

By Senator Garcia

36-01520-17

20171756__

1 A bill to be entitled
2 An act relating to examination and treatment of
3 individuals with mental illness; amending s. 394.453,
4 F.S.; revising legislative intent; amending s.
5 394.455, F.S.; providing, revising, and deleting
6 definitions; amending s. 394.457, F.S.; providing
7 responsibilities of the Department of Children and
8 Families for a comprehensive statewide mental health
9 and substance abuse program; amending s. 394.4573,
10 F.S.; conforming terminology; amending s. 394.4574,
11 F.S.; providing for additional professionals to assess
12 a resident with a mental illness who resides in an
13 assisted living facility; amending s. 394.458, F.S.;
14 prohibiting the introduction or removal of certain
15 articles at a facility providing mental health
16 services; requiring such facilities to post a notice
17 thereof; amending s. 394.459, F.S.; revising rights of
18 individuals receiving mental health treatment and
19 services to provide for the use of health care
20 surrogates or proxies to make decisions; revising
21 requirements relating to express and informed consent
22 and liability for violations; requiring service
23 providers to provide information concerning advance
24 directives; amending s. 394.4593, F.S.; expanding the
25 definition of the term "employee" to include staff,
26 volunteers, and interns employed by a service provider
27 for purposes of reporting sexual misconduct; repealing
28 s. 394.4595, F.S., relating to the Florida statewide
29 and local advocacy councils and access to patients and

36-01520-17

20171756__

30 records; creating s. 394.4596, F.S.; requiring
31 designated receiving facilities to permit access
32 authority to an agency designated by the Governor to
33 serve as the federally mandated protection and
34 advocacy system for individuals with disabilities;
35 amending s. 394.4597, F.S.; providing rights and
36 responsibilities of the representative of an
37 individual admitted to a facility for involuntary
38 examination or services; amending s. 394.4598, F.S.;
39 specifying certain persons who are prohibited from
40 being appointed as a guardian advocate; providing
41 duties of a guardian advocate; amending s. 394.4599,
42 F.S.; revising requirements for a certain notice
43 related to involuntary admission; repealing s.
44 394.460, F.S., relating to rights of professionals;
45 amending s. 394.461, F.S.; authorizing governmental
46 facilities to provide voluntary and involuntary mental
47 health and substance abuse examinations and treatment
48 under certain conditions; providing additional
49 facility reporting requirements; amending s. 394.4615,
50 F.S., relating to confidentiality of clinical records;
51 providing additional circumstances in which
52 information from a clinical record may be released;
53 amending s. 394.462, F.S.; revising requirements for
54 transportation to receiving facilities and treatment
55 facilities; providing for a law enforcement officer to
56 transport an individual to a United States Department
57 of Veterans Affairs facility under certain
58 circumstances; providing immunity from liability;

36-01520-17

20171756__

59 deleting obsolete provisions; amending s. 394.4625,
60 F.S.; revising criteria for voluntary admission to,
61 and release or discharge from, a facility for
62 examination and treatment; revising criteria for a
63 determination of neglect to include mental and
64 physical harm; requiring certain individuals charged
65 with a crime to be discharged to the custody of a law
66 enforcement officer under certain circumstances;
67 amending s. 394.463, F.S.; requiring certain persons
68 initiating an involuntary examination to provide
69 notice to the individual's guardian, representative,
70 or health care surrogate or proxy; revising a holding
71 period for involuntary examination; amending s.
72 394.467, F.S.; revising provisions relating to
73 admission to a facility for involuntary services;
74 authorizing the state attorney to represent the state
75 in certain proceedings relating to a petition for
76 involuntary services; granting the state attorney
77 access to certain clinical records and witnesses;
78 providing conditions for a continuance of the hearing;
79 requiring the Division of Administrative Hearings to
80 advise certain parties representing the individual of
81 the right to an independent examination in continued
82 involuntary services proceedings; amending s.
83 394.46715, F.S.; providing purpose of department
84 rules; amending s. 394.4672, F.S.; authorizing
85 facilities of the United States Department of Veterans
86 Affairs to provide certain mental health services;
87 amending s. 394.4685, F.S.; revising provisions

36-01520-17

20171756__

88 governing transfer of individuals between and among
89 public and private facilities; amending s. 394.469,
90 F.S.; authorizing the discharge of an individual from
91 involuntary services into the custody of a law
92 enforcement officer under certain conditions; amending
93 s. 394.473, F.S.; revising provisions relating to
94 compensation of attorneys and expert witnesses in
95 cases involving indigent individuals; amending s.
96 394.475, F.S.; conforming terminology; amending s.
97 394.4785, F.S.; defining the term "minor" for purposes
98 of admission into a mental health facility; repealing
99 s. 394.4595, F.S., relating to access to patients and
100 patients' records by members of the Florida statewide
101 and local advocacy councils; repealing s. 394.460,
102 F.S., relating to the rights of professionals;
103 repealing s. 394.4655, F.S., relating to involuntary
104 outpatient services; repealing s. 394.4786, F.S.,
105 relating to legislative intent; repealing s.
106 394.47865, F.S., relating to the privatization of
107 South Florida State Hospital; repealing s. 394.4787,
108 F.S., relating to definitions; repealing s. 394.4788,
109 F.S., relating to use of certain PMATF funds for the
110 purchase of acute care mental health services;
111 repealing s. 394.4789, F.S., relating to the
112 establishment of a referral process and eligibility
113 determination; amending ss. 20.425, 39.407, 394.4599,
114 394.492, 394.495, 394.496, 394.9082, 394.9085,
115 409.972, 744.2007, 790.065, and 945.46, F.S.;

116 conforming references and cross-references; providing

36-01520-17

20171756__

117 an effective date.

118
119 Be It Enacted by the Legislature of the State of Florida:

120
121 Section 1. Section 394.453, Florida Statutes, is amended to
122 read:

123 394.453 Legislative intent.—

124 (1) It is the intent of the Legislature:

125 (a) To authorize and direct the Department of Children and
126 Families to evaluate, research, plan, and recommend to the
127 Governor and the Legislature programs designed to reduce the
128 occurrence, severity, duration, and disabling aspects of mental,
129 emotional, and behavioral disorders and substance abuse
130 impairment.

131 (b) That treatment programs for such disorders include, ~~but~~
132 ~~not be limited to~~, comprehensive health, social, educational,
133 and rehabilitative services for individuals ~~to persons~~ requiring
134 intensive short-term and continued treatment in order to
135 encourage them to assume responsibility for their treatment and
136 recovery. It is intended that:

137 1. Such individuals ~~persons~~ be provided with emergency
138 service and temporary detention for evaluation if ~~when~~ required;

139 2. Such individuals ~~persons~~ be admitted to treatment
140 facilities if ~~on a voluntary basis when~~ extended or continuing
141 care is needed and unavailable in the community;

142 3. Involuntary services placement be provided only if ~~when~~
143 expert evaluation determines it is necessary;

144 4. Any involuntary treatment or examination be accomplished
145 in a setting that is clinically appropriate and most likely to

36-01520-17

20171756__

146 facilitate the individual's discharge ~~person's return to the~~
147 ~~community~~ as soon as possible; and

148 5. ~~Individual~~ Dignity and human rights be guaranteed to all
149 individuals ~~persons~~ who are admitted to mental health facilities
150 ~~or who are being held under s. 394.463.~~

151 (c) That services provided to individuals ~~persons~~ in this
152 state use the coordination-of-care principles characteristic of
153 recovery-oriented services and include social support services,
154 such as housing support, life skills and vocational training,
155 and employment assistance, necessary for individuals ~~persons~~
156 with mental health disorders and co-occurring mental health and
157 substance use disorders to live successfully in their
158 communities.

159 (d) That licensed, qualified health professionals be
160 authorized to practice to the fullest extent of their education
161 and training in the performance of professional functions
162 necessary to carry out the intent of this part.

163 (2) It is the policy of this state that the use of
164 restraint and seclusion ~~on clients~~ is justified only as an
165 emergency safety measure to be used in response to imminent
166 danger to the individual ~~client~~ or others. It is, therefore, the
167 intent of the Legislature to achieve an ongoing reduction in the
168 use of restraint and seclusion in programs and facilities
169 serving individuals experiencing ~~persons with~~ mental illness.

170 (3) The Legislature further finds the need for additional
171 psychiatrists to be of critical state concern and recommends the
172 establishment of an additional psychiatry program to be offered
173 by one of Florida's schools of medicine currently not offering
174 psychiatry. The program shall seek to integrate primary care and

36-01520-17

20171756__

175 psychiatry and other evolving models of care for individuals
176 ~~persons~~ with mental health and substance use disorders.
177 Additionally, the Legislature finds that the use of telemedicine
178 for patient evaluation, case management, and ongoing care will
179 improve management of patient care and reduce costs of
180 transportation.

181 Section 2. Section 394.455, Florida Statutes, is amended to
182 read:

183 394.455 Definitions.—As used in this part, the term:

184 (1) "Access center" means a facility that has medical,
185 mental health, and substance abuse professionals to provide
186 emergency screening and evaluation for mental health or
187 substance abuse disorders and may provide transportation to an
188 appropriate facility if an individual is in need of more
189 intensive services.

190 (2) "Addictions receiving facility" is a secure, acute care
191 facility that, at a minimum, provides emergency screening,
192 evaluation, detoxification, and stabilization services; is
193 operated 24 hours per day, 7 days per week; and is designated by
194 the department to serve individuals found to have substance
195 abuse impairment who qualify for services under this part.

196 (3) "Administrator" means the chief administrative officer
197 of a receiving or treatment facility or his or her designee.

198 (4) "Adult" means an individual who is 18 years of age or
199 older or who has had the disability of nonage removed under
200 chapter 743.

201 (5) "Advance directive" has the same meaning as in s.
202 765.101.

203 ~~(5) "Clinical psychologist" means a psychologist as defined~~

36-01520-17

20171756__

204 in ~~s. 490.003(7)~~ with 3 years of postdoctoral experience in the
205 practice of clinical psychology, inclusive of the experience
206 required for licensure, or a psychologist employed by a facility
207 operated by the United States Department of Veterans Affairs
208 that qualifies as a receiving or treatment facility under this
209 part.

210 (6) "Clinical record" means all parts of the record
211 required to be maintained and includes all medical records,
212 progress notes, charts, and admission and discharge data, and
213 all other information recorded by facility staff which pertains
214 to an individual's admission, retention ~~the patient's~~
215 hospitalization, or treatment at a mental facility.

216 (7) "Clinical social worker" means a person licensed to
217 practice social work under s. 491.005 or s. 491.006 or a person
218 employed as a clinical social worker by the United States
219 Department of Veterans Affairs or the United States Department
220 of Defense as a clinical social worker under s. 491.005 or s.
221 491.006.

222 (8) "Community facility" means a community service provider
223 that contracts with the department to furnish substance abuse or
224 mental health services under part IV of this chapter.

225 (9) "Community mental health center or clinic" means a
226 publicly funded, not-for-profit center that contracts with the
227 department for the provision of inpatient, outpatient, day
228 treatment, or emergency services.

229 (10) "Court," unless otherwise specified, means the circuit
230 court.

231 (11) "Department" means the Department of Children and
232 Families.

36-01520-17

20171756__

233 (12) "Designated receiving facility" means a facility
234 approved by the department which may be a public or private
235 hospital, crisis stabilization unit, or addictions receiving
236 facility; which provides, at a minimum, emergency screening,
237 evaluation, and short-term stabilization for mental health or
238 substance abuse disorders; and which may have an agreement with
239 a corresponding facility for transportation and services.

240 (13) "Detoxification facility" means a facility licensed to
241 provide detoxification services under chapter 397.

242 (14) "Electronic means" means a form of telecommunication
243 which requires all parties to maintain visual as well as audio
244 communication when being used to conduct an examination by a
245 qualified professional.

246 (15) "Express and informed consent" means consent
247 voluntarily given ~~in writing, by a competent person,~~ after
248 sufficient explanation and disclosure of the subject matter
249 involved, as documented in the clinical record, to enable the
250 individual or his or her guardian, guardian advocate, or health
251 care surrogate or proxy person to make a knowing and willful
252 decision without any element of force, fraud, deceit, duress, or
253 other form of constraint or coercion. Such consent must be in
254 writing when provided by the individual, but may be provided
255 verbally and documented in the clinical record when the
256 individual's substitute decisionmaker is unable to reasonably
257 provide it in writing.

258 (16) "Facility" means any hospital, community facility,
259 public or private facility, or receiving or treatment facility
260 providing for the evaluation, diagnosis, care, treatment,
261 training, or hospitalization of individuals ~~persons who appear~~

36-01520-17

20171756__

262 ~~to have or~~ who have been diagnosed as having a mental illness or
263 substance abuse impairment. The term does not include a program
264 or an entity licensed under chapter 400 or chapter 429.

265 (17) "Government facility" means a facility owned,
266 operated, or administered by the Department of Corrections or
267 the United States Department of Veterans Affairs.

268 (18)~~(17)~~ "Guardian" means the natural guardian of a minor,
269 or a person appointed by a court to act on behalf of a ward's
270 person if the ward is a minor or has been adjudicated
271 incapacitated.

272 (19)~~(18)~~ "Guardian advocate" means a person appointed by a
273 court to make decisions regarding mental health treatment on
274 behalf of an individual ~~a patient~~ who has been found incompetent
275 to consent to treatment pursuant to this part.

276 (20)~~(19)~~ "Hospital" means a hospital licensed under chapter
277 395 and part II of chapter 408.

278 (21)~~(20)~~ "Incapacitated" means that an individual ~~a person~~
279 has been adjudicated incapacitated pursuant to part V of chapter
280 744 and a guardian of the individual ~~person~~ has been appointed.

281 (22)~~(21)~~ "Incompetent to consent to treatment" means that
282 an individual's ~~a state in which a person's~~ judgment is so
283 affected by a mental illness or a substance abuse impairment or
284 any medical or organic cause that he or she lacks the capacity
285 to make a well-reasoned, willful, and knowing decision
286 concerning his or her medical, mental health, or substance abuse
287 treatment.

288 (23) "Individual" means any person who is held or accepted
289 for a mental health examination or treatment.

290 (24)~~(22)~~ "Involuntary examination" means an examination

36-01520-17

20171756__

291 performed under s. 394.463, ~~s. 397.6772, s. 397.679, s.~~
292 ~~397.6798, or s. 397.6811~~ to determine if an individual ~~whether a~~
293 ~~person~~ qualifies for involuntary services.

294 ~~(25)-(23)~~ "Involuntary services" means court-ordered
295 outpatient services or ~~inpatient placement for mental health~~
296 treatment for mental illness in a receiving facility or
297 treatment facility or by a service provider pursuant to s.
298 ~~394.4655 or s. 394.467.~~

299 ~~(26)-(24)~~ "Law enforcement officer" has the same meaning as
300 provided in s. 943.10 or a federal or tribal law enforcement
301 officer as defined by federal law.

302 ~~(27)-(25)~~ "Marriage and family therapist" means a person
303 licensed to practice marriage and family therapy under s.
304 491.005 or s. 491.006 or a person employed as a marriage and
305 family therapist by the United States Department of Veterans
306 Affairs or the United States Department of Defense.

307 ~~(28)-(26)~~ "Mental health counselor" means a person licensed
308 to practice mental health counseling under s. 491.005 or s.
309 491.006 or a person employed as a mental health counselor by the
310 United States Department of Veterans Affairs or the United
311 States Department of Defense.

312 ~~(29)-(27)~~ "Mental health overlay program" means a mobile
313 service that provides an independent examination for voluntary
314 admission and a range of supplemental onsite services to an
315 individual who has ~~persons with~~ a mental illness in a
316 residential setting such as a nursing home, an assisted living
317 facility, or an adult family-care home or a nonresidential
318 setting such as an adult day care center. Independent
319 examinations provided through a mental health overlay program

36-01520-17

20171756__

320 must ~~only~~ be provided only under contract with the department
321 for this service or be attached to a public receiving facility
322 that is also a community mental health center.

323 ~~(30)-(28)~~ "Mental illness" means an impairment of the mental
324 or emotional processes that exercise conscious control of one's
325 actions or of the ability to perceive or understand reality,
326 which impairment substantially interferes with the individual's
327 ~~person's~~ ability to meet the ordinary demands of living. As used
328 in ~~For the purposes of~~ this part, the term does not include a
329 developmental disability as defined in chapter 393,
330 intoxication, or conditions manifested only by antisocial
331 behavior or substance abuse impairment.

332 ~~(31)-(29)~~ "Minor" means an individual who is 17 years of age
333 or younger and who has not had the disability of nonage removed
334 pursuant to s. 743.01 or s. 743.015.

335 ~~(32)-(30)~~ "Mobile crisis response service" means a
336 nonresidential crisis service available 24 hours per day, 7 days
337 per week which provides immediate intensive assessments and
338 interventions, including screening for admission into a mental
339 health receiving facility, an addictions receiving facility, or
340 a detoxification facility, for the purpose of identifying
341 appropriate treatment services.

342 ~~(31)~~ "Patient" ~~means any person, with or without a co-~~
343 ~~occurring substance abuse disorder, who is held or accepted for~~
344 ~~mental health treatment.~~

345 ~~(33)-(32)~~ "Physician" means a medical practitioner licensed
346 under chapter 458 or chapter 459 ~~who has experience in the~~
347 ~~diagnosis and treatment of mental illness~~ or a physician
348 employed by ~~a facility operated by~~ the United States Department

36-01520-17

20171756__

349 of Veterans Affairs or the United States Department of Defense.

350 ~~(34)~~(33) "Physician assistant" means a person fully
351 licensed as a physician assistant under chapter 458 or chapter
352 459 or a person employed as a physician assistant by the United
353 States Department of Veterans Affairs or the United States
354 Department of Defense ~~who has experience in the diagnosis and~~
355 ~~treatment of mental disorders.~~

356 ~~(35)~~(34) "Private facility" means a hospital or facility
357 operated by a for-profit or not-for-profit corporation or
358 association which provides mental health or substance abuse
359 services and is not a public facility.

360 ~~(36)~~(35) "Psychiatric nurse" means an advanced registered
361 nurse practitioner certified under s. 464.012 ~~who has a master's~~
362 ~~or doctoral degree in psychiatric nursing,~~ holds a national
363 advanced practice certification as a psychiatric mental health
364 advanced practice nurse, and has 2 years of post-master's
365 clinical experience under the supervision of a physician or a
366 person employed as a psychiatric nurse by the United States
367 Department of Veterans Affairs or the United States Department
368 of Defense.

369 ~~(37)~~(36) "Psychiatrist" means a medical practitioner
370 licensed under chapter 458 or chapter 459 for at least 3 years,
371 inclusive of psychiatric residency or a person employed as a
372 psychiatrist by the United States Department of Veterans Affairs
373 or the United States Department of Defense.

374 (38) "Psychologist" means a person defined as a
375 psychologist under s. 490.003 or a person employed as a
376 psychologist by the United States Department of Veterans Affairs
377 or the United States Department of Defense.

36-01520-17

20171756__

378 ~~(39)(37)~~ "Public facility" means a facility that has
379 contracted with the department to provide mental health services
380 to all individuals ~~persons~~, regardless of ability to pay, and is
381 receiving state funds for such purpose.

382 ~~(40)(38)~~ "Qualified professional" means a physician or a
383 physician assistant licensed under chapter 458 or chapter 459; a
384 psychiatrist licensed under chapter 458 or chapter 459; a
385 psychologist as defined in s. 490.003(7); or a psychiatric nurse
386 as defined in this section.

387 ~~(41)(39)~~ "Receiving facility" means a public or private
388 facility or hospital expressly designated by the department to
389 receive and hold individuals on involuntary status ~~or refer, as~~
390 ~~appropriate, involuntary patients under emergency conditions for~~
391 ~~mental health or substance abuse evaluation and to provide~~
392 ~~treatment or transportation to the appropriate service provider.~~
393 The term does not include a county jail.

394 ~~(42)(40)~~ "Representative" means a person selected pursuant
395 to s. 394.4597(2) ~~to receive notice of proceedings during the~~
396 ~~time a patient is held in or admitted to a receiving or~~
397 ~~treatment facility.~~

398 ~~(43)(41)~~ "Restraint" means:

399 (a) A physical restraint, including any manual method or
400 physical or mechanical device, material, or equipment attached
401 or adjacent to an individual's body so that he or she cannot
402 easily remove the restraint and which restricts freedom of
403 movement or normal access to one's body. "Physical restraint"
404 includes the physical holding of an individual ~~a person~~ during a
405 procedure to forcibly administer psychotropic medication.

406 "Physical restraint" does not include physical devices such as

36-01520-17

20171756__

407 orthopedically prescribed appliances, surgical dressings and
408 bandages, supportive body bands, or other physical holding when
409 necessary for routine physical examinations and tests or for
410 purposes of orthopedic, surgical, or other similar medical
411 ~~treatment when used to provide~~ support for the achievement of
412 functional body position or proper balance for protecting an
413 individual ~~or when used to protect a person from falling out of~~
414 ~~bed.~~

415 (b) A drug or medication used to control an individual's a
416 ~~person's~~ behavior or to restrict his or her freedom of movement
417 which is not part of the standard treatment regimen for an
418 individual having ~~of a person with~~ a diagnosed mental illness.

419 (44) "School psychologist" has the same meaning as in s.
420 490.003.

421 (45)~~(42)~~ "Seclusion" means the physical segregation or
422 involuntary isolation of an individual ~~a person~~ in a room or
423 area from which the individual ~~person~~ is prevented from leaving.
424 The prevention may be by physical barrier or by a staff member
425 who is acting in a manner, or who is physically situated, so as
426 to prevent the individual ~~person~~ from leaving the room or area.
427 As used in ~~For purposes of~~ this part, the term does not mean
428 isolation due to the individual's ~~a person's~~ medical condition
429 or symptoms.

430 (46)~~(43)~~ "Secretary" means the Secretary of Children and
431 Families.

432 (47)~~(44)~~ "Service provider" means a public or private
433 receiving facility, a facility licensed under chapter 397, a
434 treatment facility, an entity under contract with the department
435 to provide mental health or substance abuse services, a

36-01520-17

20171756__

436 community mental health center or clinic, a psychologist, a
 437 clinical social worker, a marriage and family therapist, a
 438 mental health counselor, a physician, a psychiatrist, ~~an~~
 439 ~~advanced registered nurse practitioner,~~ a psychiatric nurse, or
 440 a substance abuse qualified professional ~~as defined in s. 39.01.~~

441 ~~(48)-(45)~~ "Substance abuse impaired ~~impairment~~" means a
 442 condition involving the use of alcoholic beverages or any
 443 psychoactive or mood-altering substance in such a manner as to
 444 induce mental, emotional, or physical problems and cause
 445 socially dysfunctional behavior ~~that a person has lost the power~~
 446 ~~of self-control and has inflicted or is likely to inflict~~
 447 ~~physical harm on himself, herself, or another.~~

448 (49) "Substance abuse qualified professional" has the same
 449 meaning as in s. 397.311(33).

450 ~~(50)-(46)~~ "Transfer evaluation" means the process, as
 451 approved by the department, in which the individual ~~by which a~~
 452 ~~person who is being considered for placement in a state~~
 453 ~~treatment facility~~ is evaluated for appropriateness of admission
 454 to a treatment such facility. The transfer evaluation shall be
 455 conducted by the department, a public receiving facility, or a
 456 community mental health center or clinic.

457 ~~(51)-(47)~~ "Treatment facility" means a state-owned, state-
 458 operated, or state-supported hospital, center, or clinic
 459 designated by the department for extended treatment and
 460 hospitalization of individuals who have a mental illness, beyond
 461 that provided ~~for~~ by a receiving facility or a, ~~of persons who~~
 462 ~~have a mental illness, including facilities of the United States~~
 463 ~~Government, and any private facility designated by the~~
 464 department when rendering such services ~~to a person~~ pursuant to

36-01520-17

20171756__

465 ~~the provisions of this part. Patients treated in facilities of~~
466 ~~the United States Government shall be solely those whose care is~~
467 ~~the responsibility of the United States Department of Veterans~~
468 ~~Affairs.~~

469 (52) ~~(48)~~ "Triage center" means a facility that has medical,
470 mental health, and substance abuse professionals present or on
471 call to provide emergency screening and evaluation for mental
472 health or substance abuse disorders for individuals transported
473 to the center by a law enforcement officer.

474 Section 3. Section 394.457, Florida Statutes, is amended to
475 read:

476 394.457 Operation and administration.—

477 (1) ADMINISTRATION.—The Department of Children and Families
478 is designated the "Mental Health Authority" of Florida. The
479 department and the Agency for Health Care Administration shall
480 exercise executive and administrative supervision over all
481 ~~mental health~~ facilities, programs, and services.

482 (2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is
483 responsible for:

484 (a) The planning, evaluation, and implementation of a
485 complete and comprehensive statewide program of mental health
486 and substance abuse, including community services, receiving and
487 treatment facilities, child services, research, and training as
488 authorized and approved by the Legislature, based on the annual
489 program budget of the department. The department is also
490 responsible for the coordination of efforts with other
491 departments and divisions of the state government, county and
492 municipal governments, and private agencies concerned with and
493 providing mental health or substance abuse services. It is

36-01520-17

20171756__

494 responsible for establishing standards, providing technical
495 assistance, supervising and ~~exercising supervision of~~ mental
496 health and substance abuse programs, and ~~of, and the~~ treatment
497 of individuals ~~patients~~ at, community facilities, other
498 facilities serving individuals ~~for persons~~ who have a mental
499 illness or substance abuse impairment, and any agency or
500 facility providing services under ~~to patients pursuant to~~ this
501 part.

