

By the Committees on Criminal Justice; Judiciary; Children and Families; and Senators Peaden, Fasano, Campbell, Smith and Lynn

307-2446-04

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:

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, psychiatric nurse as defined in  
18 subsection (23), or a community mental health center or clinic  
19 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 For the purpose of determining whether a person meets the  
28 criteria for involuntary outpatient placement or for preparing  
29 the proposed treatment plan pursuant to s. 394.4655, the  
30 clinical record may be released to the state attorney, the  
31 public defender or the patient's private legal counsel, the

1 court, and to the appropriate mental health professionals,  
2 including the service provider identified in s.  
3 394.4655(6)(b)2., in accordance with state and federal law.

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

7 394.463 Involuntary examination.--

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

12 (a)~~1~~. The person has refused voluntary examination  
13 after conscientious explanation and disclosure of the purpose  
14 of the examination; or

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

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

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

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

1           (2) INVOLUNTARY EXAMINATION.--

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

16           (g) A person for whom an involuntary examination has  
17 been initiated who is being evaluated or treated at a hospital  
18 for an emergency medical condition specified in s. 395.002  
19 must be examined by a receiving facility within 72 hours. The  
20 72-hour period begins when the patient arrives at the hospital  
21 and ceases when the attending physician documents that the  
22 patient has an emergency medical condition. If the patient is  
23 examined at a hospital providing emergency medical services by  
24 a professional qualified to perform an involuntary examination  
25 and is found as a result of that examination not to meet the  
26 criteria for involuntary outpatient placement pursuant to s.  
27 394.4655(1) or involuntary inpatient placement pursuant to s.  
28 394.467(1), the patient may be offered voluntary placement, if  
29 appropriate, or released directly from the hospital providing  
30 emergency medical services. The finding by the professional  
31 that the patient has been examined and does not meet the

1 criteria for involuntary inpatient placement or involuntary  
2 outpatient placement must be entered into the patient's  
3 clinical record. Nothing in this paragraph is intended to  
4 prevent a hospital providing emergency medical services from  
5 appropriately transferring a patient to another hospital prior  
6 to stabilization, provided the requirements of s.  
7 395.1041(3)(c) have been met.

8 (i) Within the 72-hour examination period or, if the  
9 72 hours ends on a weekend or holiday, no later than the next  
10 working day thereafter, one of the following actions must be  
11 taken, based on the individual needs of the patient:

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

15 2. The patient shall be released, subject to the  
16 provisions of subparagraph 1., for voluntary outpatient  
17 treatment;

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

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

1 shall be filed by the facility administrator. ~~A petition for~~  
2 ~~involuntary placement shall be filed in the appropriate court~~  
3 ~~by the facility administrator when treatment is deemed~~  
4 ~~necessary; in which case, the least restrictive treatment~~  
5 ~~consistent with the optimum improvement of the patient's~~  
6 ~~condition shall be made available.~~

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

9 394.4655 Involuntary outpatient placement.--

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

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

14 (b) The person has a mental illness;

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

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

20 (e) The person has:

21 1. At least twice within the immediately preceding 36  
22 months been involuntarily admitted to a receiving or treatment  
23 facility as defined in s. 394.455, or has received mental  
24 health services in a forensic or correctional facility. The  
25 36-month period does not include any period during which the  
26 person was admitted or incarcerated; or

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

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

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

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

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

15           (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

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

1 services consistent with s. 394.455(23). Such a recommendation  
2 must be entered on an involuntary outpatient placement  
3 certificate, which certificate must authorize the receiving  
4 facility to retain the patient pending completion of a  
5 hearing. If the patient has been stabilized and no longer  
6 meets the criteria for involuntary examination pursuant to s.  
7 394.463(1), the patient must be released from the receiving  
8 facility while awaiting the hearing for involuntary outpatient  
9 placement.

10 (b) Voluntary examination for outpatient  
11 placement.--If such an arrangement can be made, a patient may  
12 choose to be examined on an outpatient basis for an  
13 involuntary outpatient placement certificate. The certificate  
14 must be supported by the opinion of a psychiatrist and the  
15 second opinion of a clinical psychologist or another  
16 psychiatrist, both of whom have personally examined the  
17 patient within the preceding 7 calendar days, that the  
18 criteria for involuntary outpatient placement are met.  
19 However, in a county having a population of fewer than 50,000,  
20 if the psychiatrist certifies that no psychiatrist or clinical  
21 psychologist is available to provide the second opinion, the  
22 second opinion may be provided by a licensed physician who has  
23 postgraduate training and experience in diagnosis and  
24 treatment of mental and nervous disorders or by a psychiatric  
25 nurse as defined s. 394.455(23).

