

By Senator Ausley

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1 A bill to be entitled
2 An act relating to mental health treatment and
3 examinations; amending s. 394.459, F.S.; specifying
4 additional persons who may consent to mental health
5 treatment in certain circumstances; revising the
6 frequency with which the restriction on a patient's
7 right to communicate or receive visitors must be
8 reviewed; amending s. 394.4599, F.S.; authorizing a
9 receiving facility to seek assistance from a mobile
10 crisis response team for certain purposes; amending s.
11 394.462, F.S.; authorizing counties to use mobile
12 crisis response teams for certain purposes; deleting a
13 requirement that a receiving facility provide
14 examination and treatment to a felony arrestee who
15 appears to meet the criteria for involuntary
16 examination or placement at the place where he or she
17 is held; amending s. 394.463, F.S.; revising criteria
18 for involuntary examination; authorizing, rather than
19 requiring, an officer to take a person who appears to
20 meet the criteria for involuntary examination into
21 custody and deliver the person to a receiving
22 facility; revising standards for the use of physical
23 force and restraint in taking custody of persons
24 subject to ex parte orders; revising provisions on
25 return of firearms to persons after confiscation;
26 providing for release of certain persons to behavioral
27 health diversion programs; amending s. 394.4655, F.S.;
28 revising who may testify as to a patient's history in
29 considering criteria for involuntary outpatient

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30 services; amending s. 394.4573, F.S.; specifying that
31 recovery support services include access to certified
32 peer specialists; amending s. 394.496, F.S.; deleting
33 physicians from the list of professionals required to
34 develop service plans; amending s. 951.23, F.S.;
35 defining the term "inmate"; specifying rights to
36 treatment of persons in county and municipal detention
37 facilities; providing for such treatment; providing an
38 effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Paragraph (a) of subsection (3) and paragraph
43 (c) of subsection (5) of section 394.459, Florida Statutes, are
44 amended to read:

45 394.459 Rights of patients.—

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

47 (a)1. Each patient entering treatment shall be asked to
48 give express and informed consent for admission or treatment. If
49 the patient has been adjudicated incapacitated or found to be
50 incompetent to consent to treatment, express and informed
51 consent to treatment shall be sought instead from the patient's
52 guardian, ~~or~~ guardian advocate, health care surrogate,
53 representative, or proxy. If the patient is a minor, express and
54 informed consent for admission or treatment shall also be
55 requested from the patient's guardian. Express and informed
56 consent for admission or treatment of a patient under 18 years
57 of age shall be required from the patient's guardian, unless the
58 minor is seeking outpatient crisis intervention services under

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59 s. 394.4784. Express and informed consent for admission or
 60 treatment given by a patient who is under 18 years of age shall
 61 not be a condition of admission when the patient's guardian
 62 gives express and informed consent for the patient's admission
 63 pursuant to s. 394.463 or s. 394.467.

64 2. Before giving express and informed consent, the
 65 following information shall be provided and explained in plain
 66 language to the patient;~~;~~~~or~~ to the patient's guardian if the
 67 patient is 18 years of age or older and has been adjudicated
 68 incapacitated;~~;~~~~or~~ to the patient's guardian advocate if the
 69 patient has been found to be incompetent to consent to
 70 treatment; or to the patient's health care surrogate,
 71 representative, or proxy~~;~~ ~~or to~~ both the patient and the
 72 guardian if the patient is a minor:

- 73 a. The reason for admission or treatment.~~;~~
 74 b. The proposed treatment.~~;~~
 75 c. The purpose of the treatment to be provided.~~;~~
 76 d. The common risks, benefits, and side effects thereof.~~;~~
 77 e. The specific dosage range for the medication, when
 78 applicable.~~;~~
 79 f. Alternative treatment modalities.~~;~~
 80 g. The approximate length of care.~~;~~
 81 h. The potential effects of stopping treatment.~~;~~
 82 i. How treatment will be monitored.~~;~~~~and~~
 83 j. That any consent given for treatment may be revoked
 84 orally or in writing before or during the treatment period by
 85 the patient or by a person who is legally authorized to make
 86 health care decisions on behalf of the patient.