502 (b) The publication and distribution of an information
503 handbook to facilitate the understanding of ~~this part~~, the
504 policies and procedures involved in the implementation of this
505 part, and the responsibilities of the various service providers
506 ~~of services~~ under this part. Distribution of this handbook may
507 be limited to online electronic distribution. The department may
508 ~~It shall~~ stimulate research by public and private agencies,
509 institutions of higher learning, and hospitals in the interest
510 of the elimination and amelioration of mental illnesses or
511 substance abuse impairments ~~illness~~.

512 (3) POWER TO CONTRACT.—The department may contract to
513 provide, and be provided with, services and facilities in order
514 to carry out its responsibilities under this part with respect
515 to the following agencies: public and private hospitals;
516 receiving and treatment facilities; clinics; laboratories;
517 departments, divisions, and other units of state government; ~~the~~
518 state colleges and universities; ~~the~~ community colleges; private
519 colleges and universities; counties, municipalities, and ~~any~~
520 other political subdivisions ~~governmental unit~~, including
521 facilities of the United States Government; and any other public
522 or private entity that ~~which~~ provides or needs facilities or

36-01520-17

20171756__

523 services. Baker Act funds for community inpatient, crisis
524 stabilization, short-term residential treatment, and screening
525 services under this part must be allocated to each county
526 pursuant to the department's funding allocation methodology.
527 Notwithstanding s. 287.057(3)(e), contracts for community-based
528 Baker Act services for inpatient, crisis stabilization, short-
529 term residential treatment, and screening ~~provided~~ under this
530 part, other than those with other units of government, ~~to be~~
531 ~~provided for the department~~ must be awarded using competitive
532 solicitation sealed bids if the county commission of the county
533 receiving the services makes a request to the department
534 ~~department's district office~~ by January 15 of the contracting
535 year. The department ~~district~~ may not enter into a competitively
536 bid contract ~~under this provision~~ if such action will result in
537 increases of state or local expenditures for Baker Act services
538 ~~within the district~~. Contracts for ~~these~~ Baker Act services
539 using competitive solicitation sealed bids are effective for 3
540 years. The department shall adopt rules establishing minimum
541 standards for such contracted services and facilities and shall
542 make periodic audits and inspections to assure that the
543 contracted services are provided and meet the standards of the
544 department.

545 (4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The
546 department may apply for and accept any funds, grants, gifts, or
547 services made available to it by any agency or department of the
548 Federal Government or any other public or private agency or
549 person ~~individual~~ in aid of mental health and substance abuse
550 programs. All such moneys must ~~shall~~ be deposited in the State
551 Treasury and ~~shall be~~ disbursed as provided by law.

36-01520-17

20171756__

552 (5) RULES.~~The department shall adopt rules:~~

553 (a) ~~The department shall adopt rules~~ Establishing forms and
554 procedures relating to the rights and privileges of individuals
555 receiving examination or patients seeking mental health
556 treatment from facilities under this part.

557 (b) Implementing and administering ~~The department shall~~
558 ~~adopt rules necessary for the implementation and administration~~
559 ~~of the provisions of this part.,~~ and A program subject to the
560 ~~provisions of this part~~ may ~~shall not be permitted to~~ operate
561 unless rules designed to ensure the protection of the health,
562 safety, and welfare of the individuals examined and patients
563 treated under ~~through~~ such program have been adopted. Such rules
564 ~~adopted under this subsection~~ must include provisions governing
565 the use of restraint and seclusion which are consistent with
566 recognized best practices and professional judgment; prohibit
567 inherently dangerous restraint or seclusion procedures;
568 establish limitations on the use and duration of restraint and
569 seclusion; establish measures to ensure the safety of program
570 participants and staff during an incident of restraint or
571 seclusion; establish procedures for staff to follow before,
572 during, and after incidents of restraint or seclusion; establish
573 professional qualifications of and training for staff who may
574 order or be engaged in the use of restraint or seclusion; and
575 establish mandatory reporting, data collection, and data
576 dissemination procedures and requirements. Such rules ~~adopted~~
577 ~~under this subsection~~ must require that each instance of the use
578 of restraint or seclusion be documented in the clinical record
579 of the individual who has been restrained or secluded ~~patient.~~

580 (c) ~~The department shall adopt rules~~ Establishing minimum

36-01520-17

20171756__

581 standards for services provided by a mental health overlay
582 program or a mobile crisis response service.

583 (6) PERSONNEL.—

584 (a) The department shall, by rule, establish minimum
585 standards of education and experience for professional and
586 technical personnel employed in mental health programs,
587 including members of a mobile crisis response service.

588 (b) The department may ~~shall~~ design and distribute
589 appropriate materials for the orientation and training of
590 persons actively engaged in administering ~~implementing~~ the
591 provisions of this part relating to the involuntary examination
592 and treatment ~~placement~~ of individuals ~~persons~~ who are believed
593 to have a mental illness or substance abuse impairment.

594 (7) PAYMENT FOR CARE ~~OF PATIENTS~~.—Fees and fee collections
595 for individuals ~~patients~~ in state-owned, state-operated, or
596 state-supported treatment facilities must be in accordance with
597 ~~shall be according to~~ s. 402.33.

598 Section 4. Subsection (1) and paragraph (b) of subsection
599 (2) of section 394.4573, Florida Statutes, are amended to read:

600 394.4573 Coordinated system of care; annual assessment;
601 essential elements; measures of performance; system improvement
602 grants; reports.—On or before December 1 of each year, the
603 department shall submit to the Governor, the President of the
604 Senate, and the Speaker of the House of Representatives an
605 assessment of the behavioral health services in this state. The
606 assessment shall consider, at a minimum, the extent to which
607 designated receiving systems function as no-wrong-door models,
608 the availability of treatment and recovery services that use
609 recovery-oriented and peer-involved approaches, the availability

36-01520-17

20171756__

610 of less-restrictive services, and the use of evidence-informed
611 practices. The department's assessment shall consider, at a
612 minimum, the needs assessments conducted by the managing
613 entities pursuant to s. 394.9082(5). Beginning in 2017, the
614 department shall compile and include in the report all plans
615 submitted by managing entities pursuant to s. 394.9082(8) and
616 the department's evaluation of each plan.

617 (1) As used in this section, the term:

618 (a) "Care coordination" means the implementation of
619 deliberate and planned organizational relationships and service
620 procedures that improve the effectiveness and efficiency of the
621 behavioral health system by engaging in purposeful interactions
622 with individuals who are not yet effectively connected with
623 services to ensure service linkage. Examples of care
624 coordination activities include development of referral
625 agreements, shared protocols, and information exchange
626 procedures. The purpose of care coordination is to enhance the
627 delivery of treatment services and recovery supports and to
628 improve outcomes among priority populations.

629 (b) "Case management" means those direct services provided
630 to a client in order to assess his or her needs, plan or arrange
631 services, coordinate service providers, link the service system
632 to a client, monitor service delivery, and evaluate patient
633 outcomes to ensure the client is receiving the appropriate
634 services.

635 (c) "Coordinated system of care" means the full array of
636 behavioral and related services in a region or community offered
637 by all service providers, whether participating under contract
638 with the managing entity or by another method of community

36-01520-17

20171756__

639 partnership or mutual agreement.

640 (d) "No-wrong-door model" means a model for the delivery of
641 acute care services to individuals ~~persons~~ who have mental
642 health or substance use disorders, or both, which optimizes
643 access to care, regardless of the entry point to the behavioral
644 health care system.

645 (2) The essential elements of a coordinated system of care
646 include:

647 (b) A designated receiving system that consists of one or
648 more facilities serving a defined geographic area and
649 responsible for assessment and evaluation, both voluntary and
650 involuntary, and treatment or triage of patients who have a
651 mental health or substance use disorder, or co-occurring
652 disorders.

653 1. A county or several counties shall plan the designated
654 receiving system using a process that includes the managing
655 entity and is open to participation by individuals with
656 behavioral health needs and their families, service providers,
657 law enforcement agencies, and other parties. The county or
658 counties, in collaboration with the managing entity, shall
659 document the designated receiving system through written
660 memoranda of agreement or other binding arrangements. The county
661 or counties and the managing entity shall complete the plan and
662 implement the designated receiving system by July 1, 2017, and
663 the county or counties and the managing entity shall review and
664 update, as necessary, the designated receiving system at least
665 once every 3 years.

666 2. To the extent permitted by available resources, the
667 designated receiving system shall function as a no-wrong-door

36-01520-17

20171756__

668 model. The designated receiving system may be organized in any
669 manner which functions as a no-wrong-door model that responds to
670 individual needs and integrates services among various
671 providers. Such models include, but are not limited to:

672 a. A central receiving system that consists of a designated
673 central receiving facility that serves as a single entry point
674 for individuals ~~persons~~ with mental health or substance use
675 disorders, or co-occurring disorders. The central receiving
676 facility shall be capable of assessment, evaluation, and triage
677 or treatment or stabilization of individuals ~~persons~~ with mental
678 health or substance use disorders, or co-occurring disorders.

679 b. A coordinated receiving system that consists of multiple
680 entry points that are linked by shared data systems, formal
681 referral agreements, and cooperative arrangements for care
682 coordination and case management. Each entry point shall be a
683 designated receiving facility and shall, within existing
684 resources, provide or arrange for necessary services following
685 an initial assessment and evaluation.

686 c. A tiered receiving system that consists of multiple
687 entry points, some of which offer only specialized or limited
688 services. Each service provider shall be classified according to
689 its capabilities as either a designated receiving facility or
690 another type of service provider, such as a triage center, a
691 licensed detoxification facility, or an access center. All
692 participating service providers shall, within existing
693 resources, be linked by methods to share data, formal referral
694 agreements, and cooperative arrangements for care coordination
695 and case management.

696

36-01520-17

20171756__

697 An accurate inventory of the participating service providers
698 which specifies the capabilities and limitations of each
699 provider and its ability to accept patients under the designated
700 receiving system agreements and the transportation plan
701 developed pursuant to this section shall be maintained and made
702 available at all times to all first responders in the service
703 area.

704 Section 5. Section 394.4574, Florida Statutes, is amended
705 to read:

706 394.4574 Responsibilities for coordination of services for
707 a ~~mental health~~ resident with a mental illness who resides in an
708 assisted living facility that holds a limited mental health
709 license.—

710 (1) As used in this section, the term "mental health
711 resident" means an individual who receives social security
712 disability income due to a mental disorder as determined by the
713 Social Security Administration or receives supplemental security
714 income due to a mental disorder as determined by the Social
715 Security Administration and receives optional state
716 supplementation.

717 (2) Medicaid managed care plans are responsible for
718 Medicaid enrolled mental health residents, and managing entities
719 under contract with the department are responsible for mental
720 health residents who are not enrolled in a Medicaid health plan.
721 A Medicaid managed care plan or a managing entity shall ensure
722 that:

723 (a) A ~~mental health~~ resident has been assessed by a
724 psychiatrist, ~~clinical~~ psychologist, clinical social worker, ~~or~~
725 psychiatric nurse, mental health counselor, marriage and family

36-01520-17

20171756__

726 therapist, or a qualified professional ~~an individual~~ who is
727 supervised by one of these professionals, and determined to be
728 appropriate to reside in an assisted living facility. The
729 documentation must be provided to the administrator of the
730 facility within 30 days after the ~~mental health~~ resident has
731 been admitted to the facility. An evaluation completed upon
732 discharge from a state mental health treatment facility ~~hospital~~
733 meets the requirements of this subsection related to
734 appropriateness for services ~~placement~~ as a ~~mental health~~
735 resident if it was completed within 90 days before admission to
736 the facility.

737 (b) A cooperative agreement, as required in s. 429.075, is
738 developed by the mental health or substance abuse ~~care~~ services
739 provider that serves a ~~mental health~~ resident and the
740 administrator of the assisted living facility with a limited
741 mental health license in which the ~~mental health~~ resident is
742 living.

743 (c) The community living support plan, as defined in s.
744 429.02, has been prepared by a ~~mental health~~ resident and his or
745 her mental health case manager in consultation with the
746 administrator of the facility or the administrator's designee.
747 The plan must be completed and provided to the administrator of
748 the assisted living facility with a limited mental health
749 license in which the ~~mental health~~ resident lives within 30 days
750 after the resident's admission. The support plan and the
751 agreement may be in one document.

752 (d) The assisted living facility with a limited mental
753 health license is provided with documentation that the
754 individual meets the definition of a mental health resident.

36-01520-17

20171756__

755 (e) The ~~mental health~~ services provider assigns a case
756 manager to each ~~mental health~~ resident for whom the entity is
757 responsible. The case manager shall coordinate the development
758 and implementation of the community living support plan defined
759 in s. 429.02. The plan must be updated at least annually, or
760 when there is a significant change in the resident's behavioral
761 health status. Each case manager shall keep a record of the date
762 and time of any face-to-face interaction with the resident and
763 make the record available to the responsible entity for
764 inspection. The record must be retained for at least 2 years
765 after the date of the most recent interaction.

766 (f) Consistent monitoring and implementation of community
767 living support plans and cooperative agreements are conducted by
768 the resident's case manager.

769 (g) Concerns are reported to the appropriate regulatory
770 oversight organization if a regulated provider fails to deliver
771 appropriate services or otherwise acts in a manner that has the
772 potential to result in harm to the resident.

773 (3) The secretary ~~of Children and Families~~, in consultation
774 with the Agency for Health Care Administration, shall require
775 each regional ~~district~~ administrator to develop, with community
776 input, a detailed annual plan that demonstrates how the regional
777 office, in cooperation with service providers, ~~district~~ will
778 ensure the provision of state-funded mental health and substance
779 abuse treatment services to residents of assisted living
780 facilities that hold a limited mental health license. This plan
781 must ~~be consistent with the substance abuse and mental health~~
782 ~~district plan developed pursuant to s. 394.75 and must~~ address
783 case management services; access to consumer-operated drop-in

36-01520-17

20171756__

784 centers; access to services during evenings, weekends, and
785 holidays; supervision of the clinical needs of the residents;
786 and access to emergency psychiatric care.

787 Section 6. Section 394.458, Florida Statutes, is amended to
788 read:

789 394.458 Introduction or removal of certain articles
790 unlawful; penalty.-

791 (1)~~(a)~~ Except as authorized by the facility administrator
792 for a lawful purpose ~~law or as specifically authorized by the~~
793 ~~person in charge of each hospital providing mental health~~
794 ~~services under this part,~~ it is unlawful to knowingly and
795 intentionally bring into any facility providing services under
796 this part, or to take or attempt to take or send therefrom, any
797 of the following articles ~~introduce into or upon the grounds of~~
798 ~~such hospital, or to take or attempt to take or send therefrom,~~
799 ~~any of the following articles, which are hereby declared to be~~
800 ~~contraband for the purposes of this section:~~

801 (a)1. Any intoxicating beverage or beverage which causes or
802 may cause an intoxicating effect;

803 (b)2. Any controlled substance as defined in chapter 893;

804 (c) Any imitation controlled substance as defined in s.
805 817.564; or

806 (d)3. Any firearms or deadly weapon, except for certified
807 law enforcement officers acting in their official capacity.

808 ~~(b) It is unlawful to transmit to, or attempt to transmit~~
809 ~~to, or cause or attempt to cause to be transmitted to, or~~
810 ~~received by, any patient of any hospital providing mental health~~
811 ~~services under this part any article or thing declared by this~~
812 ~~section to be contraband, at any place which is outside of the~~

36-01520-17

20171756__

813 ~~grounds of such hospital, except as authorized by law or as~~
814 ~~specifically authorized by the person in charge of such~~
815 ~~hospital.~~

816 (2) A person who violates any provision of this section
817 commits a felony of the third degree, punishable as provided in
818 s. 775.082, s. 775.083, or s. 775.084.

819 (3) A facility providing services under this part shall
820 post at each entry point of the facility a conspicuous notice
821 that includes the text of this section.

822 Section 7. Section 394.459, Florida Statutes, is amended to
823 read:

824 394.459 Rights of individuals receiving mental health
825 treatment and services patients.-

826 (1) RIGHT TO ~~INDIVIDUAL~~ DIGNITY.-It is the policy of this
827 state that the ~~individual~~ dignity of all individuals held for
828 examination or admitted for mental health treatment ~~the patient~~
829 ~~shall~~ be respected at all times and upon all occasions,
830 including ~~any occasion~~ when the individual patient is taken into
831 custody, held, or transported. Procedures, facilities, vehicles,
832 and restraining devices used ~~utilized~~ for criminals or those
833 accused of a crime ~~may shall~~ not be used in connection with
834 individuals persons who have a mental illness, except for the
835 protection of the individual patient or others. Individuals
836 ~~Persons~~ who have a mental illness but who are not charged with a
837 criminal offense ~~may shall~~ not be detained or incarcerated in
838 the jails of this state. An individual ~~A person~~ who is receiving
839 treatment for mental illness ~~may shall~~ not be deprived of any
840 constitutional rights. However, if such an individual ~~a person~~
841 is adjudicated incapacitated, his or her rights may be limited

36-01520-17

20171756__

842 to the same extent the rights of any incapacitated individual
843 ~~person~~ are limited by law.

844 (2) RIGHT TO TREATMENT.—An individual held for examination
845 or admitted for mental health treatment:

846 (a) May ~~A person shall~~ not be denied treatment for mental
847 illness and services may ~~shall~~ not be delayed at a receiving or
848 treatment facility because of inability to pay. However, every
849 reasonable effort to collect appropriate reimbursement for the
850 cost of providing mental health services from individuals ~~to~~
851 ~~persons~~ able to pay for services, including insurance or third-
852 party payers ~~payments~~, shall be made by facilities providing
853 services under ~~pursuant to~~ this part.

854 (b) Shall be provided ~~It is further the policy of the state~~
855 ~~that~~ the least restrictive appropriate available treatment ~~be~~
856 ~~utilized~~ based on the individual's individual needs and best
857 interests, ~~of the patient and~~ consistent with the optimum
858 improvement of the individual's patient's condition.

859 (c) ~~Each person who remains at a receiving or treatment~~
860 ~~facility for more than 12 hours~~ Shall be given a physical
861 examination by a health practitioner authorized by law to give
862 such examinations and a mental health evaluation by a
863 psychiatrist, psychologist, or psychiatric nurse, in a mental
864 health receiving facility, within 24 hours after arrival at the
865 facility if the individual has not been released or discharged
866 pursuant to s. 394.463(2)(h) or s. 394.469. The physical
867 examination and mental health evaluation must be documented in
868 the clinical record. The physical and mental health examinations
869 shall include efforts to identify indicators and symptoms of
870 substance abuse impairment, substance abuse intoxication, and

36-01520-17

20171756__

871 ~~substance abuse withdrawal, within 24 hours after arrival at~~
872 ~~such facility.~~

873 (d) ~~Every patient in a facility~~ Shall be afforded the
874 opportunity to participate in activities designed to enhance
875 self-image and the beneficial effects of other treatments, as
876 determined by the facility.

877 (e) ~~Not more than 5 days after admission to a facility,~~
878 ~~each patient~~ Shall have and receive an individualized treatment
879 plan in writing which the individual patient has had an
880 opportunity to assist in preparing and to review before ~~prior to~~
881 ~~its~~ implementation, within 72 hours after admission to a
882 facility. The plan must ~~shall~~ include a space for the
883 individual's patient's comments and signature.

884 (3) RIGHT TO EXPRESS AND INFORMED ~~PATIENT~~ CONSENT.—

885 ~~(a)1.~~ Each individual patient entering treatment shall be
886 asked to give express and informed consent for admission or
887 treatment.

888 (a) If the individual patient has been adjudicated
889 incapacitated or found to be incompetent to consent to
890 treatment, express and informed consent must ~~to treatment shall~~
891 be sought instead from his or her ~~the patient's~~ guardian or
892 guardian advocate or health care surrogate or proxy. If the
893 individual patient is a minor, express and informed consent for
894 admission or treatment must be obtained from the minor's ~~shall~~
895 ~~also be requested from the patient's guardian. Express and~~
896 ~~informed consent for admission or treatment of a patient under~~
897 ~~18 years of age shall be required from the patient's guardian,~~
898 unless the minor is seeking outpatient crisis intervention
899 services under s. 394.4784. ~~Express and informed consent for~~

36-01520-17

20171756__

900 ~~admission or treatment given by a patient who is under 18 years~~
901 ~~of age shall not be a condition of admission when the patient's~~
902 ~~guardian gives express and informed consent for the patient's~~
903 ~~admission pursuant to s. 394.463 or s. 394.467.~~

904 (b)2. Before giving express and informed consent, the
905 following information shall be provided and explained in plain
906 language to the individual and to his or her patient, ~~or to the~~
907 ~~patient's~~ guardian if the individual is an adult ~~patient is 18~~
908 ~~years of age or older~~ and has been adjudicated incapacitated, ~~or~~
909 to his or her the patient's guardian advocate if the individual
910 ~~patient~~ has been found to be incompetent to consent to
911 treatment, to the health care surrogate or proxy, or to both the
912 individual patient and the guardian if the individual patient is
913 a minor; the reason for admission or treatment; the proposed
914 treatment; the purpose of the treatment to be provided; the
915 common risks, benefits, and side effects thereof; the specific
916 dosage range for the medication, if when applicable; alternative
917 treatment modalities; the approximate length of care; the
918 potential effects of stopping treatment; how treatment will be
919 monitored; and that any consent given for treatment may be
920 revoked orally or in writing before or during the treatment
921 period by the individual receiving treatment patient or by a
922 person who is legally authorized to make health care decisions
923 on the individual's behalf ~~of the patient~~.

924 ~~(b) In the case of medical procedures requiring the use of~~
925 ~~a general anesthetic or electroconvulsive treatment, and prior~~
926 ~~to performing the procedure, express and informed consent shall~~
927 ~~be obtained from the patient if the patient is legally~~
928 ~~competent, from the guardian of a minor patient, from the~~

36-01520-17

20171756__

929 ~~guardian of a patient who has been adjudicated incapacitated, or~~
930 ~~from the guardian advocate of the patient if the guardian~~
931 ~~advocate has been given express court authority to consent to~~
932 ~~medical procedures or electroconvulsive treatment as provided~~
933 ~~under s. 394.4598.~~

934 ~~(c) When the department is the legal guardian of a patient,~~
935 ~~or is the custodian of a patient whose physician is unwilling to~~
936 ~~perform a medical procedure, including an electroconvulsive~~
937 ~~treatment, based solely on the patient's consent and whose~~
938 ~~guardian or guardian advocate is unknown or unlocatable, the~~
939 ~~court shall hold a hearing to determine the medical necessity of~~
940 ~~the medical procedure. The patient shall be physically present,~~
941 ~~unless the patient's medical condition precludes such presence,~~
942 ~~represented by counsel, and provided the right and opportunity~~
943 ~~to be confronted with, and to cross-examine, all witnesses~~
944 ~~alleging the medical necessity of such procedure. In such~~
945 ~~proceedings, the burden of proof by clear and convincing~~
946 ~~evidence shall be on the party alleging the medical necessity of~~
947 ~~the procedure.~~

948 ~~(d) The administrator of a receiving or treatment facility~~
949 ~~may, upon the recommendation of the patient's attending~~
950 ~~physician, authorize emergency medical treatment, including a~~
951 ~~surgical procedure, if such treatment is deemed lifesaving, or~~
952 ~~if the situation threatens serious bodily harm to the patient,~~
953 ~~and permission of the patient or the patient's guardian or~~
954 ~~guardian advocate cannot be obtained.~~

955 (4) QUALITY OF TREATMENT.—

956 (a) Each individual held for examination, admitted for
957 mental health treatment, or receiving involuntary treatment

36-01520-17

20171756__

958 ~~patient~~ shall receive services that are, ~~including, for a~~
959 ~~patient placed under s. 394.4655, those services included in the~~
960 ~~court order which are suited to his or her needs, and which~~
961 ~~shall be~~ administered skillfully, safely, and humanely with full
962 respect for the individual's ~~patient's~~ dignity and personal
963 integrity. Each individual ~~patient~~ shall receive such medical,
964 vocational, social, educational, and rehabilitative services as
965 his or her condition requires in order to live successfully in
966 the community. In order to achieve this goal, the department
967 shall ~~is directed to~~ coordinate its mental health programs with
968 all other programs of the department and other state agencies.

969 (b) Facilities shall develop and maintain, in a form
970 accessible to and readily understandable by individuals held for
971 examination, admitted for mental health treatment, or receiving
972 involuntary treatment ~~patients~~ and consistent with rules adopted
973 by the department, ~~the following:~~

974 1. Criteria, procedures, and required staff training for
975 the any use of close or elevated levels of supervision; ~~of~~
976 restraint, seclusion, or isolation; ~~or of~~ emergency treatment
977 orders; ~~and for the use of~~ bodily control and physical
978 management techniques.

979 2. Procedures for documenting, monitoring, and requiring
980 clinical review of all uses of the procedures described in
981 subparagraph 1. and for documenting and requiring review of any
982 incidents resulting in injury to individuals receiving services
983 ~~patients~~.

984 3. A system for investigating, tracking, managing, and
985 responding to complaints by individuals ~~persons~~ receiving
986 services or persons ~~individuals~~ acting on their behalf.

