

By the Committee on Health Care and Senator Myers

317-1918-98

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 Health Act, to include  
13          both the Department of Children and Family  
14          Services and the Department of Health; amending  
15          s. 394.67, F.S.; redefining the term  
16          "department" for purposes of community alcohol,  
17          drug abuse, and mental health services to  
18          include both the Department of Children and  
19          Family Services and the Department of Health;  
20          creating s. 394.91, F.S.; providing for  
21          alcohol, drug abuse, and mental health services  
22          responsibilities for the Department of Health;  
23          amending s. 397.311, F.S.; redefining the term  
24          "department" for purposes of alcohol and drug  
25          abuse services; amending s. 561.121, F.S.;  
26          providing for deposit of certain revenues into  
27          the Children and Adolescents Substance Abuse  
28          Trust Fund; amending s. 984.225, F.S.;  
29          providing for placement of children in need of  
30          services; amending s. 985.06, F.S.; providing  
31          membership of the interagency workgroup for

1 youth in the juvenile justice system; amending  
2 s. 985.21, F.S.; requiring employees and agents  
3 of the Department of Health to cooperate with  
4 case managers of the Department of Juvenile  
5 Justice; amending s. 985.223, F.S.; providing  
6 responsibilities of the Department of Health  
7 with respect to incompetency evaluations of  
8 children alleged to be delinquent; providing  
9 for a committee to recommend to the Department  
10 of Children and Family Services and the  
11 Department of Health the most efficient ways to  
12 accomplish the transfer of responsibility  
13 relating to children's mental health services  
14 and children's substance abuse services;  
15 providing an effective date.  
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17 Be It Enacted by the Legislature of the State of Florida:  
18

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

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

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

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

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

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

18           (8) "Department" means:

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

21           (b) The Department of Health, when referring to  
22 services provided to children and adolescents.

23           Section 4. Subsection (3) of section 394.67, Florida  
24 Statutes, is amended to read:

25           394.67 Definitions.--When used in this part, unless  
26 the context clearly requires otherwise, the term:

27           (3) "Department" means:

28           (a) The Department of Children and Family ~~Health and~~  
29 ~~Rehabilitative~~ Services, when referring to services provided  
30 to adults; or

1           (b) The Department of Health, when referring to  
2 services provided to children and adolescents.

3           Section 5. Section 394.91, Florida Statutes, is  
4 created to read:

5           394.91 Alcohol, drug abuse, and mental health services  
6 for children and adolescents; responsibilities of the  
7 Department of Health.--

8           (1) The Department of Health shall, to the extent that  
9 funding is available and when not in conflict with any other  
10 provisions of this part, contract for the establishment and  
11 operation of alcohol, drug abuse, and mental health services  
12 for children and adolescents with any appropriate local  
13 service provider, as defined in s. 394.67(12).

14           (2) The Department of Health shall be responsible for  
15 the development of that portion of the state alcohol, drug  
16 abuse, and mental health plan relating to children and  
17 adolescents.

18           (3) Contracts for services must be performance-based  
19 and must be consistent with the state alcohol, drug abuse, and  
20 mental health plan for children and adolescents.

21           (4) Performance outcomes, measures, and standards as  
22 approved by the Legislature as part of the 1998-1999 General  
23 Appropriations Act shall be the responsibility of the  
24 Department of Health in the execution of contracted services.

25           Section 6. Subsection (9) of section 397.311, Florida  
26 Statutes, is amended to read:

27           397.311 Definitions.--As used in this chapter, except  
28 part VIII:

29           (9) "Department" means:

30           (a) The Department of Health, when referring to  
31 services provided to minors or juveniles; or

1           (b) The Department of Children and Family Services,  
2 when referring to services provided to adults and  
3 ~~Rehabilitative Services.~~

4           Section 7. Paragraph (a) of subsection (4) of section  
5 561.121, Florida Statutes, is amended to read:

6           561.121 Deposit of revenue.--

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

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

17           Section 8. Effective July 1, 1999, paragraph (b) of  
18 subsection (1) of section 561.121, Florida Statutes, as  
19 amended by chapter 97-213, Laws of Florida, is amended to  
20 read:

21           561.121 Deposit of revenue.--

22           (1) All state funds collected pursuant to ss. 563.05,  
23 564.06, and 565.12 shall be paid into the State Treasury and  
24 disbursed in the following manner:

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

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

3           984.225 Powers of disposition; placement in a  
4 staff-secure shelter.--

5           (7) If the child requires ~~residential mental health~~  
6 ~~treatment or~~ residential care for a developmental disability,  
7 the court shall refer the child to the Department of Children  
8 and Family Services for the provision of necessary services.  
9 If the child requires residential mental health treatment, the  
10 court shall refer the child to the Department of Health for  
11 the provision of necessary services.

