

By the Committee on Judiciary; and Senator Peaden

308-2468-03

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., relating to
6 guardian advocates; amending provisions to
7 conform to this act; amending s. 394.4615,
8 F.S., relating to confidentiality of clinical
9 records; providing additional circumstances in
10 which information from a clinical record may be
11 released; amending s. 394.463, F.S.; amending
12 provisions relating to involuntary examination;
13 creating s. 394.4655, F.S.; providing for
14 involuntary outpatient placement; providing
15 criteria; providing procedures; providing for a
16 voluntary examination for outpatient placement;
17 providing for a petition for involuntary
18 outpatient placement; providing for a
19 continuance of hearing; providing procedures
20 for the hearing on involuntary outpatient
21 placement; providing a procedure for continued
22 involuntary outpatient placement; amending s.
23 394.467, F.S., relating to involuntary
24 placement; conforming terminology to changes
25 made by this act; creating the Involuntary
26 Outpatient Placement Implementation Task Force;
27 providing for membership, meetings, and duties
28 of the task force; requiring a report;
29 providing for rulemaking authority; providing
30 severability; providing an effective date.
31

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

2

3 Section 1. Subsection (3) of section 394.455, Florida
4 Statutes, is amended, and subsections (31) and (32) are added
5 to that section, to read:

6 394.455 Definitions.--As used in this part, unless the
7 context clearly requires otherwise, the term:

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

13 (31) "Service provider" means any public or private
14 receiving facility, an entity under contract with the
15 Department of Children and Family Services to provide mental
16 health services, a clinical psychologist, a clinical social
17 worker, a physician, a psychiatric nurse, or a community
18 mental health center or clinic as defined in this part.

19 (32) "Involuntary placement" means either involuntary
20 outpatient treatment pursuant to s. 394.4655 or involuntary
21 inpatient treatment pursuant to s. 394.467.

22 Section 2. Subsections (1) and (7) of section
23 394.4598, Florida Statutes, are amended to read:

24 394.4598 Guardian advocate.--

25 (1) The administrator may petition the court for the
26 appointment of a guardian advocate based upon the opinion of a
27 psychiatrist that the patient is incompetent to consent to
28 treatment. If the court finds that a patient is incompetent to
29 consent to treatment and has not been adjudicated
30 incapacitated and a guardian with the authority to consent to
31 mental health treatment appointed, it shall appoint a guardian

1 advocate. The patient has the right to have an attorney
2 represent him or her at the hearing. If the person is
3 indigent, the court shall appoint the office of the public
4 defender to represent him or her at the hearing. The patient
5 has the right to testify, cross-examine witnesses, and present
6 witnesses. The proceeding shall be recorded either
7 electronically or stenographically, and testimony shall be
8 provided under oath. One of the professionals authorized to
9 give an opinion in support of a petition for involuntary
10 placement, as described in s. 394.4655 or s. 394.467(2), must
11 testify. A guardian advocate must meet the qualifications of a
12 guardian contained in part IV of chapter 744, except that a
13 professional referred to in this part, an employee of the
14 facility providing direct services to the patient under this
15 part, a departmental employee, a facility administrator, or
16 member of the Florida local advocacy council shall not be
17 appointed. A person who is appointed as a guardian advocate
18 must agree to the appointment.

19 (7) The guardian advocate shall be discharged when the
20 patient is discharged from an order for involuntary outpatient
21 placement or involuntary inpatient placement ~~a receiving or~~
22 ~~treatment facility to the community~~ or when the patient is
23 transferred from involuntary to voluntary status. The court or
24 a hearing officer shall consider the competence of the patient
25 pursuant to subsection (1) and may consider an involuntarily
26 placed patient's competence to consent to treatment at any
27 hearing. Upon sufficient evidence, the court may restore, or
28 the hearing officer may recommend that the court restore, the
29 patient's competence. A copy of the order restoring competence
30 or the certificate of discharge containing the restoration of
31

1 competence shall be provided to the patient and the guardian
2 advocate.

3 Section 3. Subsection (3) of section 394.4615, Florida
4 Statutes, is amended to read:

5 394.4615 Clinical records; confidentiality.--

6 (3) Information from the clinical record may be
7 released in the following circumstances ~~when~~:

8 (a) When a patient has declared an intention to harm
9 other persons. When such declaration has been made, the
10 administrator may authorize the release of sufficient
11 information to provide adequate warning to the person
12 threatened with harm by the patient.

