

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. 394.459, F.S., relating to
6 the rights of patients; clarifying those rights
7 that are applicable to individuals receiving
8 treatment for mental illness; requiring express
9 and informed consent prior to treatment;
10 amending s. 394.4598, F.S., relating to
11 guardian advocates; amending provisions to
12 conform to changes made by the act; amending s.
13 394.4615, F.S., relating to confidentiality of
14 clinical records; providing additional
15 circumstances in which information from a
16 clinical record may be released; amending s.
17 394.463, F.S.; revising criteria for an
18 involuntary examination; adding mental health
19 counselors to the persons who can initiate an
20 involuntary examination; revising requirements
21 for filing a petition for involuntary
22 placement; creating s. 394.4655, F.S.;
23 providing for involuntary outpatient placement;
24 providing criteria; providing procedures;
25 providing for a voluntary examination for
26 outpatient placement; providing for a petition
27 for involuntary outpatient placement; requiring
28 the appointment of counsel; providing for a
29 continuance of hearing; providing procedures
30 for the hearing on involuntary outpatient
31 placement; providing a procedure for continued

1 involuntary outpatient placement; amending s.
2 394.467, F.S., relating to involuntary
3 placement; conforming terminology to changes
4 made by the act; providing for rulemaking
5 authority; creating the Baker Act Workgroup;
6 providing a purpose; providing for the
7 coordination of the workgroup through the
8 Department of Children and Family Services;
9 providing for members; requiring the department
10 to evaluate data from a pilot program;
11 providing research criteria by the Florida
12 Mental Health Institute; requiring the Florida
13 Mental Health Institute to submit its findings
14 to the workgroup; requiring the workgroup to
15 submit a report to the Legislature; creating
16 the District 4 Baker Act Pilot Project in the
17 department; providing legislative intent;
18 requiring the Florida Mental Health Institute
19 to study data from the pilot project for fiscal
20 impact; providing a termination date;
21 authorizing the department to use a certain
22 maximum dollar amount to implement the
23 workgroup and the pilot program; providing for
24 severability; providing effective dates.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (3) of section 394.455, Florida
29 Statutes, is amended, and subsections (31) and (32) are added
30 to that section, to read:
31

1 394.455 Definitions.--As used in this part, unless the
2 context clearly requires otherwise, the term:

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

8 (31) "Service provider" means any public or private
9 receiving facility, an entity under contract with the
10 Department of Children and Family Services to provide mental
11 health services, a clinical psychologist, a clinical social
12 worker, a physician, psychiatric nurse as defined in
13 subsection (23), or a community mental health center or clinic
14 as defined in this part.

15 (32) "Involuntary examination" means an examination
16 performed under s. 394.463 to determine if an individual
17 qualifies for involuntary inpatient treatment under s.
18 394.467(1) or involuntary outpatient treatment under s.
19 394.4655(1).

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

23 Section 2. Section 394.459, Florida Statutes, is
24 amended to read:

25 394.459 Rights of patients.--

26 (1) RIGHT TO INDIVIDUAL DIGNITY.--It is the policy of
27 this state that the individual dignity of the patient shall be
28 respected at all times and upon all occasions, including any
29 occasion when the patient is taken into custody, held, or
30 transported. Procedures, facilities, vehicles, and
31 restraining devices utilized for criminals or those accused of

1 crime shall not be used in connection with persons who have a
2 mental illness, except for the protection of the patient or
3 others. Persons who have a mental illness but who are not
4 charged with a criminal offense shall not be detained or
5 incarcerated in the jails of this state. A person who is
6 receiving treatment for mental illness ~~in a facility~~ shall not
7 be deprived of any constitutional rights. However, if such a
8 person is adjudicated incapacitated, his or her rights may be
9 limited to the same extent the rights of any incapacitated
10 person are limited by law.

11 (2) RIGHT TO TREATMENT.--

12 (a) A person shall not be denied treatment for mental
13 illness and services shall not be delayed at a receiving or
14 treatment facility because of inability to pay. However, every
15 reasonable effort to collect appropriate reimbursement for the
16 cost of providing mental health services to persons able to
17 pay for services, including insurance or third-party payments,
18 shall be made by facilities providing services pursuant to
19 this part.

20 (b) It is further the policy of the state that the
21 least restrictive appropriate available treatment be utilized
22 based on the individual needs and best interests of the
23 patient and consistent with optimum improvement of the
24 patient's condition.

25 (c) Each person who remains at a receiving or
26 treatment facility for more than 12 hours shall be given a
27 physical examination by a health practitioner authorized by
28 law to give such examinations, within 24 hours after arrival
29 at such facility.

30 (d) Every patient in a facility shall be afforded the
31 opportunity to participate in activities designed to enhance

1 self-image and the beneficial effects of other treatments, as
2 determined by the facility.

3 (e) Not more than 5 days after admission to a
4 facility, each patient shall have and receive an
5 individualized treatment plan in writing which the patient has
6 had an opportunity to assist in preparing and to review prior
7 to its implementation. The plan shall include a space for the
8 patient's comments.