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

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88 (c) Each facility must permit immediate access to any
89 patient, subject to the patient's right to deny or withdraw
90 consent at any time, by the patient's family members, guardian,
91 guardian advocate, representative, Florida statewide or local
92 advocacy council, or attorney, unless such access would be
93 detrimental to the patient. If a patient's right to communicate
94 or to receive visitors is restricted by the facility, written
95 notice of such restriction and the reasons for the restriction
96 shall be served on the patient, the patient's attorney, and the
97 patient's guardian, guardian advocate, or representative; and
98 such restriction shall be recorded on the patient's clinical
99 record with the reasons therefor. The restriction of a patient's
100 right to communicate or to receive visitors shall be reviewed at
101 least every 24 hours ~~7 days~~. The right to communicate or receive
102 visitors shall not be restricted as a means of punishment.
103 ~~Nothing in~~ This paragraph does not ~~shall be construed to~~ limit
104 the provisions of paragraph (d).

105 Section 2. Paragraph (c) of subsection (2) of section
106 394.4599, Florida Statutes, is amended to read:

107 394.4599 Notice.—

108 (2) INVOLUNTARY ADMISSION.—

109 (c)1. A receiving facility shall give notice of the
110 whereabouts of a minor who is being involuntarily held for
111 examination pursuant to s. 394.463 to the minor's parent,
112 guardian, caregiver, or guardian advocate, in person or by
113 telephone or other form of electronic communication, immediately
114 after the minor's arrival at the facility. The facility may
115 delay notification for no more than 24 hours after the minor's
116 arrival if the facility has submitted a report to the central

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117 abuse hotline, pursuant to s. 39.201, based upon knowledge or
118 suspicion of abuse, abandonment, or neglect and if the facility
119 deems a delay in notification to be in the minor's best
120 interest.

121 2. The receiving facility shall attempt to notify the
122 minor's parent, guardian, caregiver, or guardian advocate until
123 the receiving facility receives confirmation from the parent,
124 guardian, caregiver, or guardian advocate, verbally, by
125 telephone or other form of electronic communication, or by
126 recorded message, that notification has been received. Attempts
127 to notify the parent, guardian, caregiver, or guardian advocate
128 must be repeated at least once every hour during the first 12
129 hours after the minor's arrival and once every 24 hours
130 thereafter and must continue until such confirmation is
131 received, unless the minor is released at the end of the 72-hour
132 examination period, or until a petition for involuntary services
133 is filed with the court pursuant to s. 394.463(2)(g). The
134 receiving facility may seek assistance from a law enforcement
135 agency or a mobile crisis response team to notify the minor's
136 parent, guardian, caregiver, or guardian advocate if the
137 facility has not received within the first 24 hours after the
138 minor's arrival a confirmation by the parent, guardian,
139 caregiver, or guardian advocate that notification has been
140 received. The receiving facility must document notification
141 attempts in the minor's clinical record.

142 Section 3. Paragraphs (a), (b), (f), (h), (k), and (l)
143 subsection (1) of section 394.462, Florida Statutes, are amended
144 to read:

145 394.462 Transportation.—A transportation plan shall be

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146 developed and implemented by each county in collaboration with
147 the managing entity in accordance with this section. A county
148 may enter into a memorandum of understanding with the governing
149 boards of nearby counties to establish a shared transportation
150 plan. When multiple counties enter into a memorandum of
151 understanding for this purpose, the counties shall notify the
152 managing entity and provide it with a copy of the agreement. The
153 transportation plan shall describe methods of transport to a
154 facility within the designated receiving system for individuals
155 subject to involuntary examination under s. 394.463 or
156 involuntary admission under s. 397.6772, s. 397.679, s.
157 397.6798, or s. 397.6811, and may identify responsibility for
158 other transportation to a participating facility when necessary
159 and agreed to by the facility. The plan may rely on emergency
160 medical transport services or private transport companies, as
161 appropriate. The plan shall comply with the transportation
162 provisions of this section and ss. 397.6772, 397.6795, 397.6822,
163 and 397.697.

