

By Senator Garcia

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1 A bill to be entitled
2 An act relating to involuntary commitment; amending s.
3 393.11, F.S.; requiring a petition for involuntary
4 admission to be executed by a petitioning commission
5 except under certain circumstances; requiring that one
6 person on the petitioning commission be either a
7 licensed physician or a licensed psychologist;
8 requiring the petition to allege that the person lacks
9 the capacity to give certain consent and has no
10 guardian or guardian advocate who can provide that
11 consent; requiring that the notice of the filing of a
12 petition for involuntary admission to residential
13 services be given to the Agency for Persons with
14 Disabilities; requiring that the agency's written
15 report on the examination of the person being
16 considered for involuntary admission be served on any
17 appointed guardian or guardian advocate; revising the
18 requirements for a court's appointment of an examining
19 committee; extending the right to challenge the
20 qualifications of those appointed to the examining
21 committee to the agency's counsel and a specified
22 state attorney; requiring that a committee member's
23 report must include an assessment of the person's need
24 for secure placement and other criteria; requiring
25 that the committee's report be served on any appointed
26 guardian or guardian advocate; providing that the
27 person may appear by video teleconference throughout
28 the initial proceeding on the petition for involuntary
29 admission to residential services; requiring that all

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30 stages of each proceeding be recorded rather than
31 stenographically reported; specifying that an order of
32 involuntary admission to residential services must
33 specify whether the placement is to be secure or
34 nonsecure and the level of supervision needed;
35 providing that a copy of an order of involuntary
36 admission be provided to any appointed guardian or
37 guardian advocate; authorizing the court to order
38 special provisions for residential services and
39 adequate supervision of the person under certain
40 conditions; specifying that an order authorizing
41 admission to residential services may not be
42 considered an adjudication of mental incapacity;
43 requiring that any minor involuntarily admitted to
44 residential services shall be evaluated within 6
45 months before reaching majority; drawing a distinction
46 between the terms "capacity" and "competency";
47 specifying that the court issuing the order has
48 jurisdiction to enter further orders as recommended by
49 a certain support plan; adding a requirement to a
50 certain annual review of the person's continued
51 involuntary admission to residential services;
52 providing an effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Section 393.11, Florida Statutes, is amended to
57 read:

58 393.11 Involuntary admission to residential services.—

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59 (1) JURISDICTION.—If a person has an intellectual
60 disability or autism and requires involuntary admission to
61 residential services provided by the agency, the circuit court
62 of the county in which the person resides has jurisdiction to
63 conduct a hearing, inquire as to whether the person has a
64 guardian or guardian advocate who can consent to voluntary
65 services on the person's behalf, and enter an order
66 involuntarily admitting the person in order for the person to
67 receive the care, treatment, habilitation, and rehabilitation
68 that the person needs. For the purpose of identifying
69 intellectual disability or autism, diagnostic capability shall
70 be established by the agency. Except as otherwise specified, the
71 proceedings under this section are governed by the Florida Rules
72 of Civil Procedure.

73 (2) PETITION.—

74 (a) A petition for involuntary admission to residential
75 services shall ~~may~~ be executed by a petitioning commission,
76 unless the petition is filed pursuant to s. 916.303.

77 (b) The petitioning commission shall consist of three
78 persons. One of these persons shall be a physician licensed and
79 practicing under chapter 458 or chapter 459, or a psychologist
80 licensed under chapter 490.

81 (c) The petition shall be verified and must:

82 1. State the name, age, and present address of the
83 commissioners and their relationship to the person who has an
84 intellectual disability or autism;

85 2. State the name, age, county of residence, and present
86 address of the person who has an intellectual disability or
87 autism;

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88 3. Allege that the commission believes that the person
89 needs involuntary residential services and specify the factual
90 information on which the belief is based;

91 4. Allege that the person lacks sufficient capacity to give
92 express and informed consent to a voluntary application for
93 services pursuant to s. 393.065 and does not have a guardian or
94 guardian advocate who can do so, and lacks the basic survival
95 and self-care skills to provide for the person's well-being or
96 is likely to physically injure others if allowed to remain at
97 liberty; and

98 5. State whether a secure or nonsecure ~~which~~ residential
99 setting is the least restrictive and most appropriate
100 alternative and specify the factual information on which the
101 belief is based.

