

1 A bill to be entitled
2 An act relating to the Marchman Act; providing a short
3 title; amending s. 397.311, F.S.; revising
4 definitions; amending s. 397.6760, F.S.; requiring,
5 rather than authorizing, a clerk of the court to
6 disclose certain records; amending s. 397.6772, F.S.;
7 removing provisions authorizing a law enforcement
8 officer to detain a person in certain facilities under
9 certain circumstances; amending s. 397.681, F.S.;
10 authorizing certain petitions to be plead
11 concurrently; providing that a violation of a court
12 order is subject to certain powers; amending s.
13 397.6811, F.S.; authorizing certain persons to be held
14 at certain facilities for a specified timeframe;
15 prohibiting a licensed service provider from
16 initiating proceedings unless certain conditions are
17 met; amending s. 397.6814, F.S.; requiring certain
18 petitions to include additional specified information;
19 amending s. 397.6815, F.S.; revising provisions
20 relating to the procedures for filing certain
21 petitions; authorizing a petitioner to serve a
22 respondent by private process; requiring a court to
23 schedule a hearing on certain petitions within a
24 specified timeframe; providing duties of the court and
25 clerk of the court relating to the issuance of a writ

26 of bodily attachment; amending s. 397.6818, F.S.;
27 requiring, rather than authorizing, a court to
28 designate a licensed service provider to perform an
29 involuntary assessment and stabilization in a
30 specified order; requiring the court to make its
31 findings based on certain records within a specified
32 timeframe; requiring the court to schedule a hearing
33 on a certain petition within a specified timeframe;
34 authorizing the court to order a law enforcement
35 agency to take a respondent into custody for
36 involuntary assessment by a licensed service provider;
37 amending s. 397.695, F.S.; prohibiting a licensed
38 service provider from initiating proceedings unless
39 certain conditions are met; amending s. 397.6957,
40 F.S.; revising provisions relating to the duties of a
41 court upon the filing of certain petitions; amending
42 ss. 397.675, 397.6758, 397.6799, 397.6822, 397.693,
43 397.6951, 397.6955, 397.697, and 397.6975, F.S.;
44 conforming provisions to changes made by the act;
45 providing an effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. This act may be cited as the "Substance Abuse
50 Services Modernization Act of 2019."

51 Section 2. Subsections (19) and (41) of section 397.311,
 52 Florida Statutes, are amended to read:

53 397.311 Definitions.—As used in this chapter, except part
 54 VIII, the term:

55 (19) "Impaired" or "substance abuse impaired" means a
 56 condition involving the use of alcoholic beverages or any
 57 psychoactive or mood-altering substance in such a manner as to
 58 induce mental, emotional, or physical problems and cause
 59 socially dysfunctional behavior. For purposes of this chapter, a
 60 person does not need to be under the influence of any substance
 61 to be substance abuse impaired.

62 (41) "Secure facility," except where the context indicates
 63 a correctional system facility, means a licensed provider that
 64 has the authority pursuant to this chapter to deter the
 65 premature departure of involuntary individuals whose leaving
 66 constitutes a violation of a court order or community-based
 67 supervision as provided by law. The term ~~"secure facility"~~
 68 includes addictions receiving facilities, ~~and~~ facilities
 69 authorized by local ordinance for the treatment of habitual
 70 abusers, and crisis stabilization units or residential treatment
 71 facilities licensed under s. 394.875.

72 Section 3. Section 397.675, Florida Statutes, is amended
 73 to read:

74 397.675 Criteria for involuntary admissions, including
 75 protective custody, emergency admission, and other involuntary

76 assessment, involuntary services ~~treatment~~, and alternative
77 involuntary assessment for minors, for purposes of assessment
78 and stabilization, and for involuntary services ~~treatment~~.—A
79 person meets the criteria for involuntary admission if there is
80 a good faith reason to believe that the person is substance
81 abuse impaired or has a co-occurring mental health disorder and,
82 because of such impairment or disorder:

83 (1) Has lost the power of self-control with respect to
84 substance abuse; and

