

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Simmons offered the following:

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3 **Amendment to Amendment (866277)**

4 Remove line(s) 189-528 and insert:

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

7 394.4655 Involuntary outpatient placement.--

8 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.--A

9 person may be ordered to involuntary outpatient placement upon a
10 finding of the court that by clear and convincing evidence:

11 (a) The person is 18 years of age or older;

12 (b) The person has a mental illness;

13 (c) The person is unlikely to survive safely in the
14 community without supervision, based on a clinical
15 determination;

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16 (d) The person has a history of lack of compliance with
17 treatment for mental illness;

18 (e) The person has:

19 1. At least twice within the immediately preceding 36
20 months been involuntarily admitted to a receiving or treatment
21 facility as defined in s. 394.455, or has received mental health
22 services in a forensic or correctional facility. The 36-month
23 period does not include any period during which the person was
24 admitted or incarcerated; or

25 2. Engaged in one or more acts of serious violent behavior
26 toward self or others, or attempts at serious bodily harm to
27 himself or herself or others, within the preceding 36 months;

28 (f) The person is, as a result of his or her mental
29 illness, unlikely to voluntarily participate in the recommended
30 treatment plan and either he or she has refused voluntary
31 placement for treatment after sufficient and conscientious
32 explanation and disclosure of the purpose of placement for
33 treatment or he or she is unable to determine for himself or
34 herself whether placement is necessary;

35 (g) In view of the person's treatment history and current
36 behavior, the person is in need of involuntary outpatient
37 placement in order to prevent a relapse or deterioration that
38 would be likely to result in serious bodily harm to himself or
39 herself or others, or a substantial harm to his or her well-
40 being as set forth in s. 394.463(1);

41 (h) It is likely that the person will benefit from
42 involuntary outpatient placement; and

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43 (i) All available less restrictive alternatives that would
44 offer an opportunity for improvement of his or her condition
45 have been judged to be inappropriate or unavailable.

46 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

47 (a)1. A patient may be retained by a receiving facility
48 upon the recommendation of the administrator of a receiving
49 facility where the patient has been examined and after adherence
50 to the notice of hearing procedures provided in s. 394.4599. The
51 recommendation must be supported by the opinion of a
52 psychiatrist and the second opinion of a clinical psychologist
53 or another psychiatrist, both of whom have personally examined
54 the patient within the preceding 72 hours, that the criteria for
55 involuntary outpatient placement are met. However, in a county
56 having a population of fewer than 50,000, if the administrator
57 certifies that no psychiatrist or clinical psychologist is
58 available to provide the second opinion, the second opinion may
59 be provided by a licensed physician who has postgraduate
60 training and experience in diagnosis and treatment of mental and
61 nervous disorders or by a psychiatric nurse as defined in this
62 chapter. Such a recommendation must be entered on an involuntary
63 outpatient placement certificate, which certificate must
64 authorize the receiving facility to retain the patient pending
65 completion of a hearing. The certificate shall be made a part of
66 the patient's clinical record.

67 2. If the patient has been stabilized and no longer meets
68 the criteria for involuntary examination pursuant to s.
69 394.463(1), the patient must be released from the receiving
70 facility while awaiting the hearing for involuntary outpatient

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71 placement. Prior to filing a petition for involuntary outpatient
72 treatment, the administrator of a receiving facility or a
73 designated department representative shall identify the service
74 provider that will have primary responsibility for service
75 provision under an order for involuntary outpatient placement,
76 unless the person is otherwise participating in outpatient
77 psychiatric treatment and is not in need of public financing for
78 that treatment, in which case the individual, if eligible, may
79 be ordered to involuntary treatment pursuant to the existing
80 psychiatric treatment relationship.