164 (1) TRANSPORTATION TO A RECEIVING FACILITY.—

165 (a) Each county shall designate a single law enforcement
166 agency or contract with a mobile crisis response team within the
167 county, or portions thereof, to take a person into custody upon
168 the entry of an ex parte order or the execution of a certificate
169 for involuntary examination by an authorized professional and to
170 transport that person to the appropriate facility within the
171 designated receiving system pursuant to a transportation plan.

172 (b)1. The designated law enforcement agency or contracted
173 mobile crisis response team may decline to transport the person
174 to a receiving facility only if:

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175 a. The jurisdiction designated by the county has contracted
176 on an annual basis with an emergency medical transport service
177 or private transport company for transportation of persons to
178 receiving facilities pursuant to this section at the sole cost
179 of the county; and

180 b. The law enforcement agency or contracted mobile crisis
181 response team and the emergency medical transport service or
182 private transport company agree that the continued presence of
183 law enforcement personnel is not necessary for the safety of the
184 person or others.

185 2. The entity providing transportation may seek
186 reimbursement for transportation expenses. The party responsible
187 for payment for such transportation is the person receiving the
188 transportation. The county shall seek reimbursement from the
189 following sources in the following order:

190 a. From a private or public third-party payor, if the
191 person receiving the transportation has applicable coverage.

192 b. From the person receiving the transportation.

193 c. From a financial settlement for medical care, treatment,
194 hospitalization, or transportation payable or accruing to the
195 injured party.

196 (f) When a member of a mental health overlay program or a
197 mobile crisis response service is a professional authorized to
198 initiate an involuntary examination pursuant to s. 394.463 or s.
199 397.675 and that professional evaluates a person and determines
200 that transportation to a receiving facility is needed, the
201 service, at its discretion, may transport the person to the
202 facility or may call on the law enforcement agency, contracted
203 mobile crisis response team, or other transportation arrangement

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204 best suited to the needs of the patient.

205 (h) When any law enforcement officer has arrested a person
206 for a felony and it appears that the person meets the statutory
207 guidelines for involuntary examination or placement under this
208 part, such person must first be processed in the same manner as
209 any other criminal suspect. The law enforcement agency shall
210 thereafter immediately notify the appropriate facility within
211 the designated receiving system pursuant to a transportation
212 plan. The receiving facility shall be responsible for promptly
213 arranging for the examination and treatment of the person. A
214 receiving facility is not required to admit a person charged
215 with a crime for whom the facility determines and documents that
216 it is unable to provide adequate security, ~~but shall provide~~
217 ~~examination and treatment to the person where he or she is held.~~

218 (k) The appropriate facility within the designated
219 receiving system pursuant to a transportation plan must accept
220 persons brought by law enforcement officers, a mobile crisis
221 response team, or an emergency medical transport service or a
222 private transport company authorized by the county, for
223 involuntary examination pursuant to s. 394.463.

224 (l) The appropriate facility within the designated
225 receiving system pursuant to a transportation plan must provide
226 persons brought by law enforcement officers, a mobile crisis
227 response team, or an emergency medical transport service or a
228 private transport company authorized by the county, pursuant to
229 s. 397.675, a basic screening or triage sufficient to refer the
230 person to the appropriate services.

231 Section 4. Paragraph (b) of subsection (1) and paragraphs
232 (a), (c), (d), and (g) of subsection (2) of section 394.463,

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233 Florida Statutes, are amended to read:

234 394.463 Involuntary examination.—

235 (1) CRITERIA.—A person may be taken to a receiving facility
236 for involuntary examination if there is reason to believe that
237 the person has a mental illness and because of his or her mental
238 illness:

239 (b)1. Without care or treatment, the person is likely to
240 suffer from neglect or refuse to care for himself or herself;
241 such neglect or refusal poses a real and present threat of
242 substantial harm to his or her well-being; and it is not
243 apparent that such harm may be avoided through the help of
244 willing, able, and responsible family members or friends or the
245 provision of other services; or

246 2. There is a substantial likelihood that in the near
247 future and without care or treatment the person will inflict
248 serious ~~cause serious bodily~~ harm to self ~~himself or herself~~ or
249 others ~~in the near future~~, as evidenced by recent behavior
250 causing, attempting to cause, or threatening such harm, such as
251 causing significant property damage.

