

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Simmons offered the following:

2

3 **Amendment (with title amendment)**

4 Remove the entire body and insert:

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

8 394.455 Definitions.--As used in this part, unless the
9 context clearly requires otherwise, the term:

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

15 (31) "Service provider" means any public or private
16 receiving facility, an entity under contract with the Department

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17 of Children and Family Services to provide mental health
18 services, a clinical psychologist, a clinical social worker, a
19 physician, psychiatric nurse as defined in subsection (23), or a
20 community mental health center or clinic as defined in this
21 part.

22 (32) "Involuntary examination" means an examination
23 performed under s. 394.463 to determine if an individual
24 qualifies for involuntary inpatient treatment under s.
25 394.467(1) or involuntary outpatient treatment under s.
26 394.4655(1).

27 (33) "Involuntary placement" means either involuntary
28 outpatient treatment pursuant to s. 394.4655 or involuntary
29 inpatient treatment pursuant to s. 394.467.

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

32 394.4598 Guardian advocate.--

33 (1) The administrator may petition the court for the
34 appointment of a guardian advocate based upon the opinion of a
35 psychiatrist that the patient is incompetent to consent to
36 treatment. If the court finds that a patient is incompetent to
37 consent to treatment and has not been adjudicated incapacitated
38 and a guardian with the authority to consent to mental health
39 treatment appointed, it shall appoint a guardian advocate. The
40 patient has the right to have an attorney represent him or her
41 at the hearing. If the person is indigent, the court shall
42 appoint the office of the public defender to represent him or
43 her at the hearing. The patient has the right to testify, cross-
44 examine witnesses, and present witnesses. The proceeding shall

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45 | be recorded either electronically or stenographically, and
46 | testimony shall be provided under oath. One of the professionals
47 | authorized to give an opinion in support of a petition for
48 | involuntary placement, as described in s. 394.4655 or s.
49 | 394.467(2), must testify. A guardian advocate must meet the
50 | qualifications of a guardian contained in part IV of chapter
51 | 744, except that a professional referred to in this part, an
52 | employee of the facility providing direct services to the
53 | patient under this part, a departmental employee, a facility
54 | administrator, or member of the Florida local advocacy council
55 | shall not be appointed. A person who is appointed as a guardian
56 | advocate must agree to the appointment.

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

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

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73 394.4615 Clinical records; confidentiality.--

74 (3) Information from the clinical record may be released
75 in the following circumstances when:

76 (a) When a patient has declared an intention to harm other
77 persons. When such declaration has been made, the administrator
78 may authorize the release of sufficient information to provide
79 adequate warning to the person threatened with harm by the
80 patient.

81 (b) When the administrator of the facility or secretary of
82 the department deems release to a qualified researcher as
83 defined in administrative rule, an aftercare treatment provider,
84 or an employee or agent of the department is necessary for
85 treatment of the patient, maintenance of adequate records,
86 compilation of treatment data, aftercare planning, or evaluation
87 of programs.

88
89 For the purpose of determining whether a person meets the
90 criteria for involuntary outpatient placement or for preparing
91 the proposed treatment plan pursuant to s. 394.4655, the
92 clinical record may be released to the state attorney, the
93 public defender or the patient's private legal counsel, the
94 court, and to the appropriate mental health professionals,
95 including the service provider identified in s.
96 394.4655(6)(b)2., in accordance with state and federal law.

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

100 394.463 Involuntary examination.--

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

105 (a)~~1~~. The person has refused voluntary examination after
106 conscientious explanation and disclosure of the purpose of the
107 examination; or

108 (b)2. The person is unable to determine for himself or
109 herself whether examination is necessary; and

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

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

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

124 (2) INVOLUNTARY EXAMINATION.--

125 (e) The Agency for Health Care Administration shall
126 receive and maintain the copies of ex parte orders, involuntary
127 outpatient placement orders issued pursuant to s. 394.4655,
128 involuntary inpatient placement orders issued pursuant to s.