102 (d) The petition must be filed in the circuit court of the
103 county in which the person who has the intellectual disability
104 or autism resides.

105 (3) NOTICE.—

106 (a) Notice of the filing of the petition shall be given to
107 the individual and his or her legal guardian or guardian
108 advocate if one has been appointed. The notice shall be given
109 both verbally and in writing in the language of the client, or
110 in other modes of communication of the client, and in English.
111 Notice shall also be given to the agency and such other persons
112 as the court may direct. The petition for involuntary admission
113 to residential services shall be served with the notice.

114 (b) If a motion or petition has been filed pursuant to s.
115 916.303 to dismiss criminal charges against a defendant who has
116 an intellectual disability or autism, and a petition is filed to

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117 involuntarily admit the defendant to residential services under
118 this section, the notice of the filing of the petition must also
119 be given to the defendant's attorney, the state attorney of the
120 circuit from which the defendant was committed, and the agency.

121 (c) The notice must state that a hearing shall be set to
122 inquire into the need of the person who has an intellectual
123 disability or autism for involuntary residential services. The
124 notice must also state the date of the hearing on the petition.

125 (d) The notice must state that the individual who has an
126 intellectual disability or autism has the right to be
127 represented by counsel of his or her own choice and that, if the
128 person cannot afford an attorney, the court shall appoint one.

129 (4) AGENCY PARTICIPATION.—

130 (a) Upon receiving the petition, the court shall
131 immediately order the agency to examine the person being
132 considered for involuntary admission to residential services.

133 (b) Following examination, the agency shall file a written
134 report with the court at least 10 working days before the date
135 of the hearing. The report must be served on the petitioner, the
136 person who has the intellectual disability or autism, his or her
137 guardian or guardian advocate if one has been appointed, and the
138 person's attorney at the time the report is filed with the
139 court.

140 (c) The report must contain the findings of the agency's
141 evaluation, any recommendations deemed appropriate, and a
142 determination of whether the person is eligible for services
143 under this chapter.

144 (5) EXAMINING COMMITTEE.—

145 (a) Upon receiving the petition, the court shall

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146 immediately appoint an examining committee to examine the person
147 being considered for involuntary admission to residential
148 services provided by the agency.

149 (b) The court shall appoint at least two, but no more than
150 three, disinterested qualified experts who meet the requirements
151 for a qualified evaluator as defined in paragraph (15) (d) have
152 ~~demonstrated to the court an expertise in the diagnosis,~~
153 ~~evaluation, and treatment of persons who have intellectual~~
154 ~~disabilities or autism. The committee must include at least one~~
155 ~~licensed and qualified physician, one licensed and qualified~~
156 ~~psychologist, and one qualified professional who, at a minimum,~~
157 ~~has a master's degree in social work, special education, or~~
158 ~~vocational rehabilitation counseling,~~ to examine the person and
159 to testify at the hearing on the involuntary admission to
160 residential services.

161 (c) Counsel for the person who is being considered for
162 involuntary admission to residential services, ~~and~~ counsel for
163 the petition commission, counsel for the agency, and a state
164 attorney in cases arising under chapter 916 have ~~has~~ the right
165 to challenge the qualifications of those appointed to the
166 examining committee.

167 (d) Members of the committee may not be employees of the
168 agency or be associated with each other in practice or in
169 employer-employee relationships. Members of the committee may
170 not have served as members of the petitioning commission.
171 Members of the committee may not be employees of the members of
172 the petitioning commission or be associated in practice with
173 members of the commission.

