

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

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BILL: SB 1744

INTRODUCER: Senator Latvala

SUBJECT: Substance Abuse Treatment Services

DATE: February 21, 2012 REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Farmer	Farmer	CF	<u>Pre-meeting</u>
2.		CJ	
3.		BC	
4.			
5.			
6.			

## I. Summary:

This bill, entitled “The Jennifer Act” (act), creates a filing fee of up to \$195 for involuntary admissions proceedings under the Marchman Act for substance abuse treatment. Specifically, the party instituting a civil action, suit, or proceeding in the circuit court shall pay the fee in all cases in which there are up to five defendants and an additional filing fee of up to \$2.50 for each defendant in excess of five. The bill provides for distribution of the proceeds.

The bill also increases the time limit for an assessment and stabilization from 72 hours to 5 days for certain involuntary admissions.

The bill includes a requirement for drug testing and mental, physical, and emotional assessment by qualified professionals upon an inmate’s arrival at a Department of Corrections (department or DOC) reception center for initial processing. When an inmate is initially processed by DOC for substance abuse services, the bill requires that each inmate be given the choice of a faith based or non-faith based rehabilitation and drug treatment program if the programs are available in the area.

This bill substantially amends the following sections of the Florida Statutes: 28.241, 397.6772, 393.6773, 397.6797, 397.6798, and 397.754.

## II. Present Situation:

Substance abuse can have long lasting, devastating effects on the person who suffers from addiction. If left untreated, substance abuse can result in job loss; alienation from friends and loved ones; and a host of physical and psychological problems.

Estimates of the total overall costs of substance abuse in the United States, including productivity and health-and crime-related costs, exceed \$600 billion annually. This includes approximately \$181 billion for illicit drugs, \$193 billion for tobacco, and \$235 billion for alcohol.<sup>1</sup> Annually, an average of 7.5 million children younger than the age of 18 live with a parent who had an alcohol use disorder in the past year.<sup>2</sup> These children are at greater risk for depression, anxiety disorders, problems with cognitive and verbal skills, and parental abuse or neglect. Furthermore, they are four times more likely than other children to develop alcohol problems themselves.<sup>3</sup>

Florida has seen a marked upsurge in prescription drug misuse/abuse in recent years, particularly opiates and benzodiazepines<sup>4</sup>. This has created an added demand for medically-assisted detoxification programs.<sup>5</sup> In addition, the state is now feeling the effects of sharp increases in methamphetamine use among certain adult populations in Central Florida (Lakeland and Tampa), Northwest Florida (rural counties between Pensacola and Tallahassee), and South Florida (Broward and Miami-Dade counties), primarily trafficked into the state from Southern California and Mexico.<sup>6</sup>

Alcohol continues to account for the highest percent of treatment admissions for adults (33.32 percent), followed by opiates (18.46 percent) and prescription drugs (18 percent). This is followed by marijuana and cocaine or crack.<sup>7</sup>

Both the United States Congress and the Florida Legislature have recognized that substance abuse is a major health problem that leads to profoundly disturbing consequences, such as serious impairment, chronic addiction, criminal behavior, injury, and death, and contributes to spiraling health care costs. Substance abuse impairment is a disease which affects the whole family, as well as the community, and requires effective, specialized prevention, intervention, and treatment services.<sup>8</sup>

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<sup>1</sup> Nat'l Institute on Drug Abuse, *InfoFacts: Understanding Drug Abuse and Addiction* (March 2011), <http://www.drugabuse.gov/publications/infofacts/understanding-drug-abuse-addiction> (last visited Feb. 20, 2012)

<sup>2</sup> *Id.*

<sup>3</sup> Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *data spotlight*, Feb. 16, 2012, <http://www.samhsa.gov/data/spotlight/Spot061ChildrenOfAlcoholics2012.pdf> (last visited Feb. 20, 2012)

