

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 919 Involuntary Admission to Residential Services

**SPONSOR(S):** Children, Families & Seniors Subcommittee, Wood

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Tuszynski	Brazzell
2) Appropriations Committee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Persons with developmental disabilities reside in various types of residential settings. Some individuals with developmental disabilities live with family, some live in their own homes, while others may live in community-based residential facilities.

Section 393.11, F.S., creates the statutory scheme for the involuntary admission of persons with intellectual disabilities that require residential services. The order for involuntary admission is of indeterminate duration and the person who has been involuntarily admitted to residential services may not be released from such order except by further order of the circuit court. The statute does not provide for any review of orders entered for involuntary admission.

In October of 2015, the U.S. Court of Appeals for the Eleventh Circuit ruled that s. 393.11, F.S., is constitutionally infirm because it does not require periodic review of continued involuntary commitment by a decision-maker with the duty to consider and authority to order release, and that such a statutory scheme is unconstitutional on its face.

HB 919 amends s. 393.11, F.S., and adds a review for persons involuntarily admitted to residential services. The bill requires APD to contract with a "qualified evaluator" to annually, unless otherwise ordered, conduct a review to determine the propriety of the continued involuntary admission.

The bill requires the agency to provide the completed annual review to the court, and that the court must complete an annual review hearing, unless a shorter review period was ordered at a previous hearing. The bill requires the court to review the report and determine whether the involuntary admission is still required and, if so, that the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting.

The bill requires the agency to give a copy of the review and reasonable notice of the hearing to the appropriate state's attorney, if appropriate, the person's attorney and guardian or guardian advocate, if appointed.

The bill defines a "qualified evaluator" as a licensed psychologist who has demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities.

There is a negative fiscal impact of approximately \$860,000.

The bill becomes effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Agency for Person with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.<sup>1</sup>

##### *Individual Support Plans*

Pursuant to s. 393.0651, F.S., APD must develop a support plan for each client receiving services from APD.<sup>2</sup> This support plan is developed with a support coordinator.<sup>3</sup> Each support plan must include the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized.<sup>4</sup> The client and his or her support coordinator must review and, if necessary, revise the support plan annually to review progress in achieving the objectives specified.<sup>5</sup>

##### *Residential Facilities*

Persons with developmental disabilities reside in various types of residential settings. Some individuals with developmental disabilities live with family, some live in their own homes, while others may live in community-based residential facilities.<sup>6</sup> Pursuant to s. 393.067, F.S., APD is charged with licensing community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs.<sup>7</sup>

##### Involuntary Admission to Residential Services

Section 393.11, F.S., creates the statutory scheme for the involuntary admission of persons with intellectual disabilities that require residential services.<sup>8</sup> Residential services include the care, treatment, habilitation, and rehabilitation the person is alleged to need.<sup>9</sup>

A petitioning commission may file a petition for involuntary admission to residential services.<sup>10,11</sup> The petitioning commission must file the petition in the circuit court of the county the person alleged to need

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<sup>1</sup> S. 393.063(9), F.S.

<sup>2</sup> S. 393.0651, F.S.

<sup>3</sup> S. 393.063(37), F.S., defines "Support Coordinator" as a person designated by APD to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the necessary supports and services; advocating on behalf of the individual or family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

<sup>4</sup> Id.

<sup>5</sup> S. 393.0651(7), F.S.

<sup>6</sup> S. 393.063(28) defines residential facility as a facility providing room and board and personal care for persons who have developmental disabilities.

<sup>7</sup> Agency for Persons with Disabilities, *Planning Resources*, accessible at: <http://apd.myflorida.com/planning-resources/> (last accessed 11/11/15).

<sup>8</sup> S. 393.11(1), F.S.

<sup>9</sup> S. 393.11(1), F.S.