174 (e) Each member of the committee shall prepare a written

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175 report for the court. The reports ~~report~~ must explicitly
176 document the extent that the person meets the criteria for
177 involuntary admission. The report, and expert testimony, must
178 include, but not be limited to:

179 ~~1. The degree of the person's intellectual disability or~~
180 ~~autism and whether, using diagnostic capabilities established by~~
181 ~~the agency, the person is eligible for agency services;~~

182 ~~1.2.~~ Whether, because of the person's degree of
183 intellectual disability or autism, the person:

184 a. Lacks sufficient capacity to give express and informed
185 consent to a voluntary application for services pursuant to s.
186 393.065, does not have a guardian or guardian advocate who may
187 do so for the person, and lacks basic survival and self-care
188 skills to such a degree that close supervision and habilitation
189 in a residential setting is necessary, and, if not provided,
190 would result in a threat of substantial harm to the person's
191 well-being; or

192 b. Is likely to physically injure others if allowed to
193 remain at liberty.

194 ~~2.3.~~ The purpose to be served by residential services ~~care~~;

195 ~~3.4.~~ A recommendation on the type of residential placement
196 which would be the most appropriate and least restrictive for
197 the person, including an assessment of the need for secure
198 placement if in the opinion of the examining committee members
199 the person presents a danger to himself or herself, or to
200 others, and the level of supervision needed; and

201 ~~4.5.~~ The appropriate care, habilitation, and treatment for
202 the intellectual disability or autism which is within the
203 agency's responsibilities under this chapter.

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204 (f) The committee members shall file the report with the
205 court at least 10 working days before the date of the hearing.
206 The report must be served on the petitioner, the person who has
207 the intellectual disability or autism and his or her guardian or
208 guardian advocate if one has been appointed, the person's
209 attorney at the time the report is filed with the court, and the
210 agency.

211 (g) Members of the examining committee shall receive a
212 reasonable fee to be determined by the court. The fees shall be
213 paid from the general revenue fund of the county in which the
214 person who has the intellectual disability or autism resided
215 when the petition was filed.

216 (6) COUNSEL; GUARDIAN AD LITEM.—

217 (a) The person who has the intellectual disability or
218 autism must be represented by counsel at all stages of the
219 judicial proceeding, including review hearings. If the person is
220 indigent and cannot afford counsel, the court shall appoint a
221 public defender at least 20 working days before the scheduled
222 hearing. The person's counsel shall have full access to the
223 records of the service provider and the agency. In all cases,
224 the attorney shall represent the rights and legal interests of
225 the person, regardless of who initiates the proceedings or pays
226 the attorney fee.

227 (b) If the attorney, during the course of his or her
228 representation, reasonably believes that the person who has the
229 intellectual disability or autism cannot adequately act in his
230 or her own interest, the attorney may seek the appointment of a
231 guardian, guardian advocate, or a guardian ad litem. A prior
232 finding of incapacity ~~incompetency~~ is not required before a

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233 guardian ad litem is appointed pursuant to this section.

234 (7) HEARING.—

235 (a) The hearing for involuntary admission shall be
236 conducted, and the order shall be entered, in the county in
237 which the petition is filed. The hearing shall be conducted in a
238 physical setting not likely to be injurious to the person's
239 condition.

240 (b) A hearing on the petition must be held as soon as
241 practicable after the petition is filed, but reasonable delay
242 for the purpose of investigation, discovery, or procuring
243 counsel or witnesses shall be granted.

244 (c) The court may appoint a general or special magistrate
245 to preside. Except as otherwise specified, the magistrate's
246 proceeding shall be governed by the Florida Rules of Civil
247 Procedure.

248 (d) The person who has the intellectual disability or
249 autism must be ~~physically~~ present, either in person or by video
250 teleconference, throughout the entire initial proceeding on the
251 petition for involuntary admission to residential services. If
252 the person's attorney believes that the person's presence at the
253 hearing is not in his or her best interest, the person's
254 presence may be waived once the court has seen the person and
255 the hearing has commenced.

256 (e) The person has the right to present evidence and to
257 cross-examine all witnesses and other evidence alleging the
258 appropriateness of the person's admission to residential
259 services care. Other relevant and material evidence regarding
260 the appropriateness of the person's admission to residential
261 services; the most appropriate, least restrictive residential

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262 placement; and the appropriate care, treatment, and habilitation
263 of the person, including written or oral reports, may be
264 introduced at the hearing by any interested person.