252 (2) INVOLUNTARY EXAMINATION.—

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

255 1. A circuit or county court may enter an ex parte order
256 stating that a person appears to meet the criteria for
257 involuntary examination and specifying the findings on which
258 that conclusion is based. The ex parte order for involuntary
259 examination must be based on written or oral sworn testimony
260 that includes specific facts that support the findings. If other
261 less restrictive means are not available, such as voluntary

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262 appearance for outpatient evaluation, a law enforcement officer,
263 or other designated agent of the court, shall take the person
264 into custody and deliver him or her to an appropriate, or the
265 nearest, facility within the designated receiving system
266 pursuant to s. 394.462 for involuntary examination. The order of
267 the court shall be made a part of the patient's clinical record.
268 A fee may not be charged for the filing of an order under this
269 subsection. A facility accepting the patient based on this order
270 must send a copy of the order to the department within 5 working
271 days. The order may be submitted electronically through existing
272 data systems, if available. The order shall be valid only until
273 the person is delivered to the facility or for the period
274 specified in the order itself, whichever comes first. If a time
275 limit is not specified in the order, the order is valid for 7
276 days after the date that the order was signed.

277 2. A law enforcement officer may ~~shall~~ take a person who
278 appears to meet the criteria for involuntary examination into
279 custody and deliver the person or have him or her delivered to
280 an appropriate, or the nearest, facility within the designated
281 receiving system pursuant to s. 394.462 for examination. The
282 officer shall execute a written report detailing the
283 circumstances under which the person was taken into custody,
284 which must be made a part of the patient's clinical record. Any
285 facility accepting the patient based on this report must send a
286 copy of the report to the department within 5 working days.

287 3. A physician, a clinical psychologist, a psychiatric
288 nurse, an advanced practice registered nurse registered under s.
289 464.0123, a mental health counselor, a marriage and family
290 therapist, or a clinical social worker may execute a certificate

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291 stating that he or she has examined a person within the
292 preceding 48 hours and finds that the person appears to meet the
293 criteria for involuntary examination and stating the
294 observations upon which that conclusion is based. If other less
295 restrictive means, such as voluntary appearance for outpatient
296 evaluation, are not available, a law enforcement officer shall
297 take into custody the person named in the certificate and
298 deliver him or her to the appropriate, or nearest, facility
299 within the designated receiving system pursuant to s. 394.462
300 for involuntary examination. The law enforcement officer shall
301 execute a written report detailing the circumstances under which
302 the person was taken into custody. The report and certificate
303 shall be made a part of the patient's clinical record. Any
304 facility accepting the patient based on this certificate must
305 send a copy of the certificate to the department within 5
306 working days. The document may be submitted electronically
307 through existing data systems, if applicable.

308
309 When sending the order, report, or certificate to the
310 department, a facility shall, at a minimum, provide information
311 about which action was taken regarding the patient under
312 paragraph (g), which information shall also be made a part of
313 the patient's clinical record.

314 (c) A law enforcement officer acting in accordance with an
315 ex parte order issued pursuant to this subsection may:

316 1. Serve and execute such order on any day of the week, at
317 any time of the day or night; and

318 2. Use such reasonable physical force as is necessary to
319 gain entry to the premises, and any dwellings, buildings, or

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320 other structures located on the premises, and take custody of
321 the person who is the subject of the ex parte order. Physical
322 force should not be used in executing an ex parte order unless
323 the person executing the order reasonably believes that there is
324 imminent danger or harm to himself or herself, to the person who
325 is the subject of the order, or to others present. If physical
326 force is used, the least amount of physical force should be
327 used, including refraining from using handcuffs if the person
328 can be safely transported without them. If ~~When practicable,~~ a
329 law enforcement officer is assigned to serve and execute the ex
330 parte order, he or she shall have received 40 hours of ~~who has~~
331 ~~received~~ crisis intervention team (CIT) training through the
332 Memphis Model or its equivalent within the preceding 5 calendar
333 years. The court may also designate another agent to serve and
334 execute the ex parte order ~~shall be assigned to serve and~~
335 ~~execute the ex parte order.~~

336 (d)1. A law enforcement officer taking custody of a person
337 under this subsection may seize and hold a firearm or any
338 ammunition the person possesses at the time of taking him or her
339 into custody if the person poses a potential danger to himself
340 or herself or others and has made a credible threat of violence
341 against another person.

