

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 313 Marchman Act
SPONSOR(S): Children, Families & Seniors Subcommittee, Gottlieb
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	14 Y, 0 N, As CS	Gilani	Brazzell
2) Appropriations Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. Approximately 20.2 million adults in the United States have a substance use disorder.

Ch. 397, F.S., the Marchman Act, supports substance abuse prevention and remediation through a system of prevention, intervention, clinical treatment, and recovery support services to assist individuals at risk for or affected by substance abuse. The Marchman Act includes a process for family, friends, and providers to petition the court to order assessment and stabilization and treatment for an individual with substance use impairment on an involuntary basis.

HB 313 revises the Marchman Act to streamline and expedite various court processes for involuntary admissions, adds certain hearing requirements, and shorten timeframes in which the court must hold certain hearings. Specifically, the bill:

- Allows petitions for involuntary assessment and stabilization and involuntary services to be pleaded concurrently, and in those instances requires courts to hold a hearing on involuntary services within 10 days of issuing its order on involuntary assessment and stabilization;
- Requires the court to hold a hearing within 10 days of issuing an order for involuntary assessment and stabilization to determine whether further proceedings are warranted;
- Allows a petitioner to designate a prearranged licensed service provider for involuntary assessment and stabilization and requires the court to consider it in an ex parte order;
- Requires the court to issue a writ of bodily attachment in ex parte orders for involuntary assessment and stabilization which is effective in other jurisdictions and requires the licensed service provider to provide its assessment and recommendations to the court within 48 hours of completing the assessment; and
- Allows the petitioner to serve the respondent with notice of the petition, summons, and hearing dates using private process.

To limit the potential for exploitation, the bill prohibits a licensed service provider from filing a petition under the Marchman Act unless it is jointly filed with an independent petitioner who has no financial interest in the licensed service provider or unless there is no other potential petitioner. The bill also revises the definition of "impaired" and makes various conforming changes to align terminology and eligibility criteria used throughout the Marchman Act.

The bill makes various other conforming and technical changes.

The bill has an indeterminate fiscal impact on the state court system.

The bill provides an effective date of July 1, 2019.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0313a.CFS

DATE: 3/7/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.¹ Approximately 20.2 million adults in the United States have a substance use disorder.² Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.³ Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.⁴ Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁵

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.⁶ The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.⁷

The Florida Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals who are not covered under Medicaid or private insurance and do not have the financial ability to pay for the services themselves). SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.⁸

Marchman Act

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.⁹ The laws resulted in separate funding streams and requirements for alcoholism and drug abuse; in response to the laws, the Florida Legislature enacted Chapters 396, F.S., (alcohol) and 397, F.S. (drug abuse).¹⁰ Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to

¹ WORLD HEALTH ORGANIZATION, *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Feb. 16, 2019).

² NATIONAL INSTITUTE ON MENTAL HEALTH, *Substance Use and Mental Health*, <https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health/index.shtml> (last visited Mar. 1, 2019).

³ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited Feb. 16, 2019).

⁴ NATIONAL INSTITUTE ON DRUG ABUSE, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited Feb. 16, 2019).

⁵ *Id.*

⁶ *Supra*, note 3.

⁷ *Id.*

⁸ These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance and children at risk for initiating drug use.

⁹ FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5.

¹⁰ *Id.*

fully implement the respective pieces of legislation.¹¹ However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.¹² In 1993 legislation was adopted to combine Chapters 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).¹³

The Marchman Act supports substance abuse prevention and remediation through a system of prevention, intervention, clinical treatment, and recovery support services to assist individuals at risk for or affected by substance abuse. An individual may receive services under the Marchman Act through either a voluntary or an involuntary admission. The Marchman Act encourages individuals to seek services on a voluntary basis and to be actively involved in planning their own services with the assistance of qualified professionals.¹⁴ However, denial of addiction is a common symptom, raising a barrier to early intervention and treatment.¹⁵ As a result, treatment often comes because of a third party making the intervention needed for substance abuse services.¹⁶

Involuntary Admissions

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization and treatment can be obtained on an involuntary basis. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use, and either:¹⁷

- 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
- 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 family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.

