HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1143 Mental Health and Substance Abuse
SPONSOR(S): Appropriations Committee, Children, Families & Seniors Subcommittee, Maney and others
TIED BILLS: HB 1157 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N, As CS	Rahming	Brazzell
2) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N	Mathews	Hall
3) Appropriations Committee	23 Y, 0 N, As CS	Fontaine	Pridgeon
4) Health & Human Services Committee			

SUMMARY ANALYSIS

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and drugs. In Florida, the Baker Act provides a legal procedure for voluntary and involuntary mental health examination and treatment. The Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services. The Department of Children and Families (DCF) is the single state authority for substance abuse and mental health treatment services in Florida.

CS/HB 1143 modifies the Baker Act and makes significant changes to the Marchman Act, the statutory processes for mental health and substance abuse examinations and treatment, respectively. The bill:

- Grants law enforcement officers discretion on initiating involuntary examinations, and revises requirements for how they transport individuals for an involuntary examination.
- Repeals all provisions for court-ordered involuntary assessments and stabilization in the Marchman Act, and combines these procedures into a consolidated involuntary treatment process.
- Prohibits courts from ordering an individual with a developmental disability who lacks a co-occurring mental illness to a state mental health treatment facility for involuntary inpatient placement.
- Revises the voluntariness provision under the Baker Act to allow a minor's voluntary admission after a clinical review, rather than a hearing, has been conducted.
- Authorizes a witness to appear remotely upon a showing of good cause and with consent by all parties.
- Allows an individual to be admitted as a civil patient in a state mental health treatment facility without a transfer evaluation and prohibits a court, in a hearing for placement in a treatment facility, from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing.
- Requires receiving and treatment facilities to inform specified persons, in writing, of services available in their geographic area that would assist in their mental health or substance abuse recovery.
- Adds a community mental health center setting to the current law restrictions on when a psychiatric nurse may release a patient from a receiving facility.
- Revises certain provisions relating to the Commission on Mental Health and Substance Abuse.
- Requires DCF to publish specified annual Baker Act reports on its website and creates the same requirement in the Marchman Act, but delays implementation for such reports until 2023.
- Makes technical and conforming changes.

The bill provides an appropriation of $633,000 for the additional data reporting costs and per diem reimbursement provisions of the bill.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.[4] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22%.[5]

The Baker Act

The Florida Mental Health Act, commonly referred to as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[6] The Act includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.[7]

Rights of Patients

Current Situation

The Baker Act protects the rights of patients examined or treated for mental illness in Florida, including, but not limited to the right to communicate freely and privately with persons outside a facility, unless the facility determines that such communication is likely to be harmful to the patient or others.[8] Currently, a

[1] World Health Organization, *Mental Health: Strengthening Our Response,* https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited Feb. 8, 2022).
[2] Centers for Disease Control and Prevention, *Mental Health Basics*, http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited Feb. 8, 2022).
[3] *Id*.
[4] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Feb. 8, 2022).
[5] *Id*.
[6] The Baker Act is contained in Part I of ch. 394, F.S.
[7] S. 394.459, F.S.
[8] S. 394.459(5), F.S. Other patient rights include the right to dignity; treatment regardless of ability to pay; express and informed consent for admission or treatment; quality treatment; possession of his or her clothing and personal effects; vote in elections, if eligible; petition the court for a writ of habeas corpus to question the cause and legality of their detention in a receiving or treatment facility; and participate in their treatment and discharge planning. See, s. 394.459 (1)-11), F.S. Current law imposes liability for damages on those who violate or abuse patient rights or privileges. See, s. 394.459 (10), F.S.

facility must provide immediate patient access to a patient's family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless such access would be detrimental to the patient or the patient exercises their right not to communicate or visit with the person.[9] If a facility restricts a patient's right to communicate or receive visitors, the facility must provide written notice of the restriction and the reasons for it to the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative. Under current law, a facility must review patient communication restrictions weekly.[10]

Baker Act patients also have the right to receive treatment at a receiving or treatment facility, regardless of ability to pay. However, current law does not require facilities to offer patients assistance in accessing any post-discharge continuum of care.

Effect of the Bill

The bill requires facilities to review a patient's communication restrictions every 72 hours, or no later than the next working day if such period ends on a weekend or holiday, instead of every week.

The bill requires facilities to provide specified patients, in writing, information about services available in the patient's geographic area that would assist in the patient's recovery.

Involuntary Examination and Receiving Facilities

Current Situation

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[11] An involuntary examination is required if there is reason to believe that the person has a mental illness and, because of his or her mental illness, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and such harm is unavoidable through help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[12]

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[13] or
- A physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.[14]

Unlike the discretion afforded courts and medical professionals, current law mandates that law enforcement officers initiate an involuntary examination of a person who appears to meet the criteria by taking him or her into custody and delivering or having the person delivered to a receiving facility for examination.[15] However, officers are not currently required to restrain the person in the least restrictive manner available and appropriate under the circumstances.

[9] S. 394.459(5)(c), F.S.
[10] *Id*. Every seven days.
[11] Ss. 394.4625 and 394.463, F.S.
[12] S. 394.463(1), F.S.
[13] S. 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[14] S. 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.
[15] S. 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.

Involuntary patients must be taken to either a public or a private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[16] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[17] Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.[18]

Under the Baker Act, a receiving facility has up to 72 hours to examine an involuntary patient.[19] During that 72 hours, an involuntary patient must be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility, to determine if the criteria for involuntary services are met.[20] Current law does not indicate when the examination period begins for an involuntary patient. However, if the patient is a minor, a receiving facility must initiate the examination within 12 hours of arrival.[21]

Within that 72-hour examination period, or, if the 72 hours ends on a weekend or holiday, no later than the next business day, one of the following must happen:[22]

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to be placed and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.

The receiving facility may not release an involuntary examination patient without the documented approval of a psychiatrist, or a clinical psychologist. However, if the receiving facility is owned or operated by a hospital or health system, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness who has completed an involuntary examination. A psychiatric nurse may not approve a patient's release if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.[23] Because of the current setting restrictions on where psychiatric nurses may approve Baker Act releases, there are about 30 nationally accredited community mental health providers in Florida that operate receiving facilities licensed under chapter 394, F.S., but cannot allow their psychiatric nurses to discharge a Baker Act patient under the protocol of their psychiatrists.[24] Current law requires DCF to prepare and provide annual reports to the agency itself, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives. The annual reports analyze data obtained from involuntary orders issued under the Baker Act, professional certificates, and law enforcement officers' reports.[25]

Current law does not require a receiving facility to inform DCF about patients who have been examined or committed multiple times under the Baker Act.

