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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/06/2009	.	
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The Committee on Children, Families, and Elder Affairs (Wise) recommended the following:

1 **Senate** ~~Substitute for Amendment (107744)~~ **(with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 394.4656, Florida Statutes, is created
7 to read:

8 394.4656 Community Mental Health and Substance Abuse
9 Treatment and Crime Reduction Act.—

10 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
11 that many jail inmates who have serious mental illnesses and who



154306

12 are committed to state forensic mental health treatment
13 facilities for competency restoration could be served more
14 effectively and at less cost in community-based alternative
15 programs. The Legislature further finds that many people who
16 have serious mental illnesses and who have been discharged from
17 state forensic mental health treatment facilities could avoid
18 recidivism to the criminal justice and forensic mental health
19 systems if they received specialized treatment in the community.
20 Therefore, it is the intent of the Legislature to create the
21 Community Mental Health and Substance Abuse Treatment and Crime
22 Reduction Act to serve individuals who have mental illnesses or
23 co-occurring mental illnesses and substance abuse disorders and
24 who are involved in or at risk of entering state forensic mental
25 health treatment facilities, prisons, jails, juvenile justice
26 centers, or state civil mental health treatment facilities.

27 (2) GOALS.—The goals of the community mental health and
28 substance abuse forensic treatment system are to:

29 (a) Ensure public safety.

30 (b) Ensure that services to restore forensic competency are
31 provided in the least restrictive, least costly, and most
32 effective environment.

33 (c) Provide competency-restoration services in the
34 community if appropriate, based on consideration of public
35 safety, needs of the individual, and available resources.

36 (d) Reduce admissions for competency restoration to state
37 forensic mental health treatment facilities.

38 (e) Reduce rates of arrest, incarceration, and
39 reincarceration.

40 (f) Increase outreach and services to individuals at risk



154306

41 for involvement in the criminal justice, juvenile justice, or
42 forensic mental health systems.

43 (g) Support collaboration among state and local
44 stakeholders, including law enforcement agencies, courts, state
45 agencies, jails, county government, service providers,
46 individuals with mental illnesses or co-occurring mental
47 illnesses and substance abuse disorders, family members,
48 advocates, and other community members.

49 (3) DEFINITIONS.—As used in this section, the term:

50 (a) "Best practices" means treatment services that
51 incorporate the most effective and acceptable interventions
52 available in the care and treatment of individuals who are
53 diagnosed as having a mental illness or a co-occurring mental
54 illness and substance abuse disorder.

55 (b) "Community forensic system" means the community mental
56 health and substance abuse forensic treatment system, including
57 the comprehensive set of services and supports provided to
58 individuals involved in or at risk of becoming involved in the
59 criminal justice system.

60 (c) "Community residential facility" means a community-
61 based residential treatment setting licensed by the agency under
62 s. 394.875 or s. 429.075, or by the department under s. 397.401.

63 (d) "Evidence-based practices" means interventions and
64 strategies that, based on the best available empirical research,
65 demonstrate effective and efficient outcomes in the care and
66 treatment of individuals who are diagnosed as having mental
67 illnesses or co-occurring mental illnesses and substance use
68 disorders.

69 (e) "Forensic intensive care management" means activities



154306

70 addressing the comprehensive psychiatric, social, and support
71 needs of individuals who are diagnosed as having serious and
72 persistent mental illnesses, co-occurring disorders, or severe
73 emotional disturbances, and who are involved in the justice
74 system and receiving services under this section. Activities
75 include, but are not limited to, service planning, service
76 coordination, monitoring, and assistance with accessing federal,
77 state, and local benefits necessary to sustain a person in the
78 community.

79 (f) "Geographic area" means a county, circuit, regional, or
80 multiregional area in this state.

81 (4) SERVICE SYSTEM.—The department, in consultation with
82 the agency, shall develop and implement a community mental
83 health and substance abuse forensic treatment system. The system
84 must build on local community diversion and reentry initiatives
85 and strategies that are consistent with those identified and
86 supported under s. 394.658(1), or with geographic areas that
87 have piloted a community-based diversion program .

88 (a) The community forensic system initiatives and
89 strategies may include, but are not limited to:

90 1. Mental health courts.

91 2. Diversion programs.

92 3. Alternative prosecution and sentencing techniques.

93 4. Crisis intervention teams.

94 5. Specialized training for criminal justice, juvenile
95 justice, and treatment services professionals.

96 6. Specialized probation officers at the state and county
97 levels to serve individuals under correctional control in the
98 community.



154306

99 7. Collateral services such as supported, transitional, and
100 permanent housing, and supported employment.

101 8. Reentry services to create or expand mental health and
102 co-occurring treatment and supports for affected individuals.

103 (b) The community forensic system must include a
104 comprehensive continuum of care and services that use evidence-
105 based and best practices to address co-occurring mental health
106 and substance abuse disorder, including the following minimum
107 services and elements:

108 1. Competency-restoration and treatment services provided
109 in a variety of settings from least restrictive to progressively
110 more restrictive settings.