13 (b) When the administrator of the facility or
14 secretary of the department deems release to a qualified
15 researcher as defined in administrative rule, an aftercare
16 treatment provider, or an employee or agent of the department
17 is necessary for treatment of the patient, maintenance of
18 adequate records, compilation of treatment data, aftercare
19 planning, or evaluation of programs.

20 (c) For the purpose of determining whether a person
21 meets the criteria for involuntary outpatient placement
22 pursuant to s. 394.4655, the clinical record may be released
23 to the state attorney, the public defender, or the patient's
24 private legal counsel; to the court; and to the appropriate
25 mental health professionals.

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

29 394.463 Involuntary examination.--

30 (1) CRITERIA.--A person may be taken to a receiving
31 facility for involuntary examination if there is reason to

1 believe that the person has a mental illness ~~he or she is~~
2 ~~mentally ill~~ and because of his or her mental illness:
3 (a)~~1~~. The person has refused voluntary examination
4 after conscientious explanation and disclosure of the purpose
5 of the examination; or
6 (b)~~2~~. The person is unable to determine for himself or
7 herself whether examination is necessary; and
8 (c)~~(b)~~ Based on the person's current reported or
9 observed behavior, considering any mental health history,
10 there is a substantial likelihood that without care or
11 treatment:
12 1. ~~Without care or treatment,~~The person is likely to
13 suffer from neglect or refuse to care for himself or herself;
14 such neglect or refusal will pose ~~poses~~ a real and present
15 threat of substantial harm to his or her well-being; and it is
16 not apparent that such harm may be avoided through the help of
17 willing family members or friends or the provision of other
18 services; or
19 2. ~~There is a substantial likelihood that without care~~
20 ~~or treatment~~ The person will cause serious bodily harm to
21 himself or herself or others in the near future, ~~as evidenced~~
22 ~~by recent behavior.~~
23 (2) INVOLUNTARY EXAMINATION.--
24 (e) The Agency for Health Care Administration shall
25 receive and maintain the copies of ex parte orders,
26 involuntary outpatient placement orders issued pursuant to s.
27 394.4655, involuntary inpatient orders issued pursuant to s.
28 394.467,professional certificates, and law enforcement
29 officers' reports. These documents shall be considered part
30 of the clinical record, governed by the provisions of s.
31 394.4615. The agency shall prepare annual reports analyzing

1 the data obtained from these documents, without information
2 identifying patients, and shall provide copies of reports to
3 the department, the President of the Senate, the Speaker of
4 the House of Representatives, and the minority leaders of the
5 Senate and the House of Representatives.

6 (g) A person for whom an involuntary examination has
7 been initiated who is being evaluated or treated at a hospital
8 for an emergency medical condition specified in s. 395.002
9 must be examined by a receiving facility within 72 hours. The
10 72-hour period begins when the patient arrives at the hospital
11 and ceases when the attending physician documents that the
12 patient has an emergency medical condition. If the patient is
13 examined at a hospital providing emergency medical services by
14 a professional qualified to perform an involuntary examination
15 and is found as a result of that examination not to meet the
16 criteria for involuntary outpatient placement pursuant to s.
17 394.4655(1) or involuntary inpatient placement pursuant to s.
18 394.467(1), the patient may be offered voluntary placement, if
19 appropriate, or released directly from the hospital providing
20 emergency medical services. The finding by the professional
21 that the patient has been examined and does not meet the
22 criteria for involuntary inpatient placement or involuntary
23 outpatient placement must be entered into the patient's
24 clinical record. Nothing in this paragraph is intended to
25 prevent a hospital providing emergency medical services from
26 appropriately transferring a patient to another hospital prior
27 to stabilization, provided the requirements of s.
28 395.1041(3)(c) have been met.

29 (i) Within the 72-hour examination period or, if the
30 72 hours ends on a weekend or holiday, no later than the next
31

1 working day thereafter, one of the following actions must be
2 taken, based on the individual needs of the patient:

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

6 2. The patient shall be released, subject to the
7 provisions of subparagraph 1., for voluntary outpatient
8 treatment;

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

14 4. A petition for involuntary outpatient placement or
15 a petition for involuntary inpatient placement shall be filed
16 in the appropriate court by the petitioner delineated in s.
17 394.4655(3)(a) ~~facility administrator~~ when treatment is deemed
18 necessary; in which case, the least restrictive treatment
19 consistent with the optimum improvement of the patient's
20 condition shall be made available.

