

By Senator Peaden

2-631-04

1                                   A bill to be entitled  
2           An act relating to mental health; amending s.  
3           394.455, F.S.; defining and redefining terms  
4           used in part I of ch. 394, F.S., "the Baker  
5           Act"; amending s. 394.4598, F.S., relating to  
6           guardian advocates; amending provisions to  
7           conform to changes made by the act; amending s.  
8           394.4615, F.S., relating to confidentiality of  
9           clinical records; providing additional  
10          circumstances in which information from a  
11          clinical record may be released; amending s.  
12          394.463, F.S.; revising criteria for an  
13          involuntary examination; revising requirements  
14          for filing a petition for involuntary  
15          placement; creating s. 394.4655, F.S.;  
16          providing for involuntary outpatient placement;  
17          providing criteria; providing procedures;  
18          providing for a voluntary examination for  
19          outpatient placement; providing for a petition  
20          for involuntary outpatient placement; requiring  
21          the appointment of counsel; providing for a  
22          continuance of hearing; providing procedures  
23          for the hearing on involuntary outpatient  
24          placement; providing a procedure for continued  
25          involuntary outpatient placement; amending s.  
26          394.467, F.S., relating to involuntary  
27          placement; conforming terminology to changes  
28          made by the act; providing for rulemaking  
29          authority; providing for severability;  
30          providing an effective date.  
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1 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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

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

24 394.4598 Guardian advocate.--

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

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

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

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

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

5 394.4615 Clinical records; confidentiality.--

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

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

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

20 (c) For the purpose of determining whether a person  
21 meets the criteria for involuntary outpatient placement or for  
22 the preparation of a proposed treatment plan pursuant to s.  
23 394.4655, the clinical record may be released to the state  
24 attorney, the public defender, or the patient's private legal  
25 counsel; to the court; and to the appropriate mental health  
26 professionals, including the service provider specified in s.  
27 394.4655(6)(b)2.

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

31 394.463 Involuntary examination.--

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

5           (a)~~1~~. The person has refused voluntary examination  
6 after conscientious explanation and disclosure of the purpose  
7 of the examination; or

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

10           **(c)(b)** Based on the person's current reported or  
11 observed behavior, considering any mental health history,  
12 there is a substantial likelihood that without care or  
13 treatment:

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

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

25           (2) INVOLUNTARY EXAMINATION.--

26           (e) The Agency for Health Care Administration shall  
27 receive and maintain the copies of ex parte orders,  
28 involuntary outpatient placement orders issued pursuant to s.  
29 394.4655, involuntary inpatient orders issued pursuant to s.  
30 394.467,professional certificates, and law enforcement  
31 officers' reports. These documents shall be considered part

1 of the clinical record, governed by the provisions of s.  
2 394.4615. The agency shall prepare annual reports analyzing  
3 the data obtained from these documents, without information  
4 identifying patients, and shall provide copies of reports to  
5 the department, the President of the Senate, the Speaker of  
6 the House of Representatives, and the minority leaders of the  
7 Senate and the House of Representatives.

8 (g) A person for whom an involuntary examination has  
9 been initiated who is being evaluated or treated at a hospital  
10 for an emergency medical condition specified in s. 395.002  
11 must be examined by a receiving facility within 72 hours. The  
12 72-hour period begins when the patient arrives at the hospital  
13 and ceases when the attending physician documents that the  
14 patient has an emergency medical condition. If the patient is  
15 examined at a hospital providing emergency medical services by  
16 a professional qualified to perform an involuntary examination  
17 and is found as a result of that examination not to meet the  
18 criteria for involuntary outpatient placement pursuant to s.  
19 394.4655(1) or involuntary inpatient placement pursuant to s.  
20 394.467(1), the patient may be offered voluntary placement, if  
21 appropriate, or released directly from the hospital providing  
22 emergency medical services. The finding by the professional  
23 that the patient has been examined and does not meet the  
24 criteria for involuntary inpatient placement or involuntary  
25 outpatient placement must be entered into the patient's  
26 clinical record. Nothing in this paragraph is intended to  
27 prevent a hospital providing emergency medical services from  
28 appropriately transferring a patient to another hospital prior  
29 to stabilization, provided the requirements of s.  
30 395.1041(3)(c) have been met.

