

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 requiring 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.; requiring recommendations and a
33 | report on adding home and community-based mental health
34 | services to the optional Medicaid services offered by the
35 | state Medicaid program; amending s. 916.106, F.S.;;
36 | providing definitions; amending s. 916.107, F.S.;;
37 | including certain conditional releasees within certain
38 | provisions relating to procedures for persons admitted to
39 | state forensic mental health treatment facilities who lack
40 | capacity to make informed decisions regarding mental
41 | health treatment; specifying treatment procedures for a
42 | client admitted to a state forensic mental health
43 | treatment facility who lacks the capacity to make an
44 | informed decision regarding mental health treatment at the
45 | time of admission; amending s. 916.111, F.S.;; providing
46 | for forensic evaluator training for mental health experts;
47 | amending s. 916.115, F.S.;; requiring court-appointed
48 | experts to have completed forensic evaluator training;
49 | requiring the court-appointed expert to be a psychiatrist
50 | or a licensed psychologist; requiring the Department of
51 | Children and Family Services to maintain and annually
52 | provide the courts with a forensic evaluator registry;
53 | amending s. 916.13, F.S.;; providing a timeframe for the
54 | holding of a competency hearing; amending s. 916.15, F.S.;;
55 | providing a timeframe for the holding of a commitment
56 | hearing; amending s. 916.17, F.S.;; requiring that certain

57 | defendants be placed in a community residential facility
 58 | for competency restoration in demonstration areas
 59 | established under the Community Mental Health and
 60 | Substance Abuse Treatment and Crime Reduction Act;
 61 | providing exceptions; providing requirements for a report
 62 | concerning a child who is found incompetent to proceed;
 63 | amending s. 985.19, F.S.; requiring that the basis for the
 64 | determination of incompetency of juveniles be conducted so
 65 | as to ensure uniform application of specified criteria;
 66 | requiring development of plans and requirements relating
 67 | to forensic evaluations; requiring that appointed experts
 68 | complete the forensic evaluator training program by
 69 | specified dates; providing an effective date.

70 |

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

72 |

73 | Section 1. Section 394.4656, Florida Statutes, is created
 74 | to read:

75 | 394.4656 Community Mental Health and Substance Abuse
 76 | Treatment and Crime Reduction Act.—

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

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

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

96 (a) Ensure public safety.

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

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

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

105 (e) Reduce rates of arrest, incarceration, and
106 reincarceration.

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

110 (g) Support collaboration among state and local
111 stakeholders, including law enforcement agencies, courts, state
112 agencies, jails, county government, service providers,

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113 individuals with mental illnesses or co-occurring mental
114 illnesses and substance abuse disorders, family members,
115 advocates, and other community members.

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

117 (a) "Agency" means the Agency for Health Care
118 Administration.

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

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

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

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

138 (f) "Forensic intensive care management" means activities
139 addressing the comprehensive psychiatric, social, and support
140 needs of individuals who are diagnosed as having serious and

141 persistent mental illnesses, co-occurring disorders, or severe
 142 emotional disturbances, and who are involved in the criminal
 143 justice system and receiving services under this section.
 144 Activities include, but are not limited to, service planning,
 145 service coordination, monitoring, and assistance with accessing
 146 federal, state, and local benefits necessary to sustain a person
 147 in the community.

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

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

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

- 159 1. Mental health courts.
- 160 2. Diversion programs.
- 161 3. Alternative prosecution and sentencing techniques.
- 162 4. Crisis intervention teams.
- 163 5. Specialized training for criminal justice, juvenile
 164 justice, and treatment services professionals.
- 165 6. Specialized probation officers at the state and county
 166 levels to serve individuals under correctional control in the
 167 community.

168 7. Collateral services such as supported, transitional,
169 and permanent housing, and supported employment.

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

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

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

180 2. Secure residential placement for initial service
181 delivery and stabilization.

182 3. Forensic intensive care management.

183 4. Supported housing.

184 5. Supported employment.

185 6. Medication management.

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

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

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

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

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

202 12. Other services or supports as identified.

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

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

216 (b) Adults who have been committed to a state forensic
217 mental health treatment facility after being adjudicated
218 incompetent to proceed or not guilty by reason of insanity, and
219 who are released or who are pending release to the community by
220 the court after completing competency restoration services or

221 being found to no longer meet the criteria for continued
222 commitment placement.

