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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2009	.	
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The Committee on Criminal Justice (Dean) recommended the following:

1           **Senate Substitute for Amendment (154306) (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



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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



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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) "Agency" means the Agency for Health Care  
51 Administration.

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

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

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

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



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70 disorders.

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

81 (g) "Geographic area" means a county, circuit, regional, or  
82 multiregional area in this state.

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

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

92 1. Mental health courts.

93 2. Diversion programs.

94 3. Alternative prosecution and sentencing techniques.

95 4. Crisis intervention teams.

96 5. Specialized training for criminal justice, juvenile  
97 justice, and treatment services professionals.

98 6. Specialized probation officers at the state and county



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99 levels to serve individuals under correctional control in the  
100 community.

101 7. Collateral services such as supported, transitional, and  
102 permanent housing, and supported employment.

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

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

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

113 2. Forensic intensive care management.

114 3. Supported housing.

115 4. Supported employment.

116 5. Medication management.

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

121 7. Residential services to address crisis episodes and  
122 short-term residential treatment.

123 8. Treatment for co-occurring mental health and substance  
124 use disorders.

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



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128           10. The use of involuntary outpatient placement for  
129 individuals meeting the criteria as provided under s. 394.4655  
130 and conditional release for individuals adjudicated incompetent  
131 to proceed due to mental illness or not guilty by reason of  
132 insanity as provided under s. 916.17.

133           11. Other services or supports as identified.

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

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

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

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

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



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157 involved with the criminal justice system.

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

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

162 (a) Define requirements for all providers in the community  
163 forensic system.

164 (b) Implement demonstration sites for participation, based  
165 on criteria in subsection (7), which demonstrate active and  
166 sustained participation in community collaborations.

167 (c) Enter into memoranda of agreement with county planning  
168 councils or committees identified in s. 394.657 that  
169 participated in the criminal justice, mental health, and  
170 substance abuse reinvestment grant program pursuant to s.  
171 394.656, or that piloted a community-based diversion program.

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

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

178 1. The number of individuals diverted from state forensic  
179 mental health treatment facilities.

180 2. The number of individuals diverted from the criminal  
181 justice system.

182 3. The rates of arrest, incarceration, and reincarceration  
183 for new criminal offenses.

184 4. The rates of employment.

185 5. The annual number of days in a crisis stabilization



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186 unit, detoxification facility, short-term residential treatment  
187 program, state civil mental health treatment facility, or state  
188 forensic mental health treatment facility.

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

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

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

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

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





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215 (d) Other elements determined by the department in  
216 consultation with the agency.

217 Section 2. Paragraph (b) of subsection (11) of section  
218 394.655, Florida Statutes, is amended to read:

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

222 (11)

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

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

232 2. Provide consultation in the development of comprehensive  
233 and cost-effective community-based mental health and substance  
234 abuse treatment services for individuals who have mental  
235 illnesses and who are receiving services in state forensic  
236 mental health treatment facilities, juvenile secure residential  
237 treatment centers specializing in competency training, prisons,  
238 jails, and juvenile justice centers.

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

241 394.656 Criminal Justice, Mental Health, and Substance  
242 Abuse Reinvestment Grant Program.-

243 (1) There is created within the Department of Children and



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

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

261 394.657 County planning councils or committees.—

262 (1) Each board of county commissioners shall designate the  
263 county public safety coordinating council established under s.  
264 951.26, or designate another criminal or juvenile justice mental  
265 health and substance abuse council or committee, as the planning  
266 council or committee. The public safety coordinating council or  
267 other designated criminal or juvenile justice mental health and  
268 substance abuse council or committee shall:

269 (a) Coordinate ~~in coordination~~ with the county offices of  
270 planning and budget ~~to,~~ shall make a formal recommendation to  
271 the board of county commissioners regarding how the Criminal  
272 Justice, Mental Health, and Substance Abuse Reinvestment Grant



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273 Program may best be implemented within a community. The board of  
274 county commissioners may assign any entity to prepare the  
275 application on behalf of the county administration for  
276 submission to the corporation for review. A county may join with  
277 one or more counties to form a consortium and use a regional  
278 public safety coordinating council or another county-designated  
279 regional criminal or juvenile justice mental health and  
280 substance abuse planning council or committee for the geographic  
281 area represented by the member counties.

