

HB 7021 Effective 7.1.2024 CHANGES TO THE BAKER ACT

Changes not affecting court hearings :

Background screening: Exempts professions screened through licensure from further screening requirements.

Patient's right to communicate: If restricted by facility, qualified professional must record restriction and reasons therefore in the clinical file within 24 hours and immediately serve a notice of same on patient, patient's attorney, and patient's guardian, guardian advocate or representative.

Psychiatric Nurse: Adds **psychiatric nurse** to several sections in conjunction with physicians if practicing within an established protocol with a psychiatrist.

Services: **Changes the terms "inpatient treatment" or "outpatient treatment" to "Services" in a number of sections.**

County court: Authorizes filing in county court.

Reporting/statistics: Requires the maintaining of statistics and reporting requirements, allocates funding to study same.

Release of clinical records: Adds "legal custodian" to list of individuals authorized to release clinical records.

Voluntary admissions: Implements the terms "adult" replacing language defining person 18 years of age or older and "minor" replacing language defining person age 17 or younger. Allows voluntary admission if such treatment is deemed suitable. If a minor, the parent or legal guardian provides express and informed consent and a clinical review is done to verify voluntariness.

Admission to voluntary treatment: Replaces "admitting physician" with "treating physician" and allows psychiatric nurses to document the clinical record as set forth above.

Transfer to involuntary status: Adds the requirement that a **clinical psychologist have at least 3 years of postdoctoral experience in the practice of clinical psychology and adds psychiatric nurse** to the list of providers who may document continued need for treatment while a petition is pending.

Involuntary examination: Adds the terminology **"able, and responsible"** to the help of willing family members or friends available to assist the patient if released.

Law Enforcement initiating involuntary examination: Replaces "shall" with "may" in law enforcement involved initiations and requires LE to provide a parent or legal guardian of a minor, if present, with the name, address and contact information for the designated receiving facility, subject to any safety and welfare concerns for the minor.

Examination period: 72 hour period begins **when the patient arrives at the receiving facility.**

Petition for involuntary services: Allows filing in county court (removes criminal division) and **mandates the court dismiss an untimely filed petition.**

394.467: Allows county court to order involuntary outpatient services. Defines involuntary inpatient placement in a secure receiving or treating facility providing stabilization and treatment if the patient does

not voluntarily consent and involuntary outpatient services as services provided in the community if the patient does not voluntarily consent. Defines “services plan” as an individualized plan detailing the recommended behavioral health services and supports based on a thorough assessment of the needs of the patient, to safeguard and enhance the patient’s health and well-being in the community.

Clarifies that people with a developmental disability may not be involuntary placed in a state treatment facility if they lack a co-occurring mental illness (in addition to TBI or dementia already in statute).

Changes affecting court hearings:

Examination upon involuntary admission: Adds requirements for examination including consideration of the patient’s treatment history at the facility and any information regarding the patients’ condition and behavior provided by knowledgeable individuals including but not limited to repeated admittance despite implementation of appropriate discharge plans. Defines “repeated admittance” as three or more admissions into the facility within the immediately preceding 12 months. Serving the patient’s basic needs while in the facility may not be considered evidence that the criteria under subparagraph (1)(b)1. Are met

394.463(1)(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 or willing, able and responsible family members or friends or the provision of other services;

Clarifies 72 hour period: If the 72 hour examination period ends on a holiday or weekend including the hours before the ordinary business hours on the morning of the next working day, the petition may be filed through the ordinary close of business on the next working day.

Transfer evaluation: Maintains requirement of transfer evaluation, but adds that before the close of the state’s case-in-chief the state may provide a copy of the transfer evaluation to the court. However, the court may not consider the substantive information in the transfer evaluation unless the evaluator is present and testifies at the hearing.

