

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 Committee on Children, Families, and Elder Affairs

BILL: SB 828

INTRODUCER: Senators Book and Gainer

SUBJECT: Mental Health and Substance Abuse

DATE: February 15, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Delia | Cox | CF | Pre-meeting |
| 2. | | | JU | |
| 3. | | | AP | |

I. Summary:

SB 828 modifies the Baker Act and makes significant changes to the Marchman Act, the statutory processes for mental health and substance abuse examinations and treatment, respectively. The bill makes all of the following substantive changes:

- Defines the terms “neglect or refuse to care for himself or herself” and “real and present threat of substantial harm” under both the Baker Act and Marchman Act.
- Requires facilities to inform persons with a serious mental illness or a serious substance use disorder of “the essential elements of recovery” and provide assistance in accessing a post-discharge continuum of care regimen.
- Provides specific requirements for verifying the assent of a minor’s voluntariness for admission to a facility.
- If the minor’s assent to voluntary admission is not verified in the specified manner, requires the facility administrator of a receiving facility to refer the case involving a minor’s admission to the clerk of the court for the appointment of a public defender within 24 hours.
- Allows individuals to be admitted as a civil patient in a state treatment facility without a transfer evaluation.
- Makes the state attorney the “real party of interest” in Marchman Act cases before the courts.
- Prohibits courts from ordering an individual with a developmental disability, as defined in s. 393.063, F.S, who lacks a co-occurring mental illness to a state mental health treatment facility for involuntary inpatient placement and requiring that such individuals instead be referred to specified agencies for further evaluation and the provision of appropriate services.
- Repeals several sections of the Marchman Act, specifically those relating to involuntary assessment and stabilization, and relocates and amends such language into the provisions for involuntary treatment.
- Allows the court to order six months of involuntary outpatient treatment in lieu of inpatient treatment by a court as part of involuntary inpatient proceedings under s. 394.467, F.S., if the

person had been twice ordered into inpatient treatment during the last 36 months and meets the criteria for involuntary placement.

- Changes the term “involuntary treatment” to “involuntary treatment services” in every instance where the term appears in ch. 397, F.S.
- Prohibits a court, in a hearing for placement in a treatment facility, from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing.
- Requires the facility administrator to file a petition for involuntary admission and a petition for voluntary admission within 72 hours of a voluntary admission of a minor or request to transfer a minor to voluntary status.
- Requires the clerk, upon filing, to appoint a public defender who will coordinate with the facility administrator to schedule a voluntariness hearing, which is a clinical, non-court proceeding.
- Requires the voluntariness hearing to occur before the date set by the clerk for the involuntary petition (within seven court working days of filing unless there is a continuance);
- Requires the involuntary petition to be withdrawn if the minor’s consent is found to be voluntary.
- If consent is found to be involuntary, requires that the minor must be discharged.
- Repeals all provisions for court-ordered involuntary assessments and stabilization (ss. 397.6811 to 397.6822, F.S.).
- Combines these procedures into a consolidated involuntary treatment process;
- Provides that a petition for involuntary treatment be filed.
- Requires the court to hold a hearing within ten court working days.

The Department of Children and Families (the DCF) states that the bill is anticipated to have an indeterminate, negative fiscal impact on the agency, as well as on private sector substance use disorder treatment providers. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2021.

II. Present Situation:

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. The primary indicators used to evaluate an individual’s mental health are:

- Emotional well-being, which is described as perceived life satisfaction, happiness, cheerfulness, peacefulness;
- Psychological well-being, which includes self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one’s environment, spirituality, self-direction, and positive relationships; and

- Social well-being, which is described as social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, and sense of community.¹

Mental illness encompasses 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. Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.²

Mental illness affects millions of people in the United States each year. Approximately one in five adults live with a mental illness and an estimated 49.5% of adolescents aged 13-18 have a mental disorder.³ Suicide is the tenth overall leading cause of death in the nation and the second leading cause of death among individuals between the ages of 10 and 24.⁴ In 2019, 3,427 lives were lost to suicide in Florida.⁵

The Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.⁶ The Baker Act deals with Florida's mental health commitment laws, and includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations.⁷ The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.⁸

Involuntary Examination

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.⁹ 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 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

¹ See the World Health Organization, *Mental Health: Strengthening Our Response*, available at <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>; the Association for Mental Health and Wellness, *What is Mental Health?*, available at <http://mhaweek.org/what-is-mental-health/> (all sites last visited February 10, 2021).

² *Id.*

³ National Institute on Mental Health (NIMH), *Mental Illness*, available at <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>; The NIMH, *Mental Illness – Prevalence of Any Mental Disorder Among Adolescents*, available at https://www.nimh.nih.gov/health/statistics/mental-illness.shtml#part_155771 (all sites last visited February 10, 2021).

⁴ National Institute on Mental Health, *Suicide*, available at <https://www.nimh.nih.gov/health/statistics/suicide.shtml> (last visited February 10, 2021).

⁵ The Department of Children and Families (The DCF), *Suicide Prevention Coordinating Council 2020 Annual Report*, p. 7. (January 1, 2021)(on file with the Senate Committee on Children, Families, and Elder Affairs).

⁶ Chapter 71-131, L.O.F.; The Baker Act is contained in ch. 394, F.S.

⁷ Sections 394.451-394.47891, F.S.

⁸ Section 394.459, F.S.

⁹ Sections 394.4625 and 394.463, F.S.

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.¹⁰

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;¹¹
- 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;¹² 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.¹³

Involuntary patients must be taken to either a public or private facility which has been designated by the 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.¹⁴ The patient must be examined by the receiving facility within 72 hours of the initiation of the involuntary examination and specified actions must be taken within that time frame to address the individual needs of the patient.¹⁵

Involuntary Outpatient Placement

A person may be ordered to involuntary outpatient services upon a finding of the court that by clear and convincing evidence that all of the following factors are met:

- 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, 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, at least twice; 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;

¹⁰ Section 394.463(1), F.S.

¹¹ Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.

¹² Section 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.