9 (3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.--

10 (a) Each patient entering treatment ~~a facility~~ shall
11 be asked to give express and informed consent for admission
12 and treatment. If the patient has been adjudicated
13 incapacitated or found to be incompetent to consent to
14 treatment, express and informed consent to treatment shall be
15 sought instead from the patient's guardian or guardian
16 advocate. If the patient is a minor, express and informed
17 consent for admission and treatment shall also be requested
18 from the patient's guardian. Express and informed consent for
19 admission and treatment of a patient under 18 years of age
20 shall be required from the patient's guardian, unless the
21 minor is seeking outpatient crisis intervention services under
22 s. 394.4784. Express and informed consent for admission and
23 treatment given by a patient who is under 18 years of age
24 shall not be a condition of admission when the patient's
25 guardian gives express and informed consent for the patient's
26 admission pursuant to s. 394.463 or s. 394.467. Prior to
27 giving consent, the following information shall be disclosed
28 to the patient, or to the patient's guardian if the patient is
29 18 years of age or older and has been adjudicated
30 incapacitated, or to the patient's guardian advocate if the
31 patient has been found to be incompetent to consent to

1 treatment, or to both the patient and the guardian if the
2 patient is a minor: the reason for admission, the proposed
3 treatment, the purpose of the treatment to be provided, the
4 common side effects thereof, alternative treatment modalities,
5 the approximate length of care, and that any consent given by
6 a patient may be revoked orally or in writing prior to or
7 during the treatment period by the patient, the guardian
8 advocate, or the guardian.

9 (b) In the case of medical procedures requiring the
10 use of a general anesthetic or electroconvulsive treatment,
11 and prior to performing the procedure, express and informed
12 consent shall be obtained from the patient if the patient is
13 legally competent, from the guardian of a minor patient, from
14 the guardian of a patient who has been adjudicated
15 incapacitated, or from the guardian advocate of the patient if
16 the guardian advocate has been given express court authority
17 to consent to medical procedures or electroconvulsive
18 treatment as provided under s. 394.4598.

19 (c) When the department is the legal guardian of a
20 patient, or is the custodian of a patient whose physician is
21 unwilling to perform a medical procedure, including an
22 electroconvulsive treatment, based solely on the patient's
23 consent and whose guardian or guardian advocate is unknown or
24 unlocatable, the court shall hold a hearing to determine the
25 medical necessity of the medical procedure. The patient shall
26 be physically present, unless the patient's medical condition
27 precludes such presence, represented by counsel, and provided
28 the right and opportunity to be confronted with, and to
29 cross-examine, all witnesses alleging the medical necessity of
30 such procedure. In such proceedings, the burden of proof by
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1 clear and convincing evidence shall be on the party alleging
2 the medical necessity of the procedure.

3 (d) The administrator of a receiving or treatment
4 facility may, upon the recommendation of the patient's
5 attending physician, authorize emergency medical treatment,
6 including a surgical procedure, if such treatment is deemed
7 lifesaving, or if the situation threatens serious bodily harm
8 to the patient, and permission of the patient or the patient's
9 guardian or guardian advocate cannot be obtained.

10 (4) QUALITY OF TREATMENT.--

11 (a) Each patient ~~in a facility~~ shall receive services,
12 including, for a patient placed under s. 394.4655, those
13 services included in the court order which are suited to his
14 or her needs, and which shall be administered skillfully,
15 safely, and humanely with full respect for the patient's
16 dignity and personal integrity. Each patient shall receive
17 such medical, vocational, social, educational, and
18 rehabilitative services as his or her condition requires in
19 order to live successfully in ~~to bring about an early return~~
20 ~~to~~ the community. In order to achieve this goal, the
21 department is directed to coordinate its mental health
22 programs with all other programs of the department and other
23 state agencies.

24 (b) Receiving and treatment facilities shall develop
25 and maintain, in a form accessible to and readily
26 understandable by patients, the following:

27 1. Criteria, procedures, and required staff training
28 for any use of close or elevated levels of supervision, of
29 restraint, seclusion, or isolation, or of emergency treatment
30 orders, and for the use of bodily control and physical
31 management techniques.

1 2. Procedures for documenting, monitoring, and
2 requiring clinical review of all uses of the procedures
3 described in subparagraph 1. and for documenting and requiring
4 review of any incidents resulting in injury to patients.

5 3. A system for the review of complaints by patients
6 or their families or guardians.

7 (c) A facility may not use seclusion or restraint for
8 punishment, to compensate for inadequate staffing, or for the
9 convenience of staff. Facilities shall ensure that all staff
10 are made aware of these restrictions on the use of seclusion
11 and restraint and shall make and maintain records which
12 demonstrate that this information has been conveyed to
13 individual staff members.

14 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

15 (a) Each person receiving services in a facility
16 providing mental health services under this part has the right
17 to communicate freely and privately with persons outside the
18 facility unless it is determined that such communication is
19 likely to be harmful to the person or others. Each facility
20 shall make available as soon as reasonably possible to persons
21 receiving services a telephone that allows for free local
22 calls and access to a long-distance service. A facility is
23 not required to pay the costs of a patient's long-distance
24 calls. The telephone shall be readily accessible to the
25 patient and shall be placed so that the patient may use it to
26 communicate privately and confidentially. The facility may
27 establish reasonable rules for the use of this telephone,
28 provided that the rules do not interfere with a patient's
29 access to a telephone to report abuse pursuant to paragraph
30 (e).
31

1 (b) Each patient admitted to a facility under the
2 provisions of this part shall be allowed to receive, send, and
3 mail sealed, unopened correspondence; and no patient's
4 incoming or outgoing correspondence shall be opened, delayed,
5 held, or censored by the facility unless there is reason to
6 believe that it contains items or substances which may be
7 harmful to the patient or others, in which case the
8 administrator may direct reasonable examination of such mail
9 and may regulate the disposition of such items or substances.

10 (c) Each facility must permit immediate access to any
11 patient, subject to the patient's right to deny or withdraw
12 consent at any time, by the patient's family members,
13 guardian, guardian advocate, representative, Florida statewide
14 or local advocacy council, or attorney, unless such access
15 would be detrimental to the patient. If a patient's right to
16 communicate or to receive visitors is restricted by the
17 facility, written notice of such restriction and the reasons
18 for the restriction shall be served on the patient, the
19 patient's attorney, and the patient's guardian, guardian
20 advocate, or representative; and such restriction shall be
21 recorded on the patient's clinical record with the reasons
22 therefor. The restriction of a patient's right to communicate
23 or to receive visitors shall be reviewed at least every 7
24 days. The right to communicate or receive visitors shall not
25 be restricted as a means of punishment. Nothing in this
26 paragraph shall be construed to limit the provisions of
27 paragraph (d).

