

By Representative Lerner

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.  
9

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  
31

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

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

30 (7) VOLUNTARY TREATMENT AGREEMENT.--  
31

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 sections 394.463(1) and 394.467, Florida  
22 Statutes, in references thereto, the sections or subdivisions  
23 of Florida Statutes set forth below are 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  
31

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

3 394.674 Clinical eligibility for publicly funded  
4 substance abuse and mental health services; fee collection  
5 requirements.--

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

19 394.492 Definitions.--As used in ss. 394.490-394.497,  
20 the term:

21 (5) "Child or adolescent who has an emotional  
22 disturbance" means a person under 18 years of age who is  
23 diagnosed with a mental, emotional, or behavioral disorder of  
24 sufficient duration to meet one of the diagnostic categories  
25 specified in the most recent edition of the Diagnostic and  
26 Statistical Manual of the American Psychiatric Association,  
27 but who does not exhibit behaviors that substantially  
28 interfere with or limit his or her role or ability to function  
29 in the family, school, or community. The emotional disturbance  
30 must not be considered to be a temporary response to a  
31 stressful situation. The term does not include a child or

1 adolescent who meets the criteria for involuntary placement  
2 under s. 394.467(1).

3 (6) "Child or adolescent who has a serious emotional  
4 disturbance or mental illness" means a person under 18 years  
5 of age who:

6 (a) Is diagnosed as having a mental, emotional, or  
7 behavioral disorder that meets one of the diagnostic  
8 categories specified in the most recent edition of the  
9 Diagnostic and Statistical Manual of Mental Disorders of the  
10 American Psychiatric Association; and

11 (b) Exhibits behaviors that substantially interfere  
12 with or limit his or her role or ability to function in the  
13 family, school, or community, which behaviors are not  
14 considered to be a temporary response to a stressful  
15 situation.

16  
17 The term includes a child or adolescent who meets the criteria  
18 for involuntary placement under s. 394.467(1).

19 984.19 Medical, psychiatric, and psychological  
20 examination and treatment of child; physical or mental  
21 examination of parent, guardian, or person requesting custody  
22 of child.--

23 (4) A judge may order that a child alleged to be or  
24 adjudicated a child in need of services be treated by a  
25 licensed health care professional. The judge may also order  
26 such child to receive mental health or retardation services  
27 from a psychiatrist, psychologist, or other appropriate  
28 service provider. If it is necessary to place the child in a  
29 residential facility for such services, then the procedures  
30 and criteria established in s. 394.467 or chapter 393 shall be  
31 used, whichever is applicable. A child may be provided mental

1 health or retardation services in emergency situations,  
2 pursuant to the procedures and criteria contained in s.  
3 394.463(1) or chapter 393, whichever is applicable.

4 985.211 Release or delivery from custody.--

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

9 (d) If the child is believed to be mentally ill as  
10 defined in s. 394.463(1), to a law enforcement officer who  
11 shall take the child to a designated public receiving facility  
12 as defined in s. 394.455 for examination pursuant to the  
13 provisions of s. 394.463.

14 Section 6. This act shall take effect July 1, 2002.

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16  
17 HOUSE SUMMARY

18 Provides additional criteria for involuntary examination  
19 at a mental health receiving facility and for involuntary  
20 placement for mental health treatment, under the Baker  
21 Act. Provides that a court order for involuntary  
22 placement may be for inpatient or outpatient treatment.  
23 Requires an order for outpatient treatment to include  
24 requirements for the provision of services and procedures  
25 in the event of patient noncompliance. Provides for  
26 waiver of the time periods for the hearing on involuntary  
27 placement if a voluntary agreement to treatment is  
28 obtained. Provides requirements for a court-approved  
29 treatment plan under such voluntary treatment agreement  
30 and provides procedures for hearings in the event of  
31 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.