

Bill No. CS for CS for CS for CS for SB 700

Amendment No. ____ Barcode 040466

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

4/AD/2R
04/28/2004 02:55 PM

.
. .
. .
. .
. .

Senators Smith and Peaden moved the following amendment:

Senate Amendment

On page 8, line 7, through
page 19, line 23, delete those lines

and insert:

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

394.4655 Involuntary outpatient placement.--

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

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

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

(b) The person has a mental illness;

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

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

(e) The person has:

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 1. At least twice within the immediately preceding 36
2 months been involuntarily admitted to a receiving or treatment
3 facility as defined in s. 394.455, or has received mental
4 health services in a forensic or correctional facility. The
5 36-month period does not include any period during which the
6 person was admitted or incarcerated; or

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

11 (f) The person is, as a result of his or her mental
12 illness, unlikely to voluntarily participate in the
13 recommended treatment plan and either he or she has refused
14 voluntary placement for treatment after sufficient and
15 conscientious explanation and disclosure of the purpose of
16 placement for treatment or he or she is unable to determine
17 for himself or herself whether placement is necessary;

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

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

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

29 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

30 (a)1. A patient may be retained by a receiving
31 facility upon the recommendation of the administrator of a

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 receiving facility where the patient has been examined and
2 after adherence to the notice of hearing procedures provided
3 in s. 394.4599. The recommendation must be supported by the
4 opinion of a psychiatrist and the second opinion of a clinical
5 psychologist or another psychiatrist, both of whom have
6 personally examined the patient within the preceding 72 hours,
7 that the criteria for involuntary outpatient placement are
8 met. However, in a county having a population of fewer than
9 50,000, if the administrator certifies that no psychiatrist or
10 clinical psychologist is available to provide the second
11 opinion, the second opinion may be provided by a licensed
12 physician who has postgraduate training and experience in
13 diagnosis and treatment of mental and nervous disorders or by
14 a psychiatric nurse as defined in this chapter. Such a
15 recommendation must be entered on an involuntary outpatient
16 placement certificate, which certificate must authorize the
17 receiving facility to retain the patient pending completion of
18 a hearing. The certificate shall be made a part of the
19 patient's clinical record.

20 2. If the patient has been stabilized and no longer
21 meets the criteria for involuntary examination pursuant to s.
22 394.463(1), the patient must be released from the receiving
23 facility while awaiting the hearing for involuntary outpatient
24 placement. Prior to filing a petition for involuntary
25 outpatient treatment, the administrator of a receiving
26 facility or a designated department representative shall
27 identify the service provider that will have primary
28 responsibility for service provision under an order for
29 involuntary outpatient placement, unless the person is
30 otherwise participating in outpatient psychiatric treatment
31 and is not in need of public financing for that treatment, in

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 which case the individual, if eligible, may be ordered to
2 involuntary treatment pursuant to the existing psychiatric
3 treatment relationship.
4 3. The service provider shall prepare a written
5 proposed treatment plan in consultation with the patient or
6 the patient's guardian advocate, if appointed, for the court's
7 consideration for inclusion in the involuntary outpatient
8 placement order. The service provider shall also provide a
9 copy of the proposed treatment plan to the patient and the
10 administrator of the receiving facility. The treatment plan
11 must specify the nature and extent of the patient's mental
12 illness. The treatment plan must address the reduction of
13 symptoms that necessitate involuntary outpatient placement and
14 include measurable goals and objectives for the services and
15 treatment that are provided to treat the person's mental
16 illness and to assist the person in living and functioning in
17 the community or to attempt to prevent a relapse or
18 deterioration. Service providers may select and provide
19 supervision to other individuals to implement specific aspects
20 of the treatment plan. The services in the treatment plan must
21 be deemed to be clinically appropriate by a physician,
22 clinical psychologist, psychiatric nurse, or clinical social
23 worker, as defined in this chapter, who consults with, or is
24 employed or contracted by, the service provider. The service
25 provider must certify to the court in the proposed treatment
26 plan whether sufficient services for improvement and
27 stabilization are currently available and whether the service
28 provider agrees to provide those services. If the service
29 provider certifies that the services in the proposed treatment
30 plan are not available, the petitioner may not file the
31 petition.

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 (b) If a patient in involuntary inpatient placement
2 meets the criteria for involuntary outpatient placement, the
3 administrator of the treatment facility may, before the
4 expiration of the period during which the treatment facility
5 is authorized to retain the patient, recommend involuntary
6 outpatient placement. The recommendation must be supported by
7 the opinion of a psychiatrist and the second opinion of a
8 clinical psychologist or another psychiatrist, both of whom
9 have personally examined the patient within the preceding 72
10 hours, that the criteria for involuntary outpatient placement
11 are met. However, in a county having a population of fewer
12 than 50,000, if the administrator certifies that no
13 psychiatrist or clinical psychologist is available to provide
14 the second opinion, the second opinion may be provided by a
15 licensed physician who has postgraduate training and
16 experience in diagnosis and treatment of mental and nervous
17 disorders or by a psychiatric nurse as defined in s.
18 394.455(23). Such a recommendation must be entered on an
19 involuntary outpatient placement certificate and the
20 certificate shall be made a part of the patient's clinical
21 record.