26 (c) From a treatment facility.--If a patient in  
27 involuntary inpatient placement meets the criteria for  
28 involuntary outpatient placement, the administrator of the  
29 treatment facility may, before the expiration of the period  
30 during which the treatment facility is authorized to retain  
31 the patient, recommend involuntary outpatient placement. The

1 recommendation must be supported by the opinion of a  
2 psychiatrist and the second opinion of a clinical psychologist  
3 or another psychiatrist, both of whom have personally examined  
4 the patient within the preceding 72 hours, that the criteria  
5 for involuntary outpatient placement are met. However, in a  
6 county having a population of fewer than 50,000, if the  
7 administrator certifies that no psychiatrist or clinical  
8 psychologist is available to provide the second opinion, the  
9 second opinion may be provided by a licensed physician who has  
10 postgraduate training and experience in diagnosis and  
11 treatment of mental and nervous disorders or by a psychiatric  
12 nurse as defined in s. 394.455(23). Such a recommendation must  
13 be entered on an involuntary outpatient placement certificate.

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

15 (a) A petition for involuntary outpatient placement  
16 may be filed by:

17 1. The administrator of a receiving facility pursuant  
18 to paragraph (2)(a);

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

30 3. The administrator of a treatment facility pursuant  
31 to paragraph (2)(c). Upon filing the petition, the

1 administrator shall provide a copy of the petition to the  
2 administrator of the receiving facility or designated  
3 department representative that will identify the service  
4 provider for the involuntary outpatient placement unless the  
5 person is otherwise participating in outpatient psychiatric  
6 treatment and is not in need of public financing for that  
7 treatment, in which case the individual, if eligible, may be  
8 involuntarily committed to the existing psychiatric treatment  
9 relationship.

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

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

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

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

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

1 state, rather than the petitioner, as the real party in  
2 interest in the proceeding.

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

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

26 2. The administrator of a receiving facility or a  
27 designated department representative shall identify the  
28 service provider that will have primary responsibility for  
29 service provision under the order. The service provider shall  
30 prepare a written proposed treatment plan and submit it before  
31 the hearing for the court's consideration for inclusion in the

1 involuntary outpatient placement order. The service provider  
2 shall also provide a copy of the proposed treatment plan to  
3 the petitioner. The treatment plan must specify the nature and  
4 extent of the patient's mental illness. The treatment plan may  
5 include provisions for case management, intensive case  
6 management, or assertive community treatment. The treatment  
7 plan may also require that the patient make use of a service  
8 provider to supply any or all of the following categories of  
9 services to the individual: medication; periodic urinalysis to  
10 determine compliance with treatment; individual or group  
11 therapy; day or partial-day programming activities;  
12 educational and vocational training or activities; alcohol or  
13 substance abuse treatment and counseling and periodic tests  
14 for the presence of alcohol or illegal drugs for persons with  
15 a history of alcohol or substance abuse; supervision of living  
16 arrangements; and any other services prescribed to treat the  
17 person's mental illness and to assist the person in living and  
18 functioning in the community or to attempt to prevent a  
19 relapse or deterioration. Service providers may select and  
20 provide supervision to other individuals, not enumerated in  
21 this sub-subparagraph, to implement specific aspects of the  
22 treatment plan, such as medication monitoring. The services in  
23 the treatment plan must be deemed to be clinically appropriate  
24 by a physician, clinical psychologist, psychiatric nurse as  
25 defined in s. 394.455(23), or clinical social worker who  
26 consults with, or is employed or contracted by, the service  
27 provider. The service provider must certify to the court in  
28 the proposed treatment plan whether sufficient services for  
29 improvement and stabilization are currently available and  
30 whether the service provider agrees to provide those services.  
31 If the service provider certifies that the services in the

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

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

1 to continue to engage the patient in treatment. For any  
2 material modification of the treatment plan to which the  
3 patient or the patient's guardian advocate, if appointed, does  
4 agree, the service provider shall send notice of the  
5 modification to the court. Any material modifications of the  
6 treatment plan which are contested by the patient or the  
7 patient's guardian advocate, if appointed, must be approved by  
8 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 examination under s. 394.463. If the  
16 person instead meets the criteria for involuntary assessment,  
17 protective custody, or involuntary admission pursuant to s.  
18 397.675, the court may order the person to be admitted for  
19 involuntary assessment for a period of 5 days pursuant to s.  
20 397.6811. Thereafter, all proceedings shall be governed by  
21 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. The patient and the patient's attorney  
13 may agree to a period of continued outpatient placement  
14 without a court hearing.