85 (2) (a) Is in need of substance abuse services and, by
86 reason of substance abuse impairment, his or her judgment has
87 been so impaired that he or she is incapable of appreciating his
88 or her need for such services and of making a rational decision
89 in that regard, although mere refusal to receive such services
90 does not constitute evidence of lack of judgment with respect to
91 his or her need for such services; or

92 (b) Without care or services ~~treatment~~, is likely to
93 suffer from neglect or refuse to care for himself or herself;
94 that such neglect or refusal poses a real and present threat of
95 substantial harm to his or her well-being; and that it is not
96 apparent that such harm may be avoided through the help of
97 willing family members or friends or the provision of other
98 services, or there is substantial likelihood that the person has
99 inflicted, or threatened to or attempted to inflict, or, unless
100 admitted, is likely to inflict, physical or emotional harm on

101 himself, herself, or another.

102 Section 4. Section 397.6758, Florida Statutes, is amended
103 to read:

104 397.6758 Release of individual from protective custody,
105 emergency admission, involuntary assessment, involuntary
106 services ~~treatment~~, and alternative involuntary assessment of a
107 minor.—An individual involuntarily admitted to a licensed
108 service provider may be released without further order of the
109 court only by a qualified professional in a hospital, a
110 detoxification facility, an addictions receiving facility, or
111 any less restrictive services ~~treatment~~ component. Notice of the
112 release must be provided to the applicant in the case of an
113 emergency admission or an alternative involuntary assessment for
114 a minor, or to the petitioner and the court if the involuntary
115 assessment or services ~~treatment~~ was court ordered. In the case
116 of a minor, the release must be:

117 (1) To the individual's parent, legal guardian, or legal
118 custodian or the authorized designee thereof;

119 (2) To the Department of Children and Families pursuant to
120 s. 39.401; or

121 (3) To the Department of Juvenile Justice pursuant to s.
122 984.13.

123 Section 5. Subsection (1) of section 397.6760, Florida
124 Statutes, is amended to read:

125 397.6760 Court records; confidentiality.—

126 (1) All petitions for involuntary assessment and
127 stabilization, court orders, and related records that are filed
128 with or by a court under this part are confidential and exempt
129 from s. 119.071(1) and s. 24(a), Art. I of the State
130 Constitution. Pleadings and other documents made confidential
131 and exempt by this section shall ~~may~~ be disclosed by the clerk
132 of the court, upon request, to any of the following:

133 (a) The petitioner.

134 (b) The petitioner's attorney.

135 (c) The respondent.

136 (d) The respondent's attorney.

137 (e) The respondent's guardian or guardian advocate, if
138 applicable.

139 (f) In the case of a minor respondent, the respondent's
140 parent, guardian, legal custodian, or guardian advocate.

141 (g) The respondent's treating health care practitioner.

142 (h) The respondent's health care surrogate or proxy.

143 (i) The Department of Children and Families, without
144 charge.

145 (j) The Department of Corrections, without charge, if the
146 respondent is committed or is to be returned to the custody of
147 the Department of Corrections from the Department of Children
148 and Families.

149 (k) A person or entity authorized to view records upon a
150 court order for good cause. In determining if there is good

151 cause for the disclosure of records, the court must weigh the
152 person or entity's need for the information against potential
153 harm to the respondent from the disclosure.

154 Section 6. Subsection (1) of section 397.6772, Florida
155 Statutes, is amended to read:

156 397.6772 Protective custody without consent.—

157 (1) If a person in circumstances which justify protective
158 custody as described in s. 397.677 fails or refuses to consent
159 to assistance and a law enforcement officer has determined that
160 a hospital or a licensed detoxification or addictions receiving
161 facility is the most appropriate place for the person, the
162 officer may, after giving due consideration to the expressed
163 wishes of the person, +

164 ~~(a)~~ take the person to a hospital or to a licensed
165 detoxification or addictions receiving facility against the
166 person's will but without using unreasonable force. The officer
167 shall use the standard form developed by the department pursuant
168 to s. 397.321 to execute a written report detailing the
169 circumstances under which the person was taken into custody. The
170 written report shall be included in the patient's clinical
171 record; ~~or~~

172 ~~(b) In the case of an adult, detain the person for his or~~
173 ~~her own protection in any municipal or county jail or other~~
174 ~~appropriate detention facility.~~

