

**By** the Committee on Criminal Justice; and Senators Fasano, Joyner, Crist, Wise, Rich, Gelber, Dockery, Siplin, Diaz de la Portilla, King, and Wilson

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1                                   A bill to be entitled  
2           An act relating to mental health; creating s.  
3           394.4656, F.S.; creating the Community Mental Health  
4           and Substance Abuse Treatment and Crime Reduction Act;  
5           providing legislative findings and intent; providing  
6           goals for the community mental health and substance  
7           abuse forensic treatment system; defining terms;  
8           requiring the Department of Children and Family  
9           Services, in consultation with the Agency for Health  
10          Care Administration, to develop and implement a  
11          community mental health and substance abuse forensic  
12          treatment system; providing initiatives and strategies  
13          for the community forensic system; detailing the  
14          services to be provided in the community forensic  
15          system; setting forth the eligibility criteria for  
16          treatment in the system; authorizing the department to  
17          develop a continuum of services to implement the  
18          Community Mental Health and Substance Abuse Treatment  
19          and Crime Reduction Act; specifying the services and  
20          functions the department must undertake; authorizing  
21          the department to establish pilot sites within the  
22          state where the community mental health and substance  
23          abuse forensic treatment system will be implemented;  
24          amending s. 394.655, F.S.; providing additional  
25          functions of the Criminal Justice, Mental Health, and  
26          Substance Abuse Policy Council; amending s. 394.656,  
27          F.S.; requiring the department and the agency to  
28          cooperate with counties that receive grants funding  
29          under the Criminal Justice, Mental Health, and

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30 Substance Abuse Reinvestment Grant Program; amending  
31 s. 394.657, F.S.; requiring county councils to consult  
32 with local government when planning or implementing  
33 the Community Mental Health and Substance Abuse  
34 Treatment and Crime Reduction Act; amending s.  
35 409.906, F.S.; adding home and community-based mental  
36 health services to the optional Medicaid services  
37 offered by the state Medicaid program; amending s.  
38 409.912, F.S.; exempting persons who have serious and  
39 persistent mental illnesses and who are receiving  
40 services under the Community Mental Health and  
41 Substance Abuse Crime Reduction Act from MediPass and  
42 managed care plans; amending s. 916.107, F.S.;  
43 specifying treatment procedures for a client admitted  
44 to a state forensic mental health treatment facility  
45 who lacks the capacity to make an informed decision  
46 regarding mental health treatment at the time of  
47 admission; amending s. 916.111, F.S.; providing for  
48 forensic evaluator training for mental health experts;  
49 amending s. 916.115, F.S.; requiring court-appointed  
50 experts to have completed forensic evaluator training;  
51 requiring the court-appointed expert to be a  
52 psychiatrist or a licensed psychologist; requiring the  
53 Department of Children and Family Services to maintain  
54 and annually provide the courts with a forensic  
55 evaluator registry; amending s. 916.13, F.S.;  
56 providing timeframes for competency hearings to be  
57 held; amending s. 916.15, F.S.; providing timeframes  
58 for commitment hearings to be held; amending s.

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59 916.17, F.S.; requiring that certain defendants be  
60 placed in a community residential facility for  
61 competency restoration in demonstration areas  
62 established under the Community Mental Health and  
63 Substance Abuse Treatment and Crime Reduction Act;  
64 providing exceptions; amending s. 985.19, F.S.;

65 authorizing the department to develop and contract for  
66 training mental health professionals to perform  
67 forensic evaluations, the protocols and procedures to  
68 be used, and standardizing the criteria used; revising  
69 requirements relating to the forensic evaluator  
70 training program that appointed experts must complete;  
71 providing an effective date.

72  
73 Be It Enacted by the Legislature of the State of Florida:

74  
75 Section 1. Section 394.4656, Florida Statutes, is created  
76 to read:

77 394.4656 Community Mental Health and Substance Abuse  
78 Treatment and Crime Reduction Act.—

79 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds  
80 that many jail inmates who have serious mental illnesses and who  
81 are committed to state forensic mental health treatment  
82 facilities for competency restoration could be served more  
83 effectively and at less cost in community-based alternative  
84 programs. The Legislature further finds that many people who  
85 have serious mental illnesses and who have been discharged from  
86 state forensic mental health treatment facilities could avoid  
87 recidivism to the criminal justice and forensic mental health

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88 systems if they received specialized treatment in the community.  
89 Therefore, it is the intent of the Legislature to create the  
90 Community Mental Health and Substance Abuse Treatment and Crime  
91 Reduction Act to serve individuals who have mental illnesses or  
92 co-occurring mental illnesses and substance abuse disorders and  
93 who are involved in or at risk of entering state forensic mental  
94 health treatment facilities, prisons, jails, juvenile justice  
95 centers, or state civil mental health treatment facilities.

