

By Senator Myers

27-1401-98

1                                   A bill to be entitled  
2           An act relating to children's mental health  
3           services and substance abuse services;  
4           transferring responsibility for such services  
5           from the Department of Children and Family  
6           Services to the Department of Health; amending  
7           s. 230.2317, F.S.; providing for membership of  
8           the Advisory Board for the Multiagency Service  
9           Network for Students with Severe Emotional  
10          Disturbances; amending s. 394.455, F.S.;  
11          redefining the term "department" for purposes  
12          of the Florida Mental Act, to include both the  
13          Department of Children and Family Services and  
14          the Department of Health; amending s. 394.50,  
15          F.S.; providing for supervision and control of  
16          children's treatment centers by the Department  
17          of Health; amending s. 394.60, F.S.; providing  
18          for transfer of patients from such centers;  
19          amending s. 394.67, F.S.; redefining the term  
20          "department" for purposes of community alcohol,  
21          drug abuse, and mental health services to  
22          include both the Department of Children and  
23          Family Services and the Department of Health;  
24          amending s. 561.21, F.S.; providing for deposit  
25          of certain revenues into the Children and  
26          Adolescents Substance Abuse Trust Fund;  
27          amending s. 984.225, F.S.; providing for  
28          placement of children in need of services;  
29          amending s. 985.06, F.S.; providing membership  
30          of the interagency workgroup for youth in the  
31          juvenile justice system; amending s. 985.21,

1 F.S.; requiring employees and agents of the  
2 Department of Health to cooperate with case  
3 managers of the Department of Juvenile Justice;  
4 amending s. 985.223, F.S.; providing  
5 responsibilities of the Department of Health  
6 with respect to incompetency evaluations of  
7 children alleged to be delinquent; providing  
8 for a committee to recommend to the Department  
9 of Children and Family Services and the  
10 Department of Health the most efficient ways to  
11 accomplish the transfer of responsibility  
12 relating to children's mental health services  
13 and children's substance abuse services;  
14 providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. All powers, duties, functions, records,  
19 personnel, property, and unexpended balances of  
20 appropriations, allocations, and other funds of the Department  
21 of Children and Family Services relating to children's mental  
22 health and children's substance abuse are transferred by a  
23 type two transfer, as defined in section 20.06, Florida  
24 Statutes, to the Department of Health and assigned to the  
25 Division of Children's Medical Services. The Department of  
26 Health may organize, classify, and manage the positions  
27 transferred in a manner that will reduce duplication, achieve  
28 maximum efficiency, and ensure accountability.

29 Section 2. Subsection (2) of section 230.2317, Florida  
30 Statutes, is amended to read:

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1           230.2317 Educational multiagency services for students  
2 with severe emotional disturbance.--

3           (2) The Commissioner of Education, the Secretary of  
4 Health Children and Family Services, and the Secretary of  
5 Juvenile Justice shall appoint an equal number of members to  
6 the Advisory Board for the Multiagency Service Network for  
7 Students with Severe Emotional Disturbance. The duties and  
8 responsibilities of the advisory board shall include oversight  
9 of the multiagency service network to provide a continuum of  
10 education, mental health treatment, and, when needed,  
11 residential services for students with severe emotional  
12 disturbance and to assess the impact of regional projects.

13           Section 3. Subsection (8) of section 394.455, Florida  
14 Statutes, is amended to read:

15           394.455 Definitions.--As used in this part, unless the  
16 context clearly requires otherwise, the term:

17           (8) "Department" means:

18           (a) The Department of Children and Family Services,  
19 when referring to services provided to adults; or

20           (b) The Department of Health, when referring to  
21 services provided to minors.

22           Section 4. Section 394.50, Florida Statutes, is  
23 amended to read:

24           394.50 Children's residential and day treatment  
25 centers.--There are established in this state children's  
26 residential and day treatment centers which shall be under the  
27 supervision and control of the Department of Health ~~and~~  
28 ~~Rehabilitative Services~~. The purpose of the centers shall be  
29 to provide for evaluation, care, treatment, and education of  
30 emotionally, mentally, or behaviorally disturbed children.

31 The department is authorized to develop children's residential

1 and day treatment centers and children's programs in such  
2 locations as it deems appropriate and within the limits of  
3 funds appropriated by the Legislature.

4 Section 5. Section 394.60, Florida Statutes, is  
5 amended to read:

6 394.60 Transfer of patients.--If the director of a  
7 center upon advice of his or her clinical staff determines  
8 that any child at the center is not responding to or  
9 benefiting from the treatment and education programs at the  
10 center and that such child is in need of further care,  
11 rehabilitation, special training, education, and treatment and  
12 would be more suitably cared for, rehabilitated, trained,  
13 educated, and treated at another of the state facilities under  
14 the Department of Health or at a facility under the Department  
15 of Children and Family and Rehabilitative Services, the center  
16 shall request the child's transfer to the proper facility.  
17 Transfers of such child to a mental health facility or  
18 retardation facility shall follow the procedures as set forth  
19 in part I of chapter 394 and chapter 393, respectively.