111 2. Forensic intensive care management.

112 3. Supported housing.

113 4. Supported employment.

114 5. Medication management.

115 6. Trauma-specific services for treatment of the effects of
116 sexual, physical, and emotional abuse or trauma experienced by
117 individuals who have mental illnesses and are involved in the
118 criminal justice system.

119 7. Residential services to address crisis episodes and
120 short-term residential treatment.

121 8. Treatment for co-occurring mental health and substance
122 use disorders.

123 9. Outreach and education for individuals and their
124 families who are at risk of further involvement with the justice
125 system.

126 10. The use of involuntary outpatient placement for
127 individuals meeting the criteria as provided under s. 394.4655



154306

128 and conditional release for individuals adjudicated incompetent
129 to proceed due to mental illness or not guilty by reason of
130 insanity as provided under s. 916.17.

131 11. Other services or supports as identified.

132 (5) ELIGIBILITY.—The department may serve individuals who
133 meet the criteria in this subsection. The department must give
134 highest priority for services under this section to:

135 (a) Adults who are adjudicated incompetent to proceed or
136 not guilty by reason of insanity under chapter 916 and ordered
137 by the court into forensic commitment, whose current most
138 serious charge is a felony of the third degree or a felony of
139 the second degree if the felony did not involve violence, and
140 who meet public safety criteria established by the court and
141 treatability criteria established by the department for
142 placement in a community setting.

143 (b) Adults who experience serious and persistent mental
144 illnesses reentering the community from state prisons.

145 (c) Adults who have been committed to a state forensic
146 mental health treatment facility after being adjudicated
147 incompetent to proceed or not guilty by reason of insanity, and
148 who are released or who are pending release to the community by
149 the court after completing competency restoration services or
150 being found to no longer meet the criteria for continued
151 commitment placement.

152 (d) Adults who experience serious and persistent mental
153 illnesses, who have a history of involvement in the justice
154 system, or who are at risk of entering or who are already
155 involved with the criminal justice system.

156 (e) Children deemed incompetent to proceed under s. 985.19.



154306

157 (6) DEPARTMENT RESPONSIBILITIES.—The department may develop
158 a continuum of services to implement this section in accordance
159 with subsection (4). The department may:

160 (a) Define requirements for all providers in the community
161 forensic system.

162 (b) Select demonstration sites for participation, based on
163 criteria in subsection (7), which demonstrate active and
164 sustained participation in community collaborations.

165 (c) Enter into memoranda of agreement with county planning
166 councils or committees identified in s. 394.657 that
167 participated in the criminal justice, mental health, and
168 substance abuse reinvestment grant program pursuant to s.
169 394.656, or that piloted a community-based diversion program.

170 (d) Identify providers to implement the continuum of
171 services. The department shall consult with county planning
172 councils or committees in the selection process.

173 (e) Establish performance measures and reporting
174 requirements for providers participating in the community
175 forensic system. The measures shall include, at a minimum:

176 1. The number of individuals diverted from state forensic
177 mental health treatment facilities.

178 2. The number of individuals diverted from the criminal
179 justice system.

180 3. The rates of arrest, incarceration, and reincarceration
181 for new criminal offenses.

182 4. The rates of employment.

183 5. The annual number of days in a crisis stabilization
184 unit, detoxification facility, short-term residential treatment
185 program, state civil mental health treatment facility, or state



154306

186 forensic mental health treatment facility.

187 (f) Monitor contracts for compliance with terms and assess
188 performance under contracts; provide an annual report to the
189 Governor, the President of the Senate, the Speaker of the House
190 of Representatives, the Chief Justice of the Florida Supreme
191 Court, and the State Courts Administrator on the implementation
192 status of the Community Mental Health and Substance Abuse
193 Treatment and Crime Reduction Act.

194 (7) IMPLEMENTATION.—The department may implement this
195 section within available resources. In expectation of statewide
196 implementation, the department may establish demonstration sites
197 in the following geographic areas of the state: Escambia, Leon,
198 and Dade counties and the Tampa Bay area. Each site must be
199 selected based on findings of community readiness and the
200 potential for affecting the greatest number of individuals
201 entering the forensic mental health and criminal justice
202 systems. Criteria for selection may include:

203 (a) Community readiness to deliver the services outlined in
204 subsection (4), demonstrated by well-established community
205 collaboration plans and local partnerships as evidenced by
206 memoranda of agreement that are submitted to and approved by the
207 department.

208 (b) A high bed-utilization rate at state forensic mental
209 health treatment facilities.

210 (c) Successful application for implementation grant funding
211 under the Criminal Justice, Mental Health, and Substance Abuse
212 Reinvestment Grant Program.

213 (d) Other elements determined by the department in
214 consultation with the agency.