¹¹ Id.

¹² Id.

¹³ Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

¹⁴ An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider, Ss. 397.601(1)-(2), F.S.

¹⁵ Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, <http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/> (last visited Feb. 28, 2019).

¹⁶ Id.

¹⁷ S. 397.675, F.S.

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act are:

- **Protective Custody:** Law enforcement officers use this when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer.¹⁸ The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment. A law enforcement officer may take the individual to their residence, to a hospital, a detoxification center, or an addiction receiving facility, whichever the officer determines is most appropriate.¹⁹

If the individual in these circumstances does not consent to protective custody, the officer may do so against the person's will, without using unreasonable force.²⁰ Additionally, the officer has the option of taking an individual, with the exception of minors,²¹ to a jail or detention facility for his or her own protection. Such detention cannot be considered an arrest for any purpose and no record can be made to indicate that the person has been detained or charged with any crime.

- **Emergency Admission:** This permits an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility or a detoxification facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only.²² Individuals admitted for involuntary assessment and stabilization under this provision must have a certificate from a specified health professional²³ demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.²⁴
- **Alternative Involuntary Assessment for Minors:** This provides a way for a parent, legal guardian or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.²⁵

Court Involved Involuntary Admissions

The two court involved Marchman Act procedures are involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services, and involuntary services, which provides for long-term court-ordered substance abuse services. Both are initiated through the filing of a petition for which the court may not charge a filing fee. Currently, these petitions must be filed separately and sequentially.

Involuntary Assessment and Stabilization

An individual's spouse, legal guardian, any relative, a private practitioner, the director of a licensed service provider or the director's designee, or any adult who has direct personal knowledge of the individual's substance abuse impairment may file a petition for involuntary assessment and stabilization

¹⁸ S. 397.677, F.S.

¹⁹ S. 397.6771, F.S. A person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody, Section 397.6773, F.S.

²⁰ S. 397.6772, F.S.

²¹ The law enforcement officer must notify the nearest relative of a minor in protective custody without consent, s. 397.6772(2), F.S.

²² S. 397.679, F.S.

²³ The certificate can be from a physician, advanced practice registered nurse, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, or a physician assistant working under the scope of a practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services.

²⁴ S. 397.6793, F.S.

²⁵ S. 397.6798, F.S.

on behalf of the individual.²⁶ If the individual is a minor, only a parent, legal guardian, legal custodian, or licensed service provider may file such a petition.

The petition for involuntary assessment and stabilization must contain:²⁷

- The name of the applicant or applicants (the individual(s) filing the petition with the court);
- The name of the respondent (the individual whom the applicant is seeking to have involuntarily assessed and stabilized);
- The relationship between the respondent and the applicant;
- The name of the respondent's attorney, if known; and
- Facts to support the need for involuntary assessment and stabilization, including the reason for the applicant's belief that:
 - The respondent is substance abuse impaired;
 - Because of such impairment, the respondent has lost the power of self-control with respect to substance abuse; and either that
 - The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
 - 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.

Once the petition is filed with the court, the court issues a summons to a respondent and the court must schedule a hearing to take place within 10 days, or can issue an ex parte order immediately.²⁸ Under the ex parte order, 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.

After hearing all relevant testimony, the court determines whether a respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent.²⁹

If the court determines a respondent meets the criteria for involuntary assessment and stabilization, it may order him or her to be admitted for a period of 5 days³⁰ to a hospital, licensed detoxification facility, or addictions receiving facility for involuntary assessment and stabilization.³¹ During that time, an assessment is completed on the individual.³² Based on the involuntary assessment at a hospital, detoxification facility, addictions receiving facility, or less restrictive component, the qualified professional must either:

- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;

²⁶ S. 397.6811, F.S.

²⁷ S. 397.6814, F.S.

²⁸ S. 397.6815, F.S.

