

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Simmons offered the following:

Amendment (with title amendments)

On page 2, line(s) 1,

insert:

Section 2. Subsection (3) of section 394.455, Florida Statutes, is amended, and subsections (31) and (32) are added to said section, to read:

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

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

Amendment No. (for drafter's use only)

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

33 (32) "Involuntary placement" means involuntary outpatient
34 treatment pursuant to s. 394.466 or involuntary inpatient
35 treatment pursuant to s. 394.467.

36 Section 3. Subsections (1) and (7) of section 394.4598,
37 Florida Statutes, are amended to read:

38 394.4598 Guardian advocate.--

39 (1) The administrator may petition the court for the
40 appointment of a guardian advocate based upon the opinion of a
41 psychiatrist that the patient is incompetent to consent to
42 treatment. If the court finds that a patient is incompetent to
43 consent to treatment and has not been adjudicated incapacitated
44 and a guardian with the authority to consent to mental health
45 treatment appointed, it shall appoint a guardian advocate. The
46 patient has the right to have an attorney represent him or her
47 at the hearing. If the person is indigent, the court shall
48 appoint the office of the public defender to represent him or
49 her at the hearing. The patient has the right to testify, cross-
50 examine witnesses, and present witnesses. The proceeding shall
51 be recorded either electronically or stenographically, and
52 testimony shall be provided under oath. One of the professionals
53 authorized to give an opinion in support of a petition for
54 involuntary placement, as described in s. 394.466 or s.
55 394.467(2), must testify. A guardian advocate must meet the

071979

Amendment No. (for drafter's use only)

56 qualifications of a guardian contained in part IV of chapter
57 744, except that a professional referred to in this part, an
58 employee of the facility providing direct services to the
59 patient under this part, a departmental employee, a facility
60 administrator, or member of the Florida local advocacy council
61 shall not be appointed. A person who is appointed as a guardian
62 advocate must agree to the appointment.

63 (7) The guardian advocate shall be discharged when the
64 patient is discharged from an order for involuntary inpatient or
65 outpatient placement or as provided in s. 394.466(6)(d) a
66 ~~receiving or treatment facility to the community~~ or when the
67 patient is transferred from involuntary to voluntary status. The
68 court or a hearing officer shall consider the competence of the
69 patient pursuant to subsection (1) and may consider an
70 involuntarily placed patient's competence to consent to
71 treatment at any hearing. Upon sufficient evidence, the court
72 may restore, or the hearing officer may recommend that the court
73 restore, the patient's competence. A copy of the order restoring
74 competence or the certificate of discharge containing the
75 restoration of competence shall be provided to the patient and
76 the guardian advocate.

77 Section 4. Paragraph (c) is added to subsection (3) of
78 section 394.4615, Florida Statutes, to read:

79 394.4615 Clinical records; confidentiality.--

80 (3) Information from the clinical record may be released
81 when:

82 (c) It is necessary to determine whether a person meets
83 the criteria for involuntary outpatient placement pursuant to s.
84 394.466. In such circumstance, the clinical record may be

Amendment No. (for drafter's use only)

85 released to the state attorney, public defender or the patient's
86 private legal counsel, the court, and the appropriate mental
87 health professionals.

88 Section 5. Subsection (1) and paragraphs (e), (g), and (i)
89 of subsection (2) of section 394.463, Florida Statutes, are
90 amended to read:

91 394.463 Involuntary examination.--

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

96 (a)1. The person has refused voluntary examination after
97 conscientious explanation and disclosure of the purpose of the
98 examination; or

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

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

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

111 2. ~~There is a substantial likelihood that without care or~~
112 ~~treatment~~ The person will cause serious bodily harm to himself

Amendment No. (for drafter's use only)

113 or herself or others in the near future, ~~as evidenced by recent~~
114 ~~behavior.~~

115 (2) INVOLUNTARY EXAMINATION.--

116 (e) The Agency for Health Care Administration shall
117 receive and maintain the copies of ex parte orders, involuntary
118 outpatient placement orders issued pursuant to s. 394.466, or
119 involuntary inpatient placement orders issued pursuant to s.
120 394.467, professional certificates, and law enforcement
121 officers' reports. These documents shall be considered part of
122 the clinical record, governed by the provisions of s. 394.4615.
123 The agency shall prepare annual reports analyzing the data
124 obtained from these documents, without information identifying
125 patients, and shall provide copies of reports to the department,
126 the President of the Senate, the Speaker of the House of
127 Representatives, and the minority leaders of the Senate and the
128 House of Representatives.