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

227 (d) Children deemed incompetent to proceed under s.
228 985.19.

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

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

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

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

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

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

- 249 1. The number of individuals diverted from state forensic
 250 mental health treatment facilities.
- 251 2. The number of individuals diverted from the criminal
 252 justice system.
- 253 3. The rates of arrest, incarceration, and reincarceration
 254 for new criminal offenses.
- 255 4. The rates of employment.
- 256 5. The annual number of days in a crisis stabilization
 257 unit, detoxification facility, short-term residential treatment
 258 program, state civil mental health treatment facility, or state
 259 forensic mental health treatment facility.
- 260 (f) Monitor contracts for compliance with terms and assess
 261 performance under contracts and provide an annual report by
 262 October 1 to the Governor, the President of the Senate, the
 263 Speaker of the House of Representatives, the Chief Justice of
 264 the Florida Supreme Court, and the State Courts Administrator on
 265 the implementation status of the Community Mental Health and
 266 Substance Abuse Treatment and Crime Reduction Act.
- 267 (7) IMPLEMENTATION.—The department shall implement this
 268 section within available resources. In expectation of statewide
 269 implementation of this section, the department, in consultation
 270 with the agency, may identify geographic areas of the state for
 271 initial implementation of up to three pilot program sites.
 272 Future expansion must have legislative approval and shall be
 273 based on findings of community readiness and the potential for
 274 affecting the greatest number of individuals entering the
 275 forensic mental health and criminal justice systems. Criteria

276 for selection of the pilot program sites and future expansion
 277 may include:

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

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

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

288 (d) Other elements determined by the department in
 289 consultation with the agency.

290 Section 2. Paragraph (b) of subsection (11) of section
 291 394.655, Florida Statutes, is amended to read:

292 394.655 The Substance Abuse and Mental Health Corporation;
 293 powers and duties; composition; evaluation and reporting
 294 requirements.—

295 (11)

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

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

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

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

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

314 | 394.656 Criminal Justice, Mental Health, and Substance
 315 | Abuse Reinvestment Grant Program.—

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

330 under the program or have piloted a community-based diversion
 331 program.

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

334 394.657 County planning councils or committees.—

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

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

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

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

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

382 (28) HOME AND COMMUNITY-BASED SERVICES.—The agency shall
 383 make plans and develop recommendations to obtain federal
 384 financial participation for individuals receiving services under
 385 the Community Mental Health and Substance Abuse Treatment and

386 Crime Reduction Act pursuant to s. 394.4656. The plans may be
 387 limited to services for a select number of eligible individuals
 388 who have incomes up to 150 percent of the federal poverty level.
 389 The agency shall coordinate with the department to select and
 390 define the services that will be included in the
 391 recommendations. The agency shall report the recommendations to
 392 the Speaker of the House of Representative and the President of
 393 the Senate by July 1, 2011.

394 Section 6. Subsections (1) through (4) of section 916.106,
 395 Florida Statutes, are renumbered as subsections (2) through (5),
 396 respectively, current subsections (5) through (17) of that
 397 section are renumbered as subsections (7) through (19),
 398 respectively, and new subsections (1) and (6) are added to that
 399 section, to read:

400 916.106 Definitions.—For the purposes of this chapter, the
 401 term:

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

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

406 Section 7. Paragraph (a) of subsection (3) of section
 407 916.107, Florida Statutes, is amended to read:

408 916.107 Rights of forensic clients.—

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

410 (a) A forensic client or a person placed on conditional
 411 release in a crisis stabilization unit or a short-term
 412 residential treatment facility shall be asked to give express
 413 and informed written consent for treatment. If a client or such

414 a conditional releasee refuses such treatment as is deemed
415 necessary and essential by his or her ~~the client's~~
416 multidisciplinary treatment team for his or her ~~the~~ appropriate
417 care ~~of the client~~, such treatment may be provided under the
418 following circumstances:

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

440 2. In a situation other than an emergency situation, the
441 administrator or designee of the civil or forensic facility,

442 crisis stabilization unit, or short-term residential treatment
443 facility shall petition the court for an order authorizing
444 necessary and essential treatment for the client or conditional
445 releasee.