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129 394.467, professional certificates, and law enforcement
130 officers' reports. These documents shall be considered part of
131 the clinical record, governed by the provisions of s. 394.4615.
132 The agency shall prepare annual reports analyzing the data
133 obtained from these documents, without information identifying
134 patients, and shall provide copies of reports to the department,
135 the President of the Senate, the Speaker of the House of
136 Representatives, and the minority leaders of the Senate and the
137 House of Representatives.

138 (g) A person for whom an involuntary examination has been
139 initiated who is being evaluated or treated at a hospital for an
140 emergency medical condition specified in s. 395.002 must be
141 examined by a receiving facility within 72 hours. The 72-hour
142 period begins when the patient arrives at the hospital and
143 ceases when the attending physician documents that the patient
144 has an emergency medical condition. If the patient is examined
145 at a hospital providing emergency medical services by a
146 professional qualified to perform an involuntary examination and
147 is found as a result of that examination not to meet the
148 criteria for involuntary outpatient placement pursuant to s.
149 394.4655(1) or involuntary inpatient placement pursuant to s.
150 394.467(1), the patient may be offered voluntary placement, if
151 appropriate, or released directly from the hospital providing
152 emergency medical services. The finding by the professional
153 that the patient has been examined and does not meet the
154 criteria for involuntary inpatient placement or involuntary
155 outpatient placement must be entered into the patient's clinical
156 record. Nothing in this paragraph is intended to prevent a

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157 hospital providing emergency medical services from appropriately
158 transferring a patient to another hospital prior to
159 stabilization, provided the requirements of s. 395.1041(3)(c)
160 have been met.

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

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

168 2. The patient shall be released, subject to the
169 provisions of subparagraph 1., for voluntary outpatient
170 treatment;

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

175 4. If treatment is deemed necessary and the patient has
176 failed to consent to voluntary inpatient or outpatient
177 treatment, a petition for involuntary placement must be filed in
178 the circuit court. The petition must seek involuntary placement
179 of the patient in the least restrictive treatment consistent
180 with the optimum improvement of the patient's condition. A
181 petition for involuntary outpatient placement shall be filed by
182 one of the petitioners specified in s. 394.4655(3)(a). A
183 petition for involuntary inpatient placement shall be filed by
184 the facility administrator. A petition for involuntary placement

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185 ~~shall be filed in the appropriate court by the facility~~
186 ~~administrator when treatment is deemed necessary; in which case,~~
187 ~~the least restrictive treatment consistent with the optimum~~
188 ~~improvement of the patient's condition shall be made available.~~

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

191 394.4655 Involuntary outpatient placement.--

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

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

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

196 (b) The person has a mental illness;

197 (c) The person is unlikely to survive safely in the

198 community without supervision, based on a clinical
199 determination;

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

202 (e) The person has:

203 1. At least twice within the immediately preceding 36
204 months been involuntarily admitted to a receiving or treatment
205 facility as defined in s. 394.455, or has received mental health
206 services in a forensic or correctional facility. The 36-month
207 period does not include any period during which the person was
208 admitted or incarcerated; or

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

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212 (f) The person is, as a result of his or her mental
213 illness, unlikely to voluntarily participate in the recommended
214 treatment pursuant to the treatment plan;

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

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

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

226 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

227 (a) From a receiving facility.--A patient may be retained
228 by a receiving facility upon the recommendation of the
229 administrator of a receiving facility where the patient has been
230 examined and after adherence to the notice of hearing procedures
231 provided in s. 394.4599. The recommendation must be supported by
232 the opinion of a psychiatrist and the second opinion of a
233 clinical psychologist or another psychiatrist, both of whom have
234 personally examined the patient within the preceding 72 hours,
235 that the criteria for involuntary outpatient placement are met.
236 However, in a county having a population of fewer than 50,000,
237 if the administrator certifies that no psychiatrist or clinical
238 psychologist is available to provide the second opinion, the
239 second opinion may be provided by a licensed physician who has

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240 postgraduate training and experience in diagnosis and treatment
241 of mental and nervous disorders or by a nurse providing
242 psychiatric services consistent with s. 394.455(23). Such a
243 recommendation must be entered on an involuntary outpatient
244 placement certificate, which certificate must authorize the
245 receiving facility to retain the patient pending completion of a
246 hearing. If the patient has been stabilized and no longer meets
247 the criteria for involuntary examination pursuant to s.
248 394.463(1), the patient must be released from the receiving
249 facility while awaiting the hearing for involuntary outpatient
250 placement.