129 (g) A person for whom an involuntary examination has been
130 initiated who is being evaluated or treated at a hospital for an
131 emergency medical condition specified in s. 395.002 must be
132 examined by a receiving facility within 72 hours. The 72-hour
133 period begins when the patient arrives at the hospital and
134 ceases when the attending physician documents that the patient
135 has an emergency medical condition. If the patient is examined
136 at a hospital providing emergency medical services by a
137 professional qualified to perform an involuntary examination and
138 is found as a result of that examination not to meet the
139 criteria for involuntary outpatient placement pursuant to s.
140 394.466(1) or involuntary inpatient placement pursuant to s.
141 394.467(1), the patient may be offered voluntary placement, if

071979

Amendment No. (for drafter's use only)

142 appropriate, or released directly from the hospital providing
143 emergency medical services. The finding by the professional that
144 the patient has been examined and does not meet the criteria for
145 involuntary inpatient placement or involuntary outpatient
146 placement must be entered into the patient's clinical record.
147 Nothing in this paragraph is intended to prevent a hospital
148 providing emergency medical services from appropriately
149 transferring a patient to another hospital prior to
150 stabilization, provided the requirements of s. 395.1041(3)(c)
151 have been met.

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

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

159 2. The patient shall be released, subject to the
160 provisions of subparagraph 1., for voluntary outpatient
161 treatment;

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

166 4. A petition for involuntary inpatient placement or a
167 petition for involuntary outpatient placement shall be filed in
168 the appropriate court by the petitioner delineated in s.
169 394.466(3)(a) ~~facility administrator~~ when treatment is deemed
170 necessary; in which case, the least restrictive treatment

071979

Amendment No. (for drafter's use only)

171 consistent with the optimum improvement of the patient's
172 condition shall be made available.

173 Section 6. Section 394.466, Florida Statutes, is created
174 to read:

175 394.466 Involuntary outpatient placement.--

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

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

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

181 2. The person has a mental illness.

182 3. The person is unlikely to survive safely in the
183 community without supervision, based on a clinical
184 determination.

185 4. The person has a history of lack of compliance with
186 treatment for mental illness.

187 5. The person has:

188 a. At least twice within the last 36 months, been admitted
189 for examination or placement in a receiving or treatment
190 facility as defined in s. 394.455 or received mental health
191 services in a forensic or correctional facility. The 36-month
192 period does not include any period during which the person was
193 admitted or incarcerated immediately preceding the filing of the
194 petition and does include acts of noncompliance with the
195 treatment and the current admission for consideration; or

196 b. Engaged in one or more acts of serious violent behavior
197 toward himself or herself or others or engaged in attempts at
198 serious bodily harm to himself or herself or others within the
199 last 36 months. The 36-month period does not include any period

071979

Amendment No. (for drafter's use only)

200 in which the person was admitted or incarcerated immediately
201 preceding the filing of the petition and does include acts of
202 violence occurring during the admission or incarceration.

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

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

212 8. It is likely that the person will benefit from
213 involuntary outpatient placement.

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

217 (b) Each required criteria for involuntary outpatient
218 placement must be alleged in the petition and substantiated by
219 hospitalization or arrest records that shall be attached to the
220 petition or a sworn affidavit that shall be attached to the
221 petition. The petition shall consist of a clinical determination
222 by a qualified professional who shall be required to attend the
223 hearing pursuant to subsection (6). The patient shall be allowed
224 an opportunity to present evidence and testimony at the hearing
225 to refute or rebut said allegations.

226 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

227 (a) A patient may be retained by a receiving facility
228 unless the patient has been stabilized and no longer meets the

071979

Amendment No. (for drafter's use only)

229 involuntary examination criteria pursuant to s. 394.463(1), in
230 which case the patient must be placed in outpatient treatment
231 while awaiting the hearing for involuntary outpatient placement
232 upon the recommendation of the administrator of a receiving
233 facility where the patient has been examined and after adherence
234 to the notice and hearing procedures provided in s. 394.4599.
235 The recommendation must be supported by the opinion of a
236 psychiatrist and the second opinion of a clinical psychologist
237 or another psychiatrist, both of whom have personally examined
238 the patient within the preceding 72 hours, that the criteria for
239 involuntary outpatient placement are met. However, in counties
240 of less than 50,000 population, if the administrator certifies
241 that no psychiatrist or clinical psychologist is available to
242 provide the second opinion, such second opinion may be provided
243 by a licensed physician with postgraduate training and
244 experience in diagnosis and treatment of mental and nervous
245 disorders or by a psychiatric nurse. Such recommendation shall
246 be entered on an involuntary outpatient placement certificate,
247 which certificate shall authorize the receiving facility to
248 retain the patient pending transfer to involuntary outpatient
249 placement or completion of a hearing.

250 (b) In cases in which arrangements can be made, a patient
251 may agree to be examined on an outpatient basis for an
252 involuntary outpatient placement certificate. The certificate
253 must be supported by the opinion of a psychiatrist and the
254 second opinion of a clinical psychologist or another
255 psychiatrist, both of whom have personally examined the patient
256 within the preceding 14 calendar days, that the criteria for
257 involuntary outpatient placement are met. However, in counties

071979

Amendment No. (for drafter's use only)

258 of less than 50,000 population, if the psychiatrist certifies
259 that no psychiatrist or clinical psychologist is available to
260 provide the second opinion, such second opinion may be provided
261 by a licensed physician with postgraduate training and
262 experience in diagnosis and treatment of mental and nervous
263 disorders or by a psychiatric nurse.

