearing on petition for involuntary ~~services~~ treatment.—

(1)(a) At a hearing on a petition for involuntary ~~services~~ treatment, the respondent must be present unless he or she knowingly, intelligently, and voluntarily waived his or her right to be present, or the court finds that the respondent's presence is not consistent with his or her best interests, or is likely to be injurious to himself or herself or others; 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. Absent a showing of good cause, the court may permit all witnesses, such as any medical professional or personnel who was involved with the respondent, to remotely attend and testify at the hearing under oath via the most appropriate and convenient technological method of communication available to the court, including, but not limited to, teleconference. ~~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.~~

(b) If the respondent was not, or had previously refused to be, assessed by a qualified professional or licensed physician and the court reasonably believes, based on the petition and evidence presented, that the respondent qualifies for involuntary placement; the court shall give the respondent an opportunity to consent to an examination by a court-appointed or otherwise agreed upon physician. If the respondent agrees, the court shall reschedule the hearing within ten court-working days, and after notifying the parties of the rescheduled hearing date, continue the case. The assessment must occur before the rescheduled hearing date unless the court orders otherwise. However, if the respondent refuses, or agrees to be assessed but the court suspects he or she will not voluntarily appear at a rescheduled hearing, the court may enter a preliminary order committing the respondent to an appropriate treatment facility for further evaluation until the date of the rescheduled hearing.

(c) (i) The respondent's assessment by a qualified professional must occur within 72 hours of his or her arrival at the licensed service provider. If the assessor was not a licensed physician, the assessment must be reviewed by a physician within said 72-hour window. However, if unable to complete its involuntary assessment, and if necessary, stabilization of the respondent within 72 hours of his or her arrival, the service provider, within said window, may petition the court in writing for an extension of time to complete the evaluation. The service provider must furnish copies of its request, in accordance with all confidentiality requirements, to all parties. With or without a hearing, the court may grant additional time, not to exceed three days before the rescheduled treatment hearing.

(ii) Upon completion of his or her report, the qualified professional, in accordance with all confidentiality requirements, shall provide copies to the court and all parties. Parties shall provide the service provider with a valid email address. If, after receiving this report, the respondent agrees to treatment, his or her attorney shall notify the court, which may then cancel the rescheduled treatment hearing if it believes the respondent, based on his or her treatment history, will complete voluntary treatment. Should the assessment results support the treatment petition's allegation(s) but the respondent does not consent to voluntary treatment, the service provider shall hold the respondent until the rescheduled treatment hearing, and it may initiate

treatment. Any days of treatment provided before said hearing shall be deducted from the court's final treatment order should the court find that treatment is necessary. However, if the assessment results conflict with the treatment petition's allegation(s), the service provider shall 1) immediately inform the court and all parties, in accordance will all confidentiality requirements, and 2) release the individual, and where appropriate refer him or her to another treatment facility or service provider, or to community services; or 3) allow the individual, with consent, to remain voluntarily at the licensed service provider.

(d) The court or magistrate may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to or from the treating or assessing service provider and the court for his or her hearing(s).

(2) The petitioner has the burden of proving by clear and convincing evidence that:

(a) The respondent is substance abuse impaired, has lost the power of self-control with respect to substance abuse, and has a history of lack of compliance with treatment for substance abuse; and

(b) Because of such impairment the respondent is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:

1. Either i) without services, the respondent 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, able, and responsible family members or friends or the provision of other services; or ii) there is substantial likelihood that unless admitted ~~without services~~, the respondent has inflicted, or threatened to or attempted to inflict, or in the near future, as evidenced by his or her behavior, actions, or omissions, will likely cause serious ~~bodily~~ harm to self or others, which includes property damage ~~himself, herself, or another in the near future, as evidenced by recent behavior~~; or

2. The respondent is in need of substance abuse services but refuses ~~respondent's refusal~~ to voluntarily receive care due to ~~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. Mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for services.

3. For purposes of this section, "neglect or refuse to care for himself or herself" includes, but is not limited to, evidence that a person 1) is unable to satisfy basic needs for nourishment, medical care, shelter or safety in a manner that creates a substantial probability of imminent death, serious physical debilitation, or disease; or 2) is substantially unable to make an informed treatment choice, or needs care/treatment to prevent deterioration. In addition, "a real and present threat of substantial harm" from said "neglect" includes, but is not limited to, evidence of a substantial probability that the untreated person will lack, refuse, or not receive services for health or safety, or suffer severe mental, emotional, or physical harm that will result in the loss of ability to function in the community or loss of cognitive or volitional control over thoughts or actions.

(3) One of the qualified professionals who executed the involuntary services certificate must be a witness. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the respondent's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(4) At any point during the hearing, if the court has reason to believe that 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, or otherwise meets the involuntary commitment provisions of chapter 394, part 1; the court may initiate involuntary proceedings under said subpart.

(5) At the conclusion of the hearing the court shall either dismiss the petition, or order the respondent to receive involuntary services from his or her chosen licensed service provider if possible and appropriate. Any treatment order must included findings regarding the respondent's need for treatment and the appropriateness of other least restrictive alternatives. This order may designate the specific service provider.