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

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

24 Section 6. Section 394.467, Florida Statutes, is  
25 amended to read:

26 394.467 Involuntary inpatient placement.--

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

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

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 or a clinical  
27 psychologist with a Ph.D., Psy.D., or Ed.D.and the second  
28 opinion of a clinical psychologist or another psychiatrist,  
29 both of whom have personally examined the patient within the  
30 preceding 72 hours, that the criteria for involuntary  
31 inpatient placement are met. However, in counties of less

1 than 50,000 population, if the administrator certifies that no  
2 psychiatrist or clinical psychologist is available to provide  
3 the second opinion, such second opinion may be provided by a  
4 licensed physician with postgraduate training and experience  
5 in diagnosis and treatment of mental and nervous disorders or  
6 by a psychiatric nurse as defined in s. 394.455(23). Such  
7 recommendation shall be entered on an involuntary inpatient  
8 placement certificate, which certificate shall authorize the  
9 receiving facility to retain the patient pending transfer to a  
10 treatment facility or completion of a hearing.

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

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

31

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

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

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

21           2. The court may appoint a master to preside at the  
22 hearing. One of the professionals who executed the involuntary  
23 inpatient placement certificate shall be a witness. The  
24 patient and the patient's guardian or representative shall be  
25 informed by the court of the right to an independent expert  
26 examination. If the patient cannot afford such an  
27 examination, the court shall provide for one. The independent  
28 expert's report shall be confidential and not discoverable,  
29 unless the expert is to be called as a witness for the patient  
30 at the hearing. The testimony in the hearing must be given  
31

1 under oath, and the proceedings must be recorded. The patient  
2 may refuse to testify at the hearing.

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

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

30 (d) At the hearing on involuntary inpatient placement,  
31 the court shall consider testimony and evidence regarding the

1 patient's competence to consent to treatment. If the court  
2 finds that the patient is incompetent to consent to treatment,  
3 it shall appoint a guardian advocate as provided in s.  
4 394.4598.

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

19 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT  
20 PLACEMENT.--

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

29 (b) If the patient continues to meet the criteria for  
30 involuntary inpatient placement, the administrator shall,  
31 prior to the expiration of the period during which the

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

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

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

28 (e) If continued involuntary inpatient placement is  
29 necessary for a patient admitted while serving a criminal  
30 sentence, but whose sentence is about to expire, or for a  
31 patient involuntarily placed while a minor but who is about to

1 reach the age of 18, the administrator shall petition the  
2 administrative law judge for an order authorizing continued  
3 involuntary inpatient placement.

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

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

19 Section 7. The Department of Children and Family  
20 Services shall have rulemaking authority to implement the  
21 provisions of sections 394.455, 394.4598, 394.4615, 394.463,  
22 394.4655, and 394.467, Florida Statutes, as amended or created  
23 by this act. These rules shall be for the purpose of  
24 protecting the health, safety, and well-being of persons  
25 examined, treated, or placed under this act.

26 Section 8. If any provision of this act or the  
27 application thereof to any person or circumstance is held  
28 invalid, the invalidity does not affect other provisions or  
29 applications of this act which can be given effect without the  
30 invalid provision or application, and to this end the  
31 provisions of this act are declared severable.

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

2

3                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
4                                   COMMITTEE SUBSTITUTE FOR  
5   CS/CS/SB 700

6

6 - Provides rulemaking authority to the Department of  
7 Children and Family Services for the newly-created s.  
8 394.4655, F.S. (Involuntary Outpatient Placement).

8

8 - Clarifies the definition of psychiatric nurse for  
9 purposes of the bill.

9

10 - Provides for the opinion of a clinical psychologist to be  
11 among those opinions considered in the examination and  
12 involuntary placement decision.

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