<sup>4</sup> Opiate drugs include heroin, morphine, codeine, Oxycontin, Dilaudid, methadone, and others. Benzodiazepines, such as diazepam (Valium) and alprazolam (Xanax), are sometimes prescribed to treat anxiety, acute stress reactions, and panic attacks. The more sedating benzodiazepines, such as triazolam (Halcion) and estazolam (ProSom) are prescribed for short-term treatment of sleep disorders. Usually, benzodiazepines are not prescribed for long term use because of the risk for developing tolerance, dependence, or addiction. Nat'l Institute on Drug Abuse, *Topics in Brief: Buprenorphine:Treatment for Opiate Addiction Right in the Doctor's Office* (Aug. 2006), <http://www.drugabuse.gov/publications/topics-in-brief/buprenorphine-treatment-opiate-addiction-right-in-doctors-office>

<sup>5</sup> Fla. Dep't of Children and Families, *Long Range Plan*, Sept. 30, 2011.

<http://floridafiscalportal.state.fl.us/PDFDoc.aspx?ID=6143>, p.112.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Comm. on Health Regulation, The Florida Senate, Bill Analysis and Fiscal Impact Statement CS/CS/SB 2612 (April 16, 2009) available at <http://archive.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s2612.ha.pdf>

## The Marchman Act

Florida's substance abuse program is governed under ch. 397, F.S., otherwise known as the "Marchman Act" or the Florida Substance Abuse Impairment Act. The program is also governed by rule 65D-30 of the Florida Administrative Code (F.A.C.). Created in 1993, the Marchman Act was named after Reverend Hal. S. Marchman, a tireless advocate for persons who suffered from alcoholism and drug abuse.<sup>9</sup> He was recognized by the Florida Legislature for his contributions addressing the delivery of substance abuse services.<sup>10</sup>

The Department of Children and Families is statutorily charged with administering the state's substance abuse program. The program is designed to support the prevention and remediation of substance abuse through the provision of a comprehensive system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

The program's major functions include planning, policy development, implementation and administration, fiscal administration, provision of a comprehensive and integrated system of care, and monitoring and regulating substance abuse services and treatment facilities. The program provides services for individuals in the following areas:

- **Assessment** services provide systematic evaluation of client information to determine the nature and severity of clients' substance abuse problems and their need and motivation for services;
- **Detoxification** services assist clients in their efforts to withdraw from the effects of substance abuse;
- **Intervention** services provide early intervention services to at-risk adults and children such as short-term counseling, referral, and outreach services;
- **Outpatient Treatment** provides a range of assessment and counseling services, including a structured schedule of treatment, education, and rehabilitative services for substance abuse clients;
- **Prevention** services reduce the development of substance abuse problems by increasing public awareness through information, education, and alternative-focused activities. School-based prevention programs, aim to increase the educational achievement of students in grades four through eight. Community substance abuse agencies provide prevention services in partnership with county school boards; and
- **Residential Treatment** provides a range of assessment, treatment, rehabilitation, and education programs in an intensive therapeutic environment.<sup>11</sup>

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<sup>9</sup> Fla. Dep't of Children and Families, *Marchman Act User Reference Guide 2003*, available at <http://www.dcf.state.fl.us/programs/samh/SubstanceAbuse/marchman/marchmanacthand03p.pdf>, p. 7 (last visited Feb. 21, 2012).

<sup>10</sup> *Id.*

<sup>11</sup> Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Government Program Summaries, Dep't of Children and Families Substance Abuse Program* (June 2011) <http://www.oppaga.state.fl.us/profiles/5057/>.

The program serves adults and children with and at-risk of substance abuse problems. Target client groups include:

- adult intravenous drug users;
- adults involved in the criminal justice system who abuse substances;
- adults over the age of 55 with or at risk for substance abuse or dependence;
- children at risk of substance abuse;
- children not under the supervision of the state who are abusing substances;
- children under the supervision of the state who are abusing substances;
- dually diagnosed adults (mental illness and substance abuse); and
- parents who put their children at risk because of their substance abuse (e.g., pregnant women and parents referred by the department's Family Safety Program).<sup>12</sup>

The program provides an array of statutorily protected rights<sup>13</sup> of persons seeking and or receiving substance abuse services as well as due process rights of those persons for whom involuntary interventions are sought.<sup>14</sup>

### **Florida Department of Corrections Substance Abuse Programs<sup>15</sup>**

The DOC has developed Correctional Substance Abuse Programs at Institutional and Community-Based sites throughout the state. These programs serve offenders with substance involvement, abuse, dependence or related problems. The programs' principle objectives are to identify substance abusers, assess the severity of their drug problems, and provide the appropriate substance abuse program services.

