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1 A bill to be entitled
 2 An act relating to The Baker Act; amending s. 394.455,
 3 F.S.; defining the term "service provider"; amending s.
 4 394.4598, F.S.; revising language with respect to the
 5 guardian advocate; authorizing the guardian advocate to
 6 consent to administration of medication over objection
 7 under certain circumstances; amending s. 394.463, F.S.;
 8 revising language with respect to involuntary examination;
 9 amending s. 394.467, F.S.; revising language with respect
 10 to involuntary placement; providing reference to inpatient
 11 and outpatient involuntary placement; providing
 12 requirements for placement orders; providing for voluntary
 13 treatment agreements; providing a procedure for continued
 14 involuntary outpatient placement; providing for
 15 severability; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Subsection (31) is added to section 394.455,
 20 Florida Statutes, to read:

21 394.455 Definitions.--As used in this part, unless the
 22 context clearly requires otherwise, the term:

23 (31) "Service provider" means any public or private
 24 receiving facility, entity under contract with the Department of
 25 Children and Family Services to provide mental health services,
 26 or a clinical psychologist, clinical social worker, physician,
 27 psychiatric nurse, community mental health center, or clinic as
 28 defined in this part.

29 Section 2. Subsections (1), (6), and (7) of section
 30 394.4598, Florida Statutes, are amended to read:



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31 394.4598 Guardian advocate.--

32 (1) The administrator may petition the court for the
33 appointment of a guardian advocate based upon the opinion of a
34 psychiatrist that the patient is incompetent to consent to
35 treatment. If the court finds that a patient is incompetent to
36 consent to treatment and has not been adjudicated incapacitated
37 and a guardian with the authority to consent to mental health
38 treatment appointed, it shall appoint a guardian advocate. The
39 patient has the right to have an attorney represent him or her
40 at the hearing. If the person is indigent, the court shall
41 appoint the office of the public defender to represent him or
42 her at the hearing. The patient has the right to testify, cross-
43 examine witnesses, and present witnesses. The proceeding shall
44 be recorded either electronically or stenographically, and
45 testimony shall be provided under oath. One of the professionals
46 authorized to give an opinion in support of a petition for
47 involuntary placement, as described in s. 394.467(3)~~(2)~~, must
48 testify. A guardian advocate must meet the qualifications of a
49 guardian contained in part IV of chapter 744, except that a
50 professional referred to in this part, an employee of the
51 facility providing direct services to the patient under this
52 part, a departmental employee, a facility administrator, or
53 member of the Florida local advocacy council shall not be
54 appointed. A person who is appointed as a guardian advocate must
55 agree to the appointment.

56 (6) If a guardian with the authority to consent to medical
57 treatment has not already been appointed or if the patient has
58 not already designated a health care surrogate, the court may
59 authorize the guardian advocate to consent to medical treatment,
60 as well as mental health treatment. Unless otherwise limited by



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61 the court, a guardian advocate with authority to consent to
 62 medical treatment shall have the same authority to make health
 63 care decisions and be subject to the same restrictions as a
 64 proxy appointed under part IV of chapter 765. If the patient has
 65 an involuntary outpatient placement order that includes
 66 medication and the patient refuses medication, the service
 67 provider may seek an ex parte order pursuant to s. 394.463(2)(a)
 68 and the guardian advocate may consent to administration of
 69 medication over objection when the person is brought to a
 70 receiving facility. Unless the guardian advocate has sought and
 71 received express court approval in proceeding separate from the
 72 proceeding to determine the competence of the patient to consent
 73 to medical treatment, the guardian advocate may not consent to:

- 74 (a) Abortion.
- 75 (b) Sterilization.
- 76 (c) Electroconvulsive treatment.
- 77 (d) Psychosurgery.
- 78 (e) Experimental treatments that have not been approved by
- 79 a federally approved institutional review board in accordance
- 80 with 45 C.F.R. part 46 or 21 C.F.R. part 56.

81
 82 The court must base its decision on evidence that the treatment
 83 or procedure is essential to the care of the patient and that
 84 the treatment does not present an unreasonable risk of serious,
 85 hazardous, or irreversible side effects. The court shall follow
 86 the procedures set forth in subsection (1) of this section.