²⁹ S. 397.6818, F.S.

³⁰ S.397.6819, F.S. 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 request for an extension of time to complete its assessment. 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, s. 397.6821, F.S.

³¹ S. 397.6811, F.S. The individual may also be ordered 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.

³² S. 397.6819, F.S., The licensed service provider must assess the individual without unnecessary delay using 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.

- Allow the individual to remain voluntarily at the licensed provider; or
- Hold the individual if a petition for involuntary treatment has been initiated.³³

Involuntary Services

A person may be court-ordered for involuntary treatment if he or she meets the eligibility criteria for involuntary admission and has been involved in one of the following Marchman Act processes within certain timeframes:³⁴

- Protective custody within the previous 10 days.
- Emergency admission within the previous 10 days.
- Assessment by a qualified professional within 5 days.
- Involuntary assessment and stabilization within the previous 12 days.
- Alternative involuntary admission pursuant to s. 397.6822, F.S., within the previous 12 days.³⁵

An individual's spouse, legal guardian, any relative, or service provider, or any adult who has direct personal knowledge of the individual's substance abuse impairment or prior course of assessment and treatment may file a petition for involuntary services on behalf of the individual.³⁶ If the individual is a minor, only a parent, legal guardian, or service provider may file such a petition.

Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain the same identifying information for all parties and attorneys and facts to support the same eligibility criteria.³⁷

Upon filing of a petition, the court must schedule a hearing to be held within 5 days, and must provide a copy of the petition and notice of hearing to all parties and anyone else the court determines.³⁸ The court also issues a summons to the person whose admission is sought.

The petitioner has the burden to prove by clear and convincing evidence that:³⁹

- The individual is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse; and
- Because of such impairment is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary; and either
 - Without services, 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 there is a substantial likelihood that without services the individual will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or
 - The individual'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.

At the hearing, the court must hear and review all relevant evidence, including the results of the involuntary assessment by a qualified professional, and either dismiss the petition or order the

³³ S. 397.6822, F.S. The timely filing of a petition for involuntary services authorizes the service provider to retain physical custody of the individual pending further order of the court.

³⁴ S. 397.693, F.S.

³⁵ This section refers to disposition of an individual after involuntary assessment, including release or referral to another treatment facility or service provider, or to community services; voluntary retention of the individual; or retention of an individual pending a petition for involuntary services.

³⁶ S. 397.695, F.S.

³⁷ S. 397.6951, F.S.

³⁸ S. 397.6955, F.S.

³⁹ S. 397.6957, F.S.

individual to receive involuntary choices from his or her chosen licensed service provider, if possible and appropriate.⁴⁰ If the court finds that the conditions for involuntary services have been proven, it may order the respondent to receive involuntary services with a publicly funded licensed service provider for up to 90 days.⁴¹ Alternatively, if the individual or a person on the individual's behalf is able and willing to pay for services, the court may also order the individual to receive services at a privately funded licensed service provider. If an individual continues to need involuntary services, the licensed service provider can petition the court for continuances for up to 90 days.⁴² Unless an extension is requested, the individual is released after 90 days.⁴³

Confidentiality of Records

All service provider records related to procedures under the Marchman Act are confidential and exempt and may not be disclosed without written consent of the individual, with certain exceptions.⁴⁴ Additionally, petitions for involuntary assessment and stabilization, court orders, and related records that are filed with the court under the Marchman Act are confidential and exempt from disclosure.⁴⁵ However, the clerk of the court may disclose such records to certain entities, including parties to the proceedings and certain governmental entities.

Effect of the Bill:

HB 313 revises the Marchman Act to streamline and expedite court processes for involuntary admissions, revises the definition of "substance abuse impaired," and make various conforming and technical changes.

Involuntary Admissions

Eligibility Criteria

The bill revises the definition of "impaired" or "substance abuse impaired" to specify that an individual need not be under the influence of any substance at any particular level of frequency to be considered substance abuse impaired for purposes of the Marchman Act. This would address instances where an individual has a substance use disorder but presents as sober when involuntary admissions proceedings are initiated.