20 Section 6. Subsection (3) of section 394.67, Florida  
21 Statutes, is amended to read:

22 394.67 Definitions.--When used in this part, unless  
23 the context clearly requires otherwise, the term:

24 (3) "Department" means:

25 (a) The Department of Children and Family Health and  
26 Rehabilitative Services, when referring to services provided  
27 to adults; or

28 (b) The Department of Health, when referring to  
29 services provided to minors.

30 Section 7. Paragraph (a) of subsection (4) of section  
31 561.121, Florida Statutes, is amended to read:

1           561.121 Deposit of revenue.--

2           (4) State funds collected pursuant to s. 561.501 shall  
3 be paid into the State Treasury and credited to the following  
4 accounts:

5           (a) Nine and eight-tenths of the surcharge on the sale  
6 of alcoholic beverages for consumption on premises shall be  
7 transferred to the Children and Adolescents Substance Abuse  
8 Trust Fund, which shall remain with the Department of Health  
9 ~~and Rehabilitative Services~~ for the purpose of funding  
10 programs directed at reducing and eliminating substance abuse  
11 problems among children and adolescents.

12           Section 8. Effective July 1, 1999, paragraph (b) of  
13 subsection (1) of section 561.121, Florida Statutes, as  
14 amended by chapter 97-213, Laws of Florida, is amended to  
15 read:

16           561.121 Deposit of revenue.--

17           (1) All state funds collected pursuant to ss. 563.05,  
18 564.06, and 565.12 shall be paid into the State Treasury and  
19 disbursed in the following manner:

20           (b) Ten million dollars annually shall be transferred  
21 to the Children and Adolescents Substance Abuse Trust Fund,  
22 which shall remain with the Department of Health ~~Children and~~  
23 ~~Family Services~~ for the purpose of funding programs directed  
24 at reducing and eliminating substance abuse problems among  
25 children and adolescents.

26           Section 9. Subsection (7) of section 984.225, Florida  
27 Statutes, is amended to read:

28           984.225 Powers of disposition; placement in a  
29 staff-secure shelter.--

30           (7) If the child requires ~~residential mental health~~  
31 ~~treatment or~~ residential care for a developmental disability,

1 the court shall refer the child to the Department of Children  
2 and Family Services for the provision of necessary services.  
3 If the child requires residential mental health treatment, the  
4 court shall refer the child to the Department of Health for  
5 the provision of necessary services.

6 Section 10. Subsection (2) of section 985.06, Florida  
7 Statutes, is amended to read:

8 985.06 Statewide information-sharing system;  
9 interagency workgroup.--

10 (2) The interagency workgroup shall be coordinated  
11 through the Department of Education and shall include  
12 representatives from the state agencies specified in  
13 subsection (1), school superintendents, school district  
14 information system directors, principals, teachers, juvenile  
15 court judges, police chiefs, county sheriffs, clerks of the  
16 circuit court, the Department of Children and Family Services,  
17 the Department of Health, providers of juvenile services  
18 including a provider from a juvenile substance abuse program,  
19 and district juvenile justice managers.

20 Section 11. Paragraph (a) of subsection (1) of section  
21 985.21, Florida Statutes, is amended to read:

22 985.21 Intake and case management.--

23 (1)(a) During the intake process, the intake counselor  
24 shall screen each child to determine:

25 1. Appropriateness for release, referral to a  
26 diversionary program including, but not limited to, a  
27 teen-court program, referral for community arbitration, or  
28 referral to some other program or agency for the purpose of  
29 nonofficial or nonjudicial handling.

30 2. The presence of medical, psychiatric,  
31 psychological, substance abuse, educational problems, or other

1 conditions that may have caused the child to come to the  
2 attention of law enforcement or the Department of Juvenile  
3 Justice. In cases where such conditions are identified, and a  
4 nonjudicial handling of the case is chosen, the intake  
5 counselor shall attempt to refer the child to a program or  
6 agency, together with all available and relevant assessment  
7 information concerning the child's precipitating condition.

8         3. The Department of Juvenile Justice shall develop a  
9 case management system whereby a child brought into intake is  
10 assigned a case manager if the child was not released,  
11 referred to a diversionary program, referred for community  
12 arbitration, or referred to some other program or agency for  
13 the purpose of nonofficial or nonjudicial handling, and shall  
14 make every reasonable effort to provide continuity of case  
15 management for the child; provided, however, that case  
16 management for children committed to residential programs may  
17 be transferred as provided in s. 985.316.