Effect of the Bill

[16] S. 394.455(40), F.S. This term does not include a county jail.
[17] S. 394.455(38), F.S
[18] R. 65E-5.400(2), F.A.C.
[19] S. 394.463(2)(g), F.S.
[20] S. 394.463(2)(f), F.S.
[21] S. 394.463(2)(g), F.S.
[22] *Id*.
[23] S. 394.463(f), F.S.
[24] Email from Melanie Brown-Woofter, President and CEO, Florida Behavioral Health Association, Re: HB 1143 - FCBH (Jan. 17, 2022).
[25] S. 394.463(e). F.S.

The bill authorizes, rather than requires as in current law, law enforcement officers to transport those who appear to meet Baker Act criteria to receiving facilities. This gives law enforcement officers the same discretion that courts and medical professionals have to initiate an involuntary examination. By removing the legal mandate to initiate a Baker Act, there could be a reduction in involuntary examinations, especially in cases involving minors and schools. This may lead to greater use of alternatives to transport for involuntary examination, such as mobile response teams. The bill also requires law enforcement officers to restrain a person in the least restrictive manner available and appropriate under the circumstances.

The bill specifies that a receiving facility must examine an adult involuntary patient within 72 hours of arrival at the facility.

The bill amends the restriction requiring a receiving facility to be owned or operated by a hospital or health system for a psychiatric nurse to approve a patient's release to include nationally accredited community mental health centers. This means that psychiatric nurses, performing under the framework of an established protocol with a psychiatrist, will be allowed to release a Baker Act patient in specified community settings. However, the bill retains the prohibition on a psychiatric nurse's approval of a patient's release if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.

The bill requires DCF to publish specified annual reports on its website and eliminates the current requirement to provide annual reports to the agency itself, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

The bill requires a receiving facility to inform DCF of anyone who has been examined or committed three or more times at the facility within a 12-month period.

Involuntary Inpatient Placement

Current Situation - Criteria

A court may order a person into involuntary inpatient treatment if it finds that the person has a mental illness and, because of that mental illness, has refused voluntary inpatient treatment, is incapable of surviving alone or with the help of willing and responsible family or friends and, without treatment, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being, or will inflict serious bodily harm on him or herself or others in the near future based on recent behavior. Currently, a person's acts or omissions are not included in the criteria. Additionally, the court must find that all available less restrictive treatment alternatives which would offer an opportunity for improvement of their condition are inappropriate.[26]

The "willing and responsible" family or friends criteria here is inconsistent with the involuntary examination criteria presently under the Baker Act, which only requires "willing" family members or friends. However, both are consistent in not requiring family or friends involved in a person's self-care or survival to be "able" to help.

Courts face challenges with the present "serious bodily harm" restriction in the involuntary inpatient placement criteria. For instance, in Craig v. State, 804 So. 2d 532, 537 (Fla. 3d DCA 2002), the Third DCA found that courts are "unable to act in cases of stalking or harassment of a citizen unless there is a threat of serious physical injury." "Stated differently, the present Baker Act allows a mentally ill person to inflict less-than-serious bodily harm on others, and an unlimited amount of emotional injury, without being a candidate for civil commitment. The civil commitment system is authorized to intervene under the present statute only if there is a threat, or the reality, of serious bodily harm."[27] In Craig, the Third

[26] S. 394.467(1), F.S.
[27] Craig v. State, 804 So. 2d 532, 537 (Fla. 3d DCA 2002).

DCA suggested "the legislature revisit the Baker Act" to "strike a balance between the rights of the mentally ill and the rights of citizens."[28]

Effect of the Bill - Criteria

The bill removes inconsistencies between the involuntary inpatient placement and involuntary examination criteria by mirroring amended language in both. As a result, both sets of criteria require a "willing, able, and responsible" family member or friend to be involved in a person's self-care and allow for a person's "acts" or "omissions" to be considered when considering if a person meets the criteria, in addition to their behavior. The bill removes the "bodily" harm restriction, allowing for "serious harm" to self or others when referencing the likelihood of harm to justify involuntary placement, if all other criteria are met, granting courts more latitude in who may be ordered for involuntary inpatient placement for treatment.

Current Situation- Involuntary Inpatient Placement Hearing

The facility administrator that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[29] The petition must be based on two professional opinions, who have personally examined the individual within the past 72 hours.[30] Upon filing, the clerk of the court must provide copies to DCF, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.[31] Within one business day, the court must appoint the public defender to represent the person who is the subject of the petition, unless that person is otherwise represented by counsel.[32]

Once a petition for involuntary inpatient placement has been filed, the court must hold a hearing within five business days in the county or facility where the patient is located, unless a continuance is granted.[33] Presently, only the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[34] Under current law, the court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in their best interests, and the patient's counsel does not object.[35] Otherwise, the patient must be present.

Current law permits the court to appoint a magistrate to preside at the hearing, in general.[36] At the hearing, the state attorney must represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.[37] Although the state attorney has the evidentiary burden in Baker Act cases, current law does not require a facility to make the patient's clinical records available to the state attorney so that the state can evaluate and prepare its case before the hearing. Additionally, there is no requirement that the court allow testimony from family members regarding the patient's prior history and how it relates to their current condition.

If, at any time before the conclusion of the hearing, it appears to the court that the person does not meet the criteria for involuntary inpatient placement, but rather meets the criteria for involuntary outpatient services, then the court may order the person evaluated for involuntary outpatient services.[38] On the other hand, if the court concludes that the patient meets the criteria for involuntary inpatient placement, it has discretion to issue an order for involuntary inpatient services at a receiving facility for

[28] *Id*.
[29] S. 394.467(3), F.S.
[30] S. 394.467(2), F.S.
[31] S. 394.467(3), F.S.
[32] S. 394.467(4), F.S.
[33] S. 394.467(6), F.S.
[34] S. 394.467(5), F.S.
[35] S. 394.467(6), F.S.
[36] *Id*.
[37] *Id*.
[38] S. 394.467(6)(c), F.S.

up to 90 days or any order for involuntary mental health services in a state treatment facility[39] for up to six months.[40]

Current law prohibits a state treatment facility from admitting a civil patient unless he or she has undergone a transfer evaluation, the process by which the patient is evaluated for appropriateness of placement in a treatment facility.[41] Current law also requires the court to receive and consider the transfer evaluation's documented information before the involuntary placement hearing is held, but it does not specify that the evaluator must testify at the hearing in order for the court to consider any substantive information within it.[42] Under Florida law, if a court were to consider substantive information in the transfer evaluation without the evaluator testifying at the hearing, it would be a violation of the hearsay rule contained in Florida's Evidence Code.[43]

Current law requires the court's order to specify the nature and extent of the patient's illness and prohibits the court from ordering individuals with traumatic brain injuries or dementia who lack a co-occurring mental illness to be involuntarily committed to a state treatment facility.[44] However, there is currently no prohibition against involuntarily committing individuals with developmental disabilities into these facilities.

