

By Senator Peadar

1-1153-02

See HB 839

1 A bill to be entitled

2 An act relating to mental health treatment;

3 amending s. 394.455, F.S.; modifying

4 definitions; amending s. 394.463, F.S.;

5 providing additional criteria for involuntary

6 examination at a mental health receiving

7 facility; authorizing certain law enforcement

8 actions to enforce an outpatient treatment

9 order; providing requirements for recordkeeping

10 and reporting of such orders by the Agency for

11 Health Care Administration; amending s.

12 394.467, F.S.; providing additional criteria

13 for involuntary placement for mental health

14 treatment; providing for inpatient or

15 outpatient treatment; revising provisions

16 relating to the court's treatment order at a

17 hearing on involuntary placement; requiring an

18 order for outpatient treatment to include

19 requirements for the provision of services and

20 procedures in the event of patient

21 noncompliance; providing for waiver of the time

22 periods for the hearing on involuntary

23 placement if a voluntary agreement to treatment

24 is obtained; providing requirements for a

25 court-approved treatment plan under such

26 voluntary treatment agreement; providing

27 procedures for hearings in the event of

28 noncompliance with treatment according to the

29 agreement; clarifying provisions relating to

30 hearings for continued involuntary placement;

31 amending s. 394.499, F.S.; providing additional

1 criteria for eligibility to receive children's
2 crisis stabilization unit/juvenile addictions
3 receiving facility services; reenacting ss.
4 394.67(18), 394.674(2), 394.492(5) and (6),
5 984.19(4), and 985.211(2)(d), F.S., to
6 incorporate the amendments to ss. 394.463(1)
7 and 394.67, F.S., in cross-references;
8 providing an effective date.
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10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsections (3), (26), and (30) of section
13 394.455, Florida Statutes, are amended to read:

14 394.455 Definitions.--As used in this part, unless the
15 context clearly requires otherwise, the term:

16 (3) "Clinical record" means all parts of the record
17 required to be maintained and includes all medical records,
18 progress notes, charts, and admission and discharge data, and
19 all other information recorded by a facility which pertains to
20 the patient's hospitalization or ~~and~~ treatment.

21 (26) "Receiving facility" means any public or private
22 facility designated by the department to receive and hold
23 involuntary patients under emergency conditions or for
24 psychiatric evaluation and to provide short-term inpatient or
25 outpatient treatment. The term does not include a county jail.

26 (30) "Treatment facility" means any state-owned,
27 state-operated, or state-supported hospital, center, or clinic
28 designated by the department for extended inpatient or
29 outpatient treatment ~~and hospitalization~~, beyond that provided
30 for by a receiving facility, of persons who have a mental
31 illness, including facilities of the United States Government,

1 and any private facility designated by the department when
2 rendering such services to a person pursuant to the provisions
3 of this part. Patients treated in facilities of the United
4 States Government shall be solely those whose care is the
5 responsibility of the United States Department of Veterans
6 Affairs.

7 Section 2. Subsection (1) and paragraphs (c), (d), and
8 (e) of subsection (2) of section 394.463, Florida Statutes,
9 are amended to read:

10 394.463 Involuntary examination.--

11 (1) CRITERIA.--A person may be taken to a receiving
12 facility for involuntary examination if there is reason to
13 believe that he or she is mentally ill and because of his or
14 her mental illness:

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

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

20 (b)1. Without care or treatment, the person's current
21 condition is likely to deteriorate until his or her mental
22 illness significantly impairs his or her judgment, reason,
23 behavior, or capacity to recognize reality and has a
24 substantial probability of causing him or her to suffer severe
25 psychological, emotional, or physical harm;

26 2.1. ~~Without care or treatment, the person is likely~~
27 ~~to suffer from neglect or refuse to care for himself or~~
28 ~~herself; such neglect or refusal poses a real and present~~
29 ~~threat of substantial harm to his or her well-being; and it is~~
30 ~~not apparent that such harm may be avoided through the help of~~
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1 willing family members or friends or the provision of other
2 services; or

3 ~~3.2.~~ There is a substantial likelihood that without
4 care or treatment the person will cause serious bodily harm to
5 himself or herself or others in the near future, as evidenced
6 by recent behavior.