397.697 Court determination; effect of court order for involuntary ~~services~~ treatment.—

(1) When the court finds that the conditions for involuntary ~~services~~ treatment have been proved by clear and convincing evidence, it may order the respondent to receive involuntary services from a publicly funded licensed service provider for a period not to exceed 90 days. The court may also order a respondent to

undergo treatment through a privately funded licensed service provider if the respondent has the ability to pay for the treatment, or if any person on the respondent's behalf voluntarily demonstrates a willingness and an ability to pay for the treatment. 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 services. When the conditions justifying involuntary services no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary services are expected to exist after 90 days of services, a renewal of the involuntary services order may be requested pursuant to s. 397.6975 before the end of the 90-day period.

(2) In all cases resulting in an order for involuntary ~~services~~ treatment, the court shall retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require. The court's requirements for notification of proposed release must be included in the original order.

(3) An involuntary ~~services~~ treatment order authorizes the licensed service provider to require the individual to receive services that will benefit him or her, including services at any licensable service component of a licensed service provider.

(4) If the court orders involuntary ~~services~~ treatment, a copy of the order must be sent to the managing entity within 1 working day after it is received from the court. Documents may be submitted electronically though existing data systems, if applicable.

397.6971 Early release from involuntary ~~services~~ treatment.—

(1) At any time before the end of the 90-day involuntary ~~services~~ treatment period, or before the end of any extension granted pursuant to s. 397.6975, an individual receiving involuntary services may be determined eligible for discharge to the most appropriate referral or disposition for the individual when any of the following apply:

(a) 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.

(b) 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.

(c) If the individual was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by inability to make a determination respecting such need:

1. Such inability no longer exists; or

2. It is evident that further treatment will not bring about further significant improvements in the individual's condition.

(d) The individual is no longer in need of services.

(e) The director of the service provider determines that the individual is beyond the safe management capabilities of the provider.

(2) Whenever a qualified professional determines that an individual admitted for involuntary services qualifies for early release under subsection (1), the service provider shall immediately discharge the individual and must notify all persons specified by the court in the original treatment order.

397.6975 Extension of involuntary ~~services~~ treatment period.—

(1) Whenever a service provider believes that an individual who is nearing the scheduled date of his or her release from involuntary ~~services~~ care continues to meet the criteria for involuntary ~~services~~ treatment in s. 397.693, a petition for renewal of the involuntary ~~services~~ treatment order must ~~may~~ be filed with the court ~~at least 10 days~~ before the expiration of the court-ordered services period but preferably at least 10 days in advance. The court shall immediately schedule a hearing to be held not more than 10 ~~15~~ days after filing of the petition. Should the original treatment period expire while this hearing is pending, the court may order additional treatment if, upon reviewing the extension petition, conclude that an extension order will likely be granted. Any additional treatment time, however, shall be deducted from any extension of treatment time granted. The court shall provide the copy of the petition for renewal and the notice of the hearing to all parties to the proceeding. The hearing is conducted pursuant to s. 397.6957.

(2) If the court finds that the petition for renewal of the involuntary ~~services~~ treatment order should be granted, it may order the respondent to receive involuntary services for a period not to exceed an additional 90 days. When the conditions justifying involuntary services no longer exist, the individual must be released

as provided in s. 397.6971. When the conditions justifying involuntary services continue to exist after an additional 90 days of service, a new petition requesting renewal of the involuntary services order may be filed pursuant to this section.

(3) Within 1 court working day after the filing of a petition for continued involuntary ~~services~~ treatment, the court shall appoint the office of criminal conflict and civil regional counsel to represent the respondent, unless the respondent is otherwise represented by counsel. The clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel of such appointment. The office of criminal conflict and civil regional counsel shall represent the respondent until the petition is dismissed or the court order expires or the respondent is discharged from involuntary services. Any attorney representing the respondent shall have access to the respondent, witnesses, and records relevant to the presentation of the respondent's case and shall represent the interests of the respondent, regardless of the source of payment to the attorney.

(4) Hearings on petitions for continued involuntary services shall be before the circuit court. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this section shall be in accordance with s. 397.697.

(5) Notice of hearing shall be provided to the respondent or his or her counsel. The respondent and the respondent's counsel may agree to a period of continued involuntary services without a court hearing.

(6) The same procedure shall be repeated before the expiration of each additional period of involuntary services.

(7) If the respondent has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the respondent's competence.

397.6976 – Involuntary Treatment of Habitual Abusers

Upon petition of any person authorized under section 397.695, if a person who meets the involuntary treatment criteria of this chapter is also determined to be an habitual abuser, he or she may be committed by the court, after notice and hearing as provided in this chapter, to not more than 90 days, subject to the extension provisions of section 397.6975, of inpatient or outpatient treatment, or some combination thereof, without an assessment. For purposes of this section, "habitual abuser" means any person who has been involuntarily treated for substance abuse under this chapter, three or more times during the 24 months prior to the hearing if each prior commitment order was initially for a period of 90 days.

