HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1157 Pub. Rec./Court Records
SPONSOR(S): Maney
TIED BILLS: HB 1143 **IDEN./SIM. BILLS:** SB 1846

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N	Rahming	Brazzell
2) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Mathews	Hall
3) Government Operations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The Baker Act provides legal procedures for voluntary and involuntary mental health examination and treatment, while the Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services.

Currently, all Baker Act petitions for voluntary and involuntary mental health treatment, court orders, and related records filed with a court are confidential and exempt from public record requirements. Similarly, all Marchman Act petitions for involuntary assessment and stabilization, court orders, and related records are confidential and exempt from public record requirements. Under both Acts, the clerk of court is prohibited from posting personal identifying information on the court docket or in publicly accessible files and may only release confidential and exempt documents to specified individuals. Current law retroactively applies the exemption to all documents filed under both Acts to a specified date, but does not expressly apply the exemption to pending or filed appeals.

The bill expands exemptions from public records requirements to include a respondent's name, at trial and on appeal, on applications for voluntary mental health examinations or treatment and substance abuse treatment, and appeals pending or filed on or after July 1, 2022. The bill also adds service providers to the list of individuals the clerk of court may disclose confidential and exempt pleadings and other documents to.

The bill creates a narrow exception that allows courts to use a respondent's name in certain instances.

The bill extends the scheduled repeal dates of the public record exemptions under the Baker Act by three years, and under the Marchman Act by five years, to October 2, 2027. This keeps the public record exemptions for the disclosure of pleadings and other documents filed with a court involving admission proceedings.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that the exemption protects sensitive personal information, the release of which could cause unwarranted damage to the reputation of an individual.

The bill has an indeterminate, but likely insignificant, negative fiscal impact on the State Courts System.

This bill provides that the act shall take effect on the same date that HB 1143 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 1143 has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The public also has a right to notice of and access to meetings of any collegial public body of the executive branch of state government or of any local government.[2] The Legislature's meetings must also be open and noticed to the public, unless there is an exception.[3]

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act[4] guarantees every person's right to inspect and copy any state or local government public record.[5] The Sunshine Law[6] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.[7]

The Legislature may create an exemption to public records or open meetings requirements.[8] An exemption must specifically state the public necessity justifying the exemption[9] and must be tailored to accomplish the stated purpose of the law.[10] There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be confidential and exempt.[11]

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(b).
[3] FLA. CONST., art. I, s. 24(b).
[4] Ch. 119, F.S.
[5] "Public record" means "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." S. 119.011(12), F.S. "Agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." S. 119.011(2), F.S. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to s. 11.0431, F.S.
[6] S. 286.011, F.S.
[7] S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.
[8] FLA. CONST., art. I, s. 24(c).
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).
[11] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

Exempt Records

If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or article I, section 24 of the Florida Constitution. If records are only exempt from the Public Records Act and not confidential, the exemption does not prohibit the showing of such information, but simply exempts them from the mandatory disclosure requirements in s. 119.07(1)(a), F.S.[12]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[13] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[14]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:[15]

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[16] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

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.[17] The primary indicators used to evaluate an individual's mental health are:[18]

- **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

[12] *See Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), rev. denied, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S, [now s. 119.071(2)(c), F.S.] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not prohibit the showing of such information." *Id*. at 686.
[13] S. 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[14] S. 119.15(3), F.S.
[15] S. 119.15(6)(b), F.S.
[16] Art. I, s. 24(c), FLA. CONST.
[17] 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).
[18] 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).

- **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.[19] 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 live with a mental illness.[20] An estimated 49.5% of adolescents aged 13-18 have a mental disorder.[21]

The Baker Act

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[22] The Act provides 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.[23]

Voluntary Admissions

Under current Florida law, an adult may apply for voluntary admission to a facility for observation, diagnosis, or treatment by giving their expressed and informed consent.[24] The facility may admit the adult if it finds evidence of mental illness, the adult to be competent to provide express and informed consent, and that the adult is suitable for treatment.