175

176 ~~Such detention is not to be considered an arrest for any~~
177 ~~purpose, and no entry or other record may be made to indicate~~
178 ~~that the person has been detained or charged with any crime. The~~
179 ~~officer in charge of the detention facility must notify the~~
180 ~~nearest appropriate licensed service provider within the first 8~~
181 ~~hours after detention that the person has been detained. It is~~
182 ~~the duty of the detention facility to arrange, as necessary, for~~
183 ~~transportation of the person to an appropriate licensed service~~
184 ~~provider with an available bed. Persons taken into protective~~
185 ~~custody must be assessed by the attending physician within the~~
186 ~~72-hour period and without unnecessary delay, to determine the~~
187 ~~need for further services.~~

188 Section 7. Section 397.6799, Florida Statutes, is amended
189 to read:

190 397.6799 Disposition of minor upon completion of
191 alternative involuntary assessment.—A minor who has been
192 assessed pursuant to s. 397.6798 must, within the time
193 specified, be released or referred for further voluntary or
194 involuntary services ~~treatment~~, whichever is most appropriate to
195 the needs of the minor.

196 Section 8. Section 397.681, Florida Statutes, is amended
197 to read:

198 397.681 Involuntary petitions; general provisions; court
199 jurisdiction and right to counsel.—

200 (1) JURISDICTION.—The courts have jurisdiction of

201 involuntary assessment and stabilization petitions and
202 involuntary services ~~treatment~~ petitions for substance abuse
203 impaired persons. Petitions for involuntary assessment and
204 stabilization and petitions for involuntary services may be
205 plead concurrently, and such petitions shall ~~must~~ be filed with
206 the clerk of the court in the county where the person is
207 located. ~~The clerk of the court may not charge~~ A fee may not be
208 charged for the filing of a petition pursuant to ~~under~~ this
209 section. The chief judge may appoint a general or special
210 magistrate to preside over all or part of the proceedings. The
211 alleged impaired person is named as the respondent. Any
212 violation of a court order by a named respondent is subject to
213 the contempt powers of the court.

214 (2) RIGHT TO COUNSEL.—A respondent has the right to
215 counsel at every stage of a proceeding relating to a petition
216 for his or her involuntary assessment and stabilization and a
217 petition for his or her involuntary services ~~treatment~~ for
218 substance abuse impairment. A respondent who desires counsel and
219 is unable to afford private counsel has the right to court-
220 appointed counsel and to the benefits of s. 57.081. If the court
221 believes that the respondent needs the assistance of counsel,
222 the court shall appoint such counsel for the respondent without
223 regard to the respondent's wishes. If the respondent is a minor
224 not otherwise represented in the proceeding, the court shall
225 immediately appoint a guardian ad litem to act on the minor's

226 | behalf.

227 | Section 9. Section 397.6811, Florida Statutes, is amended
228 | to read:

229 | 397.6811 Involuntary assessment and stabilization.—A
230 | person determined by the court to appear to meet the criteria
231 | for involuntary admission under s. 397.675 may be admitted ~~for a~~
232 | ~~period of 5 days~~ to and held at a hospital or ~~to~~ a licensed
233 | detoxification facility or addictions receiving facility for a
234 | period of 5 days or more pursuant to s. 397.6822(3),^r for
235 | involuntary assessment and stabilization or to a less
236 | restrictive component of a licensed service provider for
237 | assessment only upon entry of a court order or upon receipt by
238 | the licensed service provider of a petition. Involuntary
239 | assessment and stabilization may be initiated by the submission
240 | of a petition to the court.

241 | (1) If the person upon whose behalf the petition is being
242 | filed is an adult, a petition for involuntary assessment and
243 | stabilization may be filed by the respondent's spouse or legal
244 | guardian, any relative, a private practitioner, the director of
245 | a licensed service provider or the director's designee, or an
246 | adult who has ~~direct~~ personal knowledge of the respondent's
247 | substance abuse impairment.

248 | (2) If the person upon whose behalf the petition is being
249 | filed is a minor, a petition for involuntary assessment and
250 | stabilization may be filed by a parent, legal guardian, legal

251 | custodian, or licensed service provider.