264 (c) If a patient in involuntary inpatient placement meets
265 the criteria for involuntary outpatient placement, the
266 administrator of the treatment facility may, prior to expiration
267 of the period during which the treatment facility is authorized
268 to retain the patient, recommend involuntary outpatient
269 placement. The recommendation must be supported by the opinion
270 of a psychiatrist and the second opinion of a clinical
271 psychologist or another psychiatrist, both of whom have
272 personally examined the patient within the preceding 72 hours,
273 that the criteria for involuntary outpatient placement are met.
274 However, in counties of less than 50,000 population, if the
275 administrator certifies that no psychiatrist or clinical
276 psychologist is available to provide the second opinion, such
277 second opinion may be provided by a licensed physician with
278 postgraduate training and experience in diagnosis and treatment
279 of mental and nervous disorders or by a psychiatric nurse. Such
280 recommendation shall be entered on an involuntary outpatient
281 placement certificate.

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

283 (a) A petition for involuntary outpatient placement may be
284 filed only when the full range of services that the person needs
285 for mental health treatment and to live and function
286 successfully are available in the patient's local community. The

071979

Amendment No. (for drafter's use only)

287 petitioner must certify in a sworn affidavit attached to the
288 petition the comprehensive array of necessary services, the
289 individual patient's needs, and the services that are available
290 in the community. A petition may be filed by:

291 1. The administrator of the facility pursuant to paragraph
292 (2)(a);

293 2. One of the examining professionals for persons examined
294 on a voluntary outpatient basis pursuant to paragraph (2)(b).
295 Upon filing, the examining professional shall provide a copy of
296 the petition to the administrator of the receiving facility or
297 designated department representative that will identify the
298 service provider for the involuntary outpatient placement; or

299 3. The administrator of a treatment facility pursuant to
300 paragraph (2)(c). Upon filing, the administrator shall provide a
301 copy of the petition to the administrator of the receiving
302 facility or designated department representative that will
303 identify the service provider for the involuntary outpatient
304 placement.

305 (b) The petition for involuntary outpatient placement
306 shall be filed in the county where the patient is located. Upon
307 filing, the clerk of the court shall provide copies to the
308 department, the patient, the patient's guardian or
309 representative, and the state attorney and public defender of
310 the judicial circuit in which the patient is located. No fee
311 shall be charged for the filing of a petition under this
312 paragraph.

313 (4) APPOINTMENT OF COUNSEL.--Within 1 court working day
314 after the filing of a petition for involuntary outpatient
315 placement, the court shall appoint the public defender to

071979

Amendment No. (for drafter's use only)

316 represent the person who is the subject of the petition, unless
317 the person is otherwise represented by counsel. The clerk of the
318 court shall immediately notify the public defender of such
319 appointment. The public defender shall represent the person
320 until the petition is dismissed or the court order expires or
321 the patient is discharged from involuntary outpatient placement.
322 Any attorney representing the patient shall have access to the
323 patient, witnesses, and records relevant to the presentation of
324 the patient's case and shall represent the interests of the
325 patient, regardless of the source of payment to the attorney.

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

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

331 (a)1. The court shall hold the hearing on involuntary
332 outpatient placement within 5 days after the petition is filed,
333 unless a continuance is granted. The hearing shall be held in
334 the county where the patient is located and shall be as
335 convenient to the patient as may be consistent with orderly
336 procedure and shall be conducted in physical settings not likely
337 to be injurious to the patient's condition. The state attorney
338 for the circuit in which the patient is located shall represent
339 the state, rather than the petitioner, as the real party in
340 interest in the proceeding.

341 2. The court may appoint a master to preside at the
342 hearing. One of the professionals who executed the involuntary
343 outpatient placement certificate shall be a witness. The patient
344 and the patient's guardian or representative shall be informed

071979

Amendment No. (for drafter's use only)

345 by the court of the right to an independent expert examination.
346 If the patient cannot afford such an examination, the court
347 shall provide for one. The independent expert's report shall be
348 confidential and not discoverable, unless the expert is to be
349 called as a witness for the patient at the hearing. The court
350 shall allow testimony from individuals, including family
351 members, deemed by the court to be relevant under the law of
352 this state, regarding the person's prior history, and how that
353 prior history relates to the person's current condition. The
354 testimony in the hearing must be given under oath and the
355 proceedings must be recorded. The patient may refuse to testify
356 at the hearing.