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

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

287 409.906 Optional Medicaid services.—Subject to specific  
288 appropriations, the agency may make payments for services which  
289 are optional to the state under Title XIX of the Social Security  
290 Act and are furnished by Medicaid providers to recipients who  
291 are determined to be eligible on the dates on which the services  
292 were provided. Any optional service that is provided shall be  
293 provided only when medically necessary and in accordance with  
294 state and federal law. Optional services rendered by providers  
295 in mobile units to Medicaid recipients may be restricted or  
296 prohibited by the agency. Nothing in this section shall be  
297 construed to prevent or limit the agency from adjusting fees,  
298 reimbursement rates, lengths of stay, number of visits, or  
299 number of services, or making any other adjustments necessary to  
300 comply with the availability of moneys and any limitations or  
301 directions provided for in the General Appropriations Act or



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302 chapter 216. If necessary to safeguard the state's systems of  
303 providing services to elderly and disabled persons and subject  
304 to the notice and review provisions of s. 216.177, the Governor  
305 may direct the Agency for Health Care Administration to amend  
306 the Medicaid state plan to delete the optional Medicaid service  
307 known as "Intermediate Care Facilities for the Developmentally  
308 Disabled." Optional services may include:

309 (28) HOME AND COMMUNITY-BASED SERVICES.—The agency,  
310 contingent upon appropriation of funds for this purpose, may  
311 seek federal approval through a state plan amendment to  
312 implement home and community-based services under the authority  
313 of and in compliance with s. 1915i of the Social Security Act  
314 for services provided to individuals who have been determined by  
315 an independent evaluation to have disabilities that cause them  
316 to become, or put them at risk of becoming, involved with the  
317 criminal justice system due to their mental illness. In  
318 accordance with allowances under s. 1915i of the Social Security  
319 Act, these services may be limited to a select number of  
320 eligible individuals in select geographic areas, as identified  
321 by the agency. Eligible individuals may have incomes up to 150  
322 percent of the federal poverty level. The agency shall  
323 coordinate with the department to select and define the services  
324 that will be submitted in the state plan amendment and provided  
325 under this subsection. The agency shall disenroll individuals  
326 receiving services under this subsection from MediPass, or any  
327 capitated or other Medicaid-managed care arrangement. Enrollment  
328 in state plan services may not exceed 1,000 individuals unless  
329 additional approval is obtained from the Legislature. The agency  
330 must receive approval from the Legislature or Legislative Budget



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331 Commission for any funding beyond that provided within initial  
332 implementation revenues. After July 1, 2012, the agency may seek  
333 authority to capitate Medicaid behavioral health services under  
334 this subsection.

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

337 409.912 Cost-effective purchasing of health care.—The  
338 agency shall purchase goods and services for Medicaid recipients  
339 in the most cost-effective manner consistent with the delivery  
340 of quality medical care. To ensure that medical services are  
341 effectively utilized, the agency may, in any case, require a  
342 confirmation or second physician's opinion of the correct  
343 diagnosis for purposes of authorizing future services under the  
344 Medicaid program. This section does not restrict access to  
345 emergency services or poststabilization care services as defined  
346 in 42 C.F.R. part 438.114. Such confirmation or second opinion  
347 shall be rendered in a manner approved by the agency. The agency  
348 shall maximize the use of prepaid per capita and prepaid  
349 aggregate fixed-sum basis services when appropriate and other  
350 alternative service delivery and reimbursement methodologies,  
351 including competitive bidding pursuant to s. 287.057, designed  
352 to facilitate the cost-effective purchase of a case-managed  
353 continuum of care. The agency shall also require providers to  
354 minimize the exposure of recipients to the need for acute  
355 inpatient, custodial, and other institutional care and the  
356 inappropriate or unnecessary use of high-cost services. The  
357 agency shall contract with a vendor to monitor and evaluate the  
358 clinical practice patterns of providers in order to identify  
359 trends that are outside the normal practice patterns of a



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



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

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

408 Section 7. Paragraph (a) of subsection (3) of section  
409 916.107, Florida Statutes, is amended to read:

410 916.107 Rights of forensic clients.—

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

412 (a) A forensic client shall be asked to give express and  
413 informed written consent for treatment. If a client refuses ~~such~~  
414 treatment ~~as is~~ deemed necessary and essential by the client's  
415 multidisciplinary treatment team for the appropriate care of the  
416 client, such treatment may be provided under the following  
417 circumstances:



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

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

439           a. If the client has been receiving psychotherapeutic  
440 medication at the jail at the time of transfer to the state  
441 forensic mental health treatment facility and lacks the capacity  
442 to make an informed decision regarding mental health treatment  
443 at the time of admission, the admitting physician may order a  
444 continuation of the psychotherapeutic medication if, in the  
445 clinical judgment of the physician, abrupt cessation of the  
446 psychotherapeutic medication could cause a risk to the health





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447 and safety of the client during the time a court order to  
448 medicate is pursued. The jail physician shall provide a current  
449 psychotherapeutic medication order at the time of transfer to  
450 the admitting facility.