21 Section 5. Section 394.4655, Florida Statutes, is
22 created to read:

23 394.4655 Involuntary outpatient placement.--

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

25 (a) A person may be ordered to involuntary outpatient
26 placement upon a finding of the court that by clear and
27 convincing evidence:

28 1. The person is 18 years of age or older;

29 2. The person has a mental illness;

30
31

1 3. The person is unlikely to survive safely in the
2 community without supervision, based on a clinical
3 determination;

4 4. The person has a history of lack of compliance with
5 treatment for mental illness;

6 5. The person has:

7 a. At least twice within the immediately preceding 36
8 months been admitted for examination or placement in a
9 receiving or treatment facility as defined in s. 394.455, or
10 has received mental health services in a forensic or
11 correctional facility. The 36-month period does not include
12 any period during which the person was admitted or
13 incarcerated immediately preceding the filing of the petition
14 and does include acts of noncompliance with the treatment and
15 the current admission for consideration; or

16 b. Engaged in one or more acts of serious violent
17 behavior toward self or others, or attempts at serious bodily
18 harm to himself or herself or others, within the immediately
19 preceding 36 months. The 36-month period does not include any
20 period in which the person was admitted or incarcerated
21 immediately preceding the filing of the petition and does
22 include acts of violence occurring during the admission or
23 incarceration;

24 6. The person is, as a result of his or her mental
25 illness, unlikely to voluntarily participate in the
26 recommended treatment pursuant to the treatment plan;

27 7. In view of the person's treatment history and
28 current behavior, the person is in need of involuntary
29 outpatient placement in order to prevent a relapse or
30 deterioration that would be likely to result in serious bodily
31

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

3 8. It is likely that the person will benefit from
4 involuntary outpatient placement; and

5 9. All available less restrictive alternatives that
6 would offer an opportunity for improvement of his or her
7 condition have been judged to be inappropriate.

8 (b) Each required criterion for involuntary outpatient
9 placement must be alleged in the petition and substantiated by
10 either hospitalization records or arrest records that shall be
11 attached to the petition or a sworn affidavit that shall be
12 attached to the petition. The petition must consist of a
13 clinical determination by a qualified professional who shall
14 be required to attend the hearing pursuant to subsection (6).
15 The patient shall be allowed an opportunity to present
16 evidence and testimony at the hearing to refute or rebut the
17 allegations.

18 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

19 (a) From a receiving facility.--A patient may be
20 retained by a receiving facility unless he or she has been
21 stabilized and no longer meets the criteria for involuntary
22 examination pursuant to s. 394.463(1), in which case the
23 patient must be placed in outpatient treatment while awaiting
24 the hearing for involuntary outpatient placement upon the
25 recommendation of the administrator of a receiving facility
26 where the patient has been examined and after adherence to the
27 notice and hearing procedures provided in s. 394.4599. The
28 recommendation must be supported by the opinion of a
29 psychiatrist and the second opinion of a clinical psychologist
30 or another psychiatrist, both of whom have personally examined
31 the patient within the preceding 72 hours, that the criteria

1 for involuntary outpatient placement are met. However, in a
2 county having a population of fewer than 50,000, if the
3 administrator certifies that no psychiatrist or clinical
4 psychologist is available to provide the second opinion, the
5 second opinion may be provided by a licensed physician who has
6 postgraduate training and experience in diagnosis and
7 treatment of mental and nervous disorders or by a psychiatric
8 nurse. Such a recommendation must be entered on an involuntary
9 outpatient placement certificate, which certificate must
10 authorize the receiving facility to retain the patient pending
11 transfer to involuntary outpatient placement or completion of
12 a hearing.

13 (b) Voluntary examination for outpatient
14 placement.--If such an arrangement can be made, a patient may
15 agree to be examined on an outpatient basis for an involuntary
16 outpatient placement certificate. The certificate must be
17 supported by the opinion of a psychiatrist and the second
18 opinion of a clinical psychologist or another psychiatrist,
19 both of whom have personally examined the patient within the
20 preceding 14 calendar days, that the criteria for involuntary
21 outpatient placement are met. However, in a county having a
22 population of fewer than 50,000, if the psychiatrist certifies
23 that no psychiatrist or clinical psychologist is available to
24 provide the second opinion, the second opinion may be provided
25 by a licensed physician who has postgraduate training and
26 experience in diagnosis and treatment of mental and nervous
27 disorders or by a psychiatric nurse.

