HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 791	**FINAL HOUSE FLOOR ACTION:**	
SUBJECT/SHORT TITLE	Pub. Rec./Personal Identifying Information in Pleadings and Documents Filed with Court for Involuntary Assessment Under Part V, Chapter 397	117 **Y's** 0 **N's**	
SPONSOR(S):	Oversight, Transparency & Administration Subcommittee; Children, Families & Seniors Subcommittee; Abruzzo	**GOVERNOR'S ACTION:**	Approved
COMPANION BILLS:	CS/CS/SB 886		

SUMMARY ANALYSIS

CS/CS/HB 791 passed the House on April 26, 2017, as CS/CS/SB 886.

The Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services. It establishes methods under which substance abuse assessment, stabilization, and treatment can be obtained on a voluntary and involuntary basis.

Petitions for involuntary assessment and stabilization and petitions for involuntary services contain identifying information to support the need for involuntary substance abuse treatment. Florida civil court records are generally open for public inspection unless a law or a court order specifies otherwise. Because the Marchman Act is a civil proceeding, much of the information contained in the court file is available to the public for inspection. Currently, only the records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to a patient being treated for substance abuse under the Marchman Act are confidential and exempt from public disclosure.

CS/CS/HB 791 makes all pleadings and other documents, and the images of all pleadings and other documents, in court involved involuntary admissions proceedings under the Marchman Act confidential and exempt from s. 119.07(1), F.S., and article I, section 24 of the Florida Constitution. These pleadings and documents may only be released to specified entities. The bill prevents the public from being able to inspect any documents filed with the court in involuntary admissions proceedings under the Marchman Act and prohibits the clerk of the court from publishing personal identifying information on the court docket or in publicly accessible files. Additionally, anyone who receives such records must keep them confidential. The bill provides that the exemption applies to all documents filed with a court before, on, or after July 1, 2017.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill also provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill was approved by the Governor on May 23, 2017, ch. 2017-25, L.O.F., and will become effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] Substance use disorders occur when the chronic use of alcohol and/or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[2] It is often mistakenly assumed that individuals with substance use disorders lack moral principles or willpower and that they could stop using drugs simply by choosing to change their behavior.[3] In reality, drug addiction is a complex disease, and quitting takes more than good intentions or a strong will. In fact, because drugs change the brain in ways that foster compulsive drug abuse, quitting is difficult, even for those who are ready to do so.[4]

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.[5] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[6]

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.[7] The grants provided separate funding streams and requirements for alcoholism and drug abuse. In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).[8] In 1993, legislation combined ch. 396 and ch. 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").[9] 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.

The Marchman Act is designed to support the prevention and remediation of substance abuse through the provision of a comprehensive system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services.

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[1] World Health Organization. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited May 1, 2017).
[2] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited May 1, 2017).
[3] National Institute on Drug Abuse, *Understanding Drug Use and Addiction*, http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction (last visited May 1, 2017).
[4] Id.
[5] Supra, note 2.
[6] Id.
[7] 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 March 21, 2017); *see also* Department of Children and Families, Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-17, p. 4-5.
[8] Id.
[9] Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

Voluntary and Involuntary Admissions

An individual may receive services under the Marchman Act through either a voluntary[10] or an involuntary admission.[11] The Marchman Act encourages persons to seek treatment on a voluntary basis and to be actively involved in planning their own services with the assistance of a qualified professional.[12] 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 common symptom, raising a barrier to early intervention and treatment.[15] As a result, treatment often comes because a third party made the intervention needed for substance abuse services.[16]

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis.[17] There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use; and either 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.[18]

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 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. The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment.[19]
- **Emergency Admission**: This permits an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization. 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.[20]
- **Alternative Involuntary Assessment for Minors**: This provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[21]

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[10] *See* s. 397.601, F.S.
[11] *See* ss. 397.675 – 397.6978, F.S.
[12] Department of Children and Families, *Marchman Act User Reference Guide 2003*, p. 11, *available at* https://www.dcf.state.fl.us/programs/samh/SubstanceAbuse/marchman/marchmanacthand03p.pdf (last visited May 1, 2017).
[13] S. 397.601(1), F.S.
[14] S. 397.601(2), F.S. Additionally, under s. 397.601(4)(a), F.S., a minor is authorized to consent to treatment for substance abuse.
[15] *Supra,* note 8.
[16] *Supra,* note 8.
[17] *See* ss. 397.675 – 397.6978, F.S.
[18] S. 397.675, F.S.
[19] 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.
[20] S. 397.679, F.S.
[21] S. 397.6798, F.S.