87 (7) The guardian advocate shall be discharged when the
 88 patient is discharged from an order for involuntary inpatient or
 89 outpatient placement ~~a receiving or treatment facility to the~~
 90 ~~community~~ or when the patient is transferred from involuntary to



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91 voluntary status. The court or a hearing officer shall consider
 92 the competence of the patient pursuant to subsection (1) and may
 93 consider an involuntarily placed patient's competence to consent
 94 to treatment at any hearing. Upon sufficient evidence, the court
 95 may restore, or the hearing officer may recommend that the court
 96 restore, the patient's competence. A copy of the order restoring
 97 competence or the certificate of discharge containing the
 98 restoration of competence shall be provided to the patient and
 99 the guardian advocate.

100 Section 3. Subsection (1) and paragraphs (a), (e), and (i)
 101 of subsection (2) of section 394.463, Florida Statutes, are
 102 amended to read:

103 394.463 Involuntary examination.--

104 (1) CRITERIA.--A person may be taken to a receiving
 105 facility for involuntary examination if there is reason to
 106 believe that the person has a mental illness ~~he or she is~~
 107 ~~mentally ill~~ and because of his or her mental illness, including
 108 consideration of evidence presented on the person's relevant
 109 medical and treatment history:

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

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

115 (b)1. Without care or treatment, the person is likely to
 116 suffer from neglect or refuse to care for himself or herself;
 117 such neglect or refusal poses a real and present threat of
 118 substantial harm to his or her well-being; and it is not
 119 apparent that such harm may be avoided through the help of



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120 willing family members or friends or the provision of other
121 services; ~~or~~

122 2. There is a substantial likelihood that without care or
123 treatment the person will cause serious bodily harm to himself
124 or herself or others in the near future, as evidenced by recent
125 behavior; or-

126 3. That the person is 18 years of age or older and there
127 is a substantial likelihood that without care or treatment the
128 person's condition will deteriorate to the point that, in the
129 reasonably foreseeable future, the person will meet the criteria
130 described in subparagraphs 1. and 2., based on the person's
131 present condition and well-established history of:

132 a. Two or more separate episodes within the preceding 36
133 months wherein the person has been admitted for examination or
134 placement in a receiving or treatment facility as defined in s.
135 394.455, and/or arrested for criminal behavior, not including
136 any period during which the person was in a receiving or
137 treatment facility or incarcerated; or

138 b. One or more acute psychiatric episodes resulting in
139 serious physical violence.

140 (2) INVOLUNTARY EXAMINATION.--

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

143 1. A court may enter an ex parte order stating that a
144 person appears to meet the criteria for involuntary examination,
145 or is not complying with an outpatient placement order issued
146 pursuant to s. 394.467(7)(b), giving the findings on which that
147 conclusion is based. The ex parte order for involuntary
148 examination must be based on sworn testimony, written or oral.

149 If other less restrictive means are not available, such as



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150 voluntary appearance for outpatient evaluation, a law
151 enforcement officer, or other designated agent of the court,
152 shall take the person into custody and deliver him or her to the
153 nearest receiving facility for involuntary examination. The
154 order of the court shall be made a part of the patient's
155 clinical record. No fee shall be charged for the filing of an
156 order under this subsection. Any receiving facility accepting
157 the patient based on this order must send a copy of the order to
158 the Agency for Health Care Administration on the next working
159 day. The order shall be valid only until executed or, if not
160 executed, for the period specified in the order itself. If no
161 time limit is specified in the order, the order shall be valid
162 for 7 days after the date that the order was signed.

163 2. A law enforcement officer shall take a person who
164 appears to meet the criteria for involuntary examination into
165 custody and deliver the person or have him or her delivered to
166 the nearest receiving facility for examination. The officer
167 shall execute a written report detailing the circumstances under
168 which the person was taken into custody, and the report shall be
169 made a part of the patient's clinical record. Any receiving
170 facility accepting the patient based on this report must send a
171 copy of the report to the Agency for Health Care Administration
172 on the next working day.

