

By Senator Peadar

2-738-03

1 A bill to be entitled
2 An act relating to mental health; amending s.
3 394.455, F.S.; defining and redefining terms
4 used in part I of ch. 394, F.S., "The Baker
5 Act"; amending s. 394.4598, F.S.; providing
6 additional powers of a guardian advocate;
7 revising provisions relating to the discharge
8 of a guardian advocate; amending s. 394.463,
9 F.S.; revising criteria for determining whether
10 to perform involuntary examinations; revising
11 prerequisites to initiating an involuntary
12 examination; providing for the Agency for
13 Health Care Administration to receive and
14 maintain additional documents; revising
15 procedures for filing a petition for
16 involuntary placement; allowing such a petition
17 to be for either inpatient or outpatient
18 placement; amending s. 394.467, F.S.; revising
19 criteria for involuntary placement in inpatient
20 treatment; providing criteria for involuntary
21 outpatient placement; revising procedures for
22 involuntary placement; providing for a
23 voluntary examination for outpatient placement;
24 revising hearing procedures; providing
25 requirements for placement orders; providing
26 for an ex parte order allowing a guardian
27 advocate to consent to the administration of
28 medication over a patient's objection;
29 providing for a voluntary treatment agreement;
30 providing circumstances in which a petition for
31 involuntary outpatient placement must be

1 dismissed; providing criteria and procedures
2 for continued involuntary outpatient placement;
3 providing circumstances in which a court may
4 order the discharge of a guardian advocate;
5 providing severability; providing an effective
6 date.

7

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

9

10 Section 1. Subsection (3) of section 394.455, Florida
11 Statutes, is amended, and subsection (31) is added to that
12 section, to read:

13 394.455 Definitions.--As used in this part, unless the
14 context clearly requires otherwise, the term:

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

20 (31) "Service provider" means any public or private
21 receiving facility, an entity under contract with the
22 department to provide mental health services, or a clinical
23 psychologist, clinical social worker, physician, psychiatric
24 nurse, community mental health center, or clinic, as defined
25 in this part.

26 Section 2. Subsection (1), (6), and (7) of section
27 394.4598, Florida Statutes, are amended to read:

28 394.4598 Guardian advocate.--

29 (1) The administrator may petition the court for the
30 appointment of a guardian advocate based upon the opinion of a
31 psychiatrist that the patient is incompetent to consent to

1 treatment. If the court finds that a patient is incompetent to
2 consent to treatment and has not been adjudicated
3 incapacitated and a guardian with the authority to consent to
4 mental health treatment appointed, it shall appoint a guardian
5 advocate. The patient has the right to have an attorney
6 represent him or her at the hearing. If the person is
7 indigent, the court shall appoint the office of the public
8 defender to represent him or her at the hearing. The patient
9 has the right to testify, cross-examine witnesses, and present
10 witnesses. The proceeding shall be recorded either
11 electronically or stenographically, and testimony shall be
12 provided under oath. One of the professionals authorized to
13 give an opinion in support of a petition for involuntary
14 placement, as described in s. 394.467(3)~~s. 394.467(2)~~, must
15 testify. A guardian advocate must meet the qualifications of a
16 guardian contained in part IV of chapter 744, except that a
17 professional referred to in this part, an employee of the
18 facility providing direct services to the patient under this
19 part, a departmental employee, a facility administrator, or
20 member of the Florida local advocacy council shall not be
21 appointed. A person who is appointed as a guardian advocate
22 must agree to the appointment.

23 (6) If a guardian with the authority to consent to
24 medical treatment has not already been appointed or if the
25 patient has not already designated a health care surrogate,
26 the court may authorize the guardian advocate to consent to
27 medical treatment, as well as mental health treatment. Unless
28 otherwise limited by the court, a guardian advocate with
29 authority to consent to medical treatment shall have the same
30 authority to make health care decisions and be subject to the
31 same restrictions as a proxy appointed under part IV of

1 chapter 765. If the patient has an involuntary outpatient
2 placement order that includes medication and the patient
3 refuses medication, the service provider may seek an ex parte
4 order pursuant to s. 394.463(2)(a), and the guardian advocate
5 may consent to the administration of medication over objection
6 when the person is brought to a receiving facility.Unless the
7 guardian advocate has sought and received express court
8 approval in proceeding separate from the proceeding to
9 determine the competence of the patient to consent to medical
10 treatment, the guardian advocate may not consent to:

- 11 (a) Abortion.
- 12 (b) Sterilization.
- 13 (c) Electroconvulsive treatment.
- 14 (d) Psychosurgery.
- 15 (e) Experimental treatments that have not been
16 approved by a federally approved institutional review board in
17 accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56.