251 (b) Voluntary examination for outpatient placement.--If
252 such an arrangement can be made, a patient may choose to be
253 examined on an outpatient basis for an involuntary outpatient
254 placement certificate. The certificate must be supported by the
255 opinion of a psychiatrist and the second opinion of a clinical
256 psychologist or another psychiatrist, both of whom have
257 personally examined the patient within the preceding 7 calendar
258 days, that the criteria for involuntary outpatient placement are
259 met. However, in a county having a population of fewer than
260 50,000, if the psychiatrist certifies that no psychiatrist or
261 clinical psychologist is available to provide the second
262 opinion, the second opinion may be provided by a licensed
263 physician who has postgraduate training and experience in
264 diagnosis and treatment of mental and nervous disorders or by a
265 psychiatric nurse as defined s. 394.455(23).

266 (c) From a treatment facility.--If a patient in
267 involuntary inpatient placement meets the criteria for

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268 involuntary outpatient placement, the administrator of the
269 treatment facility may, before the expiration of the period
270 during which the treatment facility is authorized to retain the
271 patient, recommend involuntary outpatient placement. The
272 recommendation must be supported by the opinion of a
273 psychiatrist and the second opinion of a clinical psychologist
274 or another psychiatrist, both of whom have personally examined
275 the patient within the preceding 72 hours, that the criteria for
276 involuntary outpatient placement are met. However, in a county
277 having a population of fewer than 50,000, if the administrator
278 certifies that no psychiatrist or clinical psychologist is
279 available to provide the second opinion, the second opinion may
280 be provided by a licensed physician who has postgraduate
281 training and experience in diagnosis and treatment of mental and
282 nervous disorders or by a psychiatric nurse as defined in s.
283 394.455(23). Such a recommendation must be entered on an
284 involuntary outpatient placement certificate.

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

286 (a) A petition for involuntary outpatient placement may be
287 filed by:

288 1. The administrator of a receiving facility pursuant to
289 paragraph(2)(a);

290 2. One of the examining professionals for persons examined
291 on a voluntary outpatient basis pursuant to paragraph (2)(b).

292 Upon filing the petition, the examining professional shall
293 provide a copy of the petition to the administrator of the
294 receiving facility or designated department representative that
295 will identify the service provider for the involuntary

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296 outpatient placement unless the person is otherwise
297 participating in outpatient psychiatric treatment and is not in
298 need of public financing for that treatment, in which case the
299 individual, if eligible, may be involuntarily committed to the
300 existing psychiatric treatment relationship; or

301 3. The administrator of a treatment facility pursuant to
302 paragraph(2)(c). Upon filing the petition, the administrator
303 shall provide a copy of the petition to the administrator of the
304 receiving facility or designated department representative that
305 will identify the service provider for the involuntary
306 outpatient placement unless the person is otherwise
307 participating in outpatient psychiatric treatment and is not in
308 need of public financing for that treatment, in which case the
309 individual, if eligible, may be involuntarily committed to the
310 existing psychiatric treatment relationship.

311 (b) Each required criterion for involuntary outpatient
312 placement must be alleged and substantiated in the petition for
313 involuntary outpatient placement. A copy of the certificate
314 recommending involuntary outpatient placement completed by a
315 qualified professional specified in subsection (2) must be
316 attached to the petition. A copy of the treatment plan specified
317 in subparagraph (6)(b)2. must be attached to the petition. At
318 the time the petition is filed, the service provider shall
319 certify that the services in the proposed treatment plan are
320 available. If the necessary services are not available in the
321 patient's local community to respond to the person's individual
322 needs, the petition may not be filed.

