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## 1 CHAMBER ACTION

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6 The Committee on Future of Florida's Families recommends the  
7 following:

8  
9 **Committee Substitute**

10 Remove the entire bill and insert:

11 A bill to be entitled

12 An act relating to The Baker Act; amending s. 394.455,  
13 F.S.; revising a definition; providing additional  
14 definitions; amending s. 394.4598, F.S.; revising language  
15 with respect to the guardian advocate; authorizing the  
16 guardian advocate to consent to administration of  
17 medication over objection under certain circumstances;  
18 amending s. 394.4615, F.S.; providing for release of  
19 certain clinical records to certain persons for certain  
20 purposes; amending s. 394.463, F.S.; revising criteria and  
21 procedures for involuntary examination; creating s.  
22 394.466, F.S.; setting forth criteria for involuntary  
23 outpatient placement; providing contents of a petition for  
24 involuntary outpatient placement; specifying procedures  
25 for involuntary outpatient placement; providing for  
26 persons who may file a petition for involuntary outpatient  
27 placement; providing for appointment of counsel; providing  
28 for continuance of hearings; providing for a hearing on



29 | involuntary outpatient placement; setting forth procedures  
30 | for the hearing; providing for appointment of a master to  
31 | preside; providing for an independent examination;  
32 | requiring a court to order involuntary outpatient  
33 | placement under certain circumstances; requiring a  
34 | treatment plan; providing for plan modification; providing  
35 | for a patient to be brought to a receiving facility upon  
36 | failure or refusal to comply with the treatment plan;  
37 | providing for involuntary inpatient placement or  
38 | involuntary assessment; requiring consideration of a  
39 | patient's competence to proceed; requiring a list of  
40 | guardian advocates to be submitted to the court; defining  
41 | the role of a guardian advocate; providing for discharge  
42 | of the guardian advocate; requiring certain documentation;  
43 | allowing a person for whom an involuntary outpatient  
44 | placement petition has been filed to agree to a voluntary  
45 | treatment agreement; specifying requirements for  
46 | agreements; providing for modifications; providing for  
47 | filing of an affidavit of noncompliance with a voluntary  
48 | treatment plan; requiring a hearing; requiring dismissal  
49 | of petitions in certain circumstances; providing  
50 | procedures for continued involuntary outpatient placement;  
51 | providing for a continued involuntary outpatient placement  
52 | certificate; requiring a hearing; requiring appointment of  
53 | a public defender; requiring hearings; providing for  
54 | appointment of a special master; amending s. 394.467,  
55 | F.S.; revising language with respect to involuntary  
56 | inpatient placement; providing a reference to inpatient



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57 and outpatient involuntary placement; providing  
58 requirements for placement orders; providing for voluntary  
59 treatment agreements; providing a procedure for continued  
60 involuntary outpatient placement; establishing the  
61 Involuntary Outpatient Placement Implementation Task  
62 Force; providing purposes; providing for membership;  
63 providing for meetings; requiring the task force to  
64 prepare an implementation plan relating to court-ordered  
65 mental health outpatient treatment; requiring a report to  
66 the Governor, Legislature, and Florida Supreme Court;  
67 providing for severability; providing an effective date.

68  
69 WHEREAS, untreated mental illness is a difficult issue  
70 confronting every Florida community, and

71 WHEREAS, there are Floridians with severe mental illnesses  
72 who are prone to relapse, often fail to comply with their  
73 treatment plans, and have repeated hospitalizations and criminal  
74 justice contacts, who are sometimes referred to as "Baker Act  
75 recidivists," and

76 WHEREAS, many states use some form of civil commitment to  
77 compel Baker Act recidivists to undergo treatment on an  
78 involuntary outpatient basis, and

79 WHEREAS, it is the intent of the Legislature to protect  
80 public safety and ensure that Baker Act recidivists receive  
81 needed mental health services, while preserving the due process  
82 rights of individuals with mental illness, and

83 WHEREAS, implementation and oversight of the involuntary  
84 outpatient placement system involves the cooperative efforts and



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85 combined resources of the Department of Children and Family  
 86 Services, the offices of the state attorneys, the offices of the  
 87 public defenders, the state courts, the clerks of court, and law  
 88 enforcement, among others, and

89 WHEREAS, the State of Florida is facing numerous  
 90 unprecedented fiscal challenges, some of which have a direct  
 91 bearing on involuntary outpatient placement, including revenue  
 92 shortfalls, the transition to state funding of the judicial  
 93 branch pursuant to Article V Revision 7, consideration of the  
 94 proper placement of the Mental Health Program Office, and  
 95 development of strategies to address the staggering growth in  
 96 Medicaid spending, and

97 WHEREAS, it is the intent of the Legislature to address  
 98 this issue in a deliberative, thoughtful process which allows  
 99 consideration of the difficult fiscal issues presented by a  
 100 statutory process for involuntary outpatient placement and to  
 101 appoint a task force to make recommendations on the effectuation  
 102 of court-ordered outpatient mental health treatment in  
 103 sufficient time to allow the stakeholders and funding entities  
 104 to adequately prepare for implementation in fiscal year 2004-  
 105 2005, NOW, THEREFORE,

106

107 Be It Enacted by the Legislature of the State of Florida:

108

109 Section 1. Subsection (3) of section 394.455, Florida  
 110 Statutes, is amended, and subsections (31) and (32) are added to  
 111 said section, to read:



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112 394.455 Definitions.--As used in this part, unless the  
113 context clearly requires otherwise, the term:

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

119 (31) "Service provider" means any public or private  
120 receiving facility, entity under contract with the Department of  
121 Children and Family Services to provide mental health services,  
122 or a clinical psychologist, clinical social worker, physician,  
123 psychiatric nurse, community mental health center, or clinic as  
124 defined in this part.