397.6977 Disposition of individual upon completion of involuntary ~~services~~ treatment.—At the conclusion of the 90-day period of court-ordered involuntary ~~services~~ treatment, the respondent is automatically discharged unless a motion for renewal of the involuntary ~~services~~ treatment order has been filed with the court pursuant to s. 397.6975.

~~**397.6978 Guardian advocate; patient incompetent to consent; substance abuse disorder.**~~

(DELETE THIS SECTION IN FULL)

397.698 – Post-Discharge Right to Continuum of Care.—Upon discharge, a respondent with a serious substance abuse addiction(s) shall be afforded the essential elements of recovery and placed in a continuum of care regiment. By January 1, 2020, the Florida Department of Health shall consult the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts and issue all necessary rules and regulations defining the services that must be provided to these individuals.

ATTACHMENT 2

Mental Health Suggested Bill Language

1. State Attorney as "Real Party of Interest" in Marchman Cases & Access to Records

*397.681 Involuntary petitions; general provisions' court jurisdiction and right to counsel--

(3) STATE REPRESENTATIVE— For all court-involved, involuntary proceedings under Chapter 397, Florida Statutes, the state attorney for the circuit in which the respondent is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding. The state attorney shall have access, via subpoena if necessary, to the respondent, witnesses, and records—such as, but not limited to, any social media, school records, and contact the respondent may have had with law enforcement officers or other state agencies—relevant to present the State's case. This provision shall take effect only if the Legislature provides the requisite funding to the state attorney for its additional staffing needs.

*397.6955 **Duties of court upon filing of petition for involuntary services.**—
(1) Upon the filing of a petition for involuntary services for a substance abuse impaired person with the clerk of the court, the clerk must notify the state attorney's office. In addition, the court shall immediately determine whether the respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. If, based on the contents of the petition, the court appoints counsel for the person, the clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel, created pursuant to s. 27.511, of the appointment. The office of criminal conflict and civil regional counsel shall represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary services. An attorney that represents the person named in the petition shall have access to the person, witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.

2. Ten Days for Court Hearings (Currently some proceedings must be set in 5 days and others in 10. Cf. 397.6815(1) [Assessments, 10 days]; 397.6955(2) [Treatment, 5 days]).

a) 394.4655(7)(a)1 - HEARING ON INVOLUNTARY OUTPATIENT SERVICES.
"The court shall hold the hearing on involuntary outpatient services within ~~5~~ 10 working days after the filing of the petition, unless a continuance is granted."

b) 394.467(6)(a)1 – HEARING ON INVOLUNTARY INPATIENT PLACEMENT.
"The court shall hold the hearing on involuntary inpatient placement within ~~5~~ 10 court working days, unless a continuance is granted."

c) *397.6955(2) – Duties of court upon filing of petition for involuntary services.
"The court shall schedule a hearing to be held on the petition within ~~5~~ 10 days unless a continuance is granted."

3. Tele-appearance of Witnesses & Best Interest/Injurious/Knowing, Intelligently, and Voluntary Waiver of Respondent's Presence at Hearings

a) 394.4655(7)(a)1 - HEARING ON INVOLUNTARY OUTPATIENT SERVICES.
"The court shall hold the hearing on involuntary outpatient services within ~~5~~ 10 working days after the filing of the petition, unless a continuance is granted. The hearing must be held in the county where the petition is filed, must be as convenient to the patient as is consistent with orderly procedure, and must be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of, or likely injurious to, the patient, or the patient knowingly, intelligently, and voluntarily waived his or her right to be present; and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. Absent a showing of good cause, the court may permit all witnesses, such as any medical professional or personnel who was involved with the patient, to remotely attend and testify at the hearing under oath via the most appropriate and convenient technological method of communication available to the court, including, but not limited to, teleconference. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding."

b) 394.467(6)(a)2 – HEARING ON INVOLUNTARY INPATIENT PLACEMENT.
"Except for good cause documented in the court file, the hearing must be held in the county or the facility, as appropriate, where the patient is located, must be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of, or likely injurious to, the patient, or the patient knowingly, intelligently, and voluntarily waived his or her right to be present; and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. Absent a showing of good cause, the court may permit all witnesses, such as any medical professional or personnel who was involved with the patient, to remotely attend and testify at the hearing under oath via the most appropriate and convenient technological method of communication available to the court, including, but not limited to, teleconference. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding."

c) 397.6818 – Court determination (involuntary assessments)
"At the hearing initiated in accordance with s. 397.6811(1), the court shall hear all relevant testimony. The respondent must be present unless the court finds that he or she knowingly, intelligently, and voluntarily waived his or her right to be present, or has reason to believe that his or her presence is not consistent with the best interests of, or likely to be injurious to him or her, in which event the court shall appoint a guardian advocate to represent the respondent. The respondent has the right to examination by a court-appointed qualified professional. Absent a showing of good

cause, the court may permit all witnesses, such as any medical professional or personnel who was involved with the patient, to remotely attend and testify at the hearing under oath via the most appropriate and convenient technological method of communication available to the court, including, but not limited to, teleconference. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the respondent meets the involuntary admission criteria of s. 397.675."