Remote Hearings

In response to the COVID-19 pandemic, on March 21, 2020, the Chief Justice of the Florida Supreme Court issued Supreme Court of Florida Administrative Order AOSC20-23, Amendment 2, authorizing courts to conduct hearings remotely. However, on January 8, 2022, Supreme Court of Florida Administrative Order AOSC21-17 was issued, requiring in-person hearings unless the facility where the individual is located is closed to hearing participants due to the facility's COVID-19 protocols or the individual waives the right to physical presence at the hearing.

Effect of the Bill - Involuntary Inpatient Placement Hearing

The bill authorizes both the patient and the state to be independently entitled to at least one continuance of the involuntary inpatient placement hearing. The state may have up to a five-court working day continuance if it has good cause and can show due diligence before moving to reset the case. The bill specifies that the state's failure to timely review readily available documents, or failure to attempt to contact a known witness does not merit a continuance.

The bill expands the grounds under which a patient's presence at the hearing may be waived. Specifically, the bill authorizes the court to waive a patient's presence if it finds that the patient's presence is likely to be injurious to the patient, or if the patient knowingly, intelligently and voluntarily waives the right to be present. However, the bill maintains the requirement that the patient's counsel have no objections for the waiver to take effect.

The bill states that magistrates may preside over hearings for the petition for involuntary inpatient placement and ancillary proceedings, including writ of habeas corpus. The bill also allows the state attorney to have access to records to litigate at the hearing. In doing so, it requires facilities to make records available to the state attorney within 24 hours of the filing of a petition for involuntary inpatient placement, but it requires that the records remain confidential and may not be used for criminal

[39] A treatment facility is any state-owned, state-operated, or state-supported hospital, center, or clinic designated by DCF to provide mentally ill patients treatment and hospitalization that extends beyond that provided for by a receiving facility. Treatment facilities also include federal government facilities and any private facility designated by DCF. Only VA patients may be treated in federal facilities S. 394.455(48), F.S. A receiving facility is any public or private facility or hospital designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. County jails are not considered receiving facilities. S. 394.455(40), F.S.
[40] S. 394.467(6)(b), F.S.
[41] S. 394.461(2), F.S.
[42] *Id*.
[43] S. 90.802, F.S. The basic hearsay rule states that courts cannot rely on out-of-court, unsworn statements (written or spoken) as proof of the matter asserted in the statement.
[44] S. 394.467(6), F.S.

investigation or prosecution purposes or any purpose other than civil commitment. Additionally, the bill requires the court to allow testimony deemed relevant from family members regarding the patient's prior history and how it relates to their current condition.

The bill increases the maximum time a patient may be retained at a receiving facility for involuntary inpatient treatment services from 90 days to six months. This change will reduce the need for the court to issue extension orders for patients who require more than 90 days of treatment.

The bill authorizes civil patients to be admitted to state treatment facilities without undergoing a transfer evaluation. This could result in a greater number of admissions to state treatment facilities. The bill also removes the requirement that the court receive and consider a transfer evaluation before a hearing for involuntary placement. Instead, it allows the state attorney to establish that a transfer evaluation was performed and that the document was properly executed by providing the court with a copy of the transfer evaluation before the close of the state's case. This change will likely improve court efficiencies as hearings will not need to be delayed because a transfer evaluation is unavailable before the hearing. The bill codifies current hearsay rules by specifying that the court may not consider substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

The bill prohibits the court from ordering an individual with a developmental disability as defined under s. 393.063, F.S., who lacks a co-occurring mental illness, into a state treatment facility. This expands current law which prohibits such orders for persons with traumatic brain injury or dementia.

Remote Hearings

The bill allows for all witnesses to appear and testify remotely under oath at a hearing via audio-video teleconference, upon a showing of good cause and if all parties consent. The bill further requires any witness appearing remotely to provide all parties with all relevant documents by the close of business the day prior to the hearing. The bill requires the court to allow testimony deemed relevant and admissible by the court under state law from specified individuals regarding the person's prior history and how that history relates to the person's current condition.

Current Situation- Extensions

Under current law, hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are administrative hearings and must be conducted in accordance with s. 120.57(1), except that any order entered by the administrative law judge (ALJ) is final and subject to judicial review in accordance with s. 120.68, F.S.[45] If the patient continues to meet the criteria for involuntary inpatient placement and is being treated at a treatment facility, the administrator must file a petition requesting authorization for continued involuntary inpatient placement. This must be done before the expiration of the period the treatment facility is authorized to retain the patient.

Current law requires the ALJ to issue extension orders for up to 90 days, if at a hearing it is shown that the patient continues to meet the criteria for involuntary inpatient placement. However, where only extensions related to involuntary inpatient placement of an individual placed at a treatment facility are being considered by the ALJ, this requirement conflicts with the statutory authority given to the ALJ to order involuntary mental health services in a treatment facility for up to 6 months.

Effect of the Bill- Extensions

The bill removes the inconsistency in current law to clarify that an individual may be held at a state-operated treatment facility for up to six months.

Voluntary Admissions and Procedures Related to Minors

Current Situation

[45] S. 394.467(7)(a), F.S.

Parents generally have the longstanding right and responsibility for the upbringing of a child, including making medical decisions. The U.S. Supreme Court has recognized that children have a protectable liberty interest in not being confined unnecessarily for medical treatment and found that the child's rights and the nature of the commitment decisions are such that parents do not always have absolute discretion to institutionalize a child. In Parham v. J.R., 442 U.S. 584 (1979), the Court did not recognize a child's right to consent to or refuse treatment or admission, but it did recognize the child's liberty interests, requiring the constitutional right to due process before admission to a mental health institution.

The Court determined due process is satisfied as long as a "neutral factfinder" has the authority to deny admission and is able to determine whether the child meets the statutory and medical standards for admission.[46] Thus, while parents have the right to seek such care for their child, the decision to admit the child must be subject to independent medical judgment and periodic review.[47] The Court further determined due process does not require that:[48]

- The neutral factfinder be a person trained in the law or a judicial or administrative officer;
- The admitting physician conduct a formal or quasi-formal adversary hearing; or
- The hearing be conducted by someone other than the admitting physician.