28 (c) From a treatment facility.--If a patient in
29 involuntary inpatient placement meets the criteria for
30 involuntary outpatient placement, the administrator of the
31 treatment facility may, before the expiration of the period

1 during which the treatment facility is authorized to retain
2 the patient, recommend involuntary outpatient placement. The
3 recommendation must be supported by the opinion of a
4 psychiatrist and the second opinion of a clinical psychologist
5 or another psychiatrist, both of whom have personally examined
6 the patient within the preceding 72 hours, that the criteria
7 for involuntary outpatient placement are met. However, in a
8 county having a population of fewer than 50,000, if the
9 administrator certifies that no psychiatrist or clinical
10 psychologist is available to provide the second opinion, the
11 second opinion may be provided by a licensed physician who has
12 postgraduate training and experience in diagnosis and
13 treatment of mental and nervous disorders or by a psychiatric
14 nurse. Such a recommendation must be entered on an involuntary
15 outpatient placement certificate.

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

17 (a) A petition for involuntary outpatient placement
18 may be filed only when the full range of services that the
19 person needs for mental health treatment and to live and
20 function successfully are available in the patient's local
21 community. The petitioner must certify, in a sworn affidavit
22 attached to the petition, the comprehensive array of services
23 that the individual person needs and the services that are
24 available in the community. A petition may be filed by:

25 1. The administrator of the facility pursuant to
26 paragraph (2)(a);

27 2. One of the examining professionals for persons
28 examined on a voluntary outpatient basis pursuant to paragraph
29 (2)(b). Upon filing the petition, the examining professional
30 shall provide a copy of the petition to the administrator of
31 the receiving facility or designated department representative

1 that will identify the service provider for the involuntary
2 outpatient placement; or

3 3. The administrator of a treatment facility pursuant
4 to paragraph (2)(c). Upon filing the petition, the
5 administrator shall provide a copy of the petition to the
6 administrator of the receiving facility or designated
7 department representative that will identify the service
8 provider for the involuntary outpatient placement.

9 (b) The petition for involuntary outpatient placement
10 must be filed in the county where the patient is located. When
11 the petition has been filed, the clerk of the court shall
12 provide copies to the department, the patient, the patient's
13 guardian or representative, and the state attorney and public
14 defender of the judicial circuit in which the patient is
15 located. A fee may not be charged for filing a petition under
16 this subsection.

17 (4) APPOINTMENT OF COUNSEL.--Within 1 court working
18 day after the filing of a petition for involuntary outpatient
19 placement, the court shall appoint the public defender to
20 represent the person who is the subject of the petition,
21 unless the person is otherwise represented by counsel. The
22 clerk of the court shall immediately notify the public
23 defender of the appointment. The public defender shall
24 represent the person until the petition is dismissed, the
25 court order expires, or the patient is discharged from
26 involuntary outpatient placement. An attorney who represents
27 the patient shall have access to the patient, witnesses, and
28 records relevant to the presentation of the patient's case and
29 shall represent the interests of the patient, regardless of
30 the source of payment to the attorney.

31

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

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

6 (a)1. The court shall hold the hearing on involuntary
7 outpatient placement within 5 days, unless a continuance is
8 granted. The hearing shall be held in the county where the
9 patient is located, shall be as convenient to the patient as
10 is consistent with orderly procedure, and shall be conducted
11 in physical settings not likely to be injurious to the
12 patient's condition. The state attorney for the circuit in
13 which the patient is located shall represent the state, rather
14 than the petitioner, as the real party in interest in the
15 proceeding.

16 2. The court may appoint a master to preside at the
17 hearing. One of the professionals who executed the involuntary
18 outpatient placement certificate shall be a witness. The
19 patient and the patient's guardian or representative shall be
20 informed by the court of the right to an independent expert
21 examination. If the patient cannot afford such an examination,
22 the court shall provide for one. The independent expert's
23 report shall be confidential and not discoverable, unless the
24 expert is to be called as a witness for the patient at the
25 hearing. The court shall allow testimony from individuals,
26 including family members, deemed by the court to be relevant
27 under Florida law, regarding the person's prior history and
28 how that prior history relates to the person's current
29 condition. The testimony in the hearing must be given under
30 oath, and the proceedings must be recorded. The patient may
31 refuse to testify at the hearing.