28 (d) Each facility shall establish reasonable rules
29 governing visitors, visiting hours, and the use of telephones
30 by patients in the least restrictive possible manner.
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1 Patients shall have the right to contact and to receive
2 communication from their attorneys at any reasonable time.

3 (e) Each patient receiving mental health treatment in
4 any facility shall have ready access to a telephone in order
5 to report an alleged abuse. The facility staff shall orally
6 and in writing inform each patient of the procedure for
7 reporting abuse and shall make every reasonable effort to
8 present the information in a language the patient understands.
9 A written copy of that procedure, including the telephone
10 number of the central abuse hotline and reporting forms, shall
11 be posted in plain view.

12 (f) The department shall adopt rules providing a
13 procedure for reporting abuse. Facility staff shall be
14 required, as a condition of employment, to become familiar
15 with the requirements and procedures for the reporting of
16 abuse.

17 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF
18 PATIENTS.--A patient's right to the possession of his or her
19 clothing and personal effects shall be respected. The
20 facility may take temporary custody of such effects when
21 required for medical and safety reasons. A patient's clothing
22 and personal effects shall be inventoried upon their removal
23 into temporary custody. Copies of this inventory shall be
24 given to the patient and to the patient's guardian, guardian
25 advocate, or representative and shall be recorded in the
26 patient's clinical record. This inventory may be amended upon
27 the request of the patient or the patient's guardian, guardian
28 advocate, or representative. The inventory and any amendments
29 to it must be witnessed by two members of the facility staff
30 and by the patient, if able. All of a patient's clothing and
31 personal effects held by the facility shall be returned to the

1 patient immediately upon the discharge or transfer of the
2 patient from the facility, unless such return would be
3 detrimental to the patient. If personal effects are not
4 returned to the patient, the reason must be documented in the
5 clinical record along with the disposition of the clothing and
6 personal effects, which may be given instead to the patient's
7 guardian, guardian advocate, or representative. As soon as
8 practicable after an emergency transfer of a patient, the
9 patient's clothing and personal effects shall be transferred
10 to the patient's new location, together with a copy of the
11 inventory and any amendments, unless an alternate plan is
12 approved by the patient, if able, and by the patient's
13 guardian, guardian advocate, or representative.

14 (7) VOTING IN PUBLIC ELECTIONS.--A patient ~~in a~~
15 ~~facility~~ who is eligible to vote according to the laws of the
16 state has the right to vote in the primary and general
17 elections. The department shall establish rules to enable
18 patients to obtain voter registration forms, applications for
19 absentee ballots, and absentee ballots.

20 (8) HABEAS CORPUS.--

21 (a) At any time, and without notice, a person held in
22 a receiving or treatment facility, or a relative, friend,
23 guardian, guardian advocate, representative, or attorney, or
24 the department, on behalf of such person, may petition for a
25 writ of habeas corpus to question the cause and legality of
26 such detention and request that the court order a return to
27 the writ in accordance with chapter 79. Each patient held in
28 a facility shall receive a written notice of the right to
29 petition for a writ of habeas corpus.

30 (b) At any time, and without notice, a person who is a
31 patient in a receiving or treatment facility, or a relative,

1 friend, guardian, guardian advocate, representative, or
2 attorney, or the department, on behalf of such person, may
3 file a petition in the circuit court in the county where the
4 patient is being held alleging that the patient is being
5 unjustly denied a right or privilege granted herein or that a
6 procedure authorized herein is being abused. Upon the filing
7 of such a petition, the court shall have the authority to
8 conduct a judicial inquiry and to issue any order needed to
9 correct an abuse of the provisions of this part.

10 (c) The administrator of any receiving or treatment
11 facility receiving a petition under this subsection shall file
12 the petition with the clerk of the court on the next court
13 working day.

14 (d) No fee shall be charged for the filing of a
15 petition under this subsection.

16 (9) VIOLATIONS.--The department shall report to the
17 Agency for Health Care Administration any violation of the
18 rights or privileges of patients, or of any procedures
19 provided under this part, by any facility or professional
20 licensed or regulated by the agency. The agency is authorized
21 to impose any sanction authorized for violation of this part,
22 based solely on the investigation and findings of the
23 department.

24 (10) LIABILITY FOR VIOLATIONS.--Any person who
25 violates or abuses any rights or privileges of patients
26 provided by this part is liable for damages as determined by
27 law. Any person who acts in good faith in compliance with the
28 provisions of this part is immune from civil or criminal
29 liability for his or her actions in connection with the
30 admission, diagnosis, treatment, or discharge of a patient to
31

1 or from a facility. However, this section does not relieve
2 any person from liability if such person commits negligence.

3 (11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE
4 PLANNING.--The patient shall have the opportunity to
5 participate in treatment and discharge planning and shall be
6 notified in writing of his or her right, upon discharge from
7 the facility, to seek treatment from the professional or
8 agency of the patient's choice.

9 (12) POSTING OF NOTICE OF RIGHTS OF PATIENTS.--Each
10 facility shall post a notice listing and describing, in the
11 language and terminology that the persons to whom the notice
12 is addressed can understand, the rights provided in this
13 section. This notice shall include a statement that
14 provisions of the federal Americans with Disabilities Act
15 apply and the name and telephone number of a person to contact
16 for further information. This notice shall be posted in a
17 place readily accessible to patients and in a format easily
18 seen by patients. This notice shall include the telephone
19 numbers of the Florida local advocacy council and Advocacy
20 Center for Persons with Disabilities, Inc.