Criteria for Involuntary Services: Adds involuntary outpatient services including new definitions and criteria for involuntary inpatient placement and involuntary outpatient services. Required findings for the court include:

INVOLUNTARY OUTPATIENT SERVICES:

- a. The person has a mental illness AND
 - i. Because of the mental illness he or she is unlikely to participate in a recommended services plan and has refused voluntary services for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary OR
 - ii. Is unable to determine for himself or herself whether services are necessary AND
- b. The person is unlikely to survive safely in the community without supervision, based on a clinical determination AND
- c. The person has a history of lack of compliance with treatment for mental illness AND
- d. 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

serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in 394.463(1) AND

- e. It is likely that the person will benefit from involuntary outpatient services AND
- f. All available less restrictive alternatives that would offer an opportunity for improvement of the person's condition have been deemed inappropriate or unavailable.

INVOLUNTARY INPATIENT SERVICES:

- a. The criteria has mostly remained the same but the statute now includes **ABLE** family and friends.
- b. All available less restrictive treatment alternatives that would offer an opportunity for improvement of the person's condition have been deemed (changed from judged) to be inappropriate or **unavailable (added)**.

Recommendation For Involuntary Services And Treatment:

The patient may be recommended for either involuntary inpatient, involuntary outpatient or both. This gives the treating physicians and the court more options to help the patient depending on what is available in the area.

The patient may be retained by the facility that examined the patient for involuntary services until the completion of the court hearing BUT if the recommendation is only for involuntary outpatient services and the patient has been stabilized and no longer meets the criteria for involuntary examination, the patient must be released pending hearing.

If involuntary inpatient placement is requested or ordered, the patient must have been examined within the preceding 72 hours.

If involuntary outpatient services is requested or ordered, the patient must have been examined within the preceding 30 days.

Clinical recommendations must be made in the petition for involuntary services which shall be made a part of the patient's clinical record.

Petition:

Who may file?

- A. Administrator of receiving facility.
- B. Administrator of treatment facility.
- C. Service provider who is treating the patient.

Where to file?

- A. Petition for involuntary inpatient placement or involuntary inpatient placement followed by outpatient services must be filed in county where patient is located.
- B. Petition for involuntary outpatient services must be filed in county where patient is located unless the patient is being placed from a state treatment facility in which case the petition must be filed in the county where the patient will reside.

Petition must include:

- A. Whether inpatient placement, outpatient services or both are requested.
- B. Length of time recommended for each type of involuntary service.
- C. Reasons for recommendation.
- D. For involuntary outpatient services or a combination of involuntary inpatient placement and outpatient services, the service provider must be identified unless the patient is otherwise participating in outpatient treatment and is not in need of public financing. In this case the existing psychiatric treatment may be ordered on an involuntary basis.
- E. A written proposed service plan prepared in consultation with the patient or the patient's guardian advocate is required when recommending involuntary outpatient services. The court should include the plan as well as findings regarding the nature and extent of the mental illness and any co-occurring substance use disorder that necessitates involuntary outpatient services. The plan must include:
 - a. The likely needed level of care.
 - b. The type of medication needed.
 - c. Anticipated discharge criteria.
 - d. A determination of clinical appropriateness by the service provider.
 - e. Each criteria for recommended involuntary services must be alleged and substantiated in the petition, and a copy of the plan, if applicable, must be attached to the petition.

IF THE SERVICES RECOMMENDED ARE NOT AVAILABLE, THE PETITIONER MAY NOT FILE AND MUST NOTIFY THE MANAGING ENTITY, WHO IN TURN MUST DOCUMENT THE EFFORTS TO OBTAIN THE REQUESTED SERVICE.

Appointment of Counsel:

- A. The Court shall appoint the Public Defender unless patient is represented by counsel or ineligible.
- B. The Public Defender's representation shall end upon:
 - a. Dismissal of Petition.
 - b. Expiration of Court order.
 - c. Discharge from involuntary services.
 - d. Otherwise discharged by the Courts.
- C. The patient's attorney shall be provided access to the patient, witnesses and relevant records.

Continuances:

State attorney may request one continuance for up to 7 calendar days only upon showing of good cause and due diligence. A failure to timely review any readily available document or failure to attempt to contact a known witness.

