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1 A bill to be entitled
2 An act relating to mental health and substance abuse
3 treatment; creating s. 394.4656, F.S.; creating the
4 Community Mental Health and Substance Abuse Treatment and
5 Crime Reduction Act; providing legislative findings and
6 intent; providing goals for the community mental health
7 and substance abuse forensic treatment system; defining
8 terms; authorizing the Department of Children and Family
9 Services, in consultation with the Agency for Health Care
10 Administration, to develop and implement a community
11 mental health and substance abuse forensic treatment
12 system; providing initiatives and strategies for the
13 community forensic system; detailing the services required
14 in the community forensic system; setting forth the
15 eligibility criteria for treatment in the system;
16 authorizing the department to develop a continuum of
17 services to implement the Community Mental Health and
18 Substance Abuse Treatment and Crime Reduction Act;
19 specifying the services and functions the department may
20 undertake; providing for implementation of the community
21 mental health and substance abuse forensic treatment
22 system; amending s. 394.655, F.S.; providing additional
23 functions of the Criminal Justice, Mental Health, and
24 Substance Abuse Policy Council; amending s. 394.656, F.S.;
25 requiring the department and the agency to cooperate with
26 counties that receive grants funding under the Criminal
27 Justice, Mental Health, and Substance Abuse Reinvestment
28 Grant Program; amending s. 394.657, F.S.; requiring county

29 | councils to consult with local governing bodies when
30 | planning or implementing the Community Mental Health and
31 | Substance Abuse Treatment and Crime Reduction Act;
32 | amending s. 409.906, F.S.; adding home and community-based
33 | mental health services to the optional Medicaid services
34 | offered by the state Medicaid program; amending s.
35 | 409.912, F.S.; allowing an exemption for persons who have
36 | serious and persistent mental illnesses and who are
37 | receiving services under the Community Mental Health and
38 | Substance Abuse Treatment and Crime Reduction Act from
39 | MediPass and managed care plans; amending s. 916.106,
40 | F.S.; providing definitions; amending s. 916.107, F.S.;
41 | including certain conditional releasees within certain
42 | provisions relating to procedures for persons admitted to
43 | state forensic mental health treatment facilities who lack
44 | capacity to make informed decisions regarding mental
45 | health treatment; specifying treatment procedures for a
46 | 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 a timeframe for the
 58 | holding of a competency hearing; amending s. 916.15, F.S.;
 59 | providing a timeframe for the holding of a commitment
 60 | hearing; 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; providing requirements for a report
 66 | concerning a child who is found incompetent to proceed;
 67 | amending s. 985.19, F.S.; requiring that the basis for the
 68 | determination of incompetency of juveniles be conducted so
 69 | as to ensure uniform application of specified criteria;
 70 | requiring development of plans and requirements relating
 71 | to forensic evaluations; requiring that appointed experts
 72 | complete the forensic evaluator training program by
 73 | specified dates; providing an effective date.

74 |

75 | Be It Enacted by the Legislature of the State of Florida:

76 |

77 | Section 1. Section 394.4656, Florida Statutes, is created
 78 | to read:

79 | 394.4656 Community Mental Health and Substance Abuse
 80 | Treatment and Crime Reduction Act.—

81 | (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 82 | that many jail inmates who have serious mental illnesses and who
 83 | are committed to state forensic mental health treatment
 84 | facilities for competency restoration could be served more

85 effectively and at less cost in community-based alternative
86 programs. The Legislature further finds that many people who
87 have serious mental illnesses and who have been discharged from
88 state forensic mental health treatment facilities could avoid
89 recidivism to the criminal justice and forensic mental health
90 systems if they received specialized treatment in the community.
91 Therefore, it is the intent of the Legislature to create the
92 Community Mental Health and Substance Abuse Treatment and Crime
93 Reduction Act to serve individuals who have mental illnesses or
94 co-occurring mental illnesses and substance abuse disorders and
95 who are involved in or at risk of entering state forensic mental
96 health treatment facilities, prisons, jails, juvenile justice
97 centers, or state civil mental health treatment facilities.

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

100 (a) Ensure public safety.

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

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

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

109 (e) Reduce rates of arrest, incarceration, and
110 reincarceration.