18
19 The court must base its decision on evidence that the
20 treatment or procedure is essential to the care of the patient
21 and that the treatment does not present an unreasonable risk
22 of serious, hazardous, or irreversible side effects. The court
23 shall follow the procedures set forth in subsection (1) of
24 this section.

25 (7) The guardian advocate shall be discharged when the
26 patient is discharged from an order for involuntary inpatient
27 or outpatient treatment ~~a receiving or treatment facility to~~
28 ~~the community~~ or when the patient is transferred from
29 involuntary to voluntary status. The court or a hearing
30 officer shall consider the competence of the patient pursuant
31 to subsection (1) and may consider an involuntarily placed

1 patient's competence to consent to treatment at any hearing.
2 Upon sufficient evidence, the court may restore, or the
3 hearing officer may recommend that the court restore, the
4 patient's competence. A copy of the order restoring competence
5 or the certificate of discharge containing the restoration of
6 competence shall be provided to the patient and the guardian
7 advocate.

8 Section 3. Subsections (1) and (2) of section 394.463,
9 Florida Statutes, are amended to read:

10 394.463 Involuntary examination.--

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

17 (a)1. The person has refused voluntary examination
18 after conscientious explanation and disclosure of the purpose
19 of the examination; or

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

22 (b)1. Without care or treatment, the person is likely
23 to suffer from neglect or refuse to care for himself or
24 herself; such neglect or refusal poses a real and present
25 threat of substantial harm to his or her well-being; and it is
26 not apparent that such harm may be avoided through the help of
27 willing family members or friends or the provision of other
28 services; or

29 2. There is a substantial likelihood that without care
30 or treatment the person will cause serious bodily harm to
31

1 himself or herself or others in the near future, as evidenced
2 by recent behavior; or-

3 3. That the person is 18 years of age or older and
4 there is a substantial likelihood that without care or
5 treatment the person's condition will deteriorate to the point
6 that, in the reasonably foreseeable future, the person will
7 meet the criteria described in subparagraph 1. or subparagraph
8 2., based on the person's present condition and a
9 well-established history of:

10 a. Two or more separate episodes within the preceding
11 36 months wherein the person has been admitted for examination
12 or placement in a receiving or treatment facility as defined
13 in s. 394.455 or arrested for criminal behavior or both, not
14 including any period during which the person was in a
15 receiving or treatment facility or incarcerated; or

16 b. One or more previous acute psychiatric episodes
17 that resulted in serious physical violence.

18 (2) INVOLUNTARY EXAMINATION.--

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

21 1. A court may enter an ex parte order stating that a
22 person appears to meet the criteria for involuntary
23 examination or is not complying with an outpatient placement
24 order issued pursuant to s. 394.467(7), giving the findings on
25 which that conclusion is based. The ex parte order for
26 involuntary examination must be based on sworn testimony,
27 written or oral. If other less restrictive means are not
28 available, such as voluntary appearance for outpatient
29 evaluation, a law enforcement officer, or other designated
30 agent of the court, shall take the person into custody and
31 deliver him or her to the nearest receiving facility for

1 involuntary examination. The order of the court shall be made
2 a part of the patient's clinical record. No fee shall be
3 charged for the filing of an order under this subsection. Any
4 receiving facility accepting the patient based on this order
5 must send a copy of the order to the Agency for Health Care
6 Administration on the next working day. The order shall be
7 valid only until executed or, if not executed, for the period
8 specified in the order itself. If no time limit is specified
9 in the order, the order shall be valid for 7 days after the
10 date that the order was signed.

11 2. A law enforcement officer shall take a person who
12 appears to meet the criteria for involuntary examination into
13 custody and deliver the person or have him or her delivered to
14 the nearest receiving facility for examination. The officer
15 shall execute a written report detailing the circumstances
16 under which the person was taken into custody, and the report
17 shall be made a part of the patient's clinical record. Any
18 receiving facility accepting the patient based on this report
19 must send a copy of the report to the Agency for Health Care
20 Administration on the next working day.

