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The 2021 Florida Statutes

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PUBLIC HEALTH

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MENTAL HEALTH

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394.463 Involuntary examination.—

(1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

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

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

(b)1. 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

2. 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.

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. [394.462](#) for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. [394.462](#) for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. [464.0123](#), a mental health counselor, a marriage and family therapist, or a clinical social worker may execute 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 and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. [394.462](#) for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

(b) A person may not be removed from any program or residential placement licensed under chapter 400 or chapter 429 and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the person is such that preparation of a law enforcement officer's report is not practicable before removal, the report shall be completed as soon as possible after removal, but in any case before the person is transported to a receiving facility. A facility admitting a person for involuntary examination who is not accompanied by the required ex parte order, professional certificate, or law enforcement officer's report shall notify the department of such admission by certified mail or by e-mail, if available, by the next working day. The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.

(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may:

1. Serve and execute such order on any day of the week, at any time of the day or night; and
2. Use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and take custody of the person who is the subject of the ex parte order. When practicable, a law enforcement officer who has received crisis intervention team (CIT) training shall be assigned to serve and execute the ex parte order.

(d)1. A law enforcement officer taking custody of a person under this subsection may seize and hold a firearm or any ammunition the person possesses at the time of taking

him or her into custody if the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person.

2. If the law enforcement officer takes custody of the person at the person's residence and the criteria in subparagraph 1. have been met, the law enforcement officer may seek the voluntary surrender of firearms or ammunition kept in the residence which have not already been seized under subparagraph 1. If such firearms or ammunition are not voluntarily surrendered, or if the person has other firearms or ammunition that were not seized or voluntarily surrendered when he or she was taken into custody, a law enforcement officer may petition the appropriate court under s. [790.401](#) for a risk protection order against the person.

3. Firearms or ammunition seized or voluntarily surrendered under this paragraph must be made available for return no later than 24 hours after the person taken into custody can document that he or she is no longer subject to involuntary examination and has been released or discharged from any inpatient or involuntary outpatient treatment provided or ordered under paragraph (g), unless a risk protection order entered under s. [790.401](#) directs the law enforcement agency to hold the firearms or ammunition for a longer period or the person is subject to a firearm purchase disability under s. [790.065](#)(2), or a firearm possession and firearm ownership disability under s. [790.064](#). The process for the actual return of firearms or ammunition seized or voluntarily surrendered under this paragraph may not take longer than 7 days.

4. Law enforcement agencies must develop policies and procedures relating to the seizure, storage, and return of firearms or ammunition held under this paragraph.

(e) The department shall receive and maintain the copies of ex parte orders, involuntary outpatient services orders issued pursuant to s. [394.4655](#), involuntary inpatient placement orders issued pursuant to s. [394.467](#), professional certificates, and law enforcement officers' reports. These documents shall be considered part of the clinical record, governed by the provisions of s. [394.4615](#). These documents shall be used to prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and shall provide copies of reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided upon the order of a physician if the physician determines that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist or a clinical psychologist or, if the receiving facility is owned or operated by a hospital or health system, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.

(g) The examination period must be for up to 72 hours. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

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

2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;
 3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or
 4. A petition for involuntary services shall be filed in the circuit court if inpatient treatment is deemed necessary or with the criminal county court, as defined in s. [394.4655](#)(1), as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. [394.4655](#)(4)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.
- (h) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. [395.002](#) must be examined by a facility within the examination period specified in paragraph (g). The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services pursuant to s. [394.4655](#)(2) or involuntary inpatient placement pursuant to s. [394.467](#)(1), the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient services or involuntary outpatient placement must be entered into the patient's clinical record. This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before stabilization if the requirements of s. [395.1041](#)(3)(c) have been met.
- (i) One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:
1. The patient must be examined by a facility and released; or
 2. The patient must be transferred to a designated facility in which appropriate medical treatment is available. However, the facility must be notified of the transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.
- (3) NOTICE OF RELEASE.—Notice of the release shall be given to the patient's guardian or representative, to any person who executed a certificate admitting the patient to the receiving facility, and to any court which ordered the patient's evaluation. If the patient is a minor, information regarding the availability of a local mobile response service, suicide prevention resources, social supports, and local self-help groups must also be provided to the patient's guardian or representative along with the notice of the release.
- (4) DATA ANALYSIS.—Using data collected under paragraph (2)(a), the department shall, at a minimum, analyze data on both the initiation of involuntary examinations of children and the initiation of involuntary examinations of students who are removed from a school; identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student; study root causes for such patterns, trends, or repeated involuntary examinations; and make recommendations to encourage the use of alternatives to eliminate inappropriate initiations of such examinations. The department shall submit a report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered year.

History.—s. 7, ch. 71-131; s. 6, ch. 73-133; s. 204, ch. 77-147; s. 7, ch. 79-298; s. 10, ch. 82-212; s. 8, ch. 84-285; s. 59, ch. 91-221; s. 3, ch. 91-249; s. 69, ch. 92-289; s. 708, ch. 95-148; s. 16, ch. 96-169; s. 1, ch. 2003-88; ss. 5, 6, 7, ch. 2004-385; s. 2, ch. 2006-171; s. 19, ch. 2006-197; s. 2, ch. 2015-111; s. 6, ch. 2016-127; s. 88, ch. 2016-241; s. 26, ch. 2017-151; s. 8, ch. 2018-3; s. 2, ch. 2019-134; s. 18, ch. 2020-9; s. 8, ch. 2020-39; s. 2, ch. 2021-176; s. 4, ch. 2021-204.