18         4. In addition to duties specified in other sections  
19 and through departmental rules, the assigned case manager  
20 shall be responsible for the following:

21             a. Ensuring that a risk assessment instrument  
22 establishing the child's eligibility for detention has been  
23 accurately completed and that the appropriate recommendation  
24 was made to the court.

25             b. Inquiring as to whether the child understands his  
26 or her rights to counsel and against self-incrimination.

27             c. Performing the preliminary screening and making  
28 referrals for comprehensive assessment regarding the child's  
29 need for substance abuse treatment services, mental health  
30 services, retardation services, literacy services, or other  
31 educational or treatment services.

1           d. Coordinating the multidisciplinary assessment when  
2 required, which includes the classification and placement  
3 process that determines the child's priority needs, risk  
4 classification, and treatment plan. When sufficient evidence  
5 exists to warrant a comprehensive assessment and the child  
6 fails to voluntarily participate in the assessment efforts, it  
7 is the responsibility of the case manager to inform the court  
8 of the need for the assessment and the refusal of the child to  
9 participate in such assessment. This assessment,  
10 classification, and placement process shall develop into the  
11 predisposition report.

12           e. Making recommendations for services and  
13 facilitating the delivery of those services to the child,  
14 including any mental health services, educational services,  
15 family counseling services, family assistance services, and  
16 substance abuse services. The delinquency case manager shall  
17 serve as the primary case manager for the purpose of managing,  
18 coordinating, and monitoring the services provided to the  
19 child. Each program administrator within the Department of  
20 Children and Family Services and each employee or agent of the  
21 Division of Children's Medical Services providing  
22 mental-health services or substance-abuse services to the  
23 child shall cooperate with the primary case manager in  
24 carrying out the duties and responsibilities described in this  
25 section.

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27 The Department of Juvenile Justice shall annually advise the  
28 Legislature and the Executive Office of the Governor of the  
29 resources needed in order for the case management system to  
30 maintain a staff-to-client ratio that is consistent with  
31 accepted standards and allows the necessary supervision and



1 services for each child. The intake process and case  
2 management system shall provide a comprehensive approach to  
3 assessing the child's needs, relative risks, and most  
4 appropriate handling, and shall be based on an individualized  
5 treatment plan.

6 Section 12. Section 985.223, Florida Statutes, is  
7 amended to read:

8 985.223 Incompetency in juvenile delinquency cases.--

9 (1) If, at any time prior to or during a delinquency  
10 case involving a delinquent act or violation of law that would  
11 be a felony if committed by an adult, the court has reason to  
12 believe that the child named in the petition may be  
13 incompetent to proceed with the hearing, the court on its own  
14 motion may, or on the motion of the child's attorney or state  
15 attorney must, stay all proceedings and order an evaluation of  
16 the child's mental condition.

17 (a) All determinations of competency shall be made at  
18 a hearing, with findings of fact based on an evaluation of the  
19 child's mental condition by not less than two nor more than  
20 three experts appointed by the court. If the determination of  
21 incompetency is based on the presence of a mental illness or  
22 mental retardation, this must be stated in the evaluation. In  
23 addition, a recommendation as to whether residential or  
24 nonresidential treatment or training is required must be  
25 included in the evaluation. All court orders determining  
26 incompetency must include specific findings by the court as to  
27 the nature of the incompetency.

28 (b) For incompetency evaluations related to mental  
29 illness, the Department of Health ~~Children and Family Services~~  
30 shall annually provide the courts with a list of mental health  
31 professionals who have completed a training program approved

1 by the Department of Health ~~Children and Family Services~~ to  
2 perform the evaluations.

3 (c) For incompetency evaluations related to mental  
4 retardation, the court shall order the Developmental Services  
5 Program Office within the Department of Children and Family  
6 Services to examine the child to determine if the child meets  
7 the definition of "retardation" in s. 393.063 and, if so,  
8 whether the child is competent to proceed with delinquency  
9 proceedings.

10 (d) A child is competent to proceed if the child has  
11 sufficient present ability to consult with counsel with a  
12 reasonable degree of rational understanding and the child has  
13 a rational and factual understanding of the present  
14 proceedings. The report must address the child's capacity to:

15 1. Appreciate the charges or allegations against the  
16 child.

17 2. Appreciate the range and nature of possible  
18 penalties that may be imposed in the proceedings against the  
19 child, if applicable.

20 3. Understand the adversarial nature of the legal  
21 process.

22 4. Disclose to counsel facts pertinent to the  
23 proceedings at issue.

24 5. Display appropriate courtroom behavior.

25 6. Testify relevantly.