154306

215 Section 2. Paragraph (b) of subsection (11) of section
216 394.655, Florida Statutes, is amended to read:

217 394.655 The Substance Abuse and Mental Health Corporation;
218 powers and duties; composition; evaluation and reporting
219 requirements.-

220 (11)

221 (b) The purpose of the council shall be to:

222 1. Align policy initiatives in the criminal justice,
223 juvenile justice, ~~and~~ mental health, and substance abuse systems
224 to ensure the most effective use of resources and to coordinate
225 the development of legislative proposals and budget requests
226 relating to the shared needs of adults and juveniles who have a
227 mental illness, substance abuse disorder, or co-occurring mental
228 health and substance abuse disorders who are in, or at risk of
229 entering, the criminal justice system.

230 2. Provide consultation in the development of comprehensive
231 and cost-effective community-based mental health and substance
232 abuse treatment services for individuals who have mental
233 illnesses and who are receiving services in state forensic
234 mental health treatment facilities, juvenile secure residential
235 treatment centers specializing in competency training, and
236 prisons. The council shall appoint an advisory committee to
237 review and monitor the implementation of the Community Mental
238 Health and Substance Abuse Treatment and Crime Reduction Act.
239 The advisory committee shall include at least one person who has
240 received services and one family member of a person who has
241 received services under this section.

242 Section 3. Subsection (1) of section 394.656, Florida
243 Statutes, is amended to read:



154306

244 394.656 Criminal Justice, Mental Health, and Substance
245 Abuse Reinvestment Grant Program.—

246 (1) There is created within the Department of Children and
247 Family Services the Criminal Justice, Mental Health, and
248 Substance Abuse Reinvestment Grant Program. The purpose of the
249 program is to provide funding to counties to ~~with which they can~~
250 ~~plan, implement, or expand initiatives that increase public~~
251 ~~safety, avert increased spending on criminal justice, and~~
252 ~~improve the accessibility and effectiveness of treatment~~
253 ~~services for adults and juveniles who have a mental illness,~~
254 ~~substance abuse disorder, or co-occurring mental health and~~
255 ~~substance abuse disorders and who are in, or at risk of~~
256 ~~entering, the criminal or juvenile justice systems. In~~
257 ~~implementing the Community Mental Health and Substance Abuse~~
258 ~~Treatment and Crime Reduction Act, the department and agency~~
259 ~~shall work in coordination with counties that received grants~~
260 ~~under the program or piloted a community-based diversion~~
261 ~~program.~~

262 Section 4. Subsection (1) of section 394.657, Florida
263 Statutes, is amended to read:

264 394.657 County planning councils or committees.—

265 (1) Each board of county commissioners shall designate the
266 county public safety coordinating council established under s.
267 951.26, or designate another criminal or juvenile justice mental
268 health and substance abuse council or committee, as the planning
269 council or committee. The public safety coordinating council or
270 other designated criminal or juvenile justice mental health and
271 substance abuse council or committee shall:

272 (a) Coordinate ~~in coordination~~ with the county offices of



154306

273 planning and budget ~~to, shall~~ make a formal recommendation to
274 the board of county commissioners regarding how the Criminal
275 Justice, Mental Health, and Substance Abuse Reinvestment Grant
276 Program may best be implemented within a community. The board of
277 county commissioners may assign any entity to prepare the
278 application on behalf of the county administration for
279 submission to the corporation for review. A county may join with
280 one or more counties to form a consortium and use a regional
281 public safety coordinating council or another county-designated
282 regional criminal or juvenile justice mental health and
283 substance abuse planning council or committee for the geographic
284 area represented by the member counties.

285 (b) Consult with local governing bodies when planning or
286 implementing the Community Mental Health and Substance Abuse
287 Treatment and Crime Reduction Act.

288 Section 5. Subsection (28) is added to section 409.906,
289 Florida Statutes, to read:

290 409.906 Optional Medicaid services.—Subject to specific
291 appropriations, the agency may make payments for services which
292 are optional to the state under Title XIX of the Social Security
293 Act and are furnished by Medicaid providers to recipients who
294 are determined to be eligible on the dates on which the services
295 were provided. Any optional service that is provided shall be
296 provided only when medically necessary and in accordance with
297 state and federal law. Optional services rendered by providers
298 in mobile units to Medicaid recipients may be restricted or
299 prohibited by the agency. Nothing in this section shall be
300 construed to prevent or limit the agency from adjusting fees,
301 reimbursement rates, lengths of stay, number of visits, or



154306

302 number of services, or making any other adjustments necessary to
303 comply with the availability of moneys and any limitations or
304 directions provided for in the General Appropriations Act or
305 chapter 216. If necessary to safeguard the state's systems of
306 providing services to elderly and disabled persons and subject
307 to the notice and review provisions of s. 216.177, the Governor
308 may direct the Agency for Health Care Administration to amend
309 the Medicaid state plan to delete the optional Medicaid service
310 known as "Intermediate Care Facilities for the Developmentally
311 Disabled." Optional services may include:

