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Proposed Committee Substitute by the Committee on Appropriations  
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to mental health and substance abuse;  
amending s. 394.455, F.S.; defining the term  
"telehealth"; amending s. 394.459, F.S.; revising the  
conditions under which a patient's communication with  
persons outside of a receiving facility may be  
restricted; revising the conditions under which a  
patient's sealed and unopened incoming or outgoing  
correspondence may be restricted; revising the  
conditions under which a patient's contact and  
visitation with persons outside of a receiving  
facility may be restricted; revising the frequency  
with which the restriction on a patient's right to  
receive visitors must be reviewed; amending s.  
394.4599, F.S.; requiring a receiving facility to  
notify specified emergency contacts of individuals who  
are being involuntarily held for examination; amending  
s. 394.4615, F.S.; requiring receiving facilities to  
document that an option to authorize the release of  
specified information has been provided, within a  
specified timeframe, to individuals admitted on a  
voluntary basis; amending s. 394.463, F.S.; requiring  
that reports issued by law enforcement officers when  
delivering a person to a receiving facility contain  
certain information related to emergency contacts;  
limiting the use of certain information provided;  
maintaining the confidential and exempt status of



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28 certain information provided to a receiving facility;  
29 requiring the Department of Children and Families to  
30 receive and maintain reports relating to the  
31 transportation of patients; authorizing receiving  
32 facility discharge examinations to be conducted  
33 through telehealth; requiring a facility administrator  
34 to file a petition for involuntary placement by a  
35 specified time; authorizing a receiving facility to  
36 postpone the release of a patient if certain  
37 requirements are met; prohibiting certain activities  
38 relating to examination and treatment; providing a  
39 criminal penalty; amending s. 394.468, F.S.; requiring  
40 that discharge and planning procedures include and  
41 document the consideration of specified factors and  
42 actions; amending s. 394.9086; modifying meeting  
43 requirements of the Commission on Mental Health and  
44 Substance Abuse; authorizing reimbursement for per  
45 diem and travel expenses for members of the  
46 commission; authorizing the commission to access  
47 certain information or records; revising the due date  
48 for the commission's interim report; amending s.  
49 397.601, F.S.; requiring service providers to document  
50 that an option to authorize the release of specified  
51 information has been provided, within a specified  
52 timeframe, to individuals admitted on a voluntary  
53 basis; amending s. 397.6772, F.S.; requiring law  
54 enforcement officers to include certain information  
55 relating to emergency contacts in reports relating to  
56 the delivery of a person to a hospital or licensed



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57 detoxification or addictions receiving facility;  
58 limiting the use of certain information provided;  
59 maintaining the confidential and exempt status of  
60 certain information provided to a hospital or licensed  
61 detoxification or addictions receiving facility;  
62 amending ss. 409.972 and 744.2007, F.S.; conforming  
63 cross-references; providing an effective date.  
64

65 Be It Enacted by the Legislature of the State of Florida:  
66

67 Section 1. Present subsections (47), (48), and (49) of  
68 section 394.455, Florida Statutes, are redesignated as  
69 subsections (48), (49), and (50), respectively, and a new  
70 subsection (47) is added to that section, to read:

71 394.455 Definitions.—As used in this part, the term:  
72 (47) "Telehealth" has the same meaning as provided in s.  
73 456.47.

74 Section 2. Subsection (5) of section 394.459, Florida  
75 Statutes is amended to read:

76 394.459 Rights of patients.—

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

78 (a) Each person receiving services in a facility providing  
79 mental health services under this part has the right to  
80 communicate freely and privately with persons outside the  
81 facility unless a qualified professional determines ~~it is~~  
82 ~~determined~~ that such communication is likely to be harmful to  
83 the person or others in a manner directly related to the  
84 person's clinical well-being, the clinical well-being of other  
85 patients, or the general safety of staff. Each facility shall



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86 make available as soon as reasonably possible to persons  
87 receiving services a telephone that allows for free local calls  
88 and access to a long-distance service. A facility is not  
89 required to pay the costs of a patient's long-distance calls.  
90 The telephone shall be readily accessible to the patient and  
91 shall be placed so that the patient may use it to communicate  
92 privately and confidentially. The facility may establish  
93 reasonable rules for the use of this telephone, provided that  
94 the rules do not interfere with a patient's access to a  
95 telephone to report abuse pursuant to paragraph (f) ~~(e)~~.