Note: Provision deleted in "New Marchman Procedures" Attachment

d) *397.6957(1) – Hearing on petition for involuntary services.
"At a hearing on a petition for involuntary services, 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 he or she knowingly, intelligently, and voluntarily waived his or her right to be present, or that his or her presence is not consistent with the best interests of, or 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." Absent a showing of good cause, the court may permit all witnesses, such as any medical professional or personnel who was involved with the respondent, to remotely attend and testify at the hearing under oath via the most appropriate and convenient technological method of communication available to the court, including, but not limited to, teleconference.

Note: Incorporated within framework of "New Marchman Procedure" changes.

4. ***Restore Baker Act Treatment Length to Six Months*** (No scientific evidence that 90 days is a maximum improvement threshold as there is with substance abuse) ***& Provide Guidance on where to send "individuals with traumatic brain injury or dementia but no co-occurring mental illness"***

394.467(6)(b) – HEARING ON INVOLUNTARY INPATIENT PLACEMENT.
"If the court concludes that the patient meets the criteria for involuntary inpatient placement, it may order that the patient be transferred to a treatment facility or, if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate facility, or that the patient receive services, on an involuntary basis, for up to 6 months. However, a patient's stay in treatment is subject to his or her progression, which the facility shall regularly—but at least once a month—review to determine if the respondent continues to meet the involuntary treatment criteria of this chapter; and whether any adequate, lesser restrictive treatment means are available. The facility, after notifying the court and parties in writing, shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary status, or an adequate, lesser restrictive method of treatment becomes available and is approved by the court. ~~90 days. However, any order for involuntary mental health services in a treatment facility may be for up to 6 months~~. The order shall specify the nature and extent of the patient's mental illness. The court may not order an individual with traumatic brain injury or dementia who lacks a co-occurring

mental illness to be involuntarily placed in a state treatment facility. Unless evaluations such as, but not limited to, the Glasgow Outcome Scale and/or Rancho Los Amigos Levels of Cognitive Functioning Scale show that said person may benefit from behavioral health treatment, these individuals are to be referred to the Agency for Persons with Disabilities and/or the Department of Elder Affairs for further evaluation and placement in a medical rehabilitation facility or supportive residential placement that addresses their individual needs. ~~The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary status.~~"

5. ***Baker Act Continuances* & State Attorney Access to Records**

394.4655(6) [Outpatient] & 394.467(5) [Inpatient] – CONTINUANCE OF HEARING.

"The patient and State ~~is~~ are independently entitled~~, with the concurrence of the patient's counsel,~~ to at least one continuance of the hearing. The patient's continuance shall be for a period of up to 4 weeks and requires the concurrence of his or her counsel. The State's continuance may be no longer than 7 court working days and requires a showing of 1) good cause; and 2) due diligence on the part of the State before requesting a continuance. The State's failure to timely review and/or contact any readily available document or witness does not warrant a continuance."

394.4655(7)(a)1. - Outpatient

The court shall hold the hearing on involuntary outpatient services within ~~5~~ 10 working days after the filing of the petition, unless a continuance is granted. The hearing must be held in the county where the petition is filed, must be as convenient to the patient as is consistent with orderly procedure, and must be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding. In preparing its case, the state attorney shall have access, via subpoena if necessary, to the patient, witnesses, and records relevant to present the State's case. These records include, but are not limited to, any social media, school records, and contact the patient may have had with law enforcement officers or other state agencies.

394.467(6)2. - Inpatient

Except for good cause documented in the court file, the hearing must be held in the county or the facility, as appropriate, where the patient is located, must be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding. In preparing its case, the state attorney shall have access, via subpoena if necessary, to the patient, witnesses, and

records relevant to present the State's case. These records include, but are not limited to, any social media, school records, and contact the patient may have had with law enforcement officers or other state agencies.

6. Baker Act Standards

394.463 Involuntary examination.—

(1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious ~~bodily~~ harm to ~~himself or her~~self or others, which includes property damage, in the near future, as evidenced by ~~recent~~ his or her behavior, actions, or omissions.

3. For purposes of this section, "neglect or refuse to care for himself or herself" includes, but is not limited to, evidence that a person a) is unable to satisfy basic needs for nourishment, medical care, shelter or safety in a manner that creates a substantial probability of imminent death, serious physical debilitation, or disease; or b) is substantially unable to make an informed treatment choice, or needs care/treatment to prevent deterioration. In addition, "a real and present threat of substantial harm" from said "neglect" includes, but is not limited to, evidence of a substantial probability that the untreated person will lack, refuse, or not receive services for health or safety, or suffer severe mental, emotional, or physical harm that will result in the loss of ability to function in the community or loss of cognitive or volitional control over thoughts or actions.

394.4655(2)2. CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES.—A person may be ordered to involuntary outpatient services upon a finding of the court, by clear and convincing evidence, that the person meets all of the following criteria:

(a) The person is 18 years of age or older.

(b) The person has a mental illness.

(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.

(d) The person has a history of lack of compliance with treatment for mental illness.

(e) The person has:

1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or

2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious ~~bodily~~ harm to ~~himself or her~~self or others, which includes property damage, within the preceding 36 months.