173 3. A physician, clinical psychologist, psychiatric nurse,
174 or clinical social worker may execute a certificate stating that
175 he or she has examined a person within the preceding 48 hours
176 and finds that the person appears to meet the criteria for
177 involuntary examination and stating the observations upon which
178 that conclusion is based. If other less restrictive means are
179 not available, such as voluntary appearance for outpatient



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180 evaluation, a law enforcement officer shall take the person
181 named in the certificate into custody and deliver him or her to
182 the nearest receiving facility for involuntary examination. The
183 law enforcement officer shall execute a written report detailing
184 the circumstances under which the person was taken into custody.
185 The report and certificate shall be made a part of the patient's
186 clinical record. Any receiving facility accepting the patient
187 based on this certificate must send a copy of the certificate to
188 the Agency for Health Care Administration on the next working
189 day.

190 (e) The Agency for Health Care Administration shall
191 receive and maintain the copies of ex parte orders, placement
192 orders issued pursuant to s. 394.467(7)(b), voluntary treatment
193 agreements issued pursuant to 394.4625, professional
194 certificates, and law enforcement officers' reports. These
195 documents shall be considered part of the clinical record,
196 governed by the provisions of s. 394.4615. The agency shall
197 prepare annual reports analyzing the data obtained from these
198 documents, without information identifying patients, and shall
199 provide copies of reports to the department, the President of
200 the Senate, the Speaker of the House of Representatives, and the
201 minority leaders of the Senate and the House of Representatives.

202 (i) Within the 72-hour examination period or, if the 72
203 hours ends on a weekend or holiday, no later than the next
204 working day thereafter, one of the following actions must be
205 taken, based on the individual needs of the patient:

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



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209 2. The patient shall be released, subject to the
 210 provisions of subparagraph 1., for outpatient treatment;
 211 3. The patient, unless he or she is charged with a crime,
 212 shall be asked to give express and informed consent to placement
 213 as a voluntary patient, and, if such consent is given, the
 214 patient shall be admitted as a voluntary patient; or
 215 4. A petition for involuntary inpatient or outpatient
 216 placement shall be filed in the appropriate court by the
 217 petitioner ~~facility administrator~~ when treatment is deemed
 218 necessary; in which case, the least restrictive treatment
 219 consistent with the optimum improvement of the patient's
 220 condition shall be made available.

221 Section 4. Section 394.467, Florida Statutes, is amended
 222 to read:

223 394.467 Involuntary placement.--

224 (1) CRITERIA.--A person may be involuntarily placed in
 225 inpatient ~~for~~ treatment upon a finding of the court, the
 226 determination of which shall include consideration of evidence
 227 presented on the person's relevant medical and treatment
 228 history, that by clear and convincing evidence ~~that~~:

229 (a) The person has a mental illness ~~He or she is mentally~~
 230 ~~ill~~ and because of his or her mental illness:

231 1.a. He or she has refused voluntary placement for
 232 treatment after sufficient and conscientious explanation and
 233 disclosure of the purpose of placement for treatment; or

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

236 2.a. He or she is manifestly incapable of surviving alone
 237 or with the help of willing and responsible family or friends,
 238 including available alternative services, and, without



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239 treatment, is likely to suffer from neglect or refuse to care
 240 for himself or herself, and such neglect or refusal poses a real
 241 and present threat of substantial harm to his or her well-being;
 242 or

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

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

250 (2) CRITERIA FOR OUTPATIENT PLACEMENT.--A person 18 years
 251 of age or older may be ordered to involuntary outpatient
 252 placement upon a finding of the court, the determination of
 253 which shall include consideration of evidence presented on the
 254 person's relevant medical and treatment history, that by clear
 255 and convincing evidence:

256 (a) The person has a mental illness and because of his or
 257 her mental illness:

258 1.a. He or she has refused voluntary treatment after
 259 sufficient and conscientious explanation and disclosure of the
 260 purpose of placement for treatment; or

261 b. He or she is unable to determine for himself or herself
 262 whether treatment is necessary; and

263 2.a. He or she is manifestly incapable of surviving alone
 264 or with the help of willing and responsible family or friends,
 265 including available alternative services, and without treatment
 266 is likely to suffer from neglect or refuse to care for himself
 267 or herself, and such neglect or refusal poses a real and present
 268 threat of substantial harm to his or her well-being;



