

By Senator Steube

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1 A bill to be entitled
2 An act relating to involuntary examination and
3 involuntary admission of minors; amending s. 394.462,
4 F.S.; authorizing a designated law enforcement agency
5 to decline to transport a minor 14 years of age or
6 younger to a receiving facility for mental health or
7 substance abuse evaluation if the parent or guardian
8 of the minor agrees to transport the minor to the
9 receiving facility; amending s. 394.463, F.S.;
10 providing circumstances under which a minor 14 years
11 of age or younger may be taken to a receiving facility
12 for involuntary examination; requiring the examination
13 of a minor 14 years of age or younger to be initiated
14 within 8 hours after the patient's arrival at the
15 receiving facility; requiring a receiving facility to
16 release a minor 14 years of age or younger to the
17 minor's parent or guardian; providing exceptions;
18 amending ss. 394.4599 and 790.065, F.S.; conforming
19 cross-references; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Paragraph (b) of subsection (1) of section
24 394.462, Florida Statutes, is amended to read:

25 394.462 Transportation.—A transportation plan shall be
26 developed and implemented by each county by July 1, 2017, in
27 collaboration with the managing entity in accordance with this
28 section. A county may enter into a memorandum of understanding
29 with the governing boards of nearby counties to establish a

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30 shared transportation plan. When multiple counties enter into a
31 memorandum of understanding for this purpose, the counties shall
32 notify the managing entity and provide it with a copy of the
33 agreement. The transportation plan shall describe methods of
34 transport to a facility within the designated receiving system
35 for individuals subject to involuntary examination under s.
36 394.463 or involuntary admission under s. 397.6772, s. 397.679,
37 s. 397.6798, or s. 397.6811, and may identify responsibility for
38 other transportation to a participating facility when necessary
39 and agreed to by the facility. The plan may rely on emergency
40 medical transport services or private transport companies, as
41 appropriate. The plan shall comply with the transportation
42 provisions of this section and ss. 397.6772, 397.6795, 397.6822,
43 and 397.697.

44 (1) TRANSPORTATION TO A RECEIVING FACILITY.—

45 (b)1. The designated law enforcement agency may decline to
46 transport the person to a receiving facility only if:

47 a. The jurisdiction designated by the county has contracted
48 on an annual basis with an emergency medical transport service
49 or private transport company for transportation of persons to
50 receiving facilities pursuant to this section at the sole cost
51 of the county; ~~and~~

52 b. The law enforcement agency and the emergency medical
53 transport service or private transport company agree that the
54 continued presence of law enforcement personnel is not necessary
55 for the safety of the person or others; ~~and~~—

56 c. With respect to a minor 14 years of age or younger, the
57 parent or guardian of the minor agrees to transport the minor to
58 the receiving facility.

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59 2. The entity providing transportation may seek
60 reimbursement for transportation expenses. The party responsible
61 for payment for such transportation is the person receiving the
62 transportation. The county shall seek reimbursement from the
63 following sources in the following order:

64 a. From a private or public third-party payor, if the
65 person receiving the transportation has applicable coverage.

66 b. From the person receiving the transportation.

67 c. From a financial settlement for medical care, treatment,
68 hospitalization, or transportation payable or accruing to the
69 injured party.

70 Section 2. Subsection (1) and paragraph (g) of subsection
71 (2) of section 394.463, Florida Statutes, are amended to read:

72 394.463 Involuntary examination.—

73 (1) CRITERIA.—

74 (a) A person older than 14 years of age may be taken to a
75 receiving facility for involuntary examination if there is
76 reason to believe that the person has a mental illness and
77 because of his or her mental illness:

78 ~~(a)~~ 1.a. The person has refused voluntary examination after
79 conscientious explanation and disclosure of the purpose of the
80 examination; or

81 b.2. The person is unable to determine for himself or
82 herself whether examination is necessary; and

83 2.a. ~~(b)~~ 1. Without care or treatment, the person is likely
84 to suffer from neglect or refuse to care for himself or herself;
85 such neglect or refusal poses a real and present threat of
86 substantial harm to his or her well-being; and it is not
87 apparent that such harm may be avoided through the help of

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88 willing family members or friends or the provision of other
89 services; or

90 ~~b.2.~~ There is a substantial likelihood that, without care
91 or treatment, the person will cause serious bodily harm to
92 himself or herself or others in the near future, as evidenced by
93 recent behavior.