446 a. If the client has been receiving psychotherapeutic
447 medication at the jail at the time of transfer to the state
448 forensic mental health treatment facility and lacks the capacity
449 to make an informed decision regarding mental health treatment
450 at the time of admission, the admitting physician may order a
451 continuation of the psychotherapeutic medication if, in the
452 clinical judgment of the physician, abrupt cessation of the
453 psychotherapeutic medication could cause a risk to the health
454 and safety of the client during the time a court order to
455 medicate is pursued. The jail physician shall provide a current
456 psychotherapeutic medication order at the time of transfer to
457 the state mental health treatment facility.

458 b. The court order shall allow such treatment for up to a
459 ~~period not to exceed~~ 90 days after following the date of the
460 entry of the order. Unless the court is notified in writing that
461 the client or conditional releasee has provided express and
462 informed consent in writing or that he or she ~~the client~~ has
463 been discharged by the committing court, the administrator or
464 designee shall, before ~~prior to~~ the expiration of the initial
465 90-day order, petition the court for an order authorizing the
466 continuation of treatment for another 90 days ~~90-day period~~.
467 This procedure shall be repeated until the client or conditional
468 releasee provides consent or is discharged by the committing
469 court.

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

- 482 a. The individual's ~~client's~~ expressed preference
483 regarding treatment;
- 484 b. The probability of adverse side effects;
- 485 c. The prognosis without treatment; and
- 486 d. The prognosis with treatment.

487

488 The hearing shall be as convenient to the client or conditional
489 releasee as may be consistent with orderly procedure and shall
490 be conducted in physical settings not likely to be injurious to
491 his or her ~~the client's~~ condition. The court may appoint a
492 general or special magistrate to preside at the hearing. The
493 client or conditional releasee or his or her ~~the client's~~
494 guardian, and the representative, shall be provided with a copy
495 of the petition and the date, time, and location of the hearing.
496 The client or conditional releasee has the right to have an
497 attorney represent him or her at the hearing, and, if the client

498 or conditional releasee is indigent, the court shall appoint the
499 office of the public defender to represent him or her ~~the client~~
500 at the hearing. The client or conditional releasee may testify
501 or not, as he or she chooses, and has the right to cross-examine
502 witnesses and may present his or her own witnesses.

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

505 916.111 Training of mental health experts.—The evaluation
506 of defendants for competency to proceed or for sanity at the
507 time of the commission of the offense shall be conducted ~~in such~~
508 ~~a way~~ as to ensure uniform application of the criteria
509 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal
510 Procedure.

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

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

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

522 (b) A mental health professional who has completed the
523 training course within the previous 5 years must maintain
524 documentation of completion of the required training course and
525 provide current contact information to the department.

526 (3) The department shall develop, and may contract with
527 accredited institutions:

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

529 1.(a) A plan for training mental health professionals to
530 perform forensic evaluations and to standardize the criteria and
531 procedures to be used in these evaluations;

532 ~~2.(b)~~ Clinical protocols and procedures based upon the
533 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
534 Procedure; and

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

538 ~~(b)(2)~~ To compile and maintain the necessary information
539 for evaluating the success of this program, including the number
540 of persons trained, the cost of operating the program, and the
541 effect on the quality of forensic evaluations as measured by
542 appropriateness of admissions to state forensic facilities and
543 to community-based care programs.

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

546 916.115 Appointment of experts.—

547 (1) The court shall appoint no more than three experts to
548 determine the mental condition of a defendant in a criminal
549 case, including competency to proceed, insanity, involuntary
550 placement, and treatment. The experts may evaluate the defendant
551 in jail or in another appropriate local facility or in a
552 facility of the Department of Corrections.

553 (a) To the extent possible, the appointed experts ~~shall~~
 554 ~~have completed forensic evaluator training approved by the~~
 555 ~~department, and each shall be psychiatrists or a psychiatrist,~~
 556 licensed psychologists ~~psychologist, or physician.~~

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

561 Section 10. Subsection (2) of section 916.13, Florida
 562 Statutes, is amended to read:

563 916.13 Involuntary commitment of defendant adjudicated
 564 incompetent.—

565 (2) A defendant who has been charged with a felony and who
 566 has been adjudicated incompetent to proceed due to mental
 567 illness, and who meets the criteria for involuntary commitment
 568 ~~to the department under the provisions of this chapter,~~ may be
 569 committed to the department, and the department shall retain and
 570 treat the defendant.