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

98 (a) Ensure public safety.

99 (b) Ensure that services to restore forensic competency are  
100 provided in the least restrictive, least costly, and most  
101 effective environment.

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

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

107 (e) Reduce rates of arrest, incarceration, and  
108 reincarceration.

109 (f) Increase outreach and services to individuals at risk  
110 for involvement in the criminal justice, juvenile justice, or  
111 forensic mental health systems.

112 (g) Support collaboration among state and local  
113 stakeholders, including law enforcement agencies, courts, state  
114 agencies, jails, county government, service providers,  
115 individuals with mental illnesses or co-occurring mental  
116 illnesses and substance abuse disorders, family members,

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117 advocates, and other community members.

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

119 (a) "Agency" means the Agency for Health Care  
120 Administration.

121 (b) "Best practices" means treatment services that  
122 incorporate the most effective and acceptable interventions  
123 available in the care and treatment of individuals who are  
124 diagnosed as having a mental illness or a co-occurring mental  
125 illness and substance abuse disorder.

126 (c) "Community forensic system" means the community mental  
127 health and substance abuse forensic treatment system, including  
128 the comprehensive set of services and supports provided to  
129 individuals involved in or at risk of becoming involved in the  
130 criminal justice system.

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

134 (e) "Evidence-based practices" means interventions and  
135 strategies that, based on the best available empirical research,  
136 demonstrate effective and efficient outcomes in the care and  
137 treatment of individuals who are diagnosed as having mental  
138 illnesses or co-occurring mental illnesses and substance use  
139 disorders.

140 (f) "Forensic intensive care management" means activities  
141 addressing the comprehensive psychiatric, social, and support  
142 needs of individuals who are diagnosed as having serious and  
143 persistent mental illnesses, co-occurring disorders, or severe  
144 emotional disturbances, and who are involved in the justice  
145 system and receiving services under this section. Activities

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146 include, but are not limited to, service planning, service  
147 coordination, monitoring, and assistance with accessing federal,  
148 state, and local benefits necessary to sustain a person in the  
149 community.

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

152 (4) SERVICE SYSTEM.—The department, in consultation with  
153 the agency, may develop and implement a community mental health  
154 and substance abuse forensic treatment system. The system must  
155 build on local community diversion and reentry initiatives and  
156 strategies that are consistent with those identified and  
157 supported under s. 394.658(1), or with geographic areas that  
158 have piloted a community-based diversion program .

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

161 1. Mental health courts.

162 2. Diversion programs.

163 3. Alternative prosecution and sentencing techniques.

164 4. Crisis intervention teams.

165 5. Specialized training for criminal justice, juvenile  
166 justice, and treatment services professionals.

167 6. Specialized probation officers at the state and county  
168 levels to serve individuals under correctional control in the  
169 community.

170 7. Collateral services such as supported, transitional, and  
171 permanent housing, and supported employment.

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

174 (b) The community forensic system must include a

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175 comprehensive continuum of care and services that use evidence-  
176 based and best practices to address co-occurring mental health  
177 and substance abuse disorder, including the following minimum  
178 services and elements:

179 1. Competency-restoration and treatment services provided  
180 in a variety of settings from least restrictive to progressively  
181 more restrictive settings.

182 2. Forensic intensive care management.

183 3. Supported housing.

184 4. Supported employment.

185 5. Medication management.

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

190 7. Residential services to address crisis episodes and  
191 short-term residential treatment.

192 8. Treatment for co-occurring mental health and substance  
193 use disorders.

194 9. Outreach and education for individuals and their  
195 families who are at risk of further involvement with the justice  
196 system.

197 10. The use of involuntary outpatient placement for  
198 individuals meeting the criteria as provided under s. 394.4655  
199 and conditional release for individuals adjudicated incompetent  
200 to proceed due to mental illness or not guilty by reason of  
201 insanity as provided under s. 916.17.

202 11. Other services or supports as identified.

203 (5) ELIGIBILITY.—The department may serve individuals who

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204 meet the criteria in this subsection. The department must give  
205 highest priority for services under this section to:

206 (a) Adults who are adjudicated incompetent to proceed or  
207 not guilty by reason of insanity under chapter 916 and ordered  
208 by the court into forensic commitment, whose current most  
209 serious charge is a felony of the third degree or a felony of  
210 the second degree if the felony did not involve violence, and  
211 who meet public safety criteria established by the court and  
212 treatability criteria established by the department for  
213 placement in a community setting.