94 (b)1. A minor 14 years of age or younger may be taken to a
95 receiving facility for involuntary examination with the consent
96 of the parent or guardian of the minor if there is reason to
97 believe that the minor has a mental illness and because of his
98 or her mental illness:

99 a. Without care or treatment, the minor is likely to suffer
100 from neglect or refuse to care for himself or herself; such
101 neglect or refusal poses a real and present threat of
102 substantial harm to his or her well-being; and it is not
103 apparent that such harm may be avoided through the help of
104 willing family members or friends or the provision of other
105 services; or

106 b. There is a substantial likelihood that, without care or
107 treatment, the minor will cause serious bodily harm to himself
108 or herself or others in the near future, as evidenced by recent
109 behavior.

110 2. The consent of a parent or guardian of the minor is not
111 required if the person who initiates the examination details in
112 writing that at least one of the following events has occurred:

113 a. Reasonable attempts have been made to contact the
114 parents or guardians of the minor, and the parents or guardians
115 could not be contacted or could not take custody of the minor
116 within a reasonable amount of time.

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117 b. The minor was considered for an involuntary examination
118 because he or she caused or attempted to cause serious bodily
119 harm to himself or herself or others or possessed an item such
120 as a weapon, a knife, a razor, a pill, or poison for the purpose
121 of conducting such harm.

122 c. The minor is in the custody of the department.

123 d. The person who initiated the involuntary examination or
124 the person who reported the minor's suspected mental illness to
125 the person authorized to initiate an involuntary examination
126 made a report to the central abuse hotline, pursuant to s.
127 39.201, based upon knowledge or suspicion of abuse, abandonment,
128 or neglect.

129 (2) INVOLUNTARY EXAMINATION.—

130 (g)1. The examination period must be for up to 72 hours.
131 For a minor older than 14 years of age, the examination shall be
132 initiated within 12 hours after the patient's arrival at the
133 facility. For a minor 14 years of age or younger, the
134 examination shall be initiated within 8 hours after the
135 patient's arrival at the facility. Within the examination period
136 or, if the examination period ends on a weekend or holiday, no
137 later than the next working day thereafter, one of the following
138 actions must be taken, based on the individual needs of the
139 patient:

140 a.1. The patient shall be released, unless he or she is
141 charged with a crime, in which case the patient shall be
142 returned to the custody of a law enforcement officer;

143 b.2. The patient shall be released, subject to subparagraph
144 1., for voluntary outpatient treatment;

145 c.3. The patient, unless he or she is charged with a crime,

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146 shall be asked to give express and informed consent to placement
147 as a voluntary patient and, if such consent is given, the
148 patient shall be admitted as a voluntary patient; or

149 ~~d.4.~~ A petition for involuntary services shall be filed in
150 the circuit court if inpatient treatment is deemed necessary or
151 with the criminal county court, as defined in s. 394.4655(1), as
152 applicable. When inpatient treatment is deemed necessary, the
153 least restrictive treatment consistent with the optimum
154 improvement of the patient's condition shall be made available.
155 When a petition is to be filed for involuntary outpatient
156 placement, it shall be filed by one of the petitioners specified
157 in s. 394.4655(4)(a). A petition for involuntary inpatient
158 placement shall be filed by the facility administrator.

159 2. A receiving facility must release a minor 14 years of
160 age or younger without delay to the minor's parent or guardian
161 upon request unless consent was not necessary to conduct the
162 examination under subparagraph (1)(b)2., the facility made a
163 report with the central abuse hotline, pursuant to s. 39.201,
164 based upon knowledge or suspicion of abuse, abandonment, or
165 neglect, or the facility filed a petition for involuntary
166 services.

167 Section 3. Paragraph (c) of subsection (2) of section
168 394.4599, Florida Statutes, is amended to read:

169 394.4599 Notice.—

170 (2) INVOLUNTARY ADMISSION.—

171 (c)1. A receiving facility shall give notice of the
172 whereabouts of a minor who is being involuntarily held for
173 examination pursuant to s. 394.463 to the minor's parent,
174 guardian, caregiver, or guardian advocate, in person or by

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175 telephone or other form of electronic communication, immediately
176 after the minor's arrival at the facility. The facility may
177 delay notification for no more than 24 hours after the minor's
178 arrival if the facility has submitted a report to the central
179 abuse hotline, pursuant to s. 39.201, based upon knowledge or
180 suspicion of abuse, abandonment, or neglect and if the facility
181 deems a delay in notification to be in the minor's best
182 interest.

183 2. The receiving facility shall attempt to notify the
184 minor's parent, guardian, caregiver, or guardian advocate until
185 the receiving facility receives confirmation from the parent,
186 guardian, caregiver, or guardian advocate, verbally, by
187 telephone or other form of electronic communication, or by
188 recorded message, that notification has been received. Attempts
189 to notify the parent, guardian, caregiver, or guardian advocate
190 must be repeated at least once every hour during the first 12
191 hours after the minor's arrival and once every 24 hours
192 thereafter and must continue until such confirmation is
193 received, unless the minor is released at the end of the 72-hour
194 examination period, or until a petition for involuntary services
195 is filed with the court pursuant to s. 394.463(2)(g)1.d. ~~s.~~
196 ~~394.463(2)(g)~~. The receiving facility may seek assistance from a
197 law enforcement agency to notify the minor's parent, guardian,
198 caregiver, or guardian advocate if the facility has not received
199 within the first 24 hours after the minor's arrival a
200 confirmation by the parent, guardian, caregiver, or guardian
201 advocate that notification has been received. The receiving
202 facility must document notification attempts in the minor's
203 clinical record.

