

By the Committee on Children and Families; and Senators  
Peadar, Fasano, Campbell, Smith and Lynn

300-1988-04

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.  
31

1 Be It Enacted by the Legislature of the State of Florida:

2

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 nurse providing psychiatric services  
18 consistent with chapter 464, or a community mental health  
19 center or clinic as defined in this part.

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

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

28 Section 2. Subsections (1) and (7) of section  
29 394.4598, Florida Statutes, are amended to read:

30 394.4598 Guardian advocate.--

31

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

26           (7) The guardian advocate shall be discharged when the  
27 patient is discharged from an order for involuntary outpatient  
28 placement or involuntary inpatient placement ~~a receiving or~~  
29 ~~treatment facility to the community~~ or when the patient is  
30 transferred from involuntary to voluntary status. The court or  
31 a hearing officer shall consider the competence of the patient

1 pursuant to subsection (1) and may consider an involuntarily  
2 placed patient's competence to consent to treatment at any  
3 hearing. Upon sufficient evidence, the court may restore, or  
4 the hearing officer may recommend that the court restore, the  
5 patient's competence. A copy of the order restoring competence  
6 or the certificate of discharge containing the restoration of  
7 competence shall be provided to the patient and the guardian  
8 advocate.

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

11 394.4615 Clinical records; confidentiality.--

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

14 (a) When a patient has declared an intention to harm  
15 other persons. When such declaration has been made, the  
16 administrator may authorize the release of sufficient  
17 information to provide adequate warning to the person  
18 threatened with harm by the patient.

19 (b) When the administrator of the facility or  
20 secretary of the department deems release to a qualified  
21 researcher as defined in administrative rule, an aftercare  
22 treatment provider, or an employee or agent of the department  
23 is necessary for treatment of the patient, maintenance of  
24 adequate records, compilation of treatment data, aftercare  
25 planning, or evaluation of programs.

26  
27 The release of a patient's clinical record must be consented  
28 to by the patient or, if a guardian advocate has been  
29 appointed, the patient's guardian advocate and must be handled  
30 in a manner consistent with applicable state and federal law.

31

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

4           394.463 Involuntary examination.--

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

9           (a)~~1~~. The person has refused voluntary examination  
10 after conscientious explanation and disclosure of the purpose  
11 of the examination; or

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

14           **(c)**~~(b)~~ Based on the person's current reported or  
15 observed behavior, considering any mental health history,  
16 there is a substantial likelihood that without care or  
17 treatment:

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

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

29           (2) INVOLUNTARY EXAMINATION.--

30           (e) The Agency for Health Care Administration shall  
31 receive and maintain the copies of ex parte orders,

1 involuntary outpatient placement orders issued pursuant to s.  
2 394.4655, involuntary inpatient placement orders issued  
3 pursuant to s. 394.467,professional certificates, and law  
4 enforcement officers' reports. These documents shall be  
5 considered part of the clinical record, governed by the  
6 provisions of s. 394.4615. The agency shall prepare annual  
7 reports analyzing the data obtained from these documents,  
8 without information identifying patients, and shall provide  
9 copies of reports to the department, the President of the  
10 Senate, the Speaker of the House of Representatives, and the  
11 minority leaders of the Senate and the House of  
12 Representatives.

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

1 prevent a hospital providing emergency medical services from  
2 appropriately transferring a patient to another hospital prior  
3 to stabilization, provided the requirements of s.  
4 395.1041(3)(c) have been met.

5 (i) Within the 72-hour examination period or, if the  
6 72 hours ends on a weekend or holiday, no later than the next  
7 working day thereafter, one of the following actions must be  
8 taken, based on the individual needs of the patient:

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

12 2. The patient shall be released, subject to the  
13 provisions of subparagraph 1., for voluntary outpatient  
14 treatment;

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

20 4. If treatment is deemed necessary and the patient  
21 has failed to consent to voluntary inpatient or outpatient  
22 treatment, a petition for involuntary placement must be filed  
23 in the circuit court. The petition must seek involuntary  
24 placement of the patient in the least restrictive treatment  
25 consistent with the optimum improvement of the patient's  
26 condition. A petition for involuntary outpatient placement  
27 shall be filed by one of the petitioners specified in s.  
28 394.4655(3)(a). A petition for involuntary inpatient placement  
29 shall be filed by the facility administrator.~~A petition for~~  
30 ~~involuntary placement shall be filed in the appropriate court~~  
31 ~~by the facility administrator when treatment is deemed~~