252 | (3) A licensed service provider may not initiate any
253 | proceedings under this chapter unless the licensed service
254 | provider files a joint petition with an independent petitioner
255 | who has no financial interest in the licensed service provider
256 | or unless no other petitioner exists.

257 | Section 10. Section 397.6814, Florida Statutes, is amended
258 | to read:

259 | 397.6814 Involuntary assessment and stabilization;
260 | contents of petition.—A petition for involuntary assessment and
261 | stabilization must contain the name of the respondent, the
262 | current location of the respondent in the county where the
263 | petition has been filed, the name of the applicant or
264 | applicants, the relationship between the respondent and the
265 | applicant, and the name of the respondent's attorney, if known,
266 | and must state any request for a designation of a prearranged
267 | service provider for involuntary assessment and stabilization
268 | and sworn facts to support the need for involuntary assessment
269 | and stabilization, including facts to support that the
270 | respondent:

271 | (1) Has lost the power of self-control with respect to
272 | substance abuse ~~The reason for the petitioner's belief that the~~
273 | ~~respondent is substance abuse impaired;~~

274 | ~~(2) The reason for the petitioner's belief that because of~~
275 | ~~such impairment the respondent has lost the power of self-~~

276 ~~control with respect to substance abuse;~~ and
277 (2)(3)(a) Is in need of substance abuse services and, by
278 reason of substance abuse impairment, his or her judgment has
279 been so impaired that he or she is incapable of appreciating his
280 or her need for such services and of making a rational decision
281 in that regard, although mere refusal to receive such services
282 does not constitute evidence of lack of judgment with respect to
283 his or her need for such services ~~The reason the petitioner~~
284 ~~believes that the respondent has inflicted or is likely to~~
285 ~~inflict physical harm on himself or herself or others unless~~
286 ~~admitted; or~~
287 (b) Without care or services, is likely to suffer from
288 neglect or refuse to care for himself or herself; that such
289 neglect or refusal poses a real and present threat of
290 substantial harm to his or her well-being; and that it is not
291 apparent that such harm may be avoided through the help of
292 willing family members or friends or the provision of other
293 services, or there is substantial likelihood that the person has
294 inflicted, or threatened to or attempted to inflict, or, unless
295 admitted, is likely to inflict, physical or emotional harm on
296 himself, herself, or another ~~The reason the petitioner believes~~
297 ~~that the respondent's refusal to voluntarily receive care is~~
298 ~~based on judgment so impaired by reason of substance abuse that~~
299 ~~the respondent is incapable of appreciating his or her need for~~
300 ~~care and of making a rational decision regarding that need for~~

HB 313

2019

301 ~~care. If the respondent has refused to submit to an assessment,~~
302 ~~such refusal must be alleged in the petition.~~

303

304 ~~A fee may not be charged for the filing of a petition pursuant~~
305 ~~to this section.~~

306 Section 11. Section 397.6815, Florida Statutes, is amended
307 to read:

308 397.6815 Involuntary assessment and stabilization;
309 procedure.—

310 (1) Upon receipt and filing of the petition for the
311 involuntary assessment and stabilization of a substance abuse
312 impaired person by the clerk of the court, the court shall
313 review the petition and ascertain whether the respondent is
314 represented by an attorney, and if not, whether, on the basis of
315 the petition, an attorney should be appointed,+ and shall
316 either:

317 (a)~~(1)~~ Provide a copy of the petition and notice of
318 hearing to the respondent; the respondent's parent, guardian, or
319 legal custodian, in the case of a minor; the respondent's
320 attorney, if known; the petitioner; the respondent's spouse or
321 guardian, if applicable; and such other persons as the court may
322 direct, and have such petition and notice personally delivered
323 to the respondent if he or she is a minor. The court shall also
324 issue a summons to the person whose admission is sought and
325 conduct a hearing within 10 calendar days. The petitioner,

326 individually or through counsel, may serve the respondent with
 327 notice of the petition, summons, and court dates by private
 328 process; or

