

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
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 for the list of professionals requires to
34 develop service plans; amending s. 951.23, F.S.;
35 providing a definition; specifying rights to treatment
36 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
 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.—
 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
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
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 a mobile crisis response team within the county, or
167 portions thereof, to take a person into custody upon the entry
168 of an ex parte order or the execution of a certificate for
169 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 a mobile
173 crisis response team may decline to transport the person to a
174 receiving facility only if:

175 a. The jurisdiction designated by the county has

176 | contracted on an annual basis with an emergency medical
177 | transport service or private transport company for
178 | transportation of persons to receiving facilities pursuant to
179 | this section at the sole cost of the county; and

180 | b. The law enforcement agency or mobile crisis response
181 | team and the emergency medical transport service or private
182 | transport company agree that the continued presence of law
183 | 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,
194 | treatment, hospitalization, or transportation payable or
195 | accruing to the 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, a mobile
203 crisis response team, or other transportation arrangement best
204 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,
233 Florida Statutes, are amended to read:

234 394.463 Involuntary examination.—

235 (1) CRITERIA.—A person may be taken to a receiving
236 facility for involuntary examination if there is reason to
237 believe that the person has a mental illness and because of his
238 or her mental 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
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
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
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, such as a mobile crisis response
335 service shall be assigned to serve and execute the ex parte
336 order.

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

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

351 he or she was taken into custody, a law enforcement officer may
352 petition the appropriate court under s. 790.401 for a risk
353 protection order against the person.

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

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

376 (g) The examination period must be for up to 72 hours. For
377 a minor, the examination shall be initiated within 12 hours
378 after the patient's arrival at the facility. Within the
379 examination period or, if the examination period ends on a
380 weekend or holiday, no later than the next working day
381 thereafter, one of the following actions must be taken, based on
382 the individual needs of the patient:

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

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

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

396 4. A petition for involuntary services shall be filed in
397 the circuit court if inpatient treatment is deemed necessary or
398 with the criminal county court, as defined in s. 394.4655(1), as
399 applicable. When inpatient treatment is deemed necessary, the
400 least restrictive treatment consistent with the optimum

401 improvement of the patient's condition shall be made available.
402 When a petition is to be filed for involuntary outpatient
403 placement, it shall be filed by one of the petitioners specified
404 in s. 394.4655(4)(a). A petition for involuntary inpatient
405 placement shall be filed by the facility administrator.

406 Section 5. Paragraph (g) of subsection (2) of section
407 394.4655, Florida Statutes, is amended to read:

408 394.4655 Involuntary outpatient services.—

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

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

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

425 Section 6. Paragraph (1) of subsection (2) of section

426 394.4573, Florida Statutes, is amended to read:

427 394.4573 Coordinated system of care; annual assessment;
428 essential elements; measures of performance; system improvement
429 grants; reports.—On or before December 1 of each year, the
430 department shall submit to the Governor, the President of the
431 Senate, and the Speaker of the House of Representatives an
432 assessment of the behavioral health services in this state. The
433 assessment shall consider, at a minimum, the extent to which
434 designated receiving systems function as no-wrong-door models,
435 the availability of treatment and recovery services that use
436 recovery-oriented and peer-involved approaches, the availability
437 of less-restrictive services, and the use of evidence-informed
438 practices. The assessment shall also consider the availability
439 of and access to coordinated specialty care programs and
440 identify any gaps in the availability of and access to such
441 programs in the state. The department's assessment shall
442 consider, at a minimum, the needs assessments conducted by the
443 managing entities pursuant to s. 394.9082(5). Beginning in 2017,
444 the department shall compile and include in the report all plans
445 submitted by managing entities pursuant to s. 394.9082(8) and
446 the department's evaluation of each plan.

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

449 (1) Recovery support, including, but not limited to,
450 support for competitive employment, educational attainment,

451 independent living skills development, family support and
 452 education, wellness management and self-care, access to support
 453 services provided by a certified peer specialist, and assistance
 454 in obtaining housing that meets the individual's needs. Such
 455 housing may include mental health residential treatment
 456 facilities, limited mental health assisted living facilities,
 457 adult family care homes, and supportive housing. Housing
 458 provided using state funds must provide a safe and decent
 459 environment free from abuse and neglect.