125 (32) "Involuntary placement" means involuntary outpatient  
126 treatment pursuant to s. 394.466 or involuntary inpatient  
127 treatment pursuant to s. 394.467.

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

130 394.4598 Guardian advocate.--

131 (1) The administrator may petition the court for the  
132 appointment of a guardian advocate based upon the opinion of a  
133 psychiatrist that the patient is incompetent to consent to  
134 treatment. If the court finds that a patient is incompetent to  
135 consent to treatment and has not been adjudicated incapacitated  
136 and a guardian with the authority to consent to mental health  
137 treatment appointed, it shall appoint a guardian advocate. The  
138 patient has the right to have an attorney represent him or her  
139 at the hearing. If the person is indigent, the court shall



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140 | appoint the office of the public defender to represent him or  
141 | her at the hearing. The patient has the right to testify, cross-  
142 | examine witnesses, and present witnesses. The proceeding shall  
143 | be recorded either electronically or stenographically, and  
144 | testimony shall be provided under oath. One of the professionals  
145 | authorized to give an opinion in support of a petition for  
146 | involuntary placement, as described in s. 394.466 or s.  
147 | 394.467(2), must testify. A guardian advocate must meet the  
148 | qualifications of a guardian contained in part IV of chapter  
149 | 744, except that a professional referred to in this part, an  
150 | employee of the facility providing direct services to the  
151 | patient under this part, a departmental employee, a facility  
152 | administrator, or member of the Florida local advocacy council  
153 | shall not be appointed. A person who is appointed as a guardian  
154 | advocate must agree to the appointment.

155 |       (7) The guardian advocate shall be discharged when the  
156 | patient is discharged from an order for involuntary inpatient or  
157 | outpatient placement or as provided in s. 394.466(6)(d) a  
158 | ~~receiving or treatment facility to the community~~ or when the  
159 | patient is transferred from involuntary to voluntary status. The  
160 | court or a hearing officer shall consider the competence of the  
161 | patient pursuant to subsection (1) and may consider an  
162 | involuntarily placed patient's competence to consent to  
163 | treatment at any hearing. Upon sufficient evidence, the court  
164 | may restore, or the hearing officer may recommend that the court  
165 | restore, the patient's competence. A copy of the order restoring  
166 | competence or the certificate of discharge containing the



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167 restoration of competence shall be provided to the patient and  
168 the guardian advocate.

169 Section 3. Paragraph (c) is added to subsection (3) of  
170 section 394.4615, Florida Statutes, to read:

171 394.4615 Clinical records; confidentiality.--

172 (3) Information from the clinical record may be released  
173 when:

174 (c) It is necessary to determine whether a person meets  
175 the criteria for involuntary outpatient placement pursuant to s.  
176 394.466. In such circumstance, the clinical record may be  
177 released to the state attorney, public defender or the patient's  
178 private legal counsel, the court, and the appropriate mental  
179 health professionals.

180 Section 4. Subsection (1) and paragraphs (e), (g), and (i)  
181 of subsection (2) of section 394.463, Florida Statutes, are  
182 amended to read:

183 394.463 Involuntary examination.--

184 (1) CRITERIA.--A person may be taken to a receiving  
185 facility for involuntary examination if there is reason to  
186 believe that the person has a mental illness ~~he or she is~~  
187 ~~mentally ill~~ and because of his or her mental illness:

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

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



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193           (b) Based on the person's current reported or observed  
194 behavior, considering any mental health history, there is a  
195 substantial likelihood that, without care or treatment:

196           1. ~~Without care or treatment,~~ The person will ~~is likely to~~  
197 suffer from neglect or refuse to care for himself or herself;  
198 such neglect or refusal will pose ~~poses~~ a real and present  
199 threat of substantial harm to his or her well-being; and it is  
200 not apparent that such harm may be avoided through the help of  
201 willing family members or friends or the provision of other  
202 services; or

203           2. ~~There is a substantial likelihood that without care or~~  
204 ~~treatment~~ The person will cause serious bodily harm to himself  
205 or herself or others in the near future, ~~as evidenced by recent~~  
206 ~~behavior.~~

207           (2) INVOLUNTARY EXAMINATION.--

208           (e) The Agency for Health Care Administration shall  
209 receive and maintain the copies of ex parte orders, involuntary  
210 outpatient placement orders issued pursuant to s. 394.466, or  
211 involuntary inpatient placement orders issued pursuant to s.  
212 394.467, professional certificates, and law enforcement  
213 officers' reports. These documents shall be considered part of  
214 the clinical record, governed by the provisions of s. 394.4615.  
215 The agency shall prepare annual reports analyzing the data  
216 obtained from these documents, without information identifying  
217 patients, and shall provide copies of reports to the department,  
218 the President of the Senate, the Speaker of the House of  
219 Representatives, and the minority leaders of the Senate and the  
220 House of Representatives.