329 (b)-(2) Without the appointment of an attorney and, relying
 330 solely on the contents of the petition, enter an ex parte order
 331 authorizing the involuntary assessment and stabilization of the
 332 respondent. The court shall schedule a hearing to be held on any
 333 petition for involuntary services filed concurrently with the
 334 involuntary assessment and stabilization petition within 10
 335 calendar days after the execution of the ex parte order. The
 336 court shall:

337 1. Issue a writ of bodily attachment and ~~may~~ order a law
 338 enforcement agency officer or other designated agent of the
 339 court to take the respondent into custody and deliver him or her
 340 to the nearest appropriate licensed service provider or a
 341 licensed service provider designated and ordered by the court;

342 2. Order that if the writ is executed in another county,
 343 the respondent shall be taken to the nearest receiving facility
 344 within such county; and

345 3. Order the licensed service provider to provide the
 346 court an assessment with recommendations indicating any need for
 347 services within 48 hours after completion of the assessment.

348 (2) The clerk of the court shall provide the writ of
 349 bodily attachment, order, petition, and notice of any scheduled
 350 court dates to a local law enforcement agency. The writ of

351 bodily attachment, order, petition, and notice of any scheduled
352 court dates shall be served upon the respondent by the law
353 enforcement agency executing the ex parte order at the time such
354 respondent is taken into custody. Such order shall be in full
355 force and effect for at least 30 calendar days after the date of
356 its execution. If a scheduled hearing to be held on a petition
357 for services, which was filed concurrently pursuant to this
358 section, will not occur due to the respondent not being taken
359 into custody and delivered pursuant to the ex parte order, the
360 court shall amend its order and reschedule the hearing within 10
361 calendar days after the previously scheduled hearing date. The
362 clerk of the court shall provide the amended ex parte order to
363 the law enforcement agency designated by the court.

364 Section 12. Section 397.6818, Florida Statutes, is amended
365 to read:

366 397.6818 Court determination.—At the hearing initiated in
367 accordance with s. 397.6811(1), the court shall hear all
368 relevant testimony. The respondent must be present unless the
369 court has reason to believe that his or her presence is likely
370 to be injurious to him or her, in which event the court shall
371 appoint a guardian advocate to represent the respondent. The
372 respondent has the right to examination ~~by a court-appointed~~
373 ~~qualified professional~~. After hearing all the evidence, the
374 court shall determine whether there is a reasonable basis to
375 believe the respondent meets the involuntary admission criteria

376 of s. 397.675.

377 (1) Based on its determination, the court shall either
378 dismiss the petition or immediately enter an order authorizing
379 the involuntary assessment and stabilization of the respondent;
380 or, if in the course of the hearing the court has reason to
381 believe that the respondent, due to mental illness other than or
382 in addition to substance abuse impairment, is likely to injure
383 himself or herself or another if allowed to remain at liberty,
384 the court may initiate involuntary proceedings under the
385 provisions of part I of chapter 394.

386 (2) If the court enters an order authorizing involuntary
387 assessment and stabilization, the order shall include the
388 court's findings with respect to the availability and
389 appropriateness of the least restrictive alternatives and the
390 need for the appointment of an attorney to represent the
391 respondent, and must ~~may~~ designate the specific licensed service
392 provider to perform the involuntary assessment and stabilization
393 of the respondent. The respondent may choose the licensed
394 service provider to deliver the involuntary assessment when
395 ~~where~~ possible and appropriate. The court shall make its
396 findings based on records released pursuant to s. 397.501(7), if
397 any, within 7 calendar days after the entry of its order
398 authorizing involuntary assessment and stabilization.

399 (3) Within 10 calendar days after the entry of its order
400 authorizing involuntary assessment and stabilization, the court

401 shall schedule a hearing to be held on a petition for
402 involuntary services to determine if any further proceedings,
403 including an order for such services, are warranted.

404 (4) If the court finds it necessary, it may order any law
405 enforcement agency or the sheriff to take the respondent into
406 custody and deliver him or her to the licensed service provider
407 specified in the court order or, if none is specified, to the
408 nearest appropriate licensed service provider for involuntary
409 assessment.