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1 (i) Within the 72-hour examination period or, if the  
2 72 hours ends on a weekend or holiday, no later than the next  
3 working day thereafter, one of the following actions must be  
4 taken, based on the individual needs of the patient:

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

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

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

16 4. A petition for involuntary placement shall be filed  
17 in the circuit ~~appropriate~~ court ~~by the facility administrator~~  
18 when treatment is deemed necessary, in which case, the least  
19 restrictive treatment consistent with the optimum improvement  
20 of the patient's condition shall be made available. A petition  
21 for involuntary outpatient placement shall be filed by one of  
22 the petitioners specified in s. 394.4655(3)(a). A petition for  
23 involuntary inpatient placement shall be filed by the facility  
24 administrator.

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

27 394.4655 Involuntary outpatient placement.--

28 (1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.--A  
29 person may be ordered to involuntary outpatient placement upon  
30 a finding of the court that by clear and convincing evidence:

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

- 1           (b) The person has a mental illness;  
2           (c) The person is unlikely to survive safely in the  
3 community without supervision, based on a clinical  
4 determination;  
5           (d) The person has a history of lack of compliance  
6 with treatment for mental illness;  
7           (e) The person has:  
8            1. At least twice within the immediately preceding 36  
9 months been admitted for examination or placement in a  
10 receiving or treatment facility as defined in s. 394.455, or  
11 has received mental health services in a forensic or  
12 correctional facility. The 36-month period does not include  
13 any period during which the person was admitted or  
14 incarcerated; or  
15            2. Engaged in one or more acts of serious violent  
16 behavior toward self or others, or attempts at serious bodily  
17 harm to himself or herself or others, within the preceding 36  
18 months;  
19           (f) The person is, as a result of his or her mental  
20 illness, unlikely to voluntarily participate in the  
21 recommended treatment pursuant to the treatment plan;  
22           (g) In view of the person's treatment history and  
23 current behavior, the person is in need of involuntary  
24 outpatient placement in order to prevent a relapse or  
25 deterioration that would be likely to result in serious bodily  
26 harm to himself or herself or others, or a substantial harm to  
27 his or her well-being as set forth in s. 394.463(1);  
28           (h) It is likely that the person will benefit from  
29 involuntary outpatient placement; and  
30  
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1           (i) All available less restrictive alternatives that  
2 would offer an opportunity for improvement of his or her  
3 condition have been judged to be inappropriate.

4           (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

5           (a) From a receiving facility.--A patient may be  
6 retained by a receiving facility upon the recommendation of  
7 the administrator of a receiving facility where the patient  
8 has been examined and after adherence to the notice and  
9 hearing procedures provided in s. 394.4599. The recommendation  
10 must be supported by the opinion of a psychiatrist and the  
11 second opinion of a clinical psychologist or another  
12 psychiatrist, both of whom have personally examined the  
13 patient within the preceding 72 hours, that the criteria for  
14 involuntary outpatient placement are met. However, in a county  
15 having a population of fewer than 50,000, if the administrator  
16 certifies that no psychiatrist or clinical psychologist is  
17 available to provide the second opinion, the second opinion  
18 may be provided by a licensed physician who has postgraduate  
19 training and experience in diagnosis and treatment of mental  
20 and nervous disorders or by a psychiatric nurse. Such a  
21 recommendation must be entered on an involuntary outpatient  
22 placement certificate, which certificate must authorize the  
23 receiving facility to retain the patient pending transfer to  
24 involuntary outpatient placement or completion of a hearing.  
25 If the patient has been stabilized and no longer meets the  
26 criteria for involuntary examination pursuant to s.  
27 394.463(1), the patient must be released from the receiving  
28 facility while awaiting the hearing for involuntary outpatient  
29 placement.

30           (b) Voluntary examination for outpatient  
31 placement.--If such an arrangement can be made, a patient may

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

15 (c) From a treatment facility.--If a patient in  
16 involuntary inpatient placement meets the criteria for  
17 involuntary outpatient placement, the administrator of the  
18 treatment facility may, before the expiration of the period  
19 during which the treatment facility is authorized to retain  
20 the patient, recommend involuntary outpatient placement. The  
21 recommendation must be supported by the opinion of a  
22 psychiatrist and the second opinion of a clinical psychologist  
23 or another psychiatrist, both of whom have personally examined  
24 the patient within the preceding 72 hours, that the criteria  
25 for involuntary outpatient placement are met. However, in a  
26 county having a population of fewer than 50,000, if the  
27 administrator certifies that no psychiatrist or clinical  
28 psychologist is available to provide the second opinion, the  
29 second opinion may be provided by a licensed physician who has  
30 postgraduate training and experience in diagnosis and  
31 treatment of mental and nervous disorders or by a psychiatric

1 nurse. Such a recommendation must be entered on an involuntary  
2 outpatient placement certificate.