22 (c)1. The administrator of the treatment facility
23 shall provide a copy of the involuntary outpatient placement
24 certificate and a copy of the state mental health discharge
25 form to a department representative in the county where the
26 patient will be residing. For persons who are leaving a state
27 mental health treatment facility, the petition for involuntary
28 outpatient placement must be filed in the county where the
29 patient will be residing.

30 2. The service provider that will have primary
31 responsibility for service provision shall be identified by

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 the designated department representative prior to the order
2 for involuntary outpatient placement and must, prior to filing
3 a petition for involuntary outpatient placement, certify to
4 the court whether the services recommended in the patient's
5 discharge plan are available in the local community and
6 whether the service provider agrees to provide those services.
7 The service provider must develop with the patient, or the
8 patient's guardian advocate, if appointed, a treatment or
9 service plan that addresses the needs identified in the
10 discharge plan. The plan must be deemed to be clinically
11 appropriate by a physician, clinical psychologist, psychiatric
12 nurse, or clinical social worker, as defined in this chapter,
13 who consults with, or is employed or contracted by, the
14 service provider.

15 3. If the service provider certifies that the services
16 in the proposed treatment or service plan are not available,
17 the petitioner may not file the petition.

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

19 (a) A petition for involuntary outpatient placement
20 may be filed by:

- 21 1. The administrator of a receiving facility; or
22 2. The administrator of a treatment facility.

23 (b) Each required criterion for involuntary outpatient
24 placement must be alleged and substantiated in the petition
25 for involuntary outpatient placement. A copy of the
26 certificate recommending involuntary outpatient placement
27 completed by a qualified professional specified in subsection
28 (2) must be attached to the petition. A copy of the proposed
29 treatment plan must be attached to the petition. Before the
30 petition is filed, the service provider shall certify that the
31 services in the proposed treatment plan are available. If the

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 necessary services are not available in the patient's local
2 community to respond to the person's individual needs, the
3 petition may not be filed.

4 (c) The petition for involuntary outpatient placement
5 must be filed in the county where the patient is located,
6 unless the patient is being placed from a state treatment
7 facility, in which case, the petition must be filed in the
8 county where the patient will reside. When the petition has
9 been filed, the clerk of the court shall provide copies of the
10 petition and the proposed treatment plan to the department,
11 the patient, the patient's guardian or representative, the
12 state attorney, and the public defender or the patient's
13 private counsel. A fee may not be charged for filing a
14 petition under this subsection.

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

29 (5) CONTINUANCE OF HEARING.--The patient is entitled,
30 with the concurrence of the patient's counsel, to at least one
31 continuance of the hearing. The continuance shall be for a

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 period of up to 4 weeks.

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

3 (a)1. The court shall hold the hearing on involuntary
4 outpatient placement within 5 working days after the filing of
5 the petition, unless a continuance is granted. The hearing
6 shall be held in the county where the petition is filed, shall
7 be as convenient to the patient as is consistent with orderly
8 procedure, and shall be conducted in physical settings not
9 likely to be injurious to the patient's condition. If the
10 court finds that the patient's attendance at the hearing is
11 not consistent with the best interests of the patient and if
12 the patient's counsel does not object, the court may waive the
13 presence of the patient from all or any portion of the
14 hearing. The state attorney for the circuit in which the
15 patient is located shall represent the state, rather than the
16 petitioner, as the real party in interest in the proceeding.

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

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 testify at the hearing.

2 (b)1. If the court concludes that the patient meets
3 the criteria for involuntary outpatient placement pursuant to
4 subsection (1), the court shall issue an order for involuntary
5 outpatient placement. The court order shall be for a period of
6 up to 6 months. The order must specify the nature and extent
7 of the patient's mental illness. The order of the court and
8 the treatment plan shall be made part of the patient's
9 clinical record. The service provider shall discharge a
10 patient from involuntary outpatient placement when the order
11 expires or any time the patient no longer meets the criteria
12 for involuntary placement. Upon discharge, the service
13 provider shall send a certificate of discharge to the court.

14 2. The court may not order the department or the
15 service provider to provide services if the program or service
16 is not available in the patient's local community, if there is
17 no space available in the program or service for the patient,
18 or if funding is not available for the program or service. A
19 copy of the order must be sent to the Agency for Health Care
20 Administration by the service provider within 1 working day
21 after it is received from the court. After the placement order
22 is issued, the service provider and the patient may modify
23 provisions of the treatment plan. For any material
24 modification of the treatment plan to which the patient or the
25 patient's guardian advocate, if appointed, does agree, the
26 service provider shall send notice of the modification to the
27 court. Any material modifications of the treatment plan which
28 are contested by the patient or the patient's guardian
29 advocate, if appointed, must be approved or disapproved by the
30 court consistent with subsection (2).