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

216 (c) Adults who have been committed to a state forensic  
217 mental health treatment facility after being adjudicated  
218 incompetent to proceed or not guilty by reason of insanity, and  
219 who are released or who are pending release to the community by  
220 the court after completing competency restoration services or  
221 being found to no longer meet the criteria for continued  
222 commitment placement.

223 (d) Adults who experience serious and persistent mental  
224 illnesses, who have a history of involvement in the justice  
225 system, or who are at risk of entering or who are already  
226 involved with the criminal justice system.

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

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

231 (a) Define requirements for all providers in the community  
232 forensic system.



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233 (b) Implement demonstration sites for participation, based  
234 on criteria in subsection (7), which demonstrate active and  
235 sustained participation in community collaborations.

236 (c) Enter into memoranda of agreement with county planning  
237 councils or committees identified in s. 394.657 that  
238 participated in the criminal justice, mental health, and  
239 substance abuse reinvestment grant program pursuant to s.  
240 394.656, or that piloted a community-based diversion program.

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

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

247 1. The number of individuals diverted from state forensic  
248 mental health treatment facilities.

249 2. The number of individuals diverted from the criminal  
250 justice system.

251 3. The rates of arrest, incarceration, and reincarceration  
252 for new criminal offenses.

253 4. The rates of employment.

254 5. The annual number of days in a crisis stabilization  
255 unit, detoxification facility, short-term residential treatment  
256 program, state civil mental health treatment facility, or state  
257 forensic mental health treatment facility.

258 (f) Monitor contracts for compliance with terms and assess  
259 performance under contracts; provide an annual report to the  
260 Governor, the President of the Senate, the Speaker of the House  
261 of Representatives, the Chief Justice of the Florida Supreme

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262 Court, and the State Courts Administrator on the implementation  
263 status of the Community Mental Health and Substance Abuse  
264 Treatment and Crime Reduction Act.

265 (7) IMPLEMENTATION.—The department may implement this  
266 section within available resources. In expectation of statewide  
267 implementation, the department may establish demonstration sites  
268 in the following geographic areas of the state: Escambia, Leon,  
269 and Dade counties and the Tampa Bay area. Future expansion shall  
270 be based on findings of community readiness and the potential  
271 for affecting the greatest number of individuals entering the  
272 forensic mental health and criminal justice systems. Criteria  
273 for selection may include:

274 (a) Community readiness to deliver the services outlined in  
275 subsection (4), demonstrated by well-established community  
276 collaboration plans and local partnerships as evidenced by  
277 memoranda of agreement that are submitted to and approved by the  
278 department.

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

281 (c) Successful application for implementation grant funding  
282 under the Criminal Justice, Mental Health, and Substance Abuse  
283 Reinvestment Grant Program.

284 (d) Other elements determined by the department in  
285 consultation with the agency.

286 Section 2. Paragraph (b) of subsection (11) of section  
287 394.655, Florida Statutes, is amended to read:

288 394.655 The Substance Abuse and Mental Health Corporation;  
289 powers and duties; composition; evaluation and reporting  
290 requirements.—

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291 (11)

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

293 1. Align policy initiatives in the criminal justice,  
294 juvenile justice, ~~and~~ mental health, and substance abuse systems  
295 to ensure the most effective use of resources and to coordinate  
296 the development of legislative proposals and budget requests  
297 relating to the shared needs of adults and juveniles who have a  
298 mental illness, substance abuse disorder, or co-occurring mental  
299 health and substance abuse disorders who are in, or at risk of  
300 entering, the criminal justice system.

301 2. Provide consultation in the development of comprehensive  
302 and cost-effective community-based mental health and substance  
303 abuse treatment services for individuals who have mental  
304 illnesses and who are receiving services in state forensic  
305 mental health treatment facilities, juvenile secure residential  
306 treatment centers specializing in competency training, prisons,  
307 jails, and juvenile justice centers.