81 3. The service provider shall prepare a written proposed
82 treatment plan in consultation with the patient or the patient's
83 guardian advocate, if appointed, for the court's consideration
84 for inclusion in the involuntary outpatient placement order. The
85 service provider shall also provide a copy of the proposed
86 treatment plan to the patient and the administrator of the
87 receiving facility. The treatment plan must specify the nature
88 and extent of the patient's mental illness. The treatment plan
89 must address the reduction of symptoms that necessitate
90 involuntary outpatient placement and include measurable goals
91 and objectives for the services and treatment that are provided
92 to treat the person's mental illness and to assist the person in
93 living and functioning in the community or to attempt to prevent
94 a relapse or deterioration. Service providers may select and
95 provide supervision to other individuals to implement specific
96 aspects of the treatment plan. The services in the treatment
97 plan must be deemed to be clinically appropriate by a physician,
98 clinical psychologist, psychiatric nurse, or clinical social

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99 worker, as defined in this chapter, who consults with, or is
100 employed or contracted by, the service provider. The service
101 provider must certify to the court in the proposed treatment
102 plan whether sufficient services for improvement and
103 stabilization are currently available and whether the service
104 provider agrees to provide those services. If the service
105 provider certifies that the services in the proposed treatment
106 plan are not available, the petitioner may not file the
107 petition.

108 (b) If a patient in involuntary inpatient placement meets
109 the criteria for involuntary outpatient placement, the
110 administrator of the treatment facility may, before the
111 expiration of the period during which the treatment facility is
112 authorized to retain the patient, recommend involuntary
113 outpatient placement. The recommendation must be supported by
114 the opinion of a psychiatrist and the second opinion of a
115 clinical psychologist or another psychiatrist, both of whom have
116 personally examined the patient within the preceding 72 hours,
117 that the criteria for involuntary outpatient placement are met.
118 However, in a county having a population of fewer than 50,000,
119 if the administrator certifies that no psychiatrist or clinical
120 psychologist is available to provide the second opinion, the
121 second opinion may be provided by a licensed physician who has
122 postgraduate training and experience in diagnosis and treatment
123 of mental and nervous disorders or by a psychiatric nurse as
124 defined in s. 394.455(23). Such a recommendation must be entered
125 on an involuntary outpatient placement certificate and the

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126 certificate shall be made a part of the patient's clinical
127 record.

128 (c)1. The administrator of the treatment facility shall
129 provide a copy of the involuntary outpatient placement
130 certificate and a copy of the state mental health discharge form
131 to a department representative in the county where the patient
132 will be residing. For persons who are leaving a state mental
133 health treatment facility, the petition for involuntary
134 outpatient placement must be filed in the county where the
135 patient will be residing.

136 2. The service provider that will have primary
137 responsibility for service provision shall be identified by the
138 designated department representative prior to the order for
139 involuntary outpatient placement and must, prior to filing a
140 petition for involuntary outpatient placement, certify to the
141 court whether the services recommended in the patient's
142 discharge plan are available in the local community and whether
143 the service provider agrees to provide those services. The
144 service provider must develop with the patient, or the patient's
145 guardian advocate, if appointed, a treatment or service plan
146 that addresses the needs identified in the discharge plan. The
147 plan must be deemed to be clinically appropriate by a physician,
148 clinical psychologist, psychiatric nurse, or clinical social
149 worker, as defined in this chapter, who consults with, or is
150 employed or contracted by, the service provider.

151 3. If the service provider certifies that the services in
152 the proposed treatment or service plan are not available, the
153 petitioner may not file the petition.

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

155 (a) A petition for involuntary outpatient placement may be
156 filed by:

157 1. The administrator of a receiving facility; or

158 2. The administrator of a treatment facility.

159 (b) Each required criterion for involuntary outpatient
160 placement must be alleged and substantiated in the petition for
161 involuntary outpatient placement. A copy of the certificate
162 recommending involuntary outpatient placement completed by a
163 qualified professional specified in subsection (2) must be
164 attached to the petition. A copy of the proposed treatment plan
165 must be attached to the petition. Before the petition is filed,
166 the service provider shall certify that the services in the
167 proposed treatment plan are available. If the necessary services
168 are not available in the patient's local community to respond to
169 the person's individual needs, the petition may not be filed.

170 (c) The petition for involuntary outpatient placement must
171 be filed in the county where the patient is located, unless the
172 patient is being placed from a state treatment facility, in
173 which case, the petition must be filed in the county where the
174 patient will reside. When the petition has been filed, the clerk
175 of the court shall provide copies of the petition and the
176 proposed treatment plan to the department, the patient, the
177 patient's guardian or representative, the state attorney, and
178 the public defender or the patient's private counsel. A fee may
179 not be charged for filing a petition under this subsection.