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269 b. There is a substantial likelihood that in the near
 270 future he or she will inflict serious bodily harm on himself or
 271 herself or another person, as evidenced by recent behavior
 272 causing, attempting, or threatening such harm; or

273 c. There is substantial likelihood that without care or
 274 treatment the person's condition will deteriorate to the point
 275 that, in the reasonably foreseeable future, the person will meet
 276 the criteria described in paragraphs (1)(a) and(b) based on the
 277 person's present condition and a well-established history of:

278 (I) Two or more separate episodes within the 36 months
 279 preceding the filing of the petition wherein the person has been
 280 admitted for examination or placement in a receiving or
 281 treatment facility as defined in s. 394.455 and/or arrested for
 282 criminal behavior, not including any period during which the
 283 person was in a receiving or treatment facility or incarcerated;
 284 or

285 (II) One or more prior acute episodes resulting in serious
 286 physical violence; and

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

290 (3) INVOLUNTARY PLACEMENT.--

291 (a) Involuntary examination for inpatient or outpatient
 292 placement.--(2) ~~ADMISSION TO A TREATMENT FACILITY.~~—A patient
 293 may be retained by a receiving facility or involuntarily placed
 294 in a treatment facility or outpatient treatment upon the
 295 recommendation of the administrator of a receiving facility
 296 where the patient has been examined and after adherence to the
 297 notice and hearing procedures provided in s. 394.4599. The
 298 recommendation must be supported by the opinion of a



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299 psychiatrist and the second opinion of a clinical psychologist
300 or another psychiatrist, both of whom have personally examined
301 the patient within the preceding 72 hours, that the criteria for
302 involuntary inpatient or outpatient placement are met. However,
303 in counties of less than 50,000 population, if the administrator
304 certifies that no psychiatrist or clinical psychologist is
305 available to provide the second opinion, such second opinion may
306 be provided by a licensed physician with postgraduate training
307 and experience in diagnosis and treatment of mental and nervous
308 disorders or by a psychiatric nurse. The opinions of the
309 examining professionals supporting an involuntary outpatient
310 placement shall include a determination as to whether the
311 patient is competent to provide express and informed consent for
312 a voluntary treatment agreement. Such recommendation shall be
313 entered on an involuntary inpatient or outpatient placement
314 certificate, which certificate shall authorize the receiving
315 facility to retain the patient pending transfer to a treatment
316 facility, outpatient treatment, or completion of a hearing.

317 (b) Voluntary examination for outpatient placement.--In
318 cases where arrangements can be made, a patient may agree to be
319 examined on an outpatient basis for an involuntary outpatient
320 placement certificate. The certificate must be supported by the
321 opinion of a psychiatrist and the second opinion of a clinical
322 psychologist or another psychiatrist, both of whom have
323 personally examined the patient within the preceding 14 calendar
324 days, that the criteria for involuntary outpatient placement are
325 met. However, in counties of less than 50,000 population, if the
326 psychiatrist certifies that no psychiatrist or clinical
327 psychologist is available to provide the second opinion, such
328 second opinion may be provided by a licensed physician with



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329 postgraduate training and experience in diagnosis and treatment
 330 of mental and nervous disorders or by a psychiatric nurse. The
 331 opinions of the examining professionals supporting an
 332 involuntary outpatient placement shall include a determination
 333 as to whether the patient is competent to provide express and
 334 informed consent for a voluntary treatment agreement.

335 (4)(3) PETITION FOR INVOLUNTARY PLACEMENT.--

336 (a) A petition for involuntary placement may be filed by
 337 one of the following means:

338 1. The administrator of the facility shall file a petition
 339 for involuntary inpatient or outpatient placement pursuant to s.
 340 394.467; or

341 2. For persons examined on a voluntary outpatient basis
 342 pursuant to s. 394.4625, one of the examining professionals may
 343 file a petition for involuntary outpatient placement. Upon
 344 filing, the examining professional shall provide a copy of the
 345 petition to the receiving facility that will identify the
 346 service provider for the involuntary outpatient placement.