312 (28) HOME AND COMMUNITY-BASED SERVICES.-The agency,
313 contingent upon appropriation of funds for this purpose, may
314 seek federal approval through a state plan amendment to
315 implement home and community-based services under the authority
316 of and in compliance with s. 1915i of the Social Security Act
317 for services provided to individuals who have been determined by
318 an independent evaluation to have disabilities that cause them
319 to become, or put them at risk of becoming, involved with the
320 criminal justice system due to their mental illness. In
321 accordance with allowances under s. 1915i of the Social Security
322 Act, these services may be limited to a select number of
323 eligible individuals in select geographic areas, as identified
324 by the agency. Eligible individuals may have incomes up to 150
325 percent of the federal poverty level. The agency shall
326 coordinate with the department to select and define the services
327 that will be submitted in the state plan amendment and provided
328 under this subsection. The agency shall disenroll individuals
329 receiving services under this subsection from MediPass, or any
330 capitated or other Medicaid-managed care arrangement. Enrollment



154306

331 in state plan services may not exceed 1,000 individuals unless
332 additional approval is obtained from the Legislature. The agency
333 must receive approval from the Legislature or Legislative Budget
334 Commission for any funding beyond that provided within initial
335 implementation revenues. After July 1, 2012, the agency may seek
336 authority to capitate Medicaid behavioral health services under
337 this subsection.

338 Section 6. Subsection (54) is added to section 409.912,
339 Florida Statutes, to read:

340 409.912 Cost-effective purchasing of health care.—The
341 agency shall purchase goods and services for Medicaid recipients
342 in the most cost-effective manner consistent with the delivery
343 of quality medical care. To ensure that medical services are
344 effectively utilized, the agency may, in any case, require a
345 confirmation or second physician's opinion of the correct
346 diagnosis for purposes of authorizing future services under the
347 Medicaid program. This section does not restrict access to
348 emergency services or poststabilization care services as defined
349 in 42 C.F.R. part 438.114. Such confirmation or second opinion
350 shall be rendered in a manner approved by the agency. The agency
351 shall maximize the use of prepaid per capita and prepaid
352 aggregate fixed-sum basis services when appropriate and other
353 alternative service delivery and reimbursement methodologies,
354 including competitive bidding pursuant to s. 287.057, designed
355 to facilitate the cost-effective purchase of a case-managed
356 continuum of care. The agency shall also require providers to
357 minimize the exposure of recipients to the need for acute
358 inpatient, custodial, and other institutional care and the
359 inappropriate or unnecessary use of high-cost services. The



154306

360 agency shall contract with a vendor to monitor and evaluate the
361 clinical practice patterns of providers in order to identify
362 trends that are outside the normal practice patterns of a
363 provider's professional peers or the national guidelines of a
364 provider's professional association. The vendor must be able to
365 provide information and counseling to a provider whose practice
366 patterns are outside the norms, in consultation with the agency,
367 to improve patient care and reduce inappropriate utilization.
368 The agency may mandate prior authorization, drug therapy
369 management, or disease management participation for certain
370 populations of Medicaid beneficiaries, certain drug classes, or
371 particular drugs to prevent fraud, abuse, overuse, and possible
372 dangerous drug interactions. The Pharmaceutical and Therapeutics
373 Committee shall make recommendations to the agency on drugs for
374 which prior authorization is required. The agency shall inform
375 the Pharmaceutical and Therapeutics Committee of its decisions
376 regarding drugs subject to prior authorization. The agency is
377 authorized to limit the entities it contracts with or enrolls as
378 Medicaid providers by developing a provider network through
379 provider credentialing. The agency may competitively bid single-
380 source-provider contracts if procurement of goods or services
381 results in demonstrated cost savings to the state without
382 limiting access to care. The agency may limit its network based
383 on the assessment of beneficiary access to care, provider
384 availability, provider quality standards, time and distance
385 standards for access to care, the cultural competence of the
386 provider network, demographic characteristics of Medicaid
387 beneficiaries, practice and provider-to-beneficiary standards,
388 appointment wait times, beneficiary use of services, provider



154306

389 turnover, provider profiling, provider licensure history,
390 previous program integrity investigations and findings, peer
391 review, provider Medicaid policy and billing compliance records,
392 clinical and medical record audits, and other factors. Providers
393 shall not be entitled to enrollment in the Medicaid provider
394 network. The agency shall determine instances in which allowing
395 Medicaid beneficiaries to purchase durable medical equipment and
396 other goods is less expensive to the Medicaid program than long-
397 term rental of the equipment or goods. The agency may establish
398 rules to facilitate purchases in lieu of long-term rentals in
399 order to protect against fraud and abuse in the Medicaid program
400 as defined in s. 409.913. The agency may seek federal waivers
401 necessary to administer these policies.