36-01520-17

20171756__

987 (c) Receiving and treatment facilities shall have written
988 procedures for reporting events that place individuals receiving
989 services at risk of harm. Such events must be reported to the
990 department as soon as reasonably possible after discovery and
991 include, but are not limited to:

992 1. The death, regardless of cause or manner, of an
993 individual examined or treated at a facility that occurs while
994 the individual is at the facility or that occurs within 72 hours
995 after release, if the death is known to the facility
996 administrator.

997 2. An injury sustained, or allegedly sustained, at a
998 facility, by an individual examined or treated at the facility
999 and caused by an accident, self-injury, assault, act of abuse,
1000 neglect, or suicide attempt, if the injury requires medical
1001 treatment by a licensed health care practitioner in an acute
1002 care medical facility.

1003 3. The unauthorized departure or absence of an individual
1004 from a facility in which he or she has been held for involuntary
1005 examination or involuntary treatment.

1006 4. A disaster or crisis situation such as a tornado,
1007 hurricane, kidnapping, riot, or hostage situation that
1008 jeopardizes the health, safety, or welfare of individuals
1009 examined or treated in a facility.

1010 5. An allegation of sexual battery upon an individual
1011 examined or treated in a facility.

1012 (d) ~~(e)~~ A facility may not use seclusion or restraint for
1013 punishment, in compensation ~~to compensate~~ for inadequate
1014 staffing, or for the convenience of staff. Facilities shall
1015 ensure that all staff, contractors, and volunteers are made

36-01520-17

20171756__

1016 aware of these restrictions ~~on the use of seclusion and~~
1017 ~~restraint and shall make~~ and maintain records which demonstrate
1018 that this information has been conveyed to each staff member,
1019 contractor, and volunteer ~~individual staff members.~~

1020 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

1021 (a) Each individual held for examination or admitted for
1022 mental health treatment ~~person receiving services~~ in a facility
1023 providing ~~mental health~~ services under this part has the right
1024 to communicate freely and privately with persons outside the
1025 facility unless it is determined that such communication is
1026 likely to be harmful to the individual ~~person~~ or others. Each
1027 facility shall make ~~available as soon as reasonably possible to~~
1028 ~~persons receiving services~~ a telephone that allows for free
1029 local calls and access to a long-distance service available to
1030 the individual as soon as reasonably possible. A facility is not
1031 required to pay the costs of an individual's ~~a patient's~~ long-
1032 distance calls. The telephone must ~~shall~~ be readily accessible
1033 ~~to the patient~~ and ~~shall be~~ placed so that the individual
1034 ~~patient~~ may use it to communicate privately and confidentially.
1035 The facility may establish reasonable rules for the use of this
1036 telephone which, ~~provided that the rules~~ do not interfere with
1037 an individual's ~~a patient's~~ access to a telephone to report
1038 abuse pursuant to paragraph (e).

1039 (b) Each individual ~~patient~~ admitted to a facility under
1040 ~~the provisions of this part~~ is ~~shall be~~ allowed to receive,
1041 send, and mail sealed, unopened correspondence; and the
1042 individual's ~~no patient's~~ incoming or outgoing correspondence
1043 may not ~~shall~~ be opened, delayed, held, or censored by the
1044 facility unless there is reason to believe that it contains

36-01520-17

20171756__

1045 items or substances that ~~which~~ may be harmful to the individual
1046 ~~patient~~ or others, in which case the administrator may direct
1047 reasonable examination of such mail and may regulate the
1048 disposition of such items or substances.

1049 (c) Each facility shall allow ~~must permit~~ immediate access
1050 to an individual held for examination or admitted for mental
1051 health treatment ~~any patient~~, subject to the ~~patient's~~ right to
1052 deny or withdraw consent at any time, by the individual, or by
1053 the individual's ~~patient's~~ family members, guardian, guardian
1054 advocate, health care surrogate or proxy, representative,
1055 ~~Florida statewide or local advocacy council~~, or attorney, unless
1056 such access would be detrimental to the individual ~~patient~~. If
1057 ~~the a patient's~~ right to communicate or to receive visitors is
1058 restricted by the facility, written notice of such restriction
1059 and the reasons for the restriction shall be served on the
1060 individual and the individual's attorney, ~~patient, the patient's~~
1061 ~~attorney, and the patient's~~ guardian, guardian advocate, health
1062 care surrogate or proxy, or representative; and such restriction
1063 and the reason for the restriction, shall be recorded in ~~on~~ the
1064 ~~patient's~~ clinical record ~~with the reasons therefor~~. The
1065 restriction must ~~of a patient's right to communicate or to~~
1066 ~~receive visitors shall~~ be reviewed at least every 7 days. The
1067 right to communicate or receive visitors may ~~shall~~ not be
1068 restricted as a means of punishment. ~~Nothing in~~ This paragraph
1069 does not ~~shall be construed to~~ limit the establishment of rules
1070 under ~~provisions of~~ paragraph (d).

1071 (d) Each facility shall establish reasonable rules
1072 governing visitors, visiting hours, and the use of telephones by
1073 individuals held for examination or admitted for mental health

36-01520-17

20171756__

1074 treatment patients in the least restrictive possible manner. An
 1075 individual has ~~Patients shall have~~ the right to contact and to
 1076 receive communication from his or her ~~their~~ attorneys at any
 1077 reasonable time.

1078 (e) Each individual held for examination or admitted for
 1079 mental health treatment patient receiving mental health
 1080 ~~treatment in any facility~~ shall have ready access to a telephone
 1081 in order to report an alleged abuse. The facility staff shall
 1082 orally and in writing inform each individual patient of the
 1083 procedure for reporting abuse and shall make every reasonable
 1084 effort to present the information in a language that the
 1085 individual patient understands. A written copy of that
 1086 procedure, including the telephone number of the central abuse
 1087 hotline and reporting forms, shall be posted in plain view.

1088 (f) The department must ~~shall~~ adopt rules providing a
 1089 procedure for reporting alleged abuse. Facility staff ~~shall be~~
 1090 ~~required~~, as a condition of employment, must ~~to~~ become familiar
 1091 with the requirements and procedures for ~~the~~ reporting ~~of~~ abuse.

1092 (6) CARE AND CUSTODY OF PERSONAL EFFECTS ~~OF PATIENTS.~~ The
 1093 rights of an individual held for examination or admitted for
 1094 mental health treatment ~~A patient's right~~ to the possession of
 1095 his or her clothing and personal effects shall be respected. The
 1096 facility may take temporary custody of such effects if ~~when~~
 1097 required for medical and safety reasons. The ~~A patient's~~
 1098 clothing and personal effects shall be inventoried upon their
 1099 removal into temporary custody. Copies of this inventory shall
 1100 be given to the individual and his or her ~~patient and to the~~
 1101 ~~patient's~~ guardian, guardian advocate, health care surrogate or
 1102 proxy, or representative and shall be recorded in the ~~patient's~~

36-01520-17

20171756__

1103 clinical record. This inventory may be amended upon the request
 1104 of the individual and his or her ~~patient or the patient's~~
 1105 guardian, guardian advocate, health care surrogate or proxy, or
 1106 representative. The inventory and any amendments to it must be
 1107 witnessed by two members of the facility staff and by the
 1108 individual patient, if able. All of ~~the a patient's~~ clothing and
 1109 personal effects held by the facility ~~must shall~~ be returned to
 1110 the individual patient immediately upon his or her ~~the~~ discharge
 1111 or transfer ~~of the patient~~ from the facility, unless such return
 1112 would be detrimental to the individual patient. If personal
 1113 effects are not returned ~~to the patient~~, the reason must be
 1114 documented in the clinical record along with the disposition of
 1115 the clothing and personal effects, which may be given instead to
 1116 the individual's patient's guardian, guardian advocate, health
 1117 care surrogate or proxy, or representative. As soon as
 1118 practicable after an emergency transfer ~~of a patient~~, the
 1119 individual's patient's clothing and personal effects shall be
 1120 transferred to the individual's patient's new location, together
 1121 with a copy of the inventory and any amendments, unless an
 1122 alternate plan is approved by the individual patient, if he or
 1123 she is able, and by his or her ~~the patient's~~ guardian, guardian
 1124 advocate, health care surrogate or proxy, or representative.

1125 (7) VOTING IN PUBLIC ELECTIONS.—An individual held for
 1126 examination or admitted for mental health treatment ~~A patient~~
 1127 who is eligible to vote according to the laws of the state has
 1128 the right to vote in ~~the~~ primary, and general, and special
 1129 elections. The department shall establish rules to enable such
 1130 individuals patients to obtain voter registration forms,
 1131 applications for vote-by-mail ballots, and vote-by-mail ballots.

36-01520-17

20171756__

1132 (8) HABEAS CORPUS.—

1133 (a) At any time, and without notice, an individual held for
1134 mental health examination or admitted for inpatient treatment in
1135 ~~a person held in a receiving or treatment~~ facility, or a
1136 relative, friend, guardian, guardian advocate, health care
1137 surrogate or proxy, representative, or attorney, or the
1138 department, on behalf of such individual ~~person~~, may petition
1139 for a writ of habeas corpus to question the cause and legality
1140 of such detention and request that the court order a return to
1141 the writ in accordance with chapter 79. Each individual ~~patient~~
1142 held in a facility shall receive a written notice of the right
1143 to petition for a writ of habeas corpus.

1144 (b) At any time, and without notice, an individual held for
1145 mental health examination or admitted for inpatient treatment ~~a~~
1146 ~~person who is a patient~~ in a ~~receiving or treatment~~ facility, or
1147 a relative, friend, guardian, guardian advocate, health care
1148 surrogate or proxy, representative, or attorney, or the
1149 department, on behalf of such individual ~~person~~, may file a
1150 petition in the circuit court in the county where the individual
1151 ~~patient~~ is being held alleging that he or she ~~the patient~~ is
1152 being unjustly denied a right or privilege granted under this
1153 part herein or that a procedure authorized under this part
1154 ~~herein~~ is being abused. Upon the filing of such a petition, the
1155 court may ~~shall have the authority~~ to conduct a judicial inquiry
1156 and ~~to~~ issue any order ~~needed~~ to correct an abuse of the
1157 provisions of this part.

1158 (c) The administrator of any ~~receiving or treatment~~
1159 facility receiving a petition under this subsection shall file
1160 the petition with the clerk of the court no later than on the

36-01520-17

20171756__

1161 next court working day.

1162 (d) ~~A No~~ fee may not ~~shall~~ be charged for the filing of a
1163 petition under this subsection.

1164 (9) VIOLATIONS.—The department shall report to the Agency
1165 for Health Care Administration and the Department of Health any
1166 violation of the rights or privileges of individuals patients,
1167 or of any procedures provided under this part, by any facility
1168 or professional licensed or regulated under state law ~~by the~~
1169 ~~agency. The agency is authorized to impose~~ Any sanction
1170 authorized for violation of this part may be imposed, based
1171 solely on the investigation and findings of the department.

1172 (10) LIABILITY FOR VIOLATIONS.—~~A Any~~ person who violates or
1173 abuses ~~the any~~ rights or privileges of individuals held or
1174 admitted for mental health treatment patients provided under ~~by~~
1175 this part is liable for damages as determined by law. ~~A Any~~
1176 person who acts reasonably, in good faith, and without
1177 negligence in compliance with ~~the provisions of~~ this part is
1178 immune from civil or criminal liability for his or her actions
1179 in connection with the preparation or execution of petitions,
1180 applications, certificates, reports, or other documents
1181 initiating admission to a facility or the apprehension,
1182 detention, transportation, examination, admission, diagnosis,
1183 treatment, or discharge of an individual ~~a patient~~ to or from a
1184 facility. ~~However, this section does not relieve any person from~~
1185 ~~liability if such person commits negligence.~~

1186 (11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE
1187 PLANNING.—An individual held for examination or admitted for
1188 mental health treatment ~~The patient~~ shall have the opportunity
1189 to participate in treatment and discharge planning and shall be

36-01520-17

20171756__

1190 notified in writing of his or her right, upon discharge from the
 1191 facility, to seek treatment from the professional or agency of
 1192 the individual's ~~patient's~~ choice.

1193 (12) ADVANCE DIRECTIVES.—All service providers providing
 1194 services under this part shall provide information concerning
 1195 advance directives and assist individuals who are competent and
 1196 willing to complete an advance directive. The directive may
 1197 include instructions regarding mental health or substance abuse
 1198 treatment. Service providers providing services under this part
 1199 shall honor the advance directive of individuals they serve, or
 1200 shall request a transfer for the individual as required by s.
 1201 765.1105.

1202 (13) ~~(12)~~ POSTING OF NOTICE OF RIGHTS OF PATIENTS.—Each
 1203 facility shall post a notice that lists and describes listing
 1204 and describing, in the language and terminology that the
 1205 individual persons to whom the notice is addressed can
 1206 understand, the rights provided under in this section. This
 1207 notice must shall include a statement that provisions of the
 1208 federal Americans with Disabilities Act apply and the name and
 1209 telephone number of a person to contact for further information.
 1210 The This notice must shall be posted in a place readily
 1211 accessible to individuals patients and in a format easily seen
 1212 by the individuals served patients. The This notice must shall
 1213 include the telephone numbers of Disability Rights Florida, Inc
 1214 the Florida local advocacy council and Advocacy Center for
 1215 Persons with Disabilities, Inc.

1216 Section 8. Section 394.4593, Florida Statutes, is amended
 1217 to read:

1218 394.4593 Sexual misconduct prohibited; reporting required;

36-01520-17

20171756__

1219 penalties.—

1220 (1) As used in this section, the term:

1221 (a) "Employee" means ~~includes any~~ paid staff member,
1222 volunteer, or intern of the department or a service provider
1223 providing services pursuant to this part; any person under
1224 contract with the department or a service provider providing
1225 services pursuant to this part; and any person providing care or
1226 support to an individual ~~a client~~ on behalf of the department or
1227 its service providers.

1228 (b) "Sexual activity" means:

1229 1. Fondling the genital area, groin, inner thighs,
1230 buttocks, or breasts of an individual ~~a person~~.

1231 2. The oral, anal, or vaginal penetration by or union with
1232 the sexual organ of another or the anal or vaginal penetration
1233 of another by any other object.

1234 3. Intentionally touching in a lewd or lascivious manner
1235 the breasts, genitals, the genital area, or buttocks, or the
1236 clothing covering them, of an individual ~~a person~~, or forcing or
1237 enticing an individual ~~a person~~ to touch the perpetrator.

1238 4. Intentionally masturbating in the presence of another
1239 individual person.

1240 5. Intentionally exposing the genitals in a lewd or
1241 lascivious manner in the presence of another individual ~~person~~.

1242 6. Intentionally committing any other sexual act that does
1243 not involve actual physical or sexual contact with another
1244 individual ~~the victim~~, including, but not limited to,
1245 sadomasochistic abuse, sexual bestiality, or the simulation of
1246 any act involving sexual activity in the presence of the
1247 individual ~~a victim~~.

36-01520-17

20171756__

1248 (c) "Sexual misconduct" means any sexual activity between
 1249 an employee and an individual held or admitted for examination
 1250 or treatment pursuant to this part ~~a patient~~, regardless of the
 1251 consent of that individual ~~the patient~~. The term does not
 1252 include an act done for a bona fide medical purpose or an
 1253 internal search conducted in the lawful performance of duty by
 1254 an employee.

1255 (2) An employee who engages in sexual misconduct with an
 1256 individual ~~a patient~~ who:

- 1257 ~~(a) Is in the custody of the department; or~~
- 1258 ~~(b) Resides in a receiving facility or a treatment~~
 1259 ~~facility, as those terms are defined in s. 394.455,~~

1260
 1261 commits a felony of the second degree, punishable as provided in
 1262 s. 775.082, s. 775.083, or s. 775.084. An employee may be found
 1263 guilty of violating this subsection without having committed the
 1264 crime of sexual battery.

1265 (3) The consent of an individual held or admitted for
 1266 examination or treatment ~~the patient~~ to sexual activity is not a
 1267 defense to prosecution under this section.

1268 (4) This section does not apply to an employee who, at the
 1269 time of the sexual activity:

- 1270 (a) Is legally married to the individual involved in the
 1271 sexual activity ~~patient~~; or
- 1272 (b) Has no reason to believe that the individual involved
 1273 in the sexual activity is held or admitted for examination or
 1274 treatment pursuant to this part ~~person with whom the employee~~
 1275 ~~engaged in sexual misconduct is a patient receiving services as~~
 1276 ~~described in subsection (2).~~

36-01520-17

20171756__

1277 (5) An employee who witnesses sexual misconduct, or who
1278 otherwise knows or has reasonable cause to suspect that a person
1279 has engaged in sexual misconduct, shall immediately report the
1280 incident to the department's central abuse hotline and to the
1281 appropriate local law enforcement agency. Such employee shall
1282 also prepare, date, and sign an independent report that
1283 specifically describes the nature of the sexual misconduct, the
1284 location and time of the incident, and the persons involved. The
1285 employee shall deliver the report to the supervisor or program
1286 director, who is responsible for providing copies to the
1287 department's inspector general. The inspector general shall
1288 immediately conduct an appropriate administrative investigation,
1289 and, if there is probable cause to believe that sexual
1290 misconduct has occurred, the inspector general shall notify the
1291 state attorney in the circuit in which the incident occurred.

1292 (6) (a) Any person who is required to make a report under
1293 this section and who knowingly or willfully fails to do so, or
1294 who knowingly or willfully prevents another person from doing
1295 so, commits a misdemeanor of the first degree, punishable as
1296 provided in s. 775.082 or s. 775.083.

1297 (b) Any person who knowingly or willfully submits
1298 inaccurate, incomplete, or untruthful information with respect
1299 to a report required under this section commits a misdemeanor of
1300 the first degree, punishable as provided in s. 775.082 or s.
1301 775.083.

1302 (c) Any person who knowingly or willfully coerces or
1303 threatens any other person with the intent to alter testimony or
1304 a written report regarding an incident of sexual misconduct
1305 commits a felony of the third degree, punishable as provided in

36-01520-17

20171756__

1306 s. 775.082, s. 775.083, or s. 775.084.

1307 (7) The provisions and penalties set forth in this section
1308 are in addition to any other civil, administrative, or criminal
1309 action provided by law which may be applied against an employee.

1310 Section 9. Section 394.4595, Florida Statutes, is repealed.

1311 Section 10. Section 394.4596, Florida Statutes, is created
1312 to read:

1313 394.4596 Federally mandated protection and advocacy system
1314 for individuals with disabilities.—The agency designated by the
1315 governor as the federally mandated protection and advocacy
1316 system for individuals with disabilities has specific access
1317 authority under federal law to facilities, individuals,
1318 information, and records. Any facility defined in s. 394.455(12)
1319 shall allow this agency to exercise access authority provided to
1320 it by state and federal law.

1321 Section 11. Section 394.4597, Florida Statutes, is amended
1322 to read:

1323 394.4597 Persons to be notified; individual's ~~patient's~~
1324 representative.—

1325 (1) VOLUNTARY ADMISSION PATIENTS.—At the time an individual
1326 ~~a patient~~ is voluntarily admitted to a receiving or treatment
1327 facility, the individual shall be asked to identify a person to
1328 be notified in case of an emergency, and the identity and
1329 contact information of that a person to be notified in case of
1330 ~~an emergency~~ shall be entered in the ~~patient's~~ clinical record.

1331 (2) INVOLUNTARY ADMISSION PATIENTS.—

1332 (a) At the time an individual ~~a patient~~ is admitted to a
1333 facility for involuntary examination or services placement, or
1334 when a petition for involuntary services placement is filed, the

36-01520-17

20171756__

1335 name, address, and telephone number ~~names, addresses, and~~
1336 ~~telephone numbers~~ of the individual's ~~patient's~~ guardian or
1337 guardian advocate, health care surrogate or proxy, or
1338 representative if he or she ~~the patient~~ has no guardian, and the
1339 individual's ~~patient's~~ attorney shall be entered in the
1340 ~~patient's~~ clinical record.

1341 (b) If the individual ~~patient~~ has no guardian, guardian
1342 advocate, health care surrogate, or proxy, ~~he or she the patient~~
1343 shall be asked to designate a representative. If the individual
1344 ~~patient~~ is unable or unwilling to designate a representative,
1345 the facility shall select a representative.

1346 (c) The individual ~~patient~~ shall be consulted with regard
1347 to the selection of a representative by the receiving or
1348 treatment facility and may ~~shall have authority to~~ request that
1349 ~~the any such~~ representative be replaced.

1350 (d) ~~If~~ When the receiving or treatment facility selects a
1351 representative, first preference shall be given to a health care
1352 surrogate, if one has been previously selected ~~by the patient~~.
1353 If the individual ~~patient~~ has not previously selected a health
1354 care surrogate, the selection, except for good cause documented
1355 in the ~~patient's~~ clinical record, shall be made from the
1356 following list in the order of listing:

- 1357 1. The individual's ~~patient's~~ spouse.
- 1358 2. An adult child of the individual ~~patient~~.
- 1359 3. A parent of the individual ~~patient~~.
- 1360 4. The adult next of kin of the individual ~~patient~~.
- 1361 5. An adult friend of the individual ~~patient~~.

1362 (e) The following persons are prohibited from selection as
1363 an individual's ~~a patient's~~ representative:

36-01520-17

20171756__

- 1364 1. A professional providing clinical services to the
1365 individual ~~patient~~ under this part.
- 1366 2. The licensed professional who initiated the involuntary
1367 examination of the individual ~~patient~~, if the examination was
1368 initiated by professional certificate.
- 1369 3. An employee, a volunteer, a contractor, an
1370 administrator, or a board member of the facility providing the
1371 examination of the individual ~~patient~~.
- 1372 4. An employee, a volunteer, a contractor, an
1373 administrator, or a board member of a treatment facility
1374 providing treatment for the individual ~~patient~~.
- 1375 5. A person providing any substantial professional services
1376 to the individual ~~patient~~, including clinical and nonclinical
1377 services.
- 1378 6. A creditor of the individual ~~patient~~.
- 1379 7. A person who is a party ~~subject~~ to an injunction for
1380 protection against domestic violence under s. 741.30, whether
1381 the order of injunction is temporary or final, and for which the
1382 individual ~~patient~~ was the petitioner.
- 1383 8. A person who is a party ~~subject~~ to an injunction for
1384 protection against repeat violence, stalking, sexual violence,
1385 or dating violence under s. 784.046, whether the order of
1386 injunction is temporary or final, and for which the individual
1387 ~~patient~~ was the petitioner.
- 1388 (f) The representative selected by the individual or
1389 designated by the facility has the right, authority, and
1390 responsibility to:
- 1391 1. Receive notice of the individual's admission;
1392 2. Receive notice of proceedings affecting the individual;

36-01520-17

20171756__

- 1393 3. Have immediate access to the individual unless such
1394 access is documented to be detrimental to the individual;
- 1395 4. Receive notice of any restriction of the individual's
1396 right to communicate or receive visitors;
- 1397 5. Receive a copy of the inventory of clothing and personal
1398 effects upon the individual's admission and to request an
1399 amendment to the inventory at any time;
- 1400 6. Receive disposition of the individual's clothing and
1401 personal effects if not returned to the individual, or to
1402 approve an alternate plan;
- 1403 7. Petition on behalf of the individual for a writ of
1404 habeas corpus to question the cause and legality of the
1405 individual's detention or to allege that the individual is being
1406 unjustly denied a right or privilege granted under this part, or
1407 that a procedure authorized under this part is being abused;
- 1408 8. Apply for a change of venue for the individual's
1409 involuntary services placement hearing for the convenience of
1410 the parties or witnesses or because of the individual's
1411 condition;
- 1412 9. Receive written notice of any restriction of the
1413 individual's right to inspect his or her clinical record;
- 1414 10. Receive notice of the release of the individual from a
1415 receiving facility where an involuntary examination was
1416 performed;
- 1417 11. Receive a copy of any petition for the individual's
1418 involuntary services filed with the court; and
- 1419 12. Be informed by the court of the individual's right to
1420 an independent expert evaluation pursuant to involuntary
1421 services procedures.

36-01520-17

20171756__

1422 Section 12. Section 394.4598, Florida Statutes, is amended
1423 to read:

1424 394.4598 Guardian advocate.—

1425 (1) The administrator may petition the court for the
1426 appointment of a guardian advocate based upon the opinion of a
1427 psychiatrist that an individual held for examination or admitted
1428 for mental health treatment ~~the patient~~ is incompetent to
1429 consent to treatment. If the court finds that the individual ~~a~~
1430 ~~patient~~ is incompetent to consent to treatment and has not been
1431 adjudicated incapacitated and a guardian having ~~with the~~
1432 authority to consent to mental health or substance abuse
1433 treatment has not been appointed, it shall appoint a guardian
1434 advocate. The individual ~~patient~~ has the right to have an
1435 attorney represent him or her at the hearing. If the individual
1436 is not otherwise represented by counsel ~~person is indigent~~, the
1437 court shall appoint the office of the public defender to
1438 represent him or her at the hearing. The individual ~~patient~~ has
1439 the right to testify, cross-examine witnesses, and present
1440 witnesses. The proceeding must ~~shall~~ be recorded ~~either~~
1441 electronically or stenographically, and testimony shall be
1442 ~~provided~~ under oath. One of the professionals authorized to give
1443 an opinion in support of a petition for involuntary services
1444 ~~placement~~, as described in ~~s. 394.4655 or s. 394.467~~, shall ~~must~~
1445 testify. The ~~A~~ guardian advocate shall ~~must~~ meet the
1446 qualifications of a guardian pursuant to ~~contained in~~ part IV of
1447 chapter 744. A person may not be appointed as a guardian
1448 advocate unless he or she agrees, ~~except that a professional~~
1449 ~~referred to in this part, an employee of the facility providing~~
1450 ~~direct services to the patient under this part, a departmental~~

36-01520-17

20171756__

1451 ~~employee, a facility administrator, or member of the Florida~~
1452 ~~local advocacy council shall not be appointed. A person who is~~
1453 ~~appointed as a guardian advocate must agree to the appointment.~~

1454 (2) The following persons are prohibited from being
1455 appointed as an individual's appointment as a patient's guardian
1456 advocate:

1457 (a) A professional providing clinical services to the
1458 individual patient under this part.