21 3. A physician, clinical psychologist, psychiatric
22 nurse, or clinical social worker may execute a certificate
23 stating that he or she has examined a person within the
24 preceding 48 hours and finds that the person appears to meet
25 the criteria for involuntary examination and stating the
26 observations upon which that conclusion is based. If other
27 less restrictive means are not available, such as voluntary
28 appearance for outpatient evaluation, a law enforcement
29 officer shall take the person named in the certificate into
30 custody and deliver him or her to the nearest receiving
31 facility for involuntary examination. The law enforcement

1 officer shall execute a written report detailing the
2 circumstances under which the person was taken into custody.
3 The report and certificate shall be made a part of the
4 patient's clinical record. Any receiving facility accepting
5 the patient based on this certificate must send a copy of the
6 certificate to the Agency for Health Care Administration on
7 the next working day.

8 (b) A person shall not be removed from any program or
9 residential placement licensed under chapter 400 and
10 transported to a receiving facility for involuntary
11 examination unless an ex parte order, a professional
12 certificate, or a law enforcement officer's report is first
13 prepared. If the condition of the person is such that
14 preparation of a law enforcement officer's report is not
15 practicable before removal, the report shall be completed as
16 soon as possible after removal, but in any case before the
17 person is transported to a receiving facility. A receiving
18 facility admitting a person for involuntary examination who is
19 not accompanied by the required ex parte order, professional
20 certificate, or law enforcement officer's report shall notify
21 the Agency for Health Care Administration of such admission by
22 certified mail no later than the next working day. The
23 provisions of this paragraph do not apply when transportation
24 is provided by the patient's family or guardian.

25 (c) A law enforcement officer acting in accordance
26 with an ex parte order issued pursuant to this subsection may
27 serve and execute such order on any day of the week, at any
28 time of the day or night.

29 (d) A law enforcement officer acting in accordance
30 with an ex parte order issued pursuant to this subsection may
31 use such reasonable physical force as is necessary to gain

1 entry to the premises, and any dwellings, buildings, or other
2 structures located on the premises, and to take custody of the
3 person who is the subject of the ex parte order.

4 (e) The Agency for Health Care Administration shall
5 receive and maintain the copies of ex parte orders, placement
6 orders issued pursuant to s. 394.467(7), voluntary treatment
7 agreements issued pursuant to s. 394.467(8), professional
8 certificates, and law enforcement officers' reports. These
9 documents shall be considered part of the clinical record,
10 governed by the provisions of s. 394.4615. The agency shall
11 prepare annual reports analyzing the data obtained from these
12 documents, without information identifying patients, and shall
13 provide copies of reports to the department, the President of
14 the Senate, the Speaker of the House of Representatives, and
15 the minority leaders of the Senate and the House of
16 Representatives.

17 (f) A patient shall be examined by a physician or
18 clinical psychologist at a receiving facility without
19 unnecessary delay and may, upon the order of a physician, be
20 given emergency treatment if it is determined that such
21 treatment is necessary for the safety of the patient or
22 others. The patient shall not be released by the receiving
23 facility or its contractor without the documented approval of
24 a psychiatrist or clinical psychologist. However, a patient
25 may not be held in a receiving facility for involuntary
26 examination longer than 72 hours.

27 (g) A person for whom an involuntary examination has
28 been initiated who is being evaluated or treated at a hospital
29 for an emergency medical condition specified in s. 395.002
30 must be examined by a receiving facility within 72 hours. The
31 72-hour period begins when the patient arrives at the hospital

1 and ceases when the attending physician documents that the
2 patient has an emergency medical condition. If the patient is
3 examined at a hospital providing emergency medical services by
4 a professional qualified to perform an involuntary examination
5 and is found as a result of that examination not to meet the
6 criteria for involuntary placement, the patient may be offered
7 voluntary placement, if appropriate, or released directly from
8 the hospital providing emergency medical services. The
9 finding by the professional that the patient has been examined
10 and does not meet the criteria for involuntary placement must
11 be entered into the patient's clinical record. Nothing in this
12 paragraph is intended to prevent a hospital providing
13 emergency medical services from appropriately transferring a
14 patient to another hospital prior to stabilization, provided
15 the requirements of s. 395.1041(3)(c) have been met.

16 (h) One of the following must occur within 12 hours
17 after the patient's attending physician documents that the
18 patient's medical condition has stabilized or that an
19 emergency medical condition does not exist:

- 20 1. The patient must be examined by a designated
21 receiving facility and released; or
- 22 2. The patient must be transferred to a designated
23 receiving facility in which appropriate medical treatment is
24 available. However, the receiving facility must be notified
25 of the transfer within 2 hours after the patient's condition
26 has been stabilized or after determination that an emergency
27 medical condition does not exist.

