

1 A bill to be entitled
2 An act relating to forensic mental health; amending s.
3 394.457, F.S.; providing additional responsibilities for
4 certain contractors of the Department of Children and
5 Family Services; requiring the department to examine
6 opportunities for set-asides for service providers that
7 have supportive employment programs; authorizing the
8 department to make certain training available to
9 correctional personnel; amending s. 394.4655, F.S.;
10 providing for involuntary outpatient treatment plans that
11 require patients to take all prescribed medications in
12 certain circumstances; amending s. 916.107, F.S.;
13 requiring that certain adults with serious and persistent
14 mental illnesses in the state correctional system who do
15 not pose a public safety risk receive a forensic mental
16 health transition plan for treatment in a residential
17 setting; providing plan requirements; amending s. 916.13,
18 F.S.; providing timeframes for competency hearings to be
19 held for defendants adjudicated incompetent; amending s.
20 916.15, F.S.; providing timeframes for commitment hearings
21 to be held for defendants adjudicated not guilty by reason
22 of insanity; amending s. 916.145, F.S.; reducing from 5
23 years to 2 years the period after which charges may be
24 dismissed without prejudice against a defendant
25 adjudicated incompetent to proceed due to the defendant's
26 mental illness, but permitting a judge to extend the
27 period to a maximum of 5 years; providing for dismissal of
28 charges in a shorter period of time if the defendant

29 | agrees to a conditional release plan meeting specified
30 | requirements; amending s. 916.17, F.S.; limiting the
31 | duration of conditional release orders issued for
32 | defendants in lieu of an involuntary commitment to a
33 | facility; providing for periodic review of such orders;
34 | providing for modification of such orders for medication
35 | compliance; providing for issuance of a new conditional
36 | release order upon expiration of such an order; amending
37 | s. 945.025, F.S.; requiring that prison medical facilities
38 | include specialized mental health treatment wards whenever
39 | possible; requiring the Department of Corrections to,
40 | within current resources, create crisis intervention teams
41 | to respond to behavioral outbursts by mentally ill
42 | inmates; amending s. 945.48, F.S.; requiring the
43 | Department of Corrections to, within current available
44 | resources, provide mental health training to correctional
45 | personnel who are likely to come in contact with mentally
46 | ill inmates; requiring the department to adopt policies
47 | and procedures concerning the use of chemical restraints
48 | on mentally ill inmates; amending s. 948.001, F.S.;
49 | defining the term "department" for purposes of ch. 948,
50 | F.S.; creating s. 948.0395, F.S.; providing for creation
51 | of a forensic mental health probation and parole program;
52 | providing program requirements; providing for designation
53 | of certain correctional probation officers as forensic
54 | probation officers; providing for establishment of
55 | requirements for such officers; providing duties for such
56 | officers; providing for an advisory workgroup; authorizing

57 | the chief judge of each circuit judge to establish a
 58 | mental health court; providing requirements for such
 59 | courts; authorizing specified activities by such courts;
 60 | requiring each court to have a coordinator for certain
 61 | aspects of the court's operations; requiring that such
 62 | courts be funded from existing revenues or from a
 63 | specified grant program; requiring the Department of
 64 | Children and Family Services to adopt certain rules
 65 | relating to supportive housing for persons released from
 66 | inpatient forensic mental health programs; requiring a
 67 | study of causes that impact the incarceration of the
 68 | mentally ill in state and local correctional facilities by
 69 | the Office of Program Policy Analysis and Government
 70 | Accountability; requiring a report to the Legislature by a
 71 | specified date; providing an effective date.

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

74 |
 75 | Section 1. Paragraphs (c) and (d) are added to subsection
 76 | (2) of section 394.457, Florida Statutes, and subsections (8)
 77 | and (9) are added to that section, to read:

78 | 394.457 Operation and administration.—

79 | (2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is
 80 | responsible for:

81 | (c) Ensuring that each state contract mental health agency
 82 | that works with individuals who are under forensic mental health
 83 | probation and parole:

84 1. Ensures that each person enrolled in the probation and
 85 parole program shall have a forensic case manager who is working
 86 towards reducing the need for institutional placement.

87 2. Coordinates between the forensic probation and parole
 88 program, mental health court, and other agencies needed to help
 89 improve access to care.

90 (d) All forensic mental health programs and contracts
 91 shall be supervised by the central office staff of the
 92 department in cooperation with each circuit administrator.

93 (8) SUPPORTIVE EMPLOYMENT PROGRAMS.— The department,
 94 within current resources, shall examine opportunities to
 95 generate cost savings through the use of set-aside agreements
 96 with supportive employment programs that serve forensic mental
 97 health consumers living in the community under plans of
 98 conditional release.

99 (9) TRAINING FOR CORRECTIONAL PERSONNEL.—The department
 100 may make available training on the special needs of adult
 101 forensic mental health inmates incarcerated in state
 102 correctional facilities operated by the Department of
 103 Corrections or a private vendor to