



1 A bill to be entitled
2 An act relating to The Baker Act; amending s. 394.455,
3 F.S.; revising a definition; providing additional
4 definitions; amending s. 394.4598, F.S.; revising language
5 with respect to the guardian advocate; authorizing the
6 guardian advocate to consent to administration of
7 medication over objection under certain circumstances;
8 amending s. 394.4615, F.S.; providing for release of
9 certain clinical records to certain persons for certain
10 purposes; amending s. 394.463, F.S.; revising criteria and
11 procedures for involuntary examination; creating s.
12 394.466, F.S.; setting forth criteria for involuntary
13 outpatient placement; providing contents of a petition for
14 involuntary outpatient placement; specifying procedures
15 for involuntary outpatient placement; providing for
16 persons who may file a petition for involuntary outpatient
17 placement; providing for appointment of counsel; providing
18 for continuance of hearings; providing for a hearing on
19 involuntary outpatient placement; setting forth procedures
20 for the hearing; providing for appointment of a master to
21 preside; providing for an independent examination;
22 requiring a court to order involuntary outpatient
23 placement under certain circumstances; requiring a
24 treatment plan; providing for plan modification; providing
25 for a patient to be brought to a receiving facility upon
26 failure or refusal to comply with the treatment plan;
27 providing for involuntary inpatient placement or
28 involuntary assessment; requiring consideration of a



29 patient's competence to proceed; requiring a list of
30 guardian advocates to be submitted to the court; defining
31 the role of a guardian advocate; providing for discharge
32 of the guardian advocate; requiring certain documentation;
33 allowing a person for whom an involuntary outpatient
34 placement petition has been filed to agree to a voluntary
35 treatment agreement; specifying requirements for
36 agreements; providing for modifications; providing for
37 filing of an affidavit of noncompliance with a voluntary
38 treatment plan; requiring a hearing; requiring dismissal
39 of petitions in certain circumstances; providing
40 procedures for continued involuntary outpatient placement;
41 providing for a continued involuntary outpatient placement
42 certificate; requiring a hearing; requiring appointment of
43 a public defender; requiring hearings; providing for
44 appointment of a special master; amending s. 394.467,
45 F.S.; revising language with respect to involuntary
46 inpatient placement; providing a reference to inpatient
47 and outpatient involuntary placement; providing
48 requirements for placement orders; providing for voluntary
49 treatment agreements; providing a procedure for continued
50 involuntary outpatient placement; establishing the
51 Involuntary Outpatient Placement Implementation Task
52 Force; providing purposes; providing for membership;
53 providing for meetings; requiring the task force to
54 prepare an implementation plan relating to court-ordered
55 mental health outpatient treatment; requiring a report to
56 the Governor, Legislature, and Florida Supreme Court;



57 | specifying certain costs or expenses related to
58 | implementation and enforcement by the state judiciary as a
59 | local requirement; providing for severability; providing
60 | an effective date.

61 |
62 | WHEREAS, untreated mental illness is a difficult issue
63 | confronting every Florida community, and

64 | WHEREAS, there are Floridians with severe mental illnesses
65 | who are prone to relapse, often fail to comply with their
66 | treatment plans, and have repeated hospitalizations and criminal
67 | justice contacts, who are sometimes referred to as "Baker Act
68 | recidivists," and

69 | WHEREAS, many states use some form of civil commitment to
70 | compel Baker Act recidivists to undergo treatment on an
71 | involuntary outpatient basis, and

72 | WHEREAS, it is the intent of the Legislature to protect
73 | public safety and ensure that Baker Act recidivists receive
74 | needed mental health services, while preserving the due process
75 | rights of individuals with mental illness, and

76 | WHEREAS, implementation and oversight of the involuntary
77 | outpatient placement system involves the cooperative efforts and
78 | combined resources of the Department of Children and Family
79 | Services, the offices of the state attorneys, the offices of the
80 | public defenders, the state courts, the clerks of court, and law
81 | enforcement, among others, and

82 | WHEREAS, the State of Florida is facing numerous
83 | unprecedented fiscal challenges, some of which have a direct
84 | bearing on involuntary outpatient placement, including revenue



85 shortfalls, the transition to state funding of the judicial
86 branch pursuant to Article V Revision 7, consideration of the
87 proper placement of the Mental Health Program Office, and
88 development of strategies to address the staggering growth in
89 Medicaid spending, and

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

99

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

101

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

105 394.455 Definitions.--As used in this part, unless the
106 context clearly requires otherwise, the term:

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



112 (31) "Service provider" means any public or private
113 receiving facility, entity under contract with the Department of
114 Children and Family Services to provide mental health services,
115 or a clinical psychologist, clinical social worker, physician,
116 psychiatric nurse, community mental health center, or clinic as
117 defined in this part.