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

310 394.656 Criminal Justice, Mental Health, and Substance  
311 Abuse Reinvestment Grant Program.—

312 (1) There is created within the Department of Children and  
313 Family Services the Criminal Justice, Mental Health, and  
314 Substance Abuse Reinvestment Grant Program. The purpose of the  
315 program is to provide funding to counties to ~~with which they can~~  
316 plan, implement, or expand initiatives that increase public  
317 safety, avert increased spending on criminal justice, and  
318 improve the accessibility and effectiveness of treatment  
319 services for adults and juveniles who have a mental illness,

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320 substance abuse disorder, or co-occurring mental health and  
321 substance abuse disorders and who are in, or at risk of  
322 entering, the criminal or juvenile justice systems. In  
323 implementing the Community Mental Health and Substance Abuse  
324 Treatment and Crime Reduction Act, the department and agency  
325 shall work in coordination with counties that received grants  
326 under the program or piloted a community-based diversion  
327 program.

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

330 394.657 County planning councils or committees.—

331 (1) Each board of county commissioners shall designate the  
332 county public safety coordinating council established under s.  
333 951.26, or designate another criminal or juvenile justice mental  
334 health and substance abuse council or committee, as the planning  
335 council or committee. The public safety coordinating council or  
336 other designated criminal or juvenile justice mental health and  
337 substance abuse council or committee shall:

338 (a) Coordinate ~~in coordination~~ with the county offices of  
339 planning and budget ~~to, shall~~ make a formal recommendation to  
340 the board of county commissioners regarding how the Criminal  
341 Justice, Mental Health, and Substance Abuse Reinvestment Grant  
342 Program may best be implemented within a community. The board of  
343 county commissioners may assign any entity to prepare the  
344 application on behalf of the county administration for  
345 submission to the corporation for review. A county may join with  
346 one or more counties to form a consortium and use a regional  
347 public safety coordinating council or another county-designated  
348 regional criminal or juvenile justice mental health and

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349 substance abuse planning council or committee for the geographic  
350 area represented by the member counties.

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

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

356 409.906 Optional Medicaid services.—Subject to specific  
357 appropriations, the agency may make payments for services which  
358 are optional to the state under Title XIX of the Social Security  
359 Act and are furnished by Medicaid providers to recipients who  
360 are determined to be eligible on the dates on which the services  
361 were provided. Any optional service that is provided shall be  
362 provided only when medically necessary and in accordance with  
363 state and federal law. Optional services rendered by providers  
364 in mobile units to Medicaid recipients may be restricted or  
365 prohibited by the agency. Nothing in this section shall be  
366 construed to prevent or limit the agency from adjusting fees,  
367 reimbursement rates, lengths of stay, number of visits, or  
368 number of services, or making any other adjustments necessary to  
369 comply with the availability of moneys and any limitations or  
370 directions provided for in the General Appropriations Act or  
371 chapter 216. If necessary to safeguard the state's systems of  
372 providing services to elderly and disabled persons and subject  
373 to the notice and review provisions of s. 216.177, the Governor  
374 may direct the Agency for Health Care Administration to amend  
375 the Medicaid state plan to delete the optional Medicaid service  
376 known as "Intermediate Care Facilities for the Developmentally  
377 Disabled." Optional services may include:

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378       (28) HOME AND COMMUNITY-BASED SERVICES.—The agency,  
379 contingent upon appropriation of funds for this purpose, may  
380 seek federal approval through a state plan amendment to  
381 implement home and community-based services under the authority  
382 of and in compliance with s. 1915i of the Social Security Act  
383 for services provided to individuals who have been determined by  
384 an independent evaluation to have disabilities that cause them  
385 to become, or put them at risk of becoming, involved with the  
386 criminal justice system due to their mental illness. In  
387 accordance with allowances under s. 1915i of the Social Security  
388 Act, these services may be limited to a select number of  
389 eligible individuals in select geographic areas, as identified  
390 by the agency. Eligible individuals may have incomes up to 150  
391 percent of the federal poverty level. The agency shall  
392 coordinate with the department to select and define the services  
393 that will be submitted in the state plan amendment and provided  
394 under this subsection. The agency shall disenroll individuals  
395 receiving services under this subsection from MediPass, or any  
396 capitated or other Medicaid-managed care arrangement. Enrollment  
397 in state plan services may not exceed 1,000 individuals unless  
398 additional approval is obtained from the Legislature. The agency  
399 must receive approval from the Legislature or Legislative Budget  
400 Commission for any funding beyond that provided within initial  
401 implementation revenues. After July 1, 2012, the agency may seek  
402 authority to capitate Medicaid behavioral health services under  
403 this subsection.