1 (b)1. If the court concludes that the patient meets
2 the criteria for involuntary outpatient placement pursuant to
3 subsection (1), the court shall issue an order for involuntary
4 outpatient placement. The court order shall be for a period of
5 up to 6 months. The service provider shall discharge a patient
6 any time the patient no longer meets the criteria for
7 involuntary placement.

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

1 the court in the treatment plan that the proposed services are
2 currently available and that the service provider agrees to
3 provide those services. Service providers may select and
4 provide supervision to other individuals, not enumerated in
5 this sub-subparagraph, to implement specific aspects of the
6 treatment plan, such as medication monitoring. The services in
7 the treatment plan must be deemed to be clinically appropriate
8 by a physician, clinical psychologist, psychiatric nurse, or
9 clinical social worker who consults with, or is employed or
10 contracted by, the service provider. The court shall not order
11 the department or the service provider to provide services if
12 the program or service is not available in the patient's local
13 community, if there is no space available in the program or
14 service for the patient, or if funding is not available for
15 the program or service. A copy of the order must be sent to
16 the Agency for Health Care Administration. After the placement
17 order is issued, the service provider and the patient may
18 modify provisions of the treatment plan. For any material
19 modification of the treatment plan, the service provider shall
20 send notice of the modification to the court. Any material
21 modifications of the treatment plan which are contested by the
22 patient must be approved by the court.

23 3. If, in the clinical judgment of a physician, the
24 patient has failed or has refused to comply with the treatment
25 ordered by the court, and, in the clinical judgment of the
26 physician, efforts were made to solicit compliance and the
27 patient may meet the criteria for involuntary examination, a
28 person may be brought to a receiving facility pursuant to s.
29 394.463. If, after examination, the patient does not meet the
30 criteria for involuntary inpatient placement pursuant to s.
31 394.467, the patient must be discharged from the receiving

1 facility. The service provider must determine whether
2 modifications should be made to the existing treatment plan
3 and must attempt to continue to engage the patient in
4 treatment. For any material modification of the treatment plan
5 to which the patient or, if appointed, the patient's guardian
6 advocate does not agree, the service provider shall send
7 notice of the modification to the court. Any material
8 modifications of the treatment plan which are contested by the
9 patient or, if appointed, the patient's guardian advocate must
10 be approved by the court.

11 (c) If, at any time before the conclusion of the
12 initial hearing on involuntary outpatient placement, it
13 appears to the court that the person does not meet the
14 criteria for involuntary outpatient placement under this
15 section but, instead, meets the criteria for involuntary
16 inpatient placement, the court may order the person admitted
17 for involuntary inpatient placement pursuant to s. 394.467. If
18 the person instead meets the criteria for involuntary
19 assessment, protective custody, or involuntary admission
20 pursuant to s. 397.675, the court may order the person to be
21 admitted for involuntary assessment for a period of 5 days
22 pursuant to s. 397.6811. Thereafter, all proceedings shall be
23 governed by chapter 397.

24 (d) At the hearing on involuntary outpatient
25 placement, the court shall consider testimony and evidence
26 regarding the patient's competence to consent to treatment. If
27 the court finds that the patient is incompetent to consent to
28 treatment, it shall appoint a guardian advocate as provided in
29 s. 394.4598 from a list of qualified and available guardian
30 advocates submitted to the court with the petition. The
31 guardian advocate is immune from civil liability under this

1 provision. Section 394.4598 governs the discharge of the
2 guardian advocate if the patient's competency to consent to
3 treatment is restored.

4 (e) The administrator of the receiving facility or the
5 designated department representative shall provide a copy of
6 the court order and adequate documentation of a patient's
7 mental illness to the service provider for involuntary
8 outpatient placement. Such documentation must include any
9 advance directives made by the patient, a psychiatric
10 evaluation of the patient, and any evaluations of the patient
11 performed by a clinical psychologist or a clinical social
12 worker.