¹³ Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record

¹⁴ Section 394.455(40), F.S.

¹⁵ Section 394.463(2)(g), F.S.

- 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 treatment or he or she is unable to determine for himself or herself whether placement is necessary;
- 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;¹⁶
- 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.¹⁷

A petition for involuntary outpatient placement may be filed by the administrator of either a receiving facility or a treatment facility.¹⁸ 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.¹⁹

The petition for involuntary outpatient placement must be filed in the county where the patient is located. However, if the patient is being placed from a state treatment facility, the petition must be filed in the county where the patient will reside.²⁰ When the petition has been filed, the clerk of the court must provide copies of the petition and the proposed treatment plan to the 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.²¹

Once a petition for involuntary outpatient placement has been filed with the court, the court must hold a hearing within five business days, unless a continuance is granted.²² 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.²³ The court must appoint the public defender to represent the person who is the subject of the petition, unless that person is otherwise represented by counsel.²⁴

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 advocate²⁵ If the court concludes that the patient meets the criteria for involuntary outpatient placement it must issue an order for involuntary outpatient services.²⁶ The order must specify the duration of involuntary

¹⁶ This factor is evaluated based on the person's treatment history and current behavior.

¹⁷ Section 394.4655(2), F.S.

¹⁸ Section 394.4655(4)(a), F.S.

¹⁹ Section 394.4655(4)(b), F.S.

²⁰ Section 394.4655(4)(c), F.S.

²¹ *Id.*

²² Section 394.4655(7)(a)1., F.S.

²³ *Id.*

²⁴ Section 394.4655(5), F.S. This must be done within one court working day of filing of the petition.

²⁵ Section 394.4655(7)(d), F.S.

²⁶ Section 394.4655(7)(b)1., F.S.

outpatient services, up to 90 days, and the nature and extent of the patient's mental illness.²⁷ The order of the court and the treatment plan shall be made part of the patient's clinical record.²⁸

If, at any time before the conclusion of the initial hearing on involuntary outpatient placement, it appears to the court that the person meets the criteria for involuntary inpatient placement does not meet the criteria for involuntary outpatient services then the court may order the person admitted for involuntary inpatient examination.²⁹

Involuntary Inpatient Placement

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 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 a 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.³⁰

The administrator of the receiving or treatment facility that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.³¹ Upon filing, the clerk of the court must provide copies to the 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.³²

The court proceedings for involuntary inpatient placement closely mirror those for involuntary outpatient services.³³ However, unlike an order for involuntary outpatient services. However, the laws governing involuntary inpatient placement are silent regarding the court's order becoming part of the patient's clinical record.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 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.

³⁰ Section 394.467(1), F.S.

³¹ Section 394.467(2) and (3), F.S.

³² Section 394.467(3), F.S.

³³ *See s.* 394.467(6) and (7), F.S.

Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. Substance use disorder (SUD) is determined based on specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).³⁴ According to the DSM-5, a diagnosis of SUD is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.³⁵ SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.³⁶ Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.³⁷ Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.³⁸

In 2018, approximately 20.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 14.8 million people diagnosed with alcohol use disorder and 8.1 million people diagnosed with drug use disorder.³⁹ The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.⁴⁰

The Marchman Act

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.⁴¹ The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.⁴² Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.⁴³ However, because persons with substance abuse issues often do not restrict their misuse to one

³⁴ The World Health Organization, *Mental Health and Substance Abuse*, available at <https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse>; the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at <https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics> (last visited February 12, 2021).

³⁵ The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at <https://www.naatp.org/resources/clinical/substance-use-disorder> (last visited February 8, 2021).

³⁶ The SAMSHA, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited February 8, 2021).

³⁷ The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited February 8, 2021).

³⁸ *Id.*

³⁹ The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Key substance use and mental health indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, p. 2, available at <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf> (last visited February 8, 2021).

⁴⁰ The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at <https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition> (last visited February 8, 2021).

⁴¹ The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).

⁴² *Id.*

⁴³ *Id.*

substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.⁴⁴ 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).⁴⁵

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.⁴⁶ However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.⁴⁷ As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.⁴⁸

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. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved.⁴⁹ 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.⁵⁰

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:

- Is in need of substance abuse services and, by reason 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;⁵¹ or
- 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 substantial likelihood that the person:

⁴⁴ *Id.*

⁴⁵ Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.

⁴⁶ *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.

⁴⁷ 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 February 10, 2021) (hereinafter cited as “Fundamentals of the Marchman Act”).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Section 394.675(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.

- Has inflicted, or threatened to or attempted to inflict physical harm on himself, herself, or another; or
- Is likely to inflict, physical harm on himself, herself, or another unless he or she is admitted.⁵²

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act include protective custody, emergency admission, and the alternative involuntary assessment for minors.

Law enforcement officers use the protective custody procedure when an individual is substance-impaired or intoxicated in public and such impairment is brought to the attention of the officer.⁵³ 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. A law enforcement officer may take the individual to their residence, to a hospital, a detoxification center, or an addiction receiving facility, whichever the officer determines is most appropriate.⁵⁴

If the individual in these circumstances does not consent to protective custody, the officer may do so against the person's will, without using unreasonable force. Additionally, the officer has the option of taking an individual to a jail or detention facility for his or her own protection. Such detention cannot be considered an arrest for any purpose and no record can be made to indicate that the person has been detained or charged with any crime.⁵⁵ However, if the individual is a minor, the law enforcement officer must notify the nearest relative of a minor in protective custody without consent.⁵⁶

The second process, emergency admission, authorizes 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, or to a less intensive component of a licensed service provider for assessment only.⁵⁷ Individuals admitted for involuntary assessment and stabilization under this provision must have a certificate from a specified health professional⁵⁸ 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.⁵⁹

⁵² Section 397.675(2)(b), F.S.

⁵³ Section 397.677, F.S. The individual can be a minor or adult under this process.

⁵⁴ Section 397.6771, F.S. A person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody, Section 397.6773, F.S.

⁵⁵ Section 397.6772(1), F.S.