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221 (g) A person for whom an involuntary examination has been  
222 initiated who is being evaluated or treated at a hospital for an  
223 emergency medical condition specified in s. 395.002 must be  
224 examined by a receiving facility within 72 hours. The 72-hour  
225 period begins when the patient arrives at the hospital and  
226 ceases when the attending physician documents that the patient  
227 has an emergency medical condition. If the patient is examined  
228 at a hospital providing emergency medical services by a  
229 professional qualified to perform an involuntary examination and  
230 is found as a result of that examination not to meet the  
231 criteria for involuntary outpatient placement pursuant to s.  
232 394.466(1) or involuntary inpatient placement pursuant to s.  
233 394.467(1), the patient may be offered voluntary placement, if  
234 appropriate, or released directly from the hospital providing  
235 emergency medical services. The finding by the professional that  
236 the patient has been examined and does not meet the criteria for  
237 involuntary inpatient placement or involuntary outpatient  
238 placement must be entered into the patient's clinical record.  
239 Nothing in this paragraph is intended to prevent a hospital  
240 providing emergency medical services from appropriately  
241 transferring a patient to another hospital prior to  
242 stabilization, provided the requirements of s. 395.1041(3)(c)  
243 have been met.

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



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

251 | 2. The patient shall be released, subject to the  
252 | provisions of subparagraph 1., for voluntary outpatient  
253 | treatment;

254 | 3. The patient, unless he or she is charged with a crime,  
255 | shall be asked to give express and informed consent to placement  
256 | as a voluntary patient, and, if such consent is given, the  
257 | patient shall be admitted as a voluntary patient; or

258 | 4. A petition for involuntary inpatient placement or a  
259 | petition for involuntary outpatient placement shall be filed in  
260 | the appropriate court by the petitioner delineated in s.  
261 | 394.466(3)(a) facility administrator when treatment is deemed  
262 | necessary; in which case, the least restrictive treatment  
263 | consistent with the optimum improvement of the patient's  
264 | condition shall be made available.

265 | Section 5. Section 394.466, Florida Statutes, is created  
266 | to read:

267 | 394.466 Involuntary outpatient placement.--

268 | (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.--

269 | (a) A person may be ordered to involuntary outpatient  
270 | placement upon a finding of the court that, by clear and  
271 | convincing evidence:

272 | 1. The person is 18 years of age or older.

273 | 2. The person has a mental illness.



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274 |       3. The person is unlikely to survive safely in the  
275 | community without supervision, based on a clinical  
276 | determination.

277 |       4. The person has a history of lack of compliance with  
278 | treatment for mental illness.

279 |       5. The person has:

280 |       a. At least twice within the last 36 months, been admitted  
281 | for examination or placement in a receiving or treatment  
282 | facility as defined in s. 394.455 or received mental health  
283 | services in a forensic or correctional facility. The 36-month  
284 | period does not include any period during which the person was  
285 | admitted or incarcerated immediately preceding the filing of the  
286 | petition and does include acts of noncompliance with the  
287 | treatment and the current admission for consideration; or

288 |       b. Engaged in one or more acts of serious violent behavior  
289 | toward himself or herself or others or engaged in attempts at  
290 | serious bodily harm to himself or herself or others within the  
291 | last 36 months. The 36-month period does not include any period  
292 | in which the person was admitted or incarcerated immediately  
293 | preceding the filing of the petition and does include acts of  
294 | violence occurring during the admission or incarceration.

295 |       6. The person is, as a result of his or her mental  
296 | illness, unlikely to voluntarily participate in the recommended  
297 | treatment pursuant to the treatment plan.

298 |       7. In view of the person's treatment history and current  
299 | behavior, the person is in need of involuntary outpatient  
300 | placement in order to prevent a relapse or deterioration which  
301 | would be likely to result in serious bodily harm to himself or



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302 herself or others, or a substantial harm to his or her well-  
303 being as defined in s. 394.463(1).

304 8. It is likely that the person will benefit from  
305 involuntary outpatient placement.

306 9. All available less restrictive alternatives which would  
307 offer an opportunity for improvement of his or her condition  
308 have been judged to be inappropriate.

309 (b) Each required criteria for involuntary outpatient  
310 placement must be alleged in the petition and substantiated by  
311 hospitalization or arrest records that shall be attached to the  
312 petition or a sworn affidavit that shall be attached to the  
313 petition. The petition shall consist of a clinical determination  
314 by a qualified professional who shall be required to attend the  
315 hearing pursuant to subsection (6). The patient shall be allowed  
316 an opportunity to present evidence and testimony at the hearing  
317 to refute or rebut said allegations.

318 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

319 (a) A patient may be retained by a receiving facility  
320 unless the patient has been stabilized and no longer meets the  
321 involuntary examination criteria pursuant to s. 394.463(1), in  
322 which case the patient must be placed in outpatient treatment  
323 while awaiting the hearing for involuntary outpatient placement  
324 upon the recommendation of the administrator of a receiving  
325 facility where the patient has been examined and after adherence  
326 to the notice and hearing procedures provided in s. 394.4599.  
327 The recommendation must be supported by the opinion of a  
328 psychiatrist and the second opinion of a clinical psychologist  
329 or another psychiatrist, both of whom have personally examined



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330 the patient within the preceding 72 hours, that the criteria for  
331 involuntary outpatient placement are met. However, in counties  
332 of less than 50,000 population, if the administrator certifies  
333 that no psychiatrist or clinical psychologist is available to  
334 provide the second opinion, such second opinion may be provided  
335 by a licensed physician with postgraduate training and  
336 experience in diagnosis and treatment of mental and nervous  
337 disorders or by a psychiatric nurse. Such recommendation shall  
338 be entered on an involuntary outpatient placement certificate,  
339 which certificate shall authorize the receiving facility to  
340 retain the patient pending transfer to involuntary outpatient  
341 placement or completion of a hearing.