7 (2) INVOLUNTARY EXAMINATION.--

8 (c) A law enforcement officer acting in accordance
9 with an ex parte order issued pursuant to this subsection or a
10 treatment order issued pursuant to s. 394.467(6)(b)3. may
11 serve and execute such order on any day of the week, at any
12 time of the day or night.

13 (d) A law enforcement officer acting in accordance
14 with an ex parte order issued pursuant to this subsection or a
15 treatment order issued pursuant to s. 394.467(6)(b)3. may use
16 such reasonable physical force as is necessary to gain entry
17 to the premises, and any dwellings, buildings, or other
18 structures located on the premises, and to take custody of the
19 person who is the subject of the ~~ex parte~~ order.

20 (e) The Agency for Health Care Administration shall
21 receive and maintain the copies of ex parte orders, treatment
22 orders issued pursuant to s. 394.467(6)(b)3., professional
23 certificates, and law enforcement officers' reports. These
24 documents shall be considered part of the clinical record,
25 governed by the provisions of s. 394.4615. The agency shall
26 prepare annual reports analyzing the data obtained from these
27 documents, without information identifying patients, and shall
28 provide copies of reports to the department, the President of
29 the Senate, the Speaker of the House of Representatives, and
30 the minority leaders of the Senate and the House of
31 Representatives.

1 Section 3. Subsection (1), paragraph (b) of subsection
2 (6), and paragraphs (b) and (d) of present subsection (7) of
3 section 394.467, Florida Statutes, are amended, present
4 subsections (7) and (8) are renumbered as subsections (8) and
5 (9), respectively, and a new subsection (7) is added to that
6 section, to read:

7 394.467 Involuntary placement.--

8 (1) CRITERIA.--A person may be involuntarily placed in
9 inpatient or outpatient ~~for~~ treatment upon a finding of the
10 court, the determination of which shall include consideration
11 of the person's relevant medical history, that by clear and
12 convincing evidence ~~that~~:

13 (a) He or she is mentally ill and because of his or
14 her mental illness:

15 1.a. He or she has refused voluntary placement for
16 treatment after sufficient and conscientious explanation and
17 disclosure of the purpose of placement for treatment; or

18 b. He or she is unable to determine for himself or
19 herself whether placement is necessary; and

20 2.a. He or she is manifestly incapable of surviving
21 alone or with the help of willing and responsible family or
22 friends, including available alternative services, and,
23 without treatment, is likely to suffer from neglect or refuse
24 to care for himself or herself, and such neglect or refusal
25 poses a real and present threat of substantial harm to his or
26 her well-being; ~~or~~

27 b. There is substantial likelihood that in the near
28 future he or she will inflict serious bodily harm on himself
29 or herself or another person, as evidenced by recent behavior
30 causing, attempting, or threatening such harm; or ~~and~~

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1 c. Without treatment, his or her current condition is
2 likely to deteriorate until his or her mental illness
3 significantly impairs his or her judgment, reason, behavior,
4 or capacity to recognize reality and has a substantial
5 probability of causing him or her to suffer severe
6 psychological, emotional, or physical harm; and

7 (b) All available less restrictive treatment
8 alternatives which would offer an opportunity for improvement
9 of his or her condition have been judged to be inappropriate.

10 (6) HEARING ON INVOLUNTARY PLACEMENT.--

11 (b)1. If the court concludes that the patient meets
12 the criteria for involuntary placement, it shall order that
13 the patient be transferred to a treatment facility or, if the
14 patient is at a treatment facility, that the patient be
15 retained there or be treated at any other appropriate
16 receiving or treatment facility, or that the patient receive
17 services from a receiving or treatment facility, on an
18 involuntary basis, for a period of up to 6 months. ~~The order~~
19 ~~shall specify the nature and extent of the patient's mental~~
20 ~~illness.~~The facility shall discharge a patient any time the
21 patient no longer meets the criteria for involuntary
22 placement, unless the patient has transferred to voluntary
23 status.