118 (32) "Involuntary placement" means involuntary outpatient
119 treatment pursuant to s. 394.466 or involuntary inpatient
120 treatment pursuant to s. 394.467.

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

123 394.4598 Guardian advocate.--

124 (1) The administrator may petition the court for the
125 appointment of a guardian advocate based upon the opinion of a
126 psychiatrist that the patient is incompetent to consent to
127 treatment. If the court finds that a patient is incompetent to
128 consent to treatment and has not been adjudicated incapacitated
129 and a guardian with the authority to consent to mental health
130 treatment appointed, it shall appoint a guardian advocate. The
131 patient has the right to have an attorney represent him or her
132 at the hearing. If the person is indigent, the court shall
133 appoint the office of the public defender to represent him or
134 her at the hearing. The patient has the right to testify, cross-
135 examine witnesses, and present witnesses. The proceeding shall
136 be recorded either electronically or stenographically, and
137 testimony shall be provided under oath. One of the professionals
138 authorized to give an opinion in support of a petition for
139 involuntary placement, as described in s. 394.466 or s.



140 394.467(2), must testify. A guardian advocate must meet the
141 qualifications of a guardian contained in part IV of chapter
142 744, except that a professional referred to in this part, an
143 employee of the facility providing direct services to the
144 patient under this part, a departmental employee, a facility
145 administrator, or member of the Florida local advocacy council
146 shall not be appointed. A person who is appointed as a guardian
147 advocate must agree to the appointment.

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

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

164 394.4615 Clinical records; confidentiality.--

165 (3) Information from the clinical record may be released
166 when:



167 (c) It is necessary to determine whether a person meets
 168 the criteria for involuntary outpatient placement pursuant to s.
 169 394.466. In such circumstance, the clinical record may be
 170 released to the state attorney, public defender or the patient's
 171 private legal counsel, the court, and the appropriate mental
 172 health professionals.

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

176 394.463 Involuntary examination.--

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

181 (a)1. The person has refused voluntary examination after
 182 conscientious explanation and disclosure of the purpose of the
 183 examination; or

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

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

189 1. ~~Without care or treatment,~~ The person will ~~is likely to~~
 190 suffer from neglect or refuse to care for himself or herself;
 191 such neglect or refusal will pose ~~poses~~ a real and present
 192 threat of substantial harm to his or her well-being; and it is
 193 not apparent that such harm may be avoided through the help of



194 willing family members or friends or the provision of other
195 services; or

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

200 (2) INVOLUNTARY EXAMINATION.--

201 (e) The Agency for Health Care Administration shall
202 receive and maintain the copies of ex parte orders, involuntary
203 outpatient placement orders issued pursuant to s. 394.466, or
204 involuntary inpatient placement orders issued pursuant to s.
205 394.467, professional certificates, and law enforcement
206 officers' reports. These documents shall be considered part of
207 the clinical record, governed by the provisions of s. 394.4615.
208 The agency shall prepare annual reports analyzing the data
209 obtained from these documents, without information identifying
210 patients, and shall provide copies of reports to the department,
211 the President of the Senate, the Speaker of the House of
212 Representatives, and the minority leaders of the Senate and the
213 House of Representatives.