1459 (b) The licensed professional who initiated the involuntary
1460 examination of the individual patient, if the examination was
1461 initiated by professional certificate.

1462 (c) An employee, a contractor, a volunteer, an
1463 administrator, or a board member of the facility providing the
1464 examination of the individual patient.

1465 (d) An employee, a contractor, a volunteer, an
1466 administrator, or a board member of a treatment facility
1467 providing treatment of the individual patient.

1468 (e) A person providing any substantial professional
1469 services, ~~excluding public and professional guardians~~, to the
1470 individual patient, including clinical and nonclinical services.

1471 (f) A creditor of the individual patient.

1472 (g) A party person ~~subject~~ to an injunction for protection
1473 against domestic violence under s. 741.30, whether the order of
1474 injunction is temporary or final, and for which the individual
1475 ~~patient~~ was the petitioner.

1476 (h) A party person ~~subject~~ to an injunction for protection
1477 against repeat violence, stalking, sexual violence, or dating
1478 violence under s. 784.046, whether the order of injunction is
1479 temporary or final, and for which the individual patient was the

36-01520-17

20171756__

petitioner.

(3) A facility requesting appointment of a guardian advocate shall, before ~~must, prior to~~ the appointment, provide the prospective guardian advocate with information concerning ~~about~~ the duties and responsibilities of guardian advocates, including the information about the ethics of medical decisionmaking. Before asking a guardian advocate to give consent to treatment for an individual held for examination or admitted for mental health treatment ~~a patient~~, the facility shall provide all disclosures required under s. 394.459(3)(a)2 ~~to the guardian advocate sufficient information so that the guardian advocate can decide whether to give express and informed consent to the treatment, including information that the treatment is essential to the care of the patient, and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects.~~ Before giving consent to treatment, the guardian advocate shall ~~must~~ meet and talk with the individual ~~patient~~ and the individual's ~~patient's~~ physician face-to-face in person, if ~~at all~~ possible, and by telephone, if not. The guardian advocate shall make every effort to make decisions regarding treatment that he or she believes the individual would have made under the circumstances if the individual were capable of making such decision. The decision of the guardian advocate may be reviewed by the court, upon petition of the individual's ~~patient's~~ attorney, the individual's ~~patient's~~ family, or the facility administrator.

(4) In lieu of the training required of guardians appointed under ~~pursuant to~~ chapter 744, a guardian advocate must, at a minimum, complete ~~participate~~ in a 4-hour training course

36-01520-17

20171756__

1509 approved by the court before exercising his or her authority. At
1510 a minimum, this training course must include information
1511 concerning rights of the individual ~~about patient rights,~~
1512 psychotropic medications, the diagnosis of mental illness, the
1513 ethics of medical decisionmaking, and duties of guardian
1514 advocates.

1515 (5) The required training course and the information
1516 provided ~~to be supplied~~ to prospective guardian advocates before
1517 their appointment must be developed by the department and~~,~~
1518 approved by the chief judge of the circuit court, ~~and taught by~~
1519 ~~a court-approved organization, which may include, but is not~~
1520 ~~limited to, a community college, a guardianship organization, a~~
1521 ~~local bar association, or The Florida Bar.~~ The training course
1522 may be web-based, provided in video format, or other electronic
1523 means but must be capable of ensuring the identity and
1524 participation of the prospective guardian advocate. The court
1525 may waive some or all of the training requirements for guardian
1526 advocates or impose additional requirements. The court shall
1527 make its decision on a case-by-case basis and, in making its
1528 decision, shall consider the experience and education of the
1529 guardian advocate, the duties assigned to the guardian advocate,
1530 and the needs of the individual subject to involuntary services
1531 ~~patient.~~

1532 (6) In selecting a guardian advocate, the court shall give
1533 preference to a health care surrogate, if one has already been
1534 designated by the individual held for examination or admitted
1535 for mental health treatment ~~patient.~~ If the individual ~~patient~~
1536 has not previously selected a health care surrogate, except for
1537 good cause documented in the court record, the selection shall

36-01520-17

20171756__

1538 be made from the following list in the order of listing:

1539 (a) The individual's ~~patient's~~ spouse.

1540 (b) An adult child of the individual ~~patient~~.

1541 (c) A parent of the individual ~~patient~~.

1542 (d) The adult next of kin of the individual ~~patient~~.

1543 (e) An adult friend of the individual ~~patient~~.

1544 (f) An adult trained and willing to serve as guardian
1545 advocate for the individual ~~patient~~.

1546 (7) If a guardian having ~~with the~~ authority to consent to
1547 medical treatment has not already been appointed or if the
1548 individual held for examination or admitted for mental health
1549 treatment ~~patient~~ has not already designated a health care
1550 surrogate, the court may authorize the guardian advocate to
1551 consent to medical treatment, as well as mental health and
1552 substance abuse treatment. Unless otherwise limited by the
1553 court, a guardian advocate who has ~~with~~ authority to consent to
1554 medical treatment has ~~shall have~~ the same authority to make
1555 health care decisions and is ~~be~~ subject to the same restrictions
1556 as a proxy appointed under part IV of chapter 765.

1557 (a) Unless the guardian advocate has sought and received
1558 express court approval in proceeding separate from the
1559 proceeding to determine the competence of the individual ~~patient~~
1560 to consent to medical treatment, the guardian advocate may not
1561 consent to:

1562 1. ~~(a)~~ Abortion.

1563 2. ~~(b)~~ Sterilization.

1564 3. ~~(c)~~ Electroconvulsive treatment.

1565 4. ~~(d)~~ Psychosurgery.

1566 5. ~~(e)~~ Experimental treatments that have not been approved

36-01520-17

20171756__

1567 by a federally approved institutional review board in accordance
1568 with 45 C.F.R. part 46 or 21 C.F.R. part 56.

1569 (b) The court must base its decision on evidence that the
1570 treatment or procedure is essential to the care of the patient
1571 and that the treatment does not present an unreasonable risk of
1572 serious, hazardous, or irreversible side effects. The court
1573 shall follow the procedures set forth in subsection (1) of this
1574 section.

1575 (8) The guardian advocate shall be discharged when the
1576 individual for whom he or she is appointed ~~patient~~ is discharged
1577 from an order for involuntary services ~~outpatient placement or~~
1578 ~~involuntary inpatient placement~~ or when the individual ~~patient~~
1579 is transferred from involuntary to voluntary status. The court
1580 ~~or a hearing officer~~ shall consider the competence of the
1581 individual ~~patient~~ pursuant to subsection (1) and may consider
1582 the competence to consent to treatment of an individual on
1583 involuntary status ~~an involuntarily placed patient's competence~~
1584 ~~to consent to treatment~~ at any hearing. Upon sufficient
1585 evidence, the court may restore the individual's, ~~or the hearing~~
1586 ~~officer may recommend that the court restore, the patient's~~
1587 competence. A copy of the order restoring competence or the
1588 certificate of discharge containing the restoration of
1589 competence shall be provided to the individual ~~patient~~ and the
1590 guardian advocate.

1591 Section 13. Paragraphs (c) and (d) of subsection (2) of
1592 section 394.4599, Florida Statutes, are amended to read:

1593 394.4599 Notice.—

1594 (2) INVOLUNTARY ADMISSION.—

1595 (c)1. A receiving facility shall give notice of the

36-01520-17

20171756__

1596 whereabouts of a minor who is being involuntarily held for
1597 examination pursuant to s. 394.463 to the minor's parent,
1598 guardian, caregiver, or guardian advocate, in person or by
1599 telephone or other form of electronic communication, immediately
1600 after the minor's arrival at the facility. The facility may
1601 delay notification for no more than 24 hours after the minor's
1602 arrival if the facility has submitted a report to the central
1603 abuse hotline, pursuant to s. 39.201, based upon knowledge or
1604 suspicion of abuse, abandonment, or neglect and if the facility
1605 deems a delay in notification to be in the minor's best
1606 interest.

1607 2. The receiving facility shall attempt to notify the
1608 minor's parent, guardian, caregiver, or guardian advocate until
1609 the receiving facility receives confirmation from the parent,
1610 guardian, caregiver, or guardian advocate, verbally, by
1611 telephone or other form of electronic communication, or by
1612 recorded message, that notification has been received. Attempts
1613 to notify the parent, guardian, caregiver, or guardian advocate
1614 must be repeated at least once every hour during the first 12
1615 hours after the minor's arrival and once every 24 hours
1616 thereafter and must continue until such confirmation is
1617 received, unless the minor is released at the end of the 72-hour
1618 examination period, or until a petition for involuntary services
1619 is filed with the court pursuant to s. 394.463(2)(f)
1620 ~~394.463(2)(g)~~. The receiving facility may seek assistance from a
1621 law enforcement agency to notify the minor's parent, guardian,
1622 caregiver, or guardian advocate if the facility has not received
1623 within the first 24 hours after the minor's arrival a
1624 confirmation by the parent, guardian, caregiver, or guardian

36-01520-17

20171756__

1625 advocate that notification has been received. The receiving
1626 facility must document notification attempts in the minor's
1627 clinical record.

1628 (d) The written notice of the filing of the petition for
1629 involuntary services for an individual being held must contain
1630 the following:

1631 1. Notice that the petition for:

1632 ~~a.~~ involuntary services ~~inpatient treatment~~ pursuant to s.
1633 394.467 has been filed with the circuit court in the county in
1634 which the individual is hospitalized and the address of such
1635 court; ~~or~~

1636 ~~b. Involuntary outpatient services pursuant to s. 394.4655~~
1637 ~~has been filed with the criminal county court, as defined in s.~~
1638 ~~394.4655(1), or the circuit court, as applicable, in the county~~
1639 ~~in which the individual is hospitalized and the address of such~~
1640 ~~court.~~

1641 2. Notice that the office of the public defender has been
1642 appointed to represent the individual in the proceeding, if the
1643 individual is not otherwise represented by counsel.

1644 3. The date, time, and place of the hearing and the name of
1645 each examining expert and every other person expected to testify
1646 in support of continued detention.

1647 4. Notice that the individual, the individual's guardian,
1648 guardian advocate, health care surrogate or proxy, or
1649 representative, or the administrator may apply for a change of
1650 venue for the convenience of the parties or witnesses or because
1651 of the condition of the individual.

1652 5. Notice that the individual is entitled to an independent
1653 expert examination and, if the individual cannot afford such an

36-01520-17

20171756__

1654 examination, that the court will provide for one.

1655 Section 14. Section 394.460, Florida Statutes, is repealed.

1656 Section 15. Section 394.461, Florida Statutes, is amended
1657 to read:

1658 394.461 Designation of receiving and treatment facilities
1659 and receiving systems.—The department may ~~is authorized to~~
1660 designate and monitor receiving facilities, treatment
1661 facilities, and receiving systems and may suspend or withdraw
1662 such designation for failure to comply with this part and rules
1663 adopted under this part. Only governmental facilities and
1664 facilities ~~Unless~~ designated by the department may, ~~facilities~~
1665 ~~are not permitted to hold or treat individuals on an involuntary~~
1666 ~~basis patients under this part.~~

1667 (1) RECEIVING FACILITY.—The department may designate any
1668 ~~community facility as a receiving facility. Any other facility~~
1669 ~~within the state, including a private facility,~~ as a receiving
1670 facility if or a federal facility, may be so designated by the
1671 ~~department, provided that~~ such designation is agreed to by the
1672 governing body or authority of the facility.

1673 (2) TREATMENT FACILITY.—The department may designate any
1674 state-owned, state-operated, or state-supported facility as a
1675 state treatment facility. An individual may ~~A civil patient~~
1676 ~~shall~~ not be admitted to a civil state treatment facility
1677 without previously undergoing a transfer evaluation. Before a
1678 court hearing for involuntary services placement in a state
1679 treatment facility, the court shall receive and consider the
1680 information documented in the transfer evaluation. Any other
1681 facility, including a private facility or a governmental ~~federal~~
1682 facility, may be designated as a treatment facility by the

36-01520-17

20171756__

1683 department, if the ~~provided that~~ such designation is agreed to
1684 by the appropriate governing body or authority of the facility.

1685 (3) GOVERNMENTAL FACILITIES.—Governmental facilities may
1686 provide voluntary and involuntary mental health or substance
1687 abuse examination and treatment for individuals in their care
1688 and custody using the procedures provided in this part and shall
1689 protect the rights of these individuals.

1690 (4) ~~(3)~~ PRIVATE FACILITIES.—Private facilities designated as
1691 receiving and treatment facilities by the department may provide
1692 examination and treatment of individuals on an involuntary or
1693 voluntary basis are subject to ~~involuntary patients, as well as~~
1694 ~~voluntary patients, and are subject to all the provisions of~~
1695 this part.

1696 (5) ~~(4)~~ REPORTING REQUIREMENTS.—

1697 (a) A facility designated as a public receiving or
1698 treatment facility under this section shall report to the
1699 department individual-level encounter data, as specified by
1700 rule, as part of the service event record, even if such ~~on an~~
1701 ~~annual basis the following data, unless these data are currently~~
1702 ~~being submitted to the Agency for Health Care Administration.~~
1703 The individual level encounter data must be submitted to the
1704 department by the 15th day of the month following the month in
1705 which the facility collects the data.

1706 (b) A facility designated as a public receiving or
1707 treatment facility under this section shall submit to the
1708 department no later than 90 days after the end of the facility's
1709 fiscal year the following aggregate data, even if such data are
1710 currently being submitted to the agency:

1711 1. Number of licensed beds available by payor class.

36-01520-17

20171756__

1712 ~~2. Number of contract days.~~

1713 ~~3. Number of admissions by payor class and diagnoses.~~

1714 ~~2.4. Contracted bed day unit cost~~ Number of bed days by
1715 payor class.

1716 ~~3.5.~~ Average length of stay by payor class.

1717 ~~4.6.~~ Total revenue ~~revenues~~ by payor class.

1718 ~~(c)(b)~~ For the purposes of this subsection, "payor class"
1719 means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-
1720 pay health insurance, private-pay health maintenance
1721 organization, private preferred provider organization, the
1722 Department of Children and Families, other government programs,
1723 self-pay individuals ~~patients~~, and charity care.

1724 ~~(d)(e)~~ The data required under this subsection shall be
1725 submitted to the department within ~~no later than~~ 90 days after
1726 ~~following~~ the end of the facility's fiscal year. ~~A facility~~
1727 ~~designated as a public receiving or treatment facility shall~~
1728 ~~submit its initial report for the 6 month period ending June 30,~~
1729 ~~2008.~~

1730 ~~(e)(d)~~ The department shall issue an annual report based on
1731 the data collected ~~required~~ pursuant to this subsection, which
1732 must include data by facility. ~~The report shall include~~
1733 ~~individual facilities' data,~~ as well as statewide totals. The
1734 report shall be submitted to the Governor, the President of the
1735 Senate, and the Speaker of the House of Representatives.

1736 ~~(6)(5)~~ RECEIVING SYSTEM.—The department shall designate as
1737 a receiving system one or more facilities serving a defined
1738 geographic area developed pursuant to s. 394.4573 which is
1739 responsible for assessment and evaluation, both voluntary and
1740 involuntary, and treatment, stabilization, or triage for

36-01520-17

20171756__

1741 patients who have a mental illness, a substance use disorder, or
1742 co-occurring disorders. Any transportation plans developed
1743 pursuant to s. 394.462 must support the operation of the
1744 receiving system.

1745 (7)~~(6)~~ RULES.—The department may adopt rules relating to:

1746 (a) Procedures and criteria for receiving and evaluating
1747 facility applications for designation as a receiving or
1748 treatment facility, which may include an onsite facility
1749 inspection and evaluation of an applicant's licensing status and
1750 performance history, as well as consideration of local service
1751 needs.

1752 (b) Minimum standards consistent with this part which ~~that~~
1753 a facility must meet and maintain in order to be designated as a
1754 receiving or treatment facility and procedures for monitoring
1755 ~~continued~~ adherence to such standards.

1756 (c) Procedures and criteria for designating receiving
1757 systems which may include consideration of the adequacy of
1758 services provided by facilities within the receiving system to
1759 meet the needs of the geographic area using available resources.

1760 (d) Procedures for receiving complaints against a
1761 designated facility or designated receiving system and for
1762 initiating inspections and investigations of facilities or
1763 receiving systems alleged to have violated the provisions of
1764 this part or rules adopted under this part.

1765 (e) Procedures and criteria for the suspension or
1766 withdrawal of designation as a receiving or treatment facility
1767 or receiving system.

1768 Section 16. Section 394.4615, Florida Statutes, is amended
1769 to read:

36-01520-17

20171756__

1770 394.4615 Clinical records; confidentiality.-

1771 (1) A clinical record shall be maintained for each
1772 individual held for examination or admitted for treatment under
1773 this part ~~patient~~. The record must ~~shall~~ include data pertaining
1774 to admission and such other information as may be required under
1775 rules of the department. A clinical record is confidential and
1776 exempt from ~~the provisions of~~ s. 119.07(1). Unless waived by the
1777 express and informed consent of the individual, his or her, ~~by~~
1778 ~~the patient or the patient's~~ guardian or guardian advocate, his
1779 or her health care surrogate or proxy, or, if ~~the patient is~~
1780 deceased, by his or her ~~the patient's~~ personal representative or
1781 the family member who stands next in line of intestate
1782 succession, the confidential status of the clinical record is
1783 ~~shall not be~~ lost by ~~either~~ authorized or unauthorized
1784 disclosure to any person, organization, or agency.

1785 (2) The clinical record of an individual held for
1786 examination or admitted for treatment under this part shall be
1787 released if ~~when~~:

1788 (a) The individual ~~patient~~ or the individual's ~~patient's~~
1789 guardian, guardian advocate, or health care surrogate or proxy
1790 authorizes the release. The guardian, or guardian advocate, or
1791 health care surrogate or proxy, shall be provided access to the
1792 appropriate clinical records ~~of the patient~~. The individual
1793 ~~patient~~ or the individual's ~~patient's~~ guardian, ~~or~~ guardian
1794 advocate, health care surrogate or proxy may authorize the
1795 release of information and clinical records to appropriate
1796 persons to ensure the continuity of the individual's ~~patient's~~
1797 health care or mental health care.

1798 (b) The individual ~~patient~~ is represented by counsel and

36-01520-17

20171756__

1799 the records are needed by such ~~the patient's~~ counsel for
1800 adequate representation.

1801 (c) A petition for involuntary services is filed and the
1802 records are needed by the state attorney to evaluate the
1803 sufficiency of the petition or to prosecute the petition.
1804 However, the state attorney may not use clinical records
1805 obtained under this part for the purpose of criminal
1806 investigation or prosecution, or for any other purpose not
1807 authorized in this part.

1808 (d)-(e) The court orders such release. In determining
1809 whether there is good cause for disclosure, the court shall
1810 weigh the need for the information to be disclosed against the
1811 possible harm of disclosure to the individual ~~person~~ to whom
1812 such information pertains.

1813 (e)-(d) The individual ~~patient~~ is committed to, or ~~is to be~~
1814 returned to, the Department of Corrections ~~from the Department~~
1815 ~~of Children and Families,~~ and the Department of Corrections
1816 requests the ~~such~~ records. ~~The~~ These records shall be furnished
1817 without charge to the Department of Corrections.

1818 (3) Information from the clinical record may be released if
1819 ~~in the following circumstances:~~

1820 (a) The individual ~~When a patient~~ has declared an intention
1821 to harm self or others ~~other persons~~. If the ~~When such~~
1822 declaration has been made, the administrator may authorize the
1823 release of sufficient information to prevent harm ~~provide~~
1824 ~~adequate warning to the person threatened with harm by the~~
1825 ~~patient.~~

1826 (b) ~~When~~ The administrator of the facility or secretary of
1827 the department deems that release to a qualified researcher as

36-01520-17

20171756__

1828 defined in administrative rule, an aftercare treatment provider,
1829 or an employee or agent of the department is necessary for
1830 treatment of the individual patient, maintenance of adequate
1831 records, compilation of treatment data, aftercare planning, or
1832 evaluation of programs.

1833 (c) The information is necessary for the purpose of
1834 determining whether an individual ~~a person~~ meets the criteria
1835 for involuntary services. In such circumstances ~~outpatient~~
1836 ~~placement or for preparing the proposed treatment plan pursuant~~
1837 ~~to s. 394.4655~~, the clinical record may be released to the state
1838 attorney, the public defender or the individual's ~~patient's~~
1839 private legal counsel, the court, and to the appropriate mental
1840 health professionals, ~~including the service provider identified~~
1841 ~~in s. 394.4655(7)(b)2., in accordance with state and federal~~
1842 ~~law~~.

1843 (4) Information from clinical records may be used for
1844 statistical and research purposes if the information is
1845 abstracted in such a way as to protect the identity of
1846 individuals served and meets the requirements of department
1847 rules.

1848 (5) Information from clinical records may be used by the
1849 Agency for Health Care Administration and, ~~the department, and~~
1850 ~~the Florida advocacy councils~~ for the purpose of monitoring
1851 facility activity and investigating complaints concerning
1852 facilities.

1853 (6) Clinical records relating to a Medicaid recipient shall
1854 be furnished to the Medicaid Fraud Control Unit of the Attorney
1855 General's Office ~~in the Department of Legal Affairs~~, upon
1856 request.

36-01520-17

20171756__

1857 (7) Any person, agency, or entity receiving information
1858 pursuant to this section shall maintain such information as
1859 confidential and exempt from ~~the provisions of~~ s. 119.07(1).

1860 (8) Any facility or private mental health practitioner who
1861 acts in good faith in releasing information pursuant to this
1862 section is not subject to civil or criminal liability for such
1863 release.

1864 (9) ~~Nothing in~~ This section does not ~~is intended to~~
1865 prohibit the parent or next of kin of an individual who is held
1866 for examination or admitted for treatment under this part ~~a~~
1867 ~~person who is held in or treated under a mental health facility~~
1868 ~~or program~~ from requesting and receiving information limited to
1869 a summary of that individual's ~~person's~~ treatment plan and
1870 current physical and mental condition. Release of such
1871 information must ~~shall~~ be in accordance with the code of ethics
1872 of the profession involved.

1873 (10) An individual held for examination or admitted for
1874 treatment ~~Patients~~ shall have reasonable access to his or her
1875 ~~their~~ clinical records, unless such access is determined by the
1876 individual's ~~patient's~~ physician to be harmful to the individual
1877 ~~patient~~. If the individual's ~~patient's~~ right to inspect his or
1878 her clinical record is restricted by the facility, written
1879 notice of the ~~such~~ restriction must ~~shall~~ be given to the
1880 individual and his or her ~~patient and the patient's~~ guardian,
1881 guardian advocate, attorney, health care surrogate or proxy, or
1882 ~~and~~ representative. In addition, the restriction must ~~shall~~ be
1883 recorded in the clinical record, together with the reasons for
1884 it. The restriction expires ~~of a patient's right to inspect his~~
1885 ~~or her clinical record shall expire~~ after 7 days but may be

36-01520-17

20171756__

1886 renewed, after review, for subsequent 7-day periods.

1887 (11) Any person who fraudulently alters, defaces, or
1888 falsifies the clinical record of an individual ~~any person~~
1889 receiving ~~mental health~~ services in a facility subject to this
1890 part, or causes or procures any of these offenses to be
1891 committed, commits a misdemeanor of the second degree,
1892 punishable as provided in s. 775.082 or s. 775.083.

1893 Section 17. Section 394.462, Florida Statutes, is amended
1894 to read:

1895 394.462 Transportation.—A transportation plan shall be
1896 developed and implemented by each county by July 1, 2017, in
1897 collaboration with the managing entity in accordance with this
1898 section. A county may enter into a memorandum of understanding
1899 with the governing boards of nearby counties to establish a
1900 shared transportation plan. When multiple counties enter into a
1901 memorandum of understanding for this purpose, the counties shall
1902 notify the managing entity and provide it with a copy of the
1903 agreement. The transportation plan shall describe methods of
1904 transport to a facility within the designated receiving system
1905 for individuals subject to involuntary examination under s.
1906 394.463 or involuntary admission under s. 397.6772, s. 397.679,
1907 s. 397.6798, or s. 397.6811, and may identify responsibility for
1908 other transportation to a participating facility when necessary
1909 and agreed to by the facility. The plan may rely on emergency
1910 medical transport services or private transport companies, as
1911 appropriate. The plan shall comply with the transportation
1912 provisions of this section and ss. 397.6772, 397.6795, 397.6822,
1913 and 397.697.