Non-Court Involved Involuntary Admissions

The bill revises the settings where a law enforcement officer can place an individual in protective custody without consent. Currently, when a person is publicly substance abuse impaired or otherwise comes to the attention of a law enforcement officer, the officer may take that individual to his or her home, a hospital, or a licensed detoxification or addictions receiving facility, or in the case of an adult, can detain the individual in a jail or other detention facility. The bill removes the ability of law enforcement officers to place an individual in a jail or detention facility under the Marchman Act. However, they may still do so under normal criminal procedure where charges are filed.

Court-Involved Involuntary Admissions

The bill makes various changes to the petition process to streamline Marchman Act proceedings. The bill requires more information to be included in the initial petitions, allows petitions to be pleaded

⁴⁰ S. 397.6957, F.S.

⁴¹ S. 397.697, F.S.

⁴² The licensed service provider must file its petition at least 10 days before the 90-day period expires. A hearing must be held within 15 days. s. 397.6975, F.S.

⁴³ S. 397.6977, F.S.

⁴⁴ S. 397.501(7), F.S.

⁴⁵ S. 397.6760, F.S.

concurrently, revises duties of the court, expands acceptable methods of service, and shortens timeframes for proceedings. The bill also specifies if a respondent under Marchman Act proceedings violates a court order, he or she is subject to the contempt powers of the court.⁴⁶

Petitions

Under the bill, a petition for involuntary assessment and stabilization must include the current location of the respondent in the county where the petition is filed, and must state any request for designation of a prearranged service provider for the involuntary assessment and stabilization. When the court later reviews the petition and either holds a hearing or issues an ex parte order, it must consider this request when designating a licensed service provider to provide services to the respondent. Currently, when the court issues an ex parte order without holding a hearing, it can order the individual into the custody of the nearest licensed service provider, which may differ from the one the petitioner may have already arranged for the individual. Having this information included in the initial petition would allow the court to ensure the ex parte order is for services at the petitioner's designated licensed service provider.

The bill allows petitions for involuntary assessment and stabilization and involuntary services to be pleaded concurrently, meaning one petition can be filed to ask the court to consider both issues, as appropriate. Currently, a petitioner must first file a petition for involuntary assessment and stabilization and subsequently file a petition for involuntary services after receiving an assessment finding the individual is in need of involuntary services. This can create delays between when the individual is deemed to need services and when the court actually holds a hearing and orders those services for the individual.

Additionally, if an individual who is involuntarily admitted for services is nearing the scheduled date of release but continues to meet the criteria for involuntary services, the bill allows any petitioner to petition the court for an extension of the involuntary services period. Currently, only the licensed service provider may file such a petition. This may result in more petitions for extension of involuntary services.

Ex-Parte Orders

The Marchman Act allows the court to enter an ex parte order⁴⁷ for involuntary assessment and stabilization and order a law enforcement officer to take the respondent into custody and deliver him or her to the nearest licensed service provider for assessment and stabilization. Under the bill, in the case where a petitioner has concurrently filed for both involuntary assessment and stabilization as well as involuntary services, then the court must also schedule a hearing to be held within 10 days of the ex parte order to address the issue of involuntary services. This will streamline the process and allow an individual to transition into involuntary services sooner with less chances of relapse or elopement.

In these ex parte orders, the bill requires the court to:

- Issue a writ of bodily attachment⁴⁸ and order a law enforcement agency 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 or a licensed service provider designated and ordered by the court;
- Order that if the writ is executed in a different county, that the respondent must be taken to the nearest receiving facility in that county where the respondent is found; and
- Order the licensed service provider to provide the court with an assessment and recommendations indicating any need for services within 48 hours of completing the assessment.

⁴⁶ Judges generally have broad authority to hold a person in contempt for violating a court order, ss. 38.22 and 38.23, F.S.

⁴⁷ An ex parte order is a temporary court order that is issued without waiting for a formal hearing and is generally issued when there is a sense of urgency or emergency circumstances.