21 Section 3. Subsections (1) and (7) of section
22 394.4598, Florida Statutes, are amended to read:

23 394.4598 Guardian advocate.--

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

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

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

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

3 394.4615 Clinical records; confidentiality.--

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

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

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

18
19 For the purpose of determining whether a person meets the
20 criteria for involuntary outpatient placement or for preparing
21 the proposed treatment plan pursuant to s. 394.4655, the
22 clinical record may be released to the state attorney, the
23 public defender or the patient's private legal counsel, the
24 court, and to the appropriate mental health professionals,
25 including the service provider identified in s.
26 394.4655(6)(b)2., in accordance with state and federal law.

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

30 394.463 Involuntary examination.--

31

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

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

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

10 (b)1. Without care or treatment, the person is likely
11 to suffer from neglect or refuse to care for himself or
12 herself; such neglect or refusal poses a real and present
13 threat of substantial harm to his or her well-being; and it is
14 not apparent that such harm may be avoided through the help of
15 willing family members or friends or the provision of other
16 services; or

17 2. There is a substantial likelihood that without care
18 or treatment the person will cause serious bodily harm to
19 himself or herself or others in the near future, as evidenced
20 by recent behavior.

21 (2) INVOLUNTARY EXAMINATION.--

22 (e) The Agency for Health Care Administration shall
23 receive and maintain the copies of ex parte orders,
24 involuntary outpatient placement orders issued pursuant to s.
25 394.4655, involuntary inpatient placement orders issued
26 pursuant to s. 394.467, professional certificates, and law
27 enforcement officers' reports. These documents shall be
28 considered part of the clinical record, governed by the
29 provisions of s. 394.4615. The agency shall prepare annual
30 reports analyzing the data obtained from these documents,
31 without information identifying patients, and shall provide

1 | copies of reports to the department, the President of the
2 | Senate, the Speaker of the House of Representatives, and the
3 | minority leaders of the Senate and the House of
4 | Representatives.

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

28 | (i) Within the 72-hour examination period or, if the
29 | 72 hours ends on a weekend or holiday, no later than the next
30 | working day thereafter, one of the following actions must be
31 | taken, based on the individual needs of the patient:

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

4 2. The patient shall be released, subject to the
5 provisions of subparagraph 1., for voluntary outpatient
6 treatment;

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

11 or

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

23 Section 6. Effective July 1, 2005, paragraph (a) of
24 subsection (2) of section 394.463, Florida Statutes, is
25 amended to read:

26 394.463 Involuntary examination.--

27 (2) INVOLUNTARY EXAMINATION.--

28 (a) An involuntary examination may be initiated by any
29 one of the following means:

30 1. A court may enter an ex parte order stating that a
31 person appears to meet the criteria for involuntary

1 examination, giving the findings on which that conclusion is
2 based. The ex parte order for involuntary examination must be
3 based on sworn testimony, written or oral. If other less
4 restrictive means are not available, such as voluntary
5 appearance for outpatient evaluation, a law enforcement
6 officer, or other designated agent of the court, shall take
7 the person into custody and deliver him or her to the nearest
8 receiving facility for involuntary examination. The order of
9 the court shall be made a part of the patient's clinical
10 record. No fee shall be charged for the filing of an order
11 under this subsection. Any receiving facility accepting the
12 patient based on this order must send a copy of the order to
13 the Agency for Health Care Administration on the next working
14 day. The order shall be valid only until executed or, if not
15 executed, for the period specified in the order itself. If no
16 time limit is specified in the order, the order shall be valid
17 for 7 days after the date that the order was signed.

18 2. A law enforcement officer shall take a person who
19 appears to meet the criteria for involuntary examination into
20 custody and deliver the person or have him or her delivered to
21 the nearest receiving facility for examination. The officer
22 shall execute a written report detailing the circumstances
23 under which the person was taken into custody, and the report
24 shall be made a part of the patient's clinical record. Any
25 receiving facility accepting the patient based on this report
26 must send a copy of the report to the Agency for Health Care
27 Administration on the next working day.

28 3. A physician, clinical psychologist, psychiatric
29 nurse, mental health counselor, or clinical social worker may
30 execute a certificate stating that he or she has examined a
31 person within the preceding 48 hours and finds that the person

1 appears to meet the criteria for involuntary examination and
2 stating the observations upon which that conclusion is based.
3 If other less restrictive means are not available, such as
4 voluntary appearance for outpatient evaluation, a law
5 enforcement officer shall take the person named in the
6 certificate into custody and deliver him or her to the nearest
7 receiving facility for involuntary examination. The law
8 enforcement officer shall execute a written report detailing
9 the circumstances under which the person was taken into
10 custody. The report and certificate shall be made a part of
11 the patient's clinical record. Any receiving facility
12 accepting the patient based on this certificate must send a
13 copy of the certificate to the Agency for Health Care
14 Administration on the next working day.

15 Section 7. Effective January 1, 2005, subsection (1)
16 and paragraphs (e), (g), and (i) of subsection (2) of section
17 394.463, Florida Statutes, are amended to read:

18 394.463 Involuntary examination.--

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

23 (a)1. The person has refused voluntary examination
24 after conscientious explanation and disclosure of the purpose
25 of the examination; or

26 2. The person is unable to determine for himself or
27 herself whether examination is necessary; and

28 (b)1. Without care or treatment, the person is likely
29 to suffer from neglect or refuse to care for himself or
30 herself; such neglect or refusal poses a real and present
31 threat of substantial harm to his or her well-being; and it is

1 not apparent that such harm may be avoided through the help of
2 willing family members or friends or the provision of other
3 services; or

4 2. There is a substantial likelihood that without care
5 or treatment the person will cause serious bodily harm to
6 himself or herself or others in the near future, as evidenced
7 by recent behavior.