All inmates are screened at reception, and those inmates identified as being in need of services become Mandated Program Participants (MPP's) and are placed on the department's centralized Statewide Automated Priority List for placement in a substance abuse program. Inmates screened as being in need of services are either referred to a substance abuse program or placed on a waiting list pending availability of such programming. The Bureau of Substance Abuse Program Services is responsible for the coordination and delivery of substance abuse program services for offenders under community supervision and in prison.

### **The Jennifer Act**

The bill is named after Jennifer Reynolds-Gonzalez, a 29 year old woman who died from an accidental overdose of prescription painkillers and other drugs on January 15, 2009.<sup>16</sup> Her mother, Sharon Blair, who lives part-time in Bloomington, Indiana, and in Clearwater, Florida,

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<sup>12</sup> *Id.*

<sup>13</sup> s. 397.501, F.S.. Also see Department of Children and Families, Marchman Act User Reference Guide 2003, <http://www.dcf.state.fl.us/programs/samh/SubstanceAbuse/marchman/marchmanacthand03p.pdf>, p. 9.

<sup>14</sup> *Id.*

<sup>15</sup> Information contained in this portion of the analysis is from the Fla. Dep't of Corrections, *Substance Abuse Report-Inmate Programs, FY 2005-06*, available at <http://www.dc.state.fl.us/pub/subabuse/inmates/05-06/progtypes.html> (last visited Feb. 20, 2012)

<sup>16</sup> Justin George, *MOSI exhibit on toll of drug abuse taps into a mother's pain and mission, tampa bay times, Oct. 16, 2011*, available at <http://www.tampabay.com/news/business/tourism/mosi-exhibit-on-toll-of-drug-abuse-taps-into-a-mothers-pain-and-mission/1196427> (last visited Feb. 21, 2012).

has worked tirelessly since her daughter's tragic death to bring awareness to the devastating effects of drug addiction.<sup>17</sup> From a website dedicated to Jennifer, [www.thejenniferact.com](http://www.thejenniferact.com), Blair provides some insight into the reason this legislation is needed:

"I am asking for the legislature to review and revise The Marchman Act to include **The Jennifer Act**.

Due to the recent death of my daughter, Jennifer M. Reynolds (age 29) and repeated attempts to intervene and save her life by following all Florida laws currently in place, (filing of the Marchman Act in Pinellas, Hillsborough and Hardee Counties on behalf of my daughter, Jennifer), I see the need for reforming this law.

Respectfully, the following revisions I bring before the legislature:

There are no secure beds in Pinellas County, of which The Marchman Act requires. Therefore, I petition the state of Florida and ask for **secured beds** and facilities for the addicted under the new amendment: **The Jennifer Act**.

There are very few Florida state funded facilities currently available for the addicted for detox. Currently, the addicted can walk out of a treatment facility.

The enforcement of the Marchman Act changes from county to county within the state of Florida. . . .The fee for filing a Marchman Act petition at the courthouse is very costly: **\$400.00**. Therefore, I ask for the new law, **The Jennifer Act**, and that this filing fee be changed and re-adjusted at an affordable rate of the cost of processing the paper work **only**. Currently the cost varies from county to county, so **The Jennifer Act** would make the fee the same for every county in Florida.

Currently, the Marchman Act "holds" the addicted person for 72 hours for observation and a professional assessment. Therefore, I ask for the length of time extended for proper medical detoxing, and a board certified professional (C.A.P.) evaluation of the addicted person. The length of detox varies based the substance and the individual, but in either case 72 hours is an insufficient amount of time.  
Note: intake specialist must be board certified.