357 (b)1. If the court concludes that the patient meets the
358 criteria for involuntary outpatient placement pursuant to
359 subsection (1), the court shall issue an order for involuntary
360 outpatient placement. The court order shall be for a period of
361 up to 6 months. The service provider shall discharge a patient
362 any time the patient no longer meets the criteria for
363 involuntary placement.

364 2. The administrator of a receiving facility or designated
365 department representative shall identify the service provider
366 that will have primary responsibility for service provision
367 under the order. The service provider shall prepare a written
368 proposed treatment plan and submit the plan to the court prior
369 to the hearing for the court's consideration for inclusion in
370 the involuntary outpatient placement order. The treatment plan
371 shall specify the nature and extent of the patient's mental
372 illness. The treatment plan may include provisions for case
373 management, intensive case management, assertive community

071979

Amendment No. (for drafter's use only)

374 treatment, or a program for assertive community treatment. The
375 treatment plan may also require that the patient make use of a
376 service provider to supply any of the following categories of
377 services to the individual: medication, periodic urinalysis to
378 determine compliance with treatment, individual or group
379 therapy, day or partial day programming activities, educational
380 and vocational training or activities, alcohol or substance
381 abuse treatment and counseling and periodic tests for the
382 presence of alcohol or illegal drugs for persons with a history
383 of alcohol or substance abuse, supervision of living
384 arrangements, and any other services prescribed to treat the
385 person's mental illness and to assist the person in living and
386 functioning in the community or to attempt to prevent a relapse
387 or deterioration. The service provider shall certify to the
388 court in the treatment plan that the proposed services are
389 currently available and that the service provider agrees to
390 provide those services. Service providers may select and provide
391 supervision to other individuals not enumerated in this
392 subparagraph to implement specific aspects of the treatment
393 plan, such as medication monitoring. The services in the
394 treatment plan shall be deemed to be clinically appropriate by a
395 physician, clinical psychologist, psychiatric nurse, or clinical
396 social worker who consults with, or is employed or contracted
397 by, the service provider. The court shall not order the
398 department or the service provider to provide services if the
399 program or service is not available in the patient's local
400 community or there is no space available in the program or
401 service for the patient or if funding is not available for the
402 program or service. A copy of the order shall be sent to the

071979

Amendment No. (for drafter's use only)

403 Agency for Health Care Administration. After the placement order
404 is issued, the service provider and the patient can modify
405 provisions of the treatment plan. For any material modification
406 of the provisions of the treatment plan, the service provider
407 shall send notice of the modification to the court. Any material
408 modification of the provisions of the treatment plan that are
409 contested by the patient must be approved by the court.

410 3. When, in the clinical judgment of a physician, the
411 patient has failed or refused to comply with the treatment
412 ordered by the court, efforts were made to solicit compliance,
413 and such patient may meet the criteria for involuntary
414 examination, a person may be brought to a receiving facility
415 pursuant to s. 394.463. If, after examination, the patient does
416 not meet the criteria for involuntary inpatient placement
417 pursuant to s. 394.467, the patient must be discharged from the
418 receiving facility. The service provider must determine whether
419 modifications should be made to the existing treatment plan and
420 attempt to continue to engage the patient in treatment. For any
421 material modification of the provisions of the treatment plan to
422 which the patient or, if appointed, the patient's guardian
423 advocate does agree, the service provider shall send notice of
424 the modification to the court. Any material modification of the
425 provisions of the treatment plan that are contested by the
426 patient or, if appointed, the patient's guardian advocate must
427 be approved by the court.

428 (c) If, at any time prior to the conclusion of the initial
429 hearing on involuntary outpatient placement, it appears to the
430 court that the person does not meet the criteria for involuntary
431 outpatient placement under this section but instead meets the

071979

Amendment No. (for drafter's use only)

432 criteria for involuntary inpatient placement, the court may
433 order the person admitted for involuntary inpatient placement
434 pursuant to s. 394.467. If the person instead meets the criteria
435 for involuntary assessment, protective custody, or involuntary
436 admission pursuant to s. 397.675, the court may order the person
437 to be admitted for involuntary assessment for a period of 5 days
438 pursuant to s. 397.6811. Thereafter, all proceedings shall be
439 governed by chapter 397.

440 (d) At the hearing on involuntary outpatient placement,
441 the court shall consider testimony and evidence regarding the
442 patient's competence to consent to treatment. If the court finds
443 that the patient is incompetent to consent to treatment, the
444 court shall appoint a guardian advocate as provided in s.
445 394.4598 from a list of qualified and available guardian
446 advocates submitted to the court with the petition. The guardian
447 advocate's role shall be to monitor the patient's care to ensure
448 that the patient's rights are protected. The guardian advocate
449 is immune from liability under this provision. If the patient,
450 the patient's guardian advocate, and the service provider agree
451 that the guardian advocate is no longer needed because the
452 person is competent, the guardian advocate may be discharged.