96 (b) Each patient admitted to a facility under the  
97 provisions of this part shall be allowed to receive, send, and  
98 mail sealed, unopened correspondence; and no patient's incoming  
99 or outgoing correspondence shall be opened, delayed, held, or  
100 censored by the facility unless a qualified professional  
101 determines that such correspondence is likely to be harmful to  
102 the patient or others in a manner directly related to the  
103 patient's clinical well-being, the clinical well-being of other  
104 patients, or the general safety of staff. If there is reason to  
105 believe that such correspondence ~~it~~ contains items or substances  
106 which may be harmful to the patient or others, ~~in which case~~ the  
107 administrator may direct reasonable examination of such mail and  
108 may regulate the disposition of such items or substances.

109 (c) Each facility must permit immediate access to any  
110 patient, subject to the patient's right to deny or withdraw  
111 consent at any time, by the patient's family members, guardian,  
112 guardian advocate, representative, Florida statewide or local  
113 advocacy council, or attorney, unless a qualified professional  
114 determines that such access would be detrimental to the patient



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115 in a manner directly related to the patient's clinical well-  
116 being, the clinical well-being of other patients, or the general  
117 safety of staff.

118 (d) If a patient's right to communicate with outside  
119 persons; receive, send, or mail sealed, unopened correspondence;  
120 or ~~to~~ receive visitors is restricted by the facility, written  
121 notice of such restriction and the reasons for the restriction  
122 shall be served on the patient, the patient's attorney, and the  
123 patient's guardian, guardian advocate, or representative; a  
124 qualified professional must document any restriction within 24  
125 hours and such restriction shall be recorded on the patient's  
126 clinical record with the reasons therefor. The restriction of a  
127 patient's right to communicate or to receive visitors shall be  
128 reviewed at least every 3 7 days. The right to communicate or  
129 receive visitors shall not be restricted as a means of  
130 punishment. Nothing in this paragraph shall be construed to  
131 limit the provisions of paragraph (e)~~(d)~~.

132 ~~(e)~~(d) Each facility shall establish reasonable rules  
133 governing visitors, visiting hours, and the use of telephones by  
134 patients in the least restrictive possible manner. Patients  
135 shall have the right to contact and to receive communication  
136 from their attorneys at any reasonable time.

137 ~~(f)~~(e) Each patient receiving mental health treatment in  
138 any facility shall have ready access to a telephone in order to  
139 report an alleged abuse. The facility staff shall orally and in  
140 writing inform each patient of the procedure for reporting abuse  
141 and shall make every reasonable effort to present the  
142 information in a language the patient understands. A written  
143 copy of that procedure, including the telephone number of the



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144 central abuse hotline and reporting forms, shall be posted in  
145 plain view.

146 (g)~~(f)~~ The department shall adopt rules providing a  
147 procedure for reporting abuse. Facility staff shall be required,  
148 as a condition of employment, to become familiar with the  
149 requirements and procedures for the reporting of abuse.

150 Section 3. Paragraph (b) of subsection (2) of section  
151 394.4599, Florida Statutes, is amended to read:

152 394.4599 Notice.—

153 (2) INVOLUNTARY ADMISSION.—

154 (b) A receiving facility shall give prompt notice of the  
155 whereabouts of an individual who is being involuntarily held for  
156 examination to the individual's guardian, guardian advocate,  
157 health care surrogate or proxy, attorney or representative, or  
158 other emergency contact identified through electronic databases  
159 pursuant to s. 394.463(2) (a), by telephone or in person within  
160 24 hours after the individual's arrival at the facility. Contact  
161 attempts shall be documented in the individual's clinical record  
162 and shall begin as soon as reasonably possible after the  
163 individual's arrival.