⁴⁸ A writ of bodily attachment is an order issued by the court directing law enforcement to physically bring before the court a person who has been found in civil contempt of court.

This will allow the writ of bodily attachment to be effective in other counties of jurisdiction if the individual is located in another county. Additionally, law enforcement will not have to travel to the original county of jurisdiction if the respondent is ultimately located in another county. This would reduce strain on local law enforcement resources.

Under the bill, the clerk of the court must give the law enforcement agency a copy of the writ of bodily attachment, the ex parte order, the petition, and a notice of any scheduled court dates so that the law enforcement agency can serve the respondent at the time they take him or her into custody. The ex parte order is effective for 30 days.

In instances where the petitioner concurrently pleaded for involuntary services and a hearing has been scheduled but cannot be held due to the law enforcement agency not being able to locate the respondent for service, the court must automatically reschedule the hearing to be held within 10 days of the original hearing date. The clerk of court must provide an amended ex parte order reflecting this new hearing date to the law enforcement agency designated to execute the writ of bodily attachment. Respondents may miss hearings because they are not timely served with the hearing date. By creating a mechanism where the respondent is properly served with notice of a hearing at the same time he or she is taken into custody, the bill may reduce delays that result from missed hearings.

Involuntary Services

The bill requires the court to schedule a hearing to be held on a petition for involuntary services within 10 days after it enters an order authorizing involuntary assessment and stabilization. The purpose of this hearing is to determine whether any further proceedings are warranted, including an order for services. Additionally, for any confidential or exempt records that can only be disclosed to parties after the court's consideration, the bill requires the court to make such findings within 7 calendar days of its order authorizing involuntary assessment and stabilization.

Under the bill, if a respondent is properly served but fails to appear for his or her hearing for involuntary services, or is unwilling to submit to the court-ordered services, the court may proceed in the respondent's absence and enter an order for services.

Under the bill, if the court holds a status conference to monitor the respondent's compliance with the court's order for services, it may order the designated licensed service provider to provide the court and petitioner or petitioner's attorney with a status report of the respondent's current treatment and compliance with the court order so long as such records are disclosed in accordance with s. 397.501(7), F.S., relating to confidential and exempt records under Marchman Act proceedings.

Service Requirements

The bill allows a petitioner or a petitioner's attorney to serve the respondent by private process in Marchman Act proceedings. Currently, the court uses the sheriff's office to serve the respondent with copies of the petition, summons, and court dates. Allowing the use of private process may ease the burden on sheriff's offices and increase the number of respondents who are properly served with documents related to Marchman Act proceedings.

Conflict of Interest

The bill additionally addresses conflict of interest issues by prohibiting a licensed service provider from initiating Marchman Act proceedings unless the provider jointly files the petition with an independent petitioner who has no financial interest in the licensed service provider. However, a licensed service provider may independently file a petition if the individual has no family or friend available or able to file a petition. This may prevent licensed service providers from unnecessarily filing petitions for involuntary assessment and stabilization or involuntary services for those providers' financial gain.

Confidential Records

Currently the clerk of the court may disclose otherwise confidential or exempt records related to Marchman Act proceedings to certain entities, primarily parties related to the proceedings, certain governmental agencies, and persons authorized by court order to view the records.⁴⁹ The bill changes this permissive disclosure to a mandatory disclosure, meaning the clerk of court will have no discretion and must disclose these records whenever one of the listed entities makes a request for them.

The bill amends various timelines throughout the Marchman Act to reflect calendar days. Currently, these timelines can be interpreted to mean business days, which excludes weekends and holidays. This will create shorter timeframes for court processes under the Marchman Act.

The bill also clarifies that when an individual is involuntarily admitted for assessment stabilization for 5 days, the facility has authority to hold the individual for the same period of time. This may reduce the number of individuals who leave a facility before the assessment and stabilization is complete.

The bill makes various conforming changes to align terminology and eligibility criteria throughout the Marchman Act to reflect recent legislative amendments to the Marchman Act.