214 (g) A person for whom an involuntary examination has been
215 initiated who is being evaluated or treated at a hospital for an
216 emergency medical condition specified in s. 395.002 must be
217 examined by a receiving facility within 72 hours. The 72-hour
218 period begins when the patient arrives at the hospital and
219 ceases when the attending physician documents that the patient
220 has an emergency medical condition. If the patient is examined
221 at a hospital providing emergency medical services by a



222 professional qualified to perform an involuntary examination and
223 is found as a result of that examination not to meet the
224 criteria for involuntary outpatient placement pursuant to s.
225 394.466(1) or involuntary inpatient placement pursuant to s.
226 394.467(1), the patient may be offered voluntary placement, if
227 appropriate, or released directly from the hospital providing
228 emergency medical services. The finding by the professional that
229 the patient has been examined and does not meet the criteria for
230 involuntary inpatient placement or involuntary outpatient
231 placement must be entered into the patient's clinical record.
232 Nothing in this paragraph is intended to prevent a hospital
233 providing emergency medical services from appropriately
234 transferring a patient to another hospital prior to
235 stabilization, provided the requirements of s. 395.1041(3)(c)
236 have been met.

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

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

244 2. The patient shall be released, subject to the
245 provisions of subparagraph 1., for voluntary outpatient
246 treatment;

247 3. The patient, unless he or she is charged with a crime,
248 shall be asked to give express and informed consent to placement



249 as a voluntary patient, and, if such consent is given, the
 250 patient shall be admitted as a voluntary patient; or

251 4. A petition for involuntary inpatient placement or a
 252 petition for involuntary outpatient placement shall be filed in
 253 the appropriate court by the petitioner delineated in s.
 254 394.466(3)(a) ~~facility administrator~~ when treatment is deemed
 255 necessary; in which case, the least restrictive treatment
 256 consistent with the optimum improvement of the patient's
 257 condition shall be made available.

258 Section 5. Section 394.466, Florida Statutes, is created
 259 to read:

260 394.466 Involuntary outpatient placement.--

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

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

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

266 2. The person has a mental illness.

267 3. The person is unlikely to survive safely in the
 268 community without supervision, based on a clinical
 269 determination.

270 4. The person has a history of lack of compliance with
 271 treatment for mental illness.

272 5. The person has:

273 a. At least twice within the last 36 months, been admitted
 274 for examination or placement in a receiving or treatment
 275 facility as defined in s. 394.455 or received mental health
 276 services in a forensic or correctional facility. The 36-month



277 period does not include any period during which the person was
278 admitted or incarcerated immediately preceding the filing of the
279 petition and does include acts of noncompliance with the
280 treatment and the current admission for consideration; or

281 b. Engaged in one or more acts of serious violent behavior
282 toward himself or herself or others or engaged in attempts at
283 serious bodily harm to himself or herself or others within the
284 last 36 months. The 36-month period does not include any period
285 in which the person was admitted or incarcerated immediately
286 preceding the filing of the petition and does include acts of
287 violence occurring during the admission or incarceration.

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

291 7. In view of the person's treatment history and current
292 behavior, the person is in need of involuntary outpatient
293 placement in order to prevent a relapse or deterioration which
294 would be likely to result in serious bodily harm to himself or
295 herself or others, or a substantial harm to his or her well-
296 being as defined in s. 394.463(1).

297 8. It is likely that the person will benefit from
298 involuntary outpatient placement.

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

302 (b) Each required criteria for involuntary outpatient
303 placement must be alleged in the petition and substantiated by
304 hospitalization or arrest records that shall be attached to the



305 petition or a sworn affidavit that shall be attached to the
306 petition. The petition shall consist of a clinical determination
307 by a qualified professional who shall be required to attend the
308 hearing pursuant to subsection (6). The patient shall be allowed
309 an opportunity to present evidence and testimony at the hearing
310 to refute or rebut said allegations.

311 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

312 (a) A patient may be retained by a receiving facility
313 unless the patient has been stabilized and no longer meets the
314 involuntary examination criteria pursuant to s. 394.463(1), in
315 which case the patient must be placed in outpatient treatment
316 while awaiting the hearing for involuntary outpatient placement
317 upon the recommendation of the administrator of a receiving
318 facility where the patient has been examined and after adherence
319 to the notice and hearing procedures provided in s. 394.4599.
320 The recommendation must be supported by the opinion of a
321 psychiatrist and the second opinion of a clinical psychologist
322 or another psychiatrist, both of whom have personally examined
323 the patient within the preceding 72 hours, that the criteria for
324 involuntary outpatient placement are met. However, in counties
325 of less than 50,000 population, if the administrator certifies
326 that no psychiatrist or clinical psychologist is available to
327 provide the second opinion, such second opinion may be provided
328 by a licensed physician with postgraduate training and
329 experience in diagnosis and treatment of mental and nervous
330 disorders or by a psychiatric nurse. Such recommendation shall
331 be entered on an involuntary outpatient placement certificate,
332 which certificate shall authorize the receiving facility to



333 retain the patient pending transfer to involuntary outpatient
334 placement or completion of a hearing.