8 (2) INVOLUNTARY EXAMINATION.--

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

23 (g) A person for whom an involuntary examination has
24 been initiated who is being evaluated or treated at a hospital
25 for an emergency medical condition specified in s. 395.002
26 must be examined by a receiving facility within 72 hours. The
27 72-hour period begins when the patient arrives at the hospital
28 and ceases when the attending physician documents that the
29 patient has an emergency medical condition. If the patient is
30 examined at a hospital providing emergency medical services by
31 a professional qualified to perform an involuntary examination

1 and is found as a result of that examination not to meet the
2 criteria for involuntary outpatient placement pursuant to s.
3 394.4655(1) or involuntary inpatient placement pursuant to s.
4 394.467(1), the patient may be offered voluntary placement, if
5 appropriate, or released directly from the hospital providing
6 emergency medical services. The finding by the professional
7 that the patient has been examined and does not meet the
8 criteria for involuntary inpatient placement or involuntary
9 outpatient placement must be entered into the patient's
10 clinical record. Nothing in this paragraph is intended to
11 prevent a hospital providing emergency medical services from
12 appropriately transferring a patient to another hospital prior
13 to stabilization, provided the requirements of s.
14 395.1041(3)(c) have been met.

15 (i) Within the 72-hour examination period or, if the
16 72 hours ends on a weekend or holiday, no later than the next
17 working day thereafter, one of the following actions must be
18 taken, based on the individual needs of the patient:

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

22 2. The patient shall be released, subject to the
23 provisions of subparagraph 1., for voluntary outpatient
24 treatment;

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

29 or

30 4. A petition for involuntary placement shall be filed
31 in the circuit ~~appropriate~~ court ~~by the facility administrator~~

1 when outpatient or inpatient treatment is deemed necessary.
 2 When inpatient treatment is deemed necessary; in which case,
 3 the least restrictive treatment consistent with the optimum
 4 improvement of the patient's condition shall be made
 5 available. When a petition is to be filed for involuntary
 6 outpatient placement, it shall be filed by one of the
 7 petitioners specified in s. 394.4655(3)(a). A petition for
 8 involuntary inpatient placement shall be filed by the facility
 9 administrator.

10 Section 8. Section 394.4655, Florida Statutes, is
 11 created to read:

12 394.4655 Involuntary outpatient placement.--

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

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

17 (b) The person has a mental illness;

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

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

23 (e) The person has:

24 1. At least twice within the immediately preceding 36
 25 months been involuntarily admitted to a receiving or treatment
 26 facility as defined in s. 394.455, or has received mental
 27 health services in a forensic or correctional facility. The
 28 36-month period does not include any period during which the
 29 person was admitted or incarcerated; or

30 2. Engaged in one or more acts of serious violent
 31 behavior toward self or others, or attempts at serious bodily

1 harm to himself or herself or others, within the preceding 36
2 months;

3 (f) The person is, as a result of his or her mental
4 illness, unlikely to voluntarily participate in the
5 recommended treatment plan and either he or she has refused
6 voluntary placement for treatment after sufficient and
7 conscientious explanation and disclosure of the purpose of
8 placement for treatment or he or she is unable to determine
9 for himself or herself whether placement is necessary;

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

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

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

21 (2) INVOLUNTARY OUTPATIENT PLACEMENT.--

22 (a)1. A patient may be retained by a receiving
23 facility upon the recommendation of the administrator of a
24 receiving facility where the patient has been examined and
25 after adherence to the notice of hearing procedures provided
26 in s. 394.4599. The recommendation must be supported by the
27 opinion of a psychiatrist and the second opinion of a clinical
28 psychologist or another psychiatrist, both of whom have
29 personally examined the patient within the preceding 72 hours,
30 that the criteria for involuntary outpatient placement are
31 met. However, in a county having a population of fewer than

1 50,000, if the administrator certifies that no psychiatrist or
2 clinical psychologist is available to provide the second
3 opinion, the second opinion may be provided by a licensed
4 physician who has postgraduate training and experience in
5 diagnosis and treatment of mental and nervous disorders or by
6 a psychiatric nurse as defined in this chapter. Such a
7 recommendation must be entered on an involuntary outpatient
8 placement certificate, which certificate must authorize the
9 receiving facility to retain the patient pending completion of
10 a hearing. The certificate shall be made a part of the
11 patient's clinical record.

12 2. If the patient has been stabilized and no longer
13 meets the criteria for involuntary examination pursuant to s.
14 394.463(1), the patient must be released from the receiving
15 facility while awaiting the hearing for involuntary outpatient
16 placement. Prior to filing a petition for involuntary
17 outpatient treatment, the administrator of a receiving
18 facility or a designated department representative shall
19 identify the service provider that will have primary
20 responsibility for service provision under an order for
21 involuntary outpatient placement, unless the person is
22 otherwise participating in outpatient psychiatric treatment
23 and is not in need of public financing for that treatment, in
24 which case the individual, if eligible, may be ordered to
25 involuntary treatment pursuant to the existing psychiatric
26 treatment relationship.

27 3. The service provider shall prepare a written
28 proposed treatment plan in consultation with the patient or
29 the patient's guardian advocate, if appointed, for the court's
30 consideration for inclusion in the involuntary outpatient
31 placement order. The service provider shall also provide a

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

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

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

14 (c)1. The administrator of the treatment facility
15 shall provide a copy of the involuntary outpatient placement
16 certificate and a copy of the state mental health discharge
17 form to a department representative in the county where the
18 patient will be residing. For persons who are leaving a state
19 mental health treatment facility, the petition for involuntary
20 outpatient placement must be filed in the county where the
21 patient will be residing.