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

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

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

121 (a) "Agency" means the Agency for Health Care
122 Administration.

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

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

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

136 (e) "Evidence-based practices" means interventions and
137 strategies that, based on the best available empirical research,
138 demonstrate effective and efficient outcomes in the care and

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139 treatment of individuals who are diagnosed as having mental
140 illnesses or co-occurring mental illnesses and substance use
141 disorders.

142 (f) "Forensic intensive care management" means activities
143 addressing the comprehensive psychiatric, social, and support
144 needs of individuals who are diagnosed as having serious and
145 persistent mental illnesses, co-occurring disorders, or severe
146 emotional disturbances, and who are involved in the criminal
147 justice system and receiving services under this section.
148 Activities include, but are not limited to, service planning,
149 service coordination, monitoring, and assistance with accessing
150 federal, state, and local benefits necessary to sustain a person
151 in the community.

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

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

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

- 163 1. Mental health courts.
- 164 2. Diversion programs.
- 165 3. Alternative prosecution and sentencing techniques.
- 166 4. Crisis intervention teams.

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167 5. Specialized training for criminal justice, juvenile
168 justice, and treatment services professionals.

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

172 7. Collateral services such as supported, transitional,
173 and permanent housing, and supported employment.

174 8. Reentry services to create or expand mental health and
175 co-occurring treatment and support for affected individuals.

176 (b) The community forensic system must include a
177 comprehensive continuum of care and services that use evidence-
178 based and best practices to address co-occurring mental health
179 and substance abuse disorders, including the following minimum
180 services and elements:

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

184 2. Secure residential placement for initial service
185 delivery and stabilization.

186 3. Forensic intensive care management.

187 4. Supported housing.

188 5. Supported employment.

189 6. Medication management.

190 7. Trauma-specific services for treatment of the effects
191 of sexual, physical, and emotional abuse or trauma experienced
192 by individuals who have mental illnesses and are involved in the
193 criminal justice system.

194 8. Residential services to address crisis episodes and
195 short-term residential treatment.

196 9. Treatment for co-occurring mental health and substance
197 use disorders.

198 10. Outreach and education for individuals and their
199 families who are at risk of further involvement with the
200 criminal justice system.

201 11. The use of involuntary outpatient placement for
202 individuals meeting the criteria provided under s. 394.4655 and
203 conditional release for individuals adjudicated incompetent to
204 proceed due to mental illness or not guilty by reason of
205 insanity as provided under s. 916.17.

206 12. Other services or supports as identified.

207 (5) ELIGIBILITY.—Initial implementation shall be limited
208 to adults who are adjudicated incompetent to proceed or not
209 guilty by reason of insanity under chapter 916, whose current
210 most serious charge is a felony of the third degree or a felony
211 of the second degree that did not involve violence, who meet
212 public safety criteria established by the court and treatment
213 criteria established by the department for placement in a
214 community setting, and who otherwise would be admitted to a
215 state mental health treatment facility. Contingent upon
216 legislative approval, the department may serve individuals who
217 meet the following criteria:

218 (a) Adults who experience serious and persistent mental
219 illnesses reentering the community from state prisons.

220 (b) Adults who have been committed to a state forensic
221 mental health treatment facility after being adjudicated

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222 incompetent to proceed or not guilty by reason of insanity, and
223 who are released or who are pending release to the community by
224 the court after completing competency restoration services or
225 being found to no longer meet the criteria for continued
226 commitment placement.

227 (c) Adults who experience serious and persistent mental
228 illnesses, who have a history of involvement in the criminal
229 justice system, or who are at risk of entering or who are
230 already involved with the criminal justice system.

231 (d) Children deemed incompetent to proceed under s.
232 985.19.

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

236 (a) Define requirements for all providers in the community
237 forensic system.

238 (b) Implement demonstration sites for participation, based
239 on criteria in subsection (7), which demonstrate active and
240 sustained participation in community collaborations.

241 (c) Enter into memoranda of agreement with county planning
242 councils or committees identified in s. 394.657 that
243 participated in the Criminal Justice, Mental Health, and
244 Substance Abuse Reinvestment Grant Program pursuant to s.
245 394.656 or that have piloted a community-based diversion
246 program.