453 (e) The administrator of the receiving facility or
454 designated department representative shall provide a copy of the
455 court order and adequate documentation of a patient's mental
456 illness to the service provider for involuntary outpatient
457 placement. Such documentation shall include any advance
458 directives made by the patient, a psychiatric evaluation of the
459 patient, and any evaluations of the patient performed by a
460 clinical psychologist or a clinical social worker.

071979

Amendment No. (for drafter's use only)

461 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
462 PLACEMENT.--

463 (a) If the person continues to meet the criteria for
464 involuntary outpatient placement, the service provider shall,
465 prior to the expiration of the period during which the treatment
466 is ordered for the person, file in the circuit court a continued
467 involuntary outpatient placement certificate which shall be
468 accompanied by a statement from the person's physician or
469 clinical psychologist justifying the request, a brief
470 description of the patient's treatment during the time he or she
471 was involuntarily placed, and an individualized plan of
472 continued treatment.

473 (b) Within 1 court working day after the filing of a
474 petition for continued involuntary outpatient placement, the
475 court shall appoint the public defender to represent the person
476 who is the subject of the petition, unless the person is
477 otherwise represented by counsel. The clerk of the court shall
478 immediately notify the public defender of such appointment. The
479 public defender shall represent the person until the petition is
480 dismissed, the court order expires, or the patient is discharged
481 from involuntary outpatient placement. Any attorney representing
482 the patient shall have access to the patient, witnesses, and
483 records relevant to the presentation of the patient's case and
484 shall represent the interests of the patient, regardless of the
485 source of payment to the attorney.

486 (c) Hearings on petitions for continued involuntary
487 outpatient placement shall be before the circuit court. The
488 court may appoint a master to preside at the hearing. The
489 procedures for obtaining an order pursuant to this paragraph

071979

Amendment No. (for drafter's use only)

490 shall be in accordance with the provisions of subsection (6),
491 except that the time period included in subparagraph (1)(a)5.
492 shall not apply in determining the appropriateness of additional
493 periods of involuntary outpatient placement.

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

496 (e) The same procedure shall be repeated prior to the
497 expiration of each additional period the patient is placed in
498 treatment.

499 (f) If the patient has been previously found incompetent
500 to consent to treatment, the court shall consider testimony and
501 evidence regarding the patient's competence. If the court finds
502 evidence that the patient has become competent to consent to
503 treatment, the court may order that any guardian advocate
504 previously appointed be discharged.

505 Section 7. Section 394.467, Florida Statutes, is amended
506 to read:

507 394.467 Involuntary inpatient placement.--

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

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

513 1.a. He or she has refused voluntary placement for
514 treatment after sufficient and conscientious explanation and
515 disclosure of the purpose of placement for treatment; or

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

Amendment No. (for drafter's use only)

518 2.a. He or she is manifestly incapable of surviving alone
519 or with the help of willing and responsible family or friends,
520 including available alternative services, and, without
521 treatment, is likely to suffer from neglect or refuse to care
522 for himself or herself, and such neglect or refusal poses a real
523 and present threat of substantial harm to his or her well-being;
524 or

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

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

532 (2) ADMISSION TO A TREATMENT FACILITY.--A patient may be
533 retained by a receiving facility or involuntarily placed in a
534 treatment facility upon the recommendation of the administrator
535 of a receiving facility where the patient has been examined and
536 after adherence to the notice and hearing procedures provided in
537 s. 394.4599. The recommendation must be supported by the opinion
538 of a psychiatrist and the second opinion of a clinical
539 psychologist or another psychiatrist, both of whom have
540 personally examined the patient within the preceding 72 hours,
541 that the criteria for involuntary inpatient placement are met.
542 However, in counties of less than 50,000 population, if the
543 administrator certifies that no psychiatrist or clinical
544 psychologist is available to provide the second opinion, such
545 second opinion may be provided by a licensed physician with
546 postgraduate training and experience in diagnosis and treatment

071979

Amendment No. (for drafter's use only)

547 of mental and nervous disorders or by a psychiatric nurse. Such
548 recommendation shall be entered on an involuntary inpatient
549 placement certificate, which certificate shall authorize the
550 receiving facility to retain the patient pending transfer to a
551 treatment facility or completion of a hearing.

552 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.--The
553 administrator of the facility shall file a petition for
554 involuntary inpatient placement in the court in the county where
555 the patient is located. Upon filing, the clerk of the court
556 shall provide copies to the department, the patient, the
557 patient's guardian or representative, and the state attorney and
558 public defender of the judicial circuit in which the patient is
559 located. No fee shall be charged for the filing of a petition
560 under this subsection.

561 (4) APPOINTMENT OF COUNSEL.--Within 1 court working day
562 after the filing of a petition for involuntary inpatient
563 placement, the court shall appoint the public defender to
564 represent the person who is the subject of the petition, unless
565 the person is otherwise represented by counsel. The clerk of the
566 court shall immediately notify the public defender of such
567 appointment. Any attorney representing the patient shall have
568 access to the patient, witnesses, and records relevant to the
569 presentation of the patient's case and shall represent the
570 interests of the patient, regardless of the source of payment to
571 the attorney.