571 (a) Within ~~No later than~~ 6 months after the date of
 572 admission and at the end of any period of extended commitment,
 573 or at any time the administrator or designee has ~~shall have~~
 574 determined that the defendant has regained competency to proceed
 575 or no longer meets the criteria for continued commitment, the
 576 administrator or designee shall file a report with the court
 577 pursuant to the applicable Florida Rules of Criminal Procedure.

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

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581 Section 11. Section 916.15, Florida Statutes, is amended
582 to read:

583 916.15 Involuntary commitment of defendant adjudicated not
584 guilty by reason of insanity.—

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

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

593 (3) Every acquittee ~~defendant acquitted of criminal~~
594 ~~charges by reason of insanity and found to meet the criteria for~~
595 involuntary commitment may be committed and treated in
596 accordance with the provisions of this section and the
597 applicable Florida Rules of Criminal Procedure. The department
598 shall admit an acquittee ~~a defendant so adjudicated~~ to an
599 appropriate facility or program for treatment and shall retain
600 and treat such acquittee ~~defendant~~. No later than 6 months after
601 the date of admission, prior to the end of any period of
602 extended commitment, or at any time the administrator or
603 designee shall have determined that the acquittee ~~defendant~~ no
604 longer meets the criteria for continued commitment placement,
605 the administrator or designee shall file a report with the court
606 pursuant to the applicable Florida Rules of Criminal Procedure.

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

610 (5)~~(4)~~ In all proceedings under this section, both the
611 acquittee ~~defendant~~ and the state shall have the right to a
612 hearing before the committing court. Evidence at such hearing
613 may be presented by the hospital administrator or the
614 administrator's designee as well as by the state and the
615 acquittee ~~defendant~~. The acquittee ~~has~~ ~~defendant~~ ~~shall have~~ the
616 right to counsel at any such hearing. In the event that an
617 acquittee ~~a defendant~~ is determined to be indigent pursuant to
618 s. 27.52, the public defender shall represent the acquittee
619 ~~defendant~~. The parties shall have access to the acquittee's
620 ~~defendant's~~ records at the treating facilities and may interview
621 or depose personnel who have had contact with the acquittee
622 ~~defendant~~ at the treating facilities.

623 Section 12. Section 916.17, Florida Statutes, is amended
624 to read:

625 916.17 Conditional release.—

626 (1) Except for an inmate currently serving a prison
627 sentence, the committing court may order a conditional release
628 of any defendant or acquittee in lieu of an involuntary
629 commitment to a facility pursuant to s. 916.13 or s. 916.15
630 based upon an approved plan for providing appropriate outpatient
631 care and treatment. Upon a recommendation that outpatient
632 treatment of the defendant or acquittee is appropriate, a
633 written plan for outpatient treatment, including recommendations
634 from qualified professionals, must be filed with the court, with

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635 copies to all parties. Such a plan may also be submitted by the
636 defendant or acquittee and filed with the court with copies to
637 all parties. The plan shall include:

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

640 (b) Provisions for outpatient mental health services.

641 (c) If appropriate, recommendations for auxiliary services
642 such as vocational training, educational services, or special
643 medical care.

644

645 In its order of conditional release, the court shall specify the
646 conditions of release based upon the release plan and shall
647 direct the appropriate agencies or persons to submit periodic
648 reports to the court regarding the defendant's or acquittee's
649 compliance with the conditions of the release and progress in
650 treatment, with copies to all parties.

651 (2) A defendant who otherwise meets the criteria for
652 involuntary commitment under s. 916.13, but whose current most
653 serious charge is a felony of the third degree or a felony of
654 the second degree when the felony did not involve violence, must
655 be placed in a community residential facility in a pilot program
656 site referenced in s. 394.4656(7), for competency restoration
657 unless bed space or funding is unavailable for the community
658 placement or the trial court makes an explicit finding that the
659 defendant cannot be safely managed in such a placement. In
660 making such finding, the court shall consider all of the
661 following:

662 (a) The nature and seriousness of the crime allegedly
663 committed.

664 (b) The individual's criminal history.

665 (c) The individual's psychiatric history.

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

668 (e) The likelihood that the individual will comply with
669 and benefit from the mental health treatment and services being
670 recommended.

671 (f) The availability of appropriate community-based
672 services and treatment settings.