22 2. The service provider that will have primary
23 responsibility for service provision shall be identified by
24 the designated department representative prior to the order
25 for involuntary outpatient placement and must, prior to filing
26 a petition for involuntary outpatient placement, certify to
27 the court whether the services recommended in the patient's
28 discharge plan are available in the local community and
29 whether the service provider agrees to provide those services.
30 The service provider must develop with the patient, or the
31 patient's guardian advocate, if appointed, a treatment or

1 service plan that addresses the needs identified in the
2 discharge plan. The plan must be deemed to be clinically
3 appropriate by a physician, clinical psychologist, psychiatric
4 nurse, or clinical social worker, as defined in this chapter,
5 who consults with, or is employed or contracted by, the
6 service provider.

7 3. If the service provider certifies that the services
8 in the proposed treatment or service plan are not available,
9 the petitioner may not file the petition.

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

11 (a) A petition for involuntary outpatient placement
12 may be filed by:

13 1. The administrator of a receiving facility; or

14 2. The administrator of a treatment facility.

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

27 (c) The petition for involuntary outpatient placement
28 must be filed in the county where the patient is located,
29 unless the patient is being placed from a state treatment
30 facility, in which case, the petition must be filed in the
31 county where the patient will reside. When the petition has

1 been filed, the clerk of the court shall provide copies of the
2 petition and the proposed treatment plan to the department,
3 the patient, the patient's guardian or representative, the
4 state attorney, and the public defender or the patient's
5 private counsel. A fee may not be charged for filing a
6 petition under this subsection.

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

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

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

26 (a)1. The court shall hold the hearing on involuntary
27 outpatient placement within 5 working days after the filing of
28 the petition, unless a continuance is granted. The hearing
29 shall be held in the county where the petition is filed, shall
30 be as convenient to the patient as is consistent with orderly
31 procedure, and shall be conducted in physical settings not

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

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

25 (b)1. If the court concludes that the patient meets
26 the criteria for involuntary outpatient placement pursuant to
27 subsection (1), the court shall issue an order for involuntary
28 outpatient placement. The court order shall be for a period of
29 up to 6 months. The order must specify the nature and extent
30 of the patient's mental illness. The order of the court and
31 the treatment plan shall be made part of the patient's

1 clinical record. The service provider shall discharge a
2 patient from involuntary outpatient placement when the order
3 expires or any time the patient no longer meets the criteria
4 for involuntary placement. Upon discharge, the service
5 provider shall send a certificate of discharge to the court.

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

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

1 facility. The involuntary outpatient placement order shall
2 remain in effect unless the service provider determines that
3 the patient no longer meets the criteria for involuntary
4 outpatient placement or until the order expires. The service
5 provider must determine whether modifications should be made
6 to the existing treatment plan and must attempt to continue to
7 engage the patient in treatment. For any material modification
8 of the treatment plan to which the patient or the patient's
9 guardian advocate, if appointed, does agree, the service
10 provider shall send notice of the modification to the court.
11 Any material modifications of the treatment plan which are
12 contested by the patient or the patient's guardian advocate,
13 if appointed, must be approved or disapproved by the court
14 consistent with subsection (2).

15 (c) If, at any time before the conclusion of the
16 initial hearing on involuntary outpatient placement, it
17 appears to the court that the person does not meet the
18 criteria for involuntary outpatient placement under this
19 section but, instead, meets the criteria for involuntary
20 inpatient placement, the court may order the person admitted
21 for involuntary inpatient examination under s. 394.463. If the
22 person instead meets the criteria for involuntary assessment,
23 protective custody, or involuntary admission pursuant to s.
24 397.675, the court may order the person to be admitted for
25 involuntary assessment for a period of 5 days pursuant to s.
26 397.6811. Thereafter, all proceedings shall be governed by
27 chapter 397.

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

1 treatment, it shall appoint a guardian advocate as provided in
2 s. 394.4598. The guardian advocate shall be appointed or
3 discharged in accordance with s. 394.4598.

4 (e) The administrator of the receiving facility or the
5 designated department representative shall provide a copy of
6 the court order and adequate documentation of a patient's
7 mental illness to the service provider for involuntary
8 outpatient placement. Such documentation must include any
9 advance directives made by the patient, a psychiatric
10 evaluation of the patient, and any evaluations of the patient
11 performed by a clinical psychologist or a clinical social
12 worker.

13 (7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT
14 PLACEMENT.--

15 (a)1. If the person continues to meet the criteria for
16 involuntary outpatient placement, the service provider shall,
17 before the expiration of the period during which the treatment
18 is ordered for the person, file in the circuit court a
19 petition for continued involuntary outpatient placement.

20 2. The existing involuntary outpatient placement order
21 remains in effect until disposition on the petition for
22 continued involuntary outpatient placement.

23 3. A certificate shall be attached to the petition
24 which includes a statement from the person's physician or
25 clinical psychologist justifying the request, a brief
26 description of the patient's treatment during the time he or
27 she was involuntarily placed, and an individualized plan of
28 continued treatment.

29 4. The service provider shall develop the
30 individualized plan of continued treatment in consultation
31 with the patient or the patient's guardian advocate, if

1 appointed. When the petition has been filed, the clerk of the
2 court shall provide copies of the certificate and the
3 individualized plan of continued treatment to the department,
4 the patient, the patient's guardian advocate, the state
5 attorney, and the patient's private counsel or the public
6 defender.