⁵⁶ Section 397.6772(2), F.S.

⁵⁷ Section 397.679, F.S.

⁵⁸ Section 397.6793(1), F.S., provides a list of professionals that include a physician, a clinical psychologist, a physician assistant working under the scope of practice of the supervising physician, a psychiatric nurse, an advanced practice registered nurse, a mental health counselor, a marriage and family therapist, a master's-level-certified addictions professional for substance abuse services, or a clinical social worker

⁵⁹ Section 397.6793, F.S. The certificate can be from a physician, advanced practice registered nurse, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, or a physician

Lastly, the alternative involuntary assessment for minors 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.⁶⁰

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,⁶¹ and involuntary services, which provides for long-term court-ordered substance abuse services.⁶² Both are initiated through the filing of a petition.⁶³

Involuntary Assessment and Stabilization

An individual's spouse, legal guardian, any relative, a private practitioner, the director of a licensed service provider or the director's designee, or any adult who has direct personal knowledge of the individual's substance abuse impairment may file a petition for involuntary assessment and stabilization on behalf of the individual.⁶⁴ If the individual is a minor, only a parent, legal guardian, legal custodian, or licensed service provider may file such a petition.⁶⁵

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 known; 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;
 - Because of such impairment, the respondent has lost the power of self-control with respect to substance abuse; and
 - The respondent:
 - Has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
 - Will refuse, or has refused voluntary care and based on his or her judgement being so impaired from the substance abuse, he or she is incapable of appreciating his or her need for care and of making a rational decision regarding the need for care.⁶⁶

assistant working under the scope of a practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services.

⁶⁰ Section 397.6798, F.S.

⁶¹ See ss. 397.6811 through 397.6822, F.S.

⁶² See ss. 397.693 through 397.6978, F.S.

⁶³ Section 397.681, F.S. The court may not charge a filing fee for these petitions.

⁶⁴ Section 397.6811(1), F.S.

⁶⁵ Section 397.6811(2), F.S.

⁶⁶ Section 397.6814, F.S. Further, if the person has refused to submit to an assessment, that fact must be included in the petition.

Once the petition is filed with the court, the court issues a summons to a respondent and must schedule a hearing to take place within ten days. Alternatively, the court can issue an ex parte order immediately.⁶⁷ 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.⁶⁸

A court must conduct the hearing in accordance with s. 397.6811(1), F.S., and hear all relevant testimony. If the court determines that a respondent meets the criteria for involuntary assessment and stabilization, it must immediately enter an order that authorizes the involuntary assessment and stabilization of the respondent or, in the alternative, enter an order dismissing the petition if a respondent does not meet the criteria.⁶⁹

If the court determines a respondent meets the criteria for involuntary assessment and stabilization, it may order him or her to be admitted for a period of five days⁷⁰ to a hospital, licensed detoxification facility, or addictions receiving facility for involuntary assessment and stabilization.⁷¹ During that time, an assessment is completed on the individual.⁷² Under certain circumstances, this order may be extended to complete the assessment.⁷³

Based on the involuntary assessment at a hospital, detoxification facility, addictions receiving facility, or less restrictive component, the qualified professional 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 treatment has been initiated.⁷⁴

Involuntary Services

A person may be court-ordered for involuntary treatment if he or she meets the eligibility criteria for involuntary admission and has been involved in one of the following Marchman Act processes within certain timeframes:

- Protective custody or emergency admission within the previous ten days.
- Assessment by a qualified professional within five days.

⁶⁷ Section 397.6815, F.S.

⁶⁸ Section 397.6815(2), F.S.

⁶⁹ Section 397.6818(1), F.S. This section also provides for the written findings that must be included in the order.

⁷⁰ Section 397.6819, F.S.

⁷¹ Section 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.

⁷² Section 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.

⁷³ See s. 397.6819, F.S., for exceptions.

⁷⁴ Section 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.

- Involuntary assessment and stabilization or alternative involuntary admission pursuant to s. 397.6822, F.S.,⁷⁵ within the previous 12 days.⁷⁶

An individual's spouse, legal guardian, any relative, or service provider, or any adult who has direct personal knowledge of the individual's substance abuse impairment or prior course of assessment and treatment may file a petition for involuntary services on behalf of the individual.⁷⁷ If the individual is a minor, only a parent, legal guardian, or service provider may file such a petition.⁷⁸

Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain the same identifying information for all parties and attorneys and facts to support the same eligibility criteria as described above.⁷⁹ Upon filing of a petition, the court must schedule a hearing to be held within five days, and must provide a copy of the petition and notice of hearing to all parties and anyone else the court determines. The court also issues a summons to the person whose admission is sought.⁸⁰

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

- The individual is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse;
- Because of such impairment the person is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary; and
- The respondent meets either of the following:
 - Without services the individual:
 - Is likely to suffer from neglect or refuse to care for himself or herself and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and
 - That there is a substantial likelihood that without services the individual will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or
 - The individual's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.⁸¹

At the hearing, the court must hear and review all relevant evidence, including the results of the involuntary assessment by a qualified professional, and either dismiss the petition or order the individual to receive involuntary services from his or her chosen licensed service provider, if

⁷⁵ Section 397.6822, F.S., refers to disposition of an individual after involuntary assessment, including release or referral to another treatment facility or service provider, or to community services; voluntary retention of the individual; or retention of an individual pending a petition for involuntary services.

⁷⁶ Section 397.693, F.S.

⁷⁷ Section 397.695(1), F.S.

⁷⁸ Section 397.695(2), F.S.

⁷⁹ Section 397.6951, F.S.

⁸⁰ Section 397.6955(1) through (3), F.S.