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

349 (c) If a patient in involuntary inpatient placement meets
350 the criteria for involuntary outpatient placement, the
351 administrator of the treatment facility may, prior to expiration
352 of the period during which the treatment facility is authorized
353 to retain the patient, recommend involuntary outpatient
354 placement. The recommendation must be supported by the opinion
355 of a psychiatrist and the second opinion of a clinical
356 psychologist or another psychiatrist, both of whom have
357 personally examined the patient within the preceding 72 hours,
358 that the criteria for involuntary outpatient placement are met.
359 However, in counties of less than 50,000 population, if the
360 administrator certifies that no psychiatrist or clinical



361 psychologist is available to provide the second opinion, such
362 second opinion may be provided by a licensed physician with
363 postgraduate training and experience in diagnosis and treatment
364 of mental and nervous disorders or by a psychiatric nurse. Such
365 recommendation shall be entered on an involuntary outpatient
366 placement certificate.

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

368 (a) A petition for involuntary outpatient placement may be
369 filed only when the full range of services that the person needs
370 for mental health treatment and to live and function
371 successfully are available in the patient's local community. The
372 petitioner must certify in a sworn affidavit attached to the
373 petition the comprehensive array of necessary services, the
374 individual patient's needs, and the services that are available
375 in the community. A petition may be filed by:

376 1. The administrator of the facility pursuant to paragraph
377 (2)(a);

378 2. One of the examining professionals for persons examined
379 on a voluntary outpatient basis pursuant to paragraph (2)(b).
380 Upon filing, the examining professional shall provide a copy of
381 the petition to the administrator of the receiving facility or
382 designated department representative that will identify the
383 service provider for the involuntary outpatient placement; or

384 3. The administrator of a treatment facility pursuant to
385 paragraph (2)(c). Upon filing, the administrator shall provide a
386 copy of the petition to the administrator of the receiving
387 facility or designated department representative that will



388 identify the service provider for the involuntary outpatient
389 placement.

390 (b) The petition for involuntary outpatient placement
391 shall be filed in the county where the patient is located. Upon
392 filing, the clerk of the court shall provide copies to the
393 department, the patient, the patient's guardian or
394 representative, and the state attorney and public defender of
395 the judicial circuit in which the patient is located. No fee
396 shall be charged for the filing of a petition under this
397 paragraph.

398 (4) APPOINTMENT OF COUNSEL.--Within 1 court working day
399 after the filing of a petition for involuntary outpatient
400 placement, the court shall appoint the public defender to
401 represent the person who is the subject of the petition, unless
402 the person is otherwise represented by counsel. The clerk of the
403 court shall immediately notify the public defender of such
404 appointment. The public defender shall represent the person
405 until the petition is dismissed or the court order expires or
406 the patient is discharged from involuntary outpatient placement.
407 Any attorney representing the patient shall have access to the
408 patient, witnesses, and records relevant to the presentation of
409 the patient's case and shall represent the interests of the
410 patient, regardless of the source of payment to the attorney.

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

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



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

426 2. The court may appoint a master to preside at the
427 hearing. One of the professionals who executed the involuntary
428 outpatient placement certificate shall be a witness. The patient
429 and the patient's guardian or representative shall be informed
430 by the court of the right to an independent expert examination.
431 If the patient cannot afford such an examination, the court
432 shall provide for one. The independent expert's report shall be
433 confidential and not discoverable, unless the expert is to be
434 called as a witness for the patient at the hearing. The court
435 shall allow testimony from individuals, including family
436 members, deemed by the court to be relevant under the law of
437 this state, regarding the person's prior history, and how that
438 prior history relates to the person's current condition. The
439 testimony in the hearing must be given under oath and the
440 proceedings must be recorded. The patient may refuse to testify
441 at the hearing.