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

4 (a) A petition for involuntary outpatient placement  
5 may be filed by:

6 1. The administrator of the facility pursuant to  
7 paragraph (2)(a);

8 2. One of the examining professionals for persons  
9 examined on a voluntary outpatient basis pursuant to paragraph  
10 (2)(b). Upon filing the petition, the examining professional  
11 shall provide a copy of the petition to the administrator of  
12 the receiving facility or designated department representative  
13 that will identify the service provider for the involuntary  
14 outpatient placement; or

15 3. The administrator of a treatment facility pursuant  
16 to paragraph (2)(c). Upon filing the petition, the  
17 administrator shall provide a copy of the petition to the  
18 administrator of the receiving facility or designated  
19 department representative that will identify the service  
20 provider for the involuntary outpatient placement.

21 (b) Each required criterion for involuntary outpatient  
22 placement must be alleged and substantiated in the petition  
23 for involuntary outpatient placement. A copy of the  
24 certificate recommending involuntary outpatient placement  
25 completed by a qualified professional specified in subsection  
26 (2) must be attached to the petition.

27 (c) The petition for involuntary outpatient placement  
28 must be filed in the county where the patient is located. When  
29 the petition has been filed, the clerk of the court shall  
30 provide copies to the department, the patient, the patient's  
31 guardian or representative, and the state attorney and public

1 defender of the judicial circuit in which the patient is  
2 located. A fee may not be charged for filing a petition under  
3 this subsection.

4 (4) APPOINTMENT OF COUNSEL.--Within 1 court working  
5 day after the filing of a petition for involuntary outpatient  
6 placement, the court shall appoint the public defender to  
7 represent the person who is the subject of the petition,  
8 unless the person is otherwise represented by counsel. The  
9 clerk of the court shall immediately notify the public  
10 defender of the appointment. The public defender shall  
11 represent the person until the petition is dismissed, the  
12 court order expires, or the patient is discharged from  
13 involuntary outpatient placement. An attorney who represents  
14 the patient shall have access to the patient, witnesses, and  
15 records relevant to the presentation of the patient's case and  
16 shall represent the interests of the patient, regardless of  
17 the source of payment to the attorney.

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

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

23 (a)1. The court shall hold the hearing on involuntary  
24 outpatient placement within 5 days, unless a continuance is  
25 granted. The hearing shall be held in the county where the  
26 patient is located, shall be as convenient to the patient as  
27 is consistent with orderly procedure, and shall be conducted  
28 in physical settings not likely to be injurious to the  
29 patient's condition. If the court finds that the patient's  
30 attendance at the hearing is not consistent with the best  
31 interests of the patient and if the patient's counsel does not

1 object, the court may waive the presence of the patient from  
2 all or any portion of the hearing. The state attorney for the  
3 circuit in which the patient is located shall represent the  
4 state, rather than the petitioner, as the real party in  
5 interest in the proceeding.

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

22 (b)1. If the court concludes that the patient meets  
23 the criteria for involuntary outpatient placement pursuant to  
24 subsection (1), the court shall issue an order for involuntary  
25 outpatient placement. The court order shall be for a period of  
26 up to 6 months. The service provider shall discharge a patient  
27 any time the patient no longer meets the criteria for  
28 involuntary placement.

29 2. The administrator of a receiving facility or a  
30 designated department representative shall identify the  
31 service provider that will have primary responsibility for

1 service provision under the order. The service provider shall  
2 prepare a written proposed treatment plan and submit it before  
3 the hearing for the court's consideration for inclusion in the  
4 involuntary outpatient placement order. The service provider  
5 shall also provide a copy of the proposed treatment plan to  
6 the petitioner. The treatment plan must specify the nature and  
7 extent of the patient's mental illness. The treatment plan may  
8 include provisions for case management, intensive case  
9 management, or assertive community treatment or a program for  
10 assertive community treatment. The treatment plan may also  
11 require that the patient make use of a service provider to  
12 supply any or all of the following categories of services to  
13 the individual: medication; periodic urinalysis to determine  
14 compliance with treatment; individual or group therapy; day or  
15 partial-day programming activities; educational and vocational  
16 training or activities; alcohol or substance abuse treatment  
17 and counseling and periodic tests for the presence of alcohol  
18 or illegal drugs for persons with a history of alcohol or  
19 substance abuse; supervision of living arrangements; and any  
20 other services prescribed to treat the person's mental illness  
21 and to assist the person in living and functioning in the  
22 community or to attempt to prevent a relapse or deterioration.  
23 Service providers may select and provide supervision to other  
24 individuals, not enumerated in this sub-subparagraph, to  
25 implement specific aspects of the treatment plan, such as  
26 medication monitoring. The services in the treatment plan must  
27 be deemed to be clinically appropriate by a physician,  
28 clinical psychologist, psychiatric nurse, or clinical social  
29 worker who consults with, or is employed or contracted by, the  
30 service provider. The service provider must certify to the  
31 court in the proposed treatment plan whether sufficient