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

406       409.912 Cost-effective purchasing of health care.—The

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407 agency shall purchase goods and services for Medicaid recipients  
408 in the most cost-effective manner consistent with the delivery  
409 of quality medical care. To ensure that medical services are  
410 effectively utilized, the agency may, in any case, require a  
411 confirmation or second physician's opinion of the correct  
412 diagnosis for purposes of authorizing future services under the  
413 Medicaid program. This section does not restrict access to  
414 emergency services or poststabilization care services as defined  
415 in 42 C.F.R. part 438.114. Such confirmation or second opinion  
416 shall be rendered in a manner approved by the agency. The agency  
417 shall maximize the use of prepaid per capita and prepaid  
418 aggregate fixed-sum basis services when appropriate and other  
419 alternative service delivery and reimbursement methodologies,  
420 including competitive bidding pursuant to s. 287.057, designed  
421 to facilitate the cost-effective purchase of a case-managed  
422 continuum of care. The agency shall also require providers to  
423 minimize the exposure of recipients to the need for acute  
424 inpatient, custodial, and other institutional care and the  
425 inappropriate or unnecessary use of high-cost services. The  
426 agency shall contract with a vendor to monitor and evaluate the  
427 clinical practice patterns of providers in order to identify  
428 trends that are outside the normal practice patterns of a  
429 provider's professional peers or the national guidelines of a  
430 provider's professional association. The vendor must be able to  
431 provide information and counseling to a provider whose practice  
432 patterns are outside the norms, in consultation with the agency,  
433 to improve patient care and reduce inappropriate utilization.  
434 The agency may mandate prior authorization, drug therapy  
435 management, or disease management participation for certain

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436 populations of Medicaid beneficiaries, certain drug classes, or  
437 particular drugs to prevent fraud, abuse, overuse, and possible  
438 dangerous drug interactions. The Pharmaceutical and Therapeutics  
439 Committee shall make recommendations to the agency on drugs for  
440 which prior authorization is required. The agency shall inform  
441 the Pharmaceutical and Therapeutics Committee of its decisions  
442 regarding drugs subject to prior authorization. The agency is  
443 authorized to limit the entities it contracts with or enrolls as  
444 Medicaid providers by developing a provider network through  
445 provider credentialing. The agency may competitively bid single-  
446 source-provider contracts if procurement of goods or services  
447 results in demonstrated cost savings to the state without  
448 limiting access to care. The agency may limit its network based  
449 on the assessment of beneficiary access to care, provider  
450 availability, provider quality standards, time and distance  
451 standards for access to care, the cultural competence of the  
452 provider network, demographic characteristics of Medicaid  
453 beneficiaries, practice and provider-to-beneficiary standards,  
454 appointment wait times, beneficiary use of services, provider  
455 turnover, provider profiling, provider licensure history,  
456 previous program integrity investigations and findings, peer  
457 review, provider Medicaid policy and billing compliance records,  
458 clinical and medical record audits, and other factors. Providers  
459 shall not be entitled to enrollment in the Medicaid provider  
460 network. The agency shall determine instances in which allowing  
461 Medicaid beneficiaries to purchase durable medical equipment and  
462 other goods is less expensive to the Medicaid program than long-  
463 term rental of the equipment or goods. The agency may establish  
464 rules to facilitate purchases in lieu of long-term rentals in



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465 order to protect against fraud and abuse in the Medicaid program  
466 as defined in s. 409.913. The agency may seek federal waivers  
467 necessary to administer these policies.

468 (54) Persons who have serious and persistent mental  
469 illnesses, who are receiving services under the Community Mental  
470 Health and Substance Abuse Crime Reduction Act, and who are  
471 eligible for and receiving services under the state plan  
472 implemented under s. 1915i of the Social Security Act, as  
473 approved by the Centers for Medicare and Medicaid Services, are  
474 exempt from MediPass and managed care plans authorized under  
475 this chapter, including capitated managed care plans authorized  
476 under s. 409.91211.

477 Section 7. Paragraph (a) of subsection (3) of section  
478 916.107, Florida Statutes, is amended to read:

479 916.107 Rights of forensic clients.—

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

481 (a) A forensic client shall be asked to give express and  
482 informed written consent for treatment. If a client refuses ~~such~~  
483 ~~treatment as is~~ deemed necessary and essential by the client's  
484 multidisciplinary treatment team for the appropriate care of the  
485 client, such treatment may be provided under the following  
486 circumstances:

487 1. In an emergency situation in which there is immediate  
488 danger to the safety of the client or others, such treatment may  
489 be provided upon the written order of a physician for a period  
490 not to exceed 48 hours, excluding weekends and legal holidays.  
491 If, after the 48-hour period, the client has not given express  
492 and informed consent to the treatment initially refused, the  
493 administrator or designee of the civil or forensic facility

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494 shall, within 48 hours, excluding weekends and legal holidays,  
495 petition the committing court or the circuit court serving the  
496 county in which the facility is located, at the option of the  
497 facility administrator or designee, for an order authorizing the  
498 continued treatment of the client. In the interim, the need for  
499 treatment shall be reviewed every 48 hours and may be continued  
500 without the consent of the client upon the continued written  
501 order of a physician who has determined that the emergency  
502 situation continues to present a danger to the safety of the  
503 client or others.

