

1 A bill to be entitled
2 An act relating to mental health; creating s. 394.9086,
3 F.S.; creating the Community Mental Health and Substance
4 Abuse Treatment and Crime Reduction Act; providing
5 legislative findings and intent; providing goals for the
6 community mental health and substance abuse forensic
7 treatment system; defining terms; requiring the Department
8 of Children and Family Services, in consultation with the
9 Agency for Health Care Administration, to develop and
10 implement a community mental health and substance abuse
11 forensic treatment system; providing initiatives and
12 strategies for the community forensic system; detailing
13 the services required in the community forensic system;
14 setting forth the eligibility criteria for treatment in
15 the system; requiring the department to develop a
16 continuum of services to implement the Community Mental
17 Health and Substance Abuse Treatment and Crime Reduction
18 Act; specifying the services and functions the department
19 must undertake; authorizing the department and the agency
20 to identify pilot sites within the state where the
21 community mental health and substance abuse forensic
22 treatment system will be implemented; amending s. 394.655,
23 F.S.; providing additional functions of the Criminal
24 Justice, Mental Health, and Substance Abuse Policy
25 Council; amending s. 394.656, F.S.; requiring the
26 department and the agency to cooperate with counties that
27 receive grants funding under the Criminal Justice, Mental
28 Health, and Substance Abuse Reinvestment Grant Program;

29 | amending s. 394.657, F.S.; requiring county councils to
30 | consult with local government when planning or
31 | implementing the Community Mental Health and Substance
32 | Abuse Treatment and Crime Reduction Act; amending s.
33 | 394.659, F.S.; requiring the Criminal Justice, Mental
34 | Health, and Substance Abuse Technical Assistance Center at
35 | the Louis de la Parte Florida Mental Health Institute at
36 | the University of South Florida to perform certain
37 | functions with respect to implementing the act; amending
38 | s. 409.906, F.S.; adding home and community-based mental
39 | health services to the optional Medicaid services offered
40 | by the state Medicaid program; amending s. 409.912, F.S.;
41 | allowing an exemption for persons who have serious and
42 | persistent mental illnesses and who are receiving services
43 | under the Community Mental Health and Substance Abuse
44 | Crime Reduction Act from MediPass and managed care plans;
45 | amending s. 916.107, F.S.; specifying treatment procedures
46 | for a client admitted to a state forensic mental health
47 | treatment facility who lacks the capacity to make an
48 | informed decision regarding mental health treatment at the
49 | time of admission; amending s. 916.111, F.S.; providing
50 | for forensic evaluator training for mental health experts;
51 | amending s. 916.115, F.S.; requiring court-appointed
52 | experts to have completed forensic evaluator training;
53 | requiring the court-appointed expert to be a psychiatrist
54 | or a licensed psychologist; requiring the Department of
55 | Children and Family Services to maintain and annually
56 | provide the courts with a forensic evaluator registry;

57 | amending s. 916.13, F.S.; providing timeframes for
 58 | competency hearings to be held; amending s. 916.15, F.S.;
 59 | providing timeframes for commitment hearings to be held;
 60 | amending s. 916.17, F.S.; requiring that certain
 61 | defendants be placed in a community residential facility
 62 | for competency restoration in demonstration areas
 63 | established under the Community Mental Health and
 64 | Substance Abuse Treatment and Crime Reduction Act;
 65 | providing exceptions; amending s. 985.19, F.S.; requiring
 66 | that appointed experts complete the forensic evaluator
 67 | training program; providing a contingent effective date.
 68 |

69 | Be It Enacted by the Legislature of the State of Florida:
 70 |

71 | Section 1. Section 394.9086, Florida Statutes, is created
 72 | to read:

73 | 394.9086 Community Mental Health and Substance Abuse
 74 | Treatment and Crime Reduction Act.--

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

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

92 (2) GOALS.--The goals of the community mental health and
93 substance abuse forensic treatment system are to:

94 (a) Ensure public safety.

95 (b) Ensure that services to restore forensic competency
96 are provided in the least restrictive, least costly, and most
97 effective environment.

98 (c) Provide competency-restoration services in the
99 community when appropriate, based on consideration of public
100 safety, needs of the individual, and available resources.

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

103 (e) Reduce rates of arrest, incarceration, and
104 reincarceration.

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

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

113 advocates, and other community members.