⁸¹ Section 397.6957(2), F.S.

possible and appropriate. The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others. If such finding is made, a guardian advocate must be appointed to act on behalf of the respondent.⁸²

If the court finds that the conditions for involuntary services have been proven, it may order the respondent to receive involuntary services with a publicly funded licensed service provider for up to 90 days.⁸³ Alternatively, if the individual or a person on the individual's behalf is able and willing to pay for services, the court may also order the individual to receive services at a privately funded licensed service provider.⁸⁴ If an individual continues to need involuntary services, the licensed service provider can petition the court for continuances for up to 90 days.⁸⁵ Unless an extension is requested, the individual is released after 90 days.⁸⁶

Confidentiality of Records

Baker Act

Section 394.4615, F.S., in part, provides that clinical records related to procedures under the Baker Act are confidential and exempt⁸⁷ and may not be disclosed without written consent of the individual, with certain exceptions. Such exceptions include specified disclosure by the individual, a guardian, or a guardian advocate.⁸⁸ Court records under the Baker Act are also confidential and exempt from disclosure.⁸⁹ The clerk of the court is authorized to disclose court records to certain entities, including parties to the proceedings and certain governmental entities.⁹⁰

Marchman Act

All service provider records related to procedures under the Marchman Act are confidential and exempt and may not be disclosed without written consent of the individual, with certain exceptions.⁹¹ Additionally, petitions for involuntary assessment and stabilization, court orders, and related records that are filed with the court under the Marchman Act are confidential and exempt from disclosure.⁹² However, the clerk of the court may disclose such records to certain entities, including parties to the proceedings and certain governmental entities.⁹³

⁸² Sections 397.6957(1), F.S.

⁸³ Section 397.697(1), F.S.

⁸⁴ *Id.*

⁸⁵ The licensed service provider must file its petition at least 10 days before the 90-day period expires. A hearing must be held within 15 days. Section 397.6975, F.S.

⁸⁶ Section 397.6977, F.S.

⁸⁷ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

⁸⁸ Section 394.4615(1)-(2), F.S.

⁸⁹ Section 394.464(1), F.S.

⁹⁰ Section 394.464(1)-(2), F.S.

⁹¹ Section 397.501(7), F.S.

⁹² Section 397.6760(1), F.S.

⁹³ Section 397.6960(1)-(2), F.S.

Transportation to a Facility

Baker Act

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.⁹⁴

The Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.⁹⁵

Marchman Act

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.⁹⁶ Further, law enforcement officers are authorized to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary the transfer of the detainee to an appropriate licensed service provider with an available bed.⁹⁷

Individual Bill of Rights

Both the Marchman Act and the Baker Act provide an individual bill of rights.⁹⁸ Rights in common include the right to:

- Dignity;
- Quality of treatment;
- Not be refused treatment at a state-funded facility due to an inability to pay;
- Communicate with others;
- Care and custody of personal effects; and
- Petition the court on a writ of habeus corpus.

The individual bill of rights also imposes liability for damages on persons who violate individual rights.⁹⁹ The Marchman Act ensures the right to habeus corpus, which means that a petition for release may be filed with the court by an individual involuntarily retained or his or her parent or

⁹⁴ Section 394.462(1)(f)-(g), F.S.

⁹⁵ Section 394.459(1), F.S.

⁹⁶ Section 397.6795, F.S.

⁹⁷ Section 397.6772(1), F.S.

⁹⁸ Section 397.501, F.S., provides "Rights of Individuals" for individuals served through the Marchman Act; section 394.459, F.S., provides "Rights of Individuals" for individuals served through the Baker Act.

⁹⁹ Sections 397.501(10)(a) and 394.459(10), F.S.

representative.¹⁰⁰ In addition to the petitioners authorized in the Marchman Act, the Baker Act permits the DCF to file a writ for habeus corpus on behalf of the individual.¹⁰¹

The Florida Bar’s Special Committee on Mental Health

In 2017, the Florida Bar developed a special committee on mental health and substance use issues (The Committee).¹⁰² One of the primary directives of the committee was reviewing the state’s behavioral health laws and recommending changes as it saw fit.¹⁰³ The Committee recommended a number of changes, including, in part:

- Making the State Attorney the “real party in interest” in Marchman Act cases, having the Clerk of Court notify the State Attorney when cares are filed, and having access to all relevant persons and records in each case;¹⁰⁴
- Increasing and standardizing the length of time for courts to hold both Baker and Marchman Act hearings following the filing of a petition from five to ten days;¹⁰⁵
- Allowing witnesses to appear telephonically at both Baker and Marchman Act hearings absent good cause being shown to require their physical presence, and standardizing scenarios which allow the respondent to be excused from attending the hearing;¹⁰⁶
- Standardizing the amount of time Baker Act patients can be held at both local and state-owned treatment facilities to a six-month maximum in both instances;¹⁰⁷
- Requiring individuals who are initially subject to a Baker Act with traumatic brain injury or dementia to be referred to the Agency for Persons with Disabilities (the APD) or the Department of Elder Affairs (the DOEA);¹⁰⁸
- Granting the State Attorney the right to a seven-day working continuance in Baker Act cases if good cause is shown, and express access to all relevant records;¹⁰⁹
- Expressly defining “neglect or refusal to care for one’s self” and “real and present threat of substantial harm”;¹¹⁰
- Standardizing the admission criteria, petition contents, and court’s treatment finding for Baker Act and Marchman Act cases;¹¹¹
- Granting the public defender and regional counsel access the right to access their respective clients that are hospitalized or in a treatment facility;¹¹²
- Replacing the word ‘services’ with the word ‘treatment’ in both the Baker and Marchman Acts, as this is the term commonly used by litigants;¹¹³ and

¹⁰⁰ Section 397.501(9), F.S.

¹⁰¹ Section 394.459(8)(a), F.S.

¹⁰² The Florida Bar, *The Florida Bar’s Special Committee on Mental Health 2018 Interim Report*, April 25, 2018, p. 1, available at <https://www-media.floridabar.org/uploads/2018/05/2018-Interim-Report-Special-Committee-on-Mental-Health.pdf>. (last visited February 8, 2021)(hereinafter cited as “The Florida Bar”).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at p. 4.

¹⁰⁵ *Id.* at p. 5.

¹⁰⁶ *Id.* at p. 5-7

¹⁰⁷ The Florida Bar, p. 7.

¹⁰⁸ *Id.* at p. 7-8.

