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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2018	.	
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The Committee on Children, Families, and Elder Affairs (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 204 - 486
and insert:

(g) The court ~~Members of the examining committee~~ shall pay what it determines to be receive a reasonable fee for the evaluation and testimony given by members of the examining committee ~~to be determined by the court. The fees shall be paid from the general revenue fund of the county in which the person who has the intellectual disability or autism resided when the~~



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11 ~~petition was filed.~~

12 (6) COUNSEL; GUARDIAN AD LITEM.—

13 (a) The person who has the intellectual disability or
14 autism must be represented by counsel at all stages of the
15 judicial proceeding, including annual hearings under subsection
16 (15) which require a court to determine the continued need for a
17 person's involuntary placement resulting from an involuntary
18 admission to residential services. If the person is indigent and
19 cannot afford counsel, the court shall appoint a public defender
20 at least 20 working days before the scheduled hearing. The
21 person's counsel shall have full access to the records of the
22 service provider and the agency. In all cases, the attorney
23 shall represent the rights and legal interests of the person,
24 regardless of who initiates the proceedings or pays the attorney
25 fee.

26 (b) If the attorney, during the course of his or her
27 representation, reasonably believes that the person who has the
28 intellectual disability or autism cannot adequately act in his
29 or her own interest, the attorney may seek the appointment of a
30 guardian ad litem. A prior finding of incapacity ~~incompetency~~ is
31 not required before a guardian ad litem is appointed pursuant to
32 this section.

33 (7) HEARING.—

34 (a) The hearing for involuntary admission shall be
35 conducted, and the order shall be entered, in the county in
36 which the petition is filed. The hearing shall be conducted in a
37 physical setting not likely to be injurious to the person's
38 condition. When a petition for involuntary admission to
39 residential services is considered at a hearing, the court must



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40 consider whether there is an alternative to involuntary
41 commitment under this section that will sufficiently address the
42 person's need for residential services. The court shall use the
43 least restrictive means available to assist a person who is
44 subject to a petition for involuntary admission to residential
45 services. The court shall determine if the person has a guardian
46 or guardian advocate and the scope of the authorized powers of
47 the guardian or guardian advocate to make decisions regarding
48 the residence, medical treatment, or other services necessary to
49 sufficiently address the needs of the person.

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

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

58 (d) The person who has the intellectual disability or
59 autism must be ~~physically~~ present, either in person or by
60 contemporaneous video communication technology, throughout the
61 entire initial proceeding on the petition for involuntary
62 admission to residential services. In accordance with Rule
63 1.451, Florida Rules of Civil Procedure, the court may authorize
64 testimony at the hearing by contemporaneous audio or video
65 communication technology upon agreement of the parties or for
66 good cause shown by written request of one party and by giving
67 reasonable notice to all other parties. If the person's attorney
68 believes that the person's presence at the hearing is not in his



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69 or her best interest, the person's presence may be waived once
70 the court has seen the person and the hearing has commenced.

71 (e) The person has the right to present evidence and to
72 cross-examine all witnesses and other evidence alleging the
73 appropriateness of the person's admission to residential
74 services care. Other relevant and material evidence regarding
75 the appropriateness of the person's admission to residential
76 services; the most appropriate, least restrictive residential
77 placement; and the appropriate care, treatment, and habilitation
78 of the person, including written or oral reports, may be
79 introduced at the hearing by any interested person.

80 (f) The petitioning commission may be represented by
81 counsel at the hearing. The petitioning commission shall have
82 the right to call witnesses, present evidence, cross-examine
83 witnesses, and present argument on behalf of the petitioning
84 commission.

85 (g) All evidence shall be presented according to chapter
86 90. The burden of proof shall be on the party alleging the
87 appropriateness of the person's admission to residential
88 services. The burden of proof shall be by clear and convincing
89 evidence.

90 (h) All stages of each proceeding shall be recorded
91 ~~stenographically reported~~.

92 (8) ORDER.—

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

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



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98 1. The person is intellectually disabled or autistic;
99 2. Placement in a residential setting is the least
100 restrictive and most appropriate alternative to meet the
101 person's needs and the order specifies whether the recommended
102 placement must be secure or nonsecure; and

103 3. Because of the person's degree of intellectual
104 disability or autism, the person:

105 a. Lacks sufficient capacity to give express and informed
106 consent to a voluntary application for services pursuant to s.
107 393.065, does not have a guardian or guardian advocate to
108 consent to services on his or her behalf, and lacks basic
109 survival and self-care skills to such a degree that close
110 supervision and habilitation in a residential setting is
111 necessary and, if not provided, would result in a real and
112 present threat of substantial harm to the person's well-being;
113 or

114 b. Is likely to physically injure others if allowed to
115 remain at liberty.