<sup>10</sup> S. 393.11(2)(a)

<sup>11</sup> S. 393.11(2)(b), F.S., one of these persons must be a licensed physician in Florida.

involuntary admission resides.<sup>12</sup> Once this petition is filed, the circuit court appoints a committee to examine the person being considered for involuntary admission.<sup>13</sup> This examining committee must file a report with the court, to include, but not limited to:

- The degree of the person’s intellectual disability and whether the person is eligible for agency services;<sup>14</sup>
- Whether the person either:
  - Lacks sufficient capacity to consent for services from APD and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary to avoid a real and present threat of substantial harm; or
  - Is likely to physically injure others if allowed to remain at liberty;<sup>15</sup>
- Purpose to be served by the residential care;<sup>16</sup>
- A recommendation on the type of residential placement that would be most appropriate and least restrictive;<sup>17</sup> and
- The appropriate care, habilitation, and treatment.<sup>18</sup>

After this examining committee files their report with the court, the court holds a hearing to allow the person alleged to need involuntary admission to present evidence and cross-examine all witnesses.<sup>19</sup> The person alleged to need involuntary admission is entitled to representation by counsel at all stages of this proceeding.<sup>20</sup>

The court may not enter an order for involuntary admission unless it finds, by clear and convincing evidence, that:

- The person alleged to need involuntary admission is intellectually disabled or autistic;
- Placement in a residential setting is the least restrictive and most appropriate alternative to meet the person’s needs, and;
- Because of the person’s intellectual disability or autism, the person either:
  - Lacks sufficient capacity to consent for services from APD and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary to avoid a real and present threat of substantial harm; or
  - Is likely to physically injure others if allowed to remain at liberty.<sup>21</sup>

This order for involuntary admission is of indeterminate duration and the person who has been involuntarily admitted to residential services may not be released from such order except by further order of the circuit court.<sup>22</sup> The statute does not provide for any review of orders entered for involuntary admission. However, the statute does provide that any person involuntarily admitted to residential services may file a petition for writ of habeas corpus<sup>23</sup> to challenge their involuntary admittance.<sup>24</sup>

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<sup>12</sup> S. 393.11(2), F.S.

<sup>13</sup> S. 393.11(5), F.S.

<sup>14</sup> S. 393.11(5)(e)1., F.S.

<sup>15</sup> S. 393.11(5)(e)2., F.S.

<sup>16</sup> S. 393.11(5)(e)3., F.S.

<sup>17</sup> S. 393.11(5)(e)4., F.S.

<sup>18</sup> S. 393.11(5)(e)5., F.S.

<sup>19</sup> S. 393.11(7), F.S.

<sup>20</sup> S. 393.11(6), F.S.

<sup>21</sup> S. 393.11(8), F.S.

<sup>22</sup> S. 39.11(11), F.S.

<sup>23</sup> Latin for “you have the body” – a legal action, and constitutional right guaranteed by Art. I Sec. 9 of the U.S. Constitution, by means of which those detained may seek relief from alleged unlawful imprisonment.

<sup>24</sup> S. 39.11(13), F.S.

## *Involuntary Admission for Those Found Incompetent to Proceed to Trial*

For individuals charged with a crime but found incompetent to proceed to trial due to an intellectual disability or autism, pursuant to s. 916.303, F.S., the process of involuntary admission is slightly different. If an individual remains incompetent for two years the charges shall be dismissed.<sup>25</sup> If the charges have been dismissed, and the individual is considered to lack sufficient capacity to apply for services or lacks the basic survival and self-care skills to provide for his or her well-being or is likely to injure others if allowed to remain at liberty, a petition to involuntarily admit the individual to residential services, pursuant to s. 393.11, F.S., shall be filed.<sup>26</sup>

Once a petition for involuntary admission to residential services is filed, all of the same procedures under s. 393.11, F.S., are followed. However, because this person has been found incompetent by a criminal court, there is the added ability to place the individual in a secure facility if there is a substantial likelihood that the individual will injure another person or continues to present a danger of escape.<sup>27</sup> If the committing court places the individual in a secure facility, that placement must be reviewed annually to determine whether the individual continues to meet the criteria for placement.<sup>28</sup>