402 (54) Persons who have serious and persistent mental
403 illnesses, who are receiving services under the Community Mental
404 Health and Substance Abuse Crime Reduction Act, and who are
405 eligible for and receiving services under the state plan
406 implemented under s. 1915i of the Social Security Act, as
407 approved by the Centers for Medicare and Medicaid Services, are
408 exempt from MediPass and managed care plans authorized under
409 this chapter, including capitated managed care plans authorized
410 under s. 409.91211.

411 Section 7. Paragraph (a) of subsection (3) of section
412 916.107, Florida Statutes, is amended to read:

413 916.107 Rights of forensic clients.—

414 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

415 (a) A forensic client shall be asked to give express and
416 informed written consent for treatment. If a client refuses such
417 treatment ~~as is~~ deemed necessary and essential by the client's



154306

418 multidisciplinary treatment team for the appropriate care of the
419 client, such treatment may be provided under the following
420 circumstances:

421 1. In an emergency situation in which there is immediate
422 danger to the safety of the client or others, such treatment may
423 be provided upon the written order of a physician for a period
424 not to exceed 48 hours, excluding weekends and legal holidays.
425 If, after the 48-hour period, the client has not given express
426 and informed consent to the treatment initially refused, the
427 administrator or designee of the civil or forensic facility
428 shall, within 48 hours, excluding weekends and legal holidays,
429 petition the committing court or the circuit court serving the
430 county in which the facility is located, at the option of the
431 facility administrator or designee, for an order authorizing the
432 continued treatment of the client. In the interim, the need for
433 treatment shall be reviewed every 48 hours and may be continued
434 without the consent of the client upon the continued written
435 order of a physician who has determined that the emergency
436 situation continues to present a danger to the safety of the
437 client or others.

438 2. In a situation other than an emergency situation, the
439 administrator or designee of the facility shall petition the
440 court for an order authorizing necessary and essential treatment
441 for the client.

442 a. If the client has been receiving psychotherapeutic
443 medication at the jail at the time of transfer to the state
444 forensic mental health treatment facility and lacks the capacity
445 to make an informed decision regarding mental health treatment
446 at the time of admission, the admitting physician may order a



154306

447 continuation of the psychotherapeutic medication if, in the
448 clinical judgment of the physician, abrupt cessation of the
449 psychotherapeutic medication could cause a risk to the health
450 and safety of the client during the time a court order to
451 medicate is pursued. The jail physician shall provide a current
452 psychotherapeutic medication order at the time of transfer to
453 the admitting facility.

454 b. The court order shall allow such treatment for up to a
455 period not to exceed 90 days following the date of the entry of
456 the order. Unless the court is notified in writing that the
457 client has provided express and informed consent in writing or
458 that the client has been discharged by the committing court, the
459 administrator or designee shall, before ~~prior to~~ the expiration
460 of the initial 90-day order, petition the court for an order
461 authorizing the continuation of treatment for another 90 days
462 ~~90-day period~~. This procedure shall be repeated until the client
463 provides consent or is discharged by the committing court.

464 3. At the hearing on the issue of whether the court should
465 enter an order authorizing treatment for which a client was
466 unable to or refused to give express and informed consent, the
467 court shall determine by clear and convincing evidence that the
468 client has mental illness, retardation, or autism, that the
469 treatment not consented to is essential to the care of the
470 client, and that the treatment not consented to is not
471 experimental and does not present an unreasonable risk of
472 serious, hazardous, or irreversible side effects. In arriving at
473 the substitute judgment decision, the court must consider at
474 least the following factors:

475 a. The client's expressed preference regarding treatment;



154306

- 476 b. The probability of adverse side effects;
- 477 c. The prognosis without treatment; and
- 478 d. The prognosis with treatment.

479
480 The hearing shall be as convenient to the client as may be
481 consistent with orderly procedure and shall be conducted in
482 physical settings not likely to be injurious to the client's
483 condition. The court may appoint a general or special magistrate
484 to preside at the hearing. The client or the client's guardian,
485 and the representative, shall be provided with a copy of the
486 petition and the date, time, and location of the hearing. The
487 client has the right to have an attorney represent him or her at
488 the hearing, and, if the client is indigent, the court shall
489 appoint the office of the public defender to represent the
490 client at the hearing. The client may testify or not, as he or
491 she chooses, and has the right to cross-examine witnesses and
492 may present his or her own witnesses.

493 Section 8. Section 916.111, Florida Statutes, is amended to
494 read:

495 916.111 Training of mental health experts.—The evaluation
496 of defendants for competency to proceed or for sanity at the
497 time of the commission of the offense shall be conducted ~~in such~~
498 ~~a way~~ as to ensure uniform application of the criteria
499 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal
500 Procedure.

501 (1) A forensic evaluator training course approved by the
502 department must be provided at least annually to ensure that
503 mental health professionals have the opportunity to be placed on
504 the department's forensic evaluator registry.



154306

505 (a) Beginning July 1, 2010, experts shall remain on the
506 registry if they have completed or retaken the required training
507 within the previous 5 years. Those who have not completed the
508 training must be removed from the registry and may not conduct
509 evaluations for the courts.