114 (3) DEFINITIONS.--As used in this section, the term:

115 (a) "Best practices" means treatment services that
116 incorporate the most effective and acceptable interventions
117 available in the care and treatment of individuals who are
118 diagnosed as having a mental illness or a co-occurring mental
119 illness and substance abuse disorder.

120 (b) "Community forensic system" means the community mental
121 health and substance abuse forensic treatment system, including
122 the comprehensive set of services and supports provided to
123 individuals involved in or at risk of becoming involved in the
124 criminal justice system.

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

128 (d) "Evidence-based practices" means interventions and
129 strategies that, based on the best available empirical research,
130 demonstrate effective and efficient outcomes in the care and
131 treatment of individuals who are diagnosed as having mental
132 illnesses or co-occurring mental illnesses and substance use
133 disorders.

134 (e) "Forensic intensive care management" means activities
135 addressing the comprehensive psychiatric, social, and support
136 needs of individuals who are diagnosed as having serious and
137 persistent mental illnesses, co-occurring disorders, or severe
138 emotional disturbances, and who are involved in the justice
139 system and receiving services under this section. Activities
140 include, but are not limited to, service planning, service

141 coordination, monitoring, and assistance with accessing federal,
 142 state, and local benefits necessary to sustain a person in the
 143 community.

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

146 (4) SERVICE SYSTEM.--The department, in consultation with
 147 the agency, shall develop and implement a community mental
 148 health and substance abuse forensic treatment system. The
 149 community forensic system must build on local community
 150 diversion and reentry initiatives and strategies that are
 151 consistent with those identified and supported under s.
 152 394.658(1).

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

- 155 1. Mental health courts.
- 156 2. Diversion programs.
- 157 3. Alternative prosecution and sentencing techniques.
- 158 4. Crisis intervention teams.
- 159 5. Specialized training for criminal justice, juvenile
 160 justice, and treatment services professionals.
- 161 6. Specialized probation officers at the state and county
 162 levels to serve individuals under correctional control in the
 163 community.
- 164 7. Collateral services such as supported, transitional,
 165 and permanent housing, and supported employment.
- 166 8. Reentry services to create or expand mental health and
 167 co-occurring treatment and supports for affected individuals.

168 (b) The community forensic system must include a

CS/HB 7103

2009

- 169 comprehensive continuum of care and services that use evidence-
170 based and best practices to address co-occurring mental health
171 and substance abuse disorders. The community forensic system
172 must include the following minimum services and elements:
- 173 1. Competency-restoration and treatment services provided
174 in a variety of settings from least restrictive to progressively
175 more restrictive settings.
 - 176 2. Forensic intensive care management.
 - 177 3. Supported housing.
 - 178 4. Supported employment.
 - 179 5. Medication management.
 - 180 6. Trauma-specific services for treatment of the effects
181 of sexual, physical, and emotional abuse or trauma experienced
182 by individuals who have mental illnesses and are involved in the
183 criminal justice system.
 - 184 7. Residential services to address crisis episodes and
185 short-term residential treatment.
 - 186 8. Treatment for co-occurring mental health and substance
187 use disorders.
 - 188 9. Outreach and education for individuals and their
189 families who are at risk of further involvement with the justice
190 system.
 - 191 10. Utilization of involuntary outpatient placement for
192 individuals meeting the criteria as provided under s. 394.4655
193 and conditional release for individuals adjudicated incompetent
194 to proceed due to mental illness or not guilty by reason of
195 insanity as provided under s. 916.17.
 - 196 11. Other services or supports as identified.

197 (5) ELIGIBILITY.--The department may serve individuals who
 198 meet the criteria in this subsection. The department must give
 199 highest priority for services under this section to:

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

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

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

217 (d) Adults who experience serious and persistent mental
 218 illnesses, who have a history of involvement in the justice
 219 system, or who are at risk of entering or who are already
 220 involved with the criminal justice system.

221 (e) Children deemed incompetent to proceed under s.
 222 985.19.