504 2. In a situation other than an emergency situation, the  
505 administrator or designee of the facility shall petition the  
506 court for an order authorizing necessary and essential treatment  
507 for the client.

508 a. If the client has been receiving psychotherapeutic  
509 medication at the jail at the time of transfer to the state  
510 forensic mental health treatment facility and lacks the capacity  
511 to make an informed decision regarding mental health treatment  
512 at the time of admission, the admitting physician may order a  
513 continuation of the psychotherapeutic medication if, in the  
514 clinical judgment of the physician, abrupt cessation of the  
515 psychotherapeutic medication could cause a risk to the health  
516 and safety of the client during the time a court order to  
517 medicate is pursued. The jail physician shall provide a current  
518 psychotherapeutic medication order at the time of transfer to  
519 the admitting facility.

520 b. The court order shall allow such treatment for up to a  
521 period not to exceed 90 days following the date of the entry of  
522 the order. Unless the court is notified in writing that the

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523 client has provided express and informed consent in writing or  
524 that the client has been discharged by the committing court, the  
525 administrator or designee shall, before ~~prior to~~ the expiration  
526 of the initial 90-day order, petition the court for an order  
527 authorizing the continuation of treatment for another 90 days  
528 ~~90-day period~~. This procedure shall be repeated until the client  
529 provides consent or is discharged by the committing court.

530 3. At the hearing on the issue of whether the court should  
531 enter an order authorizing treatment for which a client was  
532 unable to or refused to give express and informed consent, the  
533 court shall determine by clear and convincing evidence that the  
534 client has mental illness, retardation, or autism, that the  
535 treatment not consented to is essential to the care of the  
536 client, and that the treatment not consented to is not  
537 experimental and does not present an unreasonable risk of  
538 serious, hazardous, or irreversible side effects. In arriving at  
539 the substitute judgment decision, the court must consider at  
540 least the following factors:

- 541 a. The client's expressed preference regarding treatment;  
542 b. The probability of adverse side effects;  
543 c. The prognosis without treatment; and  
544 d. The prognosis with treatment.

545  
546 The hearing shall be as convenient to the client as may be  
547 consistent with orderly procedure and shall be conducted in  
548 physical settings not likely to be injurious to the client's  
549 condition. The court may appoint a general or special magistrate  
550 to preside at the hearing. The client or the client's guardian,  
551 and the representative, shall be provided with a copy of the

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552 petition and the date, time, and location of the hearing. The  
553 client has the right to have an attorney represent him or her at  
554 the hearing, and, if the client is indigent, the court shall  
555 appoint the office of the public defender to represent the  
556 client at the hearing. The client may testify or not, as he or  
557 she chooses, and has the right to cross-examine witnesses and  
558 may present his or her own witnesses.

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

561 916.111 Training of mental health experts.—The evaluation  
562 of defendants for competency to proceed or for sanity at the  
563 time of the commission of the offense shall be conducted ~~in such~~  
564 ~~a way~~ as to ensure uniform application of the criteria  
565 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal  
566 Procedure.

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

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

576 (b) A mental health professional who has completed the  
577 training course within the previous 5 years must maintain  
578 documentation of completion of the required training and provide  
579 current contact information to the department.

580 (2) The department shall develop, and may contract with

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581 accredited institutions:

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

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

586 2.~~(b)~~ Clinical protocols and procedures based upon the  
587 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
588 Procedure; and

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

592 (b)~~(2)~~ To compile and maintain the necessary information  
593 for evaluating the success of this program, including the number  
594 of persons trained, the cost of operating the program, and the  
595 effect on the quality of forensic evaluations as measured by  
596 appropriateness of admissions to state forensic facilities and  
597 to community-based care programs.

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

600 916.115 Appointment of experts.—

601 (1) The court shall appoint no more than three experts to  
602 determine the mental condition of a defendant in a criminal  
603 case, including competency to proceed, insanity, involuntary  
604 placement, and treatment. The experts may evaluate the defendant  
605 in jail or in another appropriate local facility or in a  
606 facility of the Department of Corrections.