265 (f) The petitioning commission may be represented by
266 counsel at the hearing. The petitioning commission shall have
267 the right to call witnesses, present evidence, cross-examine
268 witnesses, and present argument on behalf of the petitioning
269 commission.

270 (g) All evidence shall be presented according to chapter
271 90. The burden of proof shall be on the party alleging the
272 appropriateness of the person's admission to residential
273 services. The burden of proof shall be by clear and convincing
274 evidence.

275 (h) All stages of each proceeding shall be recorded
276 ~~stenographically reported~~.

277 (8) ORDER.—

278 (a) In all cases, the court shall issue written findings of
279 fact and conclusions of law to support its decision. The order
280 must state the basis for the findings of fact.

281 (b) An order of involuntary admission to residential
282 services may not be entered unless the court finds that:

283 1. The person is intellectually disabled or autistic;

284 2. Placement in a residential setting is the least
285 restrictive and most appropriate alternative to meet the
286 person's needs; and

287 3. Because of the person's degree of intellectual
288 disability or autism, the person:

289 a. Lacks sufficient capacity to give express and informed
290 consent to a voluntary application for services pursuant to s.

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291 393.065, does not have a guardian or guardian advocate who may
292 give consent for the person, and lacks basic survival and self-
293 care skills to such a degree that close supervision and
294 habilitation in a residential setting is necessary and, if not
295 provided, would result in a real and present threat of
296 substantial harm to the person's well-being; or

297 b. Is likely to physically injure others if allowed to
298 remain at liberty.

299 (c) An order of involuntary admission to residential
300 services must specify whether placement shall be secure or
301 nonsecure and state the level of supervision needed.

302 (d)~~(e)~~ If the evidence presented to the court is not
303 sufficient to warrant involuntary admission to residential
304 services, but the court feels that residential services would be
305 beneficial, the court may recommend that the person seek
306 voluntary admission.

307 (e)~~(d)~~ If an order of involuntary admission to residential
308 services provided by the agency is entered by the court, a copy
309 of the written order shall be served upon the person and his or
310 her guardian or guardian advocate if one has been appointed, the
311 person's counsel, the agency, and the state attorney and the
312 person's defense counsel, if applicable. The order of
313 involuntary admission sent to the agency shall also be
314 accompanied by a copy of the examining committee's report and
315 other reports contained in the court file.

316 (f)~~(e)~~ The court may order special provisions for
317 residential services and adequate supervision of the person in
318 order to ensure that the person is placed and maintained in the
319 least restrictive, most appropriate setting. Special provisions

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320 may include auxiliary services that the agency provides to
321 reduce risk, and with which the person must be compliant to
322 maintain community safety. ~~Upon receiving the order, the agency~~
323 ~~shall, within 45 days, provide the court with a copy of the~~
324 ~~person's family or individual support plan and copies of all~~
325 ~~examinations and evaluations, outlining the treatment and~~
326 ~~rehabilitative programs. The agency shall document that the~~
327 ~~person has been placed in the most appropriate, least~~
328 ~~restrictive and cost-beneficial residential setting. A copy of~~
329 ~~the family or individual support plan and other examinations and~~
330 ~~evaluations shall be served upon the person and the person's~~
331 ~~counsel at the same time the documents are filed with the court.~~

332 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
333 RESIDENTIAL SERVICES.—

334 (a) An order authorizing an admission to residential
335 services ~~care~~ may not be considered an adjudication of mental
336 incapacity ~~incompetency~~. A person is not presumed incapacitated
337 ~~incompetent~~ solely by reason of the person's involuntary
338 admission to residential services. A person may not be denied
339 the full exercise of all legal rights guaranteed to citizens of
340 this state and of the United States.

341 (b) Any minor involuntarily admitted to residential
342 services shall, within the 6 months before ~~upon~~ reaching
343 majority, be evaluated pursuant to subsection (15) and be given
344 a hearing to determine the continued appropriateness of his or
345 her involuntary admission.

346 (10) CAPACITY ~~COMPETENCY~~.—

347 (a) The issue of capacity ~~competency~~ is separate and
348 distinct from a determination of the appropriateness of

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349 involuntary admission to residential services due to
350 intellectual disability or autism.