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

14           985.06 Statewide information-sharing system;  
15 interagency workgroup.--

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

26           Section 11. Paragraph (a) of subsection (1) of section  
27 985.21, Florida Statutes, is amended to read:

28           985.21 Intake and case management.--

29           (1)(a) During the intake process, the intake counselor  
30 shall screen each child to determine:  
31

1           1. Appropriateness for release, referral to a  
2 diversionary program including, but not limited to, a  
3 teen-court program, referral for community arbitration, or  
4 referral to some other program or agency for the purpose of  
5 nonofficial or nonjudicial handling.

6           2. The presence of medical, psychiatric,  
7 psychological, substance abuse, educational problems, or other  
8 conditions that may have caused the child to come to the  
9 attention of law enforcement or the Department of Juvenile  
10 Justice. In cases where such conditions are identified, and a  
11 nonjudicial handling of the case is chosen, the intake  
12 counselor shall attempt to refer the child to a program or  
13 agency, together with all available and relevant assessment  
14 information concerning the child's precipitating condition.

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

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

28           a. Ensuring that a risk assessment instrument  
29 establishing the child's eligibility for detention has been  
30 accurately completed and that the appropriate recommendation  
31 was made to the court.

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

3           c. Performing the preliminary screening and making  
4 referrals for comprehensive assessment regarding the child's  
5 need for substance abuse treatment services, mental health  
6 services, retardation services, literacy services, or other  
7 educational or treatment services.

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

19           e. Making recommendations for services and  
20 facilitating the delivery of those services to the child,  
21 including any mental health services, educational services,  
22 family counseling services, family assistance services, and  
23 substance abuse services. The delinquency case manager shall  
24 serve as the primary case manager for the purpose of managing,  
25 coordinating, and monitoring the services provided to the  
26 child. Each program administrator within the Department of  
27 Children and Family Services and each employee or agent of the  
28 Division of Children's Medical Services providing  
29 mental-health services or substance-abuse services to the  
30 child shall cooperate with the primary case manager in  
31



1 carrying out the duties and responsibilities described in this  
2 section.

3  
4 The Department of Juvenile Justice shall annually advise the  
5 Legislature and the Executive Office of the Governor of the  
6 resources needed in order for the case management system to  
7 maintain a staff-to-client ratio that is consistent with  
8 accepted standards and allows the necessary supervision and  
9 services for each child. The intake process and case  
10 management system shall provide a comprehensive approach to  
11 assessing the child's needs, relative risks, and most  
12 appropriate handling, and shall be based on an individualized  
13 treatment plan.

14 Section 12. Section 985.223, Florida Statutes, is  
15 amended to read:

16 985.223 Incompetency in juvenile delinquency cases.--

17 (1) If, at any time prior to or during a delinquency  
18 case involving a delinquent act or violation of law that would  
19 be a felony if committed by an adult, the court has reason to  
20 believe that the child named in the petition may be  
21 incompetent to proceed with the hearing, the court on its own  
22 motion may, or on the motion of the child's attorney or state  
23 attorney must, stay all proceedings and order an evaluation of  
24 the child's mental condition.

25 (a) All determinations of competency shall be made at  
26 a hearing, with findings of fact based on an evaluation of the  
27 child's mental condition by not less than two nor more than  
28 three experts appointed by the court. If the determination of  
29 incompetency is based on the presence of a mental illness or  
30 mental retardation, this must be stated in the evaluation. In  
31 addition, a recommendation as to whether residential or

1 nonresidential treatment or training is required must be  
2 included in the evaluation. All court orders determining  
3 incompetency must include specific findings by the court as to  
4 the nature of the incompetency.

5 (b) For incompetency evaluations related to mental  
6 illness, the Department of Health ~~Children and Family Services~~  
7 shall annually provide the courts with a list of mental health  
8 professionals who have completed a training program approved  
9 by the Department of Health ~~Children and Family Services~~ to  
10 perform the evaluations.

11 (c) For incompetency evaluations related to mental  
12 retardation, the court shall order the Developmental Services  
13 Program Office within the Department of Children and Family  
14 Services to examine the child to determine if the child meets  
15 the definition of "retardation" in s. 393.063 and, if so,  
16 whether the child is competent to proceed with delinquency  
17 proceedings.

18 (d) A child is competent to proceed if the child has  
19 sufficient present ability to consult with counsel with a  
20 reasonable degree of rational understanding and the child has  
21 a rational and factual understanding of the present  
22 proceedings. The report must address the child's capacity to:

23 1. Appreciate the charges or allegations against the  
24 child.

25 2. Appreciate the range and nature of possible  
26 penalties that may be imposed in the proceedings against the  
27 child, if applicable.

28 3. Understand the adversarial nature of the legal  
29 process.