The bill makes various other conforming and technical changes.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

- Section 1:** Provides a short title.
- Section 2:** Amends s. 397.311, F.S., relating to definitions.
- Section 3:** Amends s. 397.675, F.S., relating to criteria for involuntary admissions.
- Section 4:** Amends s. 397.6758, F.S., relating to release of individual from involuntary admissions.
- Section 5:** Amends s. 397.6760, relating to court records; confidentiality.
- Section 6:** Amends s. 397.6772, F.S., relating to protective custody without consent.
- Section 7:** Amends s. 397.6799, F.S., relating to disposition of minor upon completion of alternative involuntary assessment.
- Section 8:** Amends s. 397.681, F.S., relating to involuntary petitions; general provisions; court jurisdiction and right to counsel.
- Section 9:** Amends s. 397.6811, F.S., relating to involuntary assessment and stabilization.
- Section 10:** Amends s. 397.6814, F.S., relating to involuntary assessment and stabilization; contents of petition.
- Section 11:** Amends s. 397.6815, F.S., relating to involuntary assessment and stabilization; procedure.
- Section 12:** Amends s. 397.6818, F.S., relating to court determination.
- Section 13:** Amends s. 397.6822, F.S., relating to disposition of individual after involuntary assessment.
- Section 14:** Amends s. 397.693, F.S., relating to involuntary treatment.
- Section 15:** Amends s. 397.695, F.S., relating to involuntary services; who may petition.
- Section 16:** Amends s. 397.6951, F.S., relating to contents of petition for involuntary services.
- Section 17:** Amends s. 397.6955, F.S., relating to duties of court upon filing of petition for involuntary services.

⁴⁹ S. 397.6760(1), F.S. Entities include: Petitioner, petitioner's attorney, respondent, respondent's attorney, respondent's guardian or guardian advocate, a minor respondent's parent, guardian, legal custodian, or guardian advocate, respondent's treating health care practitioner, respondent's health care surrogate or proxy, DCF, Department of Corrections under certain circumstances, and a person or entity authorized by court order to see the records. The court in determining whether to allow such disclosure must weigh the need for the information against potential harm to the respondent from such disclosure.

- Section 18:** Amends s. 397.6957, F.S., relating to hearing on petition for involuntary services.
Section 19: Amends s. 397.697, F.S., relating to court determination; effect of court order for involuntary services.
Section 20: Amends s. 397.6975, F.S., relating to extension of involuntary services period.
Section 21: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Petitioners under the bill may experience more streamlined court processes for Marchman Act proceedings. Shortened timeframes for hearings may allow an individual to be ordered to involuntary services sooner with less chance of elopement and relapse.

A more streamlined Marchman Act process may increase the number of individuals accessing substance abuse treatment, resulting in a higher number of clients for substance abuse treatment providers.

D. FISCAL COMMENTS:

The bill has an indeterminate fiscal impact on the state court system. The courts will need to update policies and retrain their staff and judges on the changes in the bill, which can likely be completed within existing resources. Certain changes under the bill may streamline court processes, while others may strain the courts' resources. For example, the ability for petitioners to plead petitions concurrently or use private process to serve respondents will reduce court costs, but the additional hearing requirements and shortened timeframes in which hearings must be held under the bill may place time burdens on the judges.⁵⁰ Similarly, certain changes in procedure under the bill may reduce the need for courts to reschedule hearings, but the broadened eligibility criteria for involuntary admission may increase the number of petitions filed.

⁵⁰ Florida Office of State Courts Administrator, Judicial Impact Statement for 2019 HB 313, Feb. 21, 2019 (on file with Children, Families, and Seniors Subcommittee staff).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities..

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2019, the Children, Families, and Seniors Subcommittee adopted a strike-all amendment that:

- Restores eligibility criteria for involuntary admissions to current law;
- Restores the definition of “secure facility” to current law;
- Makes technical and reformatting changes for clarity; and
- Makes conforming changes.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.