A facility may also receive a minor for observation, diagnosis, or treatment if the minor's guardians makes the such application by giving their express and informed consent.[25] If the facility finds there is evidence of mental illness, and the minor is suitable for treatment at that facility, then they can admit the minor, but only after a hearing to verify the voluntariness of the minor's consent.[26] 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.[27] 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.[28]

Involuntary Examination

Individuals in 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.[29] 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:[30]

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[19] *Id*.
[20] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Feb. 8, 2022).
[21] *Id*.
[22] Ss. 394.451-394.47891, F.S.
[23] S. 394.459, F.S.
[24] S. 394.4625, F.S.
[25] *Id*.
[26] *Id*. The statute does not provide further detail on the nature of, or process for, a voluntariness hearing.
[27] S. 394.4625(1)(e), F.S.
[28] S. 394.4625(2), F.S.
[29] Ss. 394.4625 and 394.463, F.S.
[30] S. 394.463(1), F.S.

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; **and**
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; **or**
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

The involuntary examination may be initiated in one of three ways: [31]

- A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony. The order of the court shall be made a part of the patient's clinical record.
- A law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record.
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute 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 and stating the observations upon which that conclusion is based. The report and certificate shall be made a part of the patient's clinical record.

Involuntary patients must be taken to either a public or private facility which 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 psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.[32] The patient must be examined by the receiving facility within 72 hours of the initiation of the involuntary examination.[33]

Involuntary Outpatient Placement

A person may be ordered to involuntary outpatient services upon a finding of the court that by clear and convincing evidence:[34]

- The person is 18 years of age or older;
- The person has a mental illness;
- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person has a history of lack of compliance with treatment for mental illness;
- The person has:
    - At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility, or has received mental health services in a forensic or correctional facility; or
    - Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months;
- The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for

[31] S. 394.463(2)(a), F.S.
[32] S. 394.455(39), F.S.
[33] S. 394.463(2)(g), F.S.
[34] S. 394.4655(2), F.S.

treatment or he or she is unable to determine for himself or herself whether placement is necessary;
- In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being;
- It is likely that the person will benefit from involuntary outpatient placement; and
- All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

A petition for involuntary outpatient placement may be filed by a receiving or treatment facility's administrator.[35] The petition must allege and sustain each of the criterion for involuntary outpatient placement and be accompanied by a certificate recommending involuntary outpatient placement by a qualified professional and a proposed treatment plan.[36]

The petition for involuntary outpatient placement must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside.[37] When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to DCF, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel.[38]

Once a petition for involuntary outpatient placement has been filed with the court, the court must hold a hearing within five working days, unless a continuance is granted.[39] The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.[40] The court must, within one court working day of the filing of the petition appoint the public defender to represent the person who is the subject of the petition, unless that person is otherwise represented by counsel.[41]

At the hearing on involuntary outpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment; if the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate.[42] If the court concludes that the patient meets the criteria for involuntary outpatient placement, it must issue an order for involuntary outpatient services.[43] The order must specify the duration of involuntary outpatient services, up to 90 days, and the nature and extent of the patient's mental illness.[44] The order of the court and the treatment plan shall be made part of the patient's clinical record.[45]

If, at any time before the conclusion of the initial hearing on involuntary outpatient placement, it appears to the court that the person does not meet the criteria for involuntary outpatient services but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination.[46]

Involuntary Inpatient Placement

[35] S. 394.4655(4)(a), F.S.
[36] S. 394.4655(4)(b), F.S.
[37] S. 394.4655(4)(c), F.S.
[38] *Id.*
[39] S. 394.4655(7)(a)1., F.S.
[40] *Id.*
[41] S. 394.4655(5), F.S.
[42] S. 394.4655(7)(d), F.S.
[43] S. 394.4655(7)(b)1., F.S.
[44] *Id.*
[45] *Id.*
[46] S. 394.4655(7)(c), F.S. Additionally, if the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to the Marchman Act, the court may order the person to be admitted for involuntary assessment pursuant to the statutory requirements of the Marchman Act.

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

- He or she is mentally ill and because of his or her mental illness:
  - He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or is unable to determine for himself or herself whether placement is necessary; **and**
  - He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, 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; **or**
  - There is substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.[47]

A receiving or treatment facility's administrator must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[48] 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.[49]

The court proceedings for involuntary inpatient placement closely mirror those for involuntary outpatient services.[50] However, unlike an order for involuntary outpatient services, which statute makes part of the patient's clinical record, nothing in the laws governing involuntary inpatient placement makes the court's order part of the patient's clinical record.