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

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

253 1. The number of individuals diverted from state forensic
 254 mental health treatment facilities.

255 2. The number of individuals diverted from the criminal
 256 justice system.

257 3. The rates of arrest, incarceration, and reincarceration
 258 for new criminal offenses.

259 4. The rates of employment.

260 5. The annual number of days in a crisis stabilization
 261 unit, detoxification facility, short-term residential treatment
 262 program, state civil mental health treatment facility, or state
 263 forensic mental health treatment facility.

264 (f) Monitor contracts for compliance with terms and assess
 265 performance under contracts and provide an annual report by
 266 October 1 to the Governor, the President of the Senate, the
 267 Speaker of the House of Representatives, the Chief Justice of
 268 the Florida Supreme Court, and the State Courts Administrator on
 269 the implementation status of the Community Mental Health and
 270 Substance Abuse Treatment and Crime Reduction Act.

271 (7) IMPLEMENTATION.—The department may implement this
 272 section within available resources. In expectation of statewide
 273 implementation of this section, the department, in consultation
 274 with the agency, may identify geographic areas of the state for
 275 initial implementation of the pilot program sites. Future
 276 expansion shall be based on findings of community readiness and
 277 the potential for affecting the greatest number of individuals

278 entering the forensic mental health and criminal justice
 279 systems. Criteria for selection may include:

280 (a) Community readiness to deliver the services outlined
 281 in subsection (4), demonstrated by well-established community
 282 collaboration plans and local partnerships as evidenced by
 283 memoranda of agreement that are submitted to and approved by the
 284 department.

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

287 (c) Successful application for implementation grant
 288 funding under the Criminal Justice, Mental Health, and Substance
 289 Abuse Reinvestment Grant Program.

290 (d) Other elements determined by the department in
 291 consultation with the agency.

292 Section 2. Paragraph (b) of subsection (11) of section
 293 394.655, Florida Statutes, is amended to read:

294 394.655 The Substance Abuse and Mental Health Corporation;
 295 powers and duties; composition; evaluation and reporting
 296 requirements.-

297 (11)

298 (b) The purposes ~~purpose~~ of the council are ~~shall be~~ to:

299 1. Align policy initiatives in the criminal justice,
 300 juvenile justice, ~~and~~ mental health, and substance abuse systems
 301 to ensure the most effective use of resources and to coordinate
 302 the development of legislative proposals and budget requests
 303 relating to the shared needs of adults and juveniles who have a
 304 mental illness, substance abuse disorders ~~disorder~~, or co-

305 | occurring mental health and substance abuse disorders who are
 306 | in, or at risk of entering, the criminal justice system.

307 | 2. Provide consultation in the development of
 308 | comprehensive and cost-effective community-based mental health
 309 | and substance abuse treatment services for individuals who have
 310 | mental illnesses and who are receiving services in state
 311 | forensic mental health treatment facilities, juvenile secure
 312 | residential treatment centers specializing in competency
 313 | training, prisons, jails, and juvenile justice centers.

314 | Section 3. Subsection (1) of section 394.656, Florida
 315 | Statutes, is amended to read:

316 | 394.656 Criminal Justice, Mental Health, and Substance
 317 | Abuse Reinvestment Grant Program.—

318 | (1) There is created within the Department of Children and
 319 | Family Services the Criminal Justice, Mental Health, and
 320 | Substance Abuse Reinvestment Grant Program. The purpose of the
 321 | program is to provide funding to counties to ~~with which they can~~
 322 | plan, implement, or expand initiatives that increase public
 323 | safety, avert increased spending on criminal justice, and
 324 | improve the accessibility and effectiveness of treatment
 325 | services for adults and juveniles who have a mental illness,
 326 | substance abuse disorder, or co-occurring mental health and
 327 | substance abuse disorders and who are in, or at risk of
 328 | entering, the criminal or juvenile justice systems. In
 329 | implementing the Community Mental Health and Substance Abuse
 330 | Treatment and Crime Reduction Act, the department and agency
 331 | shall work in coordination with counties that received grants

332 under the program or have piloted a community-based diversion
 333 program.