164 Section 4. Paragraph (a) of subsection (2) of section  
165 394.4615, Florida Statutes, is amended to read:

166 394.4615 Clinical records; confidentiality.—

167 (2) The clinical record shall be released when:

168 (a) The patient or the patient's guardian authorizes the  
169 release. The guardian or guardian advocate shall be provided  
170 access to the appropriate clinical records of the patient. The  
171 patient or the patient's guardian or guardian advocate may  
172 authorize the release of information and clinical records to



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173 appropriate persons to ensure the continuity of the patient's  
174 health care or mental health care. A receiving facility must  
175 document that, within 24 hours of admission, individuals  
176 admitted on a voluntary basis have been provided with the option  
177 to authorize the release of information from their clinical  
178 record to the individual's health care surrogate or proxy,  
179 attorney, representative, or other known emergency contact.

180 Section 5. Paragraphs (a), (e), (f), and (g) of subsection  
181 (2) of section 394.463, Florida Statutes, are amended, and  
182 subsection (5) is added to that section, to read:

183 394.463 Involuntary examination.—

184 (2) INVOLUNTARY EXAMINATION.—

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

187 1. A circuit or county court may enter an ex parte order  
188 stating that a person appears to meet the criteria for  
189 involuntary examination and specifying the findings on which  
190 that conclusion is based. The ex parte order for involuntary  
191 examination must be based on written or oral sworn testimony  
192 that includes specific facts that support the findings. If other  
193 less restrictive means are not available, such as voluntary  
194 appearance for outpatient evaluation, a law enforcement officer,  
195 or other designated agent of the court, shall take the person  
196 into custody and deliver him or her to an appropriate, or the  
197 nearest, facility within the designated receiving system  
198 pursuant to s. 394.462 for involuntary examination. The order of  
199 the court shall be made a part of the patient's clinical record.  
200 A fee may not be charged for the filing of an order under this  
201 subsection. A facility accepting the patient based on this order



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202 must send a copy of the order to the department within 5 working  
203 days. The order may be submitted electronically through existing  
204 data systems, if available. The order shall be valid only until  
205 the person is delivered to the facility or for the period  
206 specified in the order itself, whichever comes first. If a time  
207 limit is not specified in the order, the order is valid for 7  
208 days after the date that the order was signed.

209         2. A law enforcement officer shall take a person who  
210 appears to meet the criteria for involuntary examination into  
211 custody and deliver the person or have him or her delivered to  
212 an appropriate, or the nearest, facility within the designated  
213 receiving system pursuant to s. 394.462 for examination. The  
214 officer shall execute a written report detailing the  
215 circumstances under which the person was taken into custody,  
216 which must be made a part of the patient's clinical record. The  
217 report must include all emergency contact information for the  
218 person that is readily accessible to the law enforcement  
219 officer, including information available through electronic  
220 databases maintained by the Department of Law Enforcement or by  
221 the Department of Highway Safety and Motor Vehicles. Such  
222 emergency contact information may be used by a receiving  
223 facility only for the purpose of informing listed emergency  
224 contacts of a patient's whereabouts and shall otherwise remain  
225 confidential and exempt pursuant to s. 119.0712(2)(d). Any  
226 facility accepting the patient based on this report must send a  
227 copy of the report to the department within 5 working days.