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204 Section 4. Paragraph (a) of subsection (2) of section
205 790.065, Florida Statutes, is amended to read:

206 790.065 Sale and delivery of firearms.—

207 (2) Upon receipt of a request for a criminal history record
208 check, the Department of Law Enforcement shall, during the
209 licensee's call or by return call, forthwith:

210 (a) Review any records available to determine if the
211 potential buyer or transferee:

212 1. Has been convicted of a felony and is prohibited from
213 receipt or possession of a firearm pursuant to s. 790.23;

214 2. Has been convicted of a misdemeanor crime of domestic
215 violence, and therefore is prohibited from purchasing a firearm;

216 3. Has had adjudication of guilt withheld or imposition of
217 sentence suspended on any felony or misdemeanor crime of
218 domestic violence unless 3 years have elapsed since probation or
219 any other conditions set by the court have been fulfilled or
220 expunction has occurred; or

221 4. Has been adjudicated mentally defective or has been
222 committed to a mental institution by a court or as provided in
223 sub-sub-paragraph b.(II), and as a result is prohibited by
224 state or federal law from purchasing a firearm.

225 a. As used in this subparagraph, "adjudicated mentally
226 defective" means a determination by a court that a person, as a
227 result of marked subnormal intelligence, or mental illness,
228 incompetency, condition, or disease, is a danger to himself or
229 herself or to others or lacks the mental capacity to contract or
230 manage his or her own affairs. The phrase includes a judicial
231 finding of incapacity under s. 744.331(6)(a), an acquittal by
232 reason of insanity of a person charged with a criminal offense,

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233 and a judicial finding that a criminal defendant is not
234 competent to stand trial.

235 b. As used in this subparagraph, "committed to a mental
236 institution" means:

237 (I) Involuntary commitment, commitment for mental
238 defectiveness or mental illness, and commitment for substance
239 abuse. The phrase includes involuntary inpatient placement as
240 defined in s. 394.467, involuntary outpatient placement as
241 defined in s. 394.4655, involuntary assessment and stabilization
242 under s. 397.6818, and involuntary substance abuse treatment
243 under s. 397.6957, but does not include a person in a mental
244 institution for observation or discharged from a mental
245 institution based upon the initial review by the physician or a
246 voluntary admission to a mental institution; or

247 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
248 admission to a mental institution for outpatient or inpatient
249 treatment of a person who had an involuntary examination under
250 s. 394.463, where each of the following conditions have been
251 met:

252 (A) An examining physician found that the person is an
253 imminent danger to himself or herself or others.

254 (B) The examining physician certified that if the person
255 did not agree to voluntary treatment, a petition for involuntary
256 outpatient or inpatient treatment would have been filed under s.
257 394.463(2)(g)1.d. ~~s. 394.463(2)(g)4.~~, or the examining physician
258 certified that a petition was filed and the person subsequently
259 agreed to voluntary treatment prior to a court hearing on the
260 petition.

261 (C) Before agreeing to voluntary treatment, the person

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262 received written notice of that finding and certification, and
263 written notice that as a result of such finding, he or she may
264 be prohibited from purchasing a firearm, and may not be eligible
265 to apply for or retain a concealed weapon or firearms license
266 under s. 790.06 and the person acknowledged such notice in
267 writing, in substantially the following form:

268

269 "I understand that the doctor who examined me believes I am a
270 danger to myself or to others. I understand that if I do not
271 agree to voluntary treatment, a petition will be filed in court
272 to require me to receive involuntary treatment. I understand
273 that if that petition is filed, I have the right to contest it.
274 In the event a petition has been filed, I understand that I can
275 subsequently agree to voluntary treatment prior to a court
276 hearing. I understand that by agreeing to voluntary treatment in
277 either of these situations, I may be prohibited from buying
278 firearms and from applying for or retaining a concealed weapons
279 or firearms license until I apply for and receive relief from
280 that restriction under Florida law."

281

282 (D) A judge or a magistrate has, pursuant to sub-sub-
283 subparagraph c.(II), reviewed the record of the finding,
284 certification, notice, and written acknowledgment classifying
285 the person as an imminent danger to himself or herself or
286 others, and ordered that such record be submitted to the
287 department.