1914 (1) TRANSPORTATION TO A RECEIVING FACILITY.—

36-01520-17

20171756__

1915 (a) Each county shall designate a single law enforcement
1916 agency within the county, or portions thereof, to take an
1917 individual ~~a person~~ into custody upon the initiation of an
1918 involuntary mental health examination and to transport that
1919 individual entry of an ex parte order or the execution of a
1920 certificate for involuntary examination by an authorized
1921 professional and to transport that person to the appropriate
1922 facility, excluding a governmental facility, within the
1923 designated receiving system pursuant to a transportation plan or
1924 an exception under subsection (4), or to the nearest receiving
1925 facility if neither apply. However, if the law enforcement
1926 officer providing transportation believes that the individual is
1927 eligible for services provided by the United States Department
1928 of Veterans Affairs, the officer may transport the individual to
1929 a facility operated by the United States Department of Veterans
1930 Affairs.

1931 (b) A law enforcement officer acting in good faith pursuant
1932 to this part may not be held criminally or civilly liable for
1933 false imprisonment.

1934 (c) ~~(b)1.~~ The designated law enforcement agency may decline
1935 to transport the individual ~~person~~ to a receiving facility only
1936 if:

1937 ~~1.a.~~ The county or jurisdiction designated by the county
1938 has contracted ~~on an annual basis~~ with an emergency medical
1939 transport service or private transport company for
1940 transportation of individuals ~~persons~~ to receiving facilities.
1941 ~~pursuant to this section at the sole cost of the county; and~~

1942 ~~2.b.~~ The law enforcement agency and the emergency medical
1943 transport service or private transport company agree that the

36-01520-17

20171756__

1944 continued presence of law enforcement personnel is not necessary
1945 for the safety of the individual being transported ~~person~~ or
1946 others.

1947 ~~3.2.~~ The entity providing transportation ~~may seek~~
1948 ~~reimbursement for transportation expenses. The party responsible~~
1949 ~~for payment for such transportation is the person receiving the~~
1950 ~~transportation. The county shall seek reimbursement from the~~
1951 following sources in the following order:

1952 a. From a private or public third-party payor, if the
1953 individual being transported ~~person receiving the transportation~~
1954 has applicable coverage.

1955 b. From the individual being transported ~~person receiving~~
1956 ~~the transportation.~~

1957 c. From a financial settlement for medical care, treatment,
1958 hospitalization, or transportation payable or accruing to the
1959 injured party.

1960 ~~(d)(e)~~ A company that transports an individual ~~a patient~~
1961 pursuant to this subsection is considered an independent
1962 contractor and is solely liable for the safe and dignified
1963 transport of the individual ~~patient~~. ~~The~~ Such company must be
1964 insured and maintain at least ~~provide no less than~~ \$100,000 in
1965 liability insurance with respect to such ~~the~~ transport ~~of~~
1966 ~~patients.~~

1967 ~~(d) Any company that contracts with a governing board of a~~
1968 ~~county to transport patients shall comply with the applicable~~
1969 ~~rules of the department to ensure the safety and dignity of~~
1970 ~~patients.~~

1971 (e) If ~~When~~ a law enforcement officer takes custody of an
1972 individual ~~a person~~ pursuant to this part, the officer may

36-01520-17

20171756__

1973 request assistance from emergency medical personnel if the ~~such~~
1974 assistance is needed for the safety of the officer or the
1975 individual ~~person~~ in custody.

1976 (f) If ~~When~~ a member of a mental health overlay program or
1977 a mobile crisis response service who is a professional
1978 authorized to initiate an involuntary examination pursuant to s.
1979 394.463 or s. 397.675 ~~and that professional~~ evaluates an
1980 individual ~~a person~~ and determines that transportation to a
1981 receiving facility is needed, the service, ~~at its discretion,~~
1982 may transport the individual ~~person~~ to the facility or may call
1983 on the law enforcement agency or other transportation
1984 arrangement best suited to the needs of the individual being
1985 transported ~~patient~~.

1986 (g) If ~~When any~~ law enforcement officer has custody of an
1987 individual ~~a person~~ based on a misdemeanor or a felony, other
1988 than a forcible felony as defined in s. 776.08, who either
1989 ~~noncriminal or minor criminal behavior that~~ meets the statutory
1990 guidelines for involuntary examination pursuant to s. 394.463,
1991 the law enforcement officer shall transport the individual
1992 ~~person~~ to the appropriate facility within the designated
1993 receiving system pursuant to a transportation plan or an
1994 exception under subsection (4), or to the nearest receiving
1995 facility if neither apply. Individuals ~~Persons~~ who meet the
1996 statutory guidelines for involuntary admission pursuant to s.
1997 397.675 may also be transported by law enforcement officers to
1998 the extent resources are available and as otherwise provided by
1999 law. Such persons shall be transported to an appropriate
2000 facility within the designated receiving system pursuant to a
2001 transportation plan or an exception under subsection (4), or to

36-01520-17

20171756__

2002 the nearest facility if neither apply.

2003 (h) If a ~~When any~~ law enforcement officer has arrested an
2004 individual ~~a person~~ for a forcible felony, as defined in s.
2005 776.08, and it appears that the individual ~~person~~ meets the
2006 criteria ~~statutory guidelines~~ for involuntary examination ~~or~~
2007 ~~placement~~ under this part, the individual ~~such person~~ must first
2008 be processed in the same manner as any other criminal suspect.
2009 The law enforcement agency shall thereafter immediately notify
2010 the appropriate facility within the designated receiving system
2011 pursuant to a transportation plan or an exception under
2012 subsection (4), or to the nearest receiving facility if neither
2013 apply. The receiving facility shall be responsible for promptly
2014 arranging for the examination and treatment of the individual
2015 ~~person~~. A receiving facility is not required to admit an
2016 individual ~~a person~~ charged with a forcible felony, as defined
2017 in s. 776.08, ~~crime~~ for whom the facility determines and
2018 documents that it is unable to provide adequate security, but
2019 shall provide examination and treatment to the individual ~~person~~
2020 where he or she is held.

2021 (i) If the appropriate law enforcement officer believes
2022 that an individual ~~a person~~ has an emergency medical condition
2023 as defined in s. 395.002, the individual ~~person~~ may be ~~first~~
2024 transported to a hospital for emergency medical treatment,
2025 regardless of whether the hospital is a designated receiving
2026 facility.

2027 (j) The costs of transportation, evaluation,
2028 hospitalization, and treatment incurred under this subsection by
2029 an individual who was ~~persons who have been~~ arrested for a
2030 violation ~~violations~~ of any state law or county or municipal

36-01520-17

20171756__

2031 ordinance may be recovered as provided in s. 901.35.

2032 (k) The appropriate facility within the designated
2033 receiving system pursuant to a transportation plan or an
2034 exception under subsection (4), or the nearest receiving
2035 facility if neither apply, must accept an individual ~~persons~~
2036 brought by law enforcement officers, or an emergency medical
2037 transport service or a private transport company authorized by
2038 the county, for involuntary examination pursuant to s. 394.463.
2039 The original of the form initiating the involuntary examination
2040 is not required for a receiving facility to accept such an
2041 individual or for transfers from one facility to another.

2042 (l) The appropriate facility within the designated
2043 receiving system pursuant to a transportation plan or an
2044 exception under subsection (4), or the nearest receiving
2045 facility if neither apply, must provide persons brought by law
2046 enforcement officers, or an emergency medical transport service
2047 or a private transport company authorized by the county,
2048 pursuant to s. 397.675, a basic screening or triage sufficient
2049 to refer the person to the appropriate services.

2050 (m) Each law enforcement agency designated pursuant to
2051 paragraph (a) shall establish a policy that reflects a single
2052 set of protocols for the safe and secure transportation and
2053 transfer of custody of the individual ~~person~~. Each law
2054 enforcement agency shall provide a copy of the protocols to the
2055 managing entity.

2056 (n) If ~~When~~ a jurisdiction has entered into a contract with
2057 an emergency medical transport service or a private transport
2058 company for transportation of individuals ~~persons~~ to facilities
2059 within the designated receiving system, such service or company

36-01520-17

20171756__

2060 shall be given preference for transportation of individuals
2061 ~~persons~~ from nursing homes, assisted living facilities, adult
2062 day care centers, or adult family-care homes, unless the
2063 behavior of the individual ~~person~~ being transported is such that
2064 transportation by a law enforcement officer is necessary.

2065 (o) This section does not ~~may not be construed to~~ limit
2066 emergency examination and treatment of incapacitated persons
2067 provided in accordance with s. 401.445.

2068 (p) A law enforcement officer may transport an individual
2069 who appears to meet the criteria for voluntary admission under
2070 s. 394.4625(1)(a) to a receiving facility at the individual's
2071 request.

2072 (2) TRANSPORTATION TO A TREATMENT FACILITY.—

2073 (a) If the individual held for examination or admitted for
2074 treatment under this part or neither the patient nor any person
2075 legally obligated or responsible for the individual ~~patient~~ is
2076 not able to pay for the expense of transporting an individual a
2077 ~~voluntary or involuntary patient~~ to a treatment facility, the
2078 transportation plan established by the governing board of the
2079 county or counties must specify how the hospitalized patient
2080 will be transported to, from, and between facilities in a safe
2081 and dignified manner.

2082 (b) A company that transports an individual ~~a patient~~
2083 pursuant to this subsection is considered an independent
2084 contractor and is solely liable for the safe and dignified
2085 transportation of the individual ~~patient~~. The ~~Such~~ company must
2086 be insured and provide at least ~~no less than~~ \$100,000 in
2087 liability insurance for such ~~with respect to the transport of~~
2088 ~~patients~~.

36-01520-17

20171756__

2089 ~~(c) A company that contracts with one or more counties to~~
2090 ~~transport patients in accordance with this section shall comply~~
2091 ~~with the applicable rules of the department to ensure the safety~~
2092 ~~and dignity of patients.~~

2093 (c) ~~(d)~~ County or municipal law enforcement and correctional
2094 personnel and equipment may not be used to transport an
2095 individual ~~patients~~ adjudicated incapacitated or found by the
2096 court to meet the criteria for involuntary services under
2097 ~~placement pursuant to~~ s. 394.467, except in small rural counties
2098 where there are no cost-efficient alternatives.

2099 (3) TRANSFER OF CUSTODY.—Custody of an individual ~~a person~~
2100 who is transported pursuant to this part and, ~~along with~~ related
2101 documentation, shall be relinquished to a responsible person
2102 ~~individual~~ at the appropriate receiving or treatment facility.

2103 (4) EXCEPTIONS.—An exception to the requirements of this
2104 section may be granted by the secretary ~~of the department~~ for
2105 the purposes of improving service coordination or better meeting
2106 the special needs of individuals. A proposal for an exception
2107 shall ~~must~~ be submitted to the department after being approved
2108 by the governing boards of any affected counties.

2109 (a) A proposal for an exception must identify the specific
2110 provision from which an exception is requested; describe how the
2111 proposal will be implemented by participating law enforcement
2112 agencies and transportation authorities; and provide a plan for
2113 the coordination of services.

2114 (b) An ~~The~~ exception may be granted only for:

2115 1. An arrangement centralizing and improving the provision
2116 of services within a county, circuit, or local area ~~district,~~
2117 which may include an exception to the requirement for

36-01520-17

20171756__

2118 transportation to the nearest receiving facility;

2119 2. An arrangement whereby ~~by which~~ a facility may provide,
 2120 in addition to required psychiatric or substance use disorder
 2121 services, an environment and services that ~~which~~ are uniquely
 2122 tailored to the needs of an identified group of individuals who
 2123 have ~~persons with~~ special needs, such as persons who have ~~with~~
 2124 hearing impairments or visual impairments, or elderly persons
 2125 who have ~~with~~ physical frailties; or

2126 3. A specialized transportation system that provides an
 2127 efficient and humane method of transporting individuals ~~patients~~
 2128 to and among receiving facilities, ~~among receiving facilities,~~
 2129 and to treatment facilities.

2130
 2131 ~~The exceptions provided in this subsection shall expire on June~~
 2132 ~~30, 2017, and no new exceptions shall be granted after that~~
 2133 ~~date. After June 30, 2017, the transport of a patient to a~~
 2134 ~~facility that is not the nearest facility must be made pursuant~~
 2135 ~~to a plan as provided in this section.~~

2136 Section 18. Section 394.4625, Florida Statutes, is amended
 2137 to read:

2138 394.4625 Voluntary admissions.—

2139 (1) EXAMINATION AND TREATMENT AUTHORITY TO RECEIVE
 2140 PATIENTS.—

2141 (a) In order to be admitted to a facility on a voluntary
 2142 basis:

2143 1. An individual must show evidence of mental illness.

2144 2. An individual must be suitable for treatment by the
 2145 facility.

2146 3. An adult must provide express and informed consent, and

36-01520-17

20171756__

2147 must be competent to do so.

2148 4. A minor may only be admitted on the basis of the express
2149 and informed consent of the minor's guardian in conjunction with
2150 the assent of the minor.

2151 a. The assent of the minor is an affirmative agreement by
2152 the minor to remain at the facility for examination or
2153 treatment. Mere failure to object is not assent.

2154 b. The minor's assent must be verified through a clinical
2155 assessment that is documented in the clinical record and
2156 conducted within 12 hours after arrival at the facility by a
2157 licensed professional authorized to initiate an involuntary
2158 examination pursuant to s. 394.463.

2159 c. In verifying the minor's assent, the examining
2160 professional must first provide the minor with an explanation as
2161 to why the minor will be examined and treated, what the minor
2162 can expect while in the facility, and when the minor may expect
2163 to be released, using language that is appropriate to the
2164 minor's age, experience, maturity, and condition. The examining
2165 professional must determine and document that the minor is able
2166 to understand this information.

2167 d. Unless the minor's assent is verified pursuant to this
2168 section, a petition for involuntary services must be filed with
2169 the court or the minor must be released to his or her guardian
2170 within 24 hours after arrival ~~A facility may receive for~~
2171 ~~observation, diagnosis, or treatment any person 18 years of age~~
2172 ~~or older making application by express and informed consent for~~
2173 ~~admission or any person age 17 or under for whom such~~
2174 ~~application is made by his or her guardian. If found to show~~
2175 ~~evidence of mental illness, to be competent to provide express~~

36-01520-17

20171756__

2176 ~~and informed consent, and to be suitable for treatment, such~~
2177 ~~person 18 years of age or older may be admitted to the facility.~~
2178 ~~A person age 17 or under may be admitted only after a hearing to~~
2179 ~~verify the voluntariness of the consent.~~

2180 (b) A mental health overlay program or a mobile crisis
2181 response service or a licensed professional who is authorized to
2182 initiate an involuntary examination pursuant to s. 394.463 and
2183 is employed by a community mental health center or clinic shall
2184 ~~must, pursuant to district procedure approved by the respective~~
2185 ~~district administrator,~~ conduct an initial assessment of the
2186 ability of the following individuals ~~persons~~ to give express and
2187 informed consent to treatment before such individuals ~~persons~~
2188 may be admitted voluntarily:

2189 1. An individual ~~A person~~ 60 years of age or older for whom
2190 transfer is being sought from a nursing home, assisted living
2191 facility, adult day care center, or adult family-care home, if
2192 the individual ~~when such person~~ has been diagnosed with ~~as~~
2193 ~~suffering from~~ dementia.

2194 2. An individual ~~A person~~ 60 years of age or older for whom
2195 transfer is being sought from a nursing home pursuant to s.
2196 400.0255(11) ~~400.0255(12)~~.

2197 3. An individual who resides in a facility licensed under
2198 chapter 400 or chapter 429 ~~A person~~ for whom all decisions
2199 concerning medical treatment are currently being lawfully made
2200 by a ~~the~~ health care surrogate or proxy designated under chapter
2201 765.

2202 (c) If ~~When~~ an initial assessment of the ability of an
2203 individual ~~a person~~ to give express and informed consent to
2204 treatment is required under this part ~~section~~, and a mobile

36-01520-17

20171756__

2205 crisis response service does not respond to the request for an
2206 assessment within 2 hours after the request is made or informs
2207 the requesting facility that it will not be able to respond
2208 within 2 hours after the request is made, the requesting
2209 facility may arrange for assessment by a any licensed
2210 professional authorized to initiate an involuntary examination
2211 under pursuant to s. 394.463. The professional may not be who is
2212 not employed by, or under contract with, or and does not have a
2213 financial interest in, ~~either~~ the facility initiating the
2214 transfer or the ~~receiving~~ facility to which the transfer may be
2215 made and may not have a financial interest in the outcome of the
2216 assessment.

2217 (d) A facility may not admit an individual on voluntary
2218 status or transfer an individual to voluntary status as a
2219 ~~voluntary patient a person~~ who has been adjudicated
2220 incapacitated, unless the condition of incapacity has been
2221 judicially removed, except when a court authorized a legal
2222 guardian in strict adherence to s. 744.3725. If a facility
2223 admits an individual on voluntary status who is later determined
2224 to have been adjudicated incapacitated, the facility shall
2225 discharge the individual or transfer the individual to
2226 involuntary status unless there is a court order pursuant to s.
2227 744.3725 as a voluntary patient a person who is later determined
2228 ~~to have been adjudicated incapacitated, and the condition of~~
2229 ~~incapacity had not been removed by the time of the admission,~~
2230 ~~the facility must either discharge the patient or transfer the~~
2231 ~~patient to involuntary status.~~

2232 (e) The health care surrogate or proxy of an individual on
2233 voluntary status a voluntary patient may not consent to the

36-01520-17

20171756__

2234 provision of mental health treatment for that individual ~~the~~
2235 ~~patient~~. An individual on voluntary status ~~A voluntary patient~~
2236 who is unwilling or unable to provide express and informed
2237 consent to mental health treatment must ~~either~~ be discharged or
2238 transferred to involuntary status.

2239 (f) Within 24 hours after an individual's voluntary
2240 admission, a physician or psychologist ~~admission of a voluntary~~
2241 ~~patient, the admitting physician~~ shall document in the ~~patient's~~
2242 clinical record whether the individual ~~that the patient~~ is able
2243 to give express and informed consent for admission. If the
2244 individual ~~patient~~ is not able to give express and informed
2245 consent for admission, the facility must ~~shall either~~ discharge
2246 ~~the patient~~ or transfer the individual ~~patient~~ to involuntary
2247 status pursuant to subsection (5).

2248 (2) RELEASE OR DISCHARGE OF VOLUNTARY PATIENTS.-

2249 (a) A facility shall discharge an individual on voluntary
2250 status who a voluntary patient:

2251 1. ~~Who~~ Has sufficiently improved so that retention in the
2252 facility is no longer clinically appropriate ~~desirable~~. The
2253 individual ~~A patient~~ may ~~also~~ be discharged to the care of a
2254 community facility.

2255 2. Has revoked ~~Who revokes~~ consent to admission or requests
2256 discharge. The individual or his or her ~~A voluntary patient or a~~
2257 relative, friend, or attorney ~~of the patient~~ may request
2258 discharge either orally or in writing at any time following
2259 admission to the facility. The patient must be discharged within
2260 24 hours after ~~of~~ the request, unless the request is rescinded
2261 or the individual ~~patient~~ is transferred to involuntary status
2262 pursuant to this section. The 24-hour time period may be

36-01520-17

20171756__

2263 extended by a treatment facility ~~if~~ when necessary for adequate
2264 discharge planning, but ~~may~~ shall not exceed 3 days excluding
2265 ~~exclusive of~~ weekends and holidays. If the individual patient,
2266 or another on the individual's patient's behalf, makes an oral
2267 request for discharge to a staff member, ~~the~~ such request must
2268 ~~shall~~ be immediately entered in the patient's clinical record.
2269 If the request for discharge is made by a person other than the
2270 individual patient, the discharge may be conditioned upon the
2271 individual's express and informed consent ~~of the patient~~.

2272 (b) An individual on voluntary status ~~A voluntary patient~~
2273 who has been admitted to a facility and who refuses to consent
2274 to or revokes consent to treatment must ~~shall~~ be discharged
2275 within 24 hours after such refusal or revocation, unless he or
2276 she is transferred to involuntary status pursuant to this
2277 section or unless the refusal or revocation is freely and
2278 voluntarily rescinded by the individual patient.

2279 (c) An individual on voluntary status who is currently
2280 charged with a crime shall be discharged to the custody of a law
2281 enforcement officer upon release or discharge from a facility,
2282 unless the individual has been released from law enforcement
2283 custody by posting of a bond, by a pretrial conditional release,
2284 or by other judicial release.

2285 (3) NOTICE OF RIGHT TO DISCHARGE.—At the time of admission
2286 and at least every 3 ~~6~~ months thereafter, an individual on
2287 voluntary status ~~a voluntary patient~~ shall be notified in
2288 writing of his or her right to apply for a discharge.

2289 (4) TRANSFER TO VOLUNTARY STATUS.—An individual on
2290 involuntary status who has been assessed and certified by a
2291 physician or psychologist as competent to provide or refuse to

36-01520-17

20171756__

2292 provide express and informed consent and involuntary patient who
2293 applies to be transferred to voluntary status shall be
2294 transferred to voluntary status immediately, unless the
2295 individual has been ordered to involuntary services ~~patient has~~
2296 ~~been charged with a crime, or has been involuntarily placed for~~
2297 ~~treatment~~ by a court pursuant to s. 394.467 and continues to
2298 meet the criteria for involuntary services placement. When
2299 transfer to voluntary status occurs, notice shall be given as
2300 provided in s. 394.4599.

2301 (5) TRANSFER TO INVOLUNTARY STATUS.—If an individual on
2302 voluntary status ~~When a voluntary patient,~~ or an authorized
2303 person on the individual's ~~patient's~~ behalf, makes a request for
2304 discharge, the request for discharge, unless freely and
2305 voluntarily rescinded, must be communicated to a physician,
2306 ~~elinical~~ psychologist, or psychiatrist as quickly as possible,
2307 but within ~~not later than~~ 12 hours after the request is made. If
2308 the individual ~~patient~~ meets the criteria for involuntary
2309 services, the individual must be transferred to a designated
2310 receiving facility or governmental facility and the
2311 administrator of the receiving or governmental facility where
2312 the individual is held ~~placement, the administrator of the~~
2313 ~~facility~~ must file with the court a petition for involuntary
2314 services placement, within 2 court working days after the
2315 request ~~for discharge~~ is made. If the petition is not filed
2316 within 2 court working days, the individual must ~~patient shall~~
2317 be discharged. Pending the filing of the petition, the
2318 individual ~~patient~~ may be held and emergency mental health
2319 treatment rendered in the least restrictive manner, upon the
2320 written order of a physician, if it is determined that such

36-01520-17

20171756__

2321 treatment is necessary for the safety of the individual ~~patient~~
 2322 or others.

2323 Section 19. Section 394.463, Florida Statutes, is amended
 2324 to read:

2325 394.463 Involuntary examination.—

2326 (1) CRITERIA.—An individual may be subject to ~~A person may~~
 2327 ~~be taken to a receiving facility for~~ involuntary examination if
 2328 there is reason to believe that he or she ~~the person~~ has a
 2329 mental illness and because of this ~~his or her~~ mental illness:

2330 (a)1. The individual ~~person~~ has refused voluntary
 2331 examination after conscientious explanation and disclosure of
 2332 the purpose of the examination; or

2333 2. The individual ~~person~~ is unable to determine for himself
 2334 or herself whether examination is necessary; and

2335 (b)~~1~~. Without care or treatment:~~7~~

2336 1. The individual ~~person~~ is likely to suffer from neglect
 2337 or refuse to care for himself or herself; such neglect or
 2338 refusal poses a real and present threat of substantial physical
 2339 or mental harm to his or her well-being; and it is not apparent
 2340 that the ~~such~~ harm may be avoided through the help of willing
 2341 family members or friends or the provision of other services; or

2342 2. There is a substantial likelihood that individual
 2343 ~~without care or treatment the person~~ will cause serious bodily
 2344 harm to self ~~himself or herself~~ or others in the near future, as
 2345 evidenced by recent behavior.

2346 (2) INVOLUNTARY EXAMINATION.—

2347 (a) An involuntary examination may be initiated by any one
 2348 of the following means:

2349 1. A circuit or county court may enter an ex parte order

36-01520-17

20171756__

2350 stating that an individual ~~a person~~ appears to meet the criteria
2351 for involuntary examination and specifying the findings on which
2352 that conclusion is based. The ex parte order for involuntary
2353 examination must be based on written or oral sworn testimony
2354 that includes specific facts that support the findings. ~~If other~~
2355 ~~less restrictive means are not available, such as voluntary~~
2356 ~~appearance for outpatient evaluation,~~ A law enforcement officer,
2357 or other designated agent of the court, shall take the
2358 individual ~~person~~ into custody and deliver him or her to an
2359 appropriate, or the nearest, facility within the designated
2360 receiving system pursuant to s. 394.462 for involuntary
2361 examination. The ~~order of the court~~ order must ~~shall~~ be made a
2362 part of the ~~patient's~~ clinical record. A fee may not be charged
2363 for the filing of a petition ~~an order~~ under this subsection. A
2364 facility accepting the individual ~~patient~~ based on the ~~this~~
2365 order must send a copy of the order to the department the next
2366 working day. The order may be submitted electronically through
2367 existing data systems, if available. The order is ~~shall be~~ valid
2368 only until the individual ~~person~~ is delivered to the facility or
2369 for the period specified in the order itself, whichever comes
2370 first. If a ~~no~~ time limit is not specified in the order, the
2371 order is ~~shall be~~ valid for 7 days after the date it ~~that the~~
2372 ~~order~~ was signed.