This means a staff physician at a receiving facility could satisfy due process requirements, so long as he or she is free to evaluate independently the child's mental and emotional condition and need for treatment.[49]

Under current Florida law, a facility may receive a minor for observation, diagnosis, or treatment with the minor's guardian's express and informed consent.[50] If the facility finds there is evidence of mental illness, and the minor is suitable for treatment at that facility, then it can admit the minor, but only after a hearing to verify the voluntariness of the minor's consent.[51] Current law does not specify the type of voluntariness hearing that must be held (e.g., judicial, administrative, or clinical), however, the hearings are currently of a judicial nature and are held before judges or magistrates.

A voluntary patient who is unwilling or unable to provide express and informed consent to mental health treatment must either be discharged or transferred to involuntary status.[52] Additionally, facilities must discharge a patient within 24 hours if he or she is sufficiently improved such that admission is no longer appropriate, consent is revoked, or discharge is requested, unless the patient is qualified for and is transferred to involuntary status.[53]

Effect of the Bill

The bill specifies that a clinical review must be held to verify the voluntariness of the minor's assent. This means that judicial hearings are no longer needed to verify the voluntariness of a minor's assent, likely increasing efficiencies in the voluntary admissions process.

The bill also requires that a clinical review be held to verify the voluntariness of a minor's assent before a minor patient's status is transferred from involuntary to voluntary.

The bill makes technical changes to conform with the modifications to the voluntary admissions section.

Substance Abuse

[46] Parham at 606.
[47] Parham at 617-618.
[48] Parham at 585.
[49] *Id*.
[50] S. 394.4625, F.S.
[51] *Id*. The statute does not provide further detail on the nature of, or process for, a voluntariness hearing.
[52] S. 394.4625(1)(e), F.S.
[53] S. 394.4625(2), F.S.

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[54] Abuse can result when a person uses a substance[55] in a way that is not intended or recommended, or because they are using more than prescribed. Drug abuse can cause individuals to experience one or more symptoms of another mental illness.[56] Additionally, individuals with mental illness may abuse drugs as a form of self-medication.[57] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.[58]

A substance use disorder (SUD) is determined by specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). According to the DSM-5, a SUD diagnosis is based on evidence of impaired control, social impairment, risky use, and pharmacological indicators (tolerance and withdrawal). Substance use disorders occur when the chronic use of alcohol or drugs cause significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[59] Symptoms can range from moderate to severe, with addiction being the most severe form of SUDs.[60] Brain imaging studies of persons with addiction show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[61] The most common substance use disorders in the U.S. are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[62]

According to the National Institute on Mental Health, a SUD is a mental disorder that affects a person's brain and behavior, leading to a person's inability to control their use of substances such as legal or illegal drugs, alcohol, or medications.[63] SUDs may co-occur with other mental disorders.[64] Approximately 9.2 million adults in the U.S. have co-occurring disorders.[65] Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug abuse.[66]

The Marchman Act

In the early 1970s, the federal government furnished grants for states "to develop continuums of care for individuals and families affected by substance abuse."[67] The grants provided separate funding streams and requirements for alcoholism and drug abuse.[68] In response, the Florida Legislature

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[54] World Health Organization (WHO), *Substance Abuse*, Substance Abuse | WHO | Regional Office for Africa (last visited Feb. 8, 2022).
[55] Substances can include alcohol and other drugs (illegal or not), as well as substances that are not drugs at all, such as coffee and cigarettes.
[56] *Comorbidity: Addiction and Other Mental Illnesses*, National Institute on Drug Abuse, NIH Publication Number 10-5771, September 2010. https://www.drugabuse.gov/sites/default/files/rrcomorbidity.pdf (last visited Feb. 8, 2022).
[57] *Id*.
[58] 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. 8, 2022).

[59] Substance Abuse and Mental Health Services Administration, *Mental Health and Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited Feb. 8, 2022).
[60] National Institute of Mental Health, *Substance Use and Co-Occurring Mental Disorders*, https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health (last visited Feb. 8, 2022).
[61] 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. 8, 2022).
[62] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited Feb. 8, 2022).
[63] National Institute of Mental Health, Substance Use and Co-Occurring Mental Disorders, https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health (last visited Feb. 8, 2022).
[64] *Id*.
[65] Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the U.S.: Results from the 2018 National Survey on Drug Use and Health,* (August 2019), https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf (last visited Feb. 8, 2022).
[66] *Id*.
[67] Darran Duchene & Patrick Lane, *Fundamentals of the Marchman Act,* Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Program, *available at* http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited Feb. 8, 2022).
[68] *Id.*

enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).[69] In 1993, legislation combined chapters 396 and 397, F.S., into a single law, entitled the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[70] The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

An individual may receive services under the Marchman Act through either voluntary[71] or involuntary admission.[72] The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis.
The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[73] However, denial of addiction is a prevalent symptom of a SUD, creating a barrier to timely intervention and effective treatment.[74] As a result, a third party must typically provide a person the intervention needed to receive SUD treatment.[75]

Rights of Individuals

Current Situation

The Marchman Act protects the rights of individuals receiving substance abuse services in Florida, including, but not limited to the right to receive quality treatment at a state-funded facility, regardless of ability to pay.[76] However, current law does not require individuals to be provided any information that may aid in their recovery or assistance in accessing any continuum of care post-discharge.

Effect of the Bill

The bill requires facilities to provide specified individuals information, in writing, about services available in the individual's geographic area that would assist in the individual's recovery.

Involuntary Admissions

Current Situation - Definitions

There are five involuntary admission procedures that can be broken down into two categories: non-court involved admissions and court involved admissions. 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
- The person's judgment has been so impaired because of substance abuse that he or she is incapable of appreciating the need for substance abuse services and of making a rational decision in regard to substance abuse services; or
- Without care or treatment, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and such harm is unavoidable through help of willing family members or friends; or

[69] *Id*.
[70] Ch. 93-39, Laws of Fla., codified in Chapter 397, F.S. Reverend Hal S. Marchman was an advocate for persons who suffer from alcoholism and drug abuse. *Supra* note 67.
[71] *See* s. 397.601, F.S.
[72] *See* ss. 397.675 – 397.6978, F.S.
[73] *See* s. 397.601(1) and (2), F.S. 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.
[74] *Supra* note 67.
[75] *Id*.
[76] S. 3.97.501, F.S.