347 (b) The petition for involuntary inpatient or outpatient
 348 placement shall be filed ~~in the court~~ in the county where the
 349 patient is located. Upon filing, the clerk of the court shall
 350 provide copies to the department, the patient, the patient's
 351 guardian or representative, and the state attorney and public
 352 defender of the judicial circuit in which the patient is
 353 located. No fee shall be charged for the filing of a petition
 354 under this subsection.

355 (5)(4) APPOINTMENT OF COUNSEL.--Within 1 court working day
 356 after the filing of a petition for involuntary inpatient or
 357 outpatient placement, the court shall appoint the public
 358 defender to represent the person who is the subject of the



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359 petition, unless the person is otherwise represented by counsel.
360 The clerk of the court shall immediately notify the public
361 defender of such appointment. Any attorney representing the
362 patient shall have access to the patient, witnesses, and records
363 relevant to the presentation of the patient's case and shall
364 represent the interests of the patient, regardless of the source
365 of payment to the attorney.

366 (6)~~(5)~~ CONTINUANCE OF HEARING.--The patient is entitled,
367 with the concurrence of the patient's counsel, to at least one
368 continuance of the hearing. The continuance shall be for a
369 period of up to 4 weeks.

370 (7)~~(6)~~ HEARING ON INVOLUNTARY PLACEMENT.--

371 (a)1. The court shall hold the hearing on involuntary
372 inpatient or outpatient placement within 5 days, unless a
373 continuance is granted. The hearing shall be held in the county
374 where the patient is located and shall be as convenient to the
375 patient as may be consistent with orderly procedure and shall be
376 conducted in physical settings not likely to be injurious to the
377 patient's condition. If the court finds that the patient's
378 attendance at the hearing is not consistent with the best
379 interests of the patient, and the patient's counsel does not
380 object, the court may waive the presence of the patient from all
381 or any portion of the hearing. The state attorney for the
382 circuit in which the patient is located shall represent the
383 state, rather than the petitioner ~~petitioning~~ facility
384 administrator, as the real party in interest in the proceeding.

385 2. The court may appoint a master to preside at the
386 hearing. One of the professionals who executed the involuntary
387 inpatient or outpatient placement certificate shall be a
388 witness. The patient and the patient's guardian or



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389 representative shall be informed by the court of the right to an
390 independent expert examination. If the patient cannot afford
391 such an examination, the court shall provide for one. The
392 independent expert's report shall be confidential and not
393 discoverable, unless the expert is to be called as a witness for
394 the patient at the hearing. The court shall allow relevant
395 testimony from individuals, including family members, regarding
396 the person's prior history and how that prior history relates to
397 the person's current condition. The testimony in the hearing
398 must be given under oath, and the proceedings must be recorded.
399 The patient may refuse to testify at the hearing.

400 (b)1. If the court concludes that the patient meets the
401 criteria for involuntary placement pursuant to subsection (1), it
402 shall order that the patient be transferred to a treatment
403 facility or, if the patient is at a treatment facility, that the
404 patient be retained there or be treated at any other appropriate
405 receiving or treatment facility, or that the patient receive
406 services from a receiving or treatment facility, on an
407 involuntary basis. If the court concludes that the patient meets
408 the criteria for involuntary outpatient placement pursuant to
409 subsection (2), the court shall issue an order for outpatient
410 placement. The court order shall be⁷ for a period of up to 6
411 months. ~~The order shall specify the nature and extent of the~~
412 ~~patient's mental illness.~~ The facility or service provider shall
413 discharge a patient any time the patient no longer meets the
414 criteria for involuntary placement, unless the patient has
415 transferred to voluntary status.