24 2. The treatment order shall specify the nature and
25 extent of the patient's mental illness and whether treatment
26 shall be on an inpatient or outpatient basis. An order for
27 outpatient treatment must include provisions for case
28 management, intensive case management, assertive community
29 treatment, or a program for assertive community treatment, if
30 those resources are available. The order may also require that
31 the patient make use of, and the Department of Children and

1 Family Services or its designees supply, any or all of the
2 following categories of services to the patient: medication;
3 periodic blood tests or urinalysis to determine compliance
4 with treatment; individual or group therapy; day or partial
5 day program activities; educational and vocational training or
6 activities; alcohol or substance abuse treatment and
7 counseling and periodic tests for the presence of alcohol or
8 illegal drugs for persons with a history of alcohol or
9 substance abuse; supervision of living arrangements; and any
10 other services prescribed to treat the person's mental illness
11 and to assist the person in living and functioning in the
12 community or attempt to prevent a relapse or deterioration.

13 The services ordered shall be deemed to be clinically
14 appropriate by a physician, clinical psychologist, psychiatric
15 nurse, or social worker who consults with, or is employed or
16 contracted by, the provider that will have primary
17 responsibility for service provision under the order. Any
18 material modifications of the provisions of the treatment
19 order to which the patient does not agree must be approved by
20 the court.

21 3. The treatment order shall specify that if the
22 patient fails to comply with the outpatient treatment order,
23 the patient shall be brought to a receiving facility for
24 involuntary examination pursuant to s. 394.463(2)(c)-(i), in
25 order to determine whether the outpatient placement is still
26 the least restrictive treatment alternative which would offer
27 an opportunity for improvement of his or her condition.
28 Failure to comply with an outpatient treatment order shall not
29 be grounds for involuntary civil commitment or a finding of
30 contempt of court.

31 (7) VOLUNTARY TREATMENT AGREEMENT.--

1 (a) A person, or his or her legal counsel with the
2 person's consent, may waive the time periods for the hearing
3 under this section for a period not to exceed 90 days from the
4 date of the waiver, if the person and the state attorney
5 designated under paragraph (6)(a) agree at any time after the
6 commencement of the proceedings that the person shall obtain
7 treatment under a voluntary treatment agreement. The voluntary
8 treatment agreement shall be in writing, shall be approved by
9 the court, and shall include a treatment plan that provides
10 for treatment in the least restrictive manner consistent with
11 the needs of the the patient. Either party may request the
12 court to modify the treatment plan at any time during the
13 90-day period. The court shall designate the Department of
14 Children and Family Services or its designee to monitor the
15 patient's treatment under, and compliance with, the voluntary
16 treatment agreement.

17 (b)1. If the patient fails to comply with the
18 treatment according to the agreement, the Department of
19 Children and Family Services or its designee shall notify the
20 counsel designated under paragraph (6)(a) and the patient's
21 counsel of the patient's noncompliance. If, within 90 days
22 after the date of the waiver under this subsection, the
23 patient fails to comply with the voluntary treatment agreement
24 approved by the court under this subsection, the counsel
25 designated under paragraph (6)(a) may file with the court a
26 statement of facts which constitute the basis for the belief
27 that the patient is not in compliance. The statement shall be
28 sworn to be true and may be based on the information and
29 belief of the person filing the statement.

30 2. Upon receipt of the statement of noncompliance, the
31 court may issue an order to detain the patient pending the

1 final disposition. If the patient is detained under this
2 subparagraph, the court shall hold the hearing within a
3 72-hour period or, if the 72-hour period ends on a weekend or
4 holiday, no later than the next working day thereafter. The
5 facts alleged as the basis for involuntary placement prior to
6 the waiver of the time periods for hearing may be the basis
7 for a final disposition at a hearing under this subparagraph.

8 (c) Upon the motion of the patient, the court shall
9 hold a hearing on the issue of noncompliance with the
10 voluntary treatment agreement within a 72-hour period or, if
11 the 72-hour period ends on a weekend or holiday, no later than
12 the next working day thereafter, from the time the motion for
13 a hearing under this subparagraph is filed with the court. At
14 a hearing on the issue of noncompliance with the agreement,
15 the written statement of noncompliance submitted under
16 subparagraph (b)2. shall be prima facie evidence that a
17 violation of the conditions has occurred. If the patient
18 denies any of the facts as stated in the statement, he or she
19 has the burden of proving that the facts are false by a
20 preponderance of the evidence.