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

21 (c) Hearings on petitions for continued involuntary
22 outpatient placement shall be before the circuit court. The
23 court may appoint a master to preside at the hearing. The
24 procedures for obtaining an order pursuant to this paragraph
25 shall be in accordance with subsection (6), except that the
26 time period included in paragraph (1)(e) is not applicable in
27 determining the appropriateness of additional periods of
28 involuntary outpatient placement.

29 (d) Notice of the hearing shall be provided as set
30 forth in s. 394.4599. The patient and the patient's attorney
31

1 may agree to a period of continued outpatient placement
2 without a court hearing.

3 (e) The same procedure shall be repeated before the
4 expiration of each additional period the patient is placed in
5 treatment.

6 (f) If the patient has previously been found
7 incompetent to consent to treatment, the court shall consider
8 testimony and evidence regarding the patient's competence.
9 Section 394.4598 governs the discharge of the guardian
10 advocate if the patient's competency to consent to treatment
11 has been restored.

12 Section 9. Section 394.467, Florida Statutes, is
13 amended to read:

14 394.467 Involuntary inpatient placement.--

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

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

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

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

25 2.a. He or she is manifestly incapable of surviving
26 alone or with the help of willing and responsible family or
27 friends, including available alternative services, and,
28 without treatment, is likely to suffer from neglect or refuse
29 to care for himself or herself, and such neglect or refusal
30 poses a real and present threat of substantial harm to his or
31 her well-being; or

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

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

8 (2) ADMISSION TO A TREATMENT FACILITY.--A patient may
9 be retained by a receiving facility or involuntarily placed in
10 a treatment facility upon the recommendation of the
11 administrator of a receiving facility where the patient has
12 been examined and after adherence to the notice and hearing
13 procedures provided in s. 394.4599. The recommendation must be
14 supported by the opinion of a psychiatrist and the second
15 opinion of a clinical psychologist or another psychiatrist,
16 both of whom have personally examined the patient within the
17 preceding 72 hours, that the criteria for involuntary
18 inpatient placement are met. However, in counties of less
19 than 50,000 population, if the administrator certifies that no
20 psychiatrist or clinical psychologist is available to provide
21 the second opinion, such second opinion may be provided by a
22 licensed physician with postgraduate training and experience
23 in diagnosis and treatment of mental and nervous disorders or
24 by a psychiatric nurse as defined in s. 394.455(23). Such
25 recommendation shall be entered on an involuntary inpatient
26 placement certificate, which certificate shall authorize the
27 receiving facility to retain the patient pending transfer to a
28 treatment facility or completion of a hearing.

29 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.--The
30 administrator of the facility shall file a petition for
31 involuntary inpatient placement in the court in the county

1 where the patient is located. Upon filing, the clerk of the
2 court shall provide copies to the department, the patient, the
3 patient's guardian or representative, and the state attorney
4 and public defender of the judicial circuit in which the
5 patient is located. No fee shall be charged for the filing of
6 a petition under this subsection.

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

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

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

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

1 not object, the court may waive the presence of the patient
2 from all or any portion of the hearing. The state attorney
3 for the circuit in which the patient is located shall
4 represent the state, rather than the petitioning facility
5 administrator, as the real party in interest in the
6 proceeding.

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

19 (b) If the court concludes that the patient meets the
20 criteria for involuntary inpatient placement, it shall order
21 that the patient be transferred to a treatment facility or, if
22 the patient is at a treatment facility, that the patient be
23 retained there or be treated at any other appropriate
24 receiving or treatment facility, or that the patient receive
25 services from a receiving or treatment facility, on an
26 involuntary basis, for a period of up to 6 months. The order
27 shall specify the nature and extent of the patient's mental
28 illness. The facility shall discharge a patient any time the
29 patient no longer meets the criteria for involuntary inpatient
30 placement, unless the patient has transferred to voluntary
31 status.

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

15 (d) At the hearing on involuntary inpatient placement,
16 the court shall consider testimony and evidence regarding the
17 patient's competence to consent to treatment. If the court
18 finds that the patient is incompetent to consent to treatment,
19 it shall appoint a guardian advocate as provided in s.
20 394.4598.

21 (e) The administrator of the receiving facility shall
22 provide a copy of the court order and adequate documentation
23 of a patient's mental illness to the administrator of a
24 treatment facility whenever a patient is ordered for
25 involuntary inpatient placement, whether by civil or criminal
26 court. Such documentation shall include any advance
27 directives made by the patient, a psychiatric evaluation of
28 the patient, and any evaluations of the patient performed by a
29 clinical psychologist or a clinical social worker. The
30 administrator of a treatment facility may refuse admission to
31 any patient directed to its facilities on an involuntary

1 basis, whether by civil or criminal court order, who is not
2 accompanied at the same time by adequate orders and
3 documentation.

4 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
5 PLACEMENT.--

6 (a) Hearings on petitions for continued involuntary
7 inpatient placement shall be administrative hearings and shall
8 be conducted in accordance with the provisions of s.
9 120.57(1), except that any order entered by the hearing
10 officer shall be final and subject to judicial review in
11 accordance with s. 120.68. Orders concerning patients
12 committed after successfully pleading not guilty by reason of
13 insanity shall be governed by the provisions of s. 916.15.

14 (b) If the patient continues to meet the criteria for
15 involuntary inpatient placement, the administrator shall,
16 prior to the expiration of the period during which the
17 treatment facility is authorized to retain the patient, file a
18 petition requesting authorization for continued involuntary
19 inpatient placement. The request shall be accompanied by a
20 statement from the patient's physician or clinical
21 psychologist justifying the request, a brief description of
22 the patient's treatment during the time he or she was
23 involuntarily placed, and an individualized plan of continued
24 treatment. Notice of the hearing shall be provided as set
25 forth in s. 394.4599. If at the hearing the hearing officer
26 finds that attendance at the hearing is not consistent with
27 the best interests of the patient, the hearing officer may
28 waive the presence of the patient from all or any portion of
29 the hearing, unless the patient, through counsel, objects to
30 the waiver of presence. The testimony in the hearing must be
31 under oath, and the proceedings must be recorded.