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323 (c) The petition for involuntary outpatient placement must
324 be filed in the county where the patient is located. When the
325 petition has been filed, the clerk of the court shall provide
326 copies of the petition and the proposed treatment plan to the
327 department, the patient, the patient's guardian or
328 representative, and the state attorney and public defender of
329 the judicial circuit in which the patient is located. A fee may
330 not be charged for filing a petition under this subsection.

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

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

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

349 (a)1. The court shall hold the hearing on involuntary
350 outpatient placement within 5 days, unless a continuance is

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351 granted. The hearing shall be held in the county where the
352 patient is located, shall be as convenient to the patient as is
353 consistent with orderly procedure, and shall be conducted in
354 physical settings not likely to be injurious to the patient's
355 condition. If the court finds that the patient's attendance at
356 the hearing is not consistent with the best interests of the
357 patient and if the patient's counsel does not object, the court
358 may waive the presence of the patient from all or any portion of
359 the hearing. The state attorney for the circuit in which the
360 patient is located shall represent the state, rather than the
361 petitioner, as the real party in interest in the proceeding.

362 2. The court may appoint a master to preside at the
363 hearing. One of the professionals who executed the involuntary
364 outpatient placement certificate shall be a witness. The patient
365 and the patient's guardian or representative shall be informed
366 by the court of the right to an independent expert examination.
367 If the patient cannot afford such an examination, the court
368 shall provide for one. The independent expert's report shall be
369 confidential and not discoverable, unless the expert is to be
370 called as a witness for the patient at the hearing. The court
371 shall allow testimony from individuals, including family
372 members, deemed by the court to be relevant under state law,
373 regarding the person's prior history and how that prior history
374 relates to the person's current condition. The testimony in the
375 hearing must be given under oath, and the proceedings must be
376 recorded. The patient may refuse to testify at the hearing.

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

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379 subsection (1), the court shall issue an order for involuntary
380 outpatient placement. The court order shall be for a period of
381 up to 6 months. The service provider shall discharge a patient
382 from involuntary outpatient treatment any time the patient no
383 longer meets the criteria for involuntary placement.

384 2. The administrator of a receiving facility or a
385 designated department representative shall identify the service
386 provider that will have primary responsibility for service
387 provision under the order. The service provider shall prepare a
388 written proposed treatment plan and submit it before the hearing
389 for the court's consideration for inclusion in the involuntary
390 outpatient placement order. The service provider shall also
391 provide a copy of the proposed treatment plan to the petitioner.
392 The treatment plan must specify the nature and extent of the
393 patient's mental illness. The treatment plan may include
394 provisions for case management, intensive case management, or
395 assertive community treatment. The treatment plan may also
396 require that the patient make use of a service provider to
397 supply any or all of the following categories of services to the
398 individual: medication; periodic urinalysis to determine
399 compliance with treatment; individual or group therapy; day or
400 partial-day programming activities; educational and vocational
401 training or activities; alcohol or substance abuse treatment and
402 counseling and periodic tests for the presence of alcohol or
403 illegal drugs for persons with a history of alcohol or substance
404 abuse; supervision of living arrangements; and any other
405 services prescribed to treat the person's mental illness and to
406 assist the person in living and functioning in the community or

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407 to attempt to prevent a relapse or deterioration. Service
408 providers may select and provide supervision to other
409 individuals, not enumerated in this sub-subparagraph, to
410 implement specific aspects of the treatment plan, such as
411 medication monitoring. The services in the treatment plan must
412 be deemed to be clinically appropriate by a physician, clinical
413 psychologist, psychiatric nurse as defined in s. 394.455(23), or
414 clinical social worker who consults with, or is employed or
415 contracted by, the service provider. The service provider must
416 certify to the court in the proposed treatment plan whether
417 sufficient services for improvement and stabilization are
418 currently available and whether the service provider agrees to
419 provide those services. If the service provider certifies that
420 the services in the proposed treatment plan are not available,
421 the petitioner shall withdraw the petition. The court may not
422 order the department or the service provider to provide services
423 if the program or service is not available in the patient's
424 local community, if there is no space available in the program
425 or service for the patient, or if funding is not available for
426 the program or service. A copy of the order must be sent to the
427 Agency for Health Care Administration by the service provider
428 within 1 working day after it is received from the court. After
429 the placement order is issued, the service provider and the
430 patient may modify provisions of the treatment plan. For any
431 material modification of the treatment plan to which the patient
432 or the patient's guardian advocate, if appointed, does agree,
433 the service provider shall send notice of the modification to
434 the court. Any material modifications of the treatment plan