342 (b) In cases in which arrangements can be made, a patient  
343 may agree to be examined on an outpatient basis for an  
344 involuntary outpatient placement certificate. The certificate  
345 must be supported by the opinion of a psychiatrist and the  
346 second opinion of a clinical psychologist or another  
347 psychiatrist, both of whom have personally examined the patient  
348 within the preceding 14 calendar days, that the criteria for  
349 involuntary outpatient placement are met. However, in counties  
350 of less than 50,000 population, if the psychiatrist certifies  
351 that no psychiatrist or clinical psychologist is available to  
352 provide the second opinion, such second opinion may be provided  
353 by a licensed physician with postgraduate training and  
354 experience in diagnosis and treatment of mental and nervous  
355 disorders or by a psychiatric nurse.

356 (c) If a patient in involuntary inpatient placement meets  
357 the criteria for involuntary outpatient placement, the



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358 administrator of the treatment facility may, prior to expiration  
359 of the period during which the treatment facility is authorized  
360 to retain the patient, recommend involuntary outpatient  
361 placement. The recommendation must be supported by the opinion  
362 of a psychiatrist and the second opinion of a clinical  
363 psychologist or another psychiatrist, both of whom have  
364 personally examined the patient within the preceding 72 hours,  
365 that the criteria for involuntary outpatient placement are met.  
366 However, in counties of less than 50,000 population, if the  
367 administrator certifies that no psychiatrist or clinical  
368 psychologist is available to provide the second opinion, such  
369 second opinion may be provided by a licensed physician with  
370 postgraduate training and experience in diagnosis and treatment  
371 of mental and nervous disorders or by a psychiatric nurse. Such  
372 recommendation shall be entered on an involuntary outpatient  
373 placement certificate.

374 (3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.--

375 (a) A petition for involuntary outpatient placement may be  
376 filed only when the full range of services that the person needs  
377 for mental health treatment and to live and function  
378 successfully are available in the patient's local community. The  
379 petitioner must certify in a sworn affidavit attached to the  
380 petition the comprehensive array of necessary services, the  
381 individual patient's needs, and the services that are available  
382 in the community. A petition may be filed by:

383 1. The administrator of the facility pursuant to paragraph

384 (2)(a);



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385        2. One of the examining professionals for persons examined  
386 on a voluntary outpatient basis pursuant to paragraph (2)(b).  
387 Upon filing, the examining professional shall provide a copy of  
388 the petition to the administrator of the receiving facility or  
389 designated department representative that will identify the  
390 service provider for the involuntary outpatient placement; or

391        3. The administrator of a treatment facility pursuant to  
392 paragraph (2)(c). Upon filing, the administrator shall provide a  
393 copy of the petition to the administrator of the receiving  
394 facility or designated department representative that will  
395 identify the service provider for the involuntary outpatient  
396 placement.

397        (b) The petition for involuntary outpatient placement  
398 shall be filed in the county where the patient is located. Upon  
399 filing, the clerk of the court shall provide copies to the  
400 department, the patient, the patient's guardian or  
401 representative, and the state attorney and public defender of  
402 the judicial circuit in which the patient is located. No fee  
403 shall be charged for the filing of a petition under this  
404 paragraph.

405        (4) APPOINTMENT OF COUNSEL.--Within 1 court working day  
406 after the filing of a petition for involuntary outpatient  
407 placement, the court shall appoint the public defender to  
408 represent the person who is the subject of the petition, unless  
409 the person is otherwise represented by counsel. The clerk of the  
410 court shall immediately notify the public defender of such  
411 appointment. The public defender shall represent the person  
412 until the petition is dismissed or the court order expires or



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413 the patient is discharged from involuntary outpatient placement.  
414 Any attorney representing the patient shall have access to the  
415 patient, witnesses, and records relevant to the presentation of  
416 the patient's case and shall represent the interests of the  
417 patient, regardless of the source of payment to the attorney.

418 (5) CONTINUANCE OF HEARING.--The patient is entitled, with  
419 the concurrence of the patient's counsel, to at least one  
420 continuance of the hearing. The continuance shall be for a  
421 period of up to 4 weeks.

422 (6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.--

423 (a)1. The court shall hold the hearing on involuntary  
424 outpatient placement within 5 days after the petition is filed,  
425 unless a continuance is granted. The hearing shall be held in  
426 the county where the patient is located and shall be as  
427 convenient to the patient as may be consistent with orderly  
428 procedure and shall be conducted in physical settings not likely  
429 to be injurious to the patient's condition. The state attorney  
430 for the circuit in which the patient is located shall represent  
431 the state, rather than the petitioner, as the real party in  
432 interest in the proceeding.