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

462 394.496 Service planning.—

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

466 Section 8. Paragraphs (d), (e), and (f) of subsection (1)
 467 of section 951.23, Florida Statutes, are redesignated as
 468 paragraphs (e), (f), and (g), respectively, and a new paragraph
 469 (d) is added to subsection (2) and subsections (12) through (16)
 470 are added to that section, to read:

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

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

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

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

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

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

488 (b) As used in this subsection, the terms "express and
489 informed written consent" or "consent" mean consent voluntarily
490 given in writing after a conscientious and sufficient
491 explanation and disclosure of the purpose of the proposed
492 treatment; the common side effects of the treatment, if any; the
493 expected duration of the treatment; and any alternative
494 treatment available. The explanation shall enable the inmate to
495 make a knowing and willful decision without any element of
496 fraud, deceit, or duress or any other form of constraint or
497 coercion.

498 (14) INVOLUNTARY TREATMENT OF INMATES; APPOINTMENT OF
499 COUNSEL.—Involuntary treatment of an inmate who refuses
500 treatment and is unable to be transported to a receiving

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

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

523 (a) A county detention facility may petition the circuit
524 court for an order for involuntary treatment if all of the
525 following conditions have been met:

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

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

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

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

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

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

551 shall be held before a circuit court judge.

552 7. A copy of the petition and written notice has been
553 issued at least 5 days before the hearing which:

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

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

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

568 (b) The court shall hold the hearing on involuntary
569 treatment within 5 court working days. The court may appoint a
570 general or special magistrate to preside. Except for good cause
571 documented in the court file, the hearing must occur in the
572 county in which the inmate is held, must be as convenient to the
573 inmate as is consistent with orderly procedure, and shall be
574 conducted in physical settings not likely to be injurious to the
575 inmate's condition. If the court finds that the inmate's

576 attendance at the hearing is not consistent with the best
577 interests of the inmate, and the inmate's counsel does not
578 object, the court may waive the presence of the inmate from all
579 or any portion of the hearing. The inmate may testify or not, as
580 he or she chooses, may cross-examine witnesses testifying on
581 behalf of the county detention facility, and may present his or
582 her own witnesses.

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

- 587 a. The inmate has a serious mental illness.
588 b. Such treatment is essential to the care of the inmate.
589 c. The treatment is experimental or presents an
590 unreasonable risk of hazardous, or irreversible side effects.

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

- 593 a. The inmate's expressed preference regarding treatment.
594 b. The prognosis for the inmate without treatment.
595 c. The prognosis for the inmate with treatment.

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

601 as the result of a mental illness.

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

606 (f) An inmate is entitled to file one motion for
607 reconsideration following a determination that he or she may
608 receive involuntary medication, and may seek a hearing to
609 present new evidence, upon good cause shown. This paragraph does
610 not prevent a court from reviewing, modifying, or terminating an
611 involuntary medication order for an inmate, if there is a
612 showing that the involuntary medication is interfering with the
613 inmate's due process rights in the criminal proceeding for which
614 he or she is held.

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

- 619 1. The duration of the inmate's confinement ends;
620 2. The petitioner files a certification of person's
621 competence to provide express and informed consent;
622 3. A court determines that the inmate no longer meets the
623 criteria for involuntary treatment; or
624 4. A court issues any other order terminating the order.

625 (h) This subsection does not prohibit a physician from

626 taking appropriate action in an emergency pursuant to an
627 emergency treatment order.

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

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

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

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

647 (d) An order renewing or continuing an existing order
648 shall be granted based on clear and convincing evidence that the
649 inmate has a serious mental illness that requires treatment with
650 psychiatric medication, and that, but for the medication, the

651 inmate would revert to the behavior that was the basis for the
652 prior order authorizing involuntary medication, coupled with
653 evidence that the inmate lacks insight regarding his or her need
654 for the medication. No new acts need be alleged or proven to
655 renew or continue an existing order.

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

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