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

071979

Amendment No. (for drafter's use only)

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

577 (a)1. The court shall hold the hearing on involuntary
578 inpatient placement within 5 days, unless a continuance is
579 granted. The hearing shall be held in the county where the
580 patient is located and shall be as convenient to the patient as
581 may be consistent with orderly procedure and shall be conducted
582 in physical settings not likely to be injurious to the patient's
583 condition. If the court finds that the patient's attendance at
584 the hearing is not consistent with the best interests of the
585 patient, and the patient's counsel does not object, the court
586 may waive the presence of the patient from all or any portion of
587 the hearing. The state attorney for the circuit in which the
588 patient is located shall represent the state, rather than the
589 petitioning facility administrator, as the real party in
590 interest in the proceeding.

591 2. The court may appoint a master to preside at the
592 hearing. One of the professionals who executed the involuntary
593 inpatient placement certificate shall be a witness. The patient
594 and the patient's guardian or representative shall be informed
595 by the court of the right to an independent expert examination.
596 If the patient cannot afford such an examination, the court
597 shall provide for one. The independent expert's report shall be
598 confidential and not discoverable, unless the expert is to be
599 called as a witness for the patient at the hearing. The
600 testimony in the hearing must be given under oath, and the
601 proceedings must be recorded. The patient may refuse to testify
602 at the hearing.

603 (b) If the court concludes that the patient meets the
604 criteria for involuntary inpatient placement, it shall order

071979

Amendment No. (for drafter's use only)

605 that the patient be transferred to a treatment facility or, if
606 the patient is at a treatment facility, that the patient be
607 retained there or be treated at any other appropriate receiving
608 or treatment facility, or that the patient receive services from
609 a receiving or treatment facility, on an involuntary basis, for
610 a period of up to 6 months. The order shall specify the nature
611 and extent of the patient's mental illness. The facility shall
612 discharge a patient any time the patient no longer meets the
613 criteria for involuntary inpatient placement, unless the patient
614 has transferred to voluntary status.

615 (c) If at any time prior to the conclusion of the hearing
616 on involuntary inpatient placement it appears to the court that
617 the person does not meet the criteria for involuntary inpatient
618 placement under this section ~~chapter~~, but instead meets the
619 criteria for involuntary outpatient placement, the court may
620 order the person evaluated for involuntary outpatient placement
621 pursuant to s. 394.466. The petition and hearing procedures set
622 forth in s. 394.466 shall apply. If the person instead meets the
623 criteria for involuntary assessment, protective custody, or
624 involuntary admission pursuant to s. 397.675, then the court may
625 order the person to be admitted for involuntary assessment for a
626 period of 5 days pursuant to s. 397.6811. Thereafter, all
627 proceedings shall be governed by chapter 397.

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

Amendment No. (for drafter's use only)

633 (e) The administrator of the receiving facility shall
634 provide a copy of the court order and adequate documentation of
635 a patient's mental illness to the administrator of a treatment
636 facility whenever a patient is ordered for involuntary inpatient
637 placement, whether by civil or criminal court. Such
638 documentation shall include any advance directives made by the
639 patient, a psychiatric evaluation of the patient, and any
640 evaluations of the patient performed by a clinical psychologist
641 or a clinical social worker. The administrator of a treatment
642 facility may refuse admission to any patient directed to its
643 facilities on an involuntary basis, whether by civil or criminal
644 court order, who is not accompanied at the same time by adequate
645 orders and documentation.

646 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
647 PLACEMENT.--

648 (a) Hearings on petitions for continued involuntary
649 inpatient placement shall be administrative hearings and shall
650 be conducted in accordance with the provisions of s. 120.57(1),
651 except that any order entered by the hearing officer shall be
652 final and subject to judicial review in accordance with s.
653 120.68. Orders concerning patients committed after successfully
654 pleading not guilty by reason of insanity shall be governed by
655 the provisions of s. 916.15.

656 (b) If the patient continues to meet the criteria for
657 involuntary inpatient placement, the administrator shall, prior
658 to the expiration of the period during which the treatment
659 facility is authorized to retain the patient, file a petition
660 requesting authorization for continued involuntary inpatient
661 placement. The request shall be accompanied by a statement from

071979

Amendment No. (for drafter's use only)

662 the patient's physician or clinical psychologist justifying the
663 request, a brief description of the patient's treatment during
664 the time he or she was involuntarily placed, and an
665 individualized plan of continued treatment. Notice of the
666 hearing shall be provided as set forth in s. 394.4599. If at the
667 hearing the hearing officer finds that attendance at the hearing
668 is not consistent with the best interests of the patient, the
669 hearing officer may waive the presence of the patient from all
670 or any portion of the hearing, unless the patient, through
671 counsel, objects to the waiver of presence. The testimony in the
672 hearing must be under oath, and the proceedings must be
673 recorded.