410 ~~(4) The order is valid only for the period specified in~~
411 ~~the order or, if a period is not specified, for 7 days after the~~
412 ~~order is signed.~~

413 Section 13. Subsection (3) of section 397.6822, Florida
414 Statutes, is amended to read:

415 397.6822 Disposition of individual after involuntary
416 assessment.—Based upon the involuntary assessment, a qualified
417 professional of the hospital, detoxification facility, or
418 addictions receiving facility, or a qualified professional when
419 a less restrictive component has been used, must:

420 (3) Retain the individual when a petition for involuntary
421 services ~~treatment~~ has been initiated, the timely filing of
422 which authorizes the service provider to retain physical custody
423 of the individual pending further order of the court.

424
425 Adhering to federal confidentiality regulations, notice of

426 disposition must be provided to the petitioner and to the court.

427 Section 14. Section 397.693, Florida Statutes, is amended
428 to read:

429 397.693 Involuntary services ~~treatment~~.—A person may be
430 the subject of a petition for court-ordered involuntary services
431 ~~treatment~~ pursuant to this part, if that person meets the
432 criteria for involuntary admission provided in s. 397.675 and:

433 (1) Has been placed under protective custody pursuant to
434 s. 397.677 within the previous 10 calendar days;

435 (2) Has been subject to an emergency admission pursuant to
436 s. 397.679 within the previous 10 calendar days;

437 (3) Has been assessed by a qualified professional within
438 10 calendar ~~5~~ days;

439 (4) Has been subject to involuntary assessment and
440 stabilization pursuant to s. 397.6818 within the previous 12
441 calendar days; or

442 (5) Has been subject to alternative involuntary admission
443 pursuant to s. 397.6822 within the previous 12 calendar days.

444 Section 15. Section 397.695, Florida Statutes, is amended
445 to read:

446 397.695 Involuntary services; persons who may petition.—

447 (1) If the respondent is an adult, a petition for
448 involuntary services may be filed by the respondent's spouse or
449 legal guardian, any relative, a licensed service provider, or an
450 adult who has ~~direct~~ personal knowledge of the respondent's

451 substance abuse impairment and his or her prior course of
452 assessment and services ~~treatment~~.

453 (2) If the respondent is a minor, a petition for
454 involuntary services ~~treatment~~ may be filed by a parent, legal
455 guardian, or licensed service provider.

456 (3) A licensed service provider may not initiate any
457 proceedings under this chapter unless the licensed service
458 provider files a joint petition with an independent petitioner
459 who has no financial interest in the licensed service provider
460 or unless no other petitioner exists.

461 Section 16. Section 397.6951, Florida Statutes, is amended
462 to read:

463 397.6951 Contents of petition for involuntary services.—A
464 petition for involuntary services must contain the name of the
465 respondent; the name of the petitioner or petitioners; the
466 relationship between the respondent and the petitioner; the name
467 of the respondent's attorney, if known; the findings and
468 recommendations of the assessment performed by the qualified
469 professional, if known; and the factual allegations presented by
470 the petitioner establishing the need for involuntary ~~outpatient~~
471 services. The factual allegations must demonstrate that the
472 respondent:

473 (1) Has lost the power of self-control with respect to
474 substance abuse ~~The reason for the petitioner's belief that the~~
475 ~~respondent is substance abuse impaired;~~

476 ~~(2) The reason for the petitioner's belief that because of~~
477 ~~such impairment the respondent has lost the power of self-~~
478 ~~control with respect to substance abuse; and~~

479 (2)(3)(a) Is in need of substance abuse services and, by
480 reason of substance abuse impairment, his or her judgment has
481 been so impaired that he or she is incapable of appreciating his
482 or her need for such services and of making a rational decision
483 in that regard, although mere refusal to receive such services
484 does not constitute evidence of lack of judgment with respect to
485 his or her need for such services ~~The reason the petitioner~~
486 ~~believes that the respondent has inflicted or is likely to~~
487 ~~inflict physical harm on himself or herself or others unless the~~
488 ~~court orders the involuntary services; or~~