- The person has either has inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another.[77]

Under the Marchman Act, to be "impaired" or "substance abuse impaired", a person must have a condition involving the use any psychoactive or mood-altering substance, in a way that induces mental, emotional, or physical problems and causes socially dysfunctional behavior. Examples of psychoactive or mood-altering substances include alcohol and illicit or prescription drugs, however, only alcohol is explicitly named under current law. Although having a substance use disorder often leads to being impaired or substance abuse impaired, it is not presently included in the "impaired" or "substance abuse impaired" definition.

Effect of the Bill - Definitions

The bill updates and expands the definition of "impaired" or "substance abuse impaired" to include having a substance use disorder or a condition involving the use of illicit or prescription drugs. This change reflects current DSM-5 criteria and takes into consideration the use of drugs other than alcohol by substance abuse impaired individuals.

This change will likely grant courts more latitude in who may be ordered for involuntary treatment.

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**: This procedure is used by law enforcement officers when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer.[78]
- **Emergency Admission**: This procedure 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. Individuals admitted for involuntary assessment and stabilization under this provision must have a physician's certificate for admission, 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.[79]
- **Alternative Involuntary Assessment for Minors**: This procedure 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.[80]

Court Involved Involuntary Admissions

Current Situation – General Provisions

Under current law, courts have jurisdiction over involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services, and involuntary services,[81] which provides for long-term court-ordered substance abuse treatment. Both types of involuntary admissions involve filing a petition with the clerk of court in the county where the person is located, which may be different from where he or she resides. Current law permits the chief judge in Marchman Act cases to appoint a general or special magistrate to preside over all or part of the proceedings. Although this may

[77] S. 397.675, F.S.
[78] Ss. 397.6771 – 397.6772, F.S. A law enforcement officer may take the individual to his or her residence, to a hospital, a detoxification center, or addiction receiving facility, or in certain circumstances, to jail. Minors, however, cannot be taken to jail.
[79] S. 397.679, F.S.
[80] S. 397.6798, F.S.
[81] The term "involuntary services" means "an array of behavioral health services that may be ordered by the court for a person with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders." S. 397.311(23), F.S. SB 12 (2016), ch. 2016-241, Laws of Fla., renamed "involuntary treatment" as "involuntary services" in ss. 397.695 – 397.6987, F.S., however some sections of the Marchman Act continue to refer to "involuntary treatment." For consistency, this analysis will use the term involuntary services.

include ancillary matters, such as writs of habeas corpus issued under the Marchman Act, this is not explicitly stated in current law.

Effect of the Bill - General Provisions

The bill revises language to specify that courts have jurisdiction over involuntary treatment petitions, rather than involuntary assessment and stabilization petitions. The bill also specifies that petitions may be filed with the clerk of court in the county where the subject of the petition resides, in addition to where he or she is located. The bill specifies that the chief judge may appoint a general or special magistrate to preside over all, or part, of the proceedings related to the petition or any ancillary matters, including but not limited to, writs of habeas corpus issued under the Marchman Act, rather than just over the proceedings.

Current Situation - Involuntary Assessment and Stabilization

A petition for involuntary assessment and stabilization must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary assessment and stabilization.[82] Once the petition is filed, the court issues a summons to the respondent and the court must schedule a hearing to take place within 10 days, or can issue an ex parte order immediately.[83] The court may appoint a magistrate to preside over all or part of the proceedings.[84]

After hearing all relevant testimony, the court determines whether the 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.[85]

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of 5 days[86] to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.[87] During that time, an assessment is completed on the individual.[88] The written assessment is sent to the court. Once the written assessment is received, the court must either: [89]

- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;
- Allow the individual to remain voluntarily at the licensed provider; or
- Hold the individual if a petition for involuntary services has been initiated.

Effect of the Bill - Involuntary Assessment and Stabilization

[82] S. 397.6951, F.S.
[83] S. 397.6815, F.S. 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.
[84] S. 397.681, F.S., F.S.
[85] S. 397.6818, F.S.
[86] 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, 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.
[87] 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.
[88] 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.
[89] 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.

The bill repeals all provisions relating to court-ordered, involuntary assessments and stabilization under the Marchman Act and consolidates them into a consolidated involuntary treatment process under ss. 397.6951-397.6975, F.S.

Current Situation - Involuntary Services

Involuntary services, synonymous with involuntary treatment, allows the court to require an individual to be admitted for treatment for a longer period if the individual meets the eligibility criteria for involuntary admission and has previously been involved in at least one of the four other involuntary admissions procedures within a specified period, including having been assessed by a qualified professional within five days.[90] Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary services.[91] Under current law, the petition must also contain the findings and recommendations of the qualified professional that performed the assessment.

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. If the individual is a minor, only a parent, legal guardian, or service provider may file such a petition.[92] Current law does not permit the court or clerk of court to waive or prohibit process service fees for indigent petitioners.

A hearing on a petition for involuntary services must be held within five days unless a continuance is granted.[93] A copy of the petition and notice of hearing must be provided to all parties and anyone else the court determines. Current law specifies that the court, not the clerk, must issue a summons to the person whose admission is sought.[94] However, typically the clerk of court, not the court, issues summons. Current law does not specify who must effectuate service (i.e., a law enforcement agency or private process servers). Current law requires the respondent to be present, unless the court finds appearance to be harmful, in which case the court must appoint a guardian advocate to appear on the respondent's behalf.[95]

In a hearing for involuntary services, the petitioner must prove by clear and convincing evidence that:[96]

- The individual is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse; and
- Because of such impairment the person is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:
    - Without services the individual is likely to suffer from neglect or refuse to care for himself or herself and 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

[90] S. 397.693, F.S.
[91] S. 397.6951, F.S.
[92] S. 397.695 (5), F.S.
[93] S. 397.6955, F.S.
[94] S. 397.6955(3), F.S.
[95] S. 397.6957(1), F.S.
[96] S. 397.6957(2), F.S.

individual to receive involuntary services from his or her chosen licensed service provider, if possible and appropriate.[97]

If the court finds that the conditions for involuntary services have been proven, it may order the respondent to receive services from a publicly funded licensed service provider for up to 90 days.[98] If an individual continues to need involuntary services, at least 10 days before the 90-day period expires, the service provider can petition the court to extend services an additional 90 days.[99] A hearing must be then held within 15 days.[100] Unless an extension is requested, the individual is automatically released after 90 days.[101]

However, substance abuse treatment facilities other than addictions receiving facilities are not locked; therefore, individuals receiving treatment in such unlocked facilities under the Marchman Act may voluntarily leave treatment at any time, and the only legal recourse is for a judge to issue a contempt of court charge and impose brief jail time.[102] Current law does not permit courts to drug test respondents in Marchman Act cases.