433 2. The court may appoint a master to preside at the  
434 hearing. One of the professionals who executed the involuntary  
435 outpatient placement certificate shall be a witness. The patient  
436 and the patient's guardian or representative shall be informed  
437 by the court of the right to an independent expert examination.  
438 If the patient cannot afford such an examination, the court  
439 shall provide for one. The independent expert's report shall be  
440 confidential and not discoverable, unless the expert is to be





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441 called as a witness for the patient at the hearing. The court  
442 shall allow testimony from individuals, including family  
443 members, deemed by the court to be relevant under the law of  
444 this state, regarding the person's prior history, and how that  
445 prior history relates to the person's current condition. The  
446 testimony in the hearing must be given under oath and the  
447 proceedings must be recorded. The patient may refuse to testify  
448 at the hearing.

449 (b)1. If the court concludes that the patient meets the  
450 criteria for involuntary outpatient placement pursuant to  
451 subsection (1), the court shall issue an order for involuntary  
452 outpatient placement. The court order shall be for a period of  
453 up to 6 months. The service provider shall discharge a patient  
454 any time the patient no longer meets the criteria for  
455 involuntary placement.

456 2. The administrator of a receiving facility or designated  
457 department representative shall identify the service provider  
458 that will have primary responsibility for service provision  
459 under the order. The service provider shall prepare a written  
460 proposed treatment plan and submit the plan to the court prior  
461 to the hearing for the court's consideration for inclusion in  
462 the involuntary outpatient placement order. The treatment plan  
463 shall specify the nature and extent of the patient's mental  
464 illness. The treatment plan may include provisions for case  
465 management, intensive case management, assertive community  
466 treatment, or a program for assertive community treatment. The  
467 treatment plan may also require that the patient make use of a  
468 service provider to supply any of the following categories of



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469 services to the individual: medication, periodic urinalysis to  
470 determine compliance with treatment, individual or group  
471 therapy, day or partial day programming activities, educational  
472 and vocational training or activities, alcohol or substance  
473 abuse treatment and counseling and periodic tests for the  
474 presence of alcohol or illegal drugs for persons with a history  
475 of alcohol or substance abuse, supervision of living  
476 arrangements, and any other services prescribed to treat the  
477 person's mental illness and to assist the person in living and  
478 functioning in the community or to attempt to prevent a relapse  
479 or deterioration. The service provider shall certify to the  
480 court in the treatment plan that the proposed services are  
481 currently available and that the service provider agrees to  
482 provide those services. Service providers may select and provide  
483 supervision to other individuals not enumerated in this  
484 subparagraph to implement specific aspects of the treatment  
485 plan, such as medication monitoring. The services in the  
486 treatment plan shall be deemed to be clinically appropriate by a  
487 physician, clinical psychologist, psychiatric nurse, or clinical  
488 social worker who consults with, or is employed or contracted  
489 by, the service provider. The court shall not order the  
490 department or the service provider to provide services if the  
491 program or service is not available in the patient's local  
492 community or there is no space available in the program or  
493 service for the patient or if funding is not available for the  
494 program or service. A copy of the order shall be sent to the  
495 Agency for Health Care Administration. After the placement order  
496 is issued, the service provider and the patient can modify



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497 provisions of the treatment plan. For any material modification  
498 of the provisions of the treatment plan, the service provider  
499 shall send notice of the modification to the court. Any material  
500 modification of the provisions of the treatment plan that are  
501 contested by the patient must be approved by the court.

502 3. When, in the clinical judgment of a physician, the  
503 patient has failed or refused to comply with the treatment  
504 ordered by the court, efforts were made to solicit compliance,  
505 and such patient may meet the criteria for involuntary  
506 examination, a person may be brought to a receiving facility  
507 pursuant to s. 394.463. If, after examination, the patient does  
508 not meet the criteria for involuntary inpatient placement  
509 pursuant to s. 394.467, the patient must be discharged from the  
510 receiving facility. The service provider must determine whether  
511 modifications should be made to the existing treatment plan and  
512 attempt to continue to engage the patient in treatment. For any  
513 material modification of the provisions of the treatment plan to  
514 which the patient or, if appointed, the patient's guardian  
515 advocate does agree, the service provider shall send notice of  
516 the modification to the court. Any material modification of the  
517 provisions of the treatment plan that are contested by the  
518 patient or, if appointed, the patient's guardian advocate must  
519 be approved by the court.

520 (c) If, at any time prior to the conclusion of the initial  
521 hearing on involuntary outpatient placement, it appears to the  
522 court that the person does not meet the criteria for involuntary  
523 outpatient placement under this section but instead meets the  
524 criteria for involuntary inpatient placement, the court may



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525 order the person admitted for involuntary inpatient placement  
526 pursuant to s. 394.467. If the person instead meets the criteria  
527 for involuntary assessment, protective custody, or involuntary  
528 admission pursuant to s. 397.675, the court may order the person  
529 to be admitted for involuntary assessment for a period of 5 days  
530 pursuant to s. 397.6811. Thereafter, all proceedings shall be  
531 governed by chapter 397.