**Evaluation and assessment of the patient/ the addicted is critical.** Therefore, I ask for the new law, **The Jennifer Act**, to supervise and oversee county by county all facilities by The Office Of Drug Control, The Capitol, Tallahassee, Florida.

**The Jennifer Act** would provide a watchdog team. This would hold the patient/addicted until a thorough and proper assessment and evaluation and stabilization of the patient/addicted has been approved by an elected board on staff at The Office of Drug Control. This is a three-fold plan.

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<sup>17</sup> *Id.*

- It brings accountability to the state funded, state run facility.
- It involves another certified addiction professional, a second evaluation and opinion.
- It ensures a treatment plan that does not release the addicted immediately. This extra time required initially, will provide a time of intense residential drug treatment.

. . . I ask for the new law, **The Jennifer Act**, for the purpose of a network of Doctors and Certified Addiction Professionals, staffed by the **Dept. of Corrections** to evaluate inmates, including drug testing, mental, physical and emotional assessment due to their addiction. After positive assessment has been made of an addict, I ask on behalf of the addicted, they be given 2 alternatives/choices for rehabilitation and drug treatment vs. incarceration:

- Faith based drug treatment
- Secular drug treatment

The purpose of **The Jennifer Act** is that we as a body in the state of Florida, work together as advocates to better mankind, especially the weak, sick and drug addicted. For twelve years, I have fearlessly fought hard and mightily for drug treatment (through the Florida court system and laws in place, including petitions to many Judges and Magistrates) for my precious daughter, Jennifer. I am a voice for the castaways, the addicted.

They are somebody's daughter, son, mother, father, sister, brother or loved one. Often times, they have children, like my daughter. She has died at age 29 and left behind a precious little son, age seven and a family that loves her deeply. It is for Jennifer, my grandson Trey and others who have no voice and believe no one hears them or cares, that I write **The Jennifer Act**.

**In summary**, it has taken too many petitions, phone calls, letters, emails, and visits to get basic drug treatment for Jennifer – which is why I know first-hand the struggle to help an addict. Most people do not have the time, knowledge, willpower or resources to accomplish what I have done, which is why I have proposed **The Jennifer Act** – so that they may have the chance to save their loved one.

**I humbly petition the state of Florida for a revision and improvement of The Marchman Act.<sup>18</sup>,**

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<sup>18</sup> TheJenniferAct.com, *What is the Jennifer Act*, available at <http://thejenniferact.com/the-jennifer-act/> (last visited Feb. 21, 2012).

### III. Effect of Proposed Changes:

The bill cites this act as “The Jennifer Act.”

The bill amends s. 28.241, F.S., related to filing fees for trial and appellate proceedings, to create a \$195 filing fee for a party who institutes a civil action, suit, or proceeding in the circuit court under part V of chapter 397, F.S.<sup>19</sup> The party shall pay the fee in all cases in which there are up to five defendants as well as an additional filing fee of up to \$2.50 for each defendant in excess of five. The fee shall be distributed as follows:

- The first \$90 shall be remitted to the Department of Revenue (DOR) for deposit into the State Courts Revenue Trust Fund;
- \$3.50 shall be remitted to the DOR for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission. Specifically, the monies will be used to fund the Florida Clerks of Court Operations Corporation under s. 28.35, F.S.; and
- \$1.50 shall be remitted to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services (DFS) to fund clerk budget reviews conducted by the DFS.

The fee is established in statute to provide uniformity throughout the state when an individual has a person committed under the act. It has been stated that some counties do not charge a fee, while other counties in Florida charge up to \$400 to have a person committed.

The bill amends s. 397.6772(1), F.S., increasing the time period from 72 hours to 5 days in which the attending physician must provide an assessment to a person taken into involuntary protective custody to determine if the person needs additional services.

The bill amends s. 397.6797, F.S., removing a requirement for the attending physician to determine the need for further services; therefore requiring that the individual be assessed by a qualified professional.<sup>20</sup>

The bill amends s. 397.6798, F.S., to increase the time period from 72 hours to 5 days that a minor must be assessed after being admitted to an addictions receiving facility for involuntary assessment and stabilization.