116 (c) If the evidence presented to the court is not
117 sufficient to warrant involuntary admission to residential
118 services, but the court feels that residential services would be
119 beneficial, the court may recommend that the person seek
120 voluntary admission.

121 (d) If an order of involuntary admission to residential
122 services provided by the agency is entered by the court, a copy
123 of the written order shall be served upon the person and his or
124 her guardian or guardian advocate if one has been appointed, the
125 person's counsel, the agency, and the state attorney and the
126 person's defense counsel, if applicable. The order of



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127 involuntary admission sent to the agency shall also be
128 accompanied by a copy of the examining committee's report and
129 other reports contained in the court file.

130 (e) The court may also order special provisions for
131 residential services and adequate supervision of the person,
132 when recommended by the agency, in order to ensure that the
133 person is placed and maintained in the least restrictive, most
134 appropriate setting. Special provisions may include auxiliary
135 services that the agency provides to reduce risk and that the
136 person must comply with to maintain community safety. Upon
137 ~~receiving the order, the agency shall, within 45 days, provide~~
138 ~~the court with a copy of the person's family or individual~~
139 ~~support plan and copies of all examinations and evaluations,~~
140 ~~outlining the treatment and rehabilitative programs. The agency~~
141 ~~shall document that the person has been placed in the most~~
142 ~~appropriate, least restrictive and cost-beneficial residential~~
143 ~~setting. A copy of the family or individual support plan and~~
144 ~~other examinations and evaluations shall be served upon the~~
145 ~~person and the person's counsel at the same time the documents~~
146 ~~are filed with the court.~~

147 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
148 RESIDENTIAL SERVICES.—

149 (a) An order authorizing an admission to residential
150 services ~~care~~ may not be considered an adjudication of mental
151 incapacity ~~incompetency~~. A person is not presumed incapacitated
152 ~~incompetent~~ solely by reason of the person's involuntary
153 admission to residential services. A person may not be denied
154 the full exercise of all legal rights guaranteed to citizens of
155 this state and of the United States.



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

161 (10) CAPACITY ~~COMPETENCY~~.—

162 (a) The issue of capacity ~~competency~~ is separate and
163 distinct from a determination of the appropriateness of
164 involuntary admission to residential services due to
165 intellectual disability or autism.

166 (b) The issue of the capacity ~~competency~~ of a person who
167 has an intellectual disability or autism for purposes of
168 assigning guardianship shall be determined in a separate
169 proceeding according to the procedures and requirements of
170 chapter 744.

171 (11) COMPETENCY.—The issue of the competency of a person
172 who has an intellectual disability or autism for purposes of
173 determining whether the person is competent to proceed in a
174 criminal trial shall be determined in accordance with chapter
175 916.

176 (12) ~~(11)~~ CONTINUING JURISDICTION.—The court that ~~which~~
177 issues the initial order for involuntary admission to
178 residential services under this section has continuing
179 jurisdiction to enter further orders to ensure that the person
180 is receiving adequate care, treatment, habilitation, and
181 rehabilitation, as recommended in the person's individualized
182 support plan ~~including psychotropic medication and behavioral~~
183 ~~programming~~. Upon request, the court may transfer the continuing
184 jurisdiction to the court where a client resides if it is



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185 different from where the original involuntary admission order
186 was issued. A person may not be released from an order for
187 involuntary admission to residential services except by the
188 order of the court.

189 (13)~~(12)~~ APPEAL.—

190 (a) Any party to the proceeding who is affected by an order
191 of the court, including the agency, may appeal to the
192 appropriate district court of appeal within the time and in the
193 manner prescribed by the Florida Rules of Appellate Procedure.

194 (b) The filing of an appeal by the person who has an
195 intellectual disability or autism stays admission of the person
196 into residential services ~~care~~. The stay remains in effect
197 during the pendency of all review proceedings in Florida courts
198 until a mandate issues.

199 (14)~~(13)~~ HABEAS CORPUS.—At any time and without notice, any
200 person involuntarily admitted into residential services ~~care~~, or
201 the person's parent or legal guardian in his or her behalf, is
202 entitled to file a petition for a writ of habeas corpus to
203 question the cause, legality, and appropriateness of the
204 person's involuntary admission. Each person, or the person's
205 parent or legal guardian, shall receive specific written notice
206 of the right to petition for a writ of habeas corpus at the time
207 of his or her involuntary placement.