The patient may seek a continuance and shall be granted an initial continuance of up to 7 calendar days with the option to request additional continuances for up to 21 calendar days total. The additional continuances shall only be granted upon a showing of good cause and due diligence by the patient and the patient's counsel before requesting the continuance.

Hearing:

Hearing shall be held within 5 court working days after filing of the petition unless continued.

Hearing must be held where the county where the petition is filed for involuntary outpatient services.

Hearing on involuntary inpatient placement or combination of involuntary inpatient placement and involuntary outpatient services must be held in the county or facility where the patient is located except for good cause documented in the court file.

Hearing must be as convenient to the patient as is consistent with orderly procedure.

Setting must not likely be injurious to the patient's condition.

Waiver of patient's presence at hearing:

- A. Patient's attendance not consistent with best interest of patient.
- B. **Patient may knowingly, intelligently and voluntarily waives his or her right to be present** and counsel does not object, the court may waive attendance.

State Attorney:

Clarifies that the State Attorney represents the state rather than the petitioner as the real party in interest.

Requires the facility or service provider to make clinical records available to state attorney and patient's attorney.

Requires confidentiality of records and prohibits the State Attorney from using any record obtained under this statute for criminal investigation, prosecution or any purpose other than the patient's civil commitment under this chapter.

Allows the State Attorney and witnesses to remotely attend and testify under oath via audio-video teleconference. Any witness intending to attend remotely and testify must provide the parties all relevant documents by the close of business on the day before the hearing.

Witnesses:

The Court shall allow testimony from persons including family members deemed by the court to be relevant under state **law regarding the patient's prior history and how that prior history relates to the patient's current condition.**

Guardian Advocate:

Court shall consider testimony and evidence regarding patient's competence to consent to services and treatment.

If incompetence is found, the court must appoint a guardian advocate per 394.4598.

Court order:

Court may order:

- A. Involuntary inpatient placement;
- B. Involuntary outpatient services;
- C. Combination of involuntary services which best meet the needs of the patient.

Involuntary outpatient services may not be ordered if not available in community, no space available, or no funding available. Lack of ability must be documented by managing entity.

MUST specify nature and extent of patient's mental illness and the reasons the appropriate involuntary services criteria are satisfied.

MAY order services or a combination thereof for up to 6 months.

If combination of services is ordered, must specify the length of time for each type of placement/service.

Court order and patient services plan must be made part of the patient's clinical record.

If involuntary inpatient placement is ordered, the court may order the patient be retained at the receiving facility while awaiting transfer or retained and treated for up to 6 months.

Retains the ability of the court to convert to a Chapter 397 assessment if the evidence meets the criteria for same.

Compliance with involuntary outpatient services order:

If involuntary outpatient services are ordered, requires the court to retain jurisdiction over the case and parties to monitor compliance and/or ordering inpatient treatment in order to stabilize a person who decompensates if they meet the commitment criteria of 394.467.

Requires service providers to report noncompliance to court unless the patient no longer meets criteria for services. If modifications to services plan are made, shall notify the court. Contested material modifications must be approved or disapproved by the Court.

Continuation of Treatment:

Must petition the Court that issued the initial order for involuntary services for continued involuntary services if patient continues to meet criteria if in receiving facility or involuntary outpatient services.

Must file before the expiration of treatment period.

Patient is entitled to counsel on the petition for continued involuntary services. Patient may voluntary continue involuntary services without court hearing.

Must be held in county or facility where patient is located.

The court may appoint a magistrate to hear the continued services petition.

Retains administrative procedure for involuntary inpatient placement.

Discharge:

Requires discharge upon expiration of the court order or when patient no longer meets the criteria for involuntary services (unless transferred to voluntary services)

Requires service provider or facility to send a Certificate of Discharge to the Court.

HB 7021 Effective 7.1.2024 CHANGES TO THE MARCHMAN ACT

Definitions:

Does away with two step process-no petition for assessment, now only for involuntary treatment.

Adds “substance use disorder” and “illicit or prescription drugs” to existing alcoholic beverages, any psychoactive or mood-altering subject so as to induce mental, emotional or physical problems or cause socially dysfunctional behavior.