1 ~~necessary; in which case, the least restrictive treatment~~  
2 ~~consistent with the optimum improvement of the patient's~~  
3 ~~condition shall be made available.~~

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

6 394.4655 Involuntary outpatient placement.--

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

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

11 (b) The person has a mental illness;

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

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

17 (e) The person has:

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

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

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

31



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

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

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

12           (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

13           (a) From a receiving facility.--A patient may be  
14 retained by a receiving facility upon the recommendation of  
15 the administrator of a receiving facility where the patient  
16 has been examined and after adherence to the notice of hearing  
17 procedures provided in s. 394.4599. The recommendation must be  
18 supported by the opinion of a psychiatrist and the second  
19 opinion of a clinical psychologist or another psychiatrist,  
20 both of whom have personally examined the patient within the  
21 preceding 72 hours, that the criteria for involuntary  
22 outpatient placement are met. However, in a county having a  
23 population of fewer than 50,000, if the administrator  
24 certifies that no psychiatrist or clinical psychologist is  
25 available to provide the second opinion, the second opinion  
26 may be provided by a licensed physician who has postgraduate  
27 training and experience in diagnosis and treatment of mental  
28 and nervous disorders or by a nurse providing psychiatric  
29 services consistent with chapter 464. Such a recommendation  
30 must be entered on an involuntary outpatient placement  
31 certificate, which certificate must authorize the receiving

1 facility to retain the patient pending completion of a  
2 hearing. If the patient has been stabilized and no longer  
3 meets the criteria for involuntary examination pursuant to s.  
4 394.463(1), the patient must be released from the receiving  
5 facility while awaiting the hearing for involuntary outpatient  
6 placement.

7 (b) Voluntary examination for outpatient  
8 placement.--If such an arrangement can be made, a patient may  
9 choose to be examined on an outpatient basis for an  
10 involuntary outpatient placement certificate. The certificate  
11 must be supported by the opinion of a psychiatrist and the  
12 second opinion of a clinical psychologist or another  
13 psychiatrist, both of whom have personally examined the  
14 patient within the preceding 14 calendar days, that the  
15 criteria for involuntary outpatient placement are met.  
16 However, in a county having a population of fewer than 50,000,  
17 if the psychiatrist certifies that no psychiatrist or clinical  
18 psychologist is available to provide the second opinion, the  
19 second opinion may be provided by a licensed physician who has  
20 postgraduate training and experience in diagnosis and  
21 treatment of mental and nervous disorders or by a nurse  
22 providing psychiatric services consistent with chapter 464.

23 (c) From a treatment facility.--If a patient in  
24 involuntary inpatient placement meets the criteria for  
25 involuntary outpatient placement, the administrator of the  
26 treatment facility may, before the expiration of the period  
27 during which the treatment facility is authorized to retain  
28 the patient, recommend involuntary outpatient placement. The  
29 recommendation must be supported by the opinion of a  
30 psychiatrist and the second opinion of a clinical psychologist  
31 or another psychiatrist, both of whom have personally examined

1 the patient within the preceding 72 hours, that the criteria  
2 for involuntary outpatient placement are met. However, in a  
3 county having a population of fewer than 50,000, if the  
4 administrator certifies that no psychiatrist or clinical  
5 psychologist is available to provide the second opinion, the  
6 second opinion may be provided by a licensed physician who has  
7 postgraduate training and experience in diagnosis and  
8 treatment of mental and nervous disorders or by a nurse  
9 providing psychiatric services consistent with chapter 464.  
10 Such a recommendation must be entered on an involuntary  
11 outpatient placement certificate.