13 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
14 PLACEMENT.--

15 (a) If the person continues to meet the criteria for
16 involuntary outpatient placement, the service provider shall,
17 before the expiration of the period during which the treatment
18 is ordered for the person, file in the circuit court a
19 continued involuntary outpatient placement certificate which
20 shall be accompanied by a statement from the person's
21 physician or clinical psychologist justifying the request, a
22 brief description of the patient's treatment during the time
23 he or she was involuntarily placed, and an individualized plan
24 of continued treatment.

25 (b) Within 1 court working day after the filing of a
26 petition for continued involuntary outpatient placement, the
27 court shall appoint the public defender to represent the
28 person who is the subject of the petition, unless the person
29 is otherwise represented by counsel. The clerk of the court
30 shall immediately notify the public defender of such
31 appointment. The public defender shall represent the person

1 until the petition is dismissed or the court order expires or
2 the patient is discharged from involuntary outpatient
3 placement. Any attorney representing the patient shall have
4 access to the patient, witnesses, and records relevant to the
5 presentation of the patient's case and shall represent the
6 interests of the patient, regardless of the source of payment
7 to the attorney.

8 (c) Hearings on petitions for continued involuntary
9 outpatient placement shall be before the circuit court. The
10 court may appoint a master to preside at the hearing. The
11 procedures for obtaining an order pursuant to this paragraph
12 shall be in accordance with subsection (6), except that the
13 time period included in sub-subparagraph 4. is not applicable
14 in determining the appropriateness of additional periods of
15 involuntary outpatient placement.

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

18 (e) The same procedure shall be repeated before the
19 expiration of each additional period the patient is placed in
20 treatment.

21 (f) If the patient has previously been found
22 incompetent to consent to treatment, the court shall consider
23 testimony and evidence regarding the patient's competence. If
24 the court finds evidence that the patient is now competent to
25 consent to treatment, the court may order that any previously
26 appointed guardian advocate be discharged.

27 Section 6. Section 394.467, Florida Statutes, is
28 amended to read:

29 394.467 Involuntary inpatient placement.--
30
31

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

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

6 1.a. He or she has refused voluntary placement for
7 treatment after sufficient and conscientious explanation and
8 disclosure of the purpose of placement for treatment; or

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

11 2.a. He or she is manifestly incapable of surviving
12 alone or with the help of willing and responsible family or
13 friends, including available alternative services, and,
14 without treatment, is likely to suffer from neglect or refuse
15 to care for himself or herself, and such neglect or refusal
16 poses a real and present threat of substantial harm to his or
17 her well-being; or

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

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

25 (2) ADMISSION TO A TREATMENT FACILITY.--A patient may
26 be retained by a receiving facility or involuntarily placed in
27 a treatment facility upon the recommendation of the
28 administrator of a receiving facility where the patient has
29 been examined and after adherence to the notice and hearing
30 procedures provided in s. 394.4599. The recommendation must be
31 supported by the opinion of a psychiatrist and the second

1 opinion of a clinical psychologist or another psychiatrist,
2 both of whom have personally examined the patient within the
3 preceding 72 hours, that the criteria for involuntary
4 inpatient placement are met. However, in counties of less
5 than 50,000 population, if the administrator certifies that no
6 psychiatrist or clinical psychologist is available to provide
7 the second opinion, such second opinion may be provided by a
8 licensed physician with postgraduate training and experience
9 in diagnosis and treatment of mental and nervous disorders or
10 by a psychiatric nurse. Such recommendation shall be entered
11 on an involuntary inpatient placement certificate, which
12 certificate shall authorize the receiving facility to retain
13 the patient pending transfer to a treatment facility or
14 completion of a hearing.

15 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.--The
16 administrator of the facility shall file a petition for
17 involuntary inpatient placement in the court in the county
18 where the patient is located. Upon filing, the clerk of the
19 court shall provide copies to the department, the patient, the
20 patient's guardian or representative, and the state attorney
21 and public defender of the judicial circuit in which the
22 patient is located. No fee shall be charged for the filing of
23 a petition under this subsection.

24 (4) APPOINTMENT OF COUNSEL.--Within 1 court working
25 day after the filing of a petition for involuntary inpatient
26 placement, the court shall appoint the public defender to
27 represent the person who is the subject of the petition,
28 unless the person is otherwise represented by counsel. The
29 clerk of the court shall immediately notify the public
30 defender of such appointment. Any attorney representing the
31 patient shall have access to the patient, witnesses, and

1 records relevant to the presentation of the patient's case and
2 shall represent the interests of the patient, regardless of
3 the source of payment to the attorney.