(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary or is unable to determine for himself or herself whether services are necessary.

(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in neglect or serious ~~bodily~~ harm ~~to himself or herself or others, or a substantial harm to his or her well-being~~ as set forth in s. 394.463(1).

(h) It is likely that the person will benefit from involuntary outpatient services.

(i) All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

(9) POST-DISCHARGE RIGHT TO CONTINUUM OF CARE.—Upon discharge, a respondent with serious mental illness(es) shall be afforded the essential elements of recovery and placed in a continuum of care regiment. By January 1, 2020, the Florida Department of Health shall consult the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts and issue all necessary rules and regulations defining the services that must be provided to these individuals.

394.467 Involuntary inpatient placement.—

(1) CRITERIA.—A person may be ordered for involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she has a mental illness and because of his or her mental illness:

1.a. He or she has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or

b. He or she is unable to determine for himself or herself whether inpatient placement is necessary; and

2.a. He or she is incapable of surviving alone or with the help of willing, able, and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or

b. There is substantial likelihood that in the near future he or she will inflict serious ~~bodily~~ harm ~~on~~ to self or others, which includes property damage, as evidenced by ~~recent~~ acts, or omission, or behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive treatment alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

(c) For purposes of this section, "neglect or refuse to care for himself or herself" includes, but is not limited to, evidence that a person i) is unable to satisfy basic needs for nourishment, medical care, shelter or safety in a manner that creates a substantial probability of imminent death, serious physical debilitation, or disease; or ii) is

substantially unable to make an informed treatment choice, or needs care/treatment to prevent deterioration. In addition, "a real and present threat of substantial harm" from said "neglect" includes, but is not limited to, evidence of a substantial probability that the untreated person will lack, refuse, or not receive services for health or safety, or suffer severe mental, emotional, or physical harm that will result in the loss of ability to function in the community or loss of cognitive or volitional control over thoughts or actions.

> See In re Beverly, 342 So. 2d 481, 487 (Fla. 1977) (noting that the 1973 version of the Baker Act included "emotional injury").
> See Craig v. State, 804 So. 2d 532, 534 (Fla. 3d DCA 2002) (suggesting "that the legislature revisit the Baker Act" because subsequent statutory amendment rendered "the civil commitment system . . . unable to act in cases of stalking or harassment of a citizen unless there is threat of serious physical injury").

(9) POST-DISCHARGE RIGHT TO CONTINUUM OF CARE.—Upon discharge, a respondent with serious mental illness(es) shall be afforded the essential elements of recovery and placed in a continuum of care regiment. By January 1, 2020, the Florida Department of Health shall consult the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts and issue all necessary rules and regulations defining the services that must be provided to these individuals.

7. Confidentiality of Baker Cases

Addition - 394.4616 – "Court records; confidentiality" [Similar to 397.6760]

(1) All petitions for involuntary examination or treatment ~~assessment and stabilization~~, court orders, and related records, **including the respondent's name at trial and on appeal,** that are filed with or by a court under this part are confidential and exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution. Pleadings and other documents made confidential and exempt by this section may be disclosed by the clerk of the court, upon request, to any of the following:

(a) The petitioner.

(b) The petitioner's attorney.

(c) The respondent.

(d) The respondent's attorney.

(e) The respondent's guardian or guardian advocate, if applicable.

(f) In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

(g) The respondent's treating health care practitioner **and treatment program provider**.

(h) The respondent's health care surrogate or proxy.

(i) The Department of Children and Families **and law enforcement agencies**, without charge.

(j) The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

(k) A person or entity authorized to view records upon a court order for good cause. In determining if there is good cause for the disclosure of records, the court must weigh the person or entity's need for the information against potential harm to the respondent from the disclosure.

(2) This section does not preclude the clerk of the court from submitting the information required by s. 790.065 to the Department of Law Enforcement.

(3) The clerk of the court may not publish personal identifying information on a court docket or in a publicly accessible file.

(4) A person or entity receiving information pursuant to this section shall maintain that information as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5) The exemption under this section applies to all documents filed with a court before, on, or after July 1, 2017**, and appeals filed on or after July 1, 2019.**

~~(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Note: 397.6760 was added in 2017. Bold and crossing out represent changes.

8. Guardian Advocates – Unfunded Mandate

Many references to guardian advocates in Ch. 394 (Ex. 394.4598, 394.4655, 394.467) and 397 (Ex. 397.6818; 397.6978), but no funding has been provided for these positions. However, except for guardian advocates appointed in involuntary inpatient Baker Act cases for inability to consent to treatment, their role overlaps with that of the respondent's court-appointed attorney. Inability to consent to care is an involuntary analysis factor.

Recommendation: *1)* Remove guardian advocate appointment requirement in Marchman Act; *2)* Remove said requirement for involuntary outpatient Baker Act; *3)* Retain requirement for involuntary inpatient Baker Acts when court finds patient unable to consent to care (but remove any requirement to appoint if unable to be present for hearing); and *4)* Retain confidentiality exemption for guardian advocates to have access to Marchman and Baker Act cases.

