

THE MARCHMAN ACT HELPS SAVE LIVES OF SUBSTANCE IMPAIRED INDIVIDUALS

By Joe Considine, Esq.

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In Florida, the Marchman Act is a very effective tool to get help for those who are suffering from substance use disorders. Other states have laws which provide for a form of involuntary commitment for substance impaired individuals but only for brief periods; however, Florida is alone in providing for involuntary commitment to treatment for a lengthy time.

The Marchman Act has historically been underutilized by families and treatment professionals. There has been a lack of understanding on the part of families and treatment professionals to use the courts to compel a substance impaired person into treatment. Many well intentioned individuals cling to the notion that people only get clean and sober when they really want to do so. People ask me: “The Marchman Act does not really work, does it?” The answer is that it is a very effective tool. Several prominent studies done in the last two decades by well credentialed experts in the field of addiction provide the science to inform us that it is effective. **Those studies find that compulsory treatment including court ordered treatment is at least as effective, if not more effective, than voluntary treatment.** See studies by UCLA and the National Institute of Mental Health in the 1990’s and later studies which were published in the American Journal of Addictions (Use of Coercion in Addiction Treatment, January-February 2008).

Countless medical and mental health professionals tell us that addiction is a disease of the brain. The individual’s dopamine receptors are so highly and persistently stimulated by the use of substances that they stunt the executive decision making function of the prefrontal cortex (the part that tells the addict to stop using). It takes months to heal the brain. The Marchman Act provides a court order requiring the loved one to stay in a structured environment for up to nine (9) months. In a treatment facility for several months, the individual can acquire enough skills coupled with good nutrition, rest, medical attention, to navigate life without returning to substance abuse. This requires time. The Marchman Act gives that time to the substance abuser.

In our law practice, I see the effects of court ordered treatment upon individual substance abusers who wanted no part of treatment and had to be compelled to treatment by the court. In many instances, these people know their lives are a mess and they do not like what they are doing to themselves, but they could not imagine life without substances - their best friend.

The first step in using the Marchman Act is to request that the court order an assessment and stabilization of the individual. Neither the individual nor the family need be residents of Florida to use the Marchman Act. Many clients are out of state families who suggest a visit to Florida to their loved one. Once in Florida, the family or friend can file the Marchman Act papers and the Court can enter an order.

It is not difficult to obtain such an assessment order. There has to be a “good faith” reason to believe the person is substance abuse impaired or has a co-occurring mental health disorder and because of the impairment or disorder:

1. The person lost the power of self- control with respect to substance abuse; and
2. a.) The person needs substance abuse services because his judgment has been so impaired that he is incapable of appreciating his need for such services and of making a rational decision about services; or
b.) Without help, will the person likely suffer from neglect or refusal to care for himself which poses a real threat of substantial harm.



The family or friend who files the petition locates a facility to do the assessment and detox the individual. It is up to the family or the substance impaired individual to pay for treatment services. There are very good facilities in South Florida available for these purposes which take insurance and there are facilities which are publically funded. Typically, the court orders a five day stay in the facility for the assessment although that time can be extended by the filing of the petition for involuntary services. The assessment has to be done by a “qualified professional” which is defined as a physician; a physician’s assistant; a professional licensed under Chapter 490 or 491 (LMHC, LCSW or LMFT). The assessment report must be reviewed and signed off by a physician.

The next step in the process is the Petitioner files a Petition for Involuntary Services (Treatment). The same criteria of the assessment proceeding must be met although now there is a higher burden of proof required to persuade the court to order involuntary services. The Petitioner must show the Court by clear and convincing evidence that the person needs treatment services. Services, by the way, are not limited to residential treatment but can include various modalities of services including intensive outpatient or outpatient treatment.

At the involuntary services hearing, the Court will hear the testimony of the Petitioner, family or friends, and the qualified professional who performed the assessment. These witnesses will tell the court about what they have personally observed about the substance abuser including behavior, demeanor, hygiene, evidence of paraphernalia, arrests and past treatment history. Many times, the addict/alcoholic admits to the family at some point that she/he knows there is a substance abuse problem and cannot stop. This is very good evidence. The mental health professional/qualified professional will testify as to the recommendations for treatment. The testimony of the treatment professional is frequently given great weight by the Court and is mostly persuasive.

Sometimes, families are concerned about the resulting anger from the substance abuser toward the Petitioner as a result of filing a Marchman Act case. It is important to remember that the family is trying to save the substance impaired individual’s life. I was very impressed by the comments of a client, the words of a father, who filed a case notwithstanding that his daughter would be very angry with him. He remarked to me: “I want to know that if her substance abuse kills her, I did everything possible for her to get her help.”

Marchman Act proceedings are confidential by law and the contents of the filing are confidential and protected from disclosure both under HIPPA laws and the Marchman Act itself.

Joe Considine has practiced law in South Florida since 1983. His practice is limited to family law and addiction related law including the Marchman Act. Joe works extensively with families whose loved ones have substance abuse and mental health problems as an attorney. www.joeconsidine.com

If you would like a copy of the studies discussed in paragraph 2, please feel free to email my office for a copy.