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

678 (d) If at a hearing it is shown that the patient continues
679 to meet the criteria for involuntary inpatient placement, the
680 administrative law judge shall sign the order for continued
681 involuntary inpatient placement for a period not to exceed 6
682 months. The same procedure shall be repeated prior to the
683 expiration of each additional period the patient is retained.

684 (e) If continued involuntary inpatient placement is
685 necessary for a patient admitted while serving a criminal
686 sentence, but whose sentence is about to expire, or for a
687 patient involuntarily placed while a minor but who is about to
688 reach the age of 18, the administrator shall petition the
689 administrative law judge for an order authorizing continued
690 involuntary inpatient placement.

071979

Amendment No. (for drafter's use only)

691 (f) If the patient has been previously found incompetent
692 to consent to treatment, the hearing officer shall consider
693 testimony and evidence regarding the patient's competence. If
694 the hearing officer finds evidence that the patient is now
695 competent to consent to treatment, the hearing officer may issue
696 a recommended order to the court that found the patient
697 incompetent to consent to treatment that the patient's
698 competence be restored and that any guardian advocate previously
699 appointed be discharged.

700 (8) RETURN OF PATIENTS.--When a patient at a treatment
701 facility leaves the facility without authorization, the
702 administrator may authorize a search for the patient and the
703 return of the patient to the facility. The administrator may
704 request the assistance of a law enforcement agency in the search
705 for and return of the patient.

706 Section 8. Involuntary Outpatient Placement Implementation
707 Task Force.--

708 (1) The Involuntary Outpatient Placement Implementation
709 Task Force is established to develop a plan for implementation
710 of the involuntary outpatient placement procedures established
711 in this act. The task force shall include a representative from
712 each of the following entities, to be designated by their
713 respective organizations no later than July 1, 2003: the Florida
714 Sheriffs Association, the Florida Police Chiefs Association, the
715 Florida Public Defender Association, Inc., the Florida
716 Prosecuting Attorneys Association, the Florida Association of
717 Court Clerks, the Florida Association of Counties, the
718 Department of Children and Family Services, the Florida Council
719 for Community Mental Health, and the Agency for Health Care

071979

Amendment No. (for drafter's use only)

720 Administration. Additionally, a member of the Senate shall be
721 designated by the President of the Senate, a member of the House
722 of Representatives shall be designated by the Speaker of the
723 House of Representatives, a representative of the Executive
724 Office of the Governor shall be designated by the Governor, and
725 a circuit judge shall be designated by the Chief Justice of the
726 Supreme Court to serve on the task force. The representative for
727 the Florida Sheriffs Association and the circuit judge shall be
728 designated by the Chief Justice of the Florida Supreme Court and
729 shall serve as co-chairs of the task force. The task force
730 should solicit and receive input from interested parties.

731 (2) The task force shall be convened no later than August
732 1, 2003. Staff support for the initial meeting shall be provided
733 by staff of the House Committee on the Future of Florida's
734 Families and the Senate Committee on Children and Families. The
735 co-chairs shall facilitate the meetings and make appropriate
736 arrangements for staff support of subsequent meetings and
737 preparation of an implementation plan and report. Expenses
738 associated with task force meetings and work products shall be
739 the responsibility of each member's organization.

740 (3) The task force shall prepare an implementation plan
741 and report that identifies issues and proposed strategies for
742 implementation of court-ordered mental health treatment on an
743 outpatient basis. The task force shall also address issues,
744 including, but not limited to, recommendations for an evaluation
745 process to determine the effectiveness of involuntary outpatient
746 placement and proposed technical amendments to the Florida
747 Statutes to improve implementation, if necessary and
748 appropriate. The implementation plan and report must recommend a

071979

Amendment No. (for drafter's use only)

749 process to collect data that reflects the impact of involuntary
750 outpatient placement on the courts, state attorneys, public
751 defenders, clerks of court, law enforcement, jails, and the
752 mental health treatment system. The report must be submitted by
753 December 1, 2003, to the Governor, the President of the Senate,
754 the Speaker of the House of Representatives, and the Chief
755 Justice of the Florida Supreme Court.

756 Section 9. Any additional costs or expenses related to
757 implementation and enforcement of this act by the judiciary of
758 this state shall be a local requirement pursuant to chapter 29,
759 Florida Statutes.

760 Section 10. If any provision of this act or its
761 application to any person or circumstance is held invalid, the
762 invalidity does not affect other provisions or applications of
763 the act which can be given effect without the invalid provision
764 or application, and to this end the provisions of this act are
765 severable.