¹⁰⁹ *Id.* at p. 8.

¹¹⁰ *Id.*

¹¹¹ *Id.* at p. 10.

¹¹² The Florida Bar, p. 12.

¹¹³ *Id.*

- Waiving the \$80 service of process fee for litigants in Marchman Act proceedings.¹¹⁴

The Committee originally crafted this series of legislative proposals for the 2019 Legislative Session.¹¹⁵ Several of the proposed recommendations were contained in SB 818 (2019)¹¹⁶ and SB 870 (2020).¹¹⁷

III. Effect of Proposed Changes:

Baker Act – Definitions, Criteria, Rights of Individuals

The bill amends s. 394.455, F.S., defining “neglect or refuse to care for himself or herself” to include, but not be limited to, evidence that a person:

- Is unable to satisfy basic needs for nourishment, clothing, medical care, shelter, or safety in a manner that creates a substantial probability of imminent death, serious physical debilitation, or disease; or
- Is substantially unable to make an informed treatment choice and needs care or treatment to prevent deterioration.

The bill defines “real and present threat of substantial harm” to include, but not be limited to, evidence of a substantial probability that the untreated person will:

- Lack, refuse, or not receive services for health and safety which are actually available in the community; or
- Suffer severe mental, emotional, or physical harm that will result in the loss of his or her ability to function in the community or the loss of cognitive or volitional control over thoughts or actions.

The bill amends s. 394.459, F.S., requiring that a patient with a serious mental illness who has been released after being Baker Acted must be provided with information regarding the essential elements of recovery and provided with assistance in accessing a continuum of care regimen. The DCF is provided with rulemaking authority to determine what services may be available in such regimens. Current law requires the state to provide involuntary treatment at a state hospital, but does not require Baker Act patients to be provided with information about the essential elements of recovery or assistance in accessing a continuum of care regimen.

The bill amends s. 394.461, F.S., authorizing civil patients to be admitted to designated receiving facilities under the Baker Act without undergoing a transfer evaluation. The bill also provides that, before the close of the state’s case in a Baker Act hearing for involuntary placement, the state may establish that a transfer evaluation was performed and that the document was properly executed by providing the court with a copy of the transfer evaluation. The bill also prohibits the court from considering the substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at p. 1.

¹¹⁶ *See* SB 818 (2019 Reg. Session).

¹¹⁷ *See* SB 870 (2020 Reg. Session).

The bill amends s. 394.4615, F.S., eliminating provisions referring to s. 394.4655, F.S., relating to involuntary outpatient services, rendered inapplicable by the bill.

The bill amends s. 394.462, F.S., updating cross references to changes made by the act.

Baker Act – Voluntary Admissions and Procedures Related to Minors

The bill amends s. 394.4625, F.S., requiring a person to show evidence of mental illness in order to be admitted to a facility on a voluntary basis. Adults must consent in writing, and minors may only be admitted on a voluntary basis if both the minor and their parent or guardian give express and informed consent. The minor's assent is considered an affirmative agreement to remain at the facility for examination. A minor's assent must be verified through a clinical assessment performed within 12 hours of arrival at the facility. The examining professional must provide the minor with the following information:

- An explanation as to why they are at the facility;
- What to expect while at the facility; and
- When they can expect to be released, using language that is appropriate to the minor's:
 - Age;
 - Experience;
 - Maturity; and
 - Condition.

The professional must document that the minor can understand this information. The facility administrator must file notice with the court of the minor's voluntary placement within one day of admission.

A public defender must be appointed by the court to review the voluntariness of the minor's admission and verify assent. The public defender can interview and represent the minor and must be given access to all relevant witnesses and records. If the public defender does not review the minor's assent, the bill provides that the clinical record may serve as verification of assent. If assent is not verified, a petition for involuntary placement must be filed or the minor must be released to their parent or guardian within 24 hours of arrival at the facility.

Baker Act – Involuntary Admissions, Involuntary Outpatient Services, Criminal Penalties

Involuntary Examination

The bill amends s. 394.463, F.S., providing that a person is subject to an involuntary examination if there is a substantial likelihood that without care or treatment the person will cause serious harm to themselves or others in the near future, as evidenced by his or her recent behavior, actions, or omissions, which includes, but is not limited to, property damage. This provision of the bill provides more specificity than current criteria, which only references certain harmful actions as evidenced by recent behavior.

The bill authorizes, rather than requires as in current law, law enforcement to transport those who appear to meet Baker Act criteria to receiving facilities. It also requires receiving facilities

to inform the DCF of any person who has been Baker Acted three or more times within a 12-month period. The bill also makes it a first degree misdemeanor¹¹⁸ to:

- Knowingly furnish false information for the purpose of obtaining emergency or other involuntary admission for any person;
- Cause, or conspire with another to cause, any involuntary mental health procedure for the person without a reason for believing a person is impaired; or,
- Cause, or conspire with another to cause, any person to be denied their rights under the mental health statutes.

Involuntary Outpatient Services

The bill amends s. 394.4655, F.S., providing that in lieu of inpatient treatment, a court may order a respondent in a Baker Act case into outpatient treatment for up to six months if it is established that the respondent meets involuntary placement criteria and:

- Has been jailed or incarcerated, involuntarily ordered into inpatient treatment, or has received services at a forensic or correctional facility at least twice during the past 36 months;
- The outpatient provider is in the same county as where the respondent resides or will reside; and
- The respondent's treating physician certifies that:
 - The respondent can be more appropriately treated on an outpatient basis; and
 - Can follow a treatment plan.¹¹⁹

The bill requires that for the duration of their treatment, the respondent must have a willing, able, and responsible social worker or case manager, or individual appointed by the court who will inform the court of any failure to comply with the treatment plan. The court is required to retain jurisdiction over the parties for entry of further orders after a hearing and the court may order inpatient treatment to stabilize a respondent who decompensates during their period of court-ordered treatment if they continue to meet the other statutorily required criteria for commitment. Further, the bill authorizes a criminal county court to order a person who meets the commitment criteria into involuntary outpatient services.