607 (a) ~~To the extent possible,~~ The appointed experts shall  
608 have completed forensic evaluator training as provided in s.  
609 916.111 ~~approved by the department,~~ and each shall be a

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610 psychiatrist, or licensed psychologist, ~~or physician.~~

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

615 Section 10. Section 916.13, Florida Statutes, is amended to  
616 read:

617 916.13 Involuntary commitment of defendant adjudicated  
618 incompetent.—

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

623 (a) The defendant has a mental illness and because of the  
624 mental illness:

625 1. The defendant is manifestly incapable of surviving alone  
626 or with the help of willing and responsible family or friends,  
627 including available alternative services, and, without  
628 treatment, the defendant is likely to suffer from neglect or  
629 refuse to care for herself or himself and such neglect or  
630 refusal poses a real and present threat of substantial harm to  
631 the defendant's well-being; or

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

636 (b) All available, less restrictive treatment alternatives,  
637 including treatment in community residential facilities or  
638 community inpatient or outpatient settings, which would offer an

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639 opportunity for improvement of the defendant's condition have  
640 been judged to be inappropriate; and

641 (c) There is a substantial probability that the mental  
642 illness causing the defendant's incompetence will respond to  
643 treatment and the defendant will regain competency to proceed in  
644 the reasonably foreseeable future.

645 (2) A defendant who has been charged with a felony and who  
646 has been adjudicated incompetent to proceed due to mental  
647 illness, and who meets the criteria for involuntary commitment  
648 ~~to the department under the provisions of this chapter,~~ may be  
649 committed to the department, and the department shall retain and  
650 treat the defendant.

651 (a) Within No later than 6 months after the date of  
652 admission and at the end of any period of extended commitment,  
653 or at any time the administrator or designee has ~~shall have~~  
654 determined that the defendant has regained competency to proceed  
655 or no longer meets the criteria for continued commitment, the  
656 administrator or designee shall file a report with the court  
657 pursuant to the applicable Florida Rules of Criminal Procedure.

658 (b) Within 30 days after the court receives notification  
659 that a defendant is competent to proceed or no longer meets the  
660 criteria for continued commitment, the defendant shall be  
661 transported back to jail pursuant to s. 916.107(10) for the  
662 purpose of holding a competency hearing, unless the defendant  
663 can be transported directly to the competency hearing without  
664 first returning to a county jail. Whenever feasible, defendants  
665 should be released to community placement without returning to a  
666 county jail.

667 (c) A competency hearing must be held within 30 days after

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668 a court receives notification that the defendant is competent to  
669 proceed or no longer meets criteria for continued commitment.

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

673 916.15 Involuntary commitment of defendant adjudicated not  
674 guilty by reason of insanity.—

675 (4) Within 30 days after the court is notified that a  
676 defendant no longer meets the criteria for involuntary  
677 commitment placement, the defendant shall be transported back to  
678 jail for the purpose of holding a commitment hearing. The  
679 commitment hearing must be held within 30 days after the court  
680 receives notification that the defendant no longer meets the  
681 criteria for continued commitment placement.

682 Section 12. Present subsections (2) and (3) of section  
683 916.17, Florida Statutes, are renumbered as subsections (3) and  
684 (4), respectively, and a new subsection (2) is added to that  
685 section, to read:

686 916.17 Conditional release.—

687 (2) A defendant who otherwise meets the criteria for  
688 involuntary commitment under s. 916.13, but whose current most  
689 serious charge is a felony of the third degree or a felony of  
690 the second degree when the felony did not involve violence, must  
691 be placed in a community residential facility for competency  
692 restoration in pilot sites established in s. 394.4656, unless  
693 bed space or funding is unavailable for the community placement  
694 or the trial court makes an explicit finding that the defendant  
695 cannot be safely managed in such a placement. In making such  
696 finding, the court shall consider all of the following:



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697       (a) The nature and seriousness of the crime allegedly  
698 committed.

699       (b) The individual's criminal history.

700       (c) The individual's psychiatric history.

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

703       (e) The likelihood that the individual will comply with and  
704 benefit from the mental health treatment and services being  
705 recommended.

706       (f) The availability of appropriate community-based  
707 services and treatment settings.