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 treatment, and involuntary services,[22] 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. The petition for involuntary assessment and stabilization must contain:

- The name of the applicant or applicants (the individual(s) filing the petition with the court);
- The name of the respondent (the individual whom the applicant is seeking to have involuntarily assessed and stabilized);
- The relationship between the respondent and the applicant;
- The name of the respondent's attorney, if he or she has one, and whether the respondent is able to afford an attorney; and
- Facts to support the need for involuntary assessment and stabilization, including the reason for the applicant's belief that:
    - The respondent is substance abuse impaired; and
    - The respondent has lost the power of self-control with respect to substance abuse; and either that:
    - The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
    - The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.[23]

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.[24]

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.[25]

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of 5 days[26] to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.[27] During that time, an assessment is completed on the

[22] "Involuntary services" is defined to mean "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.
[23] S. 397.6814, F.S.
[24] 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.
[25] S. 397.6818, F.S.
[26] 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.
[27] 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.[28] The written assessment is sent to the court. Once the written assessment is received, the court must either:

- 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.[29]

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.[30] 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.[31]

A hearing on a petition for involuntary services must be held within five days unless a continuance is granted.[32] At the hearing, petitioner has the burden of proving by clear and convincing evidence that:

- The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse; and
- Because of the respondent's impairment, he or she is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary; and either:
    - The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care; or
    - Without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.[33]

Under this provision, 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.[34] However, these treatment facilities are not locked; therefore, individuals placed in treatment 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.[35]

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[28] 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.
[29] 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.
[30] S. 397.693, F.S.
[31] S. 397.6951, F.S.
[32] S. 397.6955, F.S.
[33] S. 397.6957, F.S.
[34] 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.
[35] *Supra,* note 7. 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.

If the court orders involuntary services, a copy of the order must be sent to the managing entity within one working day after it is received from the court.[36]

Additionally, within one working day after filing a petition for continued involuntary services, the court must appoint the Office of Criminal Conflict and Civil Regional Counsel to represent the respondent, unless the respondent is otherwise represented by counsel.[37] Thereafter, the Office of Criminal Conflict and Civil Regional Counsel represents the respondent until the petition is dismissed or the court order expires or the respondent is discharged from involuntary services.[38] This same procedure is repeated before the expiration of each additional period of involuntary services.[39]

Confidentiality of Involuntary Hospitalization Proceedings

Confidentiality of Service Provider Records in Marchman Act Proceedings in Florida

Generally, civil court records are open for public inspection unless a law or a court order specifies otherwise. Because the Marchman Act is a civil proceeding, much of the information contained in the court file is available to the public for inspection. Currently, only the records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to an individual being treated for substance abuse under the Marchman Act are confidential. [40] Therefore all court records, except the records of service providers, under the Marchman Act are open for public inspection, including the petition for involuntary stabilization and assessment and the petition for involuntary treatment, unless a court orders otherwise.

Some Circuit Courts in Florida have issued orders protecting the personal information of individuals for whom an involuntary admission under the Marchman Act is sought. These court orders apply not only to Marchman Act cases, but also to cases filed under Florida's Mental Health Act, the Baker Act. Typically, these orders make all documents, and the images of all documents, filed in Baker Act and Marchman Act commitment or treatment cases confidential. Circuits have taken this action because the clinical records and other protected information in these cases are so interwoven and an integral part of the court file that it is administratively impractical to maintain only portions of the file as confidential.[41] In the Eighth Judicial Circuit, [42] the parties' names and the court dockets are not confidential and are still accessible to the public, but the viewing of the documents within the court file is limited to:

- The parties to the case;
- The parties' attorneys;
- Any governmental agency or its representative authorized by law to view the clinical records;
- Any other person or entity authorized by law; and
- A person or entity authorized to view a record by written court order.[43]

Similarly, the Sixth Judicial Circuit has ordered that the Clerks of the Circuit Court are authorized and directed to seal and maintain as confidential the case file and every record filed in both Baker Act and Marchman Act cases, including petitions for writs of habeas corpus.[44]

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[36] S. 397.697(4), F.S.
[37] S. 397.6975(3), F.S.
[38] Id.
[39] Id.
[40] S. 397.501(7), F.S. The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with the Marchman Act and with applicable federal confidentiality regulations, such as the Health Insurance Portability and Accountability Act (HIPAA), and are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.
[41] J. David Walsh, Chief Judge, Seventh Judicial Circuit, *Re: Confidentiality of Court Records REF: W-2011-104*, Jun. 6, 2011, available at https://www.clerk.org/pdf/Rule_2.420.pdf (last visited May 1, 2017).
[42] Robert E. Roundtree, Chief Judge, Eighth Judicial Circuit, *Administrative Order No. 7.12: Confidentiality of Certain Baker Act and Marchman Act Files*, Oct. 5, 2012, available at http://www.circuit8.org/web/ao/7.12%20(v1)(s)(p)%20Conf.%20of%20Certain%20Baker%20&%20Marchman%20Files.pdf (last visited May 1, 2017).
[43] Id.

Confidentiality of Involuntary Mental Health and Substance Abuse Hospitalization in Other States

Some states provide that information relating to an involuntary hospitalization for substance abuse or mental health and the related court documents are confidential and exempt. Some states provide that court records that relate only to involuntary mental health treatment are confidential,[45] while other states also protect court records relating to substance abuse treatment.[46]

Florida Firearms Law

Section 790.065(1)(a)2., F.S., requires federal firearms licensees to request background checks on individuals attempting to purchase firearms. To comply with this requirement, licensees in Florida contact the Florida Department of Law Enforcement's (FDLE) Firearms Purchase Program (FPP).