228         3. A physician, a physician assistant, a clinical  
229 psychologist, a psychiatric nurse, an advanced practice  
230 registered nurse registered under s. 464.0123, a mental health





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231 counselor, a marriage and family therapist, or a clinical social  
232 worker may execute a certificate stating that he or she has  
233 examined a person within the preceding 48 hours and finds that  
234 the person appears to meet the criteria for involuntary  
235 examination and stating the observations upon which that  
236 conclusion is based. If other less restrictive means, such as  
237 voluntary appearance for outpatient evaluation, are not  
238 available, a law enforcement officer shall take into custody the  
239 person named in the certificate and deliver him or her to the  
240 appropriate, or nearest, facility within the designated  
241 receiving system pursuant to s. 394.462 for involuntary  
242 examination. The law enforcement officer shall execute a written  
243 report detailing the circumstances under which the person was  
244 taken into custody. The report must include all emergency  
245 contact information for the person that is readily accessible to  
246 the law enforcement officer, including information available  
247 through electronic databases maintained by the Department of Law  
248 Enforcement or by the Department of Highway Safety and Motor  
249 Vehicles. Such emergency contact information may be used by a  
250 receiving facility only for the purpose of informing listed  
251 emergency contacts of a patient's whereabouts and shall  
252 otherwise remain confidential and exempt pursuant to s.  
253 119.0712(2)(d). The report and certificate shall be made a part  
254 of the patient's clinical record. Any facility accepting the  
255 patient based on this certificate must send a copy of the  
256 certificate to the department within 5 working days. The  
257 document may be submitted electronically through existing data  
258 systems, if applicable.



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260 When sending the order, report, or certificate to the  
261 department, a facility shall, at a minimum, provide information  
262 about which action was taken regarding the patient under  
263 paragraph (g), which information shall also be made a part of  
264 the patient's clinical record.

265 (e) The department shall receive and maintain the copies of  
266 ex parte orders, involuntary outpatient services orders issued  
267 pursuant to s. 394.4655, involuntary inpatient placement orders  
268 issued pursuant to s. 394.467, professional certificates, ~~and~~  
269 law enforcement officers' reports, and reports relating to the  
270 transportation of patients. These documents shall be considered  
271 part of the clinical record, governed by the provisions of s.  
272 394.4615. These documents shall be used to prepare annual  
273 reports analyzing the data obtained from these documents,  
274 without information identifying patients, and shall provide  
275 copies of reports to the department, the President of the  
276 Senate, the Speaker of the House of Representatives, and the  
277 minority leaders of the Senate and the House of Representatives.

278 (f) A patient shall be examined by a physician or a  
279 clinical psychologist, or by a psychiatric nurse performing  
280 within the framework of an established protocol with a  
281 psychiatrist at a facility without unnecessary delay to  
282 determine if the criteria for involuntary services are met.  
283 Emergency treatment may be provided upon the order of a  
284 physician if the physician determines that such treatment is  
285 necessary for the safety of the patient or others. The patient  
286 may not be released by the receiving facility or its contractor  
287 without the documented approval of a psychiatrist or a clinical  
288 psychologist or, if the receiving facility is owned or operated



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289 by a hospital or health system, the release may also be approved  
290 by a psychiatric nurse performing within the framework of an  
291 established protocol with a psychiatrist, or an attending  
292 emergency department physician with experience in the diagnosis  
293 and treatment of mental illness after completion of an  
294 involuntary examination pursuant to this subsection. A  
295 psychiatric nurse may not approve the release of a patient if  
296 the involuntary examination was initiated by a psychiatrist  
297 unless the release is approved by the initiating psychiatrist.  
298 The release may be approved through telehealth.

299 (g) The examination period must be for up to 72 hours. For  
300 a minor, the examination shall be initiated within 12 hours  
301 after the patient's arrival at the facility. Within the  
302 examination period ~~or, if the examination period ends on a~~  
303 ~~weekend or holiday, no later than the next working day~~  
304 ~~thereafter~~, one of the following actions must be taken, based on  
305 the individual needs of the patient:

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

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

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

315 4. A petition for involuntary services shall be filed in  
316 the circuit court if inpatient treatment is deemed necessary or  
317 with the criminal county court, as defined in s. 394.4655(1), as



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318 applicable. When inpatient treatment is deemed necessary, the  
319 least restrictive treatment consistent with the optimum  
320 improvement of the patient's condition shall be made available.  
321 When a petition is to be filed for involuntary outpatient  
322 placement, it shall be filed by one of the petitioners specified  
323 in s. 394.4655(4)(a). A petition for involuntary inpatient  
324 placement shall be filed by the facility administrator. If a  
325 patient's 72-hour examination period ends on a weekend or  
326 holiday, and the receiving facility:

327 a. Intends to file a petition for involuntary services,  
328 such patient may be held at a receiving facility through the  
329 next working day thereafter and such petition for involuntary  
330 services must be filed no later than such date. If the receiving  
331 facility fails to file a petition for involuntary services at  
332 the close of the next working day, the patient shall be released  
333 from the receiving facility following approval pursuant to  
334 paragraph (f).