510 (b) A mental health professional who has completed the
511 training course within the previous 5 years must maintain
512 documentation of completion of the required training and provide
513 current contact information to the department.

514 (2) The department shall develop, and may contract with
515 accredited institutions:

516 (a)~~(1)~~ To provide:

517 1.~~(a)~~ A plan for training mental health professionals to
518 perform forensic evaluations and to standardize the criteria and
519 procedures to be used in these evaluations;

520 2.~~(b)~~ Clinical protocols and procedures based upon the
521 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
522 Procedure; and

523 3.~~(e)~~ Training for mental health professionals in the
524 application of these protocols and procedures in performing
525 forensic evaluations and providing reports to the courts; and

526 (b)~~(2)~~ To compile and maintain the necessary information
527 for evaluating the success of this program, including the number
528 of persons trained, the cost of operating the program, and the
529 effect on the quality of forensic evaluations as measured by
530 appropriateness of admissions to state forensic facilities and
531 to community-based care programs.

532 Section 9. Subsection (1) of section 916.115, Florida
533 Statutes, is amended to read:



154306

534 916.115 Appointment of experts.-

535 (1) The court shall appoint no more than three experts to
536 determine the mental condition of a defendant in a criminal
537 case, including competency to proceed, insanity, involuntary
538 placement, and treatment. The experts may evaluate the defendant
539 in jail or in another appropriate local facility or in a
540 facility of the Department of Corrections.

541 (a) ~~To the extent possible,~~ The appointed experts shall
542 have completed forensic evaluator training as provided in s.
543 916.111 approved by the department, and each shall be a
544 psychiatrist, or licensed psychologist, ~~or physician.~~

545 (b) The department shall maintain and annually provide the
546 courts with a forensic evaluator registry list of available
547 mental health professionals who have completed the approved
548 training as experts.

549 Section 10. Section 916.13, Florida Statutes, is amended to
550 read:

551 916.13 Involuntary commitment of defendant adjudicated
552 incompetent.-

553 (1) Every defendant who is charged with a felony and who is
554 adjudicated incompetent to proceed may be involuntarily
555 committed for treatment upon a finding by the court of clear and
556 convincing evidence that:

557 (a) The defendant has a mental illness and because of the
558 mental illness:

559 1. The defendant is manifestly incapable of surviving alone
560 or with the help of willing and responsible family or friends,
561 including available alternative services, and, without
562 treatment, the defendant is likely to suffer from neglect or



154306

563 refuse to care for herself or himself and such neglect or
564 refusal poses a real and present threat of substantial harm to
565 the defendant's well-being; or

566 2. There is a substantial likelihood that in the near
567 future the defendant will inflict serious bodily harm on herself
568 or himself or another person, as evidenced by recent behavior
569 causing, attempting, or threatening such harm;

570 (b) All available, less restrictive treatment alternatives,
571 including treatment in community residential facilities or
572 community inpatient or outpatient settings, which would offer an
573 opportunity for improvement of the defendant's condition have
574 been judged to be inappropriate; and

575 (c) There is a substantial probability that the mental
576 illness causing the defendant's incompetence will respond to
577 treatment and the defendant will regain competency to proceed in
578 the reasonably foreseeable future.

579 (2) A defendant who has been charged with a felony and who
580 has been adjudicated incompetent to proceed due to mental
581 illness, and who meets the criteria for involuntary commitment
582 ~~to the department under the provisions of this chapter,~~ may be
583 committed to the department, and the department shall retain and
584 treat the defendant.

585 (a) Within ~~No later than~~ 6 months after the date of
586 admission and at the end of any period of extended commitment,
587 or at any time the administrator or designee has ~~shall have~~
588 determined that the defendant has regained competency to proceed
589 or no longer meets the criteria for continued commitment, the
590 administrator or designee shall file a report with the court
591 pursuant to the applicable Florida Rules of Criminal Procedure.



154306

592 (b) Within 30 days after the court receives notification
593 that a defendant is competent to proceed or no longer meets the
594 criteria for continued commitment, the defendant shall be
595 transported back to jail pursuant to s. 916.107(10) for the
596 purpose of holding a competency hearing.

597 (c) A competency hearing must be held within 30 days after
598 a court receives notification that the defendant is competent to
599 proceed or no longer meets criteria for continued commitment.

600 Section 11. Present subsection (4) of section 916.15,
601 Florida Statutes, is renumbered as subsection (5), and a new
602 subsection (4) is added to that section, to read:

603 916.15 Involuntary commitment of defendant adjudicated not
604 guilty by reason of insanity.—

605 (4) Within 30 days after the court is notified that a
606 defendant no longer meets the criteria for involuntary
607 commitment placement, the defendant shall be transported back to
608 jail for the purpose of holding a commitment hearing. The
609 commitment hearing must be held within 45 days after the court
610 receives notification that the defendant no longer meets the
611 criteria for continued commitment placement.