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435 which are contested by the patient or the patient's guardian
436 advocate, if appointed, shall be in writing and prepared by the
437 service provider or administrator for approval by the court.

438 3. If, in the clinical judgment of a physician, the
439 patient has failed or has refused to comply with the treatment
440 ordered by the court, and, in the clinical judgment of the
441 physician or clinical psychologist with a Ph.D., Psy.D., or
442 Ed.D., efforts were made to solicit compliance and the patient
443 may meet the criteria for involuntary examination, a person may
444 be brought to a receiving facility pursuant to s. 394.463. If,
445 after examination, the patient does not meet the criteria for
446 involuntary inpatient placement pursuant to s. 394.467, the
447 patient must be discharged from the receiving facility. The
448 service provider must determine whether modifications should be
449 made to the existing treatment plan and must attempt to continue
450 to engage the patient in treatment. For any material
451 modification of the treatment plan to which the patient or the
452 patient's guardian advocate, if appointed, does agree, the
453 service provider shall send notice of the modification to the
454 court. Any material modifications of the treatment plan which
455 are contested by the patient or the patient's guardian advocate,
456 if appointed, must be approved by the court.

457 (c) If, at any time before the conclusion of the initial
458 hearing on involuntary outpatient placement, it appears to the
459 court that the person does not meet the criteria for involuntary
460 outpatient placement under this section but, instead, meets the
461 criteria for involuntary inpatient placement, the court may
462 order the person admitted for involuntary inpatient examination

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463 under s. 394.463. If the person instead meets the criteria for
464 involuntary assessment, protective custody, or involuntary
465 admission pursuant to s. 397.675, the court may order the person
466 to be admitted for involuntary assessment for a period of 5 days
467 pursuant to s. 397.6811. Thereafter, all proceedings shall be
468 governed by chapter 397.

469 (d) At the hearing on involuntary outpatient placement,
470 the court shall consider testimony and evidence regarding the
471 patient's competence to consent to treatment. If the court finds
472 that the patient is incompetent to consent to treatment, it
473 shall appoint a guardian advocate as provided in s. 394.4598.
474 The guardian advocate shall be appointed or discharged in
475 accordance with s. 394.4598.

476 (e) The administrator of the receiving facility or the
477 designated department representative shall provide a copy of the
478 court order and adequate documentation of a patient's mental
479 illness to the service provider for involuntary outpatient
480 placement. Such documentation must include any advance
481 directives made by the patient, a psychiatric evaluation of the
482 patient, and any evaluations of the patient performed by a
483 clinical psychologist or a clinical social worker.

484 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
485 PLACEMENT.--

486 (a) If the person continues to meet the criteria for
487 involuntary outpatient placement, the service provider shall,
488 before the expiration of the period during which the treatment
489 is ordered for the person, file in the circuit court a continued
490 involuntary outpatient placement certificate which shall be

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491 accompanied by a statement from the person's physician or
492 clinical psychologist justifying the request, a brief
493 description of the patient's treatment during the time he or she
494 was involuntarily placed, and an individualized plan of
495 continued treatment.

496 (b) Within 1 court working day after the filing of a
497 petition for continued involuntary outpatient placement, the
498 court shall appoint the public defender to represent the person
499 who is the subject of the petition, unless the person is
500 otherwise represented by counsel. The clerk of the court shall
501 immediately notify the public defender of such appointment. The
502 public defender shall represent the person until the petition is
503 dismissed or the court order expires or the patient is
504 discharged from involuntary outpatient placement. Any attorney
505 representing the patient shall have access to the patient,
506 witnesses, and records relevant to the presentation of the
507 patient's case and shall represent the interests of the patient,
508 regardless of the source of payment to the attorney.