416 2. The placement order shall specify the nature and extent
417 of the patient's mental illness and whether treatment shall be
418 on an inpatient or outpatient basis. For an outpatient placement



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419 order, the administrator of a receiving facility shall identify
420 the service provider that will have primary responsibility for
421 service provision under the order. The service provider shall
422 prepare a treatment plan and submit it to the court prior to the
423 hearing for inclusion in the outpatient placement order. An
424 order for outpatient placement may include provisions for case
425 management, intensive case management, assertive community
426 treatment, or a program for assertive community treatment. The
427 order may also require that the patient make use of a service
428 provider to supply any or all of the following categories of
429 services to the individual: medication; periodic urinalysis to
430 determine compliance with treatment; individual or group
431 therapy; day or partial-day programming activities; educational
432 and vocational training or activities; alcohol or substance
433 abuse treatment and counseling and periodic tests for the
434 presence of alcohol or illegal drugs for persons with a history
435 of alcohol or substance abuse; supervision of living
436 arrangements; and any other services prescribed to treat the
437 person's mental illness and to assist the person in living and
438 functioning in the community or to attempt to prevent a relapse
439 or deterioration. The service provider shall certify to the
440 court in the treatment plan that the proposed services are
441 currently available and that the service provider agrees to
442 provide the services. Service providers may select and provide
443 supervision to other individuals not enumerated herein to
444 implement specific aspects of the treatment plan, such as
445 medication monitoring. The services ordered shall be deemed to
446 be clinically appropriate by a physician, clinical psychologist,
447 psychiatric nurse, or clinical social worker who consults with,
448 or is employed or contracted by, the service provider. An



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449 outpatient placement order may be issued only if the ordered
450 program or service is available in the patient's local
451 community, if there is space available in the program or service
452 for the patient, and if funding is available for the program or
453 service. The court shall not order the department or the service
454 provider to provide services if the program or service is not
455 available in the patient's local community, there is no space
456 available in the program or service for the patient, and funding
457 is not available for the program or service. The court shall
458 specify in the final order of disposition if outpatient
459 placement could not be ordered because the program or service is
460 not available in the patient's local community, there is no
461 space available in the program or service for the patient, and
462 funding is not available for the program or service. A copy of
463 the order shall be sent to the Agency for Health Care
464 Administration. After the placement order is issued, the service
465 provider and the patient may agree to modify provisions of the
466 treatment plan. For any material modification of the provisions
467 of the treatment plan to which the patient does agree, the
468 service provider shall send notice of the modification to the
469 court. Any material modifications of the provisions of the
470 treatment plan to which the patient does not agree must be
471 approved by the court.

472 3. The placement order shall specify that if the patient
473 fails to comply with the outpatient treatment plan, the service
474 provider may seek an ex parte order for involuntary examination
475 pursuant to s. 394.463(2)(a) and upon issuance the patient shall
476 be brought to a receiving facility for involuntary examination
477 pursuant to s. 394.463(2)(c)-(i), in order to determine whether
478 the outpatient placement is still the least restrictive



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479 treatment alternative which would offer an opportunity for
480 improvement of his or her condition. If after examination the
481 patient does not meet the criteria for involuntary inpatient
482 placement, the patient must be discharged from the receiving
483 facility. The service provider should determine whether
484 modifications should be made to the existing treatment plan and
485 attempt to continue to engage the patient in treatment. For any
486 material modification of the provisions of the treatment plan to
487 which the patient does agree, the service provider shall send
488 notice of the modification to the court. Any material
489 modifications of the provisions of the treatment plan to which
490 the patient does not agree must be approved by the court. In
491 cases where contempt of court is deemed appropriate for
492 noncompliance, the court shall use sanctions other than monetary
493 finances or placement in a county or regional jail or work camp.

494 (c) If at any time prior to the conclusion of the hearing
495 on involuntary placement it appears to the court that the person
496 does not meet the criteria for involuntary placement under this
497 chapter, but instead meets the criteria for involuntary
498 assessment, protective custody, or involuntary admission
499 pursuant to s. 397.675, then the court may order the person to
500 be admitted for involuntary assessment for a period of 5 days
501 pursuant to s. 397.6811. Thereafter, all proceedings shall be
502 governed by chapter 397.

503 (d) At the hearing on involuntary placement, the court
504 shall consider testimony and evidence regarding the patient's
505 competence to consent to treatment. If the court finds that the
506 patient is incompetent to consent to treatment, it shall appoint
507 a guardian advocate as provided in s. 394.4598. If a patient
508 found incompetent to consent to treatment has an involuntary



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509 outpatient placement order that includes medication and the
510 patient refuses medication, the service provider may seek an ex
511 parte order pursuant to s. 394.463(2)(a) and the guardian
512 advocate may consent to administration of medication over
513 objection when the person is brought to a receiving facility.