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

336 394.657 County planning councils or committees.—

337 (1) Each board of county commissioners shall designate the
 338 county public safety coordinating council established under s.
 339 951.26, or designate another criminal or juvenile justice mental
 340 health and substance abuse council or committee, as the planning
 341 council or committee. The public safety coordinating council or
 342 other designated criminal or juvenile justice mental health and
 343 substance abuse council or committee shall:

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

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

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

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

384 (28) HOME AND COMMUNITY-BASED SERVICES.—The agency,
 385 contingent upon appropriation of funds for this purpose, may
 386 seek federal approval through a state plan amendment to
 387 implement home and community-based services under the authority

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388 of and in compliance with s. 1915i of the Social Security Act
389 for services provided to individuals who have been determined by
390 an independent evaluation to have disabilities that cause them
391 to become, or put them at risk of becoming, involved with the
392 criminal justice system due to their mental illness. In
393 accordance with allowances under s. 1915i of the Social Security
394 Act, these services may be limited to a select number of
395 eligible individuals in select geographic areas, as identified
396 by the agency. Eligible individuals may have incomes up to 150
397 percent of the federal poverty level. The agency shall
398 coordinate with the department to select and define the services
399 that will be submitted in the state plan amendment and provided
400 under this subsection. The agency shall disenroll individuals
401 receiving services under this subsection from MediPass or any
402 capitated or other Medicaid-managed care arrangement. Enrollment
403 in state plan services may not exceed 1,000 individuals unless
404 additional approval is obtained from the Legislature. The agency
405 must receive approval from the Legislature or Legislative Budget
406 Commission for any funding beyond that provided within initial
407 implementation revenues. After July 1, 2013, the agency may seek
408 authority to capitate Medicaid behavioral health services under
409 this subsection.

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

412 409.912 Cost-effective purchasing of health care.—The
413 agency shall purchase goods and services for Medicaid recipients
414 in the most cost-effective manner consistent with the delivery
415 of quality medical care. To ensure that medical services are

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

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

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472 as defined in s. 409.913. The agency may seek federal waivers
473 necessary to administer these policies.

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

483 Section 7. Subsections (1) through (4) of section 916.106,
484 Florida Statutes, are renumbered as subsections (2) through (5),
485 respectively, current subsections (5) through (17) of that
486 section are renumbered as subsections (7) through (19),
487 respectively, and new subsections (1) and (6) are added to that
488 section, to read:

489 916.106 Definitions.—For the purposes of this chapter, the
490 term:

491 (1) "Acquittee" means a defendant who has been adjudicated
492 not guilty by reason of insanity.

493 (6) "Conditional releasee" means a person placed on
494 conditional release pursuant to s. 916.17.

495 Section 8. Paragraph (a) of subsection (3) of section
496 916.107, Florida Statutes, is amended to read:

497 916.107 Rights of forensic clients.—

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

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499 (a) A forensic client or a person placed on conditional
500 release pursuant to s. 916.17(2) in a crisis stabilization unit
501 or a short-term residential treatment facility shall be asked to
502 give express and informed written consent for treatment. If a
503 client or such a conditional releasee refuses such treatment as
504 is deemed necessary and essential by his or her ~~the client's~~
505 multidisciplinary treatment team for his or her ~~the~~ appropriate
506 care ~~of the client~~, such treatment may be provided under the
507 following circumstances:

508 1. In an emergency situation in which there is immediate
509 danger to the safety of the client or conditional releasee or
510 others, such treatment may be provided upon the written order of
511 a physician for a period not to exceed 48 hours, excluding
512 weekends and legal holidays. If, after the 48-hour period, the
513 client or conditional releasee has not given express and
514 informed consent to the treatment initially refused, the
515 administrator or designee of the civil or forensic facility,
516 crisis stabilization unit, or short-term residential treatment
517 facility serving individuals placed on conditional release
518 pursuant to s. 916.17(2) shall, within 48 hours, excluding
519 weekends and legal holidays, petition the committing court or
520 the circuit court serving the county in which the facility is
521 located, at the option of the facility administrator or
522 designee, for an order authorizing the continued treatment of
523 the client or conditional releasee. 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 or conditional releasee upon
526 the continued written order of a physician who has determined

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527 that the emergency situation continues to present a danger to
528 the safety of the client, the conditional releasee, or others.