351 (b) The issue of the capacity ~~competency~~ of a person who
352 has an intellectual disability or autism for purposes of
353 assigning guardianship shall be determined in a separate
354 proceeding according to the procedures and requirements of
355 chapter 744.

356 (11) COMPETENCY.—The issue of the competency of a person
357 who has an intellectual disability or autism for purposes of
358 determining whether the person is competent to proceed in a
359 criminal trial shall be determined in accordance with chapter
360 916.

361 (12) ~~(11)~~ CONTINUING JURISDICTION.—The court that ~~which~~
362 issues the initial order for involuntary admission to
363 residential services under this section has continuing
364 jurisdiction to enter further orders to ensure that the person
365 is receiving adequate care, treatment, habilitation, and
366 rehabilitation as recommended in the person's support plan as
367 described in s. 393.0651, ~~including psychotropic medication and~~
368 ~~behavioral programming.~~ Upon request, the court may transfer the
369 continuing jurisdiction to the court where a client resides if
370 it is different from where the original involuntary admission
371 order was issued. A person may not be released from an order for
372 involuntary admission to residential services except by the
373 order of the court.

374 (13) ~~(12)~~ APPEAL.—

375 (a) Any party to the proceeding who is affected by an order
376 of the court, including the agency, may appeal to the
377 appropriate district court of appeal within the time and in the

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378 manner prescribed by the Florida Rules of Appellate Procedure.

379 (b) The filing of an appeal by the person who has an
380 intellectual disability or autism stays admission of the person
381 into residential care. The stay remains in effect during the
382 pendency of all review proceedings in Florida courts until a
383 mandate issues.

384 (14)~~(13)~~ HABEAS CORPUS.—At any time and without notice, any
385 person involuntarily admitted into residential care, or the
386 person's parent or legal guardian in his or her behalf, is
387 entitled to file a petition for a writ of habeas corpus to
388 question the cause, legality, and appropriateness of the
389 person's involuntary admission. Each person, or the person's
390 parent or legal guardian, shall receive specific written notice
391 of the right to petition for a writ of habeas corpus at the time
392 of his or her involuntary placement.

393 (15)~~(14)~~ REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO
394 RESIDENTIAL SERVICES.—

395 (a) If a person is involuntarily admitted to residential
396 services provided by the agency, the agency shall employ or, if
397 necessary, contract with a qualified evaluator to conduct a
398 review annually, unless otherwise ordered, to determine the
399 propriety of the person's continued involuntary admission to
400 residential services based on the criteria in paragraph (8) (b).
401 The review shall include an assessment of the most appropriate
402 and least restrictive type of residential placement for the
403 person. If the person was committed under the criteria in sub-
404 subparagraph (8) (b) 3.a., the review must also address whether a
405 guardian or guardian advocate has been appointed since the
406 commitment.

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407 (b) A placement resulting from an involuntary admission to
408 residential services must be reviewed by the court at a hearing
409 annually, unless a shorter review period is ordered at a
410 previous hearing. The agency shall provide to the court the
411 completed review ~~reviews~~ by the qualified evaluator. The review
412 and hearing must determine whether the person continues to meet
413 the criteria in paragraph (8) (b) and, if so, whether the person
414 still requires involuntary placement in a residential setting
415 and whether the person is receiving adequate care, treatment,
416 habilitation, and rehabilitation in the residential setting.

417 (c) The agency shall provide a copy of the review and
418 reasonable notice of the hearing to the appropriate state
419 attorney, if applicable, the person, the person's attorney, and
420 the person's guardian or guardian advocate, if appointed.

421 (d) For purposes of this section, the term "qualified
422 evaluator" means a psychiatrist licensed under chapter 458 or
423 chapter 459, or a psychologist licensed under chapter 490, who
424 has demonstrated to the court an expertise in the diagnosis,
425 evaluation, and treatment of persons who have an intellectual
426 disability or autism ~~disabilities~~.

427 Section 2. This act shall take effect July 1, 2017.