2373 a. A law enforcement officer acting in accordance with an
2374 ex parte order issued pursuant to this subsection may serve and
2375 execute such order on any day of the week, at any time of the
2376 day or night.

2377 b. A law enforcement officer acting in accordance with an
2378 ex parte order issued pursuant to this subsection may use

36-01520-17

20171756__

2379 reasonable physical force if necessary to gain entry to the
2380 premises and any dwellings, buildings, or other structures
2381 located on the premises, and to take custody of the individual
2382 who is the subject of the ex parte order.

2383 2. A law enforcement officer shall take an individual a
2384 ~~person~~ who appears to meet the criteria for involuntary
2385 examination into custody and deliver or arrange for the delivery
2386 of the individual ~~the person or have him or her delivered~~ to an
2387 appropriate, or the nearest, facility within the designated
2388 receiving system pursuant to s. 394.462 for examination. The
2389 officer shall complete ~~execute~~ a written report detailing the
2390 circumstances under which the individual ~~person~~ was taken into
2391 custody, which must be made a part of the ~~patient's~~ clinical
2392 record. A ~~Any~~ facility accepting the individual ~~patient~~ based on
2393 this report must send a copy of the report to the department the
2394 next working day.

2395 3. A physician, ~~clinical~~ psychologist, school psychologist,
2396 psychiatric nurse, mental health counselor, marriage and family
2397 therapist, or clinical social worker, or physician assistant may
2398 complete ~~execute~~ a certificate stating that he or she has
2399 examined the individual ~~a person~~ within the preceding 48 hours
2400 and finds that the individual ~~person~~ appears to meet the
2401 criteria for involuntary examination and stating his or her ~~the~~
2402 observations upon which that conclusion is based. The
2403 certificate shall include specific facts indicating that the
2404 individual would benefit from services. The certificate shall be
2405 executed immediately. If other less restrictive means, such as
2406 ~~voluntary appearance for outpatient evaluation, are not~~
2407 ~~available,~~ A law enforcement officer shall take into custody the

36-01520-17

20171756__

2408 individual ~~person~~ named in the certificate and deliver him or
2409 her to the appropriate, or nearest, facility within the
2410 designated receiving system pursuant to s. 394.462 for
2411 involuntary examination. A law enforcement officer may only take
2412 an individual into custody on the basis of a certificate within
2413 7 calendar days after the certificate is signed. The law
2414 enforcement officer shall complete ~~execute~~ a written report
2415 detailing the circumstances under which the individual ~~person~~
2416 was taken into custody. The report and certificate shall be made
2417 a part of the ~~patient's~~ clinical record. A ~~Any~~ facility
2418 accepting the individual ~~patient~~ based on the ~~this~~ certificate
2419 must send a copy of the certificate to the department the next
2420 working day. The document may be submitted electronically
2421 through existing data systems, if applicable.

2422 (b) A law enforcement officer who initiates an involuntary
2423 examination of an individual pursuant to subparagraph (a)2., or
2424 a professional who initiates an involuntary examination of an
2425 individual pursuant to subparagraph (a)3., may notify the
2426 individual's guardian, representative, or health care surrogate
2427 or proxy of such examination. A receiving facility accepting an
2428 individual for involuntary examination shall make and document
2429 immediate attempts to notify the individual's guardian,
2430 representative, or health care surrogate or proxy upon the
2431 individual's arrival.

2432 (c) ~~(b)~~ An individual ~~A person~~ may not be removed from any
2433 program or residential services ~~placement~~ licensed under chapter
2434 400 or chapter 429 and transported to a receiving facility for
2435 involuntary examination unless an ex parte order, a professional
2436 certificate, or a law enforcement officer's report is first

36-01520-17

20171756__

2437 prepared. If the condition of the individual ~~person~~ is such that
2438 preparation of a law enforcement officer's report is not
2439 practicable before removal, the report must ~~shall~~ be completed
2440 as soon as possible after removal, but ~~in any case~~ before the
2441 individual ~~person~~ is transported to a receiving facility. A
2442 facility admitting an individual ~~a person~~ for involuntary
2443 examination who is not accompanied by the required ex parte
2444 order, professional certificate, or law enforcement officer's
2445 report must ~~shall~~ notify the department of the ~~such~~ admission by
2446 certified mail or by e-mail, if available, by the next working
2447 day. ~~The provisions of this paragraph do not apply when~~
2448 ~~transportation is provided by the patient's family or guardian.~~

2449 ~~(c) A law enforcement officer acting in accordance with an~~
2450 ~~ex parte order issued pursuant to this subsection may serve and~~
2451 ~~execute such order on any day of the week, at any time of the~~
2452 ~~day or night.~~

2453 ~~(d) A law enforcement officer acting in accordance with an~~
2454 ~~ex parte order issued pursuant to this subsection may use such~~
2455 ~~reasonable physical force as is necessary to gain entry to the~~
2456 ~~premises, and any dwellings, buildings, or other structures~~
2457 ~~located on the premises, and to take custody of the person who~~
2458 ~~is the subject of the ex parte order.~~

2459 ~~(d)(e)~~ The department shall receive and maintain the copies
2460 of ex parte petitions and orders for involuntary examinations
2461 pursuant to this section, involuntary services petitions and
2462 ~~orders, involuntary outpatient services orders issued pursuant~~
2463 ~~to s. 394.4655, involuntary inpatient placement orders issued~~
2464 ~~pursuant to s. 394.467, professional certificates, and law~~
2465 ~~enforcement officers' reports. These documents are ~~shall be~~~~

36-01520-17

20171756__

2466 ~~considered~~ part of the clinical record, governed by ~~the~~
2467 ~~provisions of~~ s. 394.4615. These documents shall be used to
2468 prepare annual reports analyzing the data obtained from these
2469 documents, without information identifying individuals held for
2470 examination or admitted for treatment patients, and shall
2471 provide copies of reports to the department, the President of
2472 the Senate, the Speaker of the House of Representatives, and the
2473 minority leaders of the Senate and the House of Representatives.

2474 (e) ~~(f)~~ An individual held for examination ~~A patient~~ shall
2475 be examined by a physician, ~~or a clinical~~ psychologist, or ~~by a~~
2476 psychiatric nurse performing within the framework of an
2477 established protocol with a psychiatrist at a facility without
2478 unnecessary delay to determine if the criteria for involuntary
2479 services are met. Emergency treatment may be provided upon the
2480 order of a physician if the physician determines that such
2481 treatment is necessary for the safety of the individual ~~patient~~
2482 or others.

2483 (f) An individual may not be held for involuntary
2484 examination for more than 72 hours after the time of the
2485 individual's arrival at the facility. Based on the individual's
2486 needs, one of the following actions must be taken within the
2487 involuntary examination period:

2488 1. The individual shall be released with the approval of a
2489 psychiatrist, psychiatric nurse, or psychologist. However, if
2490 the examination is conducted in a hospital, an attending
2491 emergency department physician may approve release. The
2492 professional approving release must have personally conducted
2493 the involuntary examination;

2494 2. The individual shall be asked to give express and

36-01520-17

20171756__

2495 informed consent for voluntary admission if a physician or
2496 psychologist has determined that the individual is competent to
2497 consent to treatment; or

2498 3. A petition for involuntary services shall be completed
2499 and filed within 72 hours after the time of the individual's
2500 arrival at the facility in the circuit court by the receiving
2501 facility administrator if involuntary services are deemed
2502 necessary. If electronic filing of the petition is not available
2503 in the county and the 72-hour period ends on a weekend or legal
2504 holiday, the petition must be filed by the next working day. If
2505 involuntary services are deemed necessary, the least restrictive
2506 treatment consistent with the optimum improvement of the
2507 individual's condition must be made available.

2508 (g) An individual discharged from a receiving or treatment
2509 facility on a voluntary or involuntary basis who is currently
2510 charged with a crime shall be released to the custody of a law
2511 enforcement officer, unless the individual has been released
2512 from law enforcement custody by posting of a bond, by a pretrial
2513 conditional release, or by other judicial release.

2514 ~~The patient may not be released by the receiving facility or~~
2515 ~~its contractor without the documented approval of a psychiatrist~~
2516 ~~or a clinical psychologist or, if the receiving facility is~~
2517 ~~owned or operated by a hospital or health system, the release~~
2518 ~~may also be approved by a psychiatric nurse performing within~~
2519 ~~the framework of an established protocol with a psychiatrist, or~~
2520 ~~an attending emergency department physician with experience in~~
2521 ~~the diagnosis and treatment of mental illness after completion~~
2522 ~~of an involuntary examination pursuant to this subsection. A~~
2523 ~~psychiatric nurse may not approve the release of a patient if~~

36-01520-17

20171756__

2524 ~~the involuntary examination was initiated by a psychiatrist~~
2525 ~~unless the release is approved by the initiating psychiatrist.~~

2526 ~~(g) Within the 72-hour examination period or, if the 72~~
2527 ~~hours ends on a weekend or holiday, no later than the next~~
2528 ~~working day thereafter, one of the following actions must be~~
2529 ~~taken, based on the individual needs of the patient:~~

2530 ~~1. The patient shall be released, unless he or she is~~
2531 ~~charged with a crime, in which case the patient shall be~~
2532 ~~returned to the custody of a law enforcement officer;~~

2533 ~~2. The patient shall be released, subject to the provisions~~
2534 ~~of subparagraph 1., for voluntary outpatient treatment;~~

2535 ~~3. The patient, unless he or she is charged with a crime,~~
2536 ~~shall be asked to give express and informed consent to placement~~
2537 ~~as a voluntary patient and, if such consent is given, the~~
2538 ~~patient shall be admitted as a voluntary patient; or~~

2539 ~~4. A petition for involuntary services shall be filed in~~
2540 ~~the circuit court if inpatient treatment is deemed necessary or~~
2541 ~~with the criminal county court, as defined in s. 394.4655(1), as~~
2542 ~~applicable. When inpatient treatment is deemed necessary, the~~
2543 ~~least restrictive treatment consistent with the optimum~~
2544 ~~improvement of the patient's condition shall be made available.~~
2545 ~~When a petition is to be filed for involuntary outpatient~~
2546 ~~placement, it shall be filed by one of the petitioners specified~~
2547 ~~in s. 394.4655(4)(a). A petition for involuntary inpatient~~
2548 ~~placement shall be filed by the facility administrator.~~

2549 ~~(h) If an individual A person for whom an involuntary~~
2550 ~~examination has been initiated ~~who~~ is also being evaluated or~~
2551 ~~treated at a hospital for an emergency medical condition as~~
2552 ~~defined ~~specified~~ in s. 395.002, the involuntary examination~~

36-01520-17

20171756__

2553 ~~must be examined by a facility within 72 hours. The 72-hour~~
2554 ~~period begins when the individual patient arrives at the~~
2555 ~~hospital and ceases when a ~~the attending~~ physician documents~~
2556 ~~that the individual patient has an emergency medical condition.~~
2557 ~~The 72-hour period resumes when the physician documents that the~~
2558 ~~emergency medical condition has stabilized or does not exist. If~~
2559 ~~the patient is examined at a hospital providing emergency~~
2560 ~~medical services by a professional qualified to perform an~~
2561 ~~involuntary examination and is found as a result of that~~
2562 ~~examination not to meet the criteria for involuntary outpatient~~
2563 ~~services pursuant to s. 394.4655(2) or involuntary inpatient~~
2564 ~~placement pursuant to s. 394.467(1), the patient may be offered~~
2565 ~~voluntary services or placement, if appropriate, or released~~
2566 ~~directly from the hospital providing emergency medical services.~~
2567 ~~The finding by the professional that the patient has been~~
2568 ~~examined and does not meet the criteria for involuntary~~
2569 ~~inpatient services or involuntary outpatient placement must be~~
2570 ~~entered into the patient's clinical record. This paragraph is~~
2571 ~~not intended to prevent A hospital providing emergency medical~~
2572 ~~services may transfer an individual from appropriately~~
2573 ~~transferring a patient to another hospital before stabilization~~
2574 ~~if the requirements of s. 395.1041(3)(c) are ~~have been~~ met.~~

2575 ~~(i)~~ One of the following must occur within 12 hours after a
2576 ~~the patient's attending~~ physician documents that the
2577 individual's patient's medical condition has stabilized or that
2578 an emergency medical condition has been stabilized or does not
2579 exist:

2580 1. The individual shall be examined by a physician,
2581 psychiatric nurse, or psychologist and, if found not to meet the

36-01520-17

20171756__

2582 criteria for involuntary examination pursuant to this section,
 2583 shall be released directly from the hospital providing the
 2584 emergency medical services. The results of the examination,
 2585 including the final disposition, shall be entered into the
 2586 clinical record ~~patient must be examined by a facility and~~
 2587 ~~released; or~~

2588 2. The individual shall be transferred to a receiving
 2589 facility for examination if ~~patient must be transferred to a~~
 2590 ~~designated facility in which~~ appropriate medical and mental
 2591 health treatment is available. However, the receiving facility
 2592 must be notified of the transfer within 2 hours after the
 2593 individual's ~~patient's~~ condition has been stabilized or after
 2594 determination that an emergency medical condition does not
 2595 exist.

2596 (3) NOTICE OF RELEASE.—Notice of the release shall be given
 2597 to the individual's ~~patient's~~ guardian, health care surrogate or
 2598 proxy, or representative, ~~to any person who executed a~~
 2599 ~~certificate admitting the patient to the receiving facility,~~ and
 2600 to any court that ordered the individual's examination ~~which~~
 2601 ~~ordered the patient's evaluation.~~

2602 Section 20. Section 394.4655, Florida Statutes, is
 2603 repealed.

2604 Section 21. Section 394.467, Florida Statutes, is amended
 2605 to read:

2606 394.467 Involuntary services ~~inpatient placement.~~—

2607 (1) CRITERIA.—An individual ~~A person~~ may be ordered for
 2608 involuntary services ~~inpatient placement for treatment~~ upon a
 2609 finding of the court by clear and convincing evidence that:

2610 (a) He or she has a mental illness and because of his or

36-01520-17

20171756__

2611 her mental illness:

2612 1.a. He or she has refused voluntary services ~~inpatient~~
2613 ~~placement for treatment~~ after sufficient and conscientious
2614 explanation and disclosure of the purpose of services or
2615 ~~inpatient placement for treatment~~; or

2616 b. He or she is unable to determine for himself or herself
2617 whether inpatient services are ~~placement is~~ necessary; and

2618 2.a. He or she is incapable of surviving alone or with ~~the~~
2619 ~~help of willing and responsible family or friends, including~~
2620 available alternative services, and, without treatment, is
2621 likely to suffer from neglect or refuse to care for himself or
2622 herself, and such neglect or refusal poses a real and present
2623 threat of substantial physical or mental harm to his or her
2624 well-being; or

2625 b. There is substantial likelihood that in the near future
2626 he or she will inflict serious bodily harm on self or others, as
2627 evidenced by recent behavior causing, attempting, or threatening
2628 such harm; and

2629 (b) All available less restrictive ~~treatment~~ alternatives
2630 that would offer an opportunity for improvement of his or her
2631 condition have been judged to be inappropriate.

2632 (2) ADMISSION TO A TREATMENT FACILITY.—An individual A
2633 ~~patient~~ may be retained by a facility or involuntarily ordered
2634 to placed in a treatment facility upon the recommendation of the
2635 administrator of the facility where the individual patient has
2636 been examined and after adherence to the notice and hearing
2637 procedures provided in s. 394.4599. The recommendation must be
2638 supported by the opinion of a psychiatrist and the second
2639 opinion of a ~~clinical~~ psychologist or another psychiatrist, both

36-01520-17

20171756__

2640 of whom have personally examined the individual patient within
2641 the preceding 72 hours, that the criteria for involuntary
2642 services inpatient placement are met. However, if the
2643 administrator certifies that a psychiatrist or ~~clinical~~
2644 psychologist is not available to provide the second opinion, the
2645 second opinion may be provided by a licensed physician who has
2646 postgraduate training and experience in diagnosis and treatment
2647 of mental illness or by a psychiatric nurse. Any opinion
2648 authorized in this subsection may be conducted through a face-
2649 to-face examination, in person, or by electronic means. Such
2650 recommendation shall be entered on a petition for involuntary
2651 services inpatient placement certificate that authorizes the
2652 facility to retain the individual being held patient pending
2653 transfer to a treatment facility or completion of a hearing.

2654 (3) PETITION FOR INVOLUNTARY SERVICES INPATIENT PLACEMENT.—

2655 (a) The administrator of the receiving facility shall file
2656 a petition for involuntary services inpatient placement in the
2657 court in the county where the individual patient is located.
2658 Upon filing, the clerk of the court shall provide copies to the
2659 department, the individual, his or her patient, the patient's
2660 guardian, guardian advocate, health care surrogate or proxy, or
2661 representative, and the state attorney and public defender of
2662 the judicial circuit in which the individual patient is located.
2663 A fee may not be charged for the filing of a petition under this
2664 subsection.

2665 (b) A receiving or treatment facility filing a petition for
2666 involuntary services shall send a copy of the petition to the
2667 Agency for Health Care Administration by the next working day.

2668 (4) APPOINTMENT OF COUNSEL.—

36-01520-17

20171756__

2669 (a) Within 1 court working day after the filing of a
2670 petition for involuntary services ~~inpatient placement~~, the court
2671 shall appoint the public defender to represent the individual
2672 ~~person~~ who is the subject of the petition, unless the person is
2673 otherwise represented by counsel. The clerk of the court shall
2674 ~~immediately~~ notify the public defender of the ~~such~~ appointment.
2675 Any attorney representing the individual ~~patient~~ shall have
2676 access to the individual ~~patient~~, witnesses, and records
2677 relevant to the presentation of the individual's ~~patient's~~ case
2678 and shall represent the interests of the individual ~~patient~~,
2679 regardless of the source of payment to the attorney. If services
2680 are ordered, the least restrictive treatment shall be sought.

2681 (b) The state attorney for the circuit in which the
2682 individual is located shall represent the state rather than the
2683 petitioning facility administrator as the real party in interest
2684 in the proceeding. The state attorney shall have access to the
2685 individual's clinical record and witnesses and shall have the
2686 authority to independently evaluate the sufficiency and
2687 appropriateness of the petition for involuntary services. If the
2688 state attorney finds the case insufficient, the state attorney
2689 shall withdraw the petition. The state attorney may not use
2690 clinical records obtained under this part for the purpose of
2691 criminal investigation or prosecution, or for any other purpose
2692 not authorized under this part.

2693 (5) CONTINUANCE OF HEARING.—The individual ~~patient~~ is
2694 entitled, with the concurrence of the individual's ~~patient's~~
2695 counsel, to at least one continuance of the hearing for up to 4
2696 weeks. Following consultation with a client concerning his or
2697 her available options, an attorney may seek to continue the

36-01520-17

20171756__

2698 hearing unless the client has verbally instructed the attorney
2699 to proceed directly to hearing. If the continuance requested is
2700 for a period of more than 1 week, the court shall, after
2701 continuing the hearing, hold a hearing as soon as practicable
2702 thereafter on the individual's competence to consent to
2703 treatment if there is no health care surrogate or proxy and a
2704 petition requesting the appointment of a guardian advocate has
2705 previously been filed as provided for in s. 394.4598(1). The
2706 state attorney may request one continuance for a period of up to
2707 1 week. Upon good cause shown, the court may grant the
2708 continuance and should set the hearing for the next available
2709 hearing date when possible.

2710 (6) HEARING ON INVOLUNTARY SERVICES ~~INPATIENT PLACEMENT~~.—

2711 (a)1. The court shall hold the hearing on involuntary
2712 services inpatient placement within 5 court working days after
2713 the petition is filed, unless a continuance is granted.

2714 2. Except for good cause documented in the court file,
2715 which may be demonstrated by administrative order of the court,
2716 the hearing must be held in the receiving or treatment facility
2717 where the individual is located. If the hearing cannot be held
2718 in the receiving or treatment facility, it must be held in a
2719 location convenient to the individual as is consistent with
2720 orderly procedure, and which is not likely to be injurious to
2721 the individual's county or the facility, as appropriate, where
2722 the patient is located, must be as convenient to the patient as
2723 is consistent with orderly procedure, and shall be conducted in
2724 physical settings not likely to be injurious to the patient's
2725 condition. If the court finds that the individual's patient's
2726 attendance at the hearing is not consistent with the best

36-01520-17

20171756__

2727 interests of the individual patient, and the individual's
2728 ~~patient's~~ counsel does not object, the court may waive the
2729 presence of the individual patient from all or any portion of
2730 the hearing. Alternatively, if the individual wishes to
2731 voluntarily waive his or her attendance at the hearing, the
2732 court must determine that the individual's waiver is knowing,
2733 intelligent, and voluntary before waiving the presence of the
2734 individual from all or any portion of the hearing. ~~The state~~
2735 ~~attorney for the circuit in which the patient is located shall~~
2736 ~~represent the state, rather than the petitioning facility~~
2737 ~~administrator, as the real party in interest in the proceeding.~~

2738 3. The court may appoint a magistrate to preside at the
2739 hearing. One of the two professionals who executed the petition
2740 for involuntary services inpatient placement certificate shall
2741 be a witness. The court shall ensure that the individual and his
2742 or her guardian, guardian advocate, health care surrogate or
2743 proxy, or representative are informed ~~patient and the patient's~~
2744 ~~guardian or representative shall be informed by the court~~ of the
2745 right to an independent expert examination. If the individual
2746 ~~patient~~ cannot afford such an examination, the court shall
2747 ensure that one is provided, as otherwise provided for by law.
2748 The independent expert's report is confidential and not
2749 discoverable, unless the expert is ~~to be~~ called as a witness for
2750 the individual patient at the hearing. The testimony in the
2751 hearing must be ~~given~~ under oath, and the proceedings must be
2752 recorded. The individual patient may refuse to testify at the
2753 hearing.

2754 4. Consistent with the notice provisions in s. 394.4599,
2755 the court shall allow testimony from persons, including family

36-01520-17

20171756__

2756 members, deemed by the court to be relevant regarding the
2757 individual's prior history and how that prior history relates to
2758 the individual's current condition.

2759 (b) If the court concludes that the individual patient
2760 meets the criteria for involuntary services inpatient placement,
2761 it may order that the individual patient be transferred to a
2762 treatment facility or, if the individual patient is at a
2763 treatment facility, that the individual patient be retained
2764 there or be treated at any other appropriate facility, or that
2765 the individual patient receive services, on an involuntary
2766 basis, for up to 90 days. However, any order for involuntary
2767 mental health services in a treatment facility may be for up to
2768 6 months. The order must ~~shall~~ specify the nature and extent of
2769 the individual's patient's mental illness. The court may not
2770 order an individual with traumatic brain injury or dementia who
2771 lacks a co-occurring mental illness to be involuntarily placed
2772 in a state treatment facility. The facility shall discharge the
2773 individual a patient any time the individual patient no longer
2774 meets the criteria for involuntary inpatient placement, unless
2775 the individual patient has transferred to voluntary status.

2776 (c) The court may not enter an order of involuntary
2777 inpatient services in a state treatment facility for an
2778 individual with dementia, Alzheimer's disease, or traumatic
2779 brain-injury who lacks a co-occurring mental illness.

2780 (d) An individual may be ordered to involuntary services on
2781 an outpatient basis if found to meet the criteria in s.
2782 394.467(1) and upon a finding of the court by clear and
2783 convincing evidence based upon a clinical determination that the
2784 individual is unlikely to survive safely in the community

36-01520-17

20171756__

2785 without supervision and that the individual is in need of such
2786 services to prevent a relapse or deterioration that would likely
2787 result in serious harm to the individual or others.

2788 1. The court may not order involuntary services on an
2789 outpatient basis if the service is not available, or if there is
2790 no space available in the service for the individual, or if
2791 funding is not available. After the order for services is
2792 entered, the service provider and the individual may modify
2793 provisions of the service plan. For any material modification of
2794 the service plan to which the individual or the individual's
2795 guardian advocate, if appointed, agree, the service provider
2796 shall send notice of the modification to the court. Any material
2797 modifications of the service plan which are contested by the
2798 individual or the guardian advocate must be approved or
2799 disapproved by the court consistent with subsection (3).

2800 2. If, in the clinical judgment of a physician, the
2801 individual has failed or has refused to comply with the
2802 outpatient services ordered by the court, and, in the clinical
2803 judgment of the physician, efforts were made to solicit
2804 compliance and the individual appears to meet the criteria for
2805 involuntary examination, the individual may be brought to a
2806 receiving facility pursuant to s. 394.463. If, after
2807 examination, the individual does not meet the criteria for
2808 involuntary services under this section, the individual must be
2809 discharged from the receiving facility. The involuntary services
2810 order shall remain in effect unless the service provider
2811 determines that the individual no longer meets the criteria for
2812 involuntary services or until the order expires. The service
2813 provider must determine whether modifications should be made to

36-01520-17

20171756__

2814 the existing treatment plan and must attempt to continue to
2815 engage the individual in services. For any material modification
2816 of the service plan to which the individual or the individual's
2817 guardian advocate, if appointed, does agree, the service
2818 provider shall send notice of the modification to the court. Any
2819 material modifications of the service plan which are contested
2820 by the individual or his or her guardian advocate, if appointed,
2821 must be approved or disapproved by the court consistent with
2822 subsection (3).