612 Section 12. Present subsections (2) and (3) of section
613 916.17, Florida Statutes, are renumbered as subsections (3) and
614 (4), respectively, and a new subsection (2) is added to that
615 section, to read:

616 916.17 Conditional release.—

617 (2) A defendant who otherwise meets the criteria for
618 involuntary commitment under s. 916.13, but whose current most
619 serious charge is a felony of the third degree or a felony of
620 the second degree when the felony did not involve violence, must



154306

621 be placed in a community residential facility for competency
622 restoration in pilot sites established in s. 394.4656, unless
623 bed space or funding is unavailable for the community placement
624 or the trial court makes an explicit finding that the defendant
625 cannot be safely managed in such a placement. In making such
626 finding, the court shall consider all of the following:

627 (a) The nature and seriousness of the crime allegedly
628 committed.

629 (b) The individual's criminal history.

630 (c) The individual's psychiatric history.

631 (d) The individual's history of violent behavior or threats
632 of violent behavior and risk of harm to self or others.

633 (e) The likelihood that the individual will comply with and
634 benefit from the mental health treatment and services being
635 recommended.

636 (f) The availability of appropriate community-based
637 services and treatment settings.

638 (g) Other information considered relevant by the court.

639 Section 13. Paragraphs (b) through (h) of subsection (1) of
640 section 985.19, Florida Statutes, are amended to read:

641 985.19 Incompetency in juvenile delinquency cases.—

642 (1) If, at any time prior to or during a delinquency case,
643 the court has reason to believe that the child named in the
644 petition may be incompetent to proceed with the hearing, the
645 court on its own motion may, or on the motion of the child's
646 attorney or state attorney must, stay all proceedings and order
647 an evaluation of the child's mental condition.

648 (b) All determinations of competency must ~~shall~~ be made at
649 a hearing, with findings of fact based on an evaluation of the



154306

650 child's mental condition made by at least ~~not less than~~ two but
651 not ~~nor~~ more than three experts appointed by the court. The
652 basis for the determination of incompetency must be specifically
653 stated in the evaluation and must be conducted so as to ensure
654 uniform application of the criteria enumerated in the Florida
655 Rules of Juvenile Procedure. ~~In addition,~~ A recommendation as to
656 whether residential or nonresidential treatment or training is
657 required must be included in the evaluation. Experts appointed
658 by the court to determine the mental condition of a child shall
659 be allowed reasonable fees for services rendered. State
660 employees may be paid expenses pursuant to s. 112.061. The fees
661 shall be taxed as costs in the case.

662 (c) All court orders determining incompetency must include
663 specific written findings by the court as to the nature of the
664 incompetency and whether the child requires secure or nonsecure
665 treatment or training environments.

666 (d) The evaluation of juveniles for competency to proceed
667 shall be conducted in a manner that ensures the uniform
668 application of the criteria in the Florida Rules of Juvenile
669 Procedure. The department shall develop, and may contract with
670 accredited institutions to provide:

671 1. A plan for training mental health professionals to
672 perform forensic evaluations and for standardizing the criteria
673 and procedures to be used in such evaluations;

674 2. Clinical protocols and procedures based on the criteria
675 in the Florida Rules of Juvenile Procedure;

676 3. Training for mental health professionals in the
677 application of these protocols and procedures for performing
678 forensic evaluations and providing reports to the courts; and



154306

679 4. Evaluation of the success of the program, including the
680 number of persons trained, the cost of operating the program,
681 and the effect on the quality of forensic evaluations as
682 measured by the appropriateness of admissions to the
683 department's juvenile competent to proceed programs.

684 (e)-(d) For ~~incompetency~~ competency evaluations related to
685 mental illness, the Department of Children and Family Services
686 shall maintain and annually provide the courts with a forensic
687 evaluator registry list of available mental health professionals
688 who have completed a training program approved by the Department
689 of Children and Family Services to perform the evaluations as
690 provided in this section. An appointed expert must be a
691 psychiatrist or licensed psychologist and must be included in
692 the registry.

693 1. A forensic evaluator training course approved by the
694 department must be provided at least annually to ensure that
695 mental health professionals have an opportunity to be placed on
696 the department's registry.

697 2. Beginning July 1, 2010, experts shall remain on the
698 registry if they have completed or retaken the required training
699 within the previous 5 years. Those who have not completed the
700 required training within the previous 5 years must be removed
701 from the registry and may not conduct evaluations for the
702 courts.

703 3. A mental health professional who has completed the
704 training course within the previous 5 years must maintain
705 documentation of having completing the required training and
706 provide current contact information to the department.

707 (f)-(e) For incompetency evaluations related to mental



154306

708 retardation or autism, the court shall order the Agency for
709 Persons with Disabilities to examine the child to determine if
710 the child meets the definition of "retardation" or "autism" in
711 s. 393.063 and, if so, whether the child is competent to proceed
712 with delinquency proceedings.

