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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Garcia) recommended the following:

**Senate Amendment**

Delete lines 2579 - 2891  
and insert:  
participate in all hearings on involuntary placement.

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

(6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.—



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11           (a)~~1~~. The court shall hold the hearing on involuntary  
12 outpatient placement within 5 court working days after the  
13 filing of the petition, unless a continuance is granted. The  
14 hearing shall be held in the county where the petition is filed,  
15 ~~shall~~ be as convenient to the individual who is the subject of  
16 the petition ~~patient~~ as is consistent with orderly procedure,  
17 and ~~shall~~ be conducted in physical settings not likely to be  
18 injurious to the individual's ~~patient's~~ condition. If the court  
19 finds that the individual's ~~patient's~~ attendance at the hearing  
20 is not consistent with the best interests of the individual  
21 ~~patient~~ and if the individual's ~~patient's~~ counsel does not  
22 object, the court may waive the presence of the individual  
23 ~~patient~~ from all or any portion of the hearing. The state  
24 attorney for the circuit in which the individual ~~patient~~ is  
25 located shall represent the state, rather than the petitioner,  
26 as the real party in interest in the proceeding. The state  
27 attorney shall have access to the individual's clinical record  
28 and witnesses and shall independently evaluate the allegations  
29 set forth in the petition for involuntary placement. If the  
30 allegations are substantiated, the state attorney shall  
31 prosecute the petition. If the allegations are not  
32 substantiated, the state attorney shall withdraw the petition.

33           (b)~~2~~. The court may appoint a magistrate ~~master~~ to preside  
34 at the hearing. One of the professionals who executed the  
35 involuntary outpatient placement certificate shall be a witness.  
36 The individual who is the subject of the petition ~~patient~~ and  
37 his or her ~~the patient's~~ guardian, guardian advocate, health  
38 care surrogate or proxy, or representative shall be informed by  
39 the court of the right to an independent expert examination. If



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40 the individual patient cannot afford such an examination, the  
41 court shall provide ~~for~~ one. The independent expert's report is  
42 ~~shall be~~ confidential and not discoverable, unless the expert is  
43 ~~to be~~ called as a witness for the individual patient at the  
44 hearing. The court shall allow testimony from persons  
45 ~~individuals~~, including family members, deemed by the court to be  
46 relevant ~~under state law~~, regarding the individual's person's  
47 prior history and how that ~~prior~~ history relates to the  
48 individual's person's current condition. The testimony in the  
49 hearing must be ~~given~~ under oath, and the proceedings must be  
50 recorded. The individual patient may refuse to testify at the  
51 hearing.

52 (c) The court shall consider testimony and evidence  
53 regarding the competence of the individual being held to consent  
54 to treatment. If the court finds that the individual is  
55 incompetent to consent, it shall appoint a guardian advocate as  
56 provided in s. 394.4598.

57 (7) COURT ORDER.-

58 (a) ~~(b)~~1. If the court concludes that the individual who is  
59 the subject of the petition patient meets the criteria for  
60 involuntary outpatient placement under ~~pursuant to~~ subsection  
61 (1), the court shall issue an order for involuntary outpatient  
62 placement. The court order may ~~shall~~ be for ~~a period of~~ up to 6  
63 months. The order must specify the nature and extent of the  
64 individual's patient's mental illness or substance abuse  
65 impairment. The court order ~~of the court~~ and the treatment plan  
66 must ~~shall~~ be made part of the individual's patient's clinical  
67 record. The service provider shall discharge an individual a  
68 patient from involuntary outpatient placement when the order



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69 expires or any time the individual patient no longer meets the  
70 criteria for involuntary placement. Upon discharge, the service  
71 provider shall send a certificate of discharge to the court.