514 (e) The administrator of the receiving facility shall
515 provide a copy of the court order and adequate documentation of
516 a patient's mental illness to the administrator of a treatment
517 facility whenever a patient is ordered for involuntary inpatient
518 placement or to the service provider for involuntary outpatient
519 placement, whether by civil or criminal court. Such
520 documentation shall include any advance directives made by the
521 patient, a psychiatric evaluation of the patient, and any
522 evaluations of the patient performed by a clinical psychologist
523 or a clinical social worker. The administrator of a treatment
524 facility may refuse admission to any patient directed to its
525 facilities on an involuntary basis, whether by civil or criminal
526 court order, who is not accompanied at the same time by adequate
527 orders and documentation.

528 (8) VOLUNTARY TREATMENT AGREEMENT.--

529 (a) A person who is 18 years of age or older and is
530 competent to provide express and informed consent for a
531 voluntary treatment agreement, or his or her legal counsel with
532 the person's consent, may waive the time periods under s.
533 394.467 for the hearing for a period not to exceed 90 days from
534 the date of the waiver, if the person and the state attorney
535 appointed under subparagraph (7)(a)1. agree at any time after
536 the commencement of the proceedings that the person shall obtain
537 treatment under a voluntary treatment agreement. An assessment
538 of the ability of a person to give express and informed consent



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539 shall be performed during the examination specified in paragraph
540 (3)(a) or paragraph (3)(b). The voluntary treatment agreement
541 shall be in writing, shall be approved by the court, and shall
542 include a treatment plan that provides for treatment in the
543 least restrictive manner consistent with the needs of the
544 person. The administrator of the appropriate receiving facility
545 shall identify the service provider that will prepare the
546 treatment plan, and monitor the person's treatment under, and
547 compliance with, the voluntary treatment agreement. The service
548 provider shall certify to the court that the ordered services
549 are currently available and that the service provider agrees to
550 provide the services. For any material modification of the
551 provisions of the treatment plan to which the patient does
552 agree, the service provider shall send notice of the
553 modification to the court. Any material modifications of the
554 provisions of the treatment plan to which the patient does not
555 agree must be approved by the court.

556 (b)1. If, within 90 days from the date of the waiver under
557 this section, the patient fails to comply with the voluntary
558 treatment agreement approved by the court under this section,
559 the service provider shall file with the court an affidavit
560 sworn under penalty of perjury showing the basis for the belief
561 that the patient is not in compliance. The service provider
562 shall also notify and send a copy of the affidavit to the state
563 attorney appointed under subparagraph (7)(a)1. and the patient's
564 counsel of the person's noncompliance.

565 2. Upon receipt of the affidavit of noncompliance, the
566 court shall issue a notice of hearing as set forth in s.
567 394.4599 and proceed with the hearing on involuntary outpatient
568 placement pursuant to subsection (7). The facts alleged as the



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569 basis for involuntary outpatient placement prior to the waiver
570 of the time periods for hearing may be the basis for a final
571 disposition at a hearing under this subparagraph.

572 (c) After being notified of noncompliance in paragraph
573 (b), the patient or his or her counsel may file a motion
574 requesting that the issue of noncompliance with the agreement be
575 heard at the involuntary outpatient placement hearing as
576 provided in paragraph (b). The motion must be filed at least 72
577 hours, excluding weekends and holidays, prior to the hearing.
578 The burden of proving noncompliance shall be by a preponderance
579 of the evidence.

580 (d) If the patient remains compliant for the period of the
581 voluntary treatment agreement, the petition for involuntary
582 outpatient placement shall be dismissed.

583 (9)(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
584 PLACEMENT.--

585 (a) Hearings on petitions for continued involuntary
586 inpatient placement shall be administrative hearings and shall
587 be conducted in accordance with the provisions of s. 120.57(1),
588 except that any order entered by the hearing officer shall be
589 final and subject to judicial review in accordance with s.
590 120.68. Orders concerning patients committed after successfully
591 pleading not guilty by reason of insanity shall be governed by
592 the provisions of s. 916.15.