713 (g)~~(f)~~ A child is competent to proceed if the child has
714 sufficient present ability to consult with counsel with a
715 reasonable degree of rational understanding and the child has a
716 rational and factual understanding of the present proceedings.
717 The report must address the child's capacity to:

- 718 1. Appreciate the charges or allegations against the child.
- 719 2. Appreciate the range and nature of possible penalties
720 that may be imposed in the proceedings against the child, if
721 applicable.
- 722 3. Understand the adversarial nature of the legal process.
- 723 4. Disclose to counsel facts pertinent to the proceedings
724 at issue.
- 725 5. Display appropriate courtroom behavior.
- 726 6. Testify relevantly.

727 (h)~~(g)~~ Immediately upon the filing of the court order
728 finding a child incompetent to proceed, the clerk of the court
729 shall notify the Department of Children and Family Services and
730 the Agency for Persons with Disabilities and fax or hand deliver
731 to the department and to the agency a referral packet that
732 includes, at a minimum, the court order, the charging documents,
733 the petition, and the court-appointed evaluator's reports.

734 (i)~~(h)~~ After placement of the child in the appropriate
735 setting, the Department of Children and Family Services in
736 consultation with the Agency for Persons with Disabilities, as



154306

737 appropriate, must, within 30 days after placement of the child,
738 prepare and submit to the court a treatment or training plan for
739 the child's restoration of competency. A copy of the plan must
740 be served upon the child's attorney, the state attorney, and the
741 attorneys representing the Department of Juvenile Justice.

742 Section 14. This act shall take effect July 1, 2009.

743

744

745 ===== T I T L E A M E N D M E N T =====

746 And the title is amended as follows:

747 Delete everything before the enacting clause

748 and insert:

749 A bill to be entitled

750 An act relating to mental health; creating s.

751 394.4656, F.S.; creating the Community Mental Health

752 and Substance Abuse Treatment and Crime Reduction Act;

753 providing legislative findings and intent; providing

754 goals for the community mental health and substance

755 abuse forensic treatment system; defining terms;

756 requiring the Department of Children and Family

757 Services, in consultation with the Agency for Health

758 Care Administration, to develop and implement a

759 community mental health and substance abuse forensic

760 treatment system; providing initiatives and strategies

761 for the community forensic system; detailing the

762 services to be provided in the community forensic

763 system; setting forth the eligibility criteria for

764 treatment in the system; authorizing the department to

765 develop a continuum of services to implement the



154306

766 Community Mental Health and Substance Abuse Treatment
767 and Crime Reduction Act; specifying the services and
768 functions the department must undertake; authorizing
769 the department to establish pilot sites within the
770 state where the community mental health and substance
771 abuse forensic treatment system will be implemented;
772 amending s. 394.655, F.S.; providing additional
773 functions of the Criminal Justice, Mental Health, and
774 Substance Abuse Policy Council; amending s. 394.656,
775 F.S.; requiring the department and the agency to
776 cooperate with counties that receive grants funding
777 under the Criminal Justice, Mental Health, and
778 Substance Abuse Reinvestment Grant Program; amending
779 s. 394.657, F.S.; requiring county councils to consult
780 with local government when planning or implementing
781 the Community Mental Health and Substance Abuse
782 Treatment and Crime Reduction Act; amending s.
783 409.906, F.S.; adding home and community-based mental
784 health services to the optional Medicaid services
785 offered by the state Medicaid program; amending s.
786 409.912, F.S.; exempting persons who have serious and
787 persistent mental illnesses and who are receiving
788 services under the Community Mental Health and
789 Substance Abuse Crime Reduction Act from MediPass and
790 managed care plans; amending s. 916.107, F.S.;
791 specifying treatment procedures for a client admitted
792 to a state forensic mental health treatment facility
793 who lacks the capacity to make an informed decision
794 regarding mental health treatment at the time of



154306

795 admission; amending s. 916.111, F.S.; providing for
796 forensic evaluator training for mental health experts;
797 amending s. 916.115, F.S.; requiring court-appointed
798 experts to have completed forensic evaluator training;
799 requiring the court-appointed expert to be a
800 psychiatrist or a licensed psychologist; requiring the
801 Department of Children and Family Services to maintain
802 and annually provide the courts with a forensic
803 evaluator registry; amending s. 916.13, F.S.;
804 providing timeframes for competency hearings to be
805 held; amending s. 916.15, F.S.; providing timeframes
806 for commitment hearings to be held; amending s.
807 916.17, F.S.; requiring that certain defendants be
808 placed in a community residential facility for
809 competency restoration in demonstration areas
810 established under the Community Mental Health and
811 Substance Abuse Treatment and Crime Reduction Act;
812 providing exceptions; amending s. 985.19, F.S.;
813 authorizing the department to develop and contract for
814 training mental health professionals to perform
815 forensic evaluations, the protocols and procedures to
816 be used, and standardizing the criteria used; revising
817 requirements relating to the forensic evaluator
818 training program that appointed experts must complete;
819 providing an effective date.

820