208 (15)~~(14)~~ REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO
209 RESIDENTIAL SERVICES.—

210 (a) If a person is involuntarily admitted to residential
211 services provided by the agency, the agency shall employ or, if
212 necessary, contract with a qualified evaluator to conduct a
213 review annually, unless otherwise ordered, to determine the



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214 propriety of the person's continued involuntary admission to
215 residential services based on the criteria in paragraph (8) (b).
216 The review shall include an assessment of the most appropriate
217 and least restrictive type of residential placement for the
218 person. If the person was committed under the criteria in sub-
219 subparagraph (8) (b) 3.a., the review must also address whether
220 the person has had a guardian or guardian advocate appointed
221 since the commitment.

222 (b) A placement resulting from an involuntary admission to
223 residential services must be reviewed by the court at a hearing
224 annually, unless a shorter review period is ordered at a
225 previous hearing. The agency shall provide to the court the
226 completed review ~~reviews~~ by the qualified evaluator. The ~~review~~
227 ~~and~~ hearing must occur within 30 days after the court receives
228 the review and determines ~~determine~~ whether the person continues
229 to be eligible for agency services and meets ~~meet~~ the criteria
230 in paragraph (8) (b) and, if so, whether the person still
231 requires involuntary placement in a residential setting and
232 whether the person is receiving adequate care, treatment,
233 habilitation, and rehabilitation in the residential setting.

234 (c) The agency shall provide a copy of the review and
235 reasonable notice of the hearing to the appropriate state
236 attorney, if applicable, the person, the person's attorney, and
237 the person's guardian or guardian advocate, if appointed.

238 (d) For purposes of this section, the term "qualified
239 evaluator" means a psychiatrist licensed under chapter 458 or
240 chapter 459, or a psychologist licensed under chapter 490, who
241 has demonstrated to the court an expertise in the diagnosis,
242 evaluation, and treatment of persons who have an intellectual



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243 disability or autism disabilities.

244 Section 2. Section 916.301, Florida Statutes, is amended to
245 read:

246 916.301 Appointment of experts.—

247 (1) All evaluations ordered by the court under this part
248 must be conducted by a qualified expert ~~experts~~ who meets the
249 requirements for a qualified evaluator as defined in s. 393.11
250 ~~have expertise in evaluating persons who have an intellectual~~
251 ~~disability or autism. The agency shall maintain and provide the~~
252 ~~courts annually with a list of available professionals who are~~
253 ~~appropriately licensed and qualified to perform evaluations of~~
254 ~~defendants alleged to be incompetent to proceed due to~~
255 ~~intellectual disability or autism. The courts may use~~
256 ~~professionals from this list when appointing experts and~~
257 ~~ordering evaluations under this part.~~

258 (2) For a competency evaluation when ~~If~~ a defendant's
259 suspected mental condition is intellectual disability or autism,
260 the court shall order the agency to select an expert to evaluate
261 whether the defendant meets the definition of intellectual
262 disability or autism and, if so, whether the defendant is
263 incompetent to proceed due to intellectual disability or autism.
264 ~~appoint the following:~~

265 ~~(a) At least one, or~~ At the request of any party, the court
266 may appoint an additional expert or direct the agency to select
267 an additional expert ~~two experts~~ to evaluate whether the
268 defendant meets the definition of intellectual disability or
269 autism and, if so, whether the defendant is competent to
270 proceed; ~~and~~

271 ~~(b) A psychologist selected by the agency who is licensed~~



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272 ~~or authorized by law to practice in this state, with experience~~
273 ~~in evaluating persons suspected of having an intellectual~~
274 ~~disability or autism, and a social service professional, with~~
275 ~~experience in working with persons who have an intellectual~~
276 ~~disability or autism.~~

277 ~~1. The psychologist shall evaluate whether the defendant~~
278 ~~meets the definition of intellectual disability or autism and,~~
279 ~~if so, whether the defendant is incompetent to proceed due to~~
280 ~~intellectual disability or autism.~~

281 ~~2. The social service professional shall provide a social~~
282 ~~and developmental history of the defendant.~~

283 (3) The experts may examine the defendant in jail, in
284 another appropriate local facility, in a facility of the
285 Department of Corrections, or on an outpatient basis.

286 (4) Experts appointed by the court, including experts
287 selected by the agency, to evaluate the mental condition of a
288 defendant in a criminal case shall be allowed reasonable fees,
289 as determined and paid by the court, for services rendered as
290 evaluators and as witnesses, ~~which shall be paid by the court.~~
291 State employees shall be paid

292
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete line 10

296 and insert:

297 involuntary admission; requiring the court to pay
298 reasonable fees for the evaluation and testimony by
299 members of the examining committee; deleting a
300 provision requiring such fees to be paid from each



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301 county's general revenue fund; providing for
302 participation of