509 (c) Hearings on petitions for continued involuntary
510 outpatient placement shall be before the circuit court. The
511 court may appoint a master to preside at the hearing. The
512 procedures for obtaining an order pursuant to this paragraph
513 shall be in accordance with subsection (6), except that the time
514 period included in paragraph (1)(e) is not applicable in
515 determining the appropriateness of additional periods of
516 involuntary outpatient placement.

517 (d) Notice of the hearing shall be provided as set forth
518 in s. 394.4599. The patient and the patient's attorney may agree

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519 to a period of continued outpatient placement without a court
520 hearing.

521 (e) The same procedure shall be repeated before the
522 expiration of each additional period the patient is placed in
523 treatment.

524 (f) If the patient has previously been found incompetent
525 to consent to treatment, the court shall consider testimony and
526 evidence regarding the patient's competence. Section 394.4598
527 governs the discharge of the guardian advocate if the patient's
528 competency to consent to treatment has been restored.

529 Section 6. Section 394.467, Florida Statutes, is amended
530 to read:

531 394.467 Involuntary inpatient placement.--

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

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

537 1.a. He or she has refused voluntary placement for
538 treatment after sufficient and conscientious explanation and
539 disclosure of the purpose of placement for treatment; or

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

542 2.a. He or she is manifestly incapable of surviving alone
543 or with the help of willing and responsible family or friends,
544 including available alternative services, and, without
545 treatment, is likely to suffer from neglect or refuse to care
546 for himself or herself, and such neglect or refusal poses a real

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547 and present threat of substantial harm to his or her well-being;
548 or

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

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

556 (2) ADMISSION TO A TREATMENT FACILITY.--A patient may be
557 retained by a receiving facility or involuntarily placed in a
558 treatment facility upon the recommendation of the administrator
559 of a receiving facility where the patient has been examined and
560 after adherence to the notice and hearing procedures provided in
561 s. 394.4599. The recommendation must be supported by the opinion
562 of a psychiatrist or a clinical psychologist with a Ph.D.,
563 Psy.D., or Ed.D. and the second opinion of a clinical
564 psychologist or another psychiatrist, both of whom have
565 personally examined the patient within the preceding 72 hours,
566 that the criteria for involuntary inpatient placement are met.
567 However, in counties of less than 50,000 population, if the
568 administrator certifies that no psychiatrist or clinical
569 psychologist is available to provide the second opinion, such
570 second opinion may be provided by a licensed physician with
571 postgraduate training and experience in diagnosis and treatment
572 of mental and nervous disorders or by a psychiatric nurse as
573 defined in s. 394.455(23). Such recommendation shall be entered
574 on an involuntary inpatient placement certificate, which

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575 certificate shall authorize the receiving facility to retain the
576 patient pending transfer to a treatment facility or completion
577 of a hearing.

578 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.--The
579 administrator of the facility shall file a petition for
580 involuntary inpatient placement in the court in the county where
581 the patient is located. Upon filing, the clerk of the court
582 shall provide copies to the department, the patient, the
583 patient's guardian or representative, and the state attorney and
584 public defender of the judicial circuit in which the patient is
585 located. No fee shall be charged for the filing of a petition
586 under this subsection.

587 (4) APPOINTMENT OF COUNSEL.--Within 1 court working day
588 after the filing of a petition for involuntary inpatient
589 placement, the court shall appoint the public defender to
590 represent the person who is the subject of the petition, unless
591 the person is otherwise represented by counsel. The clerk of
592 the court shall immediately notify the public defender of such
593 appointment. Any attorney representing the patient shall have
594 access to the patient, witnesses, and records relevant to the
595 presentation of the patient's case and shall represent the
596 interests of the patient, regardless of the source of payment to
597 the attorney.