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

13 (a) A petition for involuntary outpatient placement  
14 may be filed by:

15 1. The administrator of a receiving facility pursuant  
16 to paragraph (2)(a);

17 2. One of the examining professionals for persons  
18 examined on a voluntary outpatient basis pursuant to paragraph  
19 (2)(b). Upon filing the petition, the examining professional  
20 shall provide a copy of the petition to the administrator of  
21 the receiving facility or designated department representative  
22 that will identify the service provider for the involuntary  
23 outpatient placement unless the person is otherwise  
24 participating in outpatient psychiatric treatment and is not  
25 in need of public financing for that treatment, in which case  
26 the individual, if eligible, may be involuntarily committed to  
27 the existing psychiatric treatment relationship; or

28 3. The administrator of a treatment facility pursuant  
29 to paragraph (2)(c). Upon filing the petition, the  
30 administrator shall provide a copy of the petition to the  
31 administrator of the receiving facility or designated

1 department representative that will identify the service  
2 provider for the involuntary outpatient placement unless the  
3 person is otherwise participating in outpatient psychiatric  
4 treatment and is not in need of public financing for that  
5 treatment, in which case the individual, if eligible, may be  
6 involuntarily committed to the existing psychiatric treatment  
7 relationship.

8 (b) Each required criterion for involuntary outpatient  
9 placement must be alleged and substantiated in the petition  
10 for involuntary outpatient placement. A copy of the  
11 certificate recommending involuntary outpatient placement  
12 completed by a qualified professional specified in subsection  
13 (2) must be attached to the petition. A copy of the treatment  
14 plan specified in subparagraph (6)(b)2. must be attached to  
15 the petition. At the time the petition is filed, the service  
16 provider shall certify that the services in the proposed  
17 treatment plan are available. If the necessary services are  
18 not available in the patient's local community to respond to  
19 the person's individual needs, the petition may not be filed.

20 (c) The petition for involuntary outpatient placement  
21 must be filed in the county where the patient is located. When  
22 the petition has been filed, the clerk of the court shall  
23 provide copies to the department, the patient, the patient's  
24 guardian or representative, and the state attorney and public  
25 defender of the judicial circuit in which the patient is  
26 located. A fee may not be charged for filing a petition under  
27 this subsection.

28 (4) APPOINTMENT OF COUNSEL.--Within 1 court working  
29 day after the filing of a petition for involuntary outpatient  
30 placement, the court shall appoint the public defender to  
31 represent the person who is the subject of the petition,

1 unless the person is otherwise represented by counsel. The  
2 clerk of the court shall immediately notify the public  
3 defender of the appointment. The public defender shall  
4 represent the person until the petition is dismissed, the  
5 court order expires, or the patient is discharged from  
6 involuntary outpatient placement. An attorney who represents  
7 the patient shall have access to the patient, witnesses, and  
8 records relevant to the presentation of the patient's case and  
9 shall represent the interests of the patient, regardless of  
10 the source of payment to the attorney.

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

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

16 (a)1. The court shall hold the hearing on involuntary  
17 outpatient placement within 5 days, unless a continuance is  
18 granted. The hearing shall be held in the county where the  
19 patient is located, shall be as convenient to the patient as  
20 is consistent with orderly procedure, and shall be conducted  
21 in physical settings not likely to be injurious to the  
22 patient's condition. If the court finds that the patient's  
23 attendance at the hearing is not consistent with the best  
24 interests of the patient and if the patient's counsel does not  
25 object, the court may waive the presence of the patient from  
26 all or any portion of the hearing. The state attorney for the  
27 circuit in which the patient is located shall represent the  
28 state, rather than the petitioner, as the real party in  
29 interest in the proceeding.

30 2. The court may appoint a master to preside at the  
31 hearing. One of the professionals who executed the involuntary

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

15 (b)1. If the court concludes that the patient meets  
16 the criteria for involuntary outpatient placement pursuant to  
17 subsection (1), the court shall issue an order for involuntary  
18 outpatient placement. The court order shall be for a period of  
19 up to 6 months. The service provider shall discharge a patient  
20 from involuntary outpatient treatment any time the patient no  
21 longer meets the criteria for involuntary placement.

