



FLORIDA HOSPITAL ASSOCIATION

POLICY DOCUMENT

THE BAKER ACT & MARCHMAN ACT

ISSUE BRIEF

JANUARY 2023

Background

Under Florida state law, individuals at risk of harming themselves or others can be held for an involuntary assessment for mental health or substance abuse conditions, using the Baker Act or Marchman Act, respectively. The Baker Act and Marchman Acts are similar in purpose and intent. They differ in that the Baker Act is used for those with mental illness while the Marchman Act is used for those with substance use disorders.

The Baker and Marchman Acts became law more than 50 years ago and have not been modified to reflect societal changes and advancements of the law and mental health services. FHA supports the modernization of both laws to consider the dynamics of individuals with serious mental illness or drug addiction who are in a cycle of incarceration, hospitalization, and homelessness.

In 2020, there were 194,680 mental health assessments under the Baker Act for 121,921 people, 72% of whom were adults.¹ Between 2020 and 2021, the number of involuntary exams overall decreased in part due to bed capacity limitations for designated receiving facilities and changes in law enforcement procedures but increased for children under age 18 in part because of the impact of COVID-19.

Baker Act vs. Marchman Act

The Baker and Marchman Acts allow law enforcement and others to engage and assist any at-risk citizen if he or she might be of harm to themselves or others. Under these acts a person can be held for up to 72 hours for an involuntary assessment for mental health (Baker Act) or substance abuse (Marchman Act).

The criteria for someone to be held under the Baker Act are:

- refusing examination or cannot determine if they need an examination.
- there is a strong likelihood of harm from self-neglect or refusal to take care of oneself; or
- there is a strong likelihood that the person can cause harm to themselves or others.

The criteria for someone to be held under the Marchman Act are:

- the person using substances has inflicted/threatened to inflict harm on themselves or others; or
- the person lacks self-control and is unable to make the decision about getting help due to substance abuse.²

¹ The Baker Act: Florida Mental Health Act FY 2019/2020 [Annual Report](#), Page #5

² (Marchman Act Florida, n.d.), <https://marchmanactflorida.com/marchman-act/what-should-i-know-about-the-baker-act-and-marchman-act-for-drug-treatment/>

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The Baker Act

Chapter 394, Florida Statutes is known as [Florida Mental Health Act](#) of 1972. The Act authorizes directed personnel (health professional, law enforcement, judge) to involuntarily admit a person for psychiatric care, but only when he or she can understand the decision and its consequences and are able to fully exercise his or her rights. When this is not possible due to the severity of the person's condition, the law requires that the person be extended the due process rights assured under the involuntary provisions of the Baker Act. It provides for an involuntary mental health examination for a person who is either believed to have a mental illness or proves to be of harm to themselves or others.

A person may be taken to a receiving facility for involuntary examination if the following three criteria are met:

1. There is reason to believe that he or she is mentally ill. This means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in Chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
2. Because of his or her mental illness the person has refused voluntary examination or is unable to determine whether examination is necessary.
3. Without care or treatment, the person is likely to suffer from neglect resulting in real and present threat of substantial harm that can't be avoided through the help of others; or there is substantial likelihood that without care or treatment the person will cause serious bodily harm to self or others soon, as evidenced by recent behavior.

A person may be held for no more than 72 hours before being examined.³ Minors under the age of 18 can be held involuntarily for no more than 12 hours before being examined. If the examination determines that no further intervention is necessary, the individual may choose to voluntarily be admitted into a psychiatric facility or be released with recommendations for outpatient treatment.

Baker Act involuntary exams can be initiated by law enforcement, a physician, licensed mental health professional, advanced registered nurse practitioners, or by the court. Baker Act involuntary exams are 7% more likely to be initiated by law enforcement than medical professional.⁴ In 2020–21, 51% of exams were based on harm only and of those, 68% involved self-harm.

The Marchman Act

Chapter 397, Florida Statutes is known as the [Hal S. Marchman Alcohol and Other Drug Services Act](#) of 1993. The Act allows families (a spouse or blood relative) to initiate court ordered and monitored stabilization and long-term treatment for those experiencing substance abuse that is deemed harmful for themselves and/or others. The Act allows for involuntary assessment, stabilization, and treatment for those who are deemed dependent. The individual will be placed on a hold for assessment for no more than five days. The hold can be extended for 60-day or 90-day treatment, if deemed necessary after a court petition for involuntary assessment and stabilization is filed and hearing is held.