31 3. If, in the clinical judgment of a physician, the

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 patient has failed or has refused to comply with the treatment
2 ordered by the court, and, in the clinical judgment of the
3 physician, efforts were made to solicit compliance and the
4 patient may meet the criteria for involuntary examination, a
5 person may be brought to a receiving facility pursuant to s.
6 394.463. If, after examination, the patient does not meet the
7 criteria for involuntary inpatient placement pursuant to s.
8 394.467, the patient must be discharged from the receiving
9 facility. The involuntary outpatient placement order shall
10 remain in effect unless the service provider determines that
11 the patient no longer meets the criteria for involuntary
12 outpatient placement or until the order expires. The service
13 provider must determine whether modifications should be made
14 to the existing treatment plan and must attempt to continue to
15 engage the patient in treatment. For any material modification
16 of the treatment plan to which the patient or the patient's
17 guardian advocate, if appointed, does agree, the service
18 provider shall send notice of the modification to the court.
19 Any material modifications of the treatment plan which are
20 contested by the patient or the patient's guardian advocate,
21 if appointed, must be approved or disapproved by the court
22 consistent with subsection (2).

23 (c) If, at any time before the conclusion of the
24 initial hearing on involuntary outpatient placement, it
25 appears to the court that the person does not meet the
26 criteria for involuntary outpatient placement under this
27 section but, instead, meets the criteria for involuntary
28 inpatient placement, the court may order the person admitted
29 for involuntary inpatient examination under s. 394.463. If the
30 person instead meets the criteria for involuntary assessment,
31 protective custody, or involuntary admission pursuant to s.

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 397.675, the court may order the person to be admitted for
2 involuntary assessment for a period of 5 days pursuant to s.
3 397.6811. Thereafter, all proceedings shall be governed by
4 chapter 397.

5 (d) At the hearing on involuntary outpatient
6 placement, the court shall consider testimony and evidence
7 regarding the patient's competence to consent to treatment. If
8 the court finds that the patient is incompetent to consent to
9 treatment, it shall appoint a guardian advocate as provided in
10 s. 394.4598. The guardian advocate shall be appointed or
11 discharged in accordance with s. 394.4598.

12 (e) The administrator of the receiving facility or the
13 designated department representative shall provide a copy of
14 the court order and adequate documentation of a patient's
15 mental illness to the service provider for involuntary
16 outpatient placement. Such documentation must include any
17 advance directives made by the patient, a psychiatric
18 evaluation of the patient, and any evaluations of the patient
19 performed by a clinical psychologist or a clinical social
20 worker.

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

23 (a)1. If the person continues to meet the criteria for
24 involuntary outpatient placement, the service provider shall,
25 before the expiration of the period during which the treatment
26 is ordered for the person, file in the circuit court a
27 petition for continued involuntary outpatient placement.

28 2. The existing involuntary outpatient placement order
29 remains in effect until disposition on the petition for
30 continued involuntary outpatient placement.

31 3. A certificate shall be attached to the petition

Bill No. CS for CS for CS for CS for SB 700

Amendment No. Barcode 040466

1 which includes a statement from the person's physician or
2 clinical psychologist justifying the request, a brief
3 description of the patient's treatment during the time he or
4 she was involuntarily placed, and an individualized plan of
5 continued treatment.

6 4. The service provider shall develop the
7 individualized plan of continued treatment in consultation
8 with the patient or the patient's guardian advocate, if
9 appointed. When the petition has been filed, the clerk of the
10 court shall provide copies of the certificate and the
11 individualized plan of continued treatment to the department,
12 the patient, the patient's guardian advocate, the state
13 attorney, and the patient's private counsel or the public
14 defender.

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

29 (c) Hearings on petitions for continued involuntary
30 outpatient placement shall be before the circuit court. The
31 court may appoint a master to preside at the hearing. The

Bill No. CS for CS for CS for CS for SB 700

Amendment No. ____ Barcode 040466

1 procedures for obtaining an order pursuant to this paragraph
2 shall be in accordance with subsection (6), except that the
3 time period included in paragraph (1)(e) is not applicable in
4 determining the appropriateness of additional periods of
5 involuntary outpatient placement.

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

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

13 (f) If the patient has previously been found
14 incompetent to consent to treatment, the court shall consider
15 testimony and evidence regarding the patient's competence.
16 Section 394.4598 governs the discharge of the guardian
17 advocate if the patient's competency to consent to treatment
18 has been restored.

19
20
21
22
23
24
25
26
27
28
29
30
31