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

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

- 472 a. The client's expressed preference regarding treatment;
- 473 b. The probability of adverse side effects;
- 474 c. The prognosis without treatment; and
- 475 d. The prognosis with treatment.



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

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

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

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

(a) Beginning July 1, 2010, experts shall remain on the registry if they have completed or retaken the required training within the previous 5 years. Those who have not completed the



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505 training must be removed from the registry and may not conduct  
506 evaluations for the courts.

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

511 (2) The department shall develop, and may contract with  
512 accredited institutions:

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

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

517 2. ~~(b)~~ Clinical protocols and procedures based upon the  
518 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
519 Procedure; and

520 3. ~~(c)~~ Training for mental health professionals in the  
521 application of these protocols and procedures in performing  
522 forensic evaluations and providing reports to the courts; and

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

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

531 916.115 Appointment of experts.—

532 (1) The court shall appoint no more than three experts to  
533 determine the mental condition of a defendant in a criminal



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534 case, including competency to proceed, insanity, involuntary  
535 placement, and treatment. The experts may evaluate the defendant  
536 in jail or in another appropriate local facility or in a  
537 facility of the Department of Corrections.

538 (a) ~~To the extent possible,~~ The appointed experts shall  
539 have completed forensic evaluator training as provided in s.  
540 916.111 approved by the department, and each shall be a  
541 psychiatrist, or licensed psychologist, ~~or physician.~~

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

546 Section 10. Section 916.13, Florida Statutes, is amended to  
547 read:

548 916.13 Involuntary commitment of defendant adjudicated  
549 incompetent.—

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

554 (a) The defendant has a mental illness and because of the  
555 mental illness:

556 1. The defendant is manifestly incapable of surviving alone  
557 or with the help of willing and responsible family or friends,  
558 including available alternative services, and, without  
559 treatment, the defendant is likely to suffer from neglect or  
560 refuse to care for herself or himself and such neglect or  
561 refusal poses a real and present threat of substantial harm to  
562 the defendant's well-being; or



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

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

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

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

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

589           (b) Within 30 days after the court receives notification  
590 that a defendant is competent to proceed or no longer meets the  
591 criteria for continued commitment, the defendant shall be



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592 transported back to jail pursuant to s. 916.107(10) for the  
593 purpose of holding a competency hearing.

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

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

600 916.15 Involuntary commitment of defendant adjudicated not  
601 guilty by reason of insanity.—

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

609 Section 12. Present subsections (2) and (3) of section  
610 916.17, Florida Statutes, are renumbered as subsections (3) and  
611 (4), respectively, and a new subsection (2) is added to that  
612 section, to read:

613 916.17 Conditional release.—

614 (2) A defendant who otherwise meets the criteria for  
615 involuntary commitment under s. 916.13, but whose current most  
616 serious charge is a felony of the third degree or a felony of  
617 the second degree when the felony did not involve violence, must  
618 be placed in a community residential facility for competency  
619 restoration in pilot sites established in s. 394.4656, unless  
620 bed space or funding is unavailable for the community placement



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621 or the trial court makes an explicit finding that the defendant  
622 cannot be safely managed in such a placement. In making such  
623 finding, the court shall consider all of the following:

624 (a) The nature and seriousness of the crime allegedly  
625 committed.

626 (b) The individual's criminal history.

627 (c) The individual's psychiatric history.

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

630 (e) The likelihood that the individual will comply with and  
631 benefit from the mental health treatment and services being  
632 recommended.

633 (f) The availability of appropriate community-based  
634 services and treatment settings.

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

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

638 985.19 Incompetency in juvenile delinquency cases.—

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

645 (b) All determinations of competency must ~~shall~~ be made at  
646 a hearing, with findings of fact based on an evaluation of the  
647 child's mental condition made by at least ~~not less than~~ two but  
648 not ~~nor~~ more than three experts appointed by the court. The  
649 basis for the determination of incompetency must be specifically



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650 stated in the evaluation and must be conducted so as to ensure  
651 uniform application of the criteria enumerated in the Florida  
652 Rules of Juvenile Procedure. ~~In addition,~~ A recommendation as to  
653 whether residential or nonresidential treatment or training is  
654 required must be included in the evaluation. Experts appointed  
655 by the court to determine the mental condition of a child shall  
656 be allowed reasonable fees for services rendered. State  
657 employees may be paid expenses pursuant to s. 112.061. The fees  
658 shall be taxed as costs in the case.