342 2. If the law enforcement officer takes custody of the
343 person at the person's residence and the criteria in
344 subparagraph 1. have been met, the law enforcement officer may
345 seek the voluntary surrender of firearms or ammunition kept in
346 the residence which have not already been seized under
347 subparagraph 1. If such firearms or ammunition are not
348 voluntarily surrendered, or if the person has other firearms or

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349 ammunition that were not seized or voluntarily surrendered when
350 he or she was taken into custody, a law enforcement officer may
351 petition the appropriate court under s. 790.401 for a risk
352 protection order against the person.

353 3. Firearms or ammunition seized or voluntarily surrendered
354 under this paragraph must be made available for return no later
355 than 24 hours after the person taken into custody can document
356 that he or she is no longer subject to involuntary examination
357 and has been released or discharged from any inpatient or
358 involuntary outpatient treatment provided or ordered under
359 paragraph (g), unless a risk protection order entered under s.
360 790.401 directs the law enforcement agency to hold the firearms
361 or ammunition for a longer period or the person is subject to a
362 firearm purchase disability under s. 790.065(2), or a firearm
363 possession and firearm ownership disability under s. 790.064.
364 The process for the actual return of firearms or ammunition
365 seized or voluntarily surrendered under this paragraph may not
366 take longer than 7 days, unless a behavioral health professional
367 who has conducted a current mental health assessment of the
368 person certifies that there is substantial likelihood that in
369 the near future, the person will inflict serious bodily harm on
370 self or others, as evidenced by recent behavior causing,
371 attempting, or threatening such harm.

372 4. Law enforcement agencies must develop policies and
373 procedures relating to the seizure, storage, and return of
374 firearms or ammunition held under this paragraph.

375 (g) The examination period must be for up to 72 hours. For
376 a minor, the examination shall be initiated within 12 hours
377 after the patient's arrival at the facility. Within the

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378 examination period or, if the examination period ends on a
379 weekend or holiday, no later than the next working day
380 thereafter, one of the following actions must be taken, based on
381 the individual needs of the patient:

382 1. The patient shall be released, unless he or she is
383 charged with a crime, in which case the patient shall be
384 returned to the custody of a law enforcement officer, unless a
385 court has adjudicated and assigned the patient into a behavioral
386 health diversion treatment program, in which case the patient
387 will be sent to the determined location for the diversion
388 treatment program;

389 2. The patient shall be released, subject to subparagraph
390 1., for voluntary outpatient treatment;

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

395 4. A petition for involuntary services shall be filed in
396 the circuit court if inpatient treatment is deemed necessary or
397 with the criminal county court, as defined in s. 394.4655(1), as
398 applicable. When inpatient treatment is deemed necessary, the
399 least restrictive treatment consistent with the optimum
400 improvement of the patient's condition shall be made available.
401 When a petition is to be filed for involuntary outpatient
402 placement, it shall be filed by one of the petitioners specified
403 in s. 394.4655(4)(a). A petition for involuntary inpatient
404 placement shall be filed by the facility administrator.

405 Section 5. Paragraph (g) of subsection (2) of section
406 394.4655, Florida Statutes, is amended to read:

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407 394.4655 Involuntary outpatient services.—

408 (2) CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES.—A person
409 may be ordered to involuntary outpatient services upon a finding
410 of the court, by clear and convincing evidence, that the person
411 meets all of the following criteria:

412 (g)1. In view of the person's treatment history and current
413 behavior, the person is in need of involuntary outpatient
414 services in order to prevent a relapse or deterioration that
415 would be likely to result in serious bodily harm to himself or
416 herself or others, or a substantial harm to his or her well-
417 being as set forth in s. 394.463(1).