180 (4) APPOINTMENT OF COUNSEL.--Within 1 court working day
181 after the filing of a petition for involuntary outpatient

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182 placement, the court shall appoint the public defender to
183 represent the person who is the subject of the petition, unless
184 the person is otherwise represented by counsel. The clerk of the
185 court shall immediately notify the public defender of the
186 appointment. The public defender shall represent the person
187 until the petition is dismissed, the court order expires, or the
188 patient is discharged from involuntary outpatient placement. An
189 attorney who represents the patient shall have access to the
190 patient, witnesses, and records relevant to the presentation of
191 the patient's case and shall represent the interests of the
192 patient, regardless of the source of payment to the attorney.

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

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

198 (a)1. The court shall hold the hearing on involuntary
199 outpatient placement within 5 working days after the filing of
200 the petition, unless a continuance is granted. The hearing shall
201 be held in the county where the petition is filed, shall be as
202 convenient to the patient as is consistent with orderly
203 procedure, and shall be conducted in physical settings not
204 likely to be injurious to the patient's condition. If the court
205 finds that the patient's attendance at the hearing is not
206 consistent with the best interests of the patient and if the
207 patient's counsel does not object, the court may waive the
208 presence of the patient from all or any portion of the hearing.
209 The state attorney for the circuit in which the patient is

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210 located shall represent the state, rather than the petitioner,
211 as the real party in interest in the proceeding.

212 2. The court may appoint a master to preside at the
213 hearing. One of the professionals who executed the involuntary
214 outpatient placement certificate shall be a witness. The patient
215 and the patient's guardian or representative shall be informed
216 by the court of the right to an independent expert examination.
217 If the patient cannot afford such an examination, the court
218 shall provide for one. The independent expert's report shall be
219 confidential and not discoverable, unless the expert is to be
220 called as a witness for the patient at the hearing. The court
221 shall allow testimony from individuals, including family
222 members, deemed by the court to be relevant under state law,
223 regarding the person's prior history and how that prior history
224 relates to the person's current condition. The testimony in the
225 hearing must be given under oath, and the proceedings must be
226 recorded. The patient may refuse to testify at the hearing.

227 (b)1. If the court concludes that the patient meets the
228 criteria for involuntary outpatient placement pursuant to
229 subsection (1), the court shall issue an order for involuntary
230 outpatient placement. The court order shall be for a period of
231 up to 6 months. The order must specify the nature and extent of
232 the patient's mental illness. The order of the court and the
233 treatment plan shall be made part of the patient's clinical
234 record. The service provider shall discharge a patient from
235 involuntary outpatient placement when the order expires or any
236 time the patient no longer meets the criteria for involuntary

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237 placement. Upon discharge, the service provider shall send a
238 certificate of discharge to the court.

239 2. The court may not order the department or the service
240 provider to provide services if the program or service is not
241 available in the patient's local community, if there is no space
242 available in the program or service for the patient, or if
243 funding is not available for the program or service. A copy of
244 the order must be sent to the Agency for Health Care
245 Administration by the service provider within 1 working day
246 after it is received from the court. After the placement order
247 is issued, the service provider and the patient may modify
248 provisions of the treatment plan. For any material modification
249 of the treatment plan to which the patient or the patient's
250 guardian advocate, if appointed, does agree, the service
251 provider shall send notice of the modification to the court. Any
252 material modifications of the treatment plan which are contested
253 by the patient or the patient's guardian advocate, if appointed,
254 must be approved or disapproved by the court consistent with
255 subsection (2).

256 3. If, in the clinical judgment of a physician, the
257 patient has failed or has refused to comply with the treatment
258 ordered by the court, and, in the clinical judgment of the
259 physician, efforts were made to solicit compliance and the
260 patient may meet the criteria for involuntary examination, a
261 person may be brought to a receiving facility pursuant to s.
262 394.463. If, after examination, the patient does not meet the
263 criteria for involuntary inpatient placement pursuant to s.
264 394.467, the patient must be discharged from the receiving

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265 facility. The involuntary outpatient placement order shall
266 remain in effect unless the service provider determines that the
267 patient no longer meets the criteria for involuntary outpatient
268 placement or until the order expires. The service provider must
269 determine whether modifications should be made to the existing
270 treatment plan and must attempt to continue to engage the
271 patient in treatment. For any material modification of the
272 treatment plan to which the patient or the patient's guardian
273 advocate, if appointed, does agree, the service provider shall
274 send notice of the modification to the court. Any material
275 modifications of the treatment plan which are contested by the
276 patient or the patient's guardian advocate, if appointed, must
277 be approved or disapproved by the court consistent with
278 subsection (2).