The bill eliminates all other existing procedures of s. 394.4655, F.S., pertaining to criteria and procedures for involuntary examination.

Involuntary Inpatient Placement

The bill amends s. 394.467, F.S., adding to the criteria related to infliction of serious harm that recent acts or omissions may also be considered as behaviors that may be considered when considering if a person meets the criteria and that such behavior may include, but is not limited to, significant property damage.

The bill provides that with respect to a hearing on involuntary inpatient placement, both the patient and the state are independently entitled to at least one continuance of the hearing. The

¹¹⁸ A first degree misdemeanor is punishable by up to one year in jail and fine. This bill specifically authorizes that the fine is punishable up to \$5,000. Sections 775.082 and 775.083(1)(g), F.S.

¹¹⁹ The bill is silent regarding payment of involuntary outpatient treatment services. However, without private insurance or Medicaid, it must be presumed that the DCF would be required to pay for such treatment.

patient's continuance may be for a period of up to 4 weeks and requires concurrence of the patient's counsel. The state's continuance may be for a period of up to 5 court working days and requires a showing of good cause and due diligence by the state before it can be requested. The state's failure to timely review any readily available document or failure to attempt to contact a known witness does not merit a continuance.

The bill allows for all witnesses to a hearing to appear telephonically or by other remote means, absent a showing of good cause. The bill requires any witness appearing telephonically to provide all parties with all relevant documents by the close of business the day prior to the hearing. The bill requires the court to allow testimony deemed relevant by the court under state law from individuals, including family members, regarding the person's prior history and how that history relates to the person's current condition.

The bill allows the court to appoint a magistrate to preside at the hearing on the petition or any ancillary matters, including but not limited to, writs of habeas corpus issued under the Baker Act, rather than just over the proceedings as is authorized in current law.

Additionally, the bill mandates that the court allow testimony which it deems relevant from individuals, including family members, regarding the person's history and how that history related to the current condition of the individual.

The bill also requires the facility to make available to the state attorney to access the patient, any witnesses, and any clinical records needed to prepare its case within 24 hours of the involuntary placement petition being filed. Such records must remain confidential and may not be used for criminal investigation or prosecution purposes, or any purpose other than those related to the patient's civil commitment.

If the court finds that a patient meets the criteria for involuntary inpatient placement and the court seeks to order the patient to be transferred to a treatment facility or retained in the patient's current or another treatment facility, the bill requires the facility holding the patient to discharge the patient at any time he or she no longer meets the involuntary inpatient treatment criteria unless the patient has transferred to voluntary status.

The bill prohibits the court from ordering an individual with a developmental disability as defined under s. 393.063, F.S., who lacks a co-occurring mental illness, into a state treatment facility. Such individuals must be referred to the APD or the DOEA for further evaluation and the provision of appropriate services for their individual needs. This expands current law which prohibits such orders and requires similar referrals for persons with traumatic brain injury or dementia.

In addition, if it reasonably appears that the individual would be found incapacitated under ch. 744, F.S.,¹²⁰ and the individual does not already have a legal guardian, the bill requires the receiving facility to inform the DCF and any known next of kin and initiate guardianship

¹²⁰ Chapter 744, F.S., governs procedures related to the appointment and judicial management of guardians and guardianships.

proceedings. The receiving facility may hold the individual until the petition to appoint a guardian is heard by the court and placement is secured.

The bill also amends s. 394.467(6)(c), F.S., conforming the provision to changes made by the act.

Marchman Act – Definitions and Criteria

The bill amends s. 397.305, F.S., revising legislative intent related to the Marchman Act to include that patients be placed in the most appropriate and least restrictive environment conducive to long-term recovery while protecting individual rights.

The bill amends s. 397.311, F.S., relating to definitions under the Marchman Act, to make the same changes to definitions in statute to the Marchman Act as the bill makes to the Baker Act described above. Additionally, the bill defines “impaired” or “substance abuse impaired” to mean having a substance use disorder or a condition involving the use of alcoholic beverages, illicit or prescription drugs, or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems or cause socially dysfunctional behavior.

The bill amends s. 397.501, F.S., requiring that a patient with a serious substance abuse addiction be provided with information on the elements of a coordinated system of care upon release from an addiction receiving facility. The DCF is provided with rulemaking authority to determine what services may be provided to patients.

The bill amends s. 397.675, F.S., adding and clarifying criteria for involuntary admission under the Marchman Act. The criteria is amended in the following manner:

- Expanding the application of the criteria to a person who has a history of noncompliance with treatment, in addition to person who have lost the power of self-control with respect to substance use;
- Requiring that the person is refusing voluntary care after a sufficient and conscientious explanation and disclosure of the purpose for treatment, rather than be so impaired in judgment that he or she is incapable of appreciating the need for services;
- Clarifying the provision related to the lack of family or friends to care for the person to indicate that the willing family or friend must also be able and responsible;
- Providing that the substantial harm to the person must be in the near future if services are not provided and that the person will inflict serious harm to self or others, as evidenced by recent acts, omissions, or behavior causing, attempting, or threatening such harm, which includes, but is not limited to, significant property damage.

The bill amends s. 397.6751, F.S., relating to service provider responsibilities regarding involuntary admissions, requiring that all patients admitted under the Marchman Act be placed in the most appropriate and least restrictive environment conducive to the patient’s treatment needs.

Marchman Act – Court-Related Provisions

The bill amends s. 397.681, F.S., revising language to specify that courts have jurisdiction of involuntary treatment petitions, rather than involuntary assessment and stabilization petitions.

The bill also specifies that petitions may be filed with the clerk of court in the county where the subject of the petition resides, in addition to where he or she is located as in current law. The bill allows the chief judge in Marchman Act cases to appoint a general or special magistrate to preside over all, or part, of the proceedings related to the petition or any ancillary matters, including but not limited to, writs of habeas corpus issued under the Marchman Act, rather than just over the proceedings as is authorized in current law.