529 2. In a situation other than an emergency situation, the
530 administrator or designee of the civil or forensic facility,
531 crisis stabilization unit, or short-term residential treatment
532 facility shall petition the court for an order authorizing
533 necessary and essential treatment for the client or conditional
534 releasee.

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

547 b. The court order shall allow such treatment for up to a
548 ~~period not to exceed~~ 90 days after ~~following~~ the date of the
549 entry of the order. Unless the court is notified in writing that
550 the client or conditional releasee has provided express and
551 informed consent in writing or that he or she ~~the client~~ has
552 been discharged by the committing court, the administrator or
553 designee shall, before ~~prior to~~ the expiration of the initial
554 90-day order, petition the court for an order authorizing the

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555 continuation of treatment for another 90 days ~~90-day period~~.
556 This procedure shall be repeated until the client or conditional
557 releasee provides consent or is discharged by the committing
558 court.

559 3. At the hearing on the issue of whether the court should
560 enter an order authorizing treatment for which a client or
561 conditional releasee was unable to or refused to give express
562 and informed consent, the court shall determine by clear and
563 convincing evidence that the client or conditional releasee has
564 mental illness, retardation, or autism, that the treatment not
565 consented to is essential to his or her ~~the care of the client~~,
566 and that the treatment not consented to is not experimental and
567 does not present an unreasonable risk of serious, hazardous, or
568 irreversible side effects. In arriving at the substitute
569 judgment decision, the court must consider at least the
570 following factors:

- 571 a. The individual's ~~client's~~ expressed preference
572 regarding treatment;
- 573 b. The probability of adverse side effects;
- 574 c. The prognosis without treatment; and
- 575 d. The prognosis with treatment.
- 576

577 The hearing shall be as convenient to the client or conditional
578 releasee as may be consistent with orderly procedure and shall
579 be conducted in physical settings not likely to be injurious to
580 his or her ~~the client's~~ condition. The court may appoint a
581 general or special magistrate to preside at the hearing. The
582 client or conditional releasee or his or her ~~the client's~~

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583 guardian, and the representative, shall be provided with a copy
584 of the petition and the date, time, and location of the hearing.
585 The client or conditional releasee has the right to have an
586 attorney represent him or her at the hearing, and, if the client
587 or conditional releasee is indigent, the court shall appoint the
588 office of the public defender to represent him or her ~~the client~~
589 at the hearing. The client or conditional releasee may testify
590 or not, as he or she chooses, and has the right to cross-examine
591 witnesses and may present his or her own witnesses.

592 Section 9. Section 916.111, Florida Statutes, is amended
593 to read:

594 916.111 Training of mental health experts.—The evaluation
595 of defendants for competency to proceed or for sanity at the
596 time of the commission of the offense shall be conducted ~~in such~~
597 ~~a way~~ as to ensure uniform application of the criteria
598 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal
599 Procedure.

600 (1) Appointed experts shall have completed forensic
601 evaluator training as specified in this section.

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

606 (a) Beginning July 1, 2011, experts shall remain on the
607 registry if they have completed or retaken the required training
608 course within the previous 5 years. Those who have not completed
609 the training course must be removed from the registry and shall
610 not conduct evaluations for the courts.

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611 (b) A mental health professional who has completed the
612 training course within the previous 5 years must maintain
613 documentation of completion of the required training course and
614 provide current contact information to the department.

615 (3) The department shall develop, and may contract with
616 accredited institutions:

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

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

621 2.~~(b)~~ Clinical protocols and procedures based upon the
622 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
623 Procedure; and

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

627 (b)~~(2)~~ To compile and maintain the necessary information
628 for evaluating the success of this program, including the number
629 of persons trained, the cost of operating the program, and the
630 effect on the quality of forensic evaluations as measured by
631 appropriateness of admissions to state forensic facilities and
632 to community-based care programs.