28 (i) Within the 72-hour examination period or, if the
29 72 hours ends on a weekend or holiday, no later than the next
30 working day thereafter, one of the following actions must be
31 taken, based on the individual needs of the patient:

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

4 2. The patient shall be released, subject to the
5 provisions of subparagraph 1., for outpatient treatment;

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

10 or

11 4. A petition for involuntary inpatient or outpatient
12 placement shall be filed in the appropriate court by the
13 petitioner ~~facility administrator~~ when treatment is deemed
14 necessary; in which case, the least restrictive treatment
15 consistent with the optimum improvement of the patient's
16 condition shall be made available.

17 Section 4. Section 394.467, Florida Statutes, is
18 amended to read:

19 394.467 Involuntary placement.--

20 (1) CRITERIA FOR INPATIENT PLACEMENT.--A person may be
21 involuntarily placed in inpatient ~~for~~ treatment upon a finding
22 of the court, the determination of which must include
23 consideration of evidence presented on the person's relevant
24 medical and treatment history, that by clear and convincing
25 evidence ~~that~~:

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

28 1.a. He or she has refused voluntary placement for
29 treatment after sufficient and conscientious explanation and
30 disclosure of the purpose of placement for treatment; or

31

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

3 2.a. He or she is manifestly incapable of surviving
4 alone or with the help of willing and responsible family or
5 friends, including available alternative services, and,
6 without treatment, is likely to suffer from neglect or refuse
7 to care for himself or herself, and such neglect or refusal
8 poses a real and present threat of substantial harm to his or
9 her well-being; or

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

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

17 (2) CRITERIA FOR OUTPATIENT PLACEMENT.--A person 18
18 years of age or older may be ordered to involuntary outpatient
19 placement upon a finding of the court, the determination of
20 which must include consideration of evidence presented on the
21 person's relevant medical and treatment history, that by clear
22 and convincing evidence:

23 (a) The person has a mental illness and because of his
24 or her mental illness:

25 1.a. He or she has refused voluntary treatment after
26 sufficient and conscientious explanation and disclosure of the
27 purpose of placement for treatment; or

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

30 2.a. He or she is manifestly incapable of surviving
31 alone or with the help of willing and responsible family or

1 friends, including available alternative services, and,
2 without treatment, is likely to suffer from neglect or refuse
3 to care for himself or herself, and such neglect or refusal
4 poses a real and present threat of substantial harm to his or
5 her well-being;

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

10 c. There is substantial likelihood that without care
11 or treatment the person's condition will deteriorate to the
12 point that, in the reasonably foreseeable future, the person
13 will meet the criteria described in sub-subparagraph a. or
14 sub-subparagraph b., based on the person's present condition
15 and a well-established history of:

16 (I) Two or more separate episodes within the 36 months
17 preceding the filing of the petition wherein the person has
18 been admitted for examination or placement in a receiving or
19 treatment facility as defined in s. 394.455 or arrested for
20 criminal behavior or both, not including any period during
21 which the person was in a receiving or treatment facility or
22 incarcerated; or

23 (II) One or more previous acute episodes that resulted
24 in serious physical violence;

25 (b) All available less restrictive treatment
26 alternatives that would offer an opportunity for improvement
27 of his or her condition have been judged to be inappropriate.

28 (3) INVOLUNTARY PLACEMENT~~(2) ADMISSION TO A~~
29 ~~TREATMENT FACILITY.--~~

30 (a) Involuntary examination for inpatient or
31 outpatient placement.--A patient may be retained by a

1 receiving facility or involuntarily placed in a treatment
2 facility or outpatient treatment upon the recommendation of
3 the administrator of a receiving facility where the patient
4 has been examined and after adherence to the notice and
5 hearing procedures provided in s. 394.4599. The recommendation
6 must be supported by the opinion of a psychiatrist and the
7 second opinion of a clinical psychologist or another
8 psychiatrist, both of whom have personally examined the
9 patient within the preceding 72 hours, that the criteria for
10 involuntary inpatient or outpatient placement are met.
11 However, in counties of less than 50,000 population, if the
12 administrator certifies that no psychiatrist or clinical
13 psychologist is available to provide the second opinion, such
14 second opinion may be provided by a licensed physician with
15 postgraduate training and experience in diagnosis and
16 treatment of mental and nervous disorders or by a psychiatric
17 nurse. The opinions of the examining professionals supporting
18 an involuntary outpatient placement must include a
19 determination as to whether the patient is competent to
20 provide express and informed consent to a voluntary treatment
21 agreement.Such recommendation shall be entered on an
22 involuntary placement certificate, which certificate shall
23 authorize the receiving facility to retain the patient pending
24 transfer to a treatment facility, outpatient treatment, or
25 completion of a hearing.