72 (b)2- The court may not order the department or the service  
73 provider to provide services if the program or service is not  
74 available in the ~~patient's~~ local community of the individual  
75 being served, if there is no space available in the program or  
76 service for the individual patient, or if funding is not  
77 available for the program or service. A copy of the order must  
78 be sent to the Agency for Health Care Administration by the  
79 service provider within 1 working day after it is received from  
80 the court. After the placement order is issued, the service  
81 provider and the individual patient may modify ~~provisions of~~ the  
82 treatment plan. For any material modification of the treatment  
83 plan to which the individual patient or the individual's  
84 ~~patient's~~ guardian advocate, if appointed, does agree, the  
85 service provider shall send notice of the modification to the  
86 court. Any material modifications of the treatment plan which  
87 are contested by the individual patient or the individual's  
88 ~~patient's~~ guardian advocate, if appointed, must be approved or  
89 disapproved by the court consistent with the requirements of  
90 subsection (2).

91 (c)3- If, in the clinical judgment of a physician, the  
92 individual being served patient has failed or has refused to  
93 comply with the treatment ordered by the court, and, in the  
94 clinical judgment of the physician, efforts were made to solicit  
95 compliance and the individual patient may meet the criteria for  
96 involuntary examination, the individual ~~a person~~ may be brought  
97 to a receiving facility pursuant to s. 394.463 for involuntary



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98 examination. If, after examination, the individual patient does  
99 not meet the criteria for involuntary inpatient placement  
100 pursuant to s. 394.467, the individual patient must be  
101 discharged from the receiving facility. The involuntary  
102 outpatient placement order remains ~~shall remain~~ in effect unless  
103 the service provider determines that the individual patient no  
104 longer meets the criteria for involuntary outpatient placement  
105 or until the order expires. The service provider must determine  
106 whether modifications should be made to the existing treatment  
107 plan and must attempt to continue to engage the individual  
108 ~~patient~~ in treatment. For any material modification of the  
109 treatment plan to which the individual patient or the  
110 individual's patient's guardian advocate, if appointed, agrees  
111 ~~does agree~~, the service provider shall send notice of the  
112 modification to the court. Any material modifications of the  
113 treatment plan which are contested by the individual patient or  
114 the individual's patient's guardian advocate, if appointed, must  
115 be approved or disapproved by the court consistent with the  
116 requirements of subsection (2).

117 (d) ~~(e)~~ If, at any time before the conclusion of the initial  
118 hearing on involuntary outpatient placement, it appears to the  
119 court that the individual person does not meet the criteria for  
120 involuntary outpatient placement under this section but,  
121 ~~instead~~, meets the criteria for involuntary inpatient placement,  
122 the court may order the individual person admitted for  
123 involuntary inpatient examination under s. 394.463. ~~If the~~  
124 ~~person instead meets the criteria for involuntary assessment,~~  
125 ~~protective custody, or involuntary admission pursuant to s.~~  
126 ~~397.675, the court may order the person to be admitted for~~



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127 ~~involuntary assessment for a period of 5 days pursuant to s.~~  
128 ~~397.6811. Thereafter, all proceedings shall be governed by~~  
129 ~~chapter 397.~~

130 ~~(d) At the hearing on involuntary outpatient placement, the~~  
131 ~~court shall consider testimony and evidence regarding the~~  
132 ~~patient's competence to consent to treatment. If the court finds~~  
133 ~~that the patient is incompetent to consent to treatment, it~~  
134 ~~shall appoint a guardian advocate as provided in s. 394.4598.~~  
135 ~~The guardian advocate shall be appointed or discharged in~~  
136 ~~accordance with s. 394.4598.~~

137 (e) The administrator of the receiving facility, the  
138 detoxification facility, or the designated department  
139 representative shall provide a copy of the court order and  
140 adequate documentation of an individual's ~~a patient's~~ mental  
141 illness or substance abuse impairment to the service provider  
142 for involuntary outpatient placement. Such documentation must  
143 include any advance directives made by the individual ~~patient~~, a  
144 psychiatric evaluation of the individual ~~patient~~, and any  
145 evaluations of the individual ~~patient~~ performed by a ~~clinical~~  
146 psychologist or a clinical social worker.

147 ~~(8)-(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT~~  
148 ~~PLACEMENT.-~~

149 ~~(a)1-~~ If the individual ~~person~~ continues to meet the  
150 criteria for involuntary outpatient placement, the service  
151 provider shall, before the expiration of the period during which  
152 the placement ~~treatment~~ is ordered ~~for the person~~, file in the  
153 circuit court a petition for continued involuntary outpatient  
154 placement.