9. Clarifying Marchman Petition, Admission, and Treatment Hearing Standards

*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) Either i) a person, 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, able, and responsible family members or friends or the provision of other services; or ii) there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, in the near future, as evidenced by his or her behavior, actions, or omissions; will ~~is~~ likely ~~to~~ inflict serious ~~physical~~ harm to self or others, which includes property damage ~~on himself, herself, or another,~~.

(c) For purposes of this section, "neglect or refuse to care for himself or herself" includes, but is not limited to, evidence that a person i) is unable to satisfy basic needs for nourishment, medical care, shelter or safety in a manner that creates a substantial probability of imminent death, serious physical debilitation, or disease; or ii) is substantially unable to make an informed treatment choice, or needs care/treatment to prevent deterioration. In addition, "a real and present threat of substantial harm" from said "neglect" includes, but is not limited to, evidence of a substantial probability that the untreated person will lack, refuse, or not receive services for health or safety, or suffer severe mental, emotional, or physical harm that will result in the loss of ability to function in the community or loss of cognitive or volitional control over thoughts or actions.

397.6814 Involuntary assessment and stabilization; contents of petition.—

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, and the name of the respondent's attorney, if known, 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;

(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

(3)(a) The reason the petitioner believes that either i) the respondent, 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, able, and responsible family members or friends or the provision of other services; or ii) there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, in the near future, as evidenced by his or her behavior, actions, or omissions; ~~is~~ will likely ~~to~~ inflict serious ~~physical~~ harm to self or others, which includes property damage ~~on himself or herself or others unless the court orders the involuntary services~~; or

(b) The reason the petitioner believes that the respondent is in need of substance abuse services but refuses ~~respondent's refusal~~ to voluntarily receive care due to ~~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.

Note: Provision deleted in "New Marchman Procedures" Attachment

*397.6951 Contents of petition for involuntary ~~services~~ treatment.—
A petition for involuntary services must contain the name of the respondent; the name of the petitioner or petitioners; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known; 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 outpatient services. The factual allegations must demonstrate:
(1) The reason for the petitioner's belief that the respondent is substance abuse impaired;
(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
(3)(a) The reason the petitioner believes that either i) the respondent, 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, able, and responsible family members or friends or the provision of other services; or ii) there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, in the near future, as evidenced by his or her behavior, actions, or omissions; will likely inflict serious ~~physical~~ harm to self or others, which includes property damage ~~on himself or herself or others unless the court orders the involuntary services~~; or
(b) The reason the petitioner believes that respondent is in need of substance abuse services but refuses ~~respondent's refusal~~ to voluntarily receive care due to ~~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.

Note: Incorporated but changed in "New Marchman Procedure" Attachment

*397.6957 Hearing on petition for involuntary services.—
(1) At a hearing on a petition for involuntary services, 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 that:
(a) The respondent is substance abuse impaired, has lost the power of self-control with respect to substance abuse, and has a history of lack of compliance with treatment for substance abuse; and

(b) Because of such impairment the respondent is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:

1. Either i) without services, the respondent 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, able, and responsible family members or friends or the provision of other services; or ii) there is substantial likelihood that unless admitted ~~without services~~, the respondent has inflicted, or threatened to or attempted to inflict, or in the near future, as evidenced by his or her behavior, acts, or omissions, will likely cause serious ~~bodily~~ harm to self or others, which includes property damage ~~himself, herself, or another, in the near future, as evidenced by recent behavior~~; or

2. The respondent is in need of substance abuse services but refuses ~~respondent's refusal~~ to voluntarily receive care due to ~~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. Mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for services.

3. For purposes of this section, "neglect or refuse to care for himself or herself" includes, but is not limited to, evidence that a person 1) is unable to satisfy basic needs for nourishment, medical care, shelter or safety in a manner that creates a substantial probability of imminent death, serious physical debilitation, or disease; or 2) is substantially unable to make an informed treatment choice, or needs care/treatment to prevent deterioration. In addition, "a real and present threat of substantial harm" from said "neglect" includes, but is not limited to, evidence of a substantial probability that the untreated person will lack, refuse, or not receive services for health or safety, or suffer severe mental, emotional, or physical harm that will result in the loss of ability to function in the community or loss of cognitive or volitional control over thoughts or actions.

Note: Incorporated but significantly changed in "New Marchman Procedure"

***397.698 - POST-DISCHARGE RIGHT TO CONTINUUM OF CARE**.—Upon discharge, a respondent with a serious substance abuse addiction(s) shall be afforded the essential elements of recovery and placed in a continuum of care regiment. By January 1, 2020, the Florida Department of Health shall consult the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts and issue all necessary rules and regulations defining the services that must be provided to these individuals.

10. Elopement from Involuntary Treatment Facilities

Chapter 397, Part 2 – Suggested Addition –

397.412 – "Ability to Hold Involuntarily Committed Persons"—

(1) Unless presented with a court order releasing a person from care, all service providers licensed under this chapter may refuse an individual's request to prematurely leave his or her court-ordered involuntary treatment program if 1) said individual still meets the involuntary treatment criteria; and 2) there are no available, lesser restrictive means of

care that adequately address the person's needs. Facilities must notify the court and all relevant parties in writing if an individual is released.