1 services for improvement and stabilization are currently  
2 available and whether the service provider agrees to provide  
3 those services. If the service provider certifies that the  
4 services in the proposed treatment plan are not available, the  
5 petitioner shall withdraw the petition. The court may not  
6 order the department or the service provider to provide  
7 services if the program or service is not available in the  
8 patient's local community, if there is no space available in  
9 the program or service for the patient, or if funding is not  
10 available for the program or service. A copy of the order must  
11 be sent to the Agency for Health Care Administration. After  
12 the placement order is issued, the service provider and the  
13 patient may modify provisions of the treatment plan. For any  
14 material modification of the treatment plan to which the  
15 patient or the patient's guardian advocate, if appointed, does  
16 agree, the service provider shall send notice of the  
17 modification to the court. Any material modifications of the  
18 treatment plan which are contested by the patient or the  
19 patient's guardian advocate, if appointed, must be approved by  
20 the court.

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

1 and must attempt to continue to engage the patient in  
2 treatment. For any material modification of the treatment plan  
3 to which the patient or the patient's guardian advocate, if  
4 appointed, does agree, the service provider shall send notice  
5 of the modification to the court. Any material modifications  
6 of the treatment plan which are contested by the patient or  
7 the patient's guardian advocate, if appointed, must be  
8 approved by the court.

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

22 (d) At the hearing on involuntary outpatient  
23 placement, the court shall consider testimony and evidence  
24 regarding the patient's competence to consent to treatment. If  
25 the court finds that the patient is incompetent to consent to  
26 treatment, it shall appoint a guardian advocate as provided in  
27 s. 394.4598. The guardian advocate shall be appointed or  
28 discharged in accordance with s. 394.4598.

29 (e) The administrator of the receiving facility or the  
30 designated department representative shall provide a copy of  
31 the court order and adequate documentation of a patient's



1 mental illness to the service provider for involuntary  
2 outpatient placement. Such documentation must include any  
3 advance directives made by the patient, a psychiatric  
4 evaluation of the patient, and any evaluations of the patient  
5 performed by a clinical psychologist or a clinical social  
6 worker.

7 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT  
8 PLACEMENT.--

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

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

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1 interests of the patient, regardless of the source of payment  
2 to the attorney.

3 (c) Hearings on petitions for continued involuntary  
4 outpatient placement shall be before the circuit court. The  
5 court may appoint a master to preside at the hearing. The  
6 procedures for obtaining an order pursuant to this paragraph  
7 shall be in accordance with subsection (6), except that the  
8 time period included in paragraph (1)(e) is not applicable in  
9 determining the appropriateness of additional periods of  
10 involuntary outpatient placement.

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

13 (e) The same procedure shall be repeated before the  
14 expiration of each additional period the patient is placed in  
15 treatment.

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

22 Section 6. Section 394.467, Florida Statutes, is  
23 amended to read:

24 394.467 Involuntary inpatient placement.--

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

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

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

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

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

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

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

20           (2) ADMISSION TO A TREATMENT FACILITY.--A patient may  
21 be retained by a receiving facility or involuntarily placed in  
22 a treatment facility upon the recommendation of the  
23 administrator of a receiving facility where the patient has  
24 been examined and after adherence to the notice and hearing  
25 procedures provided in s. 394.4599. The recommendation must be  
26 supported by the opinion of a psychiatrist and the second  
27 opinion of a clinical psychologist or another psychiatrist,  
28 both of whom have personally examined the patient within the  
29 preceding 72 hours, that the criteria for involuntary  
30 inpatient placement are met. However, in counties of less  
31 than 50,000 population, if the administrator certifies that no

1 psychiatrist or clinical psychologist is available to provide  
2 the second opinion, such second opinion may be provided by a  
3 licensed physician with postgraduate training and experience  
4 in diagnosis and treatment of mental and nervous disorders or  
5 by a psychiatric nurse. Such recommendation shall be entered  
6 on an involuntary inpatient placement certificate, which  
7 certificate shall authorize the receiving facility to retain  
8 the patient pending transfer to a treatment facility or  
9 completion of a hearing.