442 (b)1. If the court concludes that the patient meets the
443 criteria for involuntary outpatient placement pursuant to



444 subsection (1), the court shall issue an order for involuntary
445 outpatient placement. The court order shall be for a period of
446 up to 6 months. The service provider shall discharge a patient
447 any time the patient no longer meets the criteria for
448 involuntary placement.

449 2. The administrator of a receiving facility or designated
450 department representative shall identify the service provider
451 that will have primary responsibility for service provision
452 under the order. The service provider shall prepare a written
453 proposed treatment plan and submit the plan to the court prior
454 to the hearing for the court's consideration for inclusion in
455 the involuntary outpatient placement order. The treatment plan
456 shall specify the nature and extent of the patient's mental
457 illness. The treatment plan may include provisions for case
458 management, intensive case management, assertive community
459 treatment, or a program for assertive community treatment. The
460 treatment plan may also require that the patient make use of a
461 service provider to supply any of the following categories of
462 services to the individual: medication, periodic urinalysis to
463 determine compliance with treatment, individual or group
464 therapy, day or partial day programming activities, educational
465 and vocational training or activities, alcohol or substance
466 abuse treatment and counseling and periodic tests for the
467 presence of alcohol or illegal drugs for persons with a history
468 of alcohol or substance abuse, supervision of living
469 arrangements, and any other services prescribed to treat the
470 person's mental illness and to assist the person in living and
471 functioning in the community or to attempt to prevent a relapse



472 or deterioration. The service provider shall certify to the
473 court in the treatment plan that the proposed services are
474 currently available and that the service provider agrees to
475 provide those services. Service providers may select and provide
476 supervision to other individuals not enumerated in this
477 subparagraph to implement specific aspects of the treatment
478 plan, such as medication monitoring. The services in the
479 treatment plan shall be deemed to be clinically appropriate by a
480 physician, clinical psychologist, psychiatric nurse, or clinical
481 social worker who consults with, or is employed or contracted
482 by, the service provider. The court shall not order the
483 department or the service provider to provide services if the
484 program or service is not available in the patient's local
485 community or there is no space available in the program or
486 service for the patient or if funding is not available for the
487 program or service. A copy of the order shall be sent to the
488 Agency for Health Care Administration. After the placement order
489 is issued, the service provider and the patient can modify
490 provisions of the treatment plan. For any material modification
491 of the provisions of the treatment plan, the service provider
492 shall send notice of the modification to the court. Any material
493 modification of the provisions of the treatment plan that are
494 contested by the patient must be approved by the court.

495 3. When, in the clinical judgment of a physician, the
496 patient has failed or refused to comply with the treatment
497 ordered by the court, efforts were made to solicit compliance,
498 and such patient may meet the criteria for involuntary
499 examination, a person may be brought to a receiving facility



500 pursuant to s. 394.463. If, after examination, the patient does
501 not meet the criteria for involuntary inpatient placement
502 pursuant to s. 394.467, the patient must be discharged from the
503 receiving facility. The service provider must determine whether
504 modifications should be made to the existing treatment plan and
505 attempt to continue to engage the patient in treatment. For any
506 material modification of the provisions of the treatment plan to
507 which the patient or, if appointed, the patient's guardian
508 advocate does agree, the service provider shall send notice of
509 the modification to the court. Any material modification of the
510 provisions of the treatment plan that are contested by the
511 patient or, if appointed, the patient's guardian advocate must
512 be approved by the court.

513 (c) If, at any time prior to the conclusion of the initial
514 hearing on involuntary outpatient placement, it appears to the
515 court that the person does not meet the criteria for involuntary
516 outpatient placement under this section but instead meets the
517 criteria for involuntary inpatient placement, the court may
518 order the person admitted for involuntary inpatient placement
519 pursuant to s. 394.467. If the person instead meets the criteria
520 for involuntary assessment, protective custody, or involuntary
521 admission pursuant to s. 397.675, the court may order the person
522 to be admitted for involuntary assessment for a period of 5 days
523 pursuant to s. 397.6811. Thereafter, all proceedings shall be
524 governed by chapter 397.