Unlike the Baker Act, current law does not require DCF to prepare and provide annual reports that analyze data obtained from involuntary orders issued under the Marchman Act, professional certificates, or law enforcement officers' reports.

Effect of the Bill - Involuntary Services

The bill amends the involuntary services criteria to allow the court to involuntarily admit an individual who *reasonably appears to meet*, rather than meets, the eligibility criteria and has previously been involved in at least one of the four other involuntary admissions procedures within a specified period. However, it amends the period for when the person has been assessed by a qualified professional to within the past 30 days, rather than five days.

The bill amends the requirements for the contents of a petition for involuntary treatment to include information that aligns with the new involuntary services criteria, such as the reason for the petitioner's belief that the person has a history of noncompliance with substance abuse treatment with continued substance use or is refusing voluntary care services because of substance abuse impairment after a sufficient and conscientious explanation and disclosure of the purpose for treatment. The bill also provides that a petition may be accompanied by a certificate or report of a qualified professional or licensed physician who has examined the respondent within 30 days before the petition was filed. The certificate must contain the professional's findings and, if the respondent refuses to submit to an examination, must document the refusal. The bill provides that in the event of an emergency requiring an expedited hearing, the petition must contain documented reasons for expediting the hearing.

The bill requires the clerk of court to notify the state attorney upon the filing of a petition for involuntary treatment services if the petition does not indicate that the petitioner has retained private counsel; or, in the alternative, notify the respondent's counsel if any has been retained. The bill also amends the time period in which the court is required to schedule a hearing on the petition to within 10 court working days, rather than five, unless a continuance is granted. With the elimination of the separate involuntary assessment and stabilization procedures, this means the total time for when a court would have to hear a petition for involuntary assessment and stabilization (within 10 days) and a petition for involuntary services (within 5 days) has been reduced from 15 to 10 court working days under the consolidated procedure.

[97] S. 397.6957(4), F.S.
[98] S. 397.697(1), F.S.
[99] S. 397.6975, F.S.
[100] *Id*.
[101] S. 397.6977, F.S.
[102] *Supra,* note 67. If the respondent leaves treatment, the facility will notify the court and a status conference hearing may be set. If the respondent does not appear at this hearing, a show cause hearing may be set. If the respondent does not appear for the show cause hearing, the court may find the respondent in contempt of court.

The bill specifies that the clerk, rather than the court, must issue the summons to the respondent and requires a law enforcement agency to effectuate service for the initial hearing, unless the court authorizes disinterested private process servers to serve parties. The bill authorizes the court to waive or prohibit service of process fees for respondents deemed indigent under current law.

In light of the consolidation of the court involved involuntary admission procedures, the bill provides that, in the case of an emergency, or when upon review of the petition the court determines that an emergency exists, the court may rely exclusively upon the contents of the petition and, without an attorney being appointed, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending. The court may further order a law enforcement officer or other designated agent of the court to:

- Take the respondent into custody and deliver him or her to either the nearest appropriate licensed service provider or a licensed service provider designated by the court to be evaluated; and
- Serve the respondent with the notice of hearing and a copy of the petition.

In such instances, the bill requires a service provider to promptly inform the court and parties of the respondent's arrival and refrain from holding the respondent for longer than 72 hours of observation thereafter, unless:

- The service provider seeks additional time in accordance with the law and the court, after a hearing, grants that motion;
- The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which will serve to extend the amount of time the respondent may be held for observation until the issue is resolved; or
- The original or extended observation period ends on a weekend or holiday, in which case the provider may hold the respondent until the next court working day.

Under the bill, if the ex parte order was not executed by the initial hearing date, it is deemed void. If the respondent does not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets the Marchman Act commitment criteria and that a substance abuse emergency exists, the bill allows the court to issue or reissue an ex parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the time of the hearing, the court:

- Must continue the case for no more than 10 court working days; and
- 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 be evaluated either by the nearest appropriate licensed service provider or by a licensed service provider designated by the court; and
    - If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

The bill requires the petitioner and the service provider to promptly inform the court that the respondent has been assessed so that the court can schedule a hearing as soon as is reasonable. The bill requires the service provider to serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. If the respondent has not been assessed within 90 days, the bill requires the court to dismiss the case.

The bill provides an exception to the requirement that a respondent be present at the hearing, allowing absence from the hearing if he or she knowingly, intelligently, and voluntarily waives their right to appear, or upon proof of service, the court finds that the respondent's presence is inconsistent with their best interests or will likely be harmful to the respondent.

To be consistent with the changes in the Baker Act, the bill allows for all witnesses to appear and testify remotely under oath at a hearing via audio-video teleconference, upon a showing of good cause and if all parties consent. The bill further requires any witness appearing remotely to provide all parties with all relevant documents by the close of business the day prior to the hearing. The bill requires the court to hear and review all relevant evidence, including testimony from family members familiar with the respondent's history and how it relates to the respondent's current condition.

The bill prohibits a respondent from being involuntarily ordered into treatment if a clinical assessment is not performed, unless the respondent is present in court and expressly waives the assessment. Outside of emergency situations, if the respondent is not, or previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it appears that the respondent qualifies for involuntary treatment services, the bill requires the court to issue an involuntary assessment and stabilization order to determine the correct level of treatment for the respondent. In Marchman Act cases where an assessment was attached to the petition, the bill allows the respondent to request, or the court on its own motion to order, an independent assessment by a court-appointed physician or another physician agreed to by the court and the parties.

An assessment order issued in accordance with the bill is valid for 90 days, and if the respondent is present or there is either proof of service or the respondent's whereabouts are known, the bill provides that the involuntary treatment hearing may be continued for no more than 10 court working days. Otherwise, the petitioner and the service provider are required to promptly inform the court that the respondent has been assessed in order for the court to schedule a hearing as soon as practicable. The bill mandates that the service provider serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. The bill requires the assessment to occur before the new hearing date. However, if there is evidence indicating that the respondent will not voluntarily appear at the hearing, or is a danger to self or others, the bill permits the court to enter a preliminary order committing the respondent to an appropriate treatment facility for further evaluation until the new hearing date. As stated above, the bill requires the court to dismiss the case if the respondent still has not been assessed after 90 days.