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

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

711       985.19 Incompetency in juvenile delinquency cases.—

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

718       (b) All determinations of competency must ~~shall~~ be made at  
719 a hearing, with findings of fact based on an evaluation of the  
720 child's mental condition made by at least ~~not less than~~ two but  
721 not ~~nor~~ more than three experts appointed by the court. The  
722 basis for the determination of incompetency must be specifically  
723 stated in the evaluation and must be conducted so as to ensure  
724 uniform application of the criteria enumerated in the Florida  
725 Rules of Juvenile Procedure. ~~In addition,~~ A recommendation as to

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726 whether residential or nonresidential treatment or training is  
727 required must be included in the evaluation. Experts appointed  
728 by the court to determine the mental condition of a child shall  
729 be allowed reasonable fees for services rendered. State  
730 employees may be paid expenses pursuant to s. 112.061. The fees  
731 shall be taxed as costs in the case.

732 (c) All court orders determining incompetency must include  
733 specific written findings by the court as to the nature of the  
734 incompetency and whether the child requires secure or nonsecure  
735 treatment or training environments.

736 (d) The evaluation of juveniles for competency to proceed  
737 shall be conducted in a manner that ensures the uniform  
738 application of the criteria in the Florida Rules of Juvenile  
739 Procedure. The department shall develop, and may contract with  
740 accredited institutions to provide:

741 1. A plan for training mental health professionals to  
742 perform forensic evaluations and for standardizing the criteria  
743 and procedures to be used in such evaluations;

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

746 3. Training for mental health professionals in the  
747 application of these protocols and procedures for performing  
748 forensic evaluations and providing reports to the courts; and

749 4. Evaluation of the success of the program, including the  
750 number of persons trained, the cost of operating the program,  
751 and the effect on the quality of forensic evaluations as  
752 measured by the appropriateness of admissions to the  
753 department's juvenile competent to proceed programs.

754 (e) ~~(d)~~ For competency ~~incompetency~~ evaluations related to

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755 mental illness, the Department of Children and Family Services  
756 shall maintain and annually provide the courts with a forensic  
757 evaluator registry ~~list~~ of available mental health professionals  
758 ~~who have completed a training program approved by the Department~~  
759 ~~of Children and Family Services to perform the evaluations as~~ as  
760 provided in this section. An appointed expert must be a  
761 psychiatrist or licensed psychologist and must be included in  
762 the registry.

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

767 2. Beginning July 1, 2010, experts shall remain on the  
768 registry if they have completed or retaken the required training  
769 within the previous 5 years. Those who have not completed the  
770 required training within the previous 5 years must be removed  
771 from the registry and may not conduct evaluations for the  
772 courts.

773 3. A mental health professional who has completed the  
774 training course within the previous 5 years must maintain  
775 documentation of having completing the required training and  
776 provide current contact information to the Department of  
777 Children and Family Services.

778 (f) ~~(e)~~ For competency ~~incompetency~~ evaluations related to  
779 mental retardation or autism, the court shall order the Agency  
780 for Persons with Disabilities to examine the child to determine  
781 if the child meets the definition of "retardation" or "autism"  
782 in s. 393.063 and, if so, whether the child is competent to  
783 proceed with delinquency proceedings.

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784        (g)~~(f)~~ A child is competent to proceed if the child has  
785 sufficient present ability to consult with counsel with a  
786 reasonable degree of rational understanding and the child has a  
787 rational and factual understanding of the present proceedings.  
788 The report must address the child's capacity to:

- 789            1. Appreciate the charges or allegations against the child.
- 790            2. Appreciate the range and nature of possible penalties  
791 that may be imposed in the proceedings against the child, if  
792 applicable.
- 793            3. Understand the adversarial nature of the legal process.
- 794            4. Disclose to counsel facts pertinent to the proceedings  
795 at issue.
- 796            5. Display appropriate courtroom behavior.
- 797            6. Testify relevantly.

798        (h)~~(g)~~ Immediately upon the filing of the court order  
799 finding a child incompetent to proceed, the clerk of the court  
800 shall notify the Department of Children and Family Services and  
801 the Agency for Persons with Disabilities and fax or hand deliver  
802 to the department and to the agency a referral packet that  
803 includes, at a minimum, the court order, the charging documents,  
804 the petition, and the court-appointed evaluator's reports.

805        (i)~~(h)~~ After placement of the child in the appropriate  
806 setting, the Department of Children and Family Services in  
807 consultation with the Agency for Persons with Disabilities, as  
808 appropriate, must, within 30 days after placement of the child,  
809 prepare and submit to the court a treatment or training plan for  
810 the child's restoration of competency. A copy of the plan must  
811 be served upon the child's attorney, the state attorney, and the  
812 attorneys representing the Department of Juvenile Justice.

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