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

635 916.115 Appointment of experts.—

636 (1) The court shall appoint no more than three experts to
637 determine the mental condition of a defendant in a criminal
638 case, including competency to proceed, insanity, involuntary

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639 placement, and treatment. The experts may evaluate the defendant
640 in jail or in another appropriate local facility or in a
641 facility of the Department of Corrections.

642 (a) To the extent possible, the appointed experts ~~shall~~
643 ~~have completed forensic evaluator training approved by the~~
644 ~~department, and each shall be psychiatrists or a psychiatrist,~~
645 licensed psychologists ~~psychologist, or physician.~~

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

650 Section 11. Subsection (2) of section 916.13, Florida
651 Statutes, is amended to read:

652 916.13 Involuntary commitment of defendant adjudicated
653 incompetent.—

654 (2) A defendant who has been charged with a felony and who
655 has been adjudicated incompetent to proceed due to mental
656 illness, and who meets the criteria for involuntary commitment
657 ~~to the department under the provisions of this chapter,~~ may be
658 committed to the department, and the department shall retain and
659 treat the defendant.

660 (a) Within ~~No later than~~ 6 months after the date of
661 admission and at the end of any period of extended commitment,
662 or at any time the administrator or designee has ~~shall have~~
663 determined that the defendant has regained competency to proceed
664 or no longer meets the criteria for continued commitment, the
665 administrator or designee shall file a report with the court
666 pursuant to the applicable Florida Rules of Criminal Procedure.

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

670 Section 12. Section 916.15, Florida Statutes, is amended
671 to read:

672 916.15 Involuntary commitment of defendant adjudicated not
673 guilty by reason of insanity.—

674 (1) The determination of whether a defendant is not guilty
675 by reason of insanity shall be determined in accordance with
676 Rule 3.217, Florida Rules of Criminal Procedure.

677 (2) An acquittee ~~A defendant who is acquitted of criminal~~
678 ~~charges because of a finding of not guilty by reason of insanity~~
679 may be involuntarily committed pursuant to such finding if the
680 defendant has a mental illness and, because of the illness, is
681 manifestly dangerous to himself or herself or others.

682 (3) Every acquittee ~~defendant acquitted of criminal~~
683 ~~charges by reason of insanity and found to meet the criteria for~~
684 involuntary commitment may be committed and treated in
685 accordance with the provisions of this section and the
686 applicable Florida Rules of Criminal Procedure. The department
687 shall admit an acquittee ~~a defendant so adjudicated~~ to an
688 appropriate facility or program for treatment and shall retain
689 and treat such acquittee ~~defendant~~. No later than 6 months after
690 the date of admission, prior to the end of any period of
691 extended commitment, or at any time the administrator or
692 designee shall have determined that the acquittee ~~defendant~~ no
693 longer meets the criteria for continued commitment placement,
694 the administrator or designee shall file a report with the court

695 pursuant to the applicable Florida Rules of Criminal Procedure.

696 (4) The commitment hearing must be held within 30 days
 697 after the court receives notification that the acquittee no
 698 longer meets the criteria for continued commitment placement.

699 (5)~~(4)~~ In all proceedings under this section, both the
 700 acquittee ~~defendant~~ and the state shall have the right to a
 701 hearing before the committing court. Evidence at such hearing
 702 may be presented by the hospital administrator or the
 703 administrator's designee as well as by the state and the
 704 acquittee ~~defendant~~. The acquittee ~~has~~ ~~defendant~~ shall have the
 705 right to counsel at any such hearing. In the event that an
 706 acquittee ~~a defendant~~ is determined to be indigent pursuant to
 707 s. 27.52, the public defender shall represent the acquittee
 708 ~~defendant~~. The parties shall have access to the acquittee's
 709 ~~defendant's~~ records at the treating facilities and may interview
 710 or depose personnel who have had contact with the acquittee
 711 ~~defendant~~ at the treating facilities.