Assessments conducted by a qualified professional under the bill must occur within 72 hours after the respondent arrives at a licensed service provider unless the respondent displays signs of withdrawal or a need to be either detoxified or treated for a medical condition. In such cases, the amount of time the respondent may be held for observation is extended until that issue is resolved. If the assessment is conducted by someone other than a licensed physician, the bill requires review by a licensed physician within the 72-hour period.

If the respondent is a minor, the bill requires the assessment to begin within the first 12 hours after the respondent is admitted, and the service provider may file a motion to extend the 72 hours of observation by petitioning the court in writing for additional time. The bill requires a service provider to provide copies of the motion to all parties in accordance with applicable confidentiality requirements. After the hearing, the bill permits the court to grant additional time or expedite the respondent's involuntary treatment hearing. However, the involuntary treatment hearing can only be expedited by agreement of the parties on the hearing date or if there is notice and proof of service. If the court grants the service provider's petition, the service provider is permitted to hold the respondent until its extended assessment period expires or until the expedited hearing date. In cases where the original or extended observation period ends on a weekend or holiday, the provider is only permitted to hold the respondent until the next court working day.

The bill requires the qualified professional, in accordance with applicable confidentiality requirements, to provide copies of the completed report to the court and all relevant parties and counsel. The report is required to contain a recommendation on the level, if any, of substance abuse and any co-occurring mental health treatment the respondent may need. The qualified professional's failure to include a treatment recommendation results in the petition's dismissal.

The bill grants the court the authority to order a law enforcement officer or other designated agent of the court to take the respondent into custody and transport him or her to or from the treating or assessing service provider and the court for their hearing.

The bill provides that the court may initiate involuntary examination proceedings at any point during the hearing if it has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to neglect or injure himself, herself, or another if not committed, or otherwise meets the involuntary commitment provisions covered under the Baker Act. The bill requires any treatment order to include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

The bill amends provisions relating to court determinations and the effect of a court order for involuntary services, providing that in order to qualify for involuntary outpatient treatment an individual must be accompanied by a willing, able, and responsible advocate, or a social worker or case manager of a licensed service provider, who will inform the court if the individual fails to comply with the outpatient program. The bill also requires that if outpatient treatment is offered in lieu of inpatient treatment, it must be available in the county where the respondent resides and it may be offered for up to six months if it is established that the respondent meets involuntary placement criteria and has been involuntarily ordered into inpatient treatment at least twice during the past 36 months, the outpatient provider is in the same county as the respondent, and the respondent's treating physician certifies that the respondent can be more appropriately treated on an outpatient basis and can follow a treatment plan.

The bill specifies that while subject to the court's oversight, a service provider's authority to require an individual to receive beneficial involuntary services is separate and distinct from the court's continuing jurisdiction. The bill also permits the court to order drug tests for respondents in Marchman Act cases.

The bill expands who may file a petition to extend treatment to include the person who filed the petition for the initial treatment order if the petition includes supporting documentation from the service provider. The bill removes the current requirement that the petition be filed at least 10 days before the expiration of the current court-ordered treatment period. This means that a petition to the court for an extension of an involuntary treatment period may be filed at any point before the expiration of the current treatment period if the individual in treatment appears to need additional care. The bill also reduces the court's requirement for scheduling a hearing from 15 days to within 10 court working days of the petition to extend being filed.

The bill creates a new requirement for DCF to publish specified annual reports on its website, but delays implantation for Marchman Act reports until 2023.

Transportation by Law Enforcement Officers

Current Situation

Law enforcement officers that take a person into protective custody are authorized to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary the transfer of the detainee to an appropriate licensed service provider with an available bed.[103] A law enforcement officer is also authorized to transport an individual for an emergency assessment and stabilization.[104]

Currently, there is no requirement that law enforcement officers transporting an individual under the Marchman Act restrain the person in the least restrictive manner available and appropriate under the circumstances.

[103] S. 397.6772(1), F.S.
[104] S. 397.6795, F.S.

Effect of the Bill

The bill requires law enforcement officers transporting an individual under the Marchman Act to restrain the individual in the least restrictive manner available and appropriate under the circumstances. This aligns with the bill's amended requirement relating to a law enforcement officer's transportation of an individual under the Baker Act.

Commission on Mental Health and Substance Abuse

Current Situation

In 2021, the Legislature created the 19-member Commission on Mental Health and Substance Abuse (Commission), adjunct to DCF, to examine the current methods of providing mental health and substance abuse services in the state. Commission members include the Secretaries of the Agency for Health Care Administration and DCF, and specified members appointed by the Governor, President of the Senate, and Speaker of the House of Representatives.

The purpose of the Commission is to:

- Examine the current methods of providing mental health and substance abuse services in the state;
- Improve the effectiveness of current practices, procedures, programs, and initiatives in providing such services;
- Identify any barriers or deficiencies in the delivery of such services; and
- Recommend changes to existing laws, rules, and policies necessary to implement the Commission's recommendations.

Current law requires state departments and agencies to provide assistance in a timely manner if requested by the Commission. However, current law does not authorize the Commission to request and receive access to confidential or exempt records that may be necessary to carry out its duties.

Current law also requires the Commission to hold its meetings, held quarterly or upon the call of the chair, via teleconference or other electronic means. This means that in person meetings are not allowed.

The Commission is presently required to submit an initial report by September 1, 2022, and a final report by September 1, 2023, to the Governor, President of the Senate, and Speaker of the House of Representatives on its findings and recommendations on how to best provide and facilitate mental health and substance abuse services in this state.

The Commission is repealed on September 1, 2023, unless it is reenacted by the Legislature.

Effect of the Bill

The bill revises certain provisions relating to the Commission to allow meetings to be in person or remotely. The bill also authorizes certain reimbursements associated with in-person meetings.

The bill provides the Commission access to confidential and exempt records under certain circumstances and extends the initial report's due date to January 1, 2023.