223 (6) DEPARTMENT RESPONSIBILITIES.--The department shall
 224 develop a continuum of services to implement the Community

225 Mental Health and Substance Abuse Treatment and Crime Reduction
 226 Act in accordance with subsection (4). The department shall:
 227 (a) Define requirements for all providers in the community
 228 forensic system.
 229 (b) Select demonstration sites for participation, based on
 230 criteria in subsection (7), which demonstrate active and
 231 sustained participation in community collaborations.
 232 (c) Enter into memoranda of agreement with county planning
 233 councils or committees identified in s. 394.657, which are
 234 included in the demonstration sites.
 235 (d) Identify providers to implement the continuum of
 236 services. The department shall consult with county planning
 237 councils or committees in the selection process.
 238 (e) Establish performance measures and reporting
 239 requirements for providers participating in the community
 240 forensic system. The measures shall include, at a minimum:
 241 1. The number of individuals diverted from state forensic
 242 mental health treatment facilities.
 243 2. The number of individuals diverted from the criminal
 244 justice system.
 245 3. The rates of arrest, incarceration, and reincarceration
 246 for new criminal offenses.
 247 4. The rates of employment.
 248 5. The annual number of days in a crisis stabilization
 249 unit, detoxification facility, short-term residential treatment
 250 program, state civil mental health treatment facility, or state
 251 forensic mental health treatment facility.
 252 (f) Monitor contracts for compliance with terms, and at

CS/HB 7103

2009

253 least annually and to the extent possible, perform joint onsite
254 monitoring with the agency and the Criminal Justice, Mental
255 Health, and Substance Abuse Technical Assistance Center
256 established under s. 394.659 to assess performance of the
257 contract.

258 (7) IMPLEMENTATION.--The department is authorized to
259 implement this section within available resources. In
260 expectation of statewide implementation of this section, the
261 department, in consultation with the agency, may identify three
262 pilot sites, one to be located one in each of the northwest,
263 southern, and Tampa Bay areas of the state for the initial
264 implementation. Each site must be selected based on findings of
265 community readiness and the potential for affecting the greatest
266 number of individuals entering the forensic mental health and
267 criminal justice systems. Criteria for selection may include:

268 (a) Community readiness to deliver the services outlined
269 in subsection (4), demonstrated by well-established community
270 collaboration plans and local partnerships as evidenced by
271 memoranda of agreement that are submitted to and approved by the
272 department.

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

275 (c) Successful application for implementation grant
276 funding under the Criminal Justice, Mental Health, and Substance
277 Abuse Reinvestment Grant Program.

278 (d) Other elements determined by the department in
279 consultation with the agency.

280 Section 2. Paragraph (b) of subsection (11) of section
 281 394.655, Florida Statutes, is amended to read:

282 394.655 The Substance Abuse and Mental Health Corporation;
 283 powers and duties; composition; evaluation and reporting
 284 requirements.--

285 (11)

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

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

295 2. Provide consultation in the development of
 296 comprehensive and cost-effective community-based mental health
 297 and substance abuse treatment services for individuals who have
 298 mental illnesses and who are receiving services in state
 299 forensic mental health treatment facilities, juvenile secure
 300 residential treatment centers specializing in competency
 301 training, prisons, jails, and juvenile justice centers. The
 302 council shall appoint an advisory committee to review and
 303 monitor the implementation of the Community Mental Health and
 304 Substance Abuse Treatment and Crime Reduction Act. The advisory
 305 committee shall include at least one person who has received
 306 services and one family member of a person who has received
 307 services under this section.

CS/HB 7103

2009

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 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,
 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 Criminal Justice, Mental Health, and Substance Abuse
 327 Reinvestment Grant Program to develop local treatment and
 328 service delivery infrastructures.

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

331 394.657 County planning councils or committees.--

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

CS/HB 7103

2009

336 council or committee. The public safety coordinating council or
 337 other designated criminal or juvenile justice mental health and
 338 substance abuse council or committee shall:

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

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

355 Section 5. Paragraphs (g), (h), (i), and (j) are added to
 356 subsection (1) of section 394.659, Florida Statutes, to read:

357 394.659 Criminal Justice, Mental Health, and Substance
 358 Abuse Technical Assistance Center.--

359 (1) There is created a Criminal Justice, Mental Health,
 360 and Substance Abuse Technical Assistance Center at the Louis de
 361 la Parte Florida Mental Health Institute at the University of
 362 South Florida, which shall:

363 (g) In coordination with the department, develop minimum

364 competencies and proficiencies required for communities and
 365 service providers.

366 (h) Identify evidence-based and best practices and deliver
 367 necessary training and consultation to service providers.

368 (i) Assist the department in developing outcome measures.

369 (j) Provide an annual report by October 1 to the Governor,
 370 the President of the Senate, the Speaker of the House of
 371 Representatives, the Chief Justice of the Florida Supreme Court,
 372 and the State Courts Administrator on the status of
 373 implementation of the Community Mental Health and Substance
 374 Abuse Treatment and Crime Reduction Act. For those areas also
 375 required to make a report under subsection (2) concerning a
 376 grant, the institute shall prepare a joint report to avoid
 377 duplication.