766
767 ===== T I T L E A M E N D M E N T =====

768 On page 1, line(s) 8 and 9,
769 remove: all of said lines

770 and insert: of an involuntary examination; amending s.
771 394.455, F.S.; revising a definition; providing additional
772 definitions; amending s. 394.4598, F.S.; revising language
773 with respect to the guardian advocate; authorizing the
774 guardian advocate to consent to administration of
775 medication over objection under certain circumstances;
776 amending s. 394.4615, F.S.; providing for release of
777 certain clinical records to certain persons for certain

Amendment No. (for drafter's use only)

778 purposes; amending s. 394.463, F.S.; revising criteria and
779 procedures for involuntary examination; creating s.
780 394.466, F.S.; setting forth criteria for involuntary
781 outpatient placement; providing contents of a petition for
782 involuntary outpatient placement; specifying procedures
783 for involuntary outpatient placement; providing for
784 persons who may file a petition for involuntary outpatient
785 placement; providing for appointment of counsel; providing
786 for continuance of hearings; providing for a hearing on
787 involuntary outpatient placement; setting forth procedures
788 for the hearing; providing for appointment of a master to
789 preside; providing for an independent examination;
790 requiring a court to order involuntary outpatient
791 placement under certain circumstances; requiring a
792 treatment plan; providing for plan modification; providing
793 for a patient to be brought to a receiving facility upon
794 failure or refusal to comply with the treatment plan;
795 providing for involuntary inpatient placement or
796 involuntary assessment; requiring consideration of a
797 patient's competence to proceed; requiring a list of
798 guardian advocates to be submitted to the court; defining
799 the role of a guardian advocate; providing for discharge
800 of the guardian advocate; requiring certain documentation;
801 allowing a person for whom an involuntary outpatient
802 placement petition has been filed to agree to a voluntary
803 treatment agreement; specifying requirements for
804 agreements; providing for modifications; providing for
805 filing of an affidavit of noncompliance with a voluntary
806 treatment plan; requiring a hearing; requiring dismissal

071979

Amendment No. (for drafter's use only)

807 of petitions in certain circumstances; providing
808 procedures for continued involuntary outpatient placement;
809 providing for a continued involuntary outpatient placement
810 certificate; requiring a hearing; requiring appointment of
811 a public defender; requiring hearings; providing for
812 appointment of a special master; amending s. 394.467,
813 F.S.; revising language with respect to involuntary
814 inpatient placement; providing a reference to inpatient
815 and outpatient involuntary placement; providing
816 requirements for placement orders; providing for voluntary
817 treatment agreements; providing a procedure for continued
818 involuntary outpatient placement; establishing the
819 Involuntary Outpatient Placement Implementation Task
820 Force; providing purposes; providing for membership;
821 providing for meetings; requiring the task force to
822 prepare an implementation plan relating to court-ordered
823 mental health outpatient treatment; requiring a report to
824 the Governor, Legislature, and Florida Supreme Court;
825 specifying certain costs or expenses related to
826 implementation and enforcement by the state judiciary as a
827 local requirement; providing for severability; providing
828 an effective date.

829
830 WHEREAS, untreated mental illness is a difficult issue
831 confronting every Florida community, and

832 WHEREAS, there are Floridians with severe mental illnesses
833 who are prone to relapse, often fail to comply with their
834 treatment plans, and have repeated hospitalizations and criminal

Amendment No. (for drafter's use only)

835 justice contacts, who are sometimes referred to as "Baker Act
836 recidivists," and

837 WHEREAS, many states use some form of civil commitment to
838 compel Baker Act recidivists to undergo treatment on an
839 involuntary outpatient basis, and

840 WHEREAS, it is the intent of the Legislature to protect
841 public safety and ensure that Baker Act recidivists receive
842 needed mental health services, while preserving the due process
843 rights of individuals with mental illness, and

844 WHEREAS, implementation and oversight of the involuntary
845 outpatient placement system involves the cooperative efforts and
846 combined resources of the Department of Children and Family
847 Services, the offices of the state attorneys, the offices of the
848 public defenders, the state courts, the clerks of court, and law
849 enforcement, among others, and

850 WHEREAS, the State of Florida is facing numerous
851 unprecedented fiscal challenges, some of which have a direct
852 bearing on involuntary outpatient placement, including revenue
853 shortfalls, the transition to state funding of the judicial
854 branch pursuant to Article V Revision 7, consideration of the
855 proper placement of the Mental Health Program Office, and
856 development of strategies to address the staggering growth in
857 Medicaid spending, and

858 WHEREAS, it is the intent of the Legislature to address
859 this issue in a deliberative, thoughtful process which allows
860 consideration of the difficult fiscal issues presented by a
861 statutory process for involuntary outpatient placement and to
862 appoint a task force to make recommendations on the effectuation
863 of court-ordered outpatient mental health treatment in

071979

Amendment No. (for drafter's use only)

864 sufficient time to allow the stakeholders and funding entities
865 to adequately prepare for implementation in fiscal year 2004-
866 2005, NOW, THEREFORE,
867