418 2. The consideration of the person's history must include
419 testimony from family members, should they desire to testify, as
420 well as testimony by other individuals deemed by the court to be
421 relevant under state law, regarding the person's prior history
422 and how that prior history relates to the person's current
423 condition.

424 Section 6. Paragraph (1) of subsection (2) of section
425 394.4573, Florida Statutes, is amended to read:

426 394.4573 Coordinated system of care; annual assessment;
427 essential elements; measures of performance; system improvement
428 grants; reports.—On or before December 1 of each year, the
429 department shall submit to the Governor, the President of the
430 Senate, and the Speaker of the House of Representatives an
431 assessment of the behavioral health services in this state. The
432 assessment shall consider, at a minimum, the extent to which
433 designated receiving systems function as no-wrong-door models,
434 the availability of treatment and recovery services that use
435 recovery-oriented and peer-involved approaches, the availability

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436 of less-restrictive services, and the use of evidence-informed
437 practices. The assessment shall also consider the availability
438 of and access to coordinated specialty care programs and
439 identify any gaps in the availability of and access to such
440 programs in the state. The department's assessment shall
441 consider, at a minimum, the needs assessments conducted by the
442 managing entities pursuant to s. 394.9082(5). Beginning in 2017,
443 the department shall compile and include in the report all plans
444 submitted by managing entities pursuant to s. 394.9082(8) and
445 the department's evaluation of each plan.

446 (2) The essential elements of a coordinated system of care
447 include:

448 (1) Recovery support, including, but not limited to,
449 support for competitive employment, educational attainment,
450 independent living skills development, family support and
451 education, wellness management and self-care, access to support
452 services provided by a certified peer specialist, and assistance
453 in obtaining housing that meets the individual's needs. Such
454 housing may include mental health residential treatment
455 facilities, limited mental health assisted living facilities,
456 adult family care homes, and supportive housing. Housing
457 provided using state funds must provide a safe and decent
458 environment free from abuse and neglect.

459 Section 7. Subsection (5) of section 394.496, Florida
460 Statutes, is amended to read:

461 394.496 Service planning.—

462 (5) A professional as defined in s. 394.455(5), (7), ~~(33)~~,
463 (36), or (37) or a professional licensed under chapter 491 must
464 be included among those persons developing the services plan.

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465 Section 8. Paragraphs (d), (e), and (f) of subsection (1)
466 of section 951.23, Florida Statutes, are redesignated as
467 paragraphs (e), (f), and (g), respectively, and a new paragraph
468 (d) is added to that subsection and subsections (12) through
469 (16) are added to that section, to read:

470 951.23 County and municipal detention facilities;
471 definitions; administration; standards and requirements.—

472 (1) DEFINITIONS.—As used in this section, the term:

473 (d) As used in subsections (14) through (16), the term
474 “inmate” has the same meaning as the term “county prisoner.”

475 (12) RIGHT TO QUALITY TREATMENT.—An inmate in a
476 correctional facility has the right to receive treatment that is
477 suites to his or her needs and that is provided in a humane
478 environment. Such treatment shall be administered skillfully,
479 safely, and humanely with respect for the inmate’s dignity and
480 personal integrity.

481 (13) RIGHT TO EXPRESS AND INFORMED CONSENT.—

482 (a) Unless it is determined that there is a guardian with
483 the authority to consent to medical treatment, an inmate
484 provided psychiatric treatment within a county detention
485 facility shall be asked to give his or her express and informed
486 written consent for such treatment.

487 (b) As used in this subsection, the terms “express and
488 informed written consent” or “consent” mean consent voluntarily
489 given in writing after a conscientious and sufficient
490 explanation and disclosure of the purpose of the proposed
491 treatment; the common side effects of the treatment, if any; the
492 expected duration of the treatment; and any alternative
493 treatment available. The explanation shall enable the inmate to

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494 make a knowing and willful decision without any element of
495 fraud, deceit, or duress or any other form of constraint or
496 coercion.