378 Section 6. Subsection (28) is added to section 409.906,
 379 Florida Statutes, to read:

380 409.906 Optional Medicaid services.--Subject to specific
 381 appropriations, the agency may make payments for services which
 382 are optional to the state under Title XIX of the Social Security
 383 Act and are furnished by Medicaid providers to recipients who
 384 are determined to be eligible on the dates on which the services
 385 were provided. Any optional service that is provided shall be
 386 provided only when medically necessary and in accordance with
 387 state and federal law. Optional services rendered by providers
 388 in mobile units to Medicaid recipients may be restricted or
 389 prohibited by the agency. Nothing in this section shall be
 390 construed to prevent or limit the agency from adjusting fees,
 391 reimbursement rates, lengths of stay, number of visits, or

CS/HB 7103

2009

392 number of services, or making any other adjustments necessary to
393 comply with the availability of moneys and any limitations or
394 directions provided for in the General Appropriations Act or
395 chapter 216. If necessary to safeguard the state's systems of
396 providing services to elderly and disabled persons and subject
397 to the notice and review provisions of s. 216.177, the Governor
398 may direct the Agency for Health Care Administration to amend
399 the Medicaid state plan to delete the optional Medicaid service
400 known as "Intermediate Care Facilities for the Developmentally
401 Disabled." Optional services may include:

402 (28) HOME AND COMMUNITY-BASED SERVICES.--The agency,
403 contingent upon appropriation of funds for this purpose, may
404 seek federal approval through a state plan amendment to
405 implement home and community-based services under the authority
406 of and in compliance with s. 1915i of the Social Security Act
407 for services provided to individuals who have been determined by
408 an independent evaluation to have disabilities that cause them
409 to become, or put them at risk of becoming, involved with the
410 criminal justice system due to their mental illness. In
411 accordance with allowances under s. 1915i of the Social Security
412 Act, these services may be limited to a select number of
413 eligible individuals in select geographic areas, as identified
414 by the agency. Eligible individuals may have incomes up to 150
415 percent of the federal poverty level. The agency shall
416 coordinate with the department to select and define the services
417 that will be submitted in the state plan amendment and be
418 provided under this subsection. The agency may disenroll from
419 enrollment in MediPass, or any capitated or other Medicaid

CS/HB 7103

2009

420 managed care arrangements, those individuals receiving services
421 under this subsection. Enrollment in state plan services may not
422 exceed 1,000 individuals unless additional approval is obtained
423 from the Legislature. The agency must receive approval from the
424 Legislature or Legislative Budget Commission for any funding
425 beyond that which is provided within initial implementation
426 revenues. After July 1, 2012, the agency may consider seeking
427 authority to capitate Medicaid behavioral health services under
428 this subsection.

429 Section 7. Subsection (54) is added to section 409.912,
430 Florida Statutes, to read:

431 409.912 Cost-effective purchasing of health care.--The
432 agency shall purchase goods and services for Medicaid recipients
433 in the most cost-effective manner consistent with the delivery
434 of quality medical care. To ensure that medical services are
435 effectively utilized, the agency may, in any case, require a
436 confirmation or second physician's opinion of the correct
437 diagnosis for purposes of authorizing future services under the
438 Medicaid program. This section does not restrict access to
439 emergency services or poststabilization care services as defined
440 in 42 C.F.R. part 438.114. Such confirmation or second opinion
441 shall be rendered in a manner approved by the agency. The agency
442 shall maximize the use of prepaid per capita and prepaid
443 aggregate fixed-sum basis services when appropriate and other
444 alternative service delivery and reimbursement methodologies,
445 including competitive bidding pursuant to s. 287.057, designed
446 to facilitate the cost-effective purchase of a case-managed
447 continuum of care. The agency shall also require providers to