Adds “treatment”.

Exempts providers licensed under Chapter 458, 459 or 464 from further background screening.

Right to counsel in judicial proceedings for involuntary treatment services and may apply for appointment if unable to afford private counsel. May be waived by respondent if the court finds the waiver is knowing, intelligent and voluntary. However, court shall appoint counsel if it believes that the respondent needs or desires the assistance of counsel.

Also adds the criteria of “able and responsible” family members or friends.

Increases assessment time to 30 days.

Service of process fee may be waived for indigent petitioner.

Removes findings and recommendations of assessment from petition.

Petition may be accompanied by a certificate or report of qualified professional who examined the respondent within 30 days prior to filing. Must include findings and recommendation. If not assessed or refused, this must be noted in the petition.

In an emergency, petition must describe exigent circumstances and include a request for ex parte assessment and stabilization per 397.68151.

Extends deadline for hearing from 5 to 10 court working days.

Law enforcement personnel must serve unless chief judge appoints disinterested private process servers to serve process under Chapter 397.

May issue ex parte order for involuntary assessment and stabilization if alleged and a court finds an emergency exists. Order may require that the respondent be taken into custody and delivered to the nearest appropriate licensed service provider or a licensed service provider designated by the court for evaluation.

Respondent may not be held for longer than 72 hours for observation unless:

- A. Provider seeks extension from the court, the court holds the hearing and an extension is granted.
- B. Respondent is showing signs of withdrawal, or is in need of detoxification or treatment for a medical condition but no longer than the scheduled hearing date; OR
- C. Original or extended observation period ends on a weekend or holiday, including the hours before the workday starts.

Ex parte order is void if not executed by the initial hearing date. However, if respondent does not appear for any reason including lack of service and the Court reasonably believes respondent meets commitment criteria and a substance abuse emergency exists after review of the petition, testimony and evidence presented. The court may issue or reissue an ex parte assessment and stabilization order valid for 90 days.

If the location of the respondent is known at the time of the hearing:

- A. Court must continue for no more than 10 court working days.
- B. May order law enforcement to take respondent into custody and deliver them to a designated provider or nearest licensed service provider.
- C. If hearing date is set, serve respondent with notice of the rescheduled hearing and copy of petition.

Petitioner must inform the court of assessment so the court may schedule a hearing as soon as practicable. If no assessment takes place within 90 days, the case must be dismissed.

Discharge planning for release from involuntary treatment services must include and document the respondent's needs and actions to address such needs including at a minimum:

- A. Follow up behavioral health appointments.
- B. Information on how to obtain prescribed medications.
- C. Information pertaining to available living arrangements and transportation.
- D. Referral to recovery support opportunities including but not limited to connecting a peer specialist.

Court Hearing:

Respondent MUST BE PRESENT unless court finds knowing, intelligent and voluntary waiver or that presence is inconsistent with his or her best interest or is likely to be injurious to self or others.

Court must hear testimony from individuals such as family members familiar with the respondent's prior history and how it relates to the current condition.

Court may order drug tests.

Allows witnesses to appear remotely. Remote witnesses must provide the parties with all relevant documents by the close of business the day before the hearing.

Requires clinical assessment unless respondent is present in court and expressly waives the assessment.

In the absence of a clinical assessment in a non-emergency situation, and the court determines the respondent qualifies for involuntary treatment services the court shall issue an involuntary assessment and stabilization order to determine the appropriate level of treatment for the respondent.

Respondent may request an independent assessment or the court may order on own motion if the assessment was attached to the petition. **The court shall inform the respondent of the right to independent assessment.** Assessment order is valid for 90 days. Involuntary treatment hearing continued for no more than 10 court working days.

Requires qualified professional to transmit the clinical assessment to the Clerk of Court no later than the ordinary close of business the day before the hearing.