³ States with a 72-hour hold: AK, AR, CA, CO, CT, FL, IN, KY, LA, MA, MN, MS, NJ, NV, NY, OR, TN, VA, VT, WI, WA, WY

⁴ The Baker Act: Florida Mental Health Act FY 2020/2021 [Annual Report](#), Page #3

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Designated Receiving Facilities

Under Chapter 394.455, designated receiving facilities under both the Baker and Marchman Acts are those approved by the Department of Children and Families, which may be a public or private hospital, crisis stabilization unit, or addictions receiving facility. The facility or hospital provides, at a minimum, emergency screening, evaluation, and short-term stabilization for mental health or substance abuse disorders; and may have an agreement with a corresponding facility for transportation and services.⁵ Hospitals designated as receiving facilities cannot deny admission of an individual deemed to meet Baker or Marchman Act criteria, regardless of bed capacity.

All receiving facilities, public or private, are permitted to hold a person on an involuntary basis. Every licensed hospital is required by federal [EMTALA law](#) to accept any individual that is brought voluntarily or involuntarily. A hospital that has chosen not to seek designation must transfer any person with a serious mental illness to a designated receiving facility at any time the person cannot provide well-reasoned, willful, and knowing decisions about their mental health care since such persons are not eligible for voluntary care. An un-designated hospital cannot retain anyone beyond 12 hours after medical clearance.⁶

Previous Legislation

[SB 1844](#), Relating to Mental Health & Substance Abuse sponsored by Senator Aaron Bean passed during the 2022 legislative session and became effective April 2022. This bill removed a provision for Baker Act receiving facilities that a voluntariness hearing be held for pediatric admissions. The bill requires under the Baker and Marchman Act that law enforcement to use the least restrictive manner to restrain an individual when transferring patients, especially if the patient is a minor to a receiving facility for an involuntary examination.

[SB 1262](#), Relating to Mental Health & Substance Abuse sponsored by Senator Danny Burgess passed during the 2022 legislative session and became effective April 2022. This bill changed the Baker and Marchman Acts to improve notification and communication between parties and provides for well-defined post-discharge planning. The bill also clarified that telehealth may be used when discharging patients under an involuntary Baker Act examination and directs facilities receiving transportation reports detailing the circumstances of a Baker Act hold to share such reports with DCF for use in analyzing annual Baker Act data. This bill also changed the due date for the Commission on Mental Health and Substance's legislatively required interim report containing their findings and recommendations on how to best provide and facilitate mental health and substance abuse services in the state, from September 1, 2022, to January 1, 2023.

[HB 1143](#), Relating to Mental Health & Substance Abuse sponsored by Representative Pat Maney did not pass during the 2022 legislative session. This bill proposed significant legal and clinical changes to the Baker Act and the Marchman Acts, including granting law enforcement officers the discretion to initiate involuntary examinations and revising requirements for how they transport individuals for an involuntary examination. HB 1143 also would have provided an appropriation of \$633,000 for the additional data reporting costs and per diem reimbursement provisions of the bill. The bill failed in committee.

⁵ [Florida Statute 394.455](#)
⁶ [DCF Receiving Facilities](#)

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Current Challenges

Hospitals are responsible for identifying and treating individuals under both acts, but there are multiple challenges:

- About half of Florida's 67 counties have at least one facility designated to receive patients held under the Baker Act or Marchman Act. Some Florida counties are geographically distant from the nearest receiving facility leaving them at a disadvantage in correctly placing individuals experiencing a mental or substance abuse crisis.
- Many law enforcement officers are not adequately trained in appropriately identifying Baker Act or Marchman Act cases, which leads to an increase in incorrect involuntary admissions to emergency rooms/receiving facilities.
- The state's availability of programs and services is insufficient to meet growing needs. Lack of timely, appropriate care contributes to reliance on involuntary holds when crisis care becomes the only option.
- Hospitals have limited bed capacity to accommodate the number of admissions and those awaiting placement.

FHA Advocacy

FHA supports policies that ensure patients with mental illness or substance use disorder have timely access to appropriate care. We are encouraged that the 2022 legislative session represented a positive shift in attitude to address Baker Act and Marchman Act statutes. FHA will continue to work with lawmakers, industry experts, and other interest groups to advocate for sensible modernizations to these laws.

Resources

- [Grading the States, An Analysis of US Psychiatric Treatment Laws](#)
- [Emergency Hospitalization for Evaluation Report](#)
- [State Laws on Emergency Holds for Mental Health Stabilization, 2016](#)
- [Benchmarks for Needed Psychiatric Beds for the United States: A Test of a Predictive Analytics Model](#)