CS/HB 7103

2009

448 minimize the exposure of recipients to the need for acute
449 inpatient, custodial, and other institutional care and the
450 inappropriate or unnecessary use of high-cost services. The
451 agency shall contract with a vendor to monitor and evaluate the
452 clinical practice patterns of providers in order to identify
453 trends that are outside the normal practice patterns of a
454 provider's professional peers or the national guidelines of a
455 provider's professional association. The vendor must be able to
456 provide information and counseling to a provider whose practice
457 patterns are outside the norms, in consultation with the agency,
458 to improve patient care and reduce inappropriate utilization.
459 The agency may mandate prior authorization, drug therapy
460 management, or disease management participation for certain
461 populations of Medicaid beneficiaries, certain drug classes, or
462 particular drugs to prevent fraud, abuse, overuse, and possible
463 dangerous drug interactions. The Pharmaceutical and Therapeutics
464 Committee shall make recommendations to the agency on drugs for
465 which prior authorization is required. The agency shall inform
466 the Pharmaceutical and Therapeutics Committee of its decisions
467 regarding drugs subject to prior authorization. The agency is
468 authorized to limit the entities it contracts with or enrolls as
469 Medicaid providers by developing a provider network through
470 provider credentialing. The agency may competitively bid single-
471 source-provider contracts if procurement of goods or services
472 results in demonstrated cost savings to the state without
473 limiting access to care. The agency may limit its network based
474 on the assessment of beneficiary access to care, provider
475 availability, provider quality standards, time and distance

476 standards for access to care, the cultural competence of the
 477 provider network, demographic characteristics of Medicaid
 478 beneficiaries, practice and provider-to-beneficiary standards,
 479 appointment wait times, beneficiary use of services, provider
 480 turnover, provider profiling, provider licensure history,
 481 previous program integrity investigations and findings, peer
 482 review, provider Medicaid policy and billing compliance records,
 483 clinical and medical record audits, and other factors. Providers
 484 shall not be entitled to enrollment in the Medicaid provider
 485 network. The agency shall determine instances in which allowing
 486 Medicaid beneficiaries to purchase durable medical equipment and
 487 other goods is less expensive to the Medicaid program than long-
 488 term rental of the equipment or goods. The agency may establish
 489 rules to facilitate purchases in lieu of long-term rentals in
 490 order to protect against fraud and abuse in the Medicaid program
 491 as defined in s. 409.913. The agency may seek federal waivers
 492 necessary to administer these policies.

493 (54) Persons who have serious and persistent mental
 494 illnesses, who are receiving services under the Community Mental
 495 Health and Substance Abuse Crime Reduction Act, and who are
 496 eligible for and receiving services under the state plan
 497 implemented under s. 1915i of the Social Security Act, as
 498 approved by the Centers for Medicare and Medicaid Services, may
 499 be exempt from MediPass and managed care plans authorized under
 500 this chapter, including capitated managed care plans authorized
 501 under s. 409.91211.

502 Section 8. Paragraph (a) of subsection (3) of section
 503 916.107, Florida Statutes, is amended to read:

CS/HB 7103

2009

504 916.107 Rights of forensic clients.--

505 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

506 (a) A forensic client shall be asked to give express and
507 informed written consent for treatment. If a client refuses such
508 treatment as is deemed necessary and essential by the client's
509 multidisciplinary treatment team for the appropriate care of the
510 client, such treatment may be provided under the following
511 circumstances:

512 1. In an emergency situation in which there is immediate
513 danger to the safety of the client or others, such treatment may
514 be provided upon the written order of a physician for a period
515 not to exceed 48 hours, excluding weekends and legal holidays.
516 If, after the 48-hour period, the client has not given express
517 and informed consent to the treatment initially refused, the
518 administrator or designee of the civil or forensic facility
519 shall, within 48 hours, excluding weekends and legal holidays,
520 petition the committing court or the circuit court serving the
521 county in which the facility is located, at the option of the
522 facility administrator or designee, for an order authorizing the
523 continued treatment of the client. In the interim, the need for
524 treatment shall be reviewed every 48 hours and may be continued
525 without the consent of the client upon the continued written
526 order of a physician who has determined that the emergency
527 situation continues to present a danger to the safety of the
528 client or others.

529 2. In a situation other than an emergency situation, the
530 administrator or designee of the facility shall petition the
531 court for an order authorizing necessary and essential treatment

CS/HB 7103

2009

532 for the client.

533 a. If the client has been receiving psychotherapeutic
534 medication at the jail at the time of transfer to the state
535 forensic mental health treatment facility and lacks the capacity
536 to make an informed decision regarding mental health treatment
537 at the time of admission, the admitting physician may order a
538 continuation of the psychotherapeutic medication if, in the
539 clinical judgment of the physician, abrupt cessation of the
540 psychotherapeutic medication could cause a risk to the health
541 and safety of the client during the time a court order to
542 medicate is pursued. The jail physician shall provide a current
543 psychotherapeutic medication order at the time of transfer to
544 the admitting facility.