155 ~~1.2-~~ The existing involuntary outpatient placement order



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156 remains in effect until disposition of ~~on~~ the petition for  
157 continued involuntary outpatient placement.

158 ~~2.3.~~ A certificate must ~~shall~~ be attached to the petition  
159 which includes a statement from the individual's ~~person's~~  
160 physician or ~~clinical~~ psychologist justifying the request, a  
161 brief description of the individual's ~~patient's~~ treatment during  
162 the time he or she was involuntarily placed, and a personalized  
163 ~~an individualized~~ plan of continued treatment.

164 ~~3.4.~~ The service provider shall develop the ~~individualized~~  
165 plan of continued treatment in consultation with the individual  
166 ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if  
167 appointed. When the petition has been filed, the clerk of the  
168 court shall provide copies of the certificate and the  
169 ~~individualized~~ plan of continued treatment to the department,  
170 the individual ~~patient~~, the individual's ~~patient's~~ guardian  
171 advocate, the state attorney, and the individual's ~~patient's~~  
172 private counsel or the public defender.

173 (b) Within 1 court working day after the filing of a  
174 petition for continued involuntary outpatient placement, the  
175 court shall appoint the public defender to represent the  
176 individual ~~person~~ who is the subject of the petition, unless the  
177 individual ~~person~~ is otherwise represented by counsel. The clerk  
178 of the court shall immediately notify the public defender of  
179 such appointment. The public defender shall represent the  
180 individual ~~person~~ until the petition is dismissed, ~~or~~ the court  
181 order expires, or the individual ~~patient~~ is discharged from  
182 involuntary outpatient placement. Any attorney representing the  
183 individual ~~patient~~ shall have access to the individual ~~patient~~,  
184 witnesses, and records relevant to the presentation of the



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185 individual's ~~patient's~~ case and shall represent the interests of  
186 the individual ~~patient~~, regardless of the source of payment to  
187 the attorney.

188 (c) The court shall inform the individual who is the  
189 subject of the petition and his or her guardian, guardian  
190 advocate, health care surrogate or proxy, or representative of  
191 the individual's right to an independent expert examination. If  
192 the individual cannot afford such an examination, the court  
193 shall provide one.

194 (d) ~~(e)~~ Hearings on petitions for continued involuntary  
195 outpatient placement are ~~shall be~~ before the circuit court. The  
196 court may appoint a magistrate ~~master~~ to preside at the hearing.  
197 The procedures for obtaining an order pursuant to this paragraph  
198 must ~~shall~~ be in accordance with subsection (6), except that the  
199 time period included in paragraph (1)(e) is not applicable in  
200 determining the appropriateness of additional periods of  
201 involuntary outpatient placement.

202 (e) ~~(d)~~ Notice of the hearing shall be provided in  
203 accordance with as set forth in s. 394.4599. The individual  
204 being served ~~patient~~ and the individual's ~~patient's~~ attorney may  
205 agree to a period of continued outpatient placement without a  
206 court hearing.

207 (f) ~~(e)~~ The same procedure shall be repeated before the  
208 expiration of each additional period the individual being served  
209 ~~patient~~ is placed in treatment.

210 (g) ~~(f)~~ If the individual in involuntary outpatient  
211 placement ~~patient~~ has previously been found incompetent to  
212 consent to treatment, the court shall consider testimony and  
213 evidence regarding the individual's ~~patient's~~ competence.





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214 Section 394.4598 governs the discharge of the guardian advocate  
215 if the individual's ~~patient's~~ competency to consent to treatment  
216 has been restored.

217 Section 15. Effective on July 1, 2016, section 394.467,  
218 Florida Statutes, is amended to read:

219 394.467 Involuntary inpatient placement.—

220 (1) CRITERIA.—An individual ~~A person~~ may be placed in  
221 involuntary inpatient placement for treatment upon a finding of  
222 the court by clear and convincing evidence that:

223 (a) He or she has a mental illness or substance abuse  
224 impairment ~~is mentally ill~~ and because of his or her mental  
225 illness or substance abuse impairment:

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

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

231 2.a. He or she is manifestly incapable of surviving alone  
232 or with the help of willing and responsible family or friends,  
233 including available alternative services, and, without  
234 treatment, is likely to suffer from neglect or refuse to care  
235 for himself or herself, and such neglect or refusal poses a real  
236 and present threat of substantial harm to his or her well-being;  
237 or

238 b. There is substantial likelihood that in the near future  
239 he or she will inflict serious bodily harm on self or others  
240 ~~himself or herself or another person~~, as evidenced by recent  
241 behavior causing, attempting, or threatening such harm; and

242 (b) All available less restrictive treatment alternatives



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243 ~~that which would~~ offer an opportunity for improvement of his or  
244 her condition have been judged to be inappropriate.