712 Section 13. Section 916.17, Florida Statutes, is amended
 713 to read:

714 916.17 Conditional release.—

715 (1) Except for an inmate currently serving a prison
 716 sentence, the committing court may order a conditional release
 717 of any defendant or acquittee in lieu of an involuntary
 718 commitment to a facility pursuant to s. 916.13 or s. 916.15
 719 based upon an approved plan for providing appropriate outpatient
 720 care and treatment. Upon a recommendation that outpatient
 721 treatment of the defendant or acquittee is appropriate, a
 722 written plan for outpatient treatment, including recommendations

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723 from qualified professionals, must be filed with the court, with
724 copies to all parties. Such a plan may also be submitted by the
725 defendant or acquittee and filed with the court with copies to
726 all parties. The plan shall include:

727 (a) Special provisions for residential care or adequate
728 supervision of the defendant or acquittee.

729 (b) Provisions for outpatient mental health services.

730 (c) If appropriate, recommendations for auxiliary services
731 such as vocational training, educational services, or special
732 medical care.

733

734 In its order of conditional release, the court shall specify the
735 conditions of release based upon the release plan and shall
736 direct the appropriate agencies or persons to submit periodic
737 reports to the court regarding the defendant's or acquittee's
738 compliance with the conditions of the release and progress in
739 treatment, with copies to all parties.

740 (2) A defendant who otherwise meets the criteria for
741 involuntary commitment under s. 916.13, but whose current most
742 serious charge is a felony of the third degree or a felony of
743 the second degree when the felony did not involve violence, must
744 be placed in a community residential facility for competency
745 restoration unless bed space or funding is unavailable for the
746 community placement or the trial court makes an explicit finding
747 that the defendant cannot be safely managed in such a placement.
748 In making such finding, the court shall consider all of the
749 following:

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750 (a) The nature and seriousness of the crime allegedly
751 committed.

752 (b) The individual's criminal history.

753 (c) The individual's psychiatric history.

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

756 (e) The likelihood that the individual will comply with
757 and benefit from the mental health treatment and services being
758 recommended.

759 (f) The availability of appropriate community-based
760 services and treatment settings.

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

762 ~~(3)-(2)~~ Upon the filing of an affidavit or statement under
763 oath by any person that the defendant or acquittee has failed to
764 comply with the conditions of release, that the defendant's or
765 acquittee's condition has deteriorated to the point that
766 inpatient care is required, or that the release conditions
767 should be modified, the court shall hold a hearing within 7 days
768 after receipt of the affidavit or statement under oath. After
769 the hearing, the court may modify the release conditions. The
770 court may also order that the defendant or acquittee be returned
771 to the department if it is found, after the appointment and
772 report of experts, that the person meets the criteria for
773 involuntary commitment under s. 916.13 or s. 916.15.

774 ~~(4)-(3)~~ If at any time it is determined after a hearing
775 that the defendant who has been conditionally released under
776 subsection (1) no longer requires court-supervised followup
777 care, the court shall terminate its jurisdiction in the cause

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778 and discharge the defendant or acquittee.

779 Section 14. Subsection (1) of section 985.19, Florida
780 Statutes, is amended to read:

781 985.19 Incompetency in juvenile delinquency cases.—

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

788 (a) Any motion questioning the child's competency to
789 proceed must be served upon the child's attorney, the state
790 attorney, the attorneys representing the department ~~of Juvenile~~
791 ~~Justice~~, and the attorneys representing the Department of
792 Children and Family Services. Thereafter, any motion, notice of
793 hearing, order, or other legal pleading relating to the child's
794 competency to proceed with the hearing must be served upon the
795 child's attorney, the state attorney, the attorneys representing
796 the department ~~of Juvenile Justice~~, and the attorneys
797 representing the Department of Children and Family Services.

798 (b) All determinations of competency must ~~shall~~ be made at
799 a hearing, with findings of fact based on an evaluation of the
800 child's mental condition made by at least ~~not less than~~ two but
801 not ~~nor~~ more than three experts appointed by the court. The
802 basis for the determination of incompetency must be specifically
803 stated in the evaluation and must be conducted so as to ensure
804 uniform application of the criteria enumerated in Rule 8.095,
805 Florida Rules of Juvenile Procedure. ~~In addition, A~~

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806 recommendation as to whether residential or nonresidential
807 treatment or training is required must be included in the
808 evaluation. Experts appointed by the court to determine the
809 mental condition of a child shall be allowed reasonable fees for
810 services rendered. State employees may be paid expenses pursuant
811 to s. 112.061. The fees shall be taxed as costs in the case.