545 b. The court order shall allow such treatment for a period
546 not to exceed 90 days following the date of the entry of the
547 order. Unless the court is notified in writing that the client
548 has provided express and informed consent in writing or that the
549 client has been discharged by the committing court, the
550 administrator or designee shall, prior to the expiration of the
551 initial 90-day order, petition the court for an order
552 authorizing the continuation of treatment for another 90-day
553 period. This procedure shall be repeated until the client
554 provides consent or is discharged by the committing court.

555 3. At the hearing on the issue of whether the court should
556 enter an order authorizing treatment for which a client was
557 unable to or refused to give express and informed consent, the
558 court shall determine by clear and convincing evidence that the
559 client has mental illness, retardation, or autism, that the

CS/HB 7103

2009

560 treatment not consented to is essential to the care of the
561 client, and that the treatment not consented to is not
562 experimental and does not present an unreasonable risk of
563 serious, hazardous, or irreversible side effects. In arriving at
564 the substitute judgment decision, the court must consider at
565 least the following factors:

- 566 a. The client's expressed preference regarding treatment;
- 567 b. The probability of adverse side effects;
- 568 c. The prognosis without treatment; and
- 569 d. The prognosis with treatment.

570

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

584 Section 9. Section 916.111, Florida Statutes, is amended
585 to read:

586 916.111 Training of mental health experts.--The evaluation
587 of defendants for competency to proceed or for sanity at the

CS/HB 7103

2009

588 time of the commission of the offense shall be conducted in such
 589 a way as to ensure uniform application of the criteria
 590 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal
 591 Procedure.

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

596 (a) Beginning July 1, 2010, experts shall remain on the
 597 registry if they have completed or retaken the required training
 598 within the previous 5 years. Those who have not completed the
 599 required training within the previous 5 years shall be removed
 600 from the registry and may not conduct evaluations for the
 601 courts.

602 (b) A mental health professional who has completed the
 603 training course within the previous 5 years is responsible for
 604 maintaining documentation of completion of the required training
 605 and providing to the department current contact information.

606 (2) The department shall develop, and may contract with
 607 accredited institutions:

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

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

612 2. ~~(b)~~ Clinical protocols and procedures based upon the
 613 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
 614 Procedure; and

615 3. ~~(c)~~ Training for mental health professionals in the

616 application of these protocols and procedures in performing
 617 forensic evaluations and providing reports to the courts; and
 618 (b)(2) To compile and maintain the necessary information
 619 for evaluating the success of this program, including the number
 620 of persons trained, the cost of operating the program, and the
 621 effect on the quality of forensic evaluations as measured by
 622 appropriateness of admissions to state forensic facilities and
 623 to community-based care programs.

624 Section 10. Subsection (1) of section 916.115, Florida
 625 Statutes, is amended to read:

626 916.115 Appointment of experts.--

627 (1) The court shall appoint no more than three experts to
 628 determine the mental condition of a defendant in a criminal
 629 case, including competency to proceed, insanity, involuntary
 630 placement, and treatment. The experts may evaluate the defendant
 631 in jail or in another appropriate local facility or in a
 632 facility of the Department of Corrections.

633 (a) ~~To the extent possible,~~ The appointed experts shall
 634 have completed forensic evaluator training as provided in s.
 635 916.111 approved by the department, and each shall be a
 636 psychiatrist, or licensed psychologist, ~~or physician.~~

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

641 Section 11. Section 916.13, Florida Statutes, is amended
 642 to read:

643 916.13 Involuntary commitment of defendant adjudicated
 644 incompetent.--

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

649 (a) The defendant has a mental illness and because of the
 650 mental illness:

651 1. The defendant is manifestly incapable of surviving
 652 alone or with the help of willing and responsible family or
 653 friends, including available alternative services, and, without
 654 treatment, the defendant is likely to suffer from neglect or
 655 refuse to care for herself or himself and such neglect or
 656 refusal poses a real and present threat of substantial harm to
 657 the defendant's well-being; or

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

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

667 (c) There is a substantial probability that the mental
 668 illness causing the defendant's incompetence will respond to
 669 treatment and the defendant will regain competency to proceed in
 670 the reasonably foreseeable future.

