



CHAMBER ACTION

The Committee on Appropriations recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

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



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



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

70
71 WHEREAS, untreated mental illness is a difficult issue
72 confronting every Florida community, and

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

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

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



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85 WHEREAS, implementation and oversight of the involuntary
86 outpatient placement system involves the cooperative efforts and
87 combined resources of the Department of Children and Family
88 Services, the offices of the state attorneys, the offices of the
89 public defenders, the state courts, the clerks of court, and law
90 enforcement, among others, and

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

99 WHEREAS, it is the intent of the Legislature to address
100 this issue in a deliberative, thoughtful process which allows
101 consideration of the difficult fiscal issues presented by a
102 statutory process for involuntary outpatient placement and to
103 appoint a task force to make recommendations on the effectuation
104 of court-ordered outpatient mental health treatment in
105 sufficient time to allow the stakeholders and funding entities
106 to adequately prepare for implementation in fiscal year 2004-
107 2005, NOW, THEREFORE,

108

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

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

114 394.455 Definitions.--As used in this part, unless the
115 context clearly requires otherwise, the term:

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

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

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

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

132 394.4598 Guardian advocate.--

133 (1) The administrator may petition the court for the
134 appointment of a guardian advocate based upon the opinion of a
135 psychiatrist that the patient is incompetent to consent to
136 treatment. If the court finds that a patient is incompetent to
137 consent to treatment and has not been adjudicated incapacitated
138 and a guardian with the authority to consent to mental health



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

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



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167 restore, the patient's competence. A copy of the order restoring
168 competence or the certificate of discharge containing the
169 restoration of competence shall be provided to the patient and
170 the guardian advocate.

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

173 394.4615 Clinical records; confidentiality.--

174 (3) Information from the clinical record may be released
175 when:

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

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

185 394.463 Involuntary examination.--

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

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

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



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

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

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

209 (2) INVOLUNTARY EXAMINATION.--

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



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

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



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

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

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

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

267 Section 5. Section 394.466, Florida Statutes, is created
268 to read:

269 394.466 Involuntary outpatient placement.--

270 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.--

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

274 1. The person is 18 years of age or older.

275 2. The person has a mental illness.



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

279 4. The person has a history of lack of compliance with
280 treatment for mental illness.

281 5. The person has:

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

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

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

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



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

306 8. It is likely that the person will benefit from
307 involuntary outpatient placement.

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

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

320 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

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



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

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

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



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

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

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

385 1. The administrator of the facility pursuant to paragraph

386 (2)(a);



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

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

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

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



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

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

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

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

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



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

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

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



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



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

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

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



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

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

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



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555 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
556 PLACEMENT.--

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

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

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



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

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

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

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

599 Section 6. Section 394.467, Florida Statutes, is amended
600 to read:

601 394.467 Involuntary inpatient placement.--

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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



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

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

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



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

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

740 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
741 PLACEMENT.--

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



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

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

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



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

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

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

800 Section 7. Involuntary Outpatient Placement Implementation
 801 Task Force.--

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



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

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



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

850 Section 8. Any additional costs or expenses related to
851 implementation and enforcement of this act by the judiciary of
852 this state shall be a local requirement pursuant to chapter 29,
853 Florida Statutes.

854 Section 9. If any provision of this act or its application
855 to any person or circumstance is held invalid, the invalidity
856 does not affect other provisions or applications of the act
857 which can be given effect without the invalid provision or
858 application, and to this end the provisions of this act are
859 severable.

860 Section 10. Except as otherwise provided herein, this act
861 shall take effect October 1, 2004.