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

674 (3)-(2) Upon the filing of an affidavit or statement under
675 oath by any person that the defendant or acquittee has failed to
676 comply with the conditions of release, that the defendant's or
677 acquittee's condition has deteriorated to the point that
678 inpatient care is required, or that the release conditions
679 should be modified, the court shall hold a hearing within 7 days
680 after receipt of the affidavit or statement under oath. After
681 the hearing, the court may modify the release conditions. The
682 court may also order that the defendant or acquittee be returned
683 to the department if it is found, after the appointment and
684 report of experts, that the person meets the criteria for
685 involuntary commitment under s. 916.13 or s. 916.15.

686 (4)-(3) If at any time it is determined after a hearing
687 that the defendant who has been conditionally released under
688 subsection (1) no longer requires court-supervised followup
689 care, the court shall terminate its jurisdiction in the cause

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690 and discharge the defendant or acquittee.

691 Section 13. Subsection (1) of section 985.19, Florida
692 Statutes, is amended to read:

693 985.19 Incompetency in juvenile delinquency cases.—

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

700 (a) Any motion questioning the child's competency to
701 proceed must be served upon the child's attorney, the state
702 attorney, the attorneys representing the department ~~of Juvenile~~
703 ~~Justice~~, and the attorneys representing the Department of
704 Children and Family Services. Thereafter, any motion, notice of
705 hearing, order, or other legal pleading relating to the child's
706 competency to proceed with the hearing must be served upon the
707 child's attorney, the state attorney, the attorneys representing
708 the department ~~of Juvenile Justice~~, and the attorneys
709 representing the Department of Children and Family Services.

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

718 recommendation as to whether residential or nonresidential
719 treatment or training is required must be included in the
720 evaluation. Experts appointed by the court to determine the
721 mental condition of a child shall be allowed reasonable fees for
722 services rendered. State employees may be paid expenses pursuant
723 to s. 112.061. The fees shall be taxed as costs in the case.

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

728 (d) The evaluation of juveniles for competency to proceed
729 shall be conducted in a manner that ensures the uniform
730 application of the criteria in Rule 8.095, Florida Rules of
731 Juvenile Procedure. The Department of Children and Family
732 Services shall develop the following:

733 1. A plan for training mental health professionals to
734 perform forensic evaluations and for standardizing the criteria
735 and procedures to be used in such evaluations.

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

738 3. Training for mental health professionals in the
739 application of these protocols and procedures for performing
740 forensic evaluations and providing reports to the courts.

741 4. Procedures for evaluating the success of the program,
742 including the number of persons trained, the cost of operating
743 the program, and the effect on the quality of forensic
744 evaluations as measured by the appropriateness of admissions to

745 the Department of Children and Family Services' juvenile
746 competent-to-proceed programs.

747 (e)-(d) For competency ~~incompetency~~ evaluations related to
748 mental illness, the Department of Children and Family Services
749 shall maintain and annually provide the courts with a forensic
750 evaluator registry ~~list~~ of available mental health professionals
751 who have completed the approved a training as experts pursuant
752 to this section ~~program approved by the Department of Children~~
753 and ~~Family Services to perform the evaluations.~~ To the extent
754 possible, the appointed expert shall be a psychiatrist or
755 licensed psychologist.

756 (f) Appointed experts shall have completed forensic
757 evaluator training as follows:

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

762 2. Beginning July 1, 2011, experts shall remain on the
763 registry if they have completed or retaken the required training
764 within the previous 5 years. Those who have not completed the
765 required training within the previous 5 years must be removed
766 from the registry and shall not conduct evaluations for the
767 courts.

768 3. A mental health professional who has completed the
769 training course within the previous 5 years must maintain
770 documentation of having completed the required training and
771 provide current contact information to the Department of
772 Children and Family Services.

773 (g)~~(e)~~ For competency ~~incompetency~~ evaluations related to
 774 mental retardation or autism, the court shall order the Agency
 775 for Persons with Disabilities to examine the child to determine
 776 if the child meets the definition of "retardation" or "autism"
 777 in s. 393.063 and, if so, whether the child is competent to
 778 proceed with delinquency proceedings.

779 (h)~~(f)~~ A child is competent to proceed if the child has
 780 sufficient present ability to consult with counsel with a
 781 reasonable degree of rational understanding and the child has a
 782 rational and factual understanding of the present proceedings.
 783 The report must address the child's capacity to:

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

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

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

809 Section 14. This act shall take effect July 1, 2010.