26 (2) Every child who is adjudicated incompetent to  
27 proceed may be involuntarily committed to the Department of  
28 Health or to the Department of Children and Family Services  
29 for treatment upon a finding by the court of clear and  
30 convincing evidence that:

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1 (a) The child is mentally ill and because of the  
2 mental illness; or the child is mentally retarded and because  
3 of the mental retardation:

4 1. The child is manifestly incapable of surviving with  
5 the help of willing and responsible family or friends,  
6 including available alternative services, and without  
7 treatment the child is likely to either suffer from neglect or  
8 refuse to care for self, and such neglect or refusal poses a  
9 real and present threat of substantial harm to the child's  
10 well-being; or

11 2. There is a substantial likelihood that in the near  
12 future the child will inflict serious bodily harm on self or  
13 others, as evidenced by recent behavior causing, attempting,  
14 or threatening such harm; and

15 (b) All available less restrictive alternatives,  
16 including treatment in community residential facilities or  
17 community inpatient or outpatient settings which would offer  
18 an opportunity for improvement of the child's condition, are  
19 inappropriate.

20 (3) Each child who has been adjudicated incompetent to  
21 proceed and who meets the criteria for commitment in  
22 subsection (2), must be committed to the Department of Health  
23 or the Department of Children and Family Services, as  
24 appropriate, and that department may retain, and if it retains  
25 must treat, the child in the least restrictive alternative  
26 consistent with public safety. Any commitment of a child to a  
27 residential program must be separate from adult forensic  
28 programs. If the child attains competency, case management  
29 and supervision of the child will be transferred to the  
30 department in order to continue delinquency proceedings;  
31 however, the court retains authority to order the Department

1 of Children and Family Services to provide continued treatment  
2 to maintain competency.

3 (a) A child adjudicated incompetent due to mental  
4 retardation may be ordered into a program designated by the  
5 Department of Children and Family Services for retarded  
6 children.

7 (b) A child adjudicated incompetent due to mental  
8 illness may be ordered into a program designated by the  
9 Department of Health ~~Children and Family Services~~ for mentally  
10 ill children.

11 (c) Not later than 6 months after the date of  
12 commitment, or at the end of any period of extended treatment  
13 or training, or at any time the service provider determines  
14 the child has attained competency or no longer meets the  
15 criteria for commitment, the service provider must file a  
16 report with the court pursuant to the applicable Rules of  
17 Juvenile Procedure.

18 (4) If a child is determined to be incompetent to  
19 proceed, the court shall retain jurisdiction of the child for  
20 up to 2 years after the date of the order of incompetency,  
21 with reviews at least every 6 months to determine competency.  
22 If the court determines at any time that the child will never  
23 become competent to proceed, the court may dismiss the  
24 delinquency petition. If, at the end of the 2-year period  
25 following the date of the order of incompetency, the child has  
26 not attained competency and there is no evidence that the  
27 child will attain competency within a year, the court must  
28 dismiss the delinquency petition. If necessary, the court may  
29 order that proceedings under chapter 393 or chapter 394 be  
30 instituted. Such proceedings must be instituted not less than  
31 60 days prior to the dismissal of the delinquency petition.

1           (5) If a child who is found to be incompetent does not  
2 meet the commitment criteria of subsection (2), the court may  
3 order the Department of Health or the Department of Children  
4 and Family Services, as appropriate, to provide appropriate  
5 treatment and training in the community. All court-ordered  
6 treatment or training must be the least restrictive  
7 alternative that is consistent with public safety. Any  
8 commitment to a residential program must be separate from  
9 adult forensic programs. If a child is ordered to receive  
10 such services, the services shall be provided by the  
11 Department of Health or the Department of Children and Family  
12 Services. The department shall continue to provide case  
13 management services to the child and receive notice of the  
14 competency status of the child. The competency determination  
15 must be reviewed at least every 6 months by the service  
16 provider, and a copy of a written report evaluating the  
17 child's competency must be filed by the provider with the  
18 court and with the Department of Health or Department of  
19 Children and Family Services and the department.

20           (6) The provisions of this section shall be  
21 implemented only subject to specific appropriation.

22           Section 13. Effective July 1, 1998, the Secretary of  
23 Children and Family Services shall appoint three  
24 representatives of the Department of Children and Family  
25 Services and the Secretary of Health shall appoint three  
26 representatives of the Department of Health to a committee the  
27 function of which is to recommend to the respective  
28 departments the most efficient means of carrying out the  
29 transfer prescribed in this act. The committee shall also  
30 recommend to the departments how they should fulfill their  
31 shared responsibilities under chapter 394, Florida Statutes.

1 The Governor shall appoint the chairman of the committee. The  
2 committee must hold its first meeting by July 15, 1998, and  
3 must report its recommendations to the respective departments  
4 by November 2, 1998.

5 Section 14. Except as otherwise provided in this act,  
6 this act shall take effect January 1, 1999.

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9 SENATE SUMMARY

10 Transfers powers, duties, responsibilities, personnel,  
11 and assets of the Department of Children and Family  
12 Services relating to children's mental health services  
and children's substance abuse services to the Department  
of Health.

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