525 (d) At the hearing on involuntary outpatient placement,
526 the court shall consider testimony and evidence regarding the
527 patient's competence to consent to treatment. If the court finds



528 that the patient is incompetent to consent to treatment, the
529 court shall appoint a guardian advocate as provided in s.
530 394.4598 from a list of qualified and available guardian
531 advocates submitted to the court with the petition. The guardian
532 advocate's role shall be to monitor the patient's care to ensure
533 that the patient's rights are protected. The guardian advocate
534 is immune from liability under this provision. If the patient,
535 the patient's guardian advocate, and the service provider agree
536 that the guardian advocate is no longer needed because the
537 person is competent, the guardian advocate may be discharged.

538 (e) The administrator of the receiving facility or
539 designated department representative shall provide a copy of the
540 court order and adequate documentation of a patient's mental
541 illness to the service provider for involuntary outpatient
542 placement. Such documentation shall include any advance
543 directives made by the patient, a psychiatric evaluation of the
544 patient, and any evaluations of the patient performed by a
545 clinical psychologist or a clinical social worker.

546 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
547 PLACEMENT.--

548 (a) If the person continues to meet the criteria for
549 involuntary outpatient placement, the service provider shall,
550 prior to the expiration of the period during which the treatment
551 is ordered for the person, file in the circuit court a continued
552 involuntary outpatient placement certificate which shall be
553 accompanied by a statement from the person's physician or
554 clinical psychologist justifying the request, a brief
555 description of the patient's treatment during the time he or she



556 was involuntarily placed, and an individualized plan of
557 continued treatment.

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

571 (c) Hearings on petitions for continued involuntary
572 outpatient placement shall be before the circuit court. The
573 court may appoint a master to preside at the hearing. The
574 procedures for obtaining an order pursuant to this paragraph
575 shall be in accordance with the provisions of subsection (6),
576 except that the time period included in subparagraph (1)(a)5.
577 shall not apply in determining the appropriateness of additional
578 periods of involuntary outpatient placement.

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

581 (e) The same procedure shall be repeated prior to the
582 expiration of each additional period the patient is placed in
583 treatment.



584 (f) If the patient has been previously found incompetent
585 to consent to treatment, the court shall consider testimony and
586 evidence regarding the patient's competence. If the court finds
587 evidence that the patient has become competent to consent to
588 treatment, the court may order that any guardian advocate
589 previously appointed be discharged.

590 Section 6. Section 394.467, Florida Statutes, is amended
591 to read:

592 394.467 Involuntary inpatient placement.--

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

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

598 1.a. He or she has refused voluntary placement for
599 treatment after sufficient and conscientious explanation and
600 disclosure of the purpose of placement for treatment; or

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

603 2.a. He or she is manifestly incapable of surviving alone
604 or with the help of willing and responsible family or friends,
605 including available alternative services, and, without
606 treatment, is likely to suffer from neglect or refuse to care
607 for himself or herself, and such neglect or refusal poses a real
608 and present threat of substantial harm to his or her well-being;
609 or

610 b. There is substantial likelihood that in the near future
611 he or she will inflict serious bodily harm on himself or herself



612 or another person, as evidenced by recent behavior causing,
613 attempting, or threatening such harm; and

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

617 (2) ADMISSION TO A TREATMENT FACILITY.--A patient may be
618 retained by a receiving facility or involuntarily placed in a
619 treatment facility upon the recommendation of the administrator
620 of a receiving facility where the patient has been examined and
621 after adherence to the notice and hearing procedures provided in
622 s. 394.4599. The recommendation must be supported by the opinion
623 of a psychiatrist and the second opinion of a clinical
624 psychologist or another psychiatrist, both of whom have
625 personally examined the patient within the preceding 72 hours,
626 that the criteria for involuntary inpatient placement are met.
627 However, in counties of less than 50,000 population, if the
628 administrator certifies that no psychiatrist or clinical
629 psychologist is available to provide the second opinion, such
630 second opinion may be provided by a licensed physician with
631 postgraduate training and experience in diagnosis and treatment
632 of mental and nervous disorders or by a psychiatric nurse. Such
633 recommendation shall be entered on an involuntary inpatient
634 placement certificate, which certificate shall authorize the
635 receiving facility to retain the patient pending transfer to a
636 treatment facility or completion of a hearing.

637 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.--The
638 administrator of the facility shall file a petition for
639 involuntary inpatient placement in the court in the county where



640 the patient is located. Upon filing, the clerk of the court
641 shall provide copies to the department, the patient, the
642 patient's guardian or representative, and the state attorney and
643 public defender of the judicial circuit in which the patient is
644 located. No fee shall be charged for the filing of a petition
645 under this subsection.