(2) Notwithstanding any other provision of this chapter or any state administrative rule, all service providers licensed to provide residential treatment under chapter 397, Florida Statutes must install the necessary security features in their facilities to safely prevent the premature departure of their involuntary patients and enact policies that enable the differentiation of their voluntary and involuntary patients. The installation of such locks or other features does not transform a treatment center into a "secure facility" as defined in this chapter, nor does it require the institution to comply any other law or regulation governing "secured facilties."

11. Firearm Possession & Mental Health

790.064 – Firearm possession and firearm ownership disability.—

(1) A person who has been adjudicated mentally defective or who has been committed to a mental institution, as those terms are defined in s. 790.065(2), may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained.

(2) The firearm possession and firearm ownership disability runs concurrently with the firearm purchase disability provided in s. 790.065(2). Law enforcement shall investigate all individuals with any type of firearm disability to determine whether they possess any firearms, and if so, seize the weaponry pursuant to s.790.401.

(3) A person may petition the court that made the adjudication or commitment, or that ordered that the record be submitted to the Department of Law Enforcement pursuant to s.790.065(2), for relief from the firearm possession and firearm ownership disability.

(4) The person seeking relief must follow the procedures set forth in s.790.065(2) for obtaining relief from the firearm purchase disability in seeking relief from the firearm possession and firearm ownership disability.

(5) The person may seek relief from the firearm possession and firearm ownership disability simultaneously with the relief being sought from the firearm purchase disability, if such relief is sought, pursuant to the procedure set forth in s.790.065(2).

790.065(2)(a)4. Sale, delivery, and possession ~~delivery~~ of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or federal law from purchasing or possessing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, ~~involuntary assessment and stabilization under s. 397.6818~~, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution; or

(II) Notwithstanding sub-sub-subparagraph (I), voluntary admission to either a substance abuse treatment facility pursuant to s.397.601, or a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s.394.463, where each of the following conditions have been met:

(A) An examining physician or the treatment facility administrator found that the person is an imminent danger to himself or herself or others.

(B) The examining physician or the treatment facility administrator certified that: a) if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s.394.463(2)(g)4., or s.397.693; or ~~the examining physician certified that~~ b) an involuntary petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.

(C) Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing or possessing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s.790.06 and the person signed or otherwise acknowledged such notice in writing, in substantially the following form:

> "I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying, selling, or possessing firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

(D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department. When reviewing the petition, the judge or magistrate may also order law enforcement to investigate and determine if the person possesses any firearms, and if so, seize the weaponry pursuant to s.790.401.

790.065(2)(a)4c - Provider Compliance

In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing or possessing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. The Department of Children and Families and Florida Department of Law Enforcement shall enforce the reporting provisions of this chapter, and all licensed mental health and substance abuse service providers must be fully compliant by

January 1, 2020. A finding of noncompliance from either department shall result in a $100,000 fine for the first offense, a $250,000 fine for the second offense, and the possible suspension of the provider's license for the third offense.

Due Process for Firearm Return

790.065(2)(a)4d A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the court that made the adjudication or commitment, or the court that ordered that the record be submitted to the department pursuant to sub-sub-subparagraph c.(II), for relief from the firearm disabilities or impoundment imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability or impoundment, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities or impoundment until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability or impoundment granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

Guardianship: 744.3215(2)(g) Rights of persons determined incapacitated.—

(2) Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:

(a) To marry. If the right to enter into a contract has been removed, the right to marry is subject to court approval.

(b) To vote.

(c) To personally apply for government benefits.

(d) To have a driver license.

(e) To travel.

(f) To seek or retain employment.

(g) To purchase, sell, keep, or bear arms. Should this right be removed, the guardian, or the agent under power of attorney if there is no guardianship, must file an inventory of the person's weaponry with the court, and either 1) place the weaponry with a local law

enforcement agency in the county where the person resides or the guardianship is being administered; or 2) petition for alternative storage of said weapons outside of the person's control. This other person or corporate entity must be able to legally possess firearms. Law enforcement may charge a reasonable storage fee, and if, after a period of ten years, the person has not successfully moved to have his or her firearm rights restored, law enforcement or the alternative storing entity may—after notifying the person in writing and, if a written objection is filed, a hearing—petition to either 1) dispose, or 2) donate, transfer, or sell the person's firearms to a person or corporate body legally able to possess firearms; unless good cause is shown.

12. PD/Regional Counsel's Access to Patients in Mental Health & Treatment Facilities

27.59 "Access to prisoners and patients in mental health or treatment facilities.—

"The public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant regional counsel shall be empowered to inquire of all persons who are incarcerated in lieu of bond or are held in a facility licensed under chapter 394 or 397 and to tender them advice and counsel at any time. ~~, but the provisions of t~~ This section does ~~shall~~ not apply ~~with respect~~ to persons who have engaged private counsel.