26 (b) Voluntary examination for outpatient
27 placement.--If arrangements can be made, a patient may agree
28 to be examined on an outpatient basis for an involuntary
29 outpatient placement certificate. The certificate must be
30 supported by the opinion of a psychiatrist and the second
31 opinion of a clinical psychologist or another psychiatrist,

1 both of whom have personally examined the patient within the
2 preceding 14 calendar days, that the criteria for involuntary
3 outpatient placement are met. However, in a county having a
4 population of less than 50,000, if the psychiatrist certifies
5 that no psychiatrist or clinical psychologist is available to
6 provide the second opinion, the second opinion may be provided
7 by a licensed physician who has had postgraduate training and
8 experience in the diagnosis and treatment of mental and
9 nervous disorders or by a psychiatric nurse. The opinions of
10 the examining professionals supporting an involuntary
11 outpatient placement must include a determination as to
12 whether the patient is competent to provide express and
13 informed consent for a voluntary treatment agreement.

14 (4)(3) PETITION FOR INVOLUNTARY PLACEMENT.--

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

17 1. The administrator of the facility shall file a
18 petition for involuntary inpatient or outpatient placement
19 pursuant to this section; or

20 2. For a person who is examined on a voluntary
21 outpatient basis pursuant to paragraph (3)(b), one of the
22 examining professionals may file a petition for involuntary
23 outpatient placement. Upon filing the petition, the examining
24 professional shall provide a copy of the petition to the
25 receiving facility that will identify the service provider for
26 the involuntary outpatient placement.

27 (b) The petition for involuntary inpatient or
28 outpatient placement must be filed in the court in the county
29 where the patient is located. Upon filing, the clerk of the
30 court shall provide copies to the department, the patient, the
31 patient's guardian or representative, and the state attorney

1 and public defender of the judicial circuit in which the
2 patient is located. No fee shall be charged for the filing of
3 a petition under this subsection.

4 (5)~~(4)~~ APPOINTMENT OF COUNSEL.--Within 1 court working
5 day after the filing of a petition for involuntary inpatient
6 or outpatient placement, the court shall appoint the public
7 defender to represent the person who is the subject of the
8 petition, unless the person is otherwise represented by
9 counsel. The clerk of the court shall immediately notify the
10 public defender of such appointment. Any attorney representing
11 the patient shall have access to the patient, witnesses, and
12 records relevant to the presentation of the patient's case and
13 shall represent the interests of the patient, regardless of
14 the source of payment to the attorney.

15 (6)~~(5)~~ CONTINUANCE OF HEARING.--The patient is
16 entitled, with the concurrence of the patient's counsel, to at
17 least one continuance of the hearing. The continuance shall
18 be for a period of up to 4 weeks.

19 (7)~~(6)~~ HEARING ON INVOLUNTARY PLACEMENT.--

20 (a)1. The court shall hold the hearing on involuntary
21 inpatient or outpatient placement within 5 days, unless a
22 continuance is granted. The hearing shall be held in the
23 county where the patient is located and shall be as convenient
24 to the patient as may be consistent with orderly procedure and
25 shall be conducted in physical settings not likely to be
26 injurious to the patient's condition. If the court finds that
27 the patient's attendance at the hearing is not consistent with
28 the best interests of the patient, and the patient's counsel
29 does not object, the court may waive the presence of the
30 patient from all or any portion of the hearing. The state
31 attorney for the circuit in which the patient is located shall

1 represent the state, rather than the petitioner ~~petitioning~~
2 ~~facility administrator~~, as the real party in interest in the
3 proceeding.

4 2. The court may appoint a master to preside at the
5 hearing. One of the professionals who executed the involuntary
6 inpatient or outpatient placement certificate shall be a
7 witness. The patient and the patient's guardian or
8 representative shall be informed by the court of the right to
9 an independent expert examination. If the patient cannot
10 afford such an examination, the court shall provide for one.
11 The independent expert's report shall be confidential and not
12 discoverable, unless the expert is to be called as a witness
13 for the patient at the hearing. The court shall allow relevant
14 testimony from individuals, including family members,
15 regarding the person's previous history and how that previous
16 history relates to the person's current condition.The
17 testimony in the hearing must be given under oath, and the
18 proceedings must be recorded. The patient may refuse to
19 testify at the hearing.