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

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

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

662 (a)1. The court shall hold the hearing on involuntary
663 inpatient placement within 5 days, unless a continuance is
664 granted. The hearing shall be held in the county where the
665 patient is located and shall be as convenient to the patient as
666 may be consistent with orderly procedure and shall be conducted
667 in physical settings not likely to be injurious to the patient's



668 condition. If the court finds that the patient's attendance at
669 the hearing is not consistent with the best interests of the
670 patient, and the patient's counsel does not object, the court
671 may waive the presence of the patient from all or any portion of
672 the hearing. The state attorney for the circuit in which the
673 patient is located shall represent the state, rather than the
674 petitioning facility administrator, as the real party in
675 interest in the proceeding.

676 2. The court may appoint a master to preside at the
677 hearing. One of the professionals who executed the involuntary
678 inpatient placement certificate shall be a witness. The patient
679 and the patient's guardian or representative shall be informed
680 by the court of the right to an independent expert examination.
681 If the patient cannot afford such an examination, the court
682 shall provide for one. The independent expert's report shall be
683 confidential and not discoverable, unless the expert is to be
684 called as a witness for the patient at the hearing. The
685 testimony in the hearing must be given under oath, and the
686 proceedings must be recorded. The patient may refuse to testify
687 at the hearing.

688 (b) If the court concludes that the patient meets the
689 criteria for involuntary inpatient placement, it shall order
690 that the patient be transferred to a treatment facility or, if
691 the patient is at a treatment facility, that the patient be
692 retained there or be treated at any other appropriate receiving
693 or treatment facility, or that the patient receive services from
694 a receiving or treatment facility, on an involuntary basis, for
695 a period of up to 6 months. The order shall specify the nature



696 and extent of the patient's mental illness. The facility shall
697 discharge a patient any time the patient no longer meets the
698 criteria for involuntary inpatient placement, unless the patient
699 has transferred to voluntary status.

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

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

718 (e) The administrator of the receiving facility shall
719 provide a copy of the court order and adequate documentation of
720 a patient's mental illness to the administrator of a treatment
721 facility whenever a patient is ordered for involuntary inpatient
722 placement, whether by civil or criminal court. Such
723 documentation shall include any advance directives made by the



724 patient, a psychiatric evaluation of the patient, and any
725 evaluations of the patient performed by a clinical psychologist
726 or a clinical social worker. The administrator of a treatment
727 facility may refuse admission to any patient directed to its
728 facilities on an involuntary basis, whether by civil or criminal
729 court order, who is not accompanied at the same time by adequate
730 orders and documentation.

731 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
732 PLACEMENT.--

733 (a) Hearings on petitions for continued involuntary
734 inpatient placement shall be administrative hearings and shall
735 be conducted in accordance with the provisions of s. 120.57(1),
736 except that any order entered by the hearing officer shall be
737 final and subject to judicial review in accordance with s.
738 120.68. Orders concerning patients committed after successfully
739 pleading not guilty by reason of insanity shall be governed by
740 the provisions of s. 916.15.

741 (b) If the patient continues to meet the criteria for
742 involuntary inpatient placement, the administrator shall, prior
743 to the expiration of the period during which the treatment
744 facility is authorized to retain the patient, file a petition
745 requesting authorization for continued involuntary inpatient
746 placement. The request shall be accompanied by a statement from
747 the patient's physician or clinical psychologist justifying the
748 request, a brief description of the patient's treatment during
749 the time he or she was involuntarily placed, and an
750 individualized plan of continued treatment. Notice of the
751 hearing shall be provided as set forth in s. 394.4599. If at the



752 hearing the hearing officer finds that attendance at the hearing
753 is not consistent with the best interests of the patient, the
754 hearing officer may waive the presence of the patient from all
755 or any portion of the hearing, unless the patient, through
756 counsel, objects to the waiver of presence. The testimony in the
757 hearing must be under oath, and the proceedings must be
758 recorded.

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

763 (d) If at a hearing it is shown that the patient continues
764 to meet the criteria for involuntary inpatient placement, the
765 administrative law judge shall sign the order for continued
766 involuntary inpatient placement for a period not to exceed 6
767 months. The same procedure shall be repeated prior to the
768 expiration of each additional period the patient is retained.