22 2. The administrator of a receiving facility or a  
23 designated department representative shall identify the  
24 service provider that will have primary responsibility for  
25 service provision under the order. The service provider shall  
26 prepare a written proposed treatment plan and submit it before  
27 the hearing for the court's consideration for inclusion in the  
28 involuntary outpatient placement order. The service provider  
29 shall also provide a copy of the proposed treatment plan to  
30 the petitioner. The treatment plan must specify the nature and  
31 extent of the patient's mental illness. The treatment plan may

1 include provisions for case management, intensive case  
2 management, or assertive community treatment. The treatment  
3 plan may also require that the patient make use of a service  
4 provider to supply any or all of the following categories of  
5 services to the individual: medication; periodic urinalysis to  
6 determine compliance with treatment; individual or group  
7 therapy; day or partial-day programming activities;  
8 educational and vocational training or activities; alcohol or  
9 substance abuse treatment and counseling and periodic tests  
10 for the presence of alcohol or illegal drugs for persons with  
11 a history of alcohol or substance abuse; supervision of living  
12 arrangements; and any other services prescribed to treat the  
13 person's mental illness and to assist the person in living and  
14 functioning in the community or to attempt to prevent a  
15 relapse or deterioration. Service providers may select and  
16 provide supervision to other individuals, not enumerated in  
17 this sub-subparagraph, to implement specific aspects of the  
18 treatment plan, such as medication monitoring. The services in  
19 the treatment plan must be deemed to be clinically appropriate  
20 by a physician, clinical psychologist, nurse providing  
21 psychiatric services consistent with chapter 464, or clinical  
22 social worker who consults with, or is employed or contracted  
23 by, the service provider. The service provider must certify to  
24 the court in the proposed treatment plan whether sufficient  
25 services for improvement and stabilization are currently  
26 available and whether the service provider agrees to provide  
27 those services. If the service provider certifies that the  
28 services in the proposed treatment plan are not available, the  
29 petitioner shall withdraw the petition. The court may not  
30 order the department or the service provider to provide  
31 services if the program or service is not available in the

1 patient's local community, if there is no space available in  
2 the program or service for the patient, or if funding is not  
3 available for the program or service. A copy of the order must  
4 be sent to the Agency for Health Care Administration by the  
5 service provider within 1 working day after it is received  
6 from the court. After the placement order is issued, the  
7 service provider and the patient may modify provisions of the  
8 treatment plan. For any material modification of the treatment  
9 plan to which the patient or the patient's guardian advocate,  
10 if appointed, does agree, the service provider shall send  
11 notice of the modification to the court. Any material  
12 modifications of the treatment plan which are contested by the  
13 patient or the patient's guardian advocate, if appointed,  
14 shall be in writing and prepared by the service provider or  
15 administrator for approval by the court.

16 3. If, in the clinical judgment of a physician, the  
17 patient has failed or has refused to comply with the treatment  
18 ordered by the court, and, in the clinical judgment of the  
19 physician, efforts were made to solicit compliance and the  
20 patient may meet the criteria for involuntary examination, a  
21 person may be brought to a receiving facility pursuant to s.  
22 394.463. If, after examination, the patient does not meet the  
23 criteria for involuntary inpatient placement pursuant to s.  
24 394.467, the patient must be discharged from the receiving  
25 facility. The service provider must determine whether  
26 modifications should be made to the existing treatment plan  
27 and must attempt to continue to engage the patient in  
28 treatment. For any material modification of the treatment plan  
29 to which the patient or the patient's guardian advocate, if  
30 appointed, does agree, the service provider shall send notice  
31 of the modification to the court. Any material modifications



1 of the treatment plan which are contested by the patient or  
2 the patient's guardian advocate, if appointed, must be  
3 approved by the court.

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

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

24 (e) The administrator of the receiving facility or the  
25 designated department representative shall provide a copy of  
26 the court order and adequate documentation of a patient's  
27 mental illness to the service provider for involuntary  
28 outpatient placement. Such documentation must include any  
29 advance directives made by the patient, a psychiatric  
30 evaluation of the patient, and any evaluations of the patient  
31

1 performed by a clinical psychologist or a clinical social  
2 worker.

3 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT  
4 PLACEMENT.--

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

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

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.

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

11 (f) If the patient has previously been found  
12 incompetent to consent to treatment, the court shall consider  
13 testimony and evidence regarding the patient's competence.

14 Section 394.4598 governs the discharge of the guardian  
15 advocate if the patient's competency to consent to treatment  
16 has been restored.