20 (b)1. If the court concludes that the patient meets
21 the criteria for involuntary inpatient placement pursuant to
22 subsection (1), it shall order that the patient be transferred
23 to a treatment facility or, if the patient is at a treatment
24 facility, that the patient be retained there or be treated at
25 any other appropriate receiving or treatment facility, or that
26 the patient receive services from a receiving or treatment
27 facility, on an involuntary basis. If the court concludes that
28 the patient meets the criteria for involuntary outpatient
29 placement pursuant to subsection (2), the court shall issue an
30 order for outpatient placement. The court order must be,for a
31 period of up to 6 months. The order shall specify the nature

1 and extent of the patient's mental illness. The facility or
2 service provider shall discharge a patient any time the
3 patient no longer meets the criteria for involuntary
4 placement, unless the patient has transferred to voluntary
5 status.

6 2. The placement order shall specify the nature and
7 extent of the patient's mental illness and whether treatment
8 will be on an inpatient or outpatient basis. For an outpatient
9 placement order, the administrator of a receiving facility
10 shall identify the service provider that will have primary
11 responsibility for service provision under the order. The
12 service provider shall prepare a treatment plan and submit it
13 to the court before the hearing for inclusion in the
14 outpatient placement order. An order for outpatient placement
15 may include provisions for case management, intensive case
16 management, or assertive community treatment or a program for
17 assertive community treatment. The order may also require that
18 the patient make use of a service provider to supply any or
19 all of the following categories of services to the individual:
20 medication, periodic urinalysis to determine compliance with
21 treatment, individual or group therapy, day or partial day
22 programming activities, educational and vocational training or
23 activities, alcohol or substance abuse treatment and
24 counseling and periodic tests for the presence of alcohol or
25 illegal drugs for persons who have a history of alcohol or
26 substance abuse, supervision of living arrangements, and any
27 other services prescribed to treat the person's mental illness
28 and to assist the person in living and functioning in the
29 community or to attempt to prevent a relapse or deterioration.
30 The service provider shall certify to the court in the
31 treatment plan that the proposed services are currently

1 available and that the service provider agrees to provide
2 those services. Service providers may select and provide
3 supervision to other individuals, not enumerated in this
4 subparagraph, to implement specific aspects of the treatment
5 plan, such as medication monitoring. The services ordered must
6 be deemed to be clinically appropriate by a physician,
7 clinical psychologist, psychiatric nurse, or clinical social
8 worker, who consults with or is employed by or has contracted
9 with the service provider. An outpatient placement order may
10 be issued only if the ordered program or service is available
11 in the patient's local community, there is space available in
12 the program or service for the patient, and funding is
13 available for the program or service. The court may not order
14 the department or the service provider to provide services if
15 the program or service is not available in the patient's local
16 community, if there is no space available in the program or
17 service for the patient, or if funding is not available for
18 the program or service. The court shall specify in the final
19 order of disposition if outpatient placement could not be
20 ordered because the program or service is not available in the
21 patient's local community, because there is no space available
22 in the program or service for the patient, or because funding
23 is not available for the program or service. A copy of the
24 order must be sent to the Agency for Health Care
25 Administration. After the placement order is issued, the
26 service provider and the patient may agree to modify
27 provisions of the treatment plan. For a material modification
28 of the treatment plan to which the patient agrees, the service
29 provider must send notice of the modification to the court. A
30 material modification of the treatment plan to which the
31 patient does not agree must be approved by the court.

1 3. The placement order must specify that if the
2 patient fails to comply with the outpatient treatment plan,
3 the service provider may seek an ex parte order for
4 involuntary examination pursuant to s. 394.463(2)(a) and, upon
5 issuance of the order, the patient shall be brought to a
6 receiving facility for involuntary examination pursuant to s.
7 394.463(2)(c)-(i), in order to determine whether the
8 outpatient placement is still the least restrictive treatment
9 alternative that would offer an opportunity for improvement of
10 the patient's condition. If, after examination, the patient
11 does not meet the criteria for involuntary inpatient
12 placement, the patient must be discharged from the receiving
13 facility. The service provider shall determine whether
14 modifications should be made to the existing treatment plan
15 and must attempt to continue to engage the patient in
16 treatment. For a material modification of the treatment plan
17 to which the patient agrees, the service provider must send
18 notice of the modification to the court. A material
19 modification of the treatment plan to which the patient does
20 not agree must be approved by the court. If contempt of court
21 is deemed appropriate for noncompliance, the court must use
22 sanctions other than monetary fines or placement in a county
23 or regional jail or work camp.