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

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

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603 (a)1. The court shall hold the hearing on involuntary
604 inpatient placement within 5 days, unless a continuance is
605 granted. The hearing shall be held in the county where the
606 patient is located and shall be as convenient to the patient as
607 may be consistent with orderly procedure and shall be conducted
608 in physical settings not likely to be injurious to the patient's
609 condition. If the court finds that the patient's attendance at
610 the hearing is not consistent with the best interests of the
611 patient, and the patient's counsel does not object, the court
612 may waive the presence of the patient from all or any portion of
613 the hearing. The state attorney for the circuit in which the
614 patient is located shall represent the state, rather than the
615 petitioning facility administrator, as the real party in
616 interest in the proceeding.

617 2. The court may appoint a master to preside at the
618 hearing. One of the professionals who executed the involuntary
619 inpatient placement certificate shall be a witness. The patient
620 and the patient's guardian or representative shall be informed
621 by the court of the right to an independent expert examination.
622 If the patient cannot afford such an examination, the court
623 shall provide for one. The independent expert's report shall be
624 confidential and not discoverable, unless the expert is to be
625 called as a witness for the patient at the hearing. The
626 testimony in the hearing must be given under oath, and the
627 proceedings must be recorded. The patient may refuse to testify
628 at the hearing.

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

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631 that the patient be transferred to a treatment facility or, if
632 the patient is at a treatment facility, that the patient be
633 retained there or be treated at any other appropriate receiving
634 or treatment facility, or that the patient receive services from
635 a receiving or treatment facility, on an involuntary basis, for
636 a period of up to 6 months. The order shall specify the nature
637 and extent of the patient's mental illness. The facility shall
638 discharge a patient any time the patient no longer meets the
639 criteria for involuntary inpatient placement, unless the patient
640 has transferred to voluntary status.

641 (c) If at any time prior to the conclusion of the hearing
642 on involuntary inpatient placement it appears to the court that
643 the person does not meet the criteria for involuntary inpatient
644 placement under this section, but instead meets the criteria for
645 involuntary outpatient placement, the court may order the person
646 evaluated for involuntary outpatient placement pursuant to s.
647 394.4655. The petition and hearing procedures set forth in s.
648 394.4655 shall apply. If the person placement under this
649 ~~chapter, but~~ instead meets the criteria for involuntary
650 assessment, protective custody, or involuntary admission
651 pursuant to s. 397.675, then the court may order the person to
652 be admitted for involuntary assessment for a period of 5 days
653 pursuant to s. 397.6811. Thereafter, all proceedings shall be
654 governed by chapter 397.

655 (d) At the hearing on involuntary inpatient placement, the
656 court shall consider testimony and evidence regarding the
657 patient's competence to consent to treatment. If the court

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658 finds that the patient is incompetent to consent to treatment,
659 it shall appoint a guardian advocate as provided in s. 394.4598.

660 (e) The administrator of the receiving facility shall
661 provide a copy of the court order and adequate documentation of
662 a patient's mental illness to the administrator of a treatment
663 facility whenever a patient is ordered for involuntary inpatient
664 placement, whether by civil or criminal court. Such
665 documentation shall include any advance directives made by the
666 patient, a psychiatric evaluation of the patient, and any
667 evaluations of the patient performed by a clinical psychologist
668 or a clinical social worker. The administrator of a treatment
669 facility may refuse admission to any patient directed to its
670 facilities on an involuntary basis, whether by civil or criminal
671 court order, who is not accompanied at the same time by adequate
672 orders and documentation.

673 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
674 PLACEMENT.--

675 (a) Hearings on petitions for continued involuntary
676 inpatient placement shall be administrative hearings and shall
677 be conducted in accordance with the provisions of s. 120.57(1),
678 except that any order entered by the hearing officer shall be
679 final and subject to judicial review in accordance with s.
680 120.68. Orders concerning patients committed after successfully
681 pleading not guilty by reason of insanity shall be governed by
682 the provisions of s. 916.15.