2823 (e)~~(e)~~ If at any time before the conclusion of the hearing
2824 on involuntary services ~~inpatient placement~~ it appears to the
2825 court that the individual ~~person~~ does not meet the criteria for
2826 involuntary services ~~inpatient placement~~ under this section, but
2827 ~~instead meets the criteria for involuntary outpatient services,~~
2828 ~~the court may order the person evaluated for involuntary~~
2829 ~~outpatient services pursuant to s. 394.4655. The petition and~~
2830 ~~hearing procedures set forth in s. 394.4655 shall apply. If the~~
2831 ~~person~~ instead meets the criteria for involuntary assessment,
2832 protective custody, or involuntary admission pursuant to s.
2833 397.675, then the court may order the person to be admitted for
2834 involuntary assessment for a period of 5 days pursuant to s.
2835 397.6811. Thereafter, all proceedings are governed by chapter
2836 397.

2837 (f)~~(d)~~ At the hearing on involuntary services ~~inpatient~~
2838 ~~placement,~~ the court shall consider testimony and evidence
2839 regarding the individual's ~~patient's~~ competence to consent to
2840 treatment. If the court finds that the individual ~~patient~~ is
2841 incompetent to consent to treatment, it shall appoint a guardian
2842 advocate as provided in s. 394.4598.

36-01520-17

20171756__

2843 (g)~~(e)~~ The administrator of the petitioning facility shall
2844 provide a copy of the court order and adequate documentation of
2845 an individual's ~~a patient's~~ mental illness to the administrator
2846 of a treatment facility if the individual ~~patient~~ is ordered for
2847 involuntary services ~~inpatient placement, whether by civil or~~
2848 ~~criminal court~~. The documentation must include any advance
2849 directives made by the individual ~~patient~~, a psychiatric
2850 evaluation of the individual ~~patient~~, and any evaluations of the
2851 individual ~~patient~~ performed by a psychiatric nurse, a ~~clinical~~
2852 psychologist, a marriage and family therapist, a mental health
2853 counselor, or a clinical social worker. The administrator of a
2854 treatment facility may refuse admission to an individual ~~any~~
2855 ~~patient~~ directed to its facilities on an involuntary basis,
2856 whether by civil or criminal court order, who is not accompanied
2857 by adequate orders and documentation.

2858 (7) PROCEDURE FOR CONTINUED INVOLUNTARY SERVICES ~~INPATIENT~~
2859 ~~PLACEMENT~~.—

2860 (a) Hearings on petitions for continued involuntary
2861 services ~~inpatient placement~~ of an individual placed at any
2862 treatment facility are administrative hearings and must be
2863 conducted in accordance with s. 120.57(1), except that any order
2864 entered by the administrative law judge is final and subject to
2865 judicial review in accordance with s. 120.68. Orders concerning
2866 individuals ~~patients~~ committed after successfully pleading not
2867 guilty by reason of insanity are governed by s. 916.15.

2868 1.~~(b)~~ If the individual ~~patient~~ continues to meet the
2869 criteria for involuntary services ~~inpatient placement~~ and is
2870 placed in ~~being treated at~~ a treatment facility, the
2871 administrator shall, before the expiration of the period the

36-01520-17

20171756__

2872 treatment facility is authorized to retain the individual
2873 ~~patient~~, file a petition requesting authorization for continued
2874 involuntary services ~~inpatient placement~~. The request must be
2875 accompanied by a statement from the individual's ~~patient's~~
2876 physician, psychiatrist, psychiatric nurse, or ~~clinical~~
2877 psychologist justifying the request, a brief description of the
2878 individual's ~~patient's~~ treatment during the time he or she was
2879 involuntarily placed, and an individualized plan of continued
2880 treatment. The state attorney for the circuit in which the
2881 individual is located shall represent the state, rather than the
2882 petitioning facility administrator, as the real party in
2883 interest in the proceeding. Notice of the hearing must be
2884 provided ~~as provided~~ in accordance with s. 394.4599. If an
2885 individual's attendance at the hearing is voluntarily waived,
2886 the administrative law judge must determine that the waiver is
2887 knowing, intelligent, and voluntary before waiving the presence
2888 of the individual from all or a portion of the hearing.
2889 Alternatively, if an individual's ~~a patient's~~ attendance at the
2890 hearing is voluntarily waived, the administrative law judge must
2891 determine that the waiver is knowing and voluntary before
2892 waiving the presence of the individual ~~patient~~ from all or a
2893 portion of the hearing. Alternatively, if at the hearing the
2894 administrative law judge finds that attendance at the hearing is
2895 not consistent with the individual's best interests ~~of the~~
2896 ~~patient~~, the administrative law judge may waive the presence of
2897 the individual ~~patient~~ from all or any portion of the hearing,
2898 unless the individual ~~patient~~, through counsel, objects to the
2899 waiver of presence. The testimony in the hearing must be under
2900 oath, and the proceedings must be recorded.

36-01520-17

20171756__

2901 2.~~(e)~~ Unless the individual patient is otherwise
2902 represented or is ineligible, he or she shall be represented at
2903 the hearing on the petition for continued involuntary services
2904 ~~inpatient placement~~ by the public defender of the circuit in
2905 which the facility is located.

2906 3. The Division of Administrative Hearings shall ensure
2907 that the individual who is the subject of the petition and his
2908 or her guardian, guardian advocate, health care surrogate or
2909 proxy, or representative are informed of the individual's right
2910 to an independent expert examination. If the individual cannot
2911 afford such an examination, the court shall ensure that one is
2912 provided as otherwise provided for by law.

2913 4.~~(d)~~ If at a hearing it is shown that the individual
2914 ~~patient~~ continues to meet the criteria for involuntary services
2915 ~~inpatient placement~~, the administrative law judge shall sign the
2916 order for continued involuntary services ~~inpatient placement~~ for
2917 up to 90 days. However, any order for involuntary mental health
2918 services in a treatment facility may be for up to 6 months. The
2919 same procedure must ~~shall~~ be repeated before the expiration of
2920 each additional period the individual patient is retained.

2921 5.~~(e)~~ If continued involuntary services ~~inpatient placement~~
2922 is necessary for an individual ~~a patient~~ admitted while serving
2923 a criminal sentence, but his or her sentence is about to expire,
2924 or for a minor involuntarily placed, but who is about to reach
2925 the age of 18, the administrator shall petition the
2926 administrative law judge for an order authorizing continued
2927 involuntary services ~~inpatient placement~~.

2928 6.~~(f)~~ If the individual patient has been previously found
2929 incompetent to consent to treatment, the administrative law

36-01520-17

20171756__

2930 judge shall consider testimony and evidence regarding the
2931 individual's ~~patient's~~ competence. If the administrative law
2932 judge finds evidence that the individual ~~patient~~ is now
2933 competent to consent to treatment, the ~~administrative law~~ judge
2934 may issue a recommended order to the court that found the
2935 individual ~~patient~~ incompetent to consent to treatment that the
2936 individual's ~~patient's~~ competence be restored and that any
2937 guardian advocate previously appointed be discharged.

2938 7.(g) If the individual ~~patient~~ has been ordered to undergo
2939 involuntary services ~~inpatient placement~~ and has previously been
2940 found incompetent to consent to treatment, the court shall
2941 consider testimony and evidence regarding the individual's
2942 ~~patient's~~ incompetence. If the individual's ~~patient's~~ competency
2943 to consent to treatment is restored, the discharge of the
2944 guardian advocate shall be governed by s. 394.4598.

2945
2946 The procedure required in this paragraph ~~subsection~~ must be
2947 followed before the expiration of each additional period the
2948 individual is ~~patient is~~ involuntarily receiving involuntary
2949 services.

2950 (b) A hearing on a petition for continued involuntary
2951 services of an individual placed at a receiving facility or
2952 nonstate treatment facility, to extend the current services or
2953 to modify the involuntary services order to authorize services
2954 in any state treatment facility, are not administrative
2955 hearings.

2956 1. If such an individual continues to meet the criteria for
2957 involuntary services, the service provider shall, before the
2958 expiration of the period during which the services are ordered,

36-01520-17

20171756__

2959 file in the circuit court a petition for continued involuntary
2960 services. The petition must be filed no later than one week
2961 before the expiration of that current involuntary period, unless
2962 the order for services was for 30 days or less, in which case
2963 the petition must be filed within a reasonable time before the
2964 expiration of the current involuntary service order.

2965 2. The existing involuntary service order remains in effect
2966 until disposition of the petition for continued involuntary
2967 service.

2968 3. The petition must be accompanied by a statement from the
2969 individual's physician or psychologist justifying the request, a
2970 brief description of the individual's treatment during the time
2971 he or she was involuntarily served, and a personalized plan of
2972 continued services.

2973 4. Within 1 court working day after the filing of a
2974 petition for continued involuntary services, the court shall
2975 appoint the public defender to represent the individual who is
2976 the subject of the petition, unless the individual is otherwise
2977 represented by counsel. The clerk of the court shall immediately
2978 notify the public defender of such appointment. The public
2979 defender shall represent the individual until the petition is
2980 dismissed, the court order expires, or the individual is
2981 discharged from involuntary status. An attorney representing the
2982 individual must have access to the individual, witnesses, and
2983 records relevant to the presentation of the individual's case
2984 and shall represent the interests of the individual, regardless
2985 of the source of payment to the attorney.

2986 5. The court shall ensure that the individual who is the
2987 subject of the petition and his or her guardian, guardian

36-01520-17

20171756__

2988 advocate, health care surrogate or proxy, or representative are
2989 informed of the individual's right to an independent expert
2990 examination. If the individual cannot afford such an
2991 examination, the court shall ensure that one is provided, as
2992 otherwise provided for by law.

2993 6. Hearings on petitions for continued involuntary services
2994 are before the circuit court. The court may appoint a magistrate
2995 to preside at the hearing. The procedures for obtaining an order
2996 pursuant to this paragraph must be in accordance with
2997 subsections (4), (5), and (6).

2998 7. Notice of the hearing shall be provided in accordance
2999 with s. 394.4599. The individual being served and the
3000 individual's attorney may agree to a period of continued
3001 involuntary services without a court hearing, unless the
3002 petition for continued services seeks to authorize services in
3003 any state treatment facility.

3004 8. The same procedure must be repeated before the
3005 expiration of each additional period the individual being served
3006 is involuntarily served.

3007 9. If the individual who has been ordered to undergo
3008 involuntary services has previously been found incompetent to
3009 consent to treatment, the court shall consider testimony and
3010 evidence regarding the individual's competence. Section 394.4598
3011 governs the discharge of the guardian advocate if the
3012 individual's competency to consent to treatment has been
3013 restored.

3014 (8) RETURN TO FACILITY.-If an individual ~~a patient~~
3015 involuntarily held at a treatment facility under this part
3016 leaves the facility without the administrator's authorization,

36-01520-17

20171756__

3017 the administrator may authorize a search for the individual
3018 ~~patient~~ and his or her return to the facility. The administrator
3019 may request the assistance of a law enforcement agency in this
3020 regard.

3021 Section 22. Section 394.46715, Florida Statutes, is amended
3022 to read:

3023 394.46715 Rulemaking authority.—The department may adopt
3024 rules to administer this part. These rules are for the purpose
3025 of protecting the health, safety, and well-being of individuals
3026 examined, treated, or placed under this part.

3027 Section 23. Section 394.4672, Florida Statutes, is amended
3028 to read:

3029 394.4672 Procedure for services ~~placement~~ of veteran with
3030 federal agency.—

3031 (1) A facility owned, operated, or administered by the
3032 United States Department of Veterans Affairs that provides
3033 mental health services shall have authority as granted by the
3034 Department of Veterans' Affairs to:

3035 (a) Initiate and conduct involuntary examination pursuant
3036 to s. 394.463.

3037 (b) Provide voluntary admission and treatment pursuant to
3038 s. 394.4625.

3039 (c) Petition for involuntary services pursuant to s.
3040 394.467.

3041 (2)~~(1)~~ If the court determines that an individual meets the
3042 criteria for involuntary service and he or she ~~Whenever it is~~
3043 ~~determined by the court that a person meets the criteria for~~
3044 ~~involuntary placement and it appears that such person is~~
3045 eligible for care or treatment by the United States Department

36-01520-17

20171756__

3046 of Veterans Affairs or other agency of the United States
3047 Government, the court, upon receipt of documentation a
3048 ~~certificate~~ from the United States Department of Veterans
3049 Affairs or another ~~such other~~ agency showing that facilities are
3050 available and that the individual ~~person~~ is eligible for care or
3051 treatment therein, may place that individual ~~person~~ with the
3052 United States Department of Veterans Affairs or other federal
3053 agency. The individual ~~person whose placement is sought~~ shall be
3054 personally served with notice of the pending involuntary service
3055 ~~placement~~ proceeding in the manner as provided in this part. r
3056 ~~and nothing in~~ This section does not ~~shall~~ affect the
3057 individual's ~~his or her~~ right to appear and be heard in the
3058 proceeding. Upon being placed, the individual is ~~placement, the~~
3059 ~~person shall be~~ subject to the ~~rules and~~ regulations of the
3060 United States Department of Veterans Affairs or other federal
3061 agency.

3062 (3)(2) The judgment or order for services issued ~~of~~
3063 ~~placement~~ by a court of competent jurisdiction of another state
3064 or of the District of Columbia, which places an individual
3065 ~~placing a person~~ with the United States Department of Veterans
3066 Affairs or other federal agency for care or treatment, has
3067 ~~shall have~~ the same force and effect in this state as in the
3068 jurisdiction of the court entering the judgment or making the
3069 order. r ~~and~~ The courts of the placing state or of the District
3070 of Columbia shall retain ~~be deemed to have retained~~ jurisdiction
3071 over the individual ~~of the person~~ so placed. Consent is ~~hereby~~
3072 given to the application of the law of the placing state or
3073 district with respect to the authority of the chief officer of
3074 any facility of the United States Department of Veterans Affairs

36-01520-17

20171756__

3075 or other federal agency operated in this state to retain custody
3076 or to transfer, parole, or discharge the individual ~~person~~.

3077 ~~(4)(3)~~ Upon receipt of documentation from a certificate of
3078 the United States Department of Veterans Affairs or another such
3079 ~~other~~ federal agency that facilities are available for the care
3080 or treatment of individuals who have mental illness and that the
3081 individual ~~mentally ill persons and that the person~~ is eligible
3082 for that care or treatment, the administrator of the receiving
3083 or treatment facility may ~~cause the transfer of~~ that individual
3084 person to the United States Department of Veterans Affairs or
3085 other federal agency. Upon ~~effecting~~ such transfer, the
3086 committing court shall be notified by the transferring agency.
3087 An individual may not be transferred ~~No person shall be~~
3088 ~~transferred to the United States Department of Veterans Affairs~~
3089 ~~or other federal agency~~ if he or she is confined pursuant to the
3090 conviction of any felony or misdemeanor or if he or she has been
3091 acquitted of the charge solely on the ground of insanity, unless
3092 before ~~prior to~~ transfer the court placing the individual ~~such~~
3093 ~~person~~ enters an order for the transfer after appropriate motion
3094 and hearing and without objection by the United States
3095 Department of Veterans Affairs.

3096 ~~(5)(4)~~ An individual ~~Any person~~ transferred as provided in
3097 this section shall be deemed to be placed with the United States
3098 Department of Veterans Affairs or other federal agency pursuant
3099 to the original order ~~placement~~.

3100 Section 24. Section 394.4685, Florida Statutes, is amended
3101 to read:

3102 394.4685 Transfer of patients among facilities.—

3103 (1) TRANSFER BETWEEN PUBLIC FACILITIES.—

36-01520-17

20171756__

3104 (a) An individual ~~A patient~~ who has been accepted at
3105 ~~admitted to~~ a public receiving facility, or his or her the
3106 family member, guardian, ~~or~~ guardian advocate, or health care
3107 surrogate or proxy of such patient, may request the transfer of
3108 the individual patient to another public receiving facility. An
3109 individual ~~A patient~~ who has been accepted at ~~admitted to~~ a
3110 public treatment facility, or his or her the family member,
3111 guardian, ~~or~~ guardian advocate, or health care surrogate or
3112 proxy of such patient, may request the transfer of the
3113 individual patient to another public treatment facility.
3114 Depending on the medical treatment or mental health treatment
3115 needs of the individual patient and the availability of
3116 appropriate facility resources, the individual patient may be
3117 transferred at the discretion of the department. If the
3118 department approves the transfer of an individual on involuntary
3119 status, notice in accordance with involuntary patient, notice
3120 according to the provisions of s. 394.4599 must be given before
3121 ~~shall be given prior to~~ the transfer by the transferring
3122 facility. The department shall respond to the request for
3123 transfer within 2 working days after receipt of the request by
3124 the facility administrator.

3125 (b) If ~~When~~ required by the medical treatment or mental
3126 health treatment needs of the individual patient or the
3127 efficient use utilization of a public receiving or public
3128 treatment facility, an individual ~~a patient~~ may be transferred
3129 from one receiving facility to another, or from one treatment
3130 facility to another, ~~at the department's discretion~~, or, with
3131 the express and informed consent of the individual or the
3132 individual's guardian, guardian advocate, or health care

36-01520-17

20171756__

3133 ~~surrogate or proxy patient or the patient's guardian or guardian~~
 3134 ~~advocate,~~ to a facility in another state. Notice in accordance
 3135 ~~with according to the provisions of s. 394.4599~~ must ~~shall~~ be
 3136 given before ~~prior to~~ the transfer by the transferring facility.
 3137 If prior notice is not possible, notice of the transfer shall be
 3138 provided as soon as practicable after the transfer.

3139 (2) TRANSFER FROM PUBLIC TO PRIVATE FACILITIES.-

3140 (a) An individual ~~A patient~~ who has been accepted at
 3141 ~~admitted to~~ a public receiving or public treatment facility and
 3142 has requested, ~~either~~ personally or through his or her guardian,
 3143 ~~or~~ guardian advocate, or health care surrogate or proxy, and is
 3144 able to pay for treatment in a private facility shall be
 3145 transferred at the individual's ~~patient's~~ expense to a private
 3146 facility upon acceptance of the individual ~~patient~~ by the
 3147 private facility.

3148 (b) A public receiving facility initiating the ~~a patient~~
 3149 transfer of an individual to a licensed hospital for acute care
 3150 mental health services not accessible through the public
 3151 receiving facility shall notify the hospital of such transfer
 3152 and send the hospital all records relating to the emergency
 3153 psychiatric or medical condition.

3154 (3) TRANSFER FROM PRIVATE TO PUBLIC FACILITIES.-

3155 (a) An individual or the individual's ~~A patient or the~~
 3156 ~~patient's~~ guardian, ~~or~~ guardian advocate, or health care
 3157 surrogate or proxy may request the transfer of the individual
 3158 ~~patient~~ from a private to a public facility, and the individual
 3159 ~~patient~~ may be so transferred upon acceptance of the individual
 3160 ~~patient~~ by the public facility.

3161 (b) A private facility may request the transfer of an

36-01520-17

20171756__

3162 individual ~~a patient~~ from the facility to a public facility, and
3163 the individual patient may be so transferred upon acceptance of
3164 the individual patient by the public facility. The cost of such
3165 transfer is ~~shall be~~ the responsibility of the transferring
3166 facility.

3167 (c) A public facility must respond to a request for the
3168 transfer of an individual ~~a patient~~ within 24 hours ~~2 working~~
3169 ~~days~~ after receipt of the request.

3170 (4) TRANSFER BETWEEN PRIVATE FACILITIES.—

3171 (a) An individual being held ~~A patient~~ in a private
3172 facility or his or her ~~the patient's~~ guardian, ~~or~~ guardian
3173 advocate, or health care surrogate or proxy may request the
3174 transfer of the individual patient to another private facility
3175 at any time, and the individual patient shall be transferred
3176 upon acceptance of the individual patient by the facility to
3177 which transfer is sought.

3178 (b) A private facility may request the transfer of an
3179 individual from the facility to another private facility, and
3180 the individual may be transferred upon acceptance of the
3181 individual by the facility to which the individual is being
3182 transferred.

3183 Section 25. Section 394.469, Florida Statutes, is amended
3184 to read:

3185 394.469 Discharge from ~~of~~ involuntary services ~~patients~~.—

3186 (1) POWER TO DISCHARGE.—At any time an individual ~~a patient~~
3187 is found to no longer meet the criteria for involuntary services
3188 ~~placement~~, the administrator shall:

3189 (a) Discharge the individual patient, ~~unless the patient is~~
3190 ~~under a criminal charge, in which case the patient shall be~~

36-01520-17

20171756__

3191 ~~transferred to the custody of the appropriate law enforcement~~
3192 ~~officer;~~

3193 (b) Transfer the individual patient to voluntary status on
3194 the administrator's his or her own authority or at the
3195 individual's patient's request, unless the individual is patient
3196 ~~is under criminal charge or~~ adjudicated incapacitated;

3197 (c) Discharge the individual to the custody of a law
3198 enforcement officer, if the individual is currently charged with
3199 any crime and has not been released from law enforcement custody
3200 by posting of a bond, or by a pretrial conditional release or by
3201 other judicial release; or

3202 (d) ~~(e)~~ Place an improved individual patient, except
3203 individuals described in paragraph (c) a patient under a
3204 ~~criminal charge~~, on convalescent status in the care of a
3205 community facility.

3206 (2) NOTICE.—Notice of discharge or transfer of an
3207 individual must be provided in accordance with a patient shall
3208 ~~be given as provided in s. 394.4599.~~

3209 Section 26. Section 394.473, Florida Statutes, is amended
3210 to read:

3211 394.473 Attorney ~~Attorney's~~ fee; expert witness fee.—

3212 (1) ~~In the case of an indigent person for whom~~ An attorney
3213 ~~is~~ appointed to represent an individual pursuant to the
3214 ~~provisions of this part, the attorney~~ shall be compensated by
3215 the state pursuant to s. 27.5304. A public defender appointed to
3216 represent an indigent individual may not ~~In the case of an~~
3217 ~~indigent person, the court may appoint a public defender. The~~
3218 ~~public defender shall receive no~~ additional compensation other
3219 than that usually paid his or her office.

36-01520-17

20171756__

3220 (2) If an indigent individual's case requires ~~In the case~~
3221 ~~of an indigent person for whom expert testimony is required~~ in a
3222 court hearing pursuant to ~~the provisions of this part act,~~ the
3223 expert shall be compensated by the state pursuant to s. 27.5303
3224 or s. 27.5304, as applicable, unless the expert, ~~except one who~~
3225 is classified as a full-time employee of the state or ~~who~~ is
3226 receiving remuneration from the state for his or her time in
3227 attendance at the hearing, ~~shall be compensated by the state~~
3228 ~~pursuant to s. 27.5304.~~

3229 Section 27. Section 394.475, Florida Statutes, is amended
3230 to read:

3231 394.475 Acceptance, examination, and involuntary services
3232 ~~placement of Florida residents~~ from out-of-state mental health
3233 authorities.-

3234 (1) Upon the request of the state mental health authority
3235 of another state, the department may ~~is authorized to~~ accept an
3236 individual as a patient, for up to a period of not more than 15
3237 days, ~~a person~~ who is and has been a bona fide resident of this
3238 state for at least a period of not less than 1 year.

3239 (2) An individual ~~Any person~~ received pursuant to
3240 subsection (1) shall be examined by the staff of the state
3241 facility where the individual ~~such patient~~ has been admitted
3242 ~~accepted, which examination shall be completed~~ during the 15-day
3243 period.

3244 (3) If, upon examination, the individual ~~such a person~~
3245 requires continued involuntary services ~~placement,~~ a petition
3246 for a hearing regarding involuntary services ~~placement~~ shall be
3247 filed with the court of the county where ~~wherein~~ the treatment
3248 facility receiving the individual ~~patient~~ is located or the

36-01520-17

20171756__

3249 county where the individual ~~patient~~ is a resident.

3250 (4) During the pendency of the examination period and the
3251 pendency of the involuntary services ~~placement~~ proceedings, an
3252 individual ~~such person~~ may continue to be held in the treatment
3253 facility unless the court having jurisdiction enters an order to
3254 the contrary.

3255 Section 28. Section 394.4785, Florida Statutes, is amended
3256 to read:

3257 394.4785 Children and adolescents; admission and services
3258 ~~placement~~ in mental health facilities.-

3259 (1) A child or adolescent ~~as~~ defined as a minor in s.
3260 394.455(31) ~~in s. 394.492~~ may not be admitted to a state-owned
3261 or state-operated mental health treatment facility. A minor
3262 ~~child~~ may be admitted pursuant to s. 394.4625, s. 394.463, or s.
3263 394.467 to a crisis stabilization unit or a residential
3264 treatment center licensed under this chapter or a hospital
3265 licensed under chapter 395. The treatment center, unit, or
3266 hospital must provide the least restrictive available treatment
3267 that is appropriate to the ~~individual~~ needs of the minor ~~child~~
3268 ~~or adolescent~~ and must adhere to the guiding principles, system
3269 of care, and service planning provisions of ~~contained in part~~
3270 III of this chapter.

3271 (2) A minor who is younger than 14 years of age ~~person~~
3272 ~~under the age of 14~~ who is admitted to a ~~any~~ hospital licensed
3273 ~~pursuant to chapter 395~~ may not be admitted to a bed in a room
3274 or ward with an adult ~~patient~~ in a mental health unit or share
3275 common areas with an adult ~~patient~~ in a mental health unit.
3276 However, a minor ~~person~~ 14 years of age or older may be admitted
3277 to a bed in a room or ward in the mental health unit with an

36-01520-17

20171756__

3278 adult if a ~~the admitting~~ physician documents in the clinical
 3279 ~~case~~ record that the services are ~~such placement is~~ medically
 3280 indicated or for reasons of safety. The ~~Such~~ placement shall be
 3281 reviewed by a ~~the attending~~ physician or a designee or on-call
 3282 physician each day and documented in the clinical ~~case~~ record.