279 (c) If, at any time before the conclusion of the initial
280 hearing on involuntary outpatient placement, it appears to the
281 court that the person does not meet the criteria for involuntary
282 outpatient placement under this section but, instead, meets the
283 criteria for involuntary inpatient placement, the court may
284 order the person admitted for involuntary inpatient examination
285 under s. 394.463. If the person instead meets the criteria for
286 involuntary assessment, protective custody, or involuntary
287 admission pursuant to s. 397.675, the court may order the person
288 to be admitted for involuntary assessment for a period of 5 days
289 pursuant to s. 397.6811. Thereafter, all proceedings shall be
290 governed by chapter 397.

291 (d) At the hearing on involuntary outpatient placement,
292 the court shall consider testimony and evidence regarding the

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293 patient's competence to consent to treatment. If the court finds
294 that the patient is incompetent to consent to treatment, it
295 shall appoint a guardian advocate as provided in s. 394.4598.
296 The guardian advocate shall be appointed or discharged in
297 accordance with s. 394.4598.

298 (e) The administrator of the receiving facility or the
299 designated department representative shall provide a copy of the
300 court order and adequate documentation of a patient's mental
301 illness to the service provider for involuntary outpatient
302 placement. Such documentation must include any advance
303 directives made by the patient, a psychiatric evaluation of the
304 patient, and any evaluations of the patient performed by a
305 clinical psychologist or a clinical social worker.

306 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
307 PLACEMENT.--

308 (a)1. If the person continues to meet the criteria for
309 involuntary outpatient placement, the service provider shall,
310 before the expiration of the period during which the treatment
311 is ordered for the person, file in the circuit court a petition
312 for continued involuntary outpatient placement.

313 2. The existing involuntary outpatient placement order
314 remains in effect until disposition on the petition for
315 continued involuntary outpatient placement.

316 3. A certificate shall be attached to the petition which
317 includes a statement from the person's physician or clinical
318 psychologist justifying the request, a brief description of the
319 patient's treatment during the time he or she was involuntarily
320 placed, and an individualized plan of continued treatment.

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321 4. The service provider shall develop the individualized
322 plan of continued treatment in consultation with the patient or
323 the patient's guardian advocate, if appointed. When the petition
324 has been filed, the clerk of the court shall provide copies of
325 the certificate and the individualized plan of continued
326 treatment to the department, the patient, the patient's guardian
327 advocate, the state attorney, and the patient's private counsel
328 or the public defender.

329 (b) Within 1 court working day after the filing of a
330 petition for continued involuntary outpatient placement, the
331 court shall appoint the public defender to represent the person
332 who is the subject of the petition, unless the person is
333 otherwise represented by counsel. The clerk of the court shall
334 immediately notify the public defender of such appointment. The
335 public defender shall represent the person until the petition is
336 dismissed or the court order expires or the patient is
337 discharged from involuntary outpatient placement. Any attorney
338 representing the patient shall have access to the patient,
339 witnesses, and records relevant to the presentation of the
340 patient's case and shall represent the interests of the patient,
341 regardless of the source of payment to the attorney.

342 (c) Hearings on petitions for continued involuntary
343 outpatient placement shall be before the circuit court. The
344 court may appoint a master to preside at the hearing. The
345 procedures for obtaining an order pursuant to this paragraph
346 shall be in accordance with subsection (6), except that the time
347 period included in paragraph (1)(e) is not applicable in

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348 determining the appropriateness of additional periods of
349 involuntary outpatient placement.

350 (d) Notice of the hearing shall be provided as set forth
351 in s. 394.4599. The patient and the patient's attorney may agree
352 to a period of continued outpatient placement without a court
353 hearing.

354 (e) The same procedure shall be repeated before the
355 expiration of each additional period the patient is placed in
356 treatment.

357 (f) If the patient has previously been found incompetent
358 to consent to treatment, the court shall consider testimony and
359 evidence regarding the patient's competence. Section 394.4598
360 governs the discharge of the guardian advocate if the patient's
361 competency to consent to treatment has been restored.