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289 c. In order to check for these conditions, the department
290 shall compile and maintain an automated database of persons who
are prohibited from purchasing a firearm based on court records

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291 of adjudications of mental defectiveness or commitments to
292 mental institutions.

293 (I) Except as provided in sub-sub-subparagraph (II), clerks
294 of court shall submit these records to the department within 1
295 month after the rendition of the adjudication or commitment.
296 Reports shall be submitted in an automated format. The reports
297 must, at a minimum, include the name, along with any known alias
298 or former name, the sex, and the date of birth of the subject.

299 (II) For persons committed to a mental institution pursuant
300 to sub-sub-subparagraph b.(II), within 24 hours after the
301 person's agreement to voluntary admission, a record of the
302 finding, certification, notice, and written acknowledgment must
303 be filed by the administrator of the receiving or treatment
304 facility, as defined in s. 394.455, with the clerk of the court
305 for the county in which the involuntary examination under s.
306 394.463 occurred. No fee shall be charged for the filing under
307 this sub-sub-subparagraph. The clerk must present the records to
308 a judge or magistrate within 24 hours after receipt of the
309 records. A judge or magistrate is required and has the lawful
310 authority to review the records ex parte and, if the judge or
311 magistrate determines that the record supports the classifying
312 of the person as an imminent danger to himself or herself or
313 others, to order that the record be submitted to the department.
314 If a judge or magistrate orders the submittal of the record to
315 the department, the record must be submitted to the department
316 within 24 hours.

317 d. A person who has been adjudicated mentally defective or
318 committed to a mental institution, as those terms are defined in
319 this paragraph, may petition the court that made the

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320 adjudication or commitment, or the court that ordered that the
321 record be submitted to the department pursuant to sub-sub-
322 subparagraph c.(II), for relief from the firearm disabilities
323 imposed by such adjudication or commitment. A copy of the
324 petition shall be served on the state attorney for the county in
325 which the person was adjudicated or committed. The state
326 attorney may object to and present evidence relevant to the
327 relief sought by the petition. The hearing on the petition may
328 be open or closed as the petitioner may choose. The petitioner
329 may present evidence and subpoena witnesses to appear at the
330 hearing on the petition. The petitioner may confront and cross-
331 examine witnesses called by the state attorney. A record of the
332 hearing shall be made by a certified court reporter or by court-
333 approved electronic means. The court shall make written findings
334 of fact and conclusions of law on the issues before it and issue
335 a final order. The court shall grant the relief requested in the
336 petition if the court finds, based on the evidence presented
337 with respect to the petitioner's reputation, the petitioner's
338 mental health record and, if applicable, criminal history
339 record, the circumstances surrounding the firearm disability,
340 and any other evidence in the record, that the petitioner will
341 not be likely to act in a manner that is dangerous to public
342 safety and that granting the relief would not be contrary to the
343 public interest. If the final order denies relief, the
344 petitioner may not petition again for relief from firearm
345 disabilities until 1 year after the date of the final order. The
346 petitioner may seek judicial review of a final order denying
347 relief in the district court of appeal having jurisdiction over
348 the court that issued the order. The review shall be conducted

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349 de novo. Relief from a firearm disability granted under this
350 sub-subparagraph has no effect on the loss of civil rights,
351 including firearm rights, for any reason other than the
352 particular adjudication of mental defectiveness or commitment to
353 a mental institution from which relief is granted.

354 e. Upon receipt of proper notice of relief from firearm
355 disabilities granted under sub-subparagraph d., the department
356 shall delete any mental health record of the person granted
357 relief from the automated database of persons who are prohibited
358 from purchasing a firearm based on court records of
359 adjudications of mental defectiveness or commitments to mental
360 institutions.

361 f. The department is authorized to disclose data collected
362 pursuant to this subparagraph to agencies of the Federal
363 Government and other states for use exclusively in determining
364 the lawfulness of a firearm sale or transfer. The department is
365 also authorized to disclose this data to the Department of
366 Agriculture and Consumer Services for purposes of determining
367 eligibility for issuance of a concealed weapons or concealed
368 firearms license and for determining whether a basis exists for
369 revoking or suspending a previously issued license pursuant to
370 s. 790.06(10). When a potential buyer or transferee appeals a
371 nonapproval based on these records, the clerks of court and
372 mental institutions shall, upon request by the department,
373 provide information to help determine whether the potential
374 buyer or transferee is the same person as the subject of the
375 record. Photographs and any other data that could confirm or
376 negate identity must be made available to the department for
377 such purposes, notwithstanding any other provision of state law

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378 to the contrary. Any such information that is made confidential
379 or exempt from disclosure by law shall retain such confidential
380 or exempt status when transferred to the department.

381 Section 5. This act shall take effect July 1, 2018.