Created in 1989, the FPP operates 12 hours a day, 7 days a week, 363 days a year and is designed to provide licensees immediate responses to background check inquiries.[47] Upon receiving a request, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm would violate state or federal law, and provides a response to the licensee.[48]

Licensed importers, manufacturers, and dealers are prohibited from selling or delivering firearms to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.[49] The term "committed to a mental institution" includes individuals who have been involuntarily admitted under the Marchman Act.[50]

To help ensure that the above-described persons are not able to purchase a firearm, FDLE created the Mental Competency (MECOM) database.[51] The clerks of court are required to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month of the adjudication or commitment for inclusion in MECOM.[52]

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[44] J. Thomas McGrady, Chief Judge, Sixth Judicial Circuit, Administrative Order No. 2010-065 PA/PI-CIR, *Re: Sealing of Court Orders*, Sept. 30, 2010, http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2010/2010-065.htm (last visited March 23, 2017).

[45] For example, Iowa's statutory code provides that all papers and records pertaining to any involuntary hospitalization or application for involuntary hospitalization of any person hospitalized with mental illness are confidential. Iowa Code s. 229.24(1). Similarly, an Ohio statute provides that all records and reports, other than court journal entries or court docket entries, identifying a person and pertaining to the person's mental health condition, assessment, provision of care or treatment, or payment for assessment, care or treatment must be kept confidential and cannot be disclosed. Ohio Rev. Code. s. 5119.28(A).

[46] For example, South Carolina statutory code provides that certificates, applications, records, and reports made for specified purposes, and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed. S.C. Code s. 44-22-100.(A). Additionally, in Michigan courts cannot acknowledge the existence of records pertaining to drug and alcohol screening and assessment, additional counseling, and treatment for substance abuse. Mich. Comp. Laws. s. 330.1261; 330.1285.

[47] It operates daily from 9:00am to 9:00pm with the exception of Christmas Day and New Year's Day. S. 790.065(5), F.S.

[48] S. 790.065, F.S.

[49] S. 790.065(2)(a)4., F.S.

[50] S. 790.065(2)(a)4.b.(I), F.S.

[51] S. 790.065(2)(a)4.c., F.S.

[52] Id.

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.[53] 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.[54] 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.[55] The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.[56]

In addition to the Florida Constitution, Florida law specifies the conditions under which public access must be provided to government records and meetings.[57] The Public Records Act[58] guarantees every person's right to inspect and copy any state or local government public record.[59] The Sunshine Law[60] 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.[61]

The Legislature may create an exemption to public records or open meetings requirements.[62] An exemption must specifically state the public necessity justifying the exemption[63] and must be tailored to accomplish the stated purpose of the law.[64] 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.[65]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meeting exemptions.[66] 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.[67]

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[53] FLA. CONST., art. I, s. 24.
[54] FLA. CONST., art. I, s. 24(a).
[55] FLA. CONST., art. I, s. 24(b).
[56] FLA. CONST., art. I, s. 24(b).
[57] Ch. 119, F.S.
[58] *Id.*
[59] "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.
[60] S. 286.011, F.S.
[61] 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 provides 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.
[62] FLA. CONST., art. I, s. 24(c).
[63] FLA. CONST., art. I, s. 24(c).
[64] FLA. CONST., art. I, s. 24(c).
[65] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).
[66] S. 119.15, F.S. An exemption is considered to be substantially amended if it is 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.
[67] S. 119.15(3), F.S.

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary[68] to meet one of the following purposes:

- Allow the state or its political subdivision to effectively and efficiently administer a program, the administration of which would be significantly impaired without the exemption; or
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only personal identifying information may be exempted under this provision; or
- Protect trade or business secrets.[69]

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.[70]

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[71] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.[72]

Effect of the Bill

The bill provides that all pleadings and other documents, and the images of all pleadings and other documents, in court involved involuntary admissions proceedings under the Marchman Act are confidential and exempt from s. 119.07(1) and art. I, s. 24 of the Florida Constitution. The information in the pleadings and documents may only be released to:

- 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
- The Department of Children and Families (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
- A person or entity authorized to view records upon a court order for good cause

The bill prevents the public from being able to inspect any documents filed with the court in involuntary admissions proceedings under the Marchman Act and prohibits the clerk of the court from publishing personal identifying information on the court docket or in publicly accessible files. Additionally, the bill requires that anyone who receives such court records must keep the records confidential.

The bill also specifies that its provisions do not preclude the clerks of court from submitting information to FDLE for input into the MECOM database.

[68] S. 119.15(6)(b), F.S.
[69] *Id*.
[70] *Id.*
[71] FLA. CONST., art. I, s. 24(c).
[72] S. 119.15(7), F.S.

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

The bill also provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill creates an indeterminate negative fiscal impact on circuit courts. Currently, circuit courts are tasked with maintaining the confidentiality of clinical records within Marchman Act cases; under the bill, petitions for involuntary assessment and stabilization will also be confidential. Circuit courts may see an indeterminate insignificant increase in costs to keep additional records confidential.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.