335 b. Does not intend to file a petition for involuntary  
336 services, a receiving facility may postpone release of a patient  
337 until the next working day thereafter only if a qualified  
338 professional documents that adequate discharge planning and  
339 procedures in accordance with s. 394.468, and approval pursuant  
340 to paragraph (f), are not possible until the next working day.

341 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND  
342 TREATMENT; PENALTIES.-

343 (a) A person may not knowingly and willfully:

344 1. Furnish false information for the purpose of obtaining  
345 emergency or other involuntary admission of another;

346 2. Cause or otherwise secure, or conspire with or assist



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347 another to cause or secure, any emergency or other involuntary  
348 procedure of another person under false pretenses; or

349 3. Cause, or conspire with or assist another to cause,  
350 without lawful justification, the denial to any person of any  
351 right accorded pursuant to this chapter.

352 (b) A person who violates this subsection commits a  
353 misdemeanor of the first degree, punishable as provided in s.  
354 775.082 and by a fine not exceeding \$5,000.

355 Section 6. Section 394.468, Florida Statutes, is amended to  
356 read:

357 394.468 Admission and discharge procedures.-

358 (1) Admission and discharge procedures and treatment  
359 policies of the department are governed solely by this part.  
360 Such procedures and policies shall not be subject to control by  
361 court procedure rules. The matters within the purview of this  
362 part are deemed to be substantive, not procedural.

363 (2) Discharge planning and procedures for any patient's  
364 release from a receiving facility or treatment facility must  
365 include and document consideration of, at a minimum:

366 (a) Follow-up behavioral health appointments;

367 (b) Information on how to obtain prescribed medications;

368 and

369 (c) Information pertaining to:

370 1. Available living arrangements;

371 2. Transportation; and

372 3. Recovery support opportunities.

373 Section 7. Paragraph (c) of subsection (3) and subsection  
374 (5) of section 394.9086, Florida Statutes, are amended, and  
375 paragraphs (d) and (e) are added to subsection (3) of that



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376 section, to read:

377 394.9086 Commission on Mental Health and Substance Abuse.—

378 (3) MEMBERSHIP; TERM LIMITS; MEETINGS.—

379 (c) The commission shall convene no later than September 1,  
380 2021. The commission shall meet quarterly or upon the call of  
381 the chair. The commission may ~~shall~~ hold its meetings in person  
382 at locations throughout the state or via teleconference or other  
383 electronic means.

384 (d) Members of the commission are entitled to receive  
385 reimbursement for per diem and travel expenses pursuant to s.  
386 112.061.

387 (e) Notwithstanding any other law, the commission may  
388 request and shall be provided with access to any information or  
389 records, including exempt and confidential information or  
390 records, which are necessary for the commission to carry out its  
391 duties. Information or records obtained by the commission which  
392 are otherwise exempt or confidential and exempt shall retain  
393 such exempt or confidential and exempt status, and the  
394 commission may not disclose such information or records.

395 (5) REPORTS.—By January 1, 2023 ~~September 1, 2022~~, the  
396 commission shall submit an interim report to the President of  
397 the Senate, the Speaker of the House of Representatives, and the  
398 Governor containing its findings and recommendations on how to  
399 best provide and facilitate mental health and substance abuse  
400 services in the state. The commission shall submit its final  
401 report to the President of the Senate, the Speaker of the House  
402 of Representatives, and the Governor by September 1, 2023.