17 Section 6. Section 394.467, Florida Statutes, is  
18 amended to read:

19 394.467 Involuntary inpatient placement.--

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

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

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

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

30 2.a. He or she is manifestly incapable of surviving  
31 alone or with the help of willing and responsible family or

1 friends, including available alternative services, and,  
2 without treatment, is likely to suffer from neglect or refuse  
3 to care for himself or herself, and such neglect or refusal  
4 poses a real and present threat of substantial harm to his or  
5 her well-being; or

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

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

13           (2) ADMISSION TO A TREATMENT FACILITY.--A patient may  
14 be retained by a receiving facility or involuntarily placed in  
15 a treatment facility upon the recommendation of the  
16 administrator of a receiving facility where the patient has  
17 been examined and after adherence to the notice and hearing  
18 procedures provided in s. 394.4599. The recommendation must be  
19 supported by the opinion of a psychiatrist and the second  
20 opinion of a clinical psychologist or another psychiatrist,  
21 both of whom have personally examined the patient within the  
22 preceding 72 hours, that the criteria for involuntary  
23 inpatient placement are met. However, in counties of less  
24 than 50,000 population, if the administrator certifies that no  
25 psychiatrist or clinical psychologist is available to provide  
26 the second opinion, such second opinion may be provided by a  
27 licensed physician with postgraduate training and experience  
28 in diagnosis and treatment of mental and nervous disorders or  
29 by a ~~psychiatric~~ nurse providing psychiatric services  
30 consistent with chapter 464. Such recommendation shall be  
31 entered on an involuntary inpatient placement certificate,

1 which certificate shall authorize the receiving facility to  
2 retain the patient pending transfer to a treatment facility or  
3 completion of a hearing.

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

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

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

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

29 (a)1. The court shall hold the hearing on involuntary  
30 inpatient placement within 5 days, unless a continuance is  
31 granted. The hearing shall be held in the county where the

1 patient is located and shall be as convenient to the patient  
2 as may be consistent with orderly procedure and shall be  
3 conducted in physical settings not likely to be injurious to  
4 the patient's condition. If the court finds that the  
5 patient's attendance at the hearing is not consistent with the  
6 best interests of the patient, and the patient's counsel does  
7 not object, the court may waive the presence of the patient  
8 from all or any portion of the hearing. The state attorney  
9 for the circuit in which the patient is located shall  
10 represent the state, rather than the petitioning facility  
11 administrator, as the real party in interest in the  
12 proceeding.

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

25           (b) If the court concludes that the patient meets the  
26 criteria for involuntary inpatient placement, it shall order  
27 that the patient be transferred to a treatment facility or, if  
28 the patient is at a treatment facility, that the patient be  
29 retained there or be treated at any other appropriate  
30 receiving or treatment facility, or that the patient receive  
31 services from a receiving or treatment facility, on an

1 involuntary basis, for a period of up to 6 months. The order  
2 shall specify the nature and extent of the patient's mental  
3 illness. The facility shall discharge a patient any time the  
4 patient no longer meets the criteria for involuntary inpatient  
5 placement, unless the patient has transferred to voluntary  
6 status.

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

21 (d) At the hearing on involuntary inpatient placement,  
22 the court shall consider testimony and evidence regarding the  
23 patient's competence to consent to treatment. If the court  
24 finds that the patient is incompetent to consent to treatment,  
25 it shall appoint a guardian advocate as provided in s.  
26 394.4598.

27 (e) The administrator of the receiving facility shall  
28 provide a copy of the court order and adequate documentation  
29 of a patient's mental illness to the administrator of a  
30 treatment facility whenever a patient is ordered for  
31 involuntary inpatient placement, whether by civil or criminal

1 court. Such documentation shall include any advance  
2 directives made by the patient, a psychiatric evaluation of  
3 the patient, and any evaluations of the patient performed by a  
4 clinical psychologist or a clinical social worker. The  
5 administrator of a treatment facility may refuse admission to  
6 any patient directed to its facilities on an involuntary  
7 basis, whether by civil or criminal court order, who is not  
8 accompanied at the same time by adequate orders and  
9 documentation.

10 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT  
11 PLACEMENT.--

12 (a) Hearings on petitions for continued involuntary  
13 inpatient placement shall be administrative hearings and shall  
14 be conducted in accordance with the provisions of s.  
15 120.57(1), except that any order entered by the hearing  
16 officer shall be final and subject to judicial review in  
17 accordance with s. 120.68. Orders concerning patients  
18 committed after successfully pleading not guilty by reason of  
19 insanity shall be governed by the provisions of s. 916.15.