497 (14) INVOLUNTARY TREATMENT OF INMATES; APPOINTMENT OF
498 COUNSEL.—Involuntary treatment of an inmate who refuses
499 treatment and is unable to be transported to a receiving
500 facility may be provided at a county detention facility if
501 deemed necessary for the appropriate care of the inmate and the
502 safety of the inmate or others. Except as provided in
503 subsections (15) and (16), an inmate confined in a county
504 detention facility may not be administered any psychiatric
505 medication without his or her prior informed consent. The inmate
506 shall be provided with a copy of the petition described in
507 paragraph (15) (a) along with the proposed treatment; the basis
508 for the proposed treatment; the names of the experts; and the
509 date, time, and location of the hearing. The inmate may have an
510 attorney represent him or her at the hearing. If the inmate is
511 indigent, the court shall appoint the public defender in the
512 county in which the inmate is held to represent the inmate who
513 is the subject of the petition within 1 court working day after
514 the filing of a petition for involuntary treatment, unless the
515 inmate is otherwise represented by counsel. The clerk of the
516 court in the county in which the inmate is held shall
517 immediately notify the public defender of such appointment. An
518 attorney representing the inmate shall have access to the inmate
519 and any records, including medical or mental health records,
520 which are relevant to the representation of the inmate.

521 (15) PROCEDURES FOR INVOLUNTARY TREATMENT OF AN INMATE.—

522 (a) A county detention facility may petition the circuit

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523 court for an order for involuntary treatment if all of the
524 following conditions have been met:

525 1. A psychiatrist, psychologist, psychiatric nurse
526 practitioner, or licensed mental health professional has
527 determined that the inmate has a serious mental illness.

528 2. A psychiatrist or psychiatric nurse practitioner has
529 determined that, as a result of that mental illness, the inmate
530 does not have the capacity to refuse treatment with psychiatric
531 medications, or is a danger to self or others.

532 3. A psychiatrist or psychiatric nurse practitioner has
533 prescribed one or more psychiatric medications for the treatment
534 of the inmate's illness, has considered the risks, benefits, and
535 treatment alternatives to involuntary medication, and has
536 determined that the treatment alternatives to involuntary
537 medication are unlikely to meet the needs of the inmate.

538 4. The inmate has been advised of the risks and benefits
539 of, and treatment alternatives to, the psychiatric medication
540 and refuses, or is unable to consent to, the administration of
541 the medication.

542 5. The county detention facility has made a documented
543 attempt to locate an available bed for the inmate in a receiving
544 facility in lieu of seeking to administer involuntary
545 medication.

546 6. The inmate is provided a hearing before the circuit
547 court, or court-appointed general magistrate or hearing officer
548 in the county in which the inmate is held. If the inmate is in
549 custody awaiting trial, any hearing pursuant to this section
550 shall be held before a circuit court judge.

551 7. A copy of the petition and written notice has been

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552 issued at least 5 days before the hearing which:

553 a. Sets forth the diagnosis, the factual basis for the
554 diagnosis, the basis upon which psychiatric medication is
555 recommended, the expected benefits of the medication, and any
556 potential side effects or risks to the inmate from the
557 medication.

558 b. Advises the inmate of the right to be present at the
559 hearing, the right to be represented by counsel at all stages of
560 the proceedings, the right to present evidence, and the right to
561 cross-examine witnesses.

562 c. Informs the inmate of his or her right to appeal any
563 determination of the circuit court, and his or her right to file
564 a petition for writ of habeas corpus with respect to any
565 findings of the circuit court or court-appointed magistrate if
566 involuntary treatment is authorized.

567 (b) The court shall hold the hearing on involuntary
568 treatment within 5 court working days. The court may appoint a
569 general or special magistrate to preside. Except for good cause
570 documented in the court file, the hearing must occur in the
571 county in which the inmate is held, must be as convenient to the
572 inmate as is consistent with orderly procedure, and shall be
573 conducted in physical settings not likely to be injurious to the
574 inmate's condition. If the court finds that the inmate's
575 attendance at the hearing is not consistent with the best
576 interests of the inmate, and the inmate's counsel does not
577 object, the court may waive the presence of the inmate from all
578 or any portion of the hearing. The inmate may testify or not, as
579 he or she chooses, may cross-examine witnesses testifying on
580 behalf of the county detention facility, and may present his or

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581 her own witnesses.