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

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

9 (a)1. The court shall hold the hearing on involuntary
10 inpatient placement within 5 days, unless a continuance is
11 granted. The hearing shall be held in the county where the
12 patient is located and shall be as convenient to the patient
13 as may be consistent with orderly procedure and shall be
14 conducted in physical settings not likely to be injurious to
15 the patient's condition. If the court finds that the
16 patient's attendance at the hearing is not consistent with the
17 best interests of the patient, and the patient's counsel does
18 not object, the court may waive the presence of the patient
19 from all or any portion of the hearing. The state attorney
20 for the circuit in which the patient is located shall
21 represent the state, rather than the petitioning facility
22 administrator, as the real party in interest in the
23 proceeding.

24 2. The court may appoint a master to preside at the
25 hearing. One of the professionals who executed the involuntary
26 inpatient placement certificate shall be a witness. The
27 patient and the patient's guardian or representative shall be
28 informed by the court of the right to an independent expert
29 examination. If the patient cannot afford such an
30 examination, the court shall provide for one. The independent
31 expert's report shall be confidential and not discoverable,

1 unless the expert is to be called as a witness for the patient
2 at the hearing. The testimony in the hearing must be given
3 under oath, and the proceedings must be recorded. The patient
4 may refuse to testify at the hearing.

5 (b) If the court concludes that the patient meets the
6 criteria for involuntary inpatient placement, it shall order
7 that the patient be transferred to a treatment facility or, if
8 the patient is at a treatment facility, that the patient be
9 retained there or be treated at any other appropriate
10 receiving or treatment facility, or that the patient receive
11 services from a receiving or treatment facility, on an
12 involuntary basis, for a period of up to 6 months. The order
13 shall specify the nature and extent of the patient's mental
14 illness. The facility shall discharge a patient any time the
15 patient no longer meets the criteria for involuntary inpatient
16 placement, unless the patient has transferred to voluntary
17 status.

18 (c) If at any time prior to the conclusion of the
19 hearing on involuntary inpatient placement it appears to the
20 court that the person does not meet the criteria for
21 involuntary inpatient placement under this section, but
22 instead meets the criteria for involuntary outpatient
23 placement, the court may order the person evaluated for
24 involuntary outpatient placement pursuant to s. 394.4655. The
25 petition and hearing procedures set forth in s. 394.4655 shall
26 apply. If the person ~~placement under this chapter, but~~ instead
27 meets the criteria for involuntary assessment, protective
28 custody, or involuntary admission pursuant to s. 397.675, then
29 the court may order the person to be admitted for involuntary
30 assessment for a period of 5 days pursuant to s. 397.6811.
31 Thereafter, all proceedings shall be governed by chapter 397.

1 (d) At the hearing on involuntary inpatient placement,
2 the court shall consider testimony and evidence regarding the
3 patient's competence to consent to treatment. If the court
4 finds that the patient is incompetent to consent to treatment,
5 it shall appoint a guardian advocate as provided in s.
6 394.4598.

7 (e) The administrator of the receiving facility shall
8 provide a copy of the court order and adequate documentation
9 of a patient's mental illness to the administrator of a
10 treatment facility whenever a patient is ordered for
11 involuntary inpatient placement, whether by civil or criminal
12 court. Such documentation shall include any advance
13 directives made by the patient, a psychiatric evaluation of
14 the patient, and any evaluations of the patient performed by a
15 clinical psychologist or a clinical social worker. The
16 administrator of a treatment facility may refuse admission to
17 any patient directed to its facilities on an involuntary
18 basis, whether by civil or criminal court order, who is not
19 accompanied at the same time by adequate orders and
20 documentation.

21 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
22 PLACEMENT.--

23 (a) Hearings on petitions for continued involuntary
24 inpatient placement shall be administrative hearings and shall
25 be conducted in accordance with the provisions of s.
26 120.57(1), except that any order entered by the hearing
27 officer shall be final and subject to judicial review in
28 accordance with s. 120.68. Orders concerning patients
29 committed after successfully pleading not guilty by reason of
30 insanity shall be governed by the provisions of s. 916.15.