Assessment must include:

- A. Recommendation on level of substance abuse treatment the respondent requires.
- B. Basis for recommendation.
- C. Whether respondent has any co-occurring mental health or other treatment needs.
- D. If involuntary, satisfies 397.6758 if contains admission and discharge information.

FAILURE TO INCLUDE TREATMENT RECOMMENDATION OR RECOMMENDATION OF NO TREATMENT SHALL RESULT IN THE DISMISSAL OF THE PETITION

Removes the requirement of a qualified professional who executed the involuntary services certificate to testify.

May convert to Chapter 394 if evidence supports it.

Order must include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

Involuntary outpatient treatment must be supported by a social worker or case manager of a licensed service provider, a willing, able and responsible individual appointed by the court who shall inform the court and parties if the respondent fails to comply with his or her outpatient program.

Unless the respondent has been involuntarily ordered into inpatient treatment at least twice in past 36 months or demonstrates ability to substantially comply with outpatient treatment while waiting for

residential placement, he or she must receive an assessment expressly recommending outpatient services and the services must be available in the county in which the respondent is located and it must appear likely that the respondent will follow the plan.

Court retains jurisdiction to monitor compliance, change treatment modality, or enforce through contempt of court.

Hearings may be set by motion of party or sua sponte and notice of same must be served.

Extensions must be sought with the Court before the expiration of the court-ordered services period.

Extension hearing must be scheduled within 10 days and held not more than 15 days after filing of the petition.

Must be held by the Court unless referred to a magistrate.

July 1 2024 Marchman Act Bench Guide

Petition for Assessment no longer exists

Assessment and Stabilization (including report) still a necessary component of Petition for Involuntary Treatment Services

Petition for Involuntary Treatment Services

Petitioner must attach assessment that has occurred in the past 30 days or assert that the respondent is undergoing assessment

If no assessment indicated in the petition the court may order assessment

Assessment Order only valid for 10 days or until the hearing on the Petition for Involuntary Treatment Services

If the court orders assessment at the hearing on the petition, the assessment order is valid for up to 90 days.

Sua Sponte Assessment by court still remains.

Hearings

Hearing on the Petition for Involuntary Treatment Services within 10 days of the Petition being filed.

Counsel (Office of Regional Conflict Counsel) is appointed to the respondent on all cases- unless respondent is present and waives counsel

-Still need to make inquiry to see the respondent qualifies for court appointed counsel during the hearing.

-If Court believes that the respondent needs or desires the assistance of counsel, the court can appoint counsel **without regard to respondent's wishes.**

Service of Process

Respondent must be present – **unless the court finds that he/she knowing intelligently waived his right to be present at the hearing (No Service) or**

Upon receiving Proof of Service and evaluating the circumstance of the case his/her presence is inconsistent with best interest, or is likely to be injurious to self or others.

Assessment

Can order Involuntary Treatment Services without Assessment if- Respondent is present and expressly waives the assessment.

If assessment makes no recommendation, the petition must be dismissed.

Petitioner has burden of proof to show by clear and convincing evidence the following:

1. The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse.
2. 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.
3. (a) Without Services, the respondent is likely to suffer from neglect or refuse to care for himself/herself, that such neglect poses a real and present threat of substantial harm to his/her well-being, and that there is a substantial likelihood that without services the respondent will cause serious bodily injury to himself/herself in the future as evidenced by recent behavior

OR

- (b) The respondent's refusal to voluntarily receive care is based on judgement so impaired by reason of substance abuse that the respondent is incapable of appreciating his/her need for care and of making a rational decision regarding that need for care

*There is no longer the requirement that the qualified professional that completed the assessment testify at the hearing on the petition.

Order must include findings respondent's need for treatment, and appropriateness of less restrictive alternatives.

Outpatient Services

If the respondent qualifies for outpatient treatment, respondent must be supported by social worker, case manager, licensed service provider, or responsible individual who shall inform the court and parties if the respondent fails to comply

If the respondent wants outpatient must receive an assessment expressly recommending outpatient services, unless awaiting inpatient placement or has been twice in the past 3 years.

Extension = Motion for Renewal of Involuntary Treatment Services