489 (b) Without care or services, is likely to suffer from
490 neglect or refuse to care for himself or herself; that such
491 neglect or refusal poses a real and present threat of
492 substantial harm to his or her well-being; and that it is not
493 apparent that such harm may be avoided through the help of
494 willing family members or friends or the provision of other
495 services, or there is substantial likelihood that the person has
496 inflicted, or threatened to or attempted to inflict, or, unless
497 admitted, is likely to inflict, physical or emotional harm on
498 himself, herself, or another ~~The reason the petitioner believes~~
499 ~~that the respondent's refusal to voluntarily receive care is~~
500 ~~based on judgment so impaired by reason of substance abuse that~~

501 ~~the respondent is incapable of appreciating his or her need for~~
502 ~~care and of making a rational decision regarding that need for~~
503 ~~care.~~

504 Section 17. Section 397.6955, Florida Statutes, is amended
505 to read:

506 397.6955 Duties of court upon filing of petition for
507 involuntary services.—

508 (1) Upon the filing of a petition for involuntary
509 services, which is not included as part of an initial assessment
510 and stabilization petition, for a substance abuse impaired
511 person with the clerk of the court, the court shall immediately
512 determine whether the respondent is represented by an attorney
513 or whether the appointment of counsel for the respondent is
514 appropriate. If the court appoints counsel for the person, the
515 clerk of the court shall immediately notify the office of
516 criminal conflict and civil regional counsel, created pursuant
517 to s. 27.511, of the appointment. The office of criminal
518 conflict and civil regional counsel shall represent the person
519 until the petition is dismissed, the court order expires, or the
520 person is discharged from involuntary services. An attorney that
521 represents the person named in the petition shall have access to
522 the person, witnesses, and records relevant to the presentation
523 of the person's case and shall represent the interests of the
524 person, regardless of the source of payment to the attorney.

525 (2) The court shall schedule a hearing to be held on the

526 petition within 5 calendar days unless a continuance is granted.
527 The court may appoint a magistrate to preside at the hearing.

528 (3) A copy of the petition and notice of the hearing must
529 be provided to the respondent; the respondent's parent,
530 guardian, or legal custodian, in the case of a minor; the
531 respondent's attorney, if known; the petitioner; the
532 respondent's spouse or guardian, if applicable; and such other
533 persons as the court may direct. If the respondent is a minor, a
534 copy of the petition and notice of the hearing must be
535 personally delivered to the respondent. The court shall also
536 issue a summons to the person whose admission is sought. The
537 petitioner, individually or through counsel, may serve the
538 respondent with notice of the petition, summons, and court dates
539 by private process.

540 Section 18. Section 397.6957, Florida Statutes, is amended
541 to read:

542 397.6957 Hearing on petition for involuntary services.—

543 (1) At a hearing on a petition for involuntary services,
544 the court shall hear and review all relevant evidence, including
545 the review of results of the assessment completed by the
546 qualified professional in connection with the respondent's
547 protective custody, emergency admission, involuntary assessment,
548 or alternative involuntary admission. The respondent must be
549 present unless the court finds that his or her presence is
550 likely to be injurious to himself or herself or others, in which

551 event the court must appoint a guardian advocate to act in
552 behalf of the respondent throughout the proceedings. If the
553 respondent fails to appear for the hearing after proper notice,
554 or is unwilling to submit to the court-ordered services, the
555 court may proceed with the hearing and enter an order for
556 services.

557 (2) The petitioner has the burden of proving by clear and
558 convincing evidence that the respondent:

559 (a) Has lost the power of self-control with respect to ~~The~~
560 ~~respondent is substance abuse impaired and has a history of lack~~
561 ~~of compliance with treatment for substance abuse; and~~

562 (b)1. Is in need of substance abuse services and, by
563 reason of substance abuse impairment, his or her judgment has
564 been so impaired that he or she is incapable of appreciating his
565 or her need for such services and of making a rational decision
566 in that regard, although mere refusal to receive such services
567 does not constitute evidence of lack of judgment with respect to
568 his or her need for such services; or ~~Because of such impairment~~
569 ~~the respondent is unlikely to voluntarily participate in the~~
570 ~~recommended services or is unable to determine for himself or~~
571 ~~herself whether services are necessary and:~~

572 ~~2.1.~~ Without care or services, the respondent is likely to
573 suffer from neglect or refuse to care for himself or herself;
574 that such neglect or refusal poses a real and present threat of
575 substantial harm to his or her well-being; and that it is not