31

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

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

24 (d) If at a hearing it is shown that the patient
25 continues to meet the criteria for involuntary inpatient
26 placement, the administrative law judge shall sign the order
27 for continued involuntary inpatient placement for a period not
28 to exceed 6 months. The same procedure shall be repeated
29 prior to the expiration of each additional period the patient
30 is retained.

31

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

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

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

23 Section 7. Involuntary Outpatient Placement
24 Implementation Task Force.--

25 (1) An Involuntary Outpatient Placement Implementation
26 Task Force is established to develop a plan for implementation
27 of the involuntary outpatient placement procedures established
28 in this act. The task force shall include a representative
29 from each of the following entities, to be designated by their
30 respective organizations no later than July 1, 2003: the
31 Florida Sheriffs' Association, the Florida Police Chiefs'

1 Association, the Florida Public Defenders Association, the
2 Florida Prosecuting Attorneys Association, the Florida
3 Association of Court Clerks, the Florida Association of
4 Counties, the Department of Children and Family Services, the
5 Florida Council for Community Mental Health, and the Agency
6 for Health Care Administration. In addition, a member of the
7 Florida Senate shall be designated by the Senate President, a
8 member of the Florida House of Representatives shall be
9 designated by the Speaker of the House of Representatives, a
10 representative of the Executive Office of the Governor shall
11 be designated by the Governor, and a circuit judge shall be
12 designated by the Chief Justice of the Florida Supreme Court
13 to serve on the task force. The representative for the Florida
14 Sheriffs' Association and the circuit judge designated by the
15 Chief Justice shall serve as co-chairs of the task force. The
16 task force should solicit and receive input from interested
17 parties.

18 (2) The task force shall be convened no later than
19 August 1, 2003. Staff support for the initial meeting shall be
20 provided by staff of the House Committee on the Future of
21 Florida's Families and the Senate Committee on Children and
22 Families. The co-chairs shall facilitate the meetings and make
23 appropriate arrangements for staff support of subsequent
24 meetings and preparation of an implementation plan and report.
25 Expenses associated with task force meetings and work products
26 shall be the responsibility of each member's organization.

27 (3) The task force shall prepare an implementation
28 plan and report that identifies issues and proposed strategies
29 for implementation of court-ordered mental health treatment on
30 an outpatient basis. The task force should also address issues
31 including, but not limited to, recommendations for an

1 evaluation process to determine the effectiveness of
2 involuntary outpatient placement and proposed technical
3 amendments to the statute to improve implementation if
4 necessary and appropriate. The implementation plan and report
5 must recommend a process to collect data that reflects the
6 impact of involuntary outpatient placement on the courts,
7 state attorneys, public defenders, clerks of court, law
8 enforcement, jails, and the mental health treatment system.
9 The report must be submitted by December 1, 2003, to the
10 Governor, the President of the Senate, the Speaker of the
11 House of Representatives, and the Chief Justice of the Florida
12 Supreme Court.

13 Section 8. The Department of Children and Family
14 Services shall have rulemaking authority to implement sections
15 1-7 of this act.

16 Section 9. If any provision of this act or the
17 application thereof to any person or circumstance is held
18 invalid, the invalidity does not affect other provisions or
19 applications of this act which can be given effect without the
20 invalid provision or application, and to this end the
21 provisions of this act are declared severable.

22 Section 10. Except as otherwise expressly provided in
23 this act, this act shall take effect October 1, 2004.
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2748
4 Adds definition for the term "involuntary placement" to
5 reflect that involuntary placement may be for outpatient or
6 inpatient treatment or services.
7 Deletes provisions relating to ex parte orders for the
8 administration of medication, failure to comply with
9 involuntary outpatient placement orders, and consent to
10 medication by a guardian advocate over a patient's objection.
11 Authorizes the release of confidential information in a
12 person's clinical records for purposes of proceedings relating
13 to involuntary outpatient placement.
14 Revises the criteria for involuntary examination.
15 Places the new provisions governing involuntary outpatient
16 placement in a new section including revised criteria and the
17 process for petition and hearing.
18 Revises the process for continued involuntary outpatient
19 placement.
20 Creates a 13-member Involuntary Outpatient Placement
21 Implementation Task Force.
22
23
24
25
26
27
28
29
30
31