Confidentiality of Service Provider Records in Baker Act Proceedings in Florida

In 2019, the Legislature created a public record exemption for certain information filed with a court under the Baker Act.[51] Specifically, all petitions for voluntary and involuntary admissions for mental health treatment, court orders, and related records that are filed with or by a court under the Baker Act are confidential and exempt from public record requirements. However, the clerk of the court may disclose the pleadings and other documents to:[52]

- The petitioner;
- The petitioner's attorney;
- The respondent;
- The respondent's attorney;
- The respondent's guardian or guardian advocate, if applicable;
- In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate;
- The respondent's treating health care practitioner;
- The respondent's health care surrogate or proxy;
- DCF, without charge;
- The Department of Corrections, if the respondent is committed or is to be returned to the custody of the Department of Corrections from DCF; and
- A person or entity authorized to view records upon a court order for good cause.

[47] S. 394.467(1), F.S.
[48] S. 394.467(2)-(3), F.S.
[49] S. 394.467(3), F.S.
[50] *See* s. 394.467(6)-(7), F.S.
[51] Ch. 2019-51, Laws of Fla., codified as s. 394.464, F.S.
[52] S. 394.464 (1), F.S.

Currently, a respondent's name, at trial and on appeal, and applications for voluntary and involuntary admission for mental health examinations are not part of the public record exemption, meaning this information is subject to public disclosure under current law.

However, the clerk of court is prohibited from publishing personal identifying information on a court docket or in a publicly accessible file.[53] This means that a court may not use a respondent's name to schedule and adjudicate cases, which includes transmitting a copy of any court order to the parties.

The 2019 public necessity statement[54] for the exemption provides that the Legislature finds that:[55]

> A person's mental health is also an intensely private matter. The public stigma associated with a mental health condition may cause persons in need of treatment to avoid seeking treatment and related services if the record of such condition is accessible to the public. Without treatment, a person's condition may worsen, the person may harm himself or herself or others, and the person may become a financial burden on the state. The content of such records or personal identifying information should not be made public merely because they are filed with or by a court or placed on a docket. Making such petitions, orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personal information which could damage their and their families' reputations. The publication of personal identifying information on a physical or virtual docket, regardless of whether any other record is published, defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive, personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and comply with mental health treatment services.

The exemption applies to all documents filed with a court before, on, or after July 1, 2019. Current law does not expressly apply the exemption to pending or filed appeals.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2024, unless reenacted by the Legislature.[56]

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[57] Substance use disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[58] 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.[59] Brain imaging studies of persons with substance use disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[60]

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[53] S. 394.464(3), F.S.
[54] Art. I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."
[55] Ch. 2019-51, Laws of Fla.
[56] S. 394.464(6), F.S.
[57] *World Health Organization, Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Feb. 8, 2022).
[58] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited Feb. 8, 2022).
[59] 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).
[60] *Id.*

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[61] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[62]

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."[63] The grants provided separate funding streams and requirements for alcoholism and drug abuse.[64] In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).[65] 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).[66] 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 or involuntary admission.

Voluntary Admissions

The Marchman Act encourages individuals to seek voluntary substance abuse impairment services within the existing financial and space capacities of a service provider. Any 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.[67]

Under the Marchman Act, a minor's consent to services has the same force and effect as an adult's.[68]

Involuntary Admissions

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis.[69] 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 either has inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another; or 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.[70]

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[61] *Supra*, note 58.
[62] *Id*.
[63] 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).
[64] *Id.*
[65] *Id*.
[66] Chapter 93-39, L.O.F., codified in Chapter 397, F.S. Reverend Hal S. Marchman was an advocate for persons who suffer from alcoholism and drug abuse. *Supra* note 63.
[67] S. 397.607, F.S.
[68] S. 397.601(4)(a), F.S.
[69] *See* ss. 397.675 – 397.6978, F.S.
[70] S. 397.675, F.S.

Non-Court Involved Involuntary Admissions

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

- **Protective Custody**: 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.[71]
- **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.[72]
- **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.[73]

Court Involved Involuntary Admissions

The two court-involved Marchman Act procedures are involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services, and involuntary services,[74] which provides for long-term court-ordered substance abuse treatment.

Involuntary Assessment and Stabilization

Involuntary assessment and stabilization involves filing a petition with the Clerk of Court.[75] Once the petition is filed with the Clerk of Court, 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.[76] 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.[77]

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of 5 days[78] to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.[79] During that time, an assessment is completed on the

[71] 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.
[72] S. 397.679, F.S.
[73] S. 397.6798, F.S.
[74] 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(22), 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.
[75] S. 397.6811, F.S.
[76] 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.
[77] S. 397.6818, F.S.
[78] 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.
[79] 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.

individual.[80] The written assessment is sent to the court. Once the written assessment is received, the court must either: [81]

- 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.