812 (c) All court orders determining incompetency must include
813 specific written findings by the court as to the nature of the
814 incompetency and whether the child requires a secure or
815 nonsecure treatment or training environment environments.

816 (d) The evaluation of juveniles for competency to proceed
817 shall be conducted in a manner that ensures the uniform
818 application of the criteria in Rule 8.095, Florida Rules of
819 Juvenile Procedure. The Department of Children and Family
820 Services shall develop the following:

821 1. A plan for training mental health professionals to
822 perform forensic evaluations and for standardizing the criteria
823 and procedures to be used in such evaluations.

824 2. Clinical protocols and procedures based on the criteria
825 in Rule 8.095, Florida Rules of Juvenile Procedure..

826 3. Training for mental health professionals in the
827 application of these protocols and procedures for performing
828 forensic evaluations and providing reports to the courts.

829 4. Procedures for evaluating the success of the program,
830 including the number of persons trained, the cost of operating
831 the program, and the effect on the quality of forensic
832 evaluations as measured by the appropriateness of admissions to

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833 the Department of Children and Family Services' juvenile
834 competent-to-proceed programs.

835 (e)-(d) For competency ~~incompetency~~ evaluations related to
836 mental illness, the Department of Children and Family Services
837 shall maintain and annually provide the courts with a forensic
838 evaluator registry ~~list~~ of available mental health professionals
839 who have completed the approved a training as experts pursuant
840 to this section ~~program approved by the Department of Children~~
841 and ~~Family Services to perform the evaluations.~~ To the extent
842 possible, the appointed expert shall be a psychiatrist or
843 licensed psychologist.

844 (f) Appointed experts shall have completed forensic
845 evaluator training as follows:

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

850 2. Beginning July 1, 2011, experts shall remain on the
851 registry if they have completed or retaken the required training
852 within the previous 5 years. Those who have not completed the
853 required training within the previous 5 years must be removed
854 from the registry and shall not conduct evaluations for the
855 courts.

856 3. A mental health professional who has completed the
857 training course within the previous 5 years must maintain
858 documentation of having completed the required training and
859 provide current contact information to the Department of
860 Children and Family Services.

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861 (g)~~(e)~~ For competency ~~incompetency~~ evaluations related to
862 mental retardation or autism, the court shall order the Agency
863 for Persons with Disabilities to examine the child to determine
864 if the child meets the definition of "retardation" or "autism"
865 in s. 393.063 and, if so, whether the child is competent to
866 proceed with delinquency proceedings.

867 (h)~~(f)~~ A child is competent to proceed if the child has
868 sufficient present ability to consult with counsel with a
869 reasonable degree of rational understanding and the child has a
870 rational and factual understanding of the present proceedings.
871 The report must address the child's capacity to:

- 872 1. Appreciate the charges or allegations against the
873 child.
- 874 2. Appreciate the range and nature of possible penalties
875 that may be imposed in the proceedings against the child, if
876 applicable.
- 877 3. Understand the adversarial nature of the legal process.
- 878 4. Disclose to counsel facts pertinent to the proceedings
879 at issue.
- 880 5. Display appropriate courtroom behavior.
- 881 6. Testify relevantly.

882 (i)~~(g)~~ Immediately upon the filing of the court order
883 finding a child incompetent to proceed, the clerk of the court
884 shall notify the Department of Children and Family Services and
885 the Agency for Persons with Disabilities and fax or hand deliver
886 to the department and to the agency a referral packet that
887 includes, at a minimum, the court order, the charging documents,
888 the petition, and the court-appointed evaluator's reports.

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889 (j)~~(h)~~ After placement of the child in the appropriate
890 setting, the Department of Children and Family Services in
891 consultation with the Agency for Persons with Disabilities, as
892 appropriate, must, within 30 days after placement of the child,
893 prepare and submit to the court a treatment or training plan for
894 the child's restoration of competency. A copy of the plan must
895 be served upon the child's attorney, the state attorney, and the
896 attorneys representing the Department of Juvenile Justice.

897 Section 15. This act shall take effect July 1, 2010.