21 (8)(7) PROCEDURE FOR CONTINUED INVOLUNTARY
22 PLACEMENT.--

23 (b) If the patient continues to meet the criteria for
24 involuntary placement, the administrator of the treatment
25 facility shall, prior to the expiration of the period during
26 which treatment is ordered for ~~the treatment facility is~~
27 ~~authorized to retain~~ the patient, file a petition requesting
28 authorization for continued involuntary placement. The
29 request shall be accompanied by a statement from the patient's
30 physician or clinical psychologist justifying the request, a
31 brief description of the patient's treatment during the time

1 he or she was involuntarily placed, and an individualized plan
2 of continued treatment. Notice of the hearing shall be
3 provided as set forth in s. 394.4599. If at the hearing the
4 hearing officer finds that attendance at the hearing is not
5 consistent with the best interests of the patient, the hearing
6 officer may waive the presence of the patient from all or any
7 portion of the hearing, unless the patient, through counsel,
8 objects to the waiver of presence. The testimony in the
9 hearing must be under oath, and the proceedings must be
10 recorded.

11 (d) If at a hearing it is shown that the patient
12 continues to meet the criteria for involuntary placement, the
13 administrative law judge shall sign the order for continued
14 involuntary placement for a period not to exceed 6 months.
15 The same procedure shall be repeated prior to the expiration
16 of each additional period the patient is placed in treatment
17 ~~retained~~.

18 Section 4. Paragraph (b) of subsection (2) of section
19 394.499, Florida Statutes, is amended to read:

20 394.499 Integrated children's crisis stabilization
21 unit/juvenile addictions receiving facility services.--

22 (2) Children eligible to receive integrated children's
23 crisis stabilization unit/juvenile addictions receiving
24 facility services include:

25 (b) A person under 18 years of age who may be taken to
26 a receiving facility for involuntary examination, if there is
27 reason to believe that he or she is mentally ill and because
28 of his or her mental illness, pursuant to s. 394.463:

29 1. Has refused voluntary examination after
30 conscientious explanation and disclosure of the purpose of the
31 examination; or

1 2. Is unable to determine for himself or herself
2 whether examination is necessary; and

3 a. Without care or treatment, the person's current
4 condition is likely to deteriorate until his or her mental
5 illness significantly impairs his or her judgment, reason,
6 behavior, or capacity to recognize reality and has a
7 substantial probability of causing him or her to suffer severe
8 psychological, emotional, or physical harm;

9 b.a. Without care or treatment is likely to suffer
10 from neglect or refuse to care for himself or herself; such
11 neglect or refusal poses a real and present threat of
12 substantial harm to his or her well-being; and it is not
13 apparent that such harm may be avoided through the help of
14 willing family members or friends or the provision of other
15 services; or

16 c.b. There is a substantial likelihood that without
17 care or treatment he or she will cause serious bodily harm to
18 himself or herself or others in the near future, as evidenced
19 by recent behavior.

20 Section 5. For the purpose of incorporating the
21 amendments to section 394.463, Florida Statutes, in references
22 thereto, subsection (18) of section 394.67, Florida Statutes,
23 is reenacted to read:

24 394.67 Definitions.--As used in this part, the term:

25 (18) "Person who is experiencing an acute mental or
26 emotional crisis" means a child, adolescent, or adult who is
27 experiencing a psychotic episode or a high level of mental or
28 emotional distress which may be precipitated by a traumatic
29 event or a perceived life problem for which the individual's
30 typical coping strategies are inadequate. The term includes an

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1 individual who meets the criteria for involuntary examination
2 specified in s. 394.463(1).

3 Section 6. For the purpose of incorporating the
4 amendments to section 394.463, Florida Statutes, in references
5 thereto, subsection (2) of section 394.674, Florida Statutes,
6 is reenacted to read:

7 394.674 Clinical eligibility for publicly funded
8 substance abuse and mental health services; fee collection
9 requirements.--

10 (2) Crisis services, as defined in s. 394.67, must,
11 within the limitations of available state and local matching
12 resources, be available to each person who is eligible for
13 services under subsection (1), regardless of the person's
14 ability to pay for such services. A person who is experiencing
15 a mental health crisis and who does not meet the criteria for
16 involuntary examination under s. 394.463(1), or a person who
17 is experiencing a substance abuse crisis and who does not meet
18 the involuntary admission criteria in s. 397.675, must
19 contribute to the cost of his or her care and treatment
20 pursuant to the sliding fee scale developed under subsection
21 (4), unless charging a fee is contraindicated because of the
22 crisis situation.