532 (d) At the hearing on involuntary outpatient placement,  
533 the court shall consider testimony and evidence regarding the  
534 patient's competence to consent to treatment. If the court finds  
535 that the patient is incompetent to consent to treatment, the  
536 court shall appoint a guardian advocate as provided in s.  
537 394.4598 from a list of qualified and available guardian  
538 advocates submitted to the court with the petition. The guardian  
539 advocate's role shall be to monitor the patient's care to ensure  
540 that the patient's rights are protected. The guardian advocate  
541 is immune from liability under this provision. If the patient,  
542 the patient's guardian advocate, and the service provider agree  
543 that the guardian advocate is no longer needed because the  
544 person is competent, the guardian advocate may be discharged.

545 (e) The administrator of the receiving facility or  
546 designated department representative shall provide a copy of the  
547 court order and adequate documentation of a patient's mental  
548 illness to the service provider for involuntary outpatient  
549 placement. Such documentation shall include any advance  
550 directives made by the patient, a psychiatric evaluation of the  
551 patient, and any evaluations of the patient performed by a  
552 clinical psychologist or a clinical social worker.



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553           (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT  
554 PLACEMENT.--

555           (a) If the person continues to meet the criteria for  
556 involuntary outpatient placement, the service provider shall,  
557 prior to the expiration of the period during which the treatment  
558 is ordered for the person, file in the circuit court a continued  
559 involuntary outpatient placement certificate which shall be  
560 accompanied by a statement from the person's physician or  
561 clinical psychologist justifying the request, a brief  
562 description of the patient's treatment during the time he or she  
563 was involuntarily placed, and an individualized plan of  
564 continued treatment.

565           (b) Within 1 court working day after the filing of a  
566 petition for continued involuntary outpatient placement, the  
567 court shall appoint the public defender to represent the person  
568 who is the subject of the petition, unless the person is  
569 otherwise represented by counsel. The clerk of the court shall  
570 immediately notify the public defender of such appointment. The  
571 public defender shall represent the person until the petition is  
572 dismissed, the court order expires, or the patient is discharged  
573 from involuntary outpatient placement. Any attorney representing  
574 the patient shall have access to the patient, witnesses, and  
575 records relevant to the presentation of the patient's case and  
576 shall represent the interests of the patient, regardless of the  
577 source of payment to the attorney.

578           (c) Hearings on petitions for continued involuntary  
579 outpatient placement shall be before the circuit court. The  
580 court may appoint a master to preside at the hearing. The



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581 procedures for obtaining an order pursuant to this paragraph  
582 shall be in accordance with the provisions of subsection (6),  
583 except that the time period included in subparagraph (1)(a)5.  
584 shall not apply in determining the appropriateness of additional  
585 periods of involuntary outpatient placement.

586 (d) Notice of the hearing shall be provided as set forth  
587 in s. 394.4599.

588 (e) The same procedure shall be repeated prior to the  
589 expiration of each additional period the patient is placed in  
590 treatment.

591 (f) If the patient has been previously found incompetent  
592 to consent to treatment, the court shall consider testimony and  
593 evidence regarding the patient's competence. If the court finds  
594 evidence that the patient has become competent to consent to  
595 treatment, the court may order that any guardian advocate  
596 previously appointed be discharged.

597 Section 6. Section 394.467, Florida Statutes, is amended  
598 to read:

599 394.467 Involuntary inpatient placement.--

600 (1) CRITERIA.--A person may be ~~involuntarily~~ placed in  
601 involuntary inpatient placement for treatment upon a finding of  
602 the court by clear and convincing evidence that:

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

605 1.a. He or she has refused voluntary placement for  
606 treatment after sufficient and conscientious explanation and  
607 disclosure of the purpose of placement for treatment; or



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608 |           b. He or she is unable to determine for himself or herself  
609 | whether placement is necessary; and

610 |           2.a. He or she is manifestly incapable of surviving alone  
611 | or with the help of willing and responsible family or friends,  
612 | including available alternative services, and, without  
613 | treatment, is likely to suffer from neglect or refuse to care  
614 | for himself or herself, and such neglect or refusal poses a real  
615 | and present threat of substantial harm to his or her well-being;  
616 | or

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

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

624 |           (2) ADMISSION TO A TREATMENT FACILITY.--A patient may be  
625 | retained by a receiving facility or involuntarily placed in a  
626 | treatment facility upon the recommendation of the administrator  
627 | of a receiving facility where the patient has been examined and  
628 | after adherence to the notice and hearing procedures provided in  
629 | s. 394.4599. The recommendation must be supported by the opinion  
630 | of a psychiatrist and the second opinion of a clinical  
631 | psychologist or another psychiatrist, both of whom have  
632 | personally examined the patient within the preceding 72 hours,  
633 | that the criteria for involuntary inpatient placement are met.  
634 | However, in counties of less than 50,000 population, if the  
635 | administrator certifies that no psychiatrist or clinical



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636 psychologist is available to provide the second opinion, such  
637 second opinion may be provided by a licensed physician with  
638 postgraduate training and experience in diagnosis and treatment  
639 of mental and nervous disorders or by a psychiatric nurse. Such  
640 recommendation shall be entered on an involuntary inpatient  
641 placement certificate, which certificate shall authorize the  
642 receiving facility to retain the patient pending transfer to a  
643 treatment facility or completion of a hearing.

644 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.--The  
645 administrator of the facility shall file a petition for  
646 involuntary inpatient placement in the court in the county where  
647 the patient is located. Upon filing, the clerk of the court  
648 shall provide copies to the department, the patient, the  
649 patient's guardian or representative, and the state attorney and  
650 public defender of the judicial circuit in which the patient is  
651 located. No fee shall be charged for the filing of a petition  
652 under this subsection.