***13.* In Chs. 394 & 397, Replace "Services" With "Treatment"** (Less confusing for pro ses)

***14.* Waive Marchman Act Service of Process Fees if Indigent**

*397.695(3) If a petitioner qualifies as indigent under section 57.082, Florida Statutes, either the court or the clerk of court may waive or prohibit any service of process fees.

15. Modifying Marchman Act with Provisions of the Myers Act [See separate attachment]

Note: Changes with * next to them have been incorporated into attached sheet.

TABLED PROPOSALS

1. Juvenile Non-Compliance *– Possible Solution {Tabled for FLSC Taskforce Review}*

397.334(5) Treatment-based drug court programs.—

"Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs as provided in ss. 948.01, 948.06, and 948.20, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under subsection (4). The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program. The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration ~~within the time limits established~~ for contempt of court if an adult. In cases involving minors violating an involuntary treatment order, the court's civil contempt powers are exempt from the time limitations of chapters 984 and 985, Florida Statutes, and the court may instead hold the minor in contempt for the same

amount of time as their court-ordered treatment provided that the court clearly inform the minor that he or she can immediately purge the contempt finding by complying with its treatment order. Should this contempt order result in incarceration, the court must hold a status conference every 2 to 4 weeks to assess the minor's well-being and inquire into whether he or she will go to, and remain in, treatment. If the incarcerated minor agrees to comply with the court's involuntary treatment order, service providers must prioritize his or her placement into treatment. ~~The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.~~"

397.706(4) – Screening, assessment, and disposition of juvenile offenders
"The court may require juvenile offenders and their families to participate in substance abuse assessment and treatment services in accordance with the provisions of chapter 984 or chapter 985 and may use its contempt powers to enforce its orders. In cases involving minors violating an involuntary treatment order, the court's civil contempt powers are exempt from the time limitations of chapters 984 and 985, Florida Statutes, and the court may instead hold the minor in contempt for the same amount of time as their court-ordered treatment provided that the court clearly inform the minor that he or she can immediately purge the contempt finding by complying with its treatment order. Should this contempt order result in incarceration, the court must hold a status conference every 2 to 4 weeks to assess the minor's well-being and inquire into whether he or she will go to, and remain in, treatment. If the incarcerated minor agrees to comply with the court's involuntary treatment order, service providers must prioritize his or her placement into treatment."

397.697(2) – Court determination; effect of court order for involuntary services
In all cases resulting in an order for involuntary services, the court shall retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require, including, but not limited to, initiating contempt of court proceedings for violating any valid order issued pursuant to chapter 397. In cases involving minors violating an involuntary treatment order, the court's civil contempt powers are exempt from the time limitations of chapters 984 and 985, Florida Statutes, and the court may instead hold the minor in contempt for the same amount of time as their court-ordered treatment provided that the court clearly inform the minor that he or she can immediately purge the contempt finding by complying with its treatment order. Should this contempt order result in incarceration, the court must hold a status conference every 2 to 4 weeks to assess the minor's well-being and inquire into whether he or she will go to, and remain in, treatment. If the incarcerated minor agrees to comply with the court's involuntary treatment order, service providers must prioritize his or her placement into treatment. The court's requirements for notification of proposed release must be included in the original order.

2. ***Magistrate Contempt/Custody Authority – Exemption to 10 Day Exemption Period*** – *{Tabled for FLSC Taskforce Review – Need Rule Change?}*
397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of involuntary assessment and stabilization petitions and involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the court in the county where the person is located. The clerk of the court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings, who shall be vested with the direct authority to hold someone in contempt of court for violating any order or recommendation issued pursuant to this chapter. In addition, law enforcement shall comply with a magistrate's recommendation to hold someone in custody, when permitted by this statute, while the magistrate's recommendation is being reviewed by the court. The alleged impaired person is named as the respondent.

394.4655(7)(a)2. Hearing on Involuntary Outpatient Services.— The court may appoint a magistrate to preside at the hearing. Law enforcement shall comply with a magistrate's recommendation to hold someone in custody, when permitted by this statute, while the magistrate's recommendation is being reviewed by the court. One of the professionals who executed the involuntary outpatient services certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

394.4655(8)(c) Procedure for Continued Involuntary Outpatient Services.—
Hearings on petitions for continued involuntary outpatient services must be before the court that issued the order for involuntary outpatient services. The court may appoint a magistrate to preside at the hearing. Law enforcement shall comply with a magistrate's recommendation to hold someone in custody, when permitted by this statute, while the magistrate's recommendation is being reviewed by the court. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of subsection (7), except that the time period included in paragraph (2)(e) is not applicable in determining the appropriateness of additional periods of involuntary outpatient placement.

394.467(6)(a)3. Hearing on Involuntary Patient Placement
The court may appoint a magistrate to preside at the hearing. Law enforcement shall comply with a magistrate's recommendation to hold someone in custody, when permitted by this statute, while the magistrate's recommendation is being reviewed by the court. One of the professionals who executed the petition for involuntary inpatient placement certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that

one is provided, as otherwise provided for by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

Note: No contempt authority in Baker Act cases. C.N. v. State, 433 So. 2d 661 (Fla. 3d DCA 1983).