582 (c)1. At the hearing on the issue of whether the court
583 should authorize treatment for which an inmate has refused to
584 give express and informed consent, the court shall determine by
585 clear and convincing evidence whether:

586 a. The inmate has a serious mental illness.

587 b. Such treatment is essential to the care of the inmate.

588 c. The treatment is experimental or presents an
589 unreasonable risk of hazardous or irreversible side effects.

590 2. In arriving at the substitute judgment decision, the
591 court must consider at least the following:

592 a. The inmate's expressed preference regarding treatment.

593 b. The prognosis for the inmate without treatment.

594 c. The prognosis for the inmate with treatment.

595 (d) The historical course of the inmate's mental illness,
596 as determined by available relevant information about the course
597 of the inmate's mental illness, shall be considered when it has
598 direct bearing on the determination of whether the inmate is a
599 danger to self or others, or is incompetent to refuse medication
600 as the result of a mental illness.

601 (e) If the court concludes that the inmate meets the
602 criteria for involuntary treatment, it may issue an order
603 authorizing such treatment for a period not to exceed 90 days
604 after the date of the order.

605 (f) An inmate is entitled to file one motion for
606 reconsideration following a determination that he or she may
607 receive involuntary medication, and may seek a hearing to
608 present new evidence, upon good cause shown. This paragraph does
609 not prevent a court from reviewing, modifying, or terminating an

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610 involuntary medication order for an inmate, if there is a
611 showing that the involuntary medication is interfering with the
612 inmate's due process rights in the criminal proceeding for which
613 he or she is held.

614 (g) Any determination of an inmate's incapacity to refuse
615 treatment with antipsychotic medication made under this section
616 shall remain in effect only until one of the following occurs,
617 whichever is first:

618 1. The duration of the inmate's confinement ends;

619 2. The petitioner files a certification of person's
620 competence to provide express and informed consent;

621 3. A court determines that the inmate no longer meets the
622 criteria for involuntary treatment; or

623 4. A court issues any other order terminating the order.

624 (h) This subsection does not prohibit a physician from
625 taking appropriate action in an emergency pursuant to an
626 emergency treatment order.

627 (16) PROCEDURES FOR PETITIONS FOR CONTINUED INVOLUNTARY
628 TREATMENT OF AN INMATE.—

629 (a) A copy of a subsequent petition to renew or continue
630 involuntary treatment of an inmate shall be provided to the
631 inmate and the inmate's attorney. In determining whether the
632 criteria for involuntary medication still exists, the court
633 shall consider the petition and underlying affidavit of the
634 psychiatrist or psychiatrists and any supplemental information
635 provided by the inmate's attorney. The court may also require
636 the testimony from the psychiatrist, if necessary. The court, at
637 a subsequent hearing, may continue the order authorizing
638 involuntary medication, vacate the order, or make any other

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639 appropriate order.

640 (b) The request to renew or continue the order shall be
641 filed and served no later than 14 days before the expiration of
642 the current order authorizing involuntary medication.

643 (c) The inmate shall be entitled to, and shall be given,
644 the same due process protections as provided in subsections (14)
645 and (15).

646 (d) An order renewing or continuing an existing order shall
647 be granted based on clear and convincing evidence that the
648 inmate has a serious mental illness that requires treatment with
649 psychiatric medication, and that, but for the medication, the
650 inmate would revert to the behavior that was the basis for the
651 prior order authorizing involuntary medication, coupled with
652 evidence that the inmate lacks insight regarding his or her need
653 for the medication. No new acts need be alleged or proven to
654 renew or continue an existing order.

655 (e) The hearing on any petition to renew or continue an
656 order for involuntary medication shall be conducted before the
657 expiration of the current order.

658 Section 9. This act shall take effect July 1, 2021.