

1 A bill to be entitled
2 An act relating to inmates under sentence of death;
3 amending s. 922.07, F.S.; providing for procedures when a
4 person under sentence of death is alleged to be insane;
5 requiring the Department of Children and Family Services
6 to supply a treatment team to evaluate and treat the
7 person; requiring the treatment team to report to the
8 Governor within a specified time; authorizing the Governor
9 to appoint a commission to reexamine the person; providing
10 that if the Governor determines that the person has
11 regained the mental capacity to understand the nature of
12 the death penalty, the Governor shall lift the stay and
13 proceed with the execution; creating s. 945.50, F.S.;
14 providing for applicability of section to inmates under
15 sentence of death; providing an exemption from specified
16 provisions; providing a purpose; providing that an inmate
17 is not incompetent because the inmate needs psychotropic
18 medication to be competent; defining psychotropic
19 medication; providing for committing an inmate under
20 sentence of death to the Department of Children and Family
21 Services or the Agency for Persons with Disabilities for
22 treatment or training; requiring the Department of
23 Children and Family Services or the Agency for Persons
24 with Disabilities to provide treatment or training
25 services at a place designated by the Department of
26 Corrections; providing for involuntary treatment of an
27 inmate found not to be competent to proceed who refuses to
28 give express and informed consent to the treatment or

29 training; providing procedures for emergency and
 30 nonemergency situations; providing for a hearing;
 31 providing an effective date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Section 922.07, Florida Statutes, is amended to
 36 read:

37 922.07 Proceedings when person under sentence of death is
 38 alleged ~~appears~~ to be insane.--

39 (1) If, at least 10 days before a scheduled execution,
 40 ~~when~~ the Governor receives written notification from the counsel
 41 of record for the convicted person or from a prison
 42 administrator ~~is informed~~ that a person under sentence of death
 43 may be insane, the Governor shall stay execution of the sentence
 44 and appoint a commission of three psychiatrists to examine the
 45 convicted person. The Governor shall notify the psychiatrists in
 46 writing that they are to examine the convicted person to
 47 determine whether he or she understands the nature and effect of
 48 the death penalty and why it is to be imposed upon him or her.
 49 The examination of the convicted person shall take place with
 50 all three psychiatrists present at the same time. Counsel for
 51 the convicted person and the state attorney may be present at
 52 the examination. If the convicted person does not have counsel,
 53 the court that imposed the sentence shall appoint counsel to
 54 represent him or her.

55 (2) After receiving the report of the commission, if the
 56 Governor decides that the convicted person has the mental

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57 capacity to understand the nature of the death penalty and the
58 reasons why it was imposed upon him or her, the Governor shall
59 immediately lift the stay and notify the Attorney General of
60 such action. Within 10 days after such notification, the
61 Governor must set the new date for execution of the death
62 sentence. When the new date for execution of the death sentence
63 is set by the Governor under this subsection, the Attorney
64 General shall notify the convicted person's ~~inmate's~~ counsel of
65 record of the date and time of execution.

66 (3) If the Governor decides that the convicted person does
67 not have the mental capacity to understand the nature of the
68 death penalty and why it was imposed on him or her, the Governor
69 shall have the convicted person transferred ~~committed~~ to a
70 Department of Corrections mental health treatment facility
71 capable of housing death row inmates. A treatment team from the
72 Department of Children and Family Services shall provide
73 evaluation and treatment services to the convicted person. The
74 treatment team shall report to the Governor on the mental
75 condition of the convicted person every 30 days.

76 (4) At any time after the convicted ~~When a person under~~
77 ~~sentence of death~~ has been transferred ~~committed~~ to a Department
78 of Corrections mental health treatment facility as provided in
79 subsection (3), he or she shall be kept there until the facility
80 ~~administrator determines that he or she has been restored to~~
81 ~~sanity. The facility administrator shall notify the Governor of~~
82 ~~his or her determination, and the Governor may shall~~ appoint
83 another commission to proceed as provided in subsection (1).
84 After receiving the commission's report, if the Governor decides

85 that the convicted person has regained sufficient mental
 86 capacity to understand the nature of the death penalty and the
 87 reasons it was imposed, the Governor shall lift the stay and
 88 proceed as provided in subsection (2).

89 (5) The Governor shall allow reasonable fees to
 90 psychiatrists appointed under the provisions of this section
 91 which shall be paid by the state.

92 Section 2. Section 945.50, Florida Statutes, is created to
 93 read:

94 945.50 Mental health treatment and training of inmates
 95 under sentence of death.--

96 (1) This section shall apply to an inmate under sentence
 97 of death who is found incompetent to proceed in capital
 98 postconviction proceedings, mentally retarded, or unable to
 99 understand the nature of the death penalty and the reasons why
 100 it was imposed.

101 (2) The purpose of this section is to provide treatment
 102 and training necessary to make the inmate competent to proceed
 103 in capital postconviction proceedings and able to understand the
 104 nature of the death penalty and the reasons why it was imposed.

105 (3) Chapters 393, 394, and 916 do not apply to an inmate
 106 under sentence of death.