593 (b) If the patient continues to meet the criteria for
594 involuntary inpatient placement, the administrator shall, prior
595 to the expiration of the period during which the treatment
596 facility is authorized to retain the patient, file a petition
597 requesting authorization for continued involuntary placement.
598 The request shall be accompanied by a statement from the



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599 patient's physician or clinical psychologist justifying the
600 request, a brief description of the patient's treatment during
601 the time he or she was involuntarily placed, and an
602 individualized plan of continued treatment. Notice of the
603 hearing shall be provided as set forth in s. 394.4599. If at the
604 hearing the hearing officer finds that attendance at the hearing
605 is not consistent with the best interests of the patient, the
606 hearing officer may waive the presence of the patient from all
607 or any portion of the hearing, unless the patient, through
608 counsel, objects to the waiver of presence. The testimony in the
609 hearing must be under oath, and the proceedings must be
610 recorded.

611 (c) Unless the patient is otherwise represented or is
612 ineligible, he or she shall be represented at the hearing on the
613 petition for continued involuntary inpatient placement by the
614 public defender of the circuit in which the facility is located.

615 (d) If at a hearing it is shown that the patient continues
616 to meet the criteria for involuntary inpatient placement, the
617 administrative law judge shall sign the order for continued
618 involuntary inpatient placement for a period not to exceed 6
619 months. The same procedure shall be repeated prior to the
620 expiration of each additional period the patient is retained.

621 (e) If continued involuntary placement is necessary for a
622 patient admitted while serving a criminal sentence, but whose
623 sentence is about to expire, or for a patient involuntarily
624 placed while a minor but who is about to reach the age of 18,
625 the administrator shall petition the administrative law judge
626 for an order authorizing continued involuntary placement.

627 (f) If the patient has been previously found incompetent
628 to consent to treatment, the hearing officer shall consider



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629 testimony and evidence regarding the patient's competence. If
630 the hearing officer finds evidence that the patient is now
631 competent to consent to treatment, the hearing officer may issue
632 a recommended order to the court that found the patient
633 incompetent to consent to treatment that the patient's
634 competence be restored and that any guardian advocate previously
635 appointed be discharged.

636 (10) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
637 PLACEMENT.--

638 (a) If the person continues to meet the criteria for
639 involuntary outpatient placement, the service provider shall,
640 prior to the expiration of the period during which the treatment
641 is ordered for the person, file a continued involuntary
642 outpatient placement certificate which shall be accompanied by a
643 statement from the person's physician or clinical psychologist
644 justifying the request, a brief description of the patient's
645 treatment during the time he or she was involuntarily placed,
646 and an individualized plan of continued treatment.

647 (b) Hearings on petitions for continued involuntary
648 outpatient placement shall be judicial hearings. The procedures
649 for obtaining an order pursuant to this paragraph shall be in
650 accordance with the provisions of subsection (7), except that
651 the time period included in sub-subparagraph (2)(a)2.c. shall
652 not be applicable in determining the appropriateness of
653 additional periods of involuntary outpatient placement.

654 (c) Notice of the hearing shall be provided as set forth
655 in s. 394.4599.

656 (d) The same procedure shall be repeated prior to the
657 expiration of each additional period the patient is placed in
658 treatment.



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659 (f) If the patient has been previously found incompetent
660 to consent to treatment, the court shall consider testimony and
661 evidence regarding the patient's competence. If the court finds
662 evidence that the patient is now competent to consent to
663 treatment, the court may order that any guardian advocate
664 previously appointed be discharged.

665 ~~(11)(8)~~ RETURN OF PATIENTS.--When a patient at a treatment
666 facility leaves the facility without authorization, the
667 administrator may authorize a search for the patient and the
668 return of the patient to the facility. The administrator may
669 request the assistance of a law enforcement agency in the search
670 for and return of the patient.

671 Section 5. If any provision of this act or its
672 application to any person or circumstance is held invalid, the
673 invalidity does not affect other provisions or applications of
674 the act which can be given effect without the invalid provision
675 or application, and to this end the provisions of this act are
676 severable.

677 Section 6. This act shall take effect July 1, 2003.