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

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

30 (5) CONTINUANCE OF HEARING.--The patient is entitled,  
31 with the concurrence of the patient's counsel, to at least one

1 continuance of the hearing. The continuance shall be for a  
2 period of up to 4 weeks.

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

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

19 2. The court may appoint a master to preside at the  
20 hearing. One of the professionals who executed the involuntary  
21 inpatient placement certificate shall be a witness. The  
22 patient and the patient's guardian or representative shall be  
23 informed by the court of the right to an independent expert  
24 examination. If the patient cannot afford such an  
25 examination, the court shall provide for one. The independent  
26 expert's report shall be confidential and not discoverable,  
27 unless the expert is to be called as a witness for the patient  
28 at the hearing. The testimony in the hearing must be given  
29 under oath, and the proceedings must be recorded. The patient  
30 may refuse to testify at the hearing.

31

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

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

28           (d) At the hearing on involuntary inpatient placement,  
29 the court shall consider testimony and evidence regarding the  
30 patient's competence to consent to treatment. If the court  
31 finds that the patient is incompetent to consent to treatment,

1 it shall appoint a guardian advocate as provided in s.  
2 394.4598.

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

17 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT  
18 PLACEMENT.--

19 (a) Hearings on petitions for continued involuntary  
20 inpatient placement shall be administrative hearings and shall  
21 be conducted in accordance with the provisions of s.  
22 120.57(1), except that any order entered by the hearing  
23 officer shall be final and subject to judicial review in  
24 accordance with s. 120.68. Orders concerning patients  
25 committed after successfully pleading not guilty by reason of  
26 insanity shall be governed by the provisions of s. 916.15.

27 (b) If the patient continues to meet the criteria for  
28 involuntary inpatient placement, the administrator shall,  
29 prior to the expiration of the period during which the  
30 treatment facility is authorized to retain the patient, file a  
31 petition requesting authorization for continued involuntary

1 inpatient placement. The request shall be accompanied by a  
2 statement from the patient's physician or clinical  
3 psychologist justifying the request, a brief description of  
4 the patient's treatment during the time he or she was  
5 involuntarily placed, and an individualized plan of continued  
6 treatment. Notice of the hearing shall be provided as set  
7 forth in s. 394.4599. If at the hearing the hearing officer  
8 finds that attendance at the hearing is not consistent with  
9 the best interests of the patient, the hearing officer may  
10 waive the presence of the patient from all or any portion of  
11 the hearing, unless the patient, through counsel, objects to  
12 the waiver of presence. The testimony in the hearing must be  
13 under oath, and the proceedings must be recorded.

14 (c) Unless the patient is otherwise represented or is  
15 ineligible, he or she shall be represented at the hearing on  
16 the petition for continued involuntary inpatient placement by  
17 the public defender of the circuit in which the facility is  
18 located.

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

26 (e) If continued involuntary inpatient placement is  
27 necessary for a patient admitted while serving a criminal  
28 sentence, but whose sentence is about to expire, or for a  
29 patient involuntarily placed while a minor but who is about to  
30 reach the age of 18, the administrator shall petition the  
31



1 administrative law judge for an order authorizing continued  
2 involuntary inpatient placement.

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

12 (8) RETURN OF PATIENTS.--When a patient at a treatment  
13 facility leaves the facility without authorization, the  
14 administrator may authorize a search for the patient and the  
15 return of the patient to the facility. The administrator may  
16 request the assistance of a law enforcement agency in the  
17 search for and return of the patient.

18 Section 7. The Department of Children and Family  
19 Services shall have rulemaking authority to implement sections  
20 1-6 of this act.

21 Section 8. If any provision of this act or the  
22 application thereof to any person or circumstance is held  
23 invalid, the invalidity does not affect other provisions or  
24 applications of this act which can be given effect without the  
25 invalid provision or application, and to this end the  
26 provisions of this act are declared severable.

27 Section 9. This act shall take effect October 1, 2004.  
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SENATE SUMMARY

Revises the Baker Act, which provides for the involuntary treatment of a person who has a mental illness. Authorizes the release of confidential information contained in a person's clinical records for purposes of proceedings relating to involuntary outpatient placement. Revises the criteria for involuntary examination. Revises provisions governing involuntary outpatient placement, including the criteria and process for the petition and hearing. Revises the process for continued involuntary outpatient placement. (See bill for details.)