24 (c) If at any time prior to the conclusion of the
25 hearing on involuntary placement it appears to the court that
26 the person does not meet the criteria for involuntary
27 placement under this chapter, but instead meets the criteria
28 for involuntary assessment, protective custody, or involuntary
29 admission pursuant to s. 397.675, then the court may order the
30 person to be admitted for involuntary assessment for a period
31

1 of 5 days pursuant to s. 397.6811. Thereafter, all
2 proceedings shall be governed by chapter 397.

3 (d) At the hearing on involuntary placement, the court
4 shall consider testimony and evidence regarding the patient's
5 competence to consent to treatment. If the court finds that
6 the patient is incompetent to consent to treatment, it shall
7 appoint a guardian advocate as provided in s. 394.4598. If a
8 patient who has been found incompetent to consent to treatment
9 has an involuntary outpatient placement order that includes
10 medication and the patient refuses medication, the service
11 provider may seek an ex parte order pursuant to s.
12 394.463(2)(a) and the guardian advocate may consent to the
13 administration of medication over objection when the person is
14 brought to a receiving facility.

15 (e) The administrator of the receiving facility shall
16 provide a copy of the court order and adequate documentation
17 of a patient's mental illness to the administrator of a
18 treatment facility whenever a patient is ordered for
19 involuntary inpatient placement or to the service provider for
20 involuntary outpatient placement, whether by civil or criminal
21 court. Such documentation shall include any advance
22 directives made by the patient, a psychiatric evaluation of
23 the patient, and any evaluations of the patient performed by a
24 clinical psychologist or a clinical social worker. The
25 administrator of a treatment facility may refuse admission to
26 any patient directed to its facilities on an involuntary
27 basis, whether by civil or criminal court order, who is not
28 accompanied at the same time by adequate orders and
29 documentation.

30 (8) VOLUNTARY TREATMENT AGREEMENT.--
31

1 (a) A person who is 18 years of age or older and is
2 competent to provide express and informed consent for a
3 voluntary treatment agreement, or his or her legal counsel
4 with the person's consent, may waive the time periods under
5 this section for the hearing for a period not to exceed 90
6 days after the date of the waiver, if the person and the state
7 attorney appointed under subparagraph (7)(a)1. agree at any
8 time after the commencement of the proceedings that the person
9 shall obtain treatment under a voluntary treatment agreement.
10 An assessment of the ability of a person to give express and
11 informed consent must be performed during the examination
12 specified in paragraph (3)(a) or paragraph (3)(b). The
13 voluntary treatment agreement must be in writing, must be
14 approved by the court, and must include a treatment plan that
15 provides for treatment in the least restrictive manner that is
16 consistent with the person's needs. The administrator of the
17 appropriate receiving facility shall identify the service
18 provider that will prepare the treatment plan and monitor the
19 person's treatment under and compliance with the voluntary
20 treatment agreement. The service provider shall certify to the
21 court that the ordered services are currently available and
22 that the service provider agrees to provide those services.
23 For a material modification of the treatment plan to which the
24 patient agrees, the service provider shall send notice of the
25 modification to the court. A material modification of the
26 treatment plan to which the patient does not agree must be
27 approved by the court.

28 (b)1. If, within 90 days after the date of the waiver
29 under this section, the subject person fails to comply with
30 the voluntary treatment agreement approved by the court under
31 this section, the service provider shall file with the court

1 an affidavit sworn under penalty of perjury which shows the
2 basis for the belief that the subject person is not in
3 compliance. The service provider shall also notify the state
4 attorney appointed under subparagraph (7)(a)1. and the
5 subject's counsel of the person's noncompliance and shall send
6 a copy of the affidavit to them.

7 2. Upon receipt of the affidavit of noncompliance, the
8 court shall issue a notice of hearing as set forth in s.
9 394.4599 and shall proceed with the hearing on involuntary
10 outpatient placement pursuant to paragraph (7). The facts
11 alleged as the basis for involuntary outpatient placement
12 before the waiver of the time periods for hearing may be the
13 basis for a final disposition at a hearing under this
14 subparagraph.

15 (c) After being notified of noncompliance under
16 paragraph (b), the subject person or his or her attorney may
17 file a motion requesting that the issue of noncompliance with
18 the agreement be heard at the involuntary outpatient placement
19 hearing under paragraph (b). The motion must be filed at least
20 72 hours, excluding weekends and holidays, before the hearing.
21 The burden of proving noncompliance shall be by a
22 preponderance of the evidence.

23 (d) If the subject person remains compliant for the
24 period of the voluntary treatment agreement, the petition for
25 involuntary outpatient placement must be dismissed.