403 Section 8. Subsection (5) is added to section 397.601,  
404 Florida Statutes, to read:



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405 397.601 Voluntary admissions.—

406 (5) A service provider must document that, within 24 hours  
407 of admission, individuals admitted on a voluntary basis have  
408 been provided with the option to authorize the release of  
409 information from their clinical record to the individual's  
410 health care surrogate or proxy, attorney, representative, or  
411 other known emergency contact.

412 Section 9. Section 397.6772, Florida Statutes, is amended  
413 to read:

414 397.6772 Protective custody without consent.—

415 (1) If a person in circumstances which justify protective  
416 custody as described in s. 397.677 fails or refuses to consent  
417 to assistance and a law enforcement officer has determined that  
418 a hospital or a licensed detoxification or addictions receiving  
419 facility is the most appropriate place for the person, the  
420 officer may, after giving due consideration to the expressed  
421 wishes of the person:

422 (a) Take the person to a hospital or to a licensed  
423 detoxification or addictions receiving facility against the  
424 person's will but without using unreasonable force. The officer  
425 shall use the standard form developed by the department pursuant  
426 to s. 397.321 to execute a written report detailing the  
427 circumstances under which the person was taken into custody. The  
428 report must include all emergency contact information for the  
429 person that is readily accessible to the law enforcement  
430 officer, including information available through electronic  
431 databases maintained by the Department of Law Enforcement or by  
432 the Department of Highway Safety and Motor Vehicles. Such  
433 emergency contact information may be used by a hospital or



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434 licensed detoxification or addictions receiving facility only  
435 for the purpose of informing listed emergency contacts of a  
436 patient's whereabouts and shall otherwise remain confidential  
437 and exempt pursuant to s. 119.0712(2)(d). The written report  
438 shall be included in the patient's clinical record; or

439 (b) In the case of an adult, detain the person for his or  
440 her own protection in any municipal or county jail or other  
441 appropriate detention facility.

442  
443 Such detention is not to be considered an arrest for any  
444 purpose, and no entry or other record may be made to indicate  
445 that the person has been detained or charged with any crime. The  
446 officer in charge of the detention facility must notify the  
447 nearest appropriate licensed service provider within the first 8  
448 hours after detention that the person has been detained. It is  
449 the duty of the detention facility to arrange, as necessary, for  
450 transportation of the person to an appropriate licensed service  
451 provider with an available bed. Persons taken into protective  
452 custody must be assessed by the attending physician within the  
453 72-hour period and without unnecessary delay, to determine the  
454 need for further services.

455 (2) The law enforcement officer must notify the nearest  
456 relative of a minor in protective custody and ~~must be notified~~  
457 ~~by the law enforcement officer,~~ as must notify the nearest  
458 relative or other known emergency contact of an adult, unless  
459 the adult requests that there be no notification. The law  
460 enforcement officer must document such notification, and any  
461 attempts at notification, in the written report detailing the  
462 circumstances under which the person was taken into custody as





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463 required under paragraph (1) (a).

464 Section 10. Paragraph (b) of subsection (1) of section  
465 409.972, Florida Statutes, is amended to read:

466 409.972 Mandatory and voluntary enrollment.—

467 (1) The following Medicaid-eligible persons are exempt from  
468 mandatory managed care enrollment required by s. 409.965, and  
469 may voluntarily choose to participate in the managed medical  
470 assistance program:

471 (b) Medicaid recipients residing in residential commitment  
472 facilities operated through the Department of Juvenile Justice  
473 or a treatment facility as defined in s. 394.455(49) ~~s.~~  
474 ~~394.455(48)~~.

475 Section 11. Subsection (7) of section 744.2007, Florida  
476 Statutes, is amended to read:

477 744.2007 Powers and duties.—

478 (7) A public guardian may not commit a ward to a treatment  
479 facility, as defined in s. 394.455(49) ~~s. 394.455(48)~~, without  
480 an involuntary placement proceeding as provided by law.

481 Section 12. This act shall take effect July 1, 2022.