245 (2) ADMISSION TO A TREATMENT FACILITY.—An individual ~~A~~  
246 ~~patient~~ may be retained by a mental health receiving facility,  
247 an addictions receiving facility, or a detoxification facility,  
248 or involuntarily placed in a treatment facility upon the  
249 recommendation of the administrator of the receiving facility  
250 where the individual ~~patient~~ has been examined and after  
251 adherence to the notice and hearing procedures provided in s.  
252 394.4599. The recommendation must be supported by the opinion of  
253 a psychiatrist and the second opinion of a ~~clinical~~ psychologist  
254 or another psychiatrist, both of whom have personally examined  
255 the individual ~~patient~~ within the preceding 72 hours, that the  
256 criteria for involuntary inpatient placement are met. However,  
257 in a county that has a population of fewer than 50,000, if the  
258 administrator certifies that a psychiatrist or ~~clinical~~  
259 psychologist is not available to provide the second opinion, the  
260 second opinion may be provided by a licensed physician who has  
261 postgraduate training and experience in diagnosis and treatment  
262 of mental and nervous disorders or by a psychiatric nurse. If  
263 the petition seeks placement for treatment of substance abuse  
264 impairment only and the individual is examined by an addictions  
265 receiving facility or detoxification facility, the first opinion  
266 may be provided by a physician, and the second opinion may be  
267 provided by a qualified professional with respect to substance  
268 abuse treatment. Any second opinion authorized in this  
269 subsection may be conducted through a face-to-face examination,  
270 in person or by electronic means. Such recommendation must ~~shall~~  
271 be entered on an involuntary inpatient placement certificate



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272 that authorizes the receiving facility to retain the individual  
273 being held ~~patient~~ pending transfer to a treatment facility or  
274 completion of a hearing.

275 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—The  
276 administrator of the mental health facility, addictions  
277 receiving facility, or detoxification facility shall file a  
278 petition for involuntary inpatient placement in the court in the  
279 county where the individual ~~patient~~ is located. Upon filing, the  
280 clerk of the court shall provide copies to the department, the  
281 individual ~~patient~~, the individual's ~~patient's~~ guardian,  
282 guardian advocate, health care surrogate or proxy, or  
283 representative, and the state attorney and public defender of  
284 the judicial circuit in which the individual ~~patient~~ is located.  
285 A No fee may not shall be charged for the filing of a petition  
286 under this subsection.

287 (4) APPOINTMENT OF COUNSEL.—Within 1 court working day  
288 after the filing of a petition for involuntary inpatient  
289 placement, the court shall appoint the public defender to  
290 represent the individual ~~person~~ who is the subject of the  
291 petition, unless the individual ~~person~~ is otherwise represented  
292 by counsel. The clerk of the court shall immediately notify the  
293 public defender of such appointment. Any attorney representing  
294 the individual ~~patient~~ shall have access to the individual  
295 ~~patient~~, witnesses, and records relevant to the presentation of  
296 the individual's ~~patient's~~ case and shall represent the  
297 interests of the individual ~~patient~~, regardless of the source of  
298 payment to the attorney.

299 (a) An attorney representing an individual in proceedings  
300 under this part shall advocate the individual's expressed



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301 desires and must be present and actively participate in all  
302 hearings on involuntary placement.

303 (b) The state attorney for the judicial circuit in which  
304 the individual is located shall represent the state rather than  
305 the petitioning facility administrator as the real party in  
306 interest in the proceeding. The state attorney shall have access  
307 to the individual's clinical record and witnesses and shall  
308 independently evaluate the allegations set forth in