26 (9)(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
27 PLACEMENT.--

28 (a) Hearings on petitions for continued involuntary
29 inpatient placement shall be administrative hearings and shall
30 be conducted in accordance with the provisions of s.
31 120.57(1), except that any order entered by the hearing

1 officer shall be final and subject to judicial review in
2 accordance with s. 120.68. Orders concerning patients
3 committed after successfully pleading not guilty by reason of
4 insanity shall be governed by the provisions of s. 916.15.

5 (b) If the patient continues to meet the criteria for
6 involuntary inpatient placement, the administrator shall,
7 prior to the expiration of the period during which the
8 treatment facility is authorized to retain the patient, file a
9 petition requesting authorization for continued involuntary
10 placement. The request shall be accompanied by a statement
11 from the patient's physician or clinical psychologist
12 justifying the request, a brief description of the patient's
13 treatment during the time he or she was involuntarily placed,
14 and an individualized plan of continued treatment. Notice of
15 the hearing shall be provided as set forth in s. 394.4599. If
16 at the hearing the hearing officer finds that attendance at
17 the hearing is not consistent with the best interests of the
18 patient, the hearing officer may waive the presence of the
19 patient from all or any portion of the hearing, unless the
20 patient, through counsel, objects to the waiver of presence.
21 The testimony in the hearing must be under oath, and the
22 proceedings must be recorded.

23 (c) Unless the patient is otherwise represented or is
24 ineligible, he or she shall be represented at the hearing on
25 the petition for continued involuntary inpatient placement by
26 the public defender of the circuit in which the facility is
27 located.

28 (d) If at a hearing it is shown that the patient
29 continues to meet the criteria for involuntary inpatient
30 placement, the administrative law judge shall sign the order
31 for continued involuntary inpatient placement for a period not

1 to exceed 6 months. The same procedure shall be repeated
2 prior to the expiration of each additional period the patient
3 is retained.

4 (e) If continued involuntary placement is necessary
5 for a patient admitted while serving a criminal sentence, but
6 whose sentence is about to expire, or for a patient
7 involuntarily placed while a minor but who is about to reach
8 the age of 18, the administrator shall petition the
9 administrative law judge for an order authorizing continued
10 involuntary placement.

11 (f) If the patient has been previously found
12 incompetent to consent to treatment, the hearing officer shall
13 consider testimony and evidence regarding the patient's
14 competence. If the hearing officer finds evidence that the
15 patient is now competent to consent to treatment, the hearing
16 officer may issue a recommended order to the court that found
17 the patient incompetent to consent to treatment that the
18 patient's competence be restored and that any guardian
19 advocate previously appointed be discharged.

20 (10) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
21 PLACEMENT.--

22 (a) If the person continues to meet the criteria for
23 involuntary outpatient placement, the service provider shall,
24 before the expiration of the period during which the treatment
25 is ordered for the person, file a continued involuntary
26 outpatient placement certificate that is accompanied by a
27 statement from the person's physician or clinical psychologist
28 justifying the request, a brief description of the patient's
29 treatment during the time he or she was involuntarily placed,
30 and an individualized plan of continued treatment.

31

1 (b) A hearing on a petition for continued involuntary
2 outpatient placement must be a judicial hearing. The
3 procedures for obtaining an order under this paragraph must be
4 in accordance with subsection (7), except that the time period
5 included in sub-subparagraph (2)(a)2.c. does not apply in
6 determining the appropriateness of additional periods of
7 involuntary outpatient placement.

8 (c) Notice of the hearing must be provided as set
9 forth in s. 394.4599.

10 (d) The same procedure must be repeated before the
11 expiration of each additional period the patient is placed in
12 treatment.

13 (f) If the patient has previously been found
14 incompetent to consent to treatment, the court must consider
15 testimony and evidence regarding the patient's competence. If
16 the court finds that the patient is now competent to consent
17 to treatment, the court may order that any guardian advocate
18 who was previously appointed be discharged.

19 (11)(8) RETURN OF PATIENTS.--When a patient at a
20 treatment facility leaves the facility without authorization,
21 the administrator may authorize a search for the patient and
22 the return of the patient to the facility. The administrator
23 may request the assistance of a law enforcement agency in the
24 search for and return of the patient.

25 Section 5. If any provision of this act or the
26 application thereof to any person or circumstance is held
27 invalid, the invalidity does not affect other provisions or
28 applications of the act which can be given effect without the
29 invalid provision or application, and to this end the
30 provisions of this act are declared severable.

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

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SENATE SUMMARY

Revises the Baker Act, which provides for involuntary treatment of a person who has a mental illness. Provides for involuntary outpatient treatment. (See bill for details.)