1 (c) Unless the patient is otherwise represented or is
2 ineligible, he or she shall be represented at the hearing on
3 the petition for continued involuntary inpatient placement by
4 the public defender of the circuit in which the facility is
5 located.

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

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

20 (f) If the patient has been previously found
21 incompetent to consent to treatment, the hearing officer shall
22 consider testimony and evidence regarding the patient's
23 competence. If the hearing officer finds evidence that the
24 patient is now competent to consent to treatment, the hearing
25 officer may issue a recommended order to the court that found
26 the patient incompetent to consent to treatment that the
27 patient's competence be restored and that any guardian
28 advocate previously appointed be discharged.

29 (8) RETURN OF PATIENTS.--When a patient at a treatment
30 facility leaves the facility without authorization, the
31 administrator may authorize a search for the patient and the

1 return of the patient to the facility. The administrator may
2 request the assistance of a law enforcement agency in the
3 search for and return of the patient.

4 Section 10. The Department of Children and Family
5 Services shall have rulemaking authority to implement the
6 provisions of sections 394.455, 394.4598, 394.4615, 394.463,
7 394.4655, and 394.467, Florida Statutes, as amended or created
8 by this act. These rules shall be for the purpose of
9 protecting the health, safety, and well-being of persons
10 examined, treated, or placed under this act.

11 Section 11. If any provision of this act or the
12 application thereof to any person or circumstance is held
13 invalid, the invalidity does not affect other provisions or
14 applications of this act which can be given effect without the
15 invalid provision or application, and to this end the
16 provisions of this act are declared severable.

17 Section 12. Baker Act Workgroup.--

18 (1) There shall be created a Baker Act Workgroup for
19 the purpose of determining the fiscal impact, if any, of
20 including in the involuntary examination provisions of the
21 Baker Act mental health professionals who are not presently
22 permitted by law to seek involuntary examination under the
23 Baker Act. The Baker Act Workgroup shall be coordinated
24 through the Department of Children and Family Services, and
25 shall include the following members:

26 (a) Two members to be appointed by the Speaker of the
27 House of Representatives, at least one of whom must be a
28 member of the Duval County delegation.

29 (b) Two members to be appointed by the President of
30 the Senate, at least one of whom must be a member of the Duval
31 County delegation.

- 1 (c) Two members to be appointed by the Governor.
- 2 (d) Two members appointed by the Secretary of Children
3 and Family Services, one of whom must be a member of the
4 Florida Mental Health Counselors Association selected in
5 consultation with the Florida Mental Health Counselors
6 Association and one of whom must be a board-certified
7 psychiatrist licensed under chapter 458 or chapter 459,
8 Florida Statutes.
- 9 (e) The Duval County Sheriff or his designee.
- 10 (2) The Department of Children and Family Services
11 shall contract with the Florida Mental Health Institute to
12 evaluate data provided by the District 4 Baker Act Pilot
13 Project, for the purpose of determining the fiscal impact, if
14 any, of including in the involuntary examination provisions of
15 the Baker Act mental health professionals who are not
16 presently permitted by law to seek involuntary examination
17 under the Baker Act.
- 18 (3) Prior to the study, the Florida Mental Health
19 Institute must provide the proposed research criteria and
20 methodology to the Baker Act Workgroup. The Baker Act
21 Workgroup must approve of any research criteria and
22 methodology that is used as a part of the study.
- 23 (4) The Florida Mental Health Institute shall submit
24 the findings of its study to the Baker Act Workgroup no later
25 than February 1, 2005.
- 26 (5) The Baker Act Workgroup shall submit a final
27 report with recommendations to the Speaker of the House of
28 Representatives and to the President of the Senate by March 1,
29 2005. The Baker Act Workgroup shall terminate on March 1,
30 2005.
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1 (6) All members of the Baker Act Workgroup shall serve
2 without additional compensation or honorarium, and are
3 authorized to receive only per diem and reimbursement for
4 travel expenses as provided in section 112.061, Florida
5 Statutes.

6 Section 13. District 4 Baker Act Pilot Project.--

7 (1) LEGISLATIVE INTENT.--It is the intent of the
8 Legislature to ensure that the public is safeguarded through
9 the expansion of qualified mental health professionals who may
10 assess and refer persons who are a danger to themselves or
11 others to appropriate services.

12 (2) The Department of Children and Family Services
13 shall create a pilot project in District 4, which encompasses
14 Baker, Clay, Duval, Nassau, and St. John's counties. The pilot
15 project shall include mental health counselors in the
16 involuntary examination provisions of the Baker Act, as
17 provided in section 4 of this act.

18 (3) Using the criteria approved by the Baker Act
19 Workgroup, the Florida Mental Health Institute shall study the
20 District 4 Baker Act Pilot Project data to determine the
21 fiscal impact, if any, of including licensed mental health
22 counselors in the involuntary examination provisions of the
23 Baker Act, as provided in section 4 of this act.

24 (4) The pilot project shall terminate on July 1, 2005,
25 unless repealed sooner by the Legislature.

26 (5) The Department of Children and Family Services is
27 authorized to use up to \$75,000 to implement the Baker Act
28 Workgroup and the District 4 Baker Act Pilot Project as
29 provided in sections 12 and 13 of this act.

30 Section 14. Except as otherwise expressly provided in
31 this act, and except for this section and sections 12 and 13

1 | of this act, which shall take effect July 1, 2004, this act
2 | shall take effect January 1, 2005.
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