23 Section 7. For the purpose of incorporating the
24 amendments to section 394.467, Florida Statutes, in references
25 thereto, subsections (5) and (6) of section 394.492, Florida
26 Statutes, are reenacted to read:

27 394.492 Definitions.--As used in ss. 394.490-394.497,
28 the term:

29 (5) "Child or adolescent who has an emotional
30 disturbance" means a person under 18 years of age who is
31 diagnosed with a mental, emotional, or behavioral disorder of

1 sufficient duration to meet one of the diagnostic categories
2 specified in the most recent edition of the Diagnostic and
3 Statistical Manual of the American Psychiatric Association,
4 but who does not exhibit behaviors that substantially
5 interfere with or limit his or her role or ability to function
6 in the family, school, or community. The emotional disturbance
7 must not be considered to be a temporary response to a
8 stressful situation. The term does not include a child or
9 adolescent who meets the criteria for involuntary placement
10 under s. 394.467(1).

11 (6) "Child or adolescent who has a serious emotional
12 disturbance or mental illness" means a person under 18 years
13 of age who:

14 (a) Is diagnosed as having a mental, emotional, or
15 behavioral disorder that meets one of the diagnostic
16 categories specified in the most recent edition of the
17 Diagnostic and Statistical Manual of Mental Disorders of the
18 American Psychiatric Association; and

19 (b) Exhibits behaviors that substantially interfere
20 with or limit his or her role or ability to function in the
21 family, school, or community, which behaviors are not
22 considered to be a temporary response to a stressful
23 situation.

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25 The term includes a child or adolescent who meets the criteria
26 for involuntary placement under s. 394.467(1).

27 Section 8. For the purpose of incorporating the
28 amendments to sections 394.463 and 394.467, Florida Statutes,
29 in references thereto, subsection (4) of section 984.19,
30 Florida Statutes, is reenacted to read:

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1 984.19 Medical, psychiatric, and psychological
2 examination and treatment of child; physical or mental
3 examination of parent, guardian, or person requesting custody
4 of child.--

5 (4) A judge may order that a child alleged to be or
6 adjudicated a child in need of services be treated by a
7 licensed health care professional. The judge may also order
8 such child to receive mental health or retardation services
9 from a psychiatrist, psychologist, or other appropriate
10 service provider. If it is necessary to place the child in a
11 residential facility for such services, then the procedures
12 and criteria established in s. 394.467 or chapter 393 shall be
13 used, whichever is applicable. A child may be provided mental
14 health or retardation services in emergency situations,
15 pursuant to the procedures and criteria contained in s.
16 394.463(1) or chapter 393, whichever is applicable.

17 Section 9. For the purpose of incorporating the
18 amendments to section 394.463, Florida Statutes, in references
19 thereto, paragraph (d) of subsection (2) of section 985.211,
20 Florida Statutes, is reenacted to read:

21 985.211 Release or delivery from custody.--

22 (2) Unless otherwise ordered by the court pursuant to
23 s. 985.215, and unless there is a need to hold the child, a
24 person taking a child into custody shall attempt to release
25 the child as follows:

26 (d) If the child is believed to be mentally ill as
27 defined in s. 394.463(1), to a law enforcement officer who
28 shall take the child to a designated public receiving facility
29 as defined in s. 394.455 for examination pursuant to the
30 provisions of s. 394.463.

31 Section 10. This act shall take effect July 1, 2002.

LEGISLATIVE SUMMARY

Provides additional criteria for involuntary examination at a mental health receiving facility and for involuntary placement for mental health treatment, under the Baker Act. Provides that a court order for involuntary placement may be for inpatient or outpatient treatment. Requires an order for outpatient treatment to include requirements for the provision of services and procedures in the event of patient noncompliance. Provides for waiver of the time periods for the hearing on involuntary placement if a voluntary agreement to treatment is obtained. Provides requirements for a court-approved treatment plan under such voluntary treatment agreement and provides procedures for hearings in the event of noncompliance with treatment according to the agreement. Conforms to the act criteria for eligibility to receive children's crisis stabilization unit/juvenile addictions receiving facility services.

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