769 (e) If continued involuntary inpatient placement is
770 necessary for a patient admitted while serving a criminal
771 sentence, but whose sentence is about to expire, or for a
772 patient involuntarily placed while a minor but who is about to
773 reach the age of 18, the administrator shall petition the
774 administrative law judge for an order authorizing continued
775 involuntary inpatient placement.

776 (f) If the patient has been previously found incompetent
777 to consent to treatment, the hearing officer shall consider
778 testimony and evidence regarding the patient's competence. If
779 the hearing officer finds evidence that the patient is now



780 competent to consent to treatment, the hearing officer may issue
781 a recommended order to the court that found the patient
782 incompetent to consent to treatment that the patient's
783 competence be restored and that any guardian advocate previously
784 appointed be discharged.

785 (8) RETURN OF PATIENTS.--When a patient at a treatment
786 facility leaves the facility without authorization, the
787 administrator may authorize a search for the patient and the
788 return of the patient to the facility. The administrator may
789 request the assistance of a law enforcement agency in the search
790 for and return of the patient.

791 Section 7. Involuntary Outpatient Placement Implementation
792 Task Force.--

793 (1) The Involuntary Outpatient Placement Implementation
794 Task Force is established to develop a plan for implementation
795 of the involuntary outpatient placement procedures established
796 in this act. The task force shall include a representative from
797 each of the following entities, to be designated by their
798 respective organizations no later than July 1, 2003: the Florida
799 Sheriffs Association, the Florida Police Chiefs Association, the
800 Florida Public Defender Association, Inc., the Florida
801 Prosecuting Attorneys Association, the Florida Association of
802 Court Clerks, the Florida Association of Counties, the
803 Department of Children and Family Services, the Florida Council
804 for Community Mental Health, and the Agency for Health Care
805 Administration. Additionally, a member of the Senate shall be
806 designated by the President of the Senate, a member of the House
807 of Representatives shall be designated by the Speaker of the



808 House of Representatives, a representative of the Executive
809 Office of the Governor shall be designated by the Governor, and
810 a circuit judge shall be designated by the Chief Justice of the
811 Supreme Court to serve on the task force. The representative for
812 the Florida Sheriffs Association and the circuit judge shall be
813 designated by the Chief Justice of the Florida Supreme Court and
814 shall serve as co-chairs of the task force. The task force
815 should solicit and receive input from interested parties.

816 (2) The task force shall be convened no later than August
817 1, 2003. Staff support for the initial meeting shall be provided
818 by staff of the House Committee on the Future of Florida's
819 Families and the Senate Committee on Children and Families. The
820 co-chairs shall facilitate the meetings and make appropriate
821 arrangements for staff support of subsequent meetings and
822 preparation of an implementation plan and report. Expenses
823 associated with task force meetings and work products shall be
824 the responsibility of each member's organization.

825 (3) The task force shall prepare an implementation plan
826 and report that identifies issues and proposed strategies for
827 implementation of court-ordered mental health treatment on an
828 outpatient basis. The task force shall also address issues,
829 including, but not limited to, recommendations for an evaluation
830 process to determine the effectiveness of involuntary outpatient
831 placement and proposed technical amendments to the Florida
832 Statutes to improve implementation, if necessary and
833 appropriate. The implementation plan and report must recommend a
834 process to collect data that reflects the impact of involuntary
835 outpatient placement on the courts, state attorneys, public



836 defenders, clerks of court, law enforcement, jails, and the
837 mental health treatment system. The report must be submitted by
838 December 1, 2003, to the Governor, the President of the Senate,
839 the Speaker of the House of Representatives, and the Chief
840 Justice of the Florida Supreme Court.

841 Section 8. Any additional costs or expenses related to
842 implementation and enforcement of this act by the judiciary of
843 this state shall be a local requirement pursuant to chapter 29,
844 Florida Statutes.

845 Section 9. If any provision of this act or its application
846 to any person or circumstance is held invalid, the invalidity
847 does not affect other provisions or applications of the act
848 which can be given effect without the invalid provision or
849 application, and to this end the provisions of this act are
850 severable.

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