The bill makes technical and conforming changes, including changing instances of 'treatment' to 'treatment services' in reference to involuntary petitions and admissions, and removes redundant provisions present in current law.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.455, F.S., relating to definitions.
Section 2: Amends s. 394.459, F.S., relating to rights of patients.
Section 3: Amends s. 394.461, F.S., relating to designation of receiving and treatment facilities and receiving systems.
Section 4: Amends s. 394.462, F.S., relating to transportation.
Section 5: Amends s. 394.4625, F.S., relating to voluntary admissions.
Section 6: Amends s. 394.463, F.S., relating to involuntary examination.
Section 7: Amends s. 394.467, F.S., relating to involuntary inpatient placement.
Section 8: Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.
Section 9: Amends s. 394.496, F.S., relating to service planning.
Section 10: Amends s. 394.499, F.S., relating to integrated children's crisis stabilization unit/juvenile addictions receiving facility services.
Section 11: Amends s. 394.9086, F.S., relating to the Commission on Mental Health and Substance Abuse.
Section 12: Amends s. 397.305, F.S., relating to legislative findings, intent, and purpose.
Section 13: Amends s. 397.311, F.S., relating to definitions.
Section 14: Creates s. 397.341, F.S., relating to transportation of individuals by law enforcement.
Section 15: Amends s. 397.501, F.S., relating to rights of individuals.
Section 16: Amends s. 397.675, F.S., relating to criteria for involuntary admissions.
Section 17: Amends s. 397.6751, F.S., relating to service provider responsibilities regarding involuntary admissions.
Section 18: Amends s. 397.681, F.S., relating to involuntary petitions; general provisions; court jurisdiction and right to counsel.
Section 19: Repeals s. 397.6811, F.S., relating to involuntary assessment and stabilization.
Section 20: Repeals s. 397.6814, F.S., relating to involuntary assessment and stabilization; contents of petition.
Section 21: Repeals s. 397.6815, F.S., relating to involuntary assessment and stabilization; procedure.
Section 22: Repeals s. 397.6818, F.S., relating to court determination.
Section 23: Repeals s. 397.6819, F.S., relating to involuntary assessment and stabilization; responsibility of licensed service provider.
Section 24: Repeals s. 397.6821, F.S., relating to extension of time for completion of involuntary assessment and stabilization.
Section 25: Repeals s. 397.6822, F.S., relating to disposition of individual after involuntary assessment.
Section 26: Amends s. 397.693, F.S., relating to involuntary treatment.
Section 27: Amends s. 397.695, F.S., relating to involuntary services; persons who may petition.
Section 28: Amends s. 397.6951, F.S., relating to contents of petition for involuntary services.
Section 29: Amends s. 397.6955, F.S., relating to duties of court upon filing of petition for involuntary services.
Section 30: Amends s. 397.6957, F.S., relating to hearing on petition for involuntary services.
Section 31: Amends s. 397.697, F.S., relating to court determination; effect of court order for involuntary services.
Section 32: Amends s. 397.6971, F.S., relating to early release from involuntary services.
Section 33: Amends s. 397.6975, F.S., relating to extension of involuntary services period.
Section 34: Amends s. 397.6977, F.S., relating to disposition of individual upon completion of involuntary services.
Section 35: Repeals s. 397.6978, F.S., relating to guardian advocate; patient incompetent to consent; substance abuse disorder.
Section 36: Amends s. 394.4655, F.S., relating to involuntary outpatient services.
Section 37: Provides an appropriation.
Section 38: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:[105]

   The bill provides a total appropriation of $633,000 to DCF for changes to the reporting of involuntary commitments to a mental health treatment facility and to provide per diem reimbursement to members of the Commission on Mental Health and Substance Abuse, as enumerated below.

   The bill requires receiving or treatment facilities to notify DCF of any individual who has been examined or committed three times or more within a 12-month period. DCF contracts with the University of South Florida (USF) Baker Act Reporting Center to meet the current data collection and reporting requirements in s. 394.463, F.S. The bill provides $88,000 for the additional reporting requirements to the contract with USF.

   The bill requires DCF to receive and maintain all records from receiving or treatment facilities that relate to an individual's involuntary commitment and produce an annual report. The bill appropriates $445,000 to DCF to administer the receipt and management of data related to Baker Act admissions.

   The bill permits members of the Commission on Mental Health and Substance Abuse to receive per diem for their travel, but retains the provision allowing for the commission to meet via teleconference or other electronic means. The bill provides $100,000 to reimburse members for their travel arrangements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Receiving and treatment facilities, including hospitals and jails, will likely experience an increase in workload and costs associated with the collection and submission of involuntary assessment and treatment orders to DCF or DCF's vendor.[106]

D. FISCAL COMMENTS:

Providing discretion to law enforcement officers whether to transport an individual meeting criteria for an involuntary examination under the Baker Act may reduce the number of involuntary exams initiated by law enforcement and an increase in use of crisis response methods with lower costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

[105] Department of Children and Families (DCF), Agency Analysis of HB 1143, p. 11 (Jan. 5, 2022).
[106] *Id*.

None.

B. RULE-MAKING AUTHORITY:

The bill provides DCF rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2022, the Children, Families & Seniors Subcommittee adopted an amendment to HB 1143 and reported the bill favorably as a committee substitute. The amendment:

- Removes changes made to the criteria for admission under the Baker and Marchman Acts.
- Removes the provision making the state attorney the real party of interest in Marchman Act cases and the state attorney's access to records.
- Revises the voluntariness provision under current law to allow a minor's voluntary admission after a clinical review, rather than a hearing, has been conducted.
- Removes the requirement that a minor's attorney be consulted before being transferred from an involuntary to voluntary status.
- Removes the requirement that specified individuals be referred to APD or DOEA for further evaluation and the provision of services.
- Authorizes witnesses to appear remotely upon a showing of good cause and if all parties consent.
- Requires the court to allow testimony from family members regarding a person's prior history, in accordance with the evidence code.
- Removes the provisions giving certain courts the ability to sanction for drug use.
- Requires facilities to inform DCF of any person seen three or more times at its facility.
- Requires a facility to a provide individuals written information about services available in the geographic area that would assist in their recovery.
- Requires LEOs transporting a person for involuntary services to restrain that person in the least restrictive manner available and appropriate under the circumstances.
- Requires DCF to publish specified Baker Act annual reports on its website and creates the same requirement in the Marchman Act, but delays implementation for Marchman Act reports until 2023.
- Allows psychiatric nurses at nationally accredited community mental health centers to release a patient from a receiving facility.
- Revises certain provisions relating to the Commission on Mental Health and Substance Abuse.

On February 22, 2022, the Health Care Appropriations Subcommittee adopted an amendment providing an appropriation of $633,000 to the Department of Children and Families. The appropriation:

- Provides for costs associated with the bill's additional reporting requirements of involuntary commitments;
- Provides for the production of an annual report on the involuntary admissions to treatment or receiving facilities; and,
- Provides travel per diem should members of the Commission on Mental Health and Substance Abuse attend in-person meetings.

The analysis is drafted to the committee substitute as amended by the Health Care Appropriations Subcommittee.