683 (b) If the patient continues to meet the criteria for
684 involuntary inpatient placement, the administrator shall, prior
685 to the expiration of the period during which the treatment

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686 facility is authorized to retain the patient, file a petition
687 requesting authorization for continued involuntary inpatient
688 placement. The request shall be accompanied by a statement from
689 the patient's physician or clinical psychologist justifying the
690 request, a brief description of the patient's treatment during
691 the time he or she was involuntarily placed, and an
692 individualized plan of continued treatment. Notice of the
693 hearing shall be provided as set forth in s. 394.4599. If at the
694 hearing the hearing officer finds that attendance at the hearing
695 is not consistent with the best interests of the patient, the
696 hearing officer may waive the presence of the patient from all
697 or any portion of the hearing, unless the patient, through
698 counsel, objects to the waiver of presence. The testimony in
699 the hearing must be under oath, and the proceedings must be
700 recorded.

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

705 (d) If at a hearing it is shown that the patient continues
706 to meet the criteria for involuntary inpatient placement, the
707 administrative law judge shall sign the order for continued
708 involuntary inpatient placement for a period not to exceed 6
709 months. The same procedure shall be repeated prior to the
710 expiration of each additional period the patient is retained.

711 (e) If continued involuntary inpatient placement is
712 necessary for a patient admitted while serving a criminal
713 sentence, but whose sentence is about to expire, or for a

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714 patient involuntarily placed while a minor but who is about to
715 reach the age of 18, the administrator shall petition the
716 administrative law judge for an order authorizing continued
717 involuntary inpatient placement.

718 (f) If the patient has been previously found incompetent
719 to consent to treatment, the hearing officer shall consider
720 testimony and evidence regarding the patient's competence. If
721 the hearing officer finds evidence that the patient is now
722 competent to consent to treatment, the hearing officer may issue
723 a recommended order to the court that found the patient
724 incompetent to consent to treatment that the patient's
725 competence be restored and that any guardian advocate previously
726 appointed be discharged.

727 (8) RETURN OF PATIENTS.--When a patient at a treatment
728 facility leaves the facility without authorization, the
729 administrator may authorize a search for the patient and the
730 return of the patient to the facility. The administrator may
731 request the assistance of a law enforcement agency in the search
732 for and return of the patient.

733 Section 7. The Department of Children and Family Services
734 shall have rulemaking authority to implement the provisions of
735 sections 394.455, 394.4598, 394.4615, 394.463, 394.4655, and
736 394.467, Florida Statutes, as amended or created by this act.
737 These rules shall be for the purpose of protecting the health,
738 safety, and well-being of persons examined, treated, or placed
739 under this act.

740 Section 8. If any provision of this act or the application
741 thereof to any person or circumstance is held invalid, the

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742 invalidity does not affect other provisions or applications of
743 this act which can be given effect without the invalid provision
744 or application, and to this end the provisions of this act are
745 declared severable.

746 Section 9. This act shall take effect January 1, 2005.

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748

749 ===== T I T L E A M E N D M E N T =====

750 Remove the entire title and insert:

751 A bill to be entitled

752 An act relating to mental health; amending s. 394.455,
753 F.S.; defining and redefining terms used in part I of ch.
754 394, F.S., "the Baker Act"; amending s. 394.4598, F.S.,
755 relating to guardian advocates; amending provisions to
756 conform to changes made by the act; amending s. 394.4615,
757 F.S., relating to confidentiality of clinical records;
758 providing additional circumstances in which information
759 from a clinical record may be released; amending s.
760 394.463, F.S.; revising criteria for an involuntary
761 examination; revising requirements for filing a petition
762 for involuntary placement; creating s. 394.4655, F.S.;
763 providing for involuntary outpatient placement; providing
764 criteria; providing procedures; providing for a voluntary
765 examination for outpatient placement; providing for a
766 petition for involuntary outpatient placement; requiring
767 the appointment of counsel; providing for a continuance of
768 hearing; providing procedures for the hearing on
769 involuntary outpatient placement; providing a procedure

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770 | for continued involuntary outpatient placement; amending
771 | s. 394.467, F.S., relating to involuntary placement;
772 | conforming terminology to changes made by the act;
773 | providing for rulemaking authority; providing for
774 | severability; providing an effective date.

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