653 (4) APPOINTMENT OF COUNSEL.--Within 1 court working day  
654 after the filing of a petition for involuntary inpatient  
655 placement, the court shall appoint the public defender to  
656 represent the person who is the subject of the petition, unless  
657 the person is otherwise represented by counsel. The clerk of the  
658 court shall immediately notify the public defender of such  
659 appointment. Any attorney representing the patient shall have  
660 access to the patient, witnesses, and records relevant to the  
661 presentation of the patient's case and shall represent the  
662 interests of the patient, regardless of the source of payment to  
663 the attorney.





664 (5) CONTINUANCE OF HEARING.--The patient is entitled, with  
 665 the concurrence of the patient's counsel, to at least one  
 666 continuance of the hearing. The continuance shall be for a  
 667 period of up to 4 weeks.

668 (6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.--

669 (a)1. The court shall hold the hearing on involuntary  
 670 inpatient placement within 5 days, unless a continuance is  
 671 granted. The hearing shall be held in the county where the  
 672 patient is located and shall be as convenient to the patient as  
 673 may be consistent with orderly procedure and shall be conducted  
 674 in physical settings not likely to be injurious to the patient's  
 675 condition. If the court finds that the patient's attendance at  
 676 the hearing is not consistent with the best interests of the  
 677 patient, and the patient's counsel does not object, the court  
 678 may waive the presence of the patient from all or any portion of  
 679 the hearing. The state attorney for the circuit in which the  
 680 patient is located shall represent the state, rather than the  
 681 petitioning facility administrator, as the real party in  
 682 interest in the proceeding.

683 2. The court may appoint a master to preside at the  
 684 hearing. One of the professionals who executed the involuntary  
 685 inpatient placement certificate shall be a witness. The patient  
 686 and the patient's guardian or representative shall be informed  
 687 by the court of the right to an independent expert examination.  
 688 If the patient cannot afford such an examination, the court  
 689 shall provide for one. The independent expert's report shall be  
 690 confidential and not discoverable, unless the expert is to be  
 691 called as a witness for the patient at the hearing. The



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692 testimony in the hearing must be given under oath, and the  
693 proceedings must be recorded. The patient may refuse to testify  
694 at the hearing.

695 (b) If the court concludes that the patient meets the  
696 criteria for involuntary inpatient placement, it shall order  
697 that the patient be transferred to a treatment facility or, if  
698 the patient is at a treatment facility, that the patient be  
699 retained there or be treated at any other appropriate receiving  
700 or treatment facility, or that the patient receive services from  
701 a receiving or treatment facility, on an involuntary basis, for  
702 a period of up to 6 months. The order shall specify the nature  
703 and extent of the patient's mental illness. The facility shall  
704 discharge a patient any time the patient no longer meets the  
705 criteria for involuntary inpatient placement, unless the patient  
706 has transferred to voluntary status.

707 (c) If at any time prior to the conclusion of the hearing  
708 on involuntary inpatient placement it appears to the court that  
709 the person does not meet the criteria for involuntary inpatient  
710 placement under this section ~~chapter~~, but instead meets the  
711 criteria for involuntary outpatient placement, the court may  
712 order the person evaluated for involuntary outpatient placement  
713 pursuant to s. 394.466. The petition and hearing procedures set  
714 forth in s. 394.466 shall apply. If the person instead meets the  
715 criteria for involuntary assessment, protective custody, or  
716 involuntary admission pursuant to s. 397.675, then the court may  
717 order the person to be admitted for involuntary assessment for a  
718 period of 5 days pursuant to s. 397.6811. Thereafter, all  
719 proceedings shall be governed by chapter 397.



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720 (d) At the hearing on involuntary inpatient placement, the  
721 court shall consider testimony and evidence regarding the  
722 patient's competence to consent to treatment. If the court finds  
723 that the patient is incompetent to consent to treatment, it  
724 shall appoint a guardian advocate as provided in s. 394.4598.

725 (e) The administrator of the receiving facility shall  
726 provide a copy of the court order and adequate documentation of  
727 a patient's mental illness to the administrator of a treatment  
728 facility whenever a patient is ordered for involuntary inpatient  
729 placement, whether by civil or criminal court. Such  
730 documentation shall include any advance directives made by the  
731 patient, a psychiatric evaluation of the patient, and any  
732 evaluations of the patient performed by a clinical psychologist  
733 or a clinical social worker. The administrator of a treatment  
734 facility may refuse admission to any patient directed to its  
735 facilities on an involuntary basis, whether by civil or criminal  
736 court order, who is not accompanied at the same time by adequate  
737 orders and documentation.

738 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT  
739 PLACEMENT.--

740 (a) Hearings on petitions for continued involuntary  
741 inpatient placement shall be administrative hearings and shall  
742 be conducted in accordance with the provisions of s. 120.57(1),  
743 except that any order entered by the hearing officer shall be  
744 final and subject to judicial review in accordance with s.  
745 120.68. Orders concerning patients committed after successfully  
746 pleading not guilty by reason of insanity shall be governed by  
747 the provisions of s. 916.15.