Involuntary Services

Involuntary services allows the court to require the individual to be admitted for treatment for a longer period only if the individual has previously been involved in at least one of the four other involuntary admissions procedures within a specified period.[82] 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.[83]

A hearing on a petition for involuntary services must be held within five days unless a continuance is granted.[84] If the court finds that the conditions for involuntary substance abuse treatment have been proven, it may order the respondent to receive services for a period not to exceed 90 days.[85] 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.[86]

Confidentiality of Service Provider Records in Marchman Act Proceedings in Florida

In 2017, the Legislature created a public record exemption for certain information filed with a court under the Marchman Act.[87] Specifically, all petitions for involuntary assessment and stabilization, court orders, and related records that are filed with or by a court under the Marchman Act are confidential and exempt from public record requirements.[88] However, the clerk of the court may disclose the pleadings and other documents to:[89]

- The petitioner;
- The petitioner's attorney;
- The respondent;
- The respondent's attorney;

[80] 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.
[81] 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.
[82] S. 397.693, F.S.
[83] S. 397.6951, F.S.
[84] S. 397.6955, F.S.
[85] S. 397.697(1), F.S. If the need for services is longer, the court may order the respondent to receive involuntary services for a period not to exceed an additional 90 days.
[86] *Supra,* note 63. 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.
[87] Ch. 2017-25, Laws of Fla., codified as s. 397.6760, F.S.
[88] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (Aug. 1, 1985).
[89] S 397.6760(1), F.S.

- The respondent's guardian or guardian advocate, if applicable;
- In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate;
- The respondent's treating health care practitioner;
- The respondent's health care surrogate or proxy;
- DCF, without charge;
- The Department of Corrections, if the respondent is committed or is to be returned to the custody of the Department of Corrections from DCF; and
- A person or entity authorized to view records upon a court order for good cause.

Under current law, a respondent's name, at trial and on appeal, and applications for voluntary and involuntary substance abuse treatment are not part of the public record exemption. However, as in the Baker Act, the clerk of court is prohibited from publishing personal identifying information on a court docket or in a publicly accessible file.[90]

The 2017 public necessity statement[91] for the exemption provides that the Legislature finds that:[92]

> A person's health and sensitive, personal information regarding his or her actual or alleged substance abuse impairment are intensely private matters. The media have obtained, and published information from, such records without the affected person's consent. The content of such records or personal identifying information should not be made public merely because they are filed with or by a court or placed on a docket. Making such petitions, orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personal information which could damage their and their families' reputations. The publication of personal identifying information on a physical or virtual docket, regardless of whether any other record is published, defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive, personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and comply with substance abuse treatment services.

The exemption applies to all documents filed with a court before, on, or after July 1, 2017. Current law does not expressly apply the exemption to pending or filed appeals.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2022, unless reenacted by the Legislature.[93]

Effect of the Bill

The bill expands exemptions from public records requirements to include a respondent's name, at trial and on appeal, on applications for voluntary mental health examinations or treatment and substance abuse treatment, as well as appeals pending or filed on or after July 1, 2022. The bill also adds service providers to the list of individuals to whom the clerk of court may disclose confidential and exempt pleadings and documents.

The bill maintains the current prohibition against a clerk of court publishing personal identifying information on a court docket or in a publicly accessible file, but creates a narrow exception that allows courts to use a respondent's name to schedule and adjudicate cases.

The bill extends the scheduled repeal dates of the public record exemptions under the Baker Act by three years, and under the Marchman Act by five years, to October 2, 2027, thereby maintaining the

[90] S. 397.6760(3), F.S.
[91] Art. I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."
[92] Ch. 2017-25, Laws of Fla.
[93] S. 397.6760(6), F.S.

public record exemptions for the disclosure of pleadings and other documents filed with a court involving admission proceedings.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that the exemption protects sensitive personal information, the release of which could cause unwarranted damage to the reputation of an individual.

This bill provides that the act shall take effect on the same date that HB 1143 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 1143 has an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.464, F.S., relating to court records; confidentiality.
Section 2: Amends s. 397.6760, F.S., relating to court records; confidentiality
Section 3: Provides a statement of public necessity.
Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate, but likely insignificant, negative fiscal impact on the State Courts System.[94]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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.

[94] Office of the State Courts Administrator, Agency Analysis of HB 1157, p. 2 (Jan. 21, 2022).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES