TAC
Treatment Advocacy Center

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Florida State Guidance

Contents

Statutory basis and key terms

Florida Statutes Title XXIX, Chapter 394

Follow this link to read the Statutes in full here: Florida Statutes Title XXIX, Chapter 394

Key definitions

"Authorized professional" means a physician, physician assistant, clinical psychologist, psychiatric nurse, advanced practice registered nurse, mental health counselor, marriage and family therapist, or a clinical social worker.

"Department" means the Department of Children and Families.

"Designated receiving facility" means a facility approved by the Department which may be a public or private hospital, crisis stabilization unit, or addictions receiving facility; which provides emergency screening, evaluation, and short-term stabilization for mental health or substance abuse disorders.

"Ex parte" refers to a situation where a judge decides or acts after hearing from only one party, usually because something is urgent and cannot wait for a full hearing.

"Express and informed consent" means written permission that a capable person freely gives after being clearly informed about what they are agreeing to, so they can make a knowledgeable and intentional decision without pressure, deception, or coercion.

"Guardian advocate" means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment.

"Incompetent to consent to treatment" means a state in which a person's judgment is so affected by a mental illness that the person lacks the capacity to make a well-reasoned, willful, and knowing decision concerning their medical, mental health, or substance abuse treatment.

"Involuntary inpatient placement" means placement in a secure receiving or treatment facility providing stabilization and treatment services to a person who does not voluntarily consent to services.

"Involuntary outpatient services" means services provided in the community to a person who does not voluntarily consent to or participate in services.

"Mental illness" means an impairment of mental or emotional functioning that affect's a person's ability to exercise conscious control of one's actions, to perceive or understand reality, and to meet everyday needs.

This does not include a developmental disability, intoxication, or a condition caused solely by dementia, traumatic brain injury, antisocial behavior, or substance abuse.

"Receiving facility" means a public or private facility or hospital designated by the Department to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health evaluation, and to provide treatment or transportation

to the appropriate service provider. The term does not include a county jail.

"Services plan" means an individualized plan which details the recommended behavioral health services and supports needed to safeguard the patient's health and well-being in the community.

"Service provider" means any of the following:

- A receiving facility, a licensed substance use treatment facility, a treatment facility, a community mental health center or clinic, an entity under contract with the Department to provide mental health or substance abuse services.
- A psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a physician assistant, a psychiatrist, a psychologist, an advanced practice registered nurse, or a psychiatric nurse.

"Treatment facility" means a hospital, center, or clinic approved by the Department to provide extended mental health treatment or hospitalization, beyond that which is provided by a receiving facility. These facilities may be run by the state, supported by the state, operated by the federal government, or privately run if approved by the Department. Veterans may receive treatment in federal facilities only if their care is handled by the U.S. Department of Veterans Affairs.

Key abbreviations

- Law enforcement officer (LEO)

Emergency evaluation

(Referred to as "involuntary examination.")

Criteria for emergency evaluation

Because of a person's mental illness, they:

- Have refused voluntary examination after being informed of the purpose; *or*
- Are unable to determine for themselves whether examination is necessary; *and*
- Without care or treatment are likely to suffer from neglect or refuse to care for themselves; such neglect or refusal poses a real and present threat of substantial harm to their well-being; and it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; *or*

- There is a substantial likelihood that without treatment will cause serious bodily harm to self or others in the near future, as evidenced by recent behavior.

Who can initiate an emergency evaluation?

Any person can initiate emergency evaluation, but the process differs based on whether the person initiating is a law enforcement officer (LEO), an authorized professional (*see definition*), or any other person.

Any person

How? File a petition and affidavit in the circuit or county court seeking an ex parte order requiring involuntary examination.

What do they initiate? Will initiate the court's review to determine whether it appears criteria are met for a potential order for involuntary examination.

Where does the proposed patient go? Nowhere before court review.

What's the time limit for the response? No time limit is specified for response by the court, LEO, or authorized professional.

What happens? If the court determines it appears criteria are met, it may enter an ex parte order requiring involuntary examination. If less restrictive means are not available, the court will order an LEO or other designated agent of the court to place the person in civil custody and transport them to an appropriate, or nearest, designated facility for involuntary examination. When practicable, a law enforcement officer who has received crisis intervention team (CIT) training must be assigned to serve the ex parte order.

What's next? A physician, a clinical psychologist, or a psychiatric nurse must examine the patient without unnecessary delay to determine if the criteria for involuntary services (*see inpatient and outpatient below*) are met. For a minor, the examination must be initiated within 12 hours.

This examination must include, but is not limited to, consideration of the patient's treatment history and any information regarding the patient's condition and behavior provided by knowledgeable individuals.

Within the examination period, one of the following actions must be taken:

- The patient shall be released unless charged with a crime, in which case, the patient is returned to custody of law enforcement;

- The patient shall be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and if given, so placed; *or*
- A petition for involuntary services shall be filed in the circuit court or county court.

Time duration of the hold? Up to 72 hours, which begins when a patient arrives at the receiving facility. If the 72-hour period ends on a weekend or holiday and the facility:

- Intends to file a petition for involuntary services, the person may continue to be held until the close of business on the first business day.
- Does not intend to file a petition for involuntary services, the facility may postpone the person's release until the next business day only if they document adequate discharge planning and procedures are not possible until the next business day.

Who decides whether to continue to a hearing? The examining psychiatric professional.

Is there a form? Statewide forms are available here: Florida DCF Baker Act Forms

Law enforcement officer (LEO)

How? Upon belief a person appears to meet criteria.

What do they initiate? May place the person in civil custody to transport them for an involuntary examination.

Where does the proposed patient go? A designated receiving facility.

What's the time limit for the response? No time limit is specified for response by the court, LEO, or authorized professional.

What happens? The LEO will transport or direct the transport of the person to an appropriate, or the nearest, designated facility for examination. The LEO must restrain the person in the least restrictive manner available and appropriate under the circumstances.

The LEO must write a report documenting the circumstances under which the person was taken into civil custody.

What's next? A physician, a clinical psychologist, or a psychiatric nurse must examine the patient without unnecessary delay to determine if the criteria for involuntary services (*see inpatient and outpatient below*) are met. For a minor, the examination must be initiated within 12 hours.

This examination must include, but is not limited to, consideration of the patient's treatment history and any information regarding the patient's condition and behavior provided by knowledgeable individuals.

Within the examination period, one of the following actions must be taken:

- The patient shall be released unless charged with a crime, in which case, the patient is returned to custody of law enforcement;
- The patient shall be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and if given, so placed; or
- A petition for involuntary services shall be filed in the circuit court or with the county court.

Time duration of the hold? Up to 72 hours, which begins when a patient arrives at the receiving facility. If the 72-hour period ends on a weekend or holiday and the facility:

- Intends to file a petition for involuntary services, the person may continue to be held until the close of business on the first business day.
- Does not intend to file a petition for involuntary services, the facility may postpone the person's release until the next business day only if they document adequate discharge planning and procedures are not possible until the next business day.

Who decides whether to continue to a hearing? The examining psychiatric professional.

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Authorized professional (see definition)

How? Examine the person who may need treatment and issue a certificate within 48 hours stating the person appears to meet criteria and the observations which support their conclusion.

What do they initiate? May initiate civil custody to transport the person for an involuntary examination by an LEO if other less restrictive means, such as voluntary appearance for outpatient examination, are not available. The LEO must write a report detailing the circumstances under which the person was taken into civil custody.

Where does the proposed patient go? A designated receiving facility.

What's the time limit for the response? No time limit is specified for response by the court, LEO, or authorized professional.

What happens? The LEO must transport the person to an appropriate, or the nearest, designated facility for examination.

The LEO must write a report documenting the circumstances under which the person was taken into civil custody.

What's next? A physician, a clinical psychologist, or a psychiatric nurse must examine the patient without unnecessary delay to determine if the criteria for involuntary services (*see inpatient and outpatient below*) are met. For a minor, the examination must be initiated within 12 hours.

This examination must include, but is not limited to, consideration of the patient's treatment history and any information regarding the patient's condition and behavior provided by knowledgeable individuals.

Within the examination period, one of the following actions must be taken:

- The patient shall be released unless charged with a crime, in which case, the patient is returned to custody of law enforcement;
- The patient shall be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and if given, so placed; *or*
- A petition for involuntary services shall be filed in the circuit court or county court.

Time duration of the hold? Up to 72 hours, which begins when a patient arrives at the receiving facility. If the 72-hour period ends on a weekend or holiday and the facility:

- Intends to file a petition for involuntary services, the person may continue to be held until the close of business on the first business day.
- Does not intend to file a petition for involuntary services, the facility may postpone the person's release until the next business day only if they document adequate discharge planning and procedures are not possible until the next business day.

Who decides whether to continue to a hearing? The examining psychiatric professional.

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Inpatient and outpatient treatment

(Referred to as "involuntary services.")

Criteria for inpatient treatment:

- The person has a mental illness and because of the illness:
    - Has refused voluntary inpatient placement for treatment after being informed of its purpose; *or*
    - Is unable to determine for themselves whether inpatient placement is necessary; *and*
- The person is:
    - Incapable of surviving alone or with the help of willing, able, and responsible family members or friends, including available alternative services, and without treatment, is likely to suffer from neglect or refuse to care for themselves, and such neglect or refusal poses a real and present threat of substantial harm to their well-being; *or*
    - There is a substantial likelihood that without treatment the person will cause serious bodily harm to self or others in the near future, as evidenced by recent behavior causing, attempting, or threatening to cause such harm; *and*
- Less restrictive treatment alternatives are inappropriate or unavailable.

Criteria for outpatient treatment:

- The person has a mental illness and because of the illness:
    - Is unlikely to voluntarily participate in a recommended services plan and has refused voluntary services for treatment after explanation of why the services are necessary; *or*
    - Is unable to determine for themselves whether services are necessary; *and*
- The person is unlikely to survive safely in the community without supervision, based on clinical determination;
- The person has a history of not adhering to recommended treatment for mental illness;
- Based on the person's treatment history and current behavior, they are in need of involuntary outpatient treatment services in order to prevent relapse or deterioration that would result in serious bodily harm to self or others, or substantial harm to their well-being;
- It is unlikely that the person will benefit from involuntary outpatient services; *and*
- Less restrictive alternatives are inappropriate or unavailable.

When can outpatient treatment be court-ordered?

Upon discharge from hospital or from a community setting.

Who can initiate?

Only the administrator of a receiving facility, the administrator of a treatment facility, or the service provider who is treating the person can initiate, and the process does not differ based on who initiates.

How? File a petition for involuntary services in the county where the patient is located. If requesting inpatient treatment, or inpatient treatment followed by outpatient services, the petition is filed with the circuit court. If requesting outpatient treatment only, the petition is filed with the county court.

Required documentation? The petition must state:

- Recommendation of inpatient treatment, outpatient treatment, or both.
- Recommended length of treatment.
- Reasons for recommendations.

A recommendation for inpatient or a combination of inpatient and outpatient treatment must be supported by the opinion of a psychiatrist and a clinical psychologist, another psychiatrist, or a psychiatric nurse who examined the person within the past 72 hours.

A recommendation for outpatient or a combination of inpatient and outpatient must:

- Identify the service provider who has agreed to provide services if the court orders treatment. If the person does not need public funding for the treatment, the identified provider may be the person's existing outpatient psychiatric provider.
- Include a written proposed services plan which has been deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider.

What's next? The court must hold a hearing within five court working days after the filing of the petition, unless the court grants the state or the patient's request for a continuance. The state may only obtain one continuance of up to seven calendar days upon showing good cause and due diligence. The patient may request an initial continuance for up to seven calendar days. The patient may request additional continuances for up to 21 days upon showing good cause and due diligence.

At the hearing, the court must consider testimony and evidence of the patient's competence to consent to services and treatment. If the court finds that the person is incompetent to consent to treatment, it must order a guardian advocate.

At the hearing, the court will determine if the patient meets criteria for treatment by clear and convincing evidence. If so, it may order the patient to inpatient treatment, outpatient

treatment, or a combination of both.

Who issues the treatment order? The court.

Who makes discharge decisions? Treating facility or service provider.

Who supervises the treatment plan? The service provider.

How long can the first treatment order last? Up to six months. An order for a combination of involuntary services must specify the length of time the patient is ordered to each.

What's the renewal process? If a patient is receiving outpatient treatment, the service provider must file a petition requesting authorization for continued services with the court that issued the initial order.

If a patient is receiving inpatient treatment at a receiving facility, the administrator must, before the expiration of the initial order, file a petition requesting authorization for continued services with the court that issued the initial order.

If a patient is receiving inpatient treatment at a treatment facility, the administrator must, before the expiration of the initial order, file a petition requesting authorization for continued services with the administrative law court.

The petition must be accompanied by a statement from the patient's physician, psychiatrist, psychiatric nurse, or clinical psychologist justifying the request, a brief description of the patient's treatment during the time they were receiving involuntary services, an individualized plan of continued treatment, and a proposed services plan if the petition is for involuntary outpatient services.

The court must schedule a hearing to be held within 15 days of filing. The existing order will remain in effect until the hearing. If it is shown that the patient continues to meet the criteria, the court or administrative law judge must issue an order for continued involuntary outpatient services, involuntary inpatient placement, or a combination of both for up to six months, as applicable. The same process may be repeated before the expiration of each additional period that the patient is under a treatment order.

What's the discharge process? The patient must be discharged upon expiration of the court order or at any time the patient no longer meets the criteria for involuntary services, unless the patient has transferred to voluntary status. Upon discharge, the service provider or facility must send a certificate of discharge to the court.

Is there a form? Statewide forms are available here: Florida DCF Baker Act Forms