20 (b) If the patient continues to meet the criteria for  
21 involuntary inpatient placement, the administrator shall,  
22 prior to the expiration of the period during which the  
23 treatment facility is authorized to retain the patient, file a  
24 petition requesting authorization for continued involuntary  
25 inpatient placement. The request shall be accompanied by a  
26 statement from the patient's physician or clinical  
27 psychologist justifying the request, a brief description of  
28 the patient's treatment during the time he or she was  
29 involuntarily placed, and an individualized plan of continued  
30 treatment. Notice of the hearing shall be provided as set  
31 forth in s. 394.4599. If at the hearing the hearing officer



1 finds that attendance at the hearing is not consistent with  
2 the best interests of the patient, the hearing officer may  
3 waive the presence of the patient from all or any portion of  
4 the hearing, unless the patient, through counsel, objects to  
5 the waiver of presence. The testimony in the hearing must be  
6 under oath, and the proceedings must be recorded.

7 (c) Unless the patient is otherwise represented or is  
8 ineligible, he or she shall be represented at the hearing on  
9 the petition for continued involuntary inpatient placement by  
10 the public defender of the circuit in which the facility is  
11 located.

12 (d) If at a hearing it is shown that the patient  
13 continues to meet the criteria for involuntary inpatient  
14 placement, the administrative law judge shall sign the order  
15 for continued involuntary inpatient placement for a period not  
16 to exceed 6 months. The same procedure shall be repeated  
17 prior to the expiration of each additional period the patient  
18 is retained.

19 (e) If continued involuntary inpatient placement is  
20 necessary for a patient admitted while serving a criminal  
21 sentence, but whose sentence is about to expire, or for a  
22 patient involuntarily placed while a minor but who is about to  
23 reach the age of 18, the administrator shall petition the  
24 administrative law judge for an order authorizing continued  
25 involuntary inpatient placement.

26 (f) If the patient has been previously found  
27 incompetent to consent to treatment, the hearing officer shall  
28 consider testimony and evidence regarding the patient's  
29 competence. If the hearing officer finds evidence that the  
30 patient is now competent to consent to treatment, the hearing  
31 officer may issue a recommended order to the court that found

1 the patient incompetent to consent to treatment that the  
2 patient's competence be restored and that any guardian  
3 advocate previously appointed be discharged.

4 (8) RETURN OF PATIENTS.--When a patient at a treatment  
5 facility leaves the facility without authorization, the  
6 administrator may authorize a search for the patient and the  
7 return of the patient to the facility. The administrator may  
8 request the assistance of a law enforcement agency in the  
9 search for and return of the patient.

10 Section 7. The Department of Children and Family  
11 Services shall have rulemaking authority to implement the  
12 provisions of ss. 394.455, 394.4598, 394.4615, 394.463, and  
13 394.467, as amended or created by this act. These rules shall  
14 be for the purpose of protecting the health, safety, and  
15 well-being of persons examined, treated, or placed under this  
16 act.

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

23 Section 9. This act shall take effect January 1, 2005.  
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bill 700

- 4 \* Provides a definition for the term "involuntary  
5 examination".
- 6 \* Specifies that the release of a patient's confidential  
7 record must be consented to by the patient or the  
8 patient's guardian advocate and handled in a manner  
9 consistent with applicable state and federal laws.
- 10 \* Requires that involuntary placement of the patient be  
11 made in the least restrictive placement available  
12 whenever treatment is deemed necessary and the patient  
13 will not consent for treatment.
- 14 \* Allows a patient to be involuntarily committed to a  
15 psychiatric treatment provider, who had been providing  
16 services prior to the commitment court order, when public  
17 funding is not needed.
- 18 \* Specifies that a copy of the treatment plan as well as  
19 the certification that services are available in the  
20 local community be attached to the filed petition.  
21 Directs that a petition may not be filed if the necessary  
22 services are not available.
- 23 \* Directs the service provider to send a copy of the court  
24 order to the Agency for Health Care Administration within  
25 one working day after it is received from the court.
- 26 \* Requires that material modifications to the treatment  
27 plan that are contested by the patient or the guardian  
28 advocate be prepared by the service provider and  
29 presented in writing for approval by the court.
- 30 \* Specifies the sections of statute for which the  
31 department has rulemaking authority. Directs that the  
purpose for these rules is the protection of the health,  
safety, and well-being of persons examined, treated, or  
placed under the act.