The bill amends s. 397.754, F.S., to specify that, upon arrival at a Department of Corrections reception center for initial processing, to the fullest extent possible, inmates must also undergo drug testing and mental, physical, and emotional assessment by qualified professionals. In areas where both faith-based and nonfaith-based drug programs are available, and to the fullest extent

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<sup>19</sup> Part V, ch. 397, F.S., governs Involuntary Admissions Procedures under the Marchman Act (ss. 397.675 – 397.6977, F.S.).

<sup>20</sup> Section 397.311(26), F.S., defines a “qualified professional” as a physician or a physician assistant licensed under chapter 458 or chapter 459; a professional licensed under chapter 490 or chapter 491; an advanced registered nurse practitioner having a specialty in psychiatry licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services and who holds, at a minimum, a bachelor’s degree. A person who is certified in substance abuse treatment services by a state-recognized certification process in another state at the time of employment with a licensed substance abuse provider in this state may perform the functions of a qualified professional as defined in this chapter but must meet certification requirements contained in this subsection no later than 1 year after his or her date of employment.

practicable, each inmate must be given the choice of a faith-based or nonfaith-based program for rehabilitation and drug treatment.

The bill also makes technical and conforming changes.

The bill provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

##### A. Tax/Fee Issues:

None.

##### B. Private Sector Impact:

According to DCF, private sector agencies and agencies under contract with the department such as hospitals, detoxification programs, addiction receiving facilities, and treatment programs may incur costs associated with additional capacity utilization.<sup>21</sup>

##### C. Government Sector Impact:

According to DCF, the department's contracted substance abuse detoxification, addiction receiving facilities, and treatment programs would be impacted by additional capacity utilization (i.e., longer stays occupying available bed space). Any recommendations to require additional lengths of stay for involuntary assessment and treatment would need to be addressed through modifications to 65D-30, F.A.C.

According to the Office of the State Courts Administrator (OSCA), the bill creates a new filing fee and a new revenue source to the State Courts Revenue Trust Fund. The proposed bill would impose a \$195 filing fee for involuntary admissions proceedings under the Marchman Act for substance abuse treatment. Currently, there is no filing fee

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<sup>21</sup> Fla. Dep't. of Children and Families, *Senate Bill 1744 Staff Analysis and Economic Impact* (Jan. 12, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

for these actions. ninety dollars of the filing fee is to be remitted into the State Courts Revenue Trust Fund.<sup>22</sup>

The precise impact would depend upon the number of these cases that are filed annually. There were 9,059 cases filed for Marchman Act (substance abuse) in FY 2010-11. Assuming the same number of cases are filed in FY 2012-13 as were in FY 2010-11, the revenues to the State Courts Revenue Trust fund would be \$815,310. However, the OSCA does not know how many cases would be exempt from the filing fee or would not pay because they are indigent.<sup>23</sup>

According to the Clerks of the Court, this bill would have an indeterminate fiscal impact on the office of the Clerk.<sup>24</sup>

According to the Department of Revenue (DOR), with respect to the new filing fee and the requirement for distribution of funds through DOR, three additional lines will be added to the Clerks of the Court's SUNTAX/web reporting application and the clerks will need to be notified of the changes. Programming changes are done by the SUNTAX Project Office and require approximately 20 hours of in-house labor and 20 hours of contract labor (\$120/hour) at a cost of \$2,400.<sup>25</sup>

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

None.

## **VIII. Additional Information:**

### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

### **B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>22</sup> Office of the State Courts Administrator, *Amended 2012 Judicial Impact Statement, Senate Bill 1744* (Jan. 30, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>23</sup>*Id.*

<sup>24</sup> Fla. Ass'n. of the Court Clerks, *Senate Bill 1744 Substance Abuse Treatment Services* (Jan. 30, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>25</sup> Fla. Dep't. of Revenue, 2012 Bill Analysis, Senate Bill 1744 (Jan. 23, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).