The bill provides that subject to appropriation, the state attorney must represent Florida, rather than the petitioner, as the real party of interest in all Marchman Act proceedings where the respondent has not obtained private counsel. The bill prohibits the state attorney from using records obtained pursuant to Marchman Act cases for any purpose other than those relating to the respondent's civil commitment under the Act and requires the records to remain confidential.

The bill amends s. 397.693, F.S., relating to involuntary treatment, amending the criteria for when a person may be the subject of court-ordered involuntary treatment petition under the Marchman Act to if the person:

- *Reasonably appears to meet*, rather than meets, the criteria enumerated in s. 397.675, F.S.;
- Has been placed under protective custody pursuant to s. 397.677, F.S., within the previous 10 days;
- Has been subject to an emergency admission under section 397.679, F.S., within the previous 10 days; or
- Has been assessed by a qualified professional within the past 30 days, rather than the previous five days.

The bill amends s. 397.695, F.S., relating to involuntary treatment, changing instances of 'treatment' to 'treatment services' throughout the section and allowing the court to waive or prohibit service of process fees for respondents deemed indigent under s. 57.082, F.S.¹²¹

The bill amends 397.6951, F.S., relating to the required contents for a petition for involuntary treatment, changing instances of 'treatment' to 'treatment services' throughout the section and removing the requirement that a petition for involuntary treatment contain findings and recommendations of an assessment by a qualified professional.

The bill modifies the criteria for a petition for involuntary treatment under the Marchman Act in the substantively similar manner as the bill modifies the criteria for involuntary admission under the Baker Act as discussed above. The bill also provides that a petition may be accompanied by a certificate or report of a qualified professional or licensed physician who has examined the respondent within the 30 days preceding the filing of the petition. The certificate must contain the professional's findings and if the respondent refuses to submit to an examination must document the refusal. The bill provides that in the event of an emergency requiring an expedited hearing, the petition must contain documented reasons for expediting the hearing.

The bill amends s. 397.6955, F.S., requiring the clerk of court to notify the state attorney upon the filing of a petition for involuntary treatment services under the Marchman Act if the petition does not indicate that the petitioner has retained private counsel; or, in the alternative, notify the

¹²¹ Section 57.082, F.S., provides processes and criteria for the determination of civil indigent status.

respondent's counsel if any has been retained. The bill also amends the time period in which the court is required to schedule a hearing on the petition to within ten court working days, rather than five, unless a continuance is granted.

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

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

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

- The service provider seeks additional time under s. 397.6957(1)(c), F.S., and the court, after a hearing, grants that motion;
- The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which will serve to extend the amount of time the respondent may be held for observation until the issue is resolved; or
- The original or extended observation period ends on a weekend or holiday, in which case the provider may hold the respondent until the next court working day.

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

- Must continue the case for no more than ten court working days; and
- May order a law enforcement officer or other designated agent of the court to:
 - Take the respondent into custody and deliver him or her to be evaluated either by the nearest appropriate licensed service provider or by a licensed service provider designated by the court; and
 - If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

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

The bill amends s. 397.6957, F.S., requiring a respondent to be present during a hearing on an involuntary treatment services petition unless the respondent has knowingly, intelligently, and voluntarily waived their right to appear, or upon proof of service, the court finds that the respondent's presence is inconsistent with their best interests or will likely be harmful to them.

The bill authorizes the court to consider testimony from family members familiar with the respondent's history and how it relates to their current condition. The bill also permits the court to utilize drug testing for respondents in Marchman Act cases. The bill allows witnesses, such as medical professionals or personnel involved in treatment of the respondent, to testify remotely via the most appropriate and convenient technological method of communication available to the court, including but not limited to teleconference, and allows any witnesses intending to remotely attend and testify at the hearing as long as they provide the parties with all relevant documents by close of business on the day before the hearing. Current law requires the respondent to be present at such hearings unless the court finds appearance to be harmful, in which case the court must appoint a guardian advocate to appear on the respondent's behalf.

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

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

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

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

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

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

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

The bill amends s, 397.697, F.S., relating to court determinations and the effect of a court order for involuntary services, providing that in order to qualify for involuntary outpatient treatment an individual must be accompanied by a willing, able, and responsible advocate, or a social worker or case manager of a licensed service provider, who will inform the court if the individual fails to comply with their outpatient program. The bill also requires that if outpatient treatment is offered in lieu of inpatient treatment, it must be available in the county where the respondent resides and it may be offered for up to six months if it is established that the respondent meets involuntary placement criteria and has been involuntarily ordered into inpatient treatment at least twice during the past 36 months, the outpatient provider is in the same county as the respondent, and the respondent's treating physician certifies that the respondent can be more appropriately treated on an outpatient basis and can follow a treatment plan.

The bill requires the court to retain jurisdiction in all cases resulting in involuntary inpatient treatment so that it may monitor compliance with treatment, change treatment modalities, or initiate contempt of court proceedings as needed. The bill also permits hearings to be set with the court to address the ancillary matters for which the bill extends jurisdiction, provided the

proceedings are served in accordance with court procedural rules. The bill clarifies that while subject to the court's oversight, a service provider's authority is separate and distinct from the court's continuing jurisdiction.

The bill amends s. 397.6975, F.S., related to extension of involuntary services periods, providing that a service provider may petition the court for an extension of an involuntary treatment period at any point before the expiration of the current treatment period if the individual in treatment appears to need additional care, removing the current requirement that the petition be filed at least 10 days before the expiration of the current court-ordered treatment period. The bill requires the court to immediately schedule a hearing to be held not more than 10 court working days after the filing of the petition to extend. The bill allows the court to order additional treatment if the original time period will expire before the hearing is concluded and it appears likely to the court that additional treatment will be required.

