

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Committee on Criminal and Civil Justice

BILL: SB 774

INTRODUCER: Senator Wright

SUBJECT: Electronic Transmittal of Court Orders

DATE: March 21, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 774 requires the clerk of court to electronically deliver to the sheriff, within 6 hours of entry of an order by a judge, certain court orders requiring prompt attention by the sheriff for the sake of public safety. The orders requiring prompt delivery are an order to detain an individual for involuntary mental health examination, an order to detain an individual for involuntary substance abuse evaluation, or an order to take possession of firearms and ammunition from an individual pursuant to a risk protection order. The 6-hour limit applies at all times, including nights, weekends, holidays, and during natural disasters.

The bill may have an impact on the clerks of court workload. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2025.

II. Present Situation:

Involuntary Mental Health Examination

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.¹ The Baker Act includes Florida's mental health commitment laws, and includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations.² The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.³

¹ Ch. 71-131, Laws of Fla. The Baker Act is contained in ch. 394, F.S. The "Baker Act" is named in honor of the legendary state representative Maxine Baker of Miami who served from 1963 to 1972. She was strongly interested in mental health issues, served as chair of the House Committee on Mental Health, and sponsored the bill.

² Sections 394.451-394.47891, F.S.

³ Section 394.459, F.S.

Individuals suffering from an acute mental 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.⁴ 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:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine 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.⁵

The 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;⁶
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;⁷ or
- A physician, clinical psychologist, psychiatric 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.⁸

A law enforcement officer who delivers an individual to a receiving facility 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.⁹ Any facility accepting the patient based on this certificate must send a copy of the certificate to the DCF within 5 working days.¹⁰ The same reporting requirements apply in instances where a law enforcement officer delivers a person to a receiving facility pursuant to a certificate executed by a health care professional.¹¹

⁴ Sections 394.4625 and 394.463, F.S.

⁵ Section 394.463(1), F.S.

⁶ Section 394.463(2)(a)1., F.S. In addition, the order of the court must be made a part of the patient's clinical record.

⁷ Section 394.463(2)(a)2., F.S.

⁸ Section 394.463(2)(a)3., F.S.

⁹ Section 394.463(2)(a)2., F.S.

¹⁰ *Id.*

¹¹ Section 394.463(2)(a)3., F.S.

Involuntary Substance Abuse Examination

In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).¹² The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider. An individual who wishes to enter treatment may apply to a service provider for voluntary admission.¹³ 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.¹⁴ However, denial of addiction is a prevalent symptom of substance use disorder (SUD), creating a barrier to timely intervention and effective treatment.¹⁵ As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.¹⁶

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved.¹⁷ Three of the procedures do not involve the court, while two require direct petitions to the circuit court. The same criteria for involuntary admission apply regardless of the admission process used.¹⁸

An individual meets the criteria for an involuntary admission under the Marchman Act if 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:

- Needs substance abuse services and, because of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard;¹⁹ or
- Without care or treatment:
 - The person is likely to suffer from neglect or refuse to care for himself or herself;
 - The 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 substantial likelihood that the person:
 - Has inflicted, or threatened to or attempted to inflict physical harm on himself, herself, or another; or

¹² Ch. 93-39, s. 2, L.O.F. (creating ch. 397, F.S., effective October 1, 1993).

¹³ Section 397.601(1), F.S.

¹⁴ Section 397.601(2), F.S.

¹⁵ Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at <http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/> (last visited March 8, 2025) (hereinafter cited as “Fundamentals of the Marchman Act”).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 397.675(2)(a), F.S. However, mere refusal to receive services does not constitute evidence of lack of judgment with respect to the person’s need for such services.

- Is likely to inflict physical harm on himself, herself, or another unless he or she is admitted.²⁰

Involuntary Seizure of Firearms from Certain Individuals

In 2018, the Florida Legislature passed the Marjory Stoneman Douglas High School Public Safety Act (Act) in response to a tragic school shooting.²¹ In addition to other provisions in the Act, the law addresses public safety by restricting firearm and ammunition possession by a person who poses a danger to himself or herself or others.

Section 790.401, F.S., contains a process for a law enforcement officer or a law enforcement agency to petition a circuit court for a temporary ex parte risk protection order and a final risk protection order.²² The intent of the process and court intervention is to temporarily prevent a person from accessing firearms when there is demonstrated evidence that the person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior. The process strikes a balance between the rights of the person (respondent) including due process of law, and reducing death or injury as a result of his or her use of firearms during a mental health crisis.²³

To issue a risk protection order the court must find by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm.²⁴

A court, in determining whether grounds for a risk protection order exist may consider any relevant evidence including, but not limited to:

- A recent act or threat of violence by the respondent against himself or herself or others, regardless of whether the violence or threat of violence involves a firearm;
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or a no contact order issued under ss. 741.30, 784.046, or 784.0485, F.S.;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;

²⁰ Section 397.675(2)(b), F.S.

²¹ Chapter 2018-3, s. 16, L.O.F.

²² The law enforcement officer or law enforcement agency petitioning the court for a risk protection order (petitioner) must make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a risk protection order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice. Section 790.401(2)(f), F.S.

²³ Chapter 2018-3, s. 14, L.O.F.

²⁴ Section 790.401(3)(b), F.S.

- Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28, F.S.;
- Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person;
- Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent;
- Any relevant information from family and household members concerning the respondent; and
- Witness testimony, taken while the witness is under oath, relating to the matter before the court.²⁵

If the court issues a risk protection order, it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.²⁶

Florida law allows the petitioner to request that a court issue a temporary ex parte risk protection order, without notice to the respondent, before the hearing for a final risk protection order has occurred. To issue the ex parte order, the court must find that the respondent poses a significant danger of causing personal injury to himself or herself or to others in the near future by having in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition.²⁷ The court must consider all relevant evidence, including the evidence described above, in determining whether to issue an ex parte risk protection order.²⁸

Upon issuance of a risk protection order, including a temporary ex parte risk protection order, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S.²⁹

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S. The law enforcement officer must take possession of all firearms and ammunition belonging to the respondent that are surrendered.³⁰

²⁵ Section 790.401(3)(c)1.-15., F.S.

²⁶ Section 790.401(3)(b), F.S.

²⁷ Section 790.401(4)(a), F.S.

²⁸ Section 790.401(4)(b), F.S.

²⁹ Sections 790.401(3)(g), (4)(e), and (7)(a), F.S.

³⁰ Section 790.401(7)(b), F.S.

Time for Transmittal of Court Orders

The risk protection order law requires the clerk to furnish the court order, petition, and notice of hearing to the sheriff on or before the next business day.³¹ The Baker Act and the Marchman Act do not address the issue of when the clerk must transmit the operative paperwork to the sheriff for the sheriff to take custody of the individual. These orders can and are often sought on an expedited or emergency basis requiring prompt action by the sheriff. Judicial circuits are required to have one or more judges available to serve nights, weekends, holidays, and during natural disasters.³²

III. Effect of Proposed Changes:

The bill amends ss. 394.463, 397.68151, and 790.401, F.S., relating to involuntary mental health examinations, involuntary substance abuse examinations, and the issuance of risk protection orders, respectively, to require that the clerk of the circuit court transmit the operative paperwork to the county sheriff by electronic means and no later than 6 hours after the court entered the order. No exception is made for nights, weekends, holidays, or natural disasters.

The bill is effective July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

³¹ Section 790.401(3)(a)1., F.S.

³² Section 26.20, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may increase workload for the clerks of court in counties that do not currently assign an “on call” staff member for emergencies that might occur on nights, weekends, holidays, or during natural disasters.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.463, 397.68151, and 790.401.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.