671 (2) (a) A defendant who has been charged with a felony and
 672 who has been adjudicated incompetent to proceed due to mental
 673 illness, and who meets the criteria for involuntary commitment
 674 ~~to the department under the provisions of this chapter,~~ may be
 675 committed to the department, and the department shall retain and
 676 treat the defendant. Within ~~No later than~~ 6 months after the
 677 date of admission and at the end of any period of extended
 678 commitment, or at any time the administrator or designee shall
 679 have determined that the defendant has regained competency to
 680 proceed or no longer meets the criteria for continued
 681 commitment, the administrator or designee shall file a report
 682 with the court pursuant to the applicable Florida Rules of
 683 Criminal Procedure.

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

689 (c) A competency hearing shall be held within 30 days
 690 after a court receives notification that the defendant is
 691 competent to proceed or no longer meets criteria for continued
 692 commitment.

693 Section 12. Present subsection (4) of section 916.15,
 694 Florida Statutes, is renumbered as subsection (5), and a new
 695 subsection (4) is added to that section, to read:

696 916.15 Involuntary commitment of defendant adjudicated not
 697 guilty by reason of insanity.--

698 (4) (a) Within 30 days after the court is notified that a

699 defendant no longer meets the criteria for involuntary
 700 commitment placement, the defendant shall be transported back to
 701 jail for the purpose of holding a commitment hearing.

702 (b) A commitment hearing shall be held within 30 days
 703 after the court receives notification that the defendant no
 704 longer meets the criteria for continued commitment placement.

705 Section 13. Present subsections (2) and (3) of section
 706 916.17, Florida Statutes, are renumbered as subsections (3) and
 707 (4), respectively, and a new subsection (2) is added to that
 708 section, to read:

709 916.17 Conditional release.--

710 (2) A defendant who otherwise meets the criteria for
 711 involuntary commitment under s. 916.13, but whose current most
 712 serious charge is a felony of the third degree or a felony of
 713 the second degree when the felony did not involve violence, must
 714 be placed in a community residential facility for competency
 715 restoration in pilot sites established in s. 394.9086, unless
 716 bed space or funding is unavailable for the community placement
 717 or the trial court makes an explicit finding that the defendant
 718 cannot be safely managed in such a placement. In making the
 719 determination under this subsection, the court shall consider
 720 all of the following:

721 (a) The nature and seriousness of the crime allegedly
 722 committed.

723 (b) The individual's criminal history.

724 (c) The individual's psychiatric history.

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

CS/HB 7103

2009

727 (e) The likelihood that the individual will comply with
728 and benefit from the mental health treatment and services being
729 recommended.

730 (f) The availability of appropriate community-based
731 services and treatment settings.

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

733 Section 14. Paragraphs (b) and (d) of subsection (1) of
734 section 985.19, Florida Statutes, are amended to read:

735 985.19 Incompetency in juvenile delinquency cases.--

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

742 (b) All determinations of competency shall be made at a
743 hearing, with findings of fact based on an evaluation of the
744 child's mental condition made by not less than two nor more than
745 three experts appointed by the court. The basis for the
746 determination of incompetency must be specifically stated in the
747 evaluation and must be conducted in such a way as to ensure
748 uniform application of the criteria enumerated in Rule 8.095,
749 Florida Rules of Juvenile Procedure. In addition, a
750 recommendation as to whether residential or nonresidential
751 treatment or training is required must be included in the
752 evaluation. Experts appointed by the court to determine the
753 mental condition of a child shall be allowed reasonable fees for
754 services rendered. State employees may be paid expenses pursuant

CS/HB 7103

2009

755 to s. 112.061. The fees shall be taxed as costs in the case.

756 (d) Appointed experts must have completed forensic
757 evaluator training approved by the Department of Children and
758 Family Services within 5 years prior to conducting evaluations
759 for the court, and each must be a psychiatrist or licensed
760 psychologist. For incompetency evaluations related to mental
761 illness, the Department of Children and Family Services shall
762 maintain and annually provide the courts with a list of
763 available mental health professionals who have completed a
764 training program approved by the Department of Children and
765 Family Services to perform the evaluations.

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

772 2. A mental health professional who has completed the
773 training course within the previous 5 years is responsible for
774 maintaining documentation of completion of the required training
775 and providing to the Department of Children and Family Services
776 current contact information.

777 Section 15. This act shall take effect July 1, 2009, only
778 if a specific appropriation to fund the provisions of this act
779 is made in fiscal year 2009-2010.