3283 Section 29. Section 394.4786, Florida Statutes, is
 3284 repealed.

3285 Section 30. Section 394.47865, Florida Statutes, is
 3286 repealed.

3287 Section 31. Section 394.4787, Florida Statutes, is
 3288 repealed.

3289 Section 32. Section 394.4788, Florida Statutes, is
 3290 repealed.

3291 Section 33. Section 394.4789, Florida Statutes, is
 3292 repealed.

3293 Section 34. Paragraph (a) of subsection (5) of section
 3294 20.425, Florida Statutes, is amended to read:

3295 20.425 Agency for Health Care Administration; trust funds.—
 3296 The following trust funds shall be administered by the Agency
 3297 for Health Care Administration:

3298 (5) Public Medical Assistance Trust Fund.

3299 (a) Funds to be credited to and uses of the trust fund
 3300 shall be administered in accordance with s. ~~the provisions of~~
 3301 ~~ss. 394.4786 and~~ 409.918.

3302 Section 35. Paragraph (a) of subsection (3) and subsection
 3303 (6) of section 39.407, Florida Statutes, are amended to read:

3304 39.407 Medical, psychiatric, and psychological examination
 3305 and treatment of child; physical, mental, or substance abuse
 3306 examination of person with or requesting child custody.—

36-01520-17

20171756__

3307 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.
3308 or paragraph (e), before the department provides psychotropic
3309 medications to a child in its custody, the prescribing physician
3310 shall attempt to obtain express and informed consent, as defined
3311 in s. 394.455(15) and as described in s. 394.459(3) ~~(a)~~, from the
3312 child's parent or legal guardian. The department must take steps
3313 necessary to facilitate the inclusion of the parent in the
3314 child's consultation with the physician. However, if the
3315 parental rights of the parent have been terminated, the parent's
3316 location or identity is unknown or cannot reasonably be
3317 ascertained, or the parent declines to give express and informed
3318 consent, the department may, after consultation with the
3319 prescribing physician, seek court authorization to provide the
3320 psychotropic medications to the child. Unless parental rights
3321 have been terminated and if it is possible to do so, the
3322 department shall continue to involve the parent in the
3323 decisionmaking process regarding the provision of psychotropic
3324 medications. If, at any time, a parent whose parental rights
3325 have not been terminated provides express and informed consent
3326 to the provision of a psychotropic medication, the requirements
3327 of this section that the department seek court authorization do
3328 not apply to that medication until such time as the parent no
3329 longer consents.

3330 2. Any time the department seeks a medical evaluation to
3331 determine the need to initiate or continue a psychotropic
3332 medication for a child, the department must provide to the
3333 evaluating physician all pertinent medical information known to
3334 the department concerning that child.

3335 (6) Children who are in the legal custody of the department

36-01520-17

20171756__

3336 may be placed by the department, without prior approval of the
3337 court, in a residential treatment center licensed under s.
3338 394.875 or a hospital licensed under chapter 395 for residential
3339 mental health treatment only pursuant to this section or may be
3340 placed by the court in accordance with an order of involuntary
3341 examination or involuntary services ~~placement~~ entered pursuant
3342 to s. 394.463 or s. 394.467. All children placed in a
3343 residential treatment program under this subsection must have a
3344 guardian ad litem appointed.

3345 (a) As used in this subsection, the term:

3346 1. "Residential treatment" means placement for observation,
3347 diagnosis, or treatment of an emotional disturbance in a
3348 residential treatment center licensed under s. 394.875 or a
3349 hospital licensed under chapter 395.

3350 2. "Least restrictive alternative" means the treatment and
3351 conditions of treatment that, separately and in combination, are
3352 no more intrusive or restrictive of freedom than reasonably
3353 necessary to achieve a substantial therapeutic benefit or to
3354 protect the child or adolescent or others from physical injury.

3355 3. "Suitable for residential treatment" or "suitability"
3356 means a determination concerning a child or adolescent with an
3357 emotional disturbance as defined in s. 394.492(5) or a serious
3358 emotional disturbance as defined in s. 394.492(6) that each of
3359 the following criteria is met:

3360 a. The child requires residential treatment.

3361 b. The child is in need of a residential treatment program
3362 and is expected to benefit from mental health treatment.

3363 c. An appropriate, less restrictive alternative to
3364 residential treatment is unavailable.

36-01520-17

20171756__

3365 (b) Whenever the department believes that a child in its
3366 legal custody is emotionally disturbed and may need residential
3367 treatment, an examination and suitability assessment must be
3368 conducted by a qualified evaluator who is appointed by the
3369 Agency for Health Care Administration. This suitability
3370 assessment must be completed before the placement of the child
3371 in a residential treatment center for emotionally disturbed
3372 children and adolescents or a hospital. The qualified evaluator
3373 must be a psychiatrist or a psychologist licensed in Florida who
3374 has at least 3 years of experience in the diagnosis and
3375 treatment of serious emotional disturbances in children and
3376 adolescents and who has no actual or perceived conflict of
3377 interest with any inpatient facility or residential treatment
3378 center or program.

3379 (c) Before a child is admitted under this subsection, the
3380 child shall be assessed for suitability for residential
3381 treatment by a qualified evaluator who has conducted a personal
3382 examination and assessment of the child and has made written
3383 findings that:

3384 1. The child appears to have an emotional disturbance
3385 serious enough to require residential treatment and is
3386 reasonably likely to benefit from the treatment.

3387 2. The child has been provided with a clinically
3388 appropriate explanation of the nature and purpose of the
3389 treatment.

3390 3. All available modalities of treatment less restrictive
3391 than residential treatment have been considered, and a less
3392 restrictive alternative that would offer comparable benefits to
3393 the child is unavailable.

36-01520-17

20171756__

3394
3395 A copy of the written findings of the evaluation and suitability
3396 assessment must be provided to the department, to the guardian
3397 ad litem, and, if the child is a member of a Medicaid managed
3398 care plan, to the plan that is financially responsible for the
3399 child's care in residential treatment, all of whom must be
3400 provided with the opportunity to discuss the findings with the
3401 evaluator.

3402 (d) Immediately upon placing a child in a residential
3403 treatment program under this section, the department must notify
3404 the guardian ad litem and the court having jurisdiction over the
3405 child and must provide the guardian ad litem and the court with
3406 a copy of the assessment by the qualified evaluator.

3407 (e) Within 10 days after the admission of a child to a
3408 residential treatment program, the director of the residential
3409 treatment program or the director's designee must ensure that an
3410 individualized plan of treatment has been prepared by the
3411 program and has been explained to the child, to the department,
3412 and to the guardian ad litem, and submitted to the department.
3413 The child must be involved in the preparation of the plan to the
3414 maximum feasible extent consistent with his or her ability to
3415 understand and participate, and the guardian ad litem and the
3416 child's foster parents must be involved to the maximum extent
3417 consistent with the child's treatment needs. The plan must
3418 include a preliminary plan for residential treatment and
3419 aftercare upon completion of residential treatment. The plan
3420 must include specific behavioral and emotional goals against
3421 which the success of the residential treatment may be measured.
3422 A copy of the plan must be provided to the child, to the

36-01520-17

20171756__

3423 guardian ad litem, and to the department.

3424 (f) Within 30 days after admission, the residential
3425 treatment program must review the appropriateness and
3426 suitability of the child's placement in the program. The
3427 residential treatment program must determine whether the child
3428 is receiving benefit toward the treatment goals and whether the
3429 child could be treated in a less restrictive treatment program.
3430 The residential treatment program shall prepare a written report
3431 of its findings and submit the report to the guardian ad litem
3432 and to the department. The department must submit the report to
3433 the court. The report must include a discharge plan for the
3434 child. The residential treatment program must continue to
3435 evaluate the child's treatment progress every 30 days thereafter
3436 and must include its findings in a written report submitted to
3437 the department. The department may not reimburse a facility
3438 until the facility has submitted every written report that is
3439 due.

3440 (g)1. The department must submit, at the beginning of each
3441 month, to the court having jurisdiction over the child, a
3442 written report regarding the child's progress toward achieving
3443 the goals specified in the individualized plan of treatment.

3444 2. The court must conduct a hearing to review the status of
3445 the child's residential treatment plan no later than 3 months
3446 after the child's admission to the residential treatment
3447 program. An independent review of the child's progress toward
3448 achieving the goals and objectives of the treatment plan must be
3449 completed by a qualified evaluator and submitted to the court
3450 before its 3-month review.

3451 3. For any child in residential treatment at the time a

36-01520-17

20171756__

3452 judicial review is held pursuant to s. 39.701, the child's
3453 continued placement in residential treatment must be a subject
3454 of the judicial review.

3455 4. If at any time the court determines that the child is
3456 not suitable for continued residential treatment, the court
3457 shall order the department to place the child in the least
3458 restrictive setting that is best suited to meet his or her
3459 needs.

3460 (h) After the initial 3-month review, the court must
3461 conduct a review of the child's residential treatment plan every
3462 90 days.

3463 (i) The department must adopt rules for implementing
3464 timeframes for the completion of suitability assessments by
3465 qualified evaluators and a procedure that includes timeframes
3466 for completing the 3-month independent review by the qualified
3467 evaluators of the child's progress toward achieving the goals
3468 and objectives of the treatment plan which review must be
3469 submitted to the court. The Agency for Health Care
3470 Administration must adopt rules for the registration of
3471 qualified evaluators, the procedure for selecting the evaluators
3472 to conduct the reviews required under this section, and a
3473 reasonable, cost-efficient fee schedule for qualified
3474 evaluators.

3475 Section 36. Subsections (5) and (6) of section 394.492,
3476 Florida Statutes, are amended to read:

3477 394.492 Definitions.—As used in ss. 394.490-394.497, the
3478 term:

3479 (5) "Child or adolescent who has an emotional disturbance"
3480 means a person under 18 years of age who is diagnosed with a

36-01520-17

20171756__

3481 mental, emotional, or behavioral disorder of sufficient duration
 3482 to meet one of the diagnostic categories specified in the most
 3483 recent edition of the Diagnostic and Statistical Manual of the
 3484 American Psychiatric Association, but who does not exhibit
 3485 behaviors that substantially interfere with or limit his or her
 3486 role or ability to function in the family, school, or community.
 3487 The emotional disturbance must not be considered to be a
 3488 temporary response to a stressful situation. The term does not
 3489 include a child or adolescent who meets the criteria for
 3490 involuntary services placement under s. 394.467(1).

3491 (6) "Child or adolescent who has a serious emotional
 3492 disturbance or mental illness" means a person under 18 years of
 3493 age who:

3494 (a) Is diagnosed as having a mental, emotional, or
 3495 behavioral disorder that meets one of the diagnostic categories
 3496 specified in the most recent edition of the Diagnostic and
 3497 Statistical Manual of Mental Disorders of the American
 3498 Psychiatric Association; and

3499 (b) Exhibits behaviors that substantially interfere with or
 3500 limit his or her role or ability to function in the family,
 3501 school, or community, which behaviors are not considered to be a
 3502 temporary response to a stressful situation.

3503
 3504 The term includes a child or adolescent who meets the criteria
 3505 for involuntary services placement under s. 394.467(1).

3506 Section 37. Paragraphs (a) and (c) of subsection (3) of
 3507 section 394.495, Florida Statutes, are amended to read:

3508 394.495 Child and adolescent mental health system of care;
 3509 programs and services.-

36-01520-17

20171756__

3510 (3) Assessments must be performed by:
 3511 (a) A professional as defined in s. 394.455(7), (33), (36),
 3512 or (37) 394.455(5), (7), (32), (35), or (36);

3513 (c) A person who is under the direct supervision of a
 3514 qualified professional as defined in s. 394.455(7), (33), (36),
 3515 or (37) 394.455(5), (7), (32), (35), or (36) or a professional
 3516 licensed under chapter 491.

3517 Section 38. Subsection (5) of section 394.496, Florida
 3518 Statutes, is amended to read:

3519 394.496 Service planning.—

3520 (5) A professional as defined in s. 394.455(7), (33), (36),
 3521 or (37) 394.455(5), (7), (32), (35), or (36) or a professional
 3522 licensed under chapter 491 must be included among those persons
 3523 developing the services plan.

3524 Section 39. Paragraph (b) of subsection (10) of section
 3525 394.9082, Florida Statutes, is amended to read:

3526 394.9082 Behavioral health managing entities.—

3527 (10) ACUTE CARE SERVICES UTILIZATION DATABASE.—The
 3528 department shall develop, implement, and maintain standards
 3529 under which a managing entity shall collect utilization data
 3530 from all public receiving facilities situated within its
 3531 geographical service area and all detoxification and addictions
 3532 receiving facilities under contract with the managing entity. As
 3533 used in this subsection, the term “public receiving facility”
 3534 means an entity that meets the licensure requirements of, and is
 3535 designated by, the department to operate as a public receiving
 3536 facility under s. 394.875 and that is operating as a licensed
 3537 crisis stabilization unit.

3538 (b) A managing entity shall require providers specified in

36-01520-17

20171756__

3539 paragraph (a) to submit data, in real time or at least daily, to
3540 the managing entity for:

3541 ~~1. All admissions and discharges of clients receiving~~
3542 ~~public receiving facility services who qualify as indigent, as~~
3543 ~~defined in s. 394.4787.~~

3544 1.2. All admissions and discharges of clients receiving
3545 substance abuse services in an addictions receiving facility or
3546 detoxification facility pursuant to parts IV and V of chapter
3547 397 who qualify as indigent.

3548 2.3. The current active census of total licensed and
3549 utilized beds, the number of beds purchased by the department,
3550 the number of clients qualifying as indigent who occupy any of
3551 those beds, the total number of unoccupied licensed beds,
3552 regardless of funding, and the number in excess of licensed
3553 capacity. Crisis units licensed for both adult and child use
3554 will report as a single unit.

3555 Section 40. Subsection (6) of section 394.9085, Florida
3556 Statutes, is amended to read:

3557 394.9085 Behavioral provider liability.—

3558 (6) For purposes of this section, the terms "detoxification
3559 services," "addictions receiving facility," and "receiving
3560 facility" have the same meanings as those provided in ss.

3561 397.311(25)(a)4., 397.311(25)(a)1., and 394.455(41) ~~394.455(39)~~,
3562 respectively.

3563 Section 41. Paragraph (b) of subsection (1) of section
3564 409.972, Florida Statutes, is amended to read:

3565 409.972 Mandatory and voluntary enrollment.—

3566 (1) The following Medicaid-eligible persons are exempt from
3567 mandatory managed care enrollment required by s. 409.965, and

36-01520-17

20171756__

3568 may voluntarily choose to participate in the managed medical
3569 assistance program:

3570 (b) Medicaid recipients residing in residential commitment
3571 facilities operated through the Department of Juvenile Justice
3572 or a treatment facility as defined in s. 394.455(51)
3573 ~~394.455(47)~~.

3574 Section 42. Subsection (7) of section 744.2007, Florida
3575 Statutes, is amended to read:

3576 744.2007 Powers and duties.—

3577 (7) A public guardian may not commit a ward to a treatment
3578 facility, as defined in s. 394.455(51) ~~394.455(47)~~, without an
3579 involuntary placement proceeding as provided by law.

3580 Section 43. Paragraph (a) of subsection (2) of section
3581 790.065, Florida Statutes, is amended to read:

3582 790.065 Sale and delivery of firearms.—

3583 (2) Upon receipt of a request for a criminal history record
3584 check, the Department of Law Enforcement shall, during the
3585 licensee's call or by return call, forthwith:

3586 (a) Review any records available to determine if the
3587 potential buyer or transferee:

3588 1. Has been convicted of a felony and is prohibited from
3589 receipt or possession of a firearm pursuant to s. 790.23;

3590 2. Has been convicted of a misdemeanor crime of domestic
3591 violence, and therefore is prohibited from purchasing a firearm;

3592 3. Has had adjudication of guilt withheld or imposition of
3593 sentence suspended on any felony or misdemeanor crime of
3594 domestic violence unless 3 years have elapsed since probation or
3595 any other conditions set by the court have been fulfilled or
3596 expunction has occurred; or

36-01520-17

20171756__

3597 4. Has been adjudicated mentally defective or has been
3598 committed to a mental institution by a court or as provided in
3599 sub-sub-subparagraph b.(II), and as a result is prohibited by
3600 state or federal law from purchasing a firearm.

3601 a. As used in this subparagraph, "adjudicated mentally
3602 defective" means a determination by a court that a person, as a
3603 result of marked subnormal intelligence, or mental illness,
3604 incompetency, condition, or disease, is a danger to himself or
3605 herself or to others or lacks the mental capacity to contract or
3606 manage his or her own affairs. The phrase includes a judicial
3607 finding of incapacity under s. 744.331(6)(a), an acquittal by
3608 reason of insanity of a person charged with a criminal offense,
3609 and a judicial finding that a criminal defendant is not
3610 competent to stand trial.

3611 b. As used in this subparagraph, "committed to a mental
3612 institution" means:

3613 (I) Involuntary commitment, commitment for mental
3614 defectiveness or mental illness, and commitment for substance
3615 abuse. The phrase includes involuntary services ~~inpatient~~
3616 ~~placement~~ as defined in s. 394.467, ~~involuntary outpatient~~
3617 ~~placement as defined in s. 394.4655~~, involuntary assessment and
3618 stabilization under s. 397.6818, and involuntary substance abuse
3619 treatment under s. 397.6957, but does not include a person in a
3620 mental institution for observation or discharged from a mental
3621 institution based upon the initial review by the physician or a
3622 voluntary admission to a mental institution; or

3623 (II) Notwithstanding sub-sub-subparagraph (I), voluntary
3624 admission to a mental institution for outpatient or inpatient
3625 treatment of a person who had an involuntary examination under

36-01520-17

20171756__

3626 s. 394.463, where each of the following conditions have been
3627 met:

3628 (A) An examining physician found that the person is an
3629 imminent danger to himself or herself or others.

3630 (B) The examining physician certified that if the person
3631 did not agree to voluntary treatment, a petition for involuntary
3632 outpatient or inpatient treatment would have been filed under s.
3633 394.463(2)(f)3. ~~394.463(2)(i)4.~~, or the examining physician
3634 certified that a petition was filed and the person subsequently
3635 agreed to voluntary treatment prior to a court hearing on the
3636 petition.

3637 (C) Before agreeing to voluntary treatment, the person
3638 received written notice of that finding and certification, and
3639 written notice that as a result of such finding, he or she may
3640 be prohibited from purchasing a firearm, and may not be eligible
3641 to apply for or retain a concealed weapon or firearms license
3642 under s. 790.06 and the person acknowledged such notice in
3643 writing, in substantially the following form:

3644 "I understand that the doctor who examined me believes I am a
3645 danger to myself or to others. I understand that if I do not
3646 agree to voluntary treatment, a petition will be filed in court
3647 to require me to receive involuntary treatment. I understand
3648 that if that petition is filed, I have the right to contest it.
3649 In the event a petition has been filed, I understand that I can
3650 subsequently agree to voluntary treatment prior to a court
3651 hearing. I understand that by agreeing to voluntary treatment in
3652 either of these situations, I may be prohibited from buying
3653 firearms and from applying for or retaining a concealed weapons
3654 or firearms license until I apply for and receive relief from

36-01520-17

20171756__

3655 that restriction under Florida law.”

3656 (D) A judge or a magistrate has, pursuant to sub-sub-
3657 subparagraph c.(II), reviewed the record of the finding,
3658 certification, notice, and written acknowledgment classifying
3659 the person as an imminent danger to himself or herself or
3660 others, and ordered that such record be submitted to the
3661 department.

3662 c. In order to check for these conditions, the department
3663 shall compile and maintain an automated database of persons who
3664 are prohibited from purchasing a firearm based on court records
3665 of adjudications of mental defectiveness or commitments to
3666 mental institutions.

3667 (I) Except as provided in sub-sub-subparagraph (II), clerks
3668 of court shall submit these records to the department within 1
3669 month after the rendition of the adjudication or commitment.
3670 Reports shall be submitted in an automated format. The reports
3671 must, at a minimum, include the name, along with any known alias
3672 or former name, the sex, and the date of birth of the subject.

3673 (II) For persons committed to a mental institution pursuant
3674 to sub-sub-subparagraph b.(II), within 24 hours after the
3675 person's agreement to voluntary admission, a record of the
3676 finding, certification, notice, and written acknowledgment must
3677 be filed by the administrator of the receiving or treatment
3678 facility, as defined in s. 394.455, with the clerk of the court
3679 for the county in which the involuntary examination under s.
3680 394.463 occurred. No fee shall be charged for the filing under
3681 this sub-sub-subparagraph. The clerk must present the records to
3682 a judge or magistrate within 24 hours after receipt of the
3683 records. A judge or magistrate is required and has the lawful

36-01520-17

20171756__

3684 authority to review the records ex parte and, if the judge or
3685 magistrate determines that the record supports the classifying
3686 of the person as an imminent danger to himself or herself or
3687 others, to order that the record be submitted to the department.
3688 If a judge or magistrate orders the submittal of the record to
3689 the department, the record must be submitted to the department
3690 within 24 hours.

3691 d. A person who has been adjudicated mentally defective or
3692 committed to a mental institution, as those terms are defined in
3693 this paragraph, may petition the court that made the
3694 adjudication or commitment, or the court that ordered that the
3695 record be submitted to the department pursuant to sub-sub-
3696 subparagraph c.(II), for relief from the firearm disabilities
3697 imposed by such adjudication or commitment. A copy of the
3698 petition shall be served on the state attorney for the county in
3699 which the person was adjudicated or committed. The state
3700 attorney may object to and present evidence relevant to the
3701 relief sought by the petition. The hearing on the petition may
3702 be open or closed as the petitioner may choose. The petitioner
3703 may present evidence and subpoena witnesses to appear at the
3704 hearing on the petition. The petitioner may confront and cross-
3705 examine witnesses called by the state attorney. A record of the
3706 hearing shall be made by a certified court reporter or by court-
3707 approved electronic means. The court shall make written findings
3708 of fact and conclusions of law on the issues before it and issue
3709 a final order. The court shall grant the relief requested in the
3710 petition if the court finds, based on the evidence presented
3711 with respect to the petitioner's reputation, the petitioner's
3712 mental health record and, if applicable, criminal history

36-01520-17

20171756__

3713 record, the circumstances surrounding the firearm disability,
3714 and any other evidence in the record, that the petitioner will
3715 not be likely to act in a manner that is dangerous to public
3716 safety and that granting the relief would not be contrary to the
3717 public interest. If the final order denies relief, the
3718 petitioner may not petition again for relief from firearm
3719 disabilities until 1 year after the date of the final order. The
3720 petitioner may seek judicial review of a final order denying
3721 relief in the district court of appeal having jurisdiction over
3722 the court that issued the order. The review shall be conducted
3723 de novo. Relief from a firearm disability granted under this
3724 sub-subparagraph has no effect on the loss of civil rights,
3725 including firearm rights, for any reason other than the
3726 particular adjudication of mental defectiveness or commitment to
3727 a mental institution from which relief is granted.

3728 e. Upon receipt of proper notice of relief from firearm
3729 disabilities granted under sub-subparagraph d., the department
3730 shall delete any mental health record of the person granted
3731 relief from the automated database of persons who are prohibited
3732 from purchasing a firearm based on court records of
3733 adjudications of mental defectiveness or commitments to mental
3734 institutions.

3735 f. The department is authorized to disclose data collected
3736 pursuant to this subparagraph to agencies of the Federal
3737 Government and other states for use exclusively in determining
3738 the lawfulness of a firearm sale or transfer. The department is
3739 also authorized to disclose this data to the Department of
3740 Agriculture and Consumer Services for purposes of determining
3741 eligibility for issuance of a concealed weapons or concealed

36-01520-17

20171756__

3742 firearms license and for determining whether a basis exists for
3743 revoking or suspending a previously issued license pursuant to
3744 s. 790.06(10). When a potential buyer or transferee appeals a
3745 nonapproval based on these records, the clerks of court and
3746 mental institutions shall, upon request by the department,
3747 provide information to help determine whether the potential
3748 buyer or transferee is the same person as the subject of the
3749 record. Photographs and any other data that could confirm or
3750 negate identity must be made available to the department for
3751 such purposes, notwithstanding any other provision of state law
3752 to the contrary. Any such information that is made confidential
3753 or exempt from disclosure by law shall retain such confidential
3754 or exempt status when transferred to the department.

3755 Section 44. Subsection (1) of section 945.46, Florida
3756 Statutes, is amended to read:

3757 945.46 Initiation of involuntary services placement ~~placement~~
3758 proceedings with respect to a mentally ill inmate scheduled for
3759 release.—

3760 (1) If an inmate who is receiving mental health treatment
3761 in the department is scheduled for release through expiration of
3762 sentence or any other means, but continues to be mentally ill
3763 and in need of care and treatment, as defined in s. 945.42, the
3764 warden is authorized to initiate procedures for involuntary
3765 services placement ~~placement~~ pursuant to s. 394.467, 60 days prior to such
3766 release.

3767 Section 45. This act shall take effect July 1, 2017.