30 4. Disclose to counsel facts pertinent to the  
31 proceedings at issue.

1           5. Display appropriate courtroom behavior.  
2           6. Testify relevantly.  
3           (2) Every child who is adjudicated incompetent to  
4 proceed may be involuntarily committed to the Department of  
5 Health or to the Department of Children and Family Services  
6 for treatment upon a finding by the court of clear and  
7 convincing evidence that:  
8           (a) The child is mentally ill and because of the  
9 mental illness; or the child is mentally retarded and because  
10 of the mental retardation:  
11           1. The child is manifestly incapable of surviving with  
12 the help of willing and responsible family or friends,  
13 including available alternative services, and without  
14 treatment the child is likely to either suffer from neglect or  
15 refuse to care for self, and such neglect or refusal poses a  
16 real and present threat of substantial harm to the child's  
17 well-being; or  
18           2. There is a substantial likelihood that in the near  
19 future the child will inflict serious bodily harm on self or  
20 others, as evidenced by recent behavior causing, attempting,  
21 or threatening such harm; and  
22           (b) All available less restrictive alternatives,  
23 including treatment in community residential facilities or  
24 community inpatient or outpatient settings which would offer  
25 an opportunity for improvement of the child's condition, are  
26 inappropriate.  
27           (3) Each child who has been adjudicated incompetent to  
28 proceed and who meets the criteria for commitment in  
29 subsection (2), must be committed to the Department of Health  
30 or the Department of Children and Family Services, as  
31 appropriate, and that department may retain, and if it retains

1 must treat, the child in the least restrictive alternative  
2 consistent with public safety. Any commitment of a child to a  
3 residential program must be separate from adult forensic  
4 programs. If the child attains competency, case management  
5 and supervision of the child will be transferred to the  
6 department in order to continue delinquency proceedings;  
7 however, the court retains authority to order the Department  
8 of Children and Family Services to provide continued treatment  
9 to maintain competency.

10 (a) A child adjudicated incompetent due to mental  
11 retardation may be ordered into a program designated by the  
12 Department of Children and Family Services for retarded  
13 children.

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

18 (c) Not later than 6 months after the date of  
19 commitment, or at the end of any period of extended treatment  
20 or training, or at any time the service provider determines  
21 the child has attained competency or no longer meets the  
22 criteria for commitment, the service provider must file a  
23 report with the court pursuant to the applicable Rules of  
24 Juvenile Procedure.

25 (4) If a child is determined to be incompetent to  
26 proceed, the court shall retain jurisdiction of the child for  
27 up to 2 years after the date of the order of incompetency,  
28 with reviews at least every 6 months to determine competency.  
29 If the court determines at any time that the child will never  
30 become competent to proceed, the court may dismiss the  
31 delinquency petition. If, at the end of the 2-year period

1 following the date of the order of incompetency, the child has  
2 not attained competency and there is no evidence that the  
3 child will attain competency within a year, the court must  
4 dismiss the delinquency petition. If necessary, the court may  
5 order that proceedings under chapter 393 or chapter 394 be  
6 instituted. Such proceedings must be instituted not less than  
7 60 days prior to the dismissal of the delinquency petition.

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

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

29 Section 13. Effective July 1, 1998, the Secretary of  
30 Children and Family Services shall appoint three  
31 representatives of the Department of Children and Family

1 Services and the Secretary of Health shall appoint three  
2 representatives of the Department of Health to a committee the  
3 function of which is to recommend to the respective  
4 departments the most efficient means of carrying out the  
5 transfer prescribed in this act. The committee shall  
6 recommend to the departments how they should fulfill their  
7 shared responsibilities under chapters 394 and 397, Florida  
8 Statutes. The committee shall also recommend to the  
9 departments any revisions to the Florida Statutes necessary to  
10 ensure the successful administration of each department's  
11 respective responsibilities as a result of this act. The  
12 Governor shall appoint the chairman of the committee. The  
13 committee must hold its first meeting by July 15, 1998, and  
14 must report its recommendations to the respective departments  
15 by November 2, 1998.

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

18

19 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
20 COMMITTEE SUBSTITUTE FOR  
21 Senate Bill 2334

22

22 Deletes reference to conforming amendments to ss. 394.50 and  
23 394.60, F.S., relating to children's treatment centers and  
patient transfers, respectively.

24 Creates s. 394.91, F.S., providing responsibilities for the  
25 Department of Health regarding alcohol, drug abuse, and mental  
health services.

26 Amends s. 397.311, F.S., redefining the term "department" for  
27 purposes of alcohol and drug abuse services.

28 Adds to the duties of the transition advisory committee the  
29 development of recommendations regarding any additional  
statutory revisions necessary to reflect the responsibilities  
resulting from this bill.

30 Incorporates technical and conforming revisions.

31