576 apparent that such harm may be avoided through the help of
577 willing family members or friends or the provision of other
578 services, or ~~that~~ there is a substantial likelihood that ~~without~~
579 ~~services~~ the person has inflicted, or threatened to or attempted
580 to inflict, or, unless admitted, is likely to inflict, physical
581 or emotional ~~respondent will cause serious bodily harm on~~ ~~to~~
582 himself, herself, or another in the near future, as evidenced by
583 recent behavior; or

584 ~~2. The respondent's refusal to voluntarily receive care is~~
585 ~~based on judgment so impaired by reason of substance abuse that~~
586 ~~the respondent is incapable of appreciating his or her need for~~
587 ~~care and of making a rational decision regarding that need for~~
588 ~~care.~~

589 (3) ~~A~~ One of the ~~qualified professional~~ professionals who
590 executed an ~~the~~ involuntary services certificate pursuant to s.
591 397.679 must be a witness. The court shall allow testimony from
592 individuals, including family members, deemed by the court to be
593 relevant under state law, regarding the respondent's prior
594 history and how that prior history relates to the person's
595 current condition. The testimony in the hearing must be under
596 oath, and the proceedings must be recorded. The patient may
597 refuse to testify at the hearing.

598 (4) At the conclusion of the hearing the court shall
599 dismiss the petition or order the respondent to receive
600 involuntary services from his or her chosen licensed service

601 provider if possible and appropriate or a licensed service
602 provider designated by the court. The court may, on its own
603 motion or on the motion of any party, schedule a status
604 conference for the purpose of monitoring the respondent's
605 continued compliance with the court's order for services. Based
606 upon its findings made after reviewing the records released
607 pursuant to s. 397.501(7), the court may order the designated
608 licensed service provider to provide the court and petitioner or
609 the petitioner's counsel with a status report of the
610 respondent's current treatment and compliance with the court
611 order.

612 Section 19. Subsection (1) of section 397.697, Florida
613 Statutes, is amended to read:

614 397.697 Court determination; effect of court order for
615 involuntary services.—

616 (1) When the court finds that the conditions for
617 involuntary services have been proved by clear and convincing
618 evidence, it may order the respondent to receive involuntary
619 services from a publicly funded licensed service provider for a
620 period not to exceed 90 days. The court may also order a
621 respondent to undergo services ~~treatment~~ through a privately
622 funded licensed service provider if the respondent has the
623 ability to pay for the services ~~treatment~~, or if any person on
624 the respondent's behalf voluntarily demonstrates a willingness
625 and an ability to pay for the services ~~treatment~~. If the court

626 finds it necessary, it may direct any law enforcement agency or
627 the sheriff to take the respondent into custody and deliver him
628 or her to the licensed service provider specified in the court
629 order, or to the nearest appropriate licensed service provider,
630 for involuntary services. When the conditions justifying
631 involuntary services no longer exist, the individual must be
632 released as provided in s. 397.6971. When the conditions
633 justifying involuntary services are expected to exist after 90
634 days of services, a renewal of the involuntary services order
635 may be requested pursuant to s. 397.6975 before the end of the
636 90-day period.

637 Section 20. Subsections (1) and (7) of section 397.6975,
638 Florida Statutes, are amended to read:

639 397.6975 Extension of involuntary services period.—

640 (1) Whenever any petitioner or a licensed service provider
641 believes that an individual who is nearing the scheduled date of
642 his or her release from involuntary services continues to meet
643 the criteria for involuntary services in s. 397.693, a petition
644 for renewal of the involuntary services order may be filed with
645 the court at least 10 days before the expiration of the court-
646 ordered services period. The court shall immediately schedule a
647 hearing to be held not more than 15 days after filing of the
648 petition. The court shall provide the copy of the petition for
649 renewal and the notice of the hearing to all parties to the
650 proceeding. The hearing is conducted pursuant to s. 397.6957.

HB 313

2019

651 (7) If the respondent has previously been found
652 incompetent to consent to services ~~treatment~~, the court shall
653 consider testimony and evidence regarding the respondent's
654 competence.

655 Section 21. This act shall take effect July 1, 2019.