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748 (b) If the patient continues to meet the criteria for  
749 involuntary inpatient placement, the administrator shall, prior  
750 to the expiration of the period during which the treatment  
751 facility is authorized to retain the patient, file a petition  
752 requesting authorization for continued involuntary inpatient  
753 placement. The request shall be accompanied by a statement from  
754 the patient's physician or clinical psychologist justifying the  
755 request, a brief description of the patient's treatment during  
756 the time he or she was involuntarily placed, and an  
757 individualized plan of continued treatment. Notice of the  
758 hearing shall be provided as set forth in s. 394.4599. If at the  
759 hearing the hearing officer finds that attendance at the hearing  
760 is not consistent with the best interests of the patient, the  
761 hearing officer may waive the presence of the patient from all  
762 or any portion of the hearing, unless the patient, through  
763 counsel, objects to the waiver of presence. The testimony in the  
764 hearing must be under oath, and the proceedings must be  
765 recorded.

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

770 (d) If at a hearing it is shown that the patient continues  
771 to meet the criteria for involuntary inpatient placement, the  
772 administrative law judge shall sign the order for continued  
773 involuntary inpatient placement for a period not to exceed 6  
774 months. The same procedure shall be repeated prior to the  
775 expiration of each additional period the patient is retained.



776 (e) If continued involuntary inpatient placement is  
 777 necessary for a patient admitted while serving a criminal  
 778 sentence, but whose sentence is about to expire, or for a  
 779 patient involuntarily placed while a minor but who is about to  
 780 reach the age of 18, the administrator shall petition the  
 781 administrative law judge for an order authorizing continued  
 782 involuntary inpatient placement.

783 (f) If the patient has been previously found incompetent  
 784 to consent to treatment, the hearing officer shall consider  
 785 testimony and evidence regarding the patient's competence. If  
 786 the hearing officer finds evidence that the patient is now  
 787 competent to consent to treatment, the hearing officer may issue  
 788 a recommended order to the court that found the patient  
 789 incompetent to consent to treatment that the patient's  
 790 competence be restored and that any guardian advocate previously  
 791 appointed be discharged.

792 (8) RETURN OF PATIENTS.--When a patient at a treatment  
 793 facility leaves the facility without authorization, the  
 794 administrator may authorize a search for the patient and the  
 795 return of the patient to the facility. The administrator may  
 796 request the assistance of a law enforcement agency in the search  
 797 for and return of the patient.

798 Section 7. Involuntary Outpatient Placement Implementation  
 799 Task Force.--

800 (1) The Involuntary Outpatient Placement Implementation  
 801 Task Force is established to develop a plan for implementation  
 802 of the involuntary outpatient placement procedures established  
 803 in this act. The task force shall include a representative from



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804 each of the following entities, to be designated by their  
805 respective organizations no later than July 1, 2003: the Florida  
806 Sheriffs Association, the Florida Police Chiefs Association, the  
807 Florida Public Defender Association, Inc., the Florida  
808 Prosecuting Attorneys Association, the Florida Association of  
809 Court Clerks, the Florida Association of Counties, the  
810 Department of Children and Family Services, the Florida Council  
811 for Community Mental Health, and the Agency for Health Care  
812 Administration. Additionally, a member of the Senate shall be  
813 designated by the President of the Senate, a member of the House  
814 of Representatives shall be designated by the Speaker of the  
815 House of Representatives, a representative of the Executive  
816 Office of the Governor shall be designated by the Governor, and  
817 a circuit judge shall be designated by the Chief Justice of the  
818 Supreme Court to serve on the task force. The representative for  
819 the Florida Sheriffs Association and the circuit judge shall be  
820 designated by the Chief Justice of the Florida Supreme Court and  
821 shall serve as co-chairs of the task force. The task force  
822 should solicit and receive input from interested parties.

823 (2) The task force shall be convened no later than August  
824 1, 2003. Staff support for the initial meeting shall be provided  
825 by staff of the House Committee on the Future of Florida's  
826 Families and the Senate Committee on Children and Families. The  
827 co-chairs shall facilitate the meetings and make appropriate  
828 arrangements for staff support of subsequent meetings and  
829 preparation of an implementation plan and report. Expenses  
830 associated with task force meetings and work products shall be  
831 the responsibility of each member's organization.



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832           (3) The task force shall prepare an implementation plan  
833 and report that identifies issues and proposed strategies for  
834 implementation of court-ordered mental health treatment on an  
835 outpatient basis. The task force shall also address issues,  
836 including, but not limited to, recommendations for an evaluation  
837 process to determine the effectiveness of involuntary outpatient  
838 placement and proposed technical amendments to the Florida  
839 Statutes to improve implementation, if necessary and  
840 appropriate. The implementation plan and report must recommend a  
841 process to collect data that reflects the impact of involuntary  
842 outpatient placement on the courts, state attorneys, public  
843 defenders, clerks of court, law enforcement, jails, and the  
844 mental health treatment system. The report must be submitted by  
845 December 1, 2003, to the Governor, the President of the Senate,  
846 the Speaker of the House of Representatives, and the Chief  
847 Justice of the Florida Supreme Court.

848           Section 8. If any provision of this act or its application  
849 to any person or circumstance is held invalid, the invalidity  
850 does not affect other provisions or applications of the act  
851 which can be given effect without the invalid provision or  
852 application, and to this end the provisions of this act are  
853 severable.

854           Section 9. Except as otherwise provided herein, this act  
855 shall take effect October 1, 2004.