### *J.R. v. Palmer*

In 2004, J.R. was involuntarily admitted to nonsecure residential services under s. 39.11, F.S. The involuntary admission order does not include an end date for the involuntary admission.<sup>29</sup> In August of 2011, J.R. filed suit claiming his constitutional due process rights had been violated because s. 39.11, F.S., does not provide periodic review of his continued involuntary confinement by a decision-maker that has the authority to release him.<sup>30</sup> APD argued that within the annual review of the individual's support plan, under s. 393.0651, F.S., there is an implicit obligation to review the circumstances and petition the court if the circumstances have changed to the point that involuntary admission was no longer appropriate.<sup>31</sup>

In May of 2015, the Supreme Court of Florida, in an answer to two certified questions from the U.S. Court of Appeals for the Eleventh Circuit, ruled that:

- The annual support plan review, pursuant to s. 393.0651, F.S., does not contain an implicit requirement for APD to consider the continued propriety of an involuntary admission, under s. 393.11, F.S.
- There is no implicit requirement for APD to petition the circuit court for a person's release from involuntary admission under ss. 393.11 or 393.0651, F.S.

In October of 2015, the U.S. Court of Appeals for the Eleventh Circuit ruled that s. 393.11, F.S., is constitutionally infirm because it does not require periodic review of continued involuntary commitment by a decision-maker with the duty to consider and authority to order release, and that such a statutory scheme is unconstitutional on its face.<sup>32</sup>

### **Effect of Proposed Changes**

HB 919 amends s. 393.11, F.S., and adds a review for persons involuntarily admitted to residential services. The bill requires APD to contract with a "qualified evaluator" to conduct an annual review, unless otherwise ordered, of persons involuntarily admitted to determine the propriety of the continued involuntary admission. The bill requires the agency to provide the completed annual review to the court, and that the court must complete an annual review hearing, unless a shorter review period was ordered at a previous hearing. The bill requires the court to review the report and determine whether the

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<sup>25</sup> S. 916.303(1), F.S.

<sup>26</sup> S. 916.303(2), F.S.

<sup>27</sup> S. 916.303(3), F.S.

<sup>28</sup> Id.

<sup>29</sup> J.R. v. Palmer, SC13-1549 (2015)

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> J.R. v. Hansen, No. 12-14212 (11<sup>th</sup> Cir. Oct. 15, 2015) \*Hansen was the Director of APD when the case was originally filed.

involuntary admission is still required and, if so, that the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting.

The bill requires APD to provide a copy of the review and give reasonable notice of the hearing to the appropriate state's attorney, if applicable, the person's attorney and guardian or guardian advocate, if appointed.

The bill also defines a "qualified evaluator" as a licensed psychologist who has demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities.

The bill becomes effective upon becoming law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 393.11, F.S., dealing with involuntary admission to residential services.

**Section 2:** Provides for an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

APD estimates that it will cost \$860,400 to evaluate all persons currently involuntarily admitted. APD estimates there are 2,151 individuals that will need to be evaluated at a cost of \$400 per evaluation.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

The U.S. Court of Appeals for the Eleventh Circuit ruled that s. 393.11, F.S., is constitutionally infirm because it does not require periodic review of continued involuntary commitment by a decision-maker with the duty to consider and authority to order release, and that such a statutory scheme is unconstitutional on its face.<sup>33</sup>

This bill remedies this constitutional infirmity by creating a periodic review of involuntary commitment by a decision-maker with the duty to consider and authority to order release.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 13, 2016, the Children, Families and Seniors Subcommittee adopted a strike all amendment. The amendment made the following changes:

- The title amendment designates the correct agency, the Agency for Persons with Disabilities;
- Allows the court to order a period of review that is different than annually;
- Requires the agency to provide a copy of the review and provide reasonable notice of the review hearing to the state's attorney, if applicable, the person's attorney and guardian or guardian advocate, if appointed; and
- Changes the effective date to "upon becoming law."

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

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<sup>33</sup> J.R. v. Hansen, No. 12-14212 (11<sup>th</sup> Cir. Oct. 15, 2015) \*Hansen was the Director of APD when the case was originally filed.  
**STORAGE NAME:** h0919a.CFSS  
**DATE:** 1/19/2016