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

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

668 1. A plan for training mental health professionals to  
669 perform forensic evaluations and for standardizing the criteria  
670 and procedures to be used in such evaluations;

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

673 3. Training for mental health professionals in the  
674 application of these protocols and procedures for performing  
675 forensic evaluations and providing reports to the courts; and

676 4. Evaluation of the success of the program, including the  
677 number of persons trained, the cost of operating the program,  
678 and the effect on the quality of forensic evaluations as





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679 measured by the appropriateness of admissions to the  
680 department's juvenile competent to proceed programs.

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

690 1. A forensic evaluator training course approved by the  
691 Department of Children and Family Services must be provided at  
692 least annually to ensure that mental health professionals have  
693 an opportunity to be placed on the registry.

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

700 3. A mental health professional who has completed the  
701 training course within the previous 5 years must maintain  
702 documentation of having completing the required training and  
703 provide current contact information to the Department of  
704 Children and Family Services.

705 (f)-(e) For incompetency evaluations related to mental  
706 retardation or autism, the court shall order the Agency for  
707 Persons with Disabilities to examine the child to determine if



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708 the child meets the definition of "retardation" or "autism" in  
709 s. 393.063 and, if so, whether the child is competent to proceed  
710 with delinquency proceedings.

711 (g)~~(f)~~ A child is competent to proceed if the child has  
712 sufficient present ability to consult with counsel with a  
713 reasonable degree of rational understanding and the child has a  
714 rational and factual understanding of the present proceedings.

715 The report must address the child's capacity to:

716 1. Appreciate the charges or allegations against the child.

717 2. Appreciate the range and nature of possible penalties  
718 that may be imposed in the proceedings against the child, if  
719 applicable.

720 3. Understand the adversarial nature of the legal process.

721 4. Disclose to counsel facts pertinent to the proceedings  
722 at issue.

723 5. Display appropriate courtroom behavior.

724 6. Testify relevantly.

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

732 (i)~~(h)~~ After placement of the child in the appropriate  
733 setting, the Department of Children and Family Services in  
734 consultation with the Agency for Persons with Disabilities, as  
735 appropriate, must, within 30 days after placement of the child,  
736 prepare and submit to the court a treatment or training plan for



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737 the child's restoration of competency. A copy of the plan must  
738 be served upon the child's attorney, the state attorney, and the  
739 attorneys representing the Department of Juvenile Justice.

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

741

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

743 And the title is amended as follows:

744

745 Delete everything before the enacting clause  
746 and insert:

747

A bill to be entitled

748

An act relating to mental health; creating s.

749

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

750

and Substance Abuse Treatment and Crime Reduction Act;

751

providing legislative findings and intent; providing

752

goals for the community mental health and substance

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abuse forensic treatment system; defining terms;

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requiring the Department of Children and Family

755

Services, in consultation with the Agency for Health

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Care Administration, to develop and implement a

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community mental health and substance abuse forensic

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treatment system; providing initiatives and strategies

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for the community forensic system; detailing the

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services to be provided in the community forensic

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system; setting forth the eligibility criteria for

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treatment in the system; authorizing the department to

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develop a continuum of services to implement the

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Community Mental Health and Substance Abuse Treatment

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and Crime Reduction Act; specifying the services and



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766 functions the department must undertake; authorizing  
767 the department to establishe pilot sites within the  
768 state where the community mental health and substance  
769 abuse forensic treatment system will be implemented;  
770 amending s. 394.655, F.S.; providing additional  
771 functions of the Criminal Justice, Mental Health, and  
772 Substance Abuse Policy Council; amending s. 394.656,  
773 F.S.; requiring the department and the agency to  
774 cooperate with counties that receive grants funding  
775 under the Criminal Justice, Mental Health, and  
776 Substance Abuse Reinvestment Grant Program; amending  
777 s. 394.657, F.S.; requiring county councils to consult  
778 with local government when planning or implementing  
779 the Community Mental Health and Substance Abuse  
780 Treatment and Crime Reduction Act; amending s.  
781 409.906, F.S.; adding home and community-based mental  
782 health services to the optional Medicaid services  
783 offered by the state Medicaid program; amending s.  
784 409.912, F.S.; exempting persons who have serious and  
785 persistent mental illnesses and who are receiving  
786 services under the Community Mental Health and  
787 Substance Abuse Crime Reduction Act from MediPass and  
788 managed care plans; amending s. 916.107, F.S.;  
789 specifying treatment procedures for a client admitted  
790 to a state forensic mental health treatment facility  
791 who lacks the capacity to make an informed decision  
792 regarding mental health treatment at the time of  
793 admission; amending s. 916.111, F.S.; providing for  
794 forensic evaluator training for mental health experts;



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