The bill deletes remaining provisions in s. 397.6975, F.S., found in current subsection (3)-(7). Section 397.6975, F.S., which currently provide for the following:

- Section 397.6975(3) provides that within 1 court working day after the filing of a petition for continued involuntary services, the court is required to appoint the office of criminal conflict and civil regional counsel to represent the respondent, unless the respondent is otherwise represented by counsel.
- Section 397.6975(4), F.S., requires hearings on petitions for continued involuntary services to be held before circuit court, and allowing the court to appoint a magistrate to preside over the hearing. This subsection requires the court to adhere to procedures for obtaining an order pursuant to section 397.697.
- Section 397.6975(5), F.S., provides that notice of a hearing must be provided to the respondent or his or her counsel, and that the respondent and the respondent's counsel may agree to a period of continued involuntary services without a court hearing.
- Section 397.6975(6), F.S., provides that the same procedure is to be repeated before the expiration of each additional period of involuntary services.
- Section 397.6975(7), F.S., requires the court to consider testimony and evidence regarding the respondent's competence in instances where the respondent has previously been found incompetent to consent to treatment.

The bill repeals the following provisions relating to court-ordered, involuntary assessments and stabilization under the Marchman Act:

- Section 397.6811, F.S., relating to involuntary assessment and stabilization;
- Section 397.6814, F.S., relating to the contents of a petition filed in a hearing on involuntary assessment and stabilization;
- Section 397.6815, F.S., relating to court procedures for hearings on involuntary assessments and stabilization;
- Section 397.6818, F.S., relating to court determinations in a hearing on involuntary assessments and stabilization;
- Section 397.6819, F.S., relating to the responsibility of licensed service providers pertaining to involuntary assessments and stabilization;

- Section 397.6821, F.S., relating to extensions of time for completion of involuntary assessments and stabilization; and
- Section 397.6822, F.S., relating to dispositions of individuals after involuntary assessments.

The bill combines these processes into a consolidated involuntary treatment process under sections 397.6951-397.6975, F.S. Currently, if a person is assessed and stabilized through a non-court-ordered admission, a petition for involuntary services would be filed and the court would schedule a hearing within five days. Under the bill, a petition for involuntary treatment would be filed and the court would have to hold a hearing within ten court working days.

Baker Act – Cross-References and Technical Changes

The bill amends ss. 394.495 and 394.496, F.S., explicitly updating professionals involved in the Baker Act from a list of cross referenced statutes to a list of professional titles, including:

- Clinical psychologist;
- Clinical social worker, physician;
- Psychiatric nurse;
- Psychiatrist; or
- Person working under the direct supervision of one of these health care professionals.

The bill amends s. 394.499, F.S., relating to integrated children’s CSU or juvenile addiction receiving facility services, revising “guardian” to “parent or legal” guardian, to state: a person under 18 years of age for whom voluntary application is made by his or her parent or legal guardian. Also, the bill adds a statutory reference to the voluntary admissions section presently in statute (s. 394.4625, F.S.). These are technical changes made to conform with the modifications to section 394.4625, F.S., in section 8 in the bill.

The bill amends s. 394.9085, F.S., relating to behavioral provider liability, adding cross references to ss. 397.311(26)(a)4. and 394.455, F.S., and eliminating cross references to ss. 397.311(26)(a)3. and 394.455(40), F.S.

The bill amends ss. 394.4598 and 394.4599, F.S., relating to guardian advocates and involuntary admission, respectively, to conform cross-references to changes made by the act.

Marchman Act - Cross-References and Technical Changes

The bill makes the following technical changes related to current Marchman Act provisions:

- Amends s. 397.416, F.S., conforming a cross-reference to changes made in the act.
- Amends s. 397.6971, related to early release from involuntary services, to change all instances of the word ‘services’ to ‘treatment services.’
- Amends s. 397.6977, F.S., relating to disposition of individual completion of involuntary treatment services, to change all instances of the word ‘services’ to ‘treatment services.’
- Repeals s. 397.6978, F.S., relating to guardian advocates; patients incompetent to consent; and substance abuse disorder.
- Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment in Medicaid programs, to change a cross reference.

- Amends s. 464.012, F.S., relating to the scope of practice for advanced registered nurse practitioners to correct a cross reference.
- Amends s. 744.2007, F.S., relating to powers and duties of guardians, to correct a cross-reference.
- Amends s. 790.065, relating to the sale and delivery of firearms, to eliminate cross references.

The bill provides an effective date of July 1, 2021.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DCF anticipates that the bill may impact private service providers required to complete transfer evaluations, as they will be required to testify at related court hearings.¹²² The DCF also anticipates an indeterminate impact to private providers who will need to obtain clinical records to prepare a treatment plan or determine if a provider has the capacity to treat a particular individual.¹²³

¹²² The DCF, Agency Analysis of SB 828 (2021), p. 13. (February 1, 2021)(on file with the Senate Committee on Children, Families, and Elder Affairs).

¹²³ *Id.*

C. Government Sector Impact:

The DCF anticipates that there will be an indeterminate fiscal impact on the agency associated with rulemaking and training.¹²⁴ The DCF also predicts an indeterminate impact resulting from the bill's requirement that the agency notify facilities of any individual who has been examined or committed three or more times in a 12-month period.¹²⁵

The Office of the State Courts Administrator (OSCA) states that trial court judicial workloads may be impacted by the bill, however any specific impact is indeterminate at this time and will be reflected in the Supreme Court's annual opinion regarding certification of the need for additional judges.¹²⁶

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends sections 394.455, 394.459, 394.4598, 394.4599, 394.461, 394.4615, 394.462, 394.4625, 394.463, 394.4655, 394.467, 394.495, 394.496, 394.499, 394.9085, 397.305, 397.311, 397.416, 397.501, 397.675, 397.6751, 397.681, 397.693, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, 397.6977, 409.972, 464.012, 744.2007, and 790.065 of the Florida Statutes.

This bill repeals sections 397.6811, 397.6814, 397.6815, 397.6818, 397.6819, 397.6821 and 397.6822, and 397.6978 of the Florida Statutes.

VIII. 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹²⁴ *Id.* at p. 12.

¹²⁵ *Id.*

¹²⁶ The OSCA, *Senate Bill 828 Judicial Impact Statement*, p. 6 (February 12, 2021)(on file with the Senate Committee on Children, Families, and Elder Affairs).