107 (4) An inmate who, because of psychotropic medication, is
 108 able to understand the nature of the proceedings and assist in
 109 the inmate's own defense shall not be deemed incompetent to
 110 proceed in capital postconviction proceedings simply because the
 111 inmate's satisfactory mental functioning is dependent upon such
 112 medication. An inmate who, because of psychotropic medication,

113 is able to understand the nature of the death penalty and the
114 reasons why it was imposed shall not be deemed subsequently
115 unable to understand the nature of the death penalty and the
116 reasons why it was imposed simply because the inmate's
117 satisfactory mental functioning is dependent upon such
118 medication. As used in this section, "psychotropic medication"
119 means any drug or compound used to treat mental or emotional
120 disorders affecting the mind, behavior, intellectual functions,
121 perception, moods, or emotions and includes antipsychotic,
122 antidepressant, antimanic, and antianxiety drugs.

123 (5) An inmate found incompetent to proceed in capital
124 postconviction proceedings by reason of mental illness, or an
125 inmate found to be unable to understand the nature of the death
126 penalty and the reasons why it was imposed, may be involuntarily
127 committed to the Department of Children and Family Services. An
128 inmate found incompetent to proceed in capital postconviction
129 proceedings by reason of mental retardation may be involuntarily
130 committed to the Agency for Persons with Disabilities.

131 (6) Regardless of the commitment, the department shall
132 retain custody of the inmate. The department shall, in its sole
133 discretion, place the inmate in the correctional facility it
134 determines is best equipped to treat or train such inmate and is
135 best suited to the security and custody needs of the inmate
136 sentenced to death.

137 (7) Personnel from the Department of Children and Family
138 Services or the Agency for Persons with Disabilities shall
139 provide treatment or training at the inmate's facility. Such
140 personnel shall also be responsible for providing all reports

141 required by court order or court rule.

142 (8) If the court determines that the inmate is competent
 143 to proceed, it shall enter its order so finding, discharge the
 144 involuntary commitment order as to the Department of Children
 145 and Family Services or the Agency for Persons with Disabilities,
 146 and proceed with the inmate's postconviction proceedings. If the
 147 court determines that the inmate understands the nature of the
 148 death penalty and the reasons why it was imposed, the court
 149 shall enter its order so finding and shall notify the Governor.

150 (9) An inmate who has been found incompetent to proceed in
 151 capital postconviction proceedings, or who has been found to not
 152 understand the nature of the death penalty and the reasons why
 153 it was imposed, and who is involuntarily committed to the
 154 Department of Children and Family Services under this section,
 155 shall be asked to give express and informed written consent for
 156 medical treatment. If the inmate is unable or refuses to give
 157 express and informed written consent for treatment, including
 158 psychotropic medications, which treatment the Department of
 159 Children and Family Services deems necessary to restoration of
 160 the inmate's competency or sanity, or for the safety of the
 161 inmate or others, such treatment may be provided under the
 162 following circumstances:

163 (a) In an emergency situation in which there is immediate
 164 danger to the safety of the inmate or others, such treatment may
 165 be provided upon the written order of a physician for a period
 166 not to exceed 48 hours, excluding weekends and legal holidays.
 167 If, after the 48-hour period, the inmate has not given express
 168 and informed consent to the treatment, the Department of

169 Children and Family Services shall, within 48 hours, excluding
 170 weekends and legal holidays, petition the committing court or
 171 other authorized circuit court for an order authorizing the
 172 continued treatment of the inmate. In the interim, treatment may
 173 be continued without the consent of the inmate upon the
 174 continued written order of a physician who has determined that
 175 the emergency situation continues to present a danger to the
 176 safety of the inmate or others.

177 (b) In a situation other than an emergency situation, the
 178 Department of Children and Family Services shall petition the
 179 court for an order authorizing the treatment for the inmate. The
 180 order shall require the inmate to submit to the treatment for a
 181 period not to exceed 90 days from the date of the entry of the
 182 order. If the inmate does not provide express and informed
 183 consent in writing to the continuation of treatment, the court
 184 may continue the order for treatment for successive 90-day
 185 periods, continuing until the inmate provides consent or the
 186 involuntary commitment order is discharged by the court.

187 (c) At a hearing on the issue of whether the court should
 188 order treatment for which an inmate has not given express and
 189 informed consent, the court shall determine by clear and
 190 convincing evidence that the inmate is in need of services and
 191 that the proposed treatment is necessary for restoration to
 192 competency or sanity. In arriving at the decision, the court
 193 must consider the following factors:

- 194 1. The inmate's expressed preference.
- 195 2. The probability of adverse side effects.
- 196 3. The prognosis for restoration to competency or sanity

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197 without treatment or training.

198 4. The prognosis for restoration to competency or sanity
199 with treatment or training.

200 (d) If medical treatment is ordered, department medical
201 personnel may assist in providing general medical care and the
202 administering of medication.

203 (10) Nothing in this section shall restrict the ability of
204 the department or any treating medical provider from providing
205 emergency medical treatment if such treatment is deemed
206 lifesaving or there is a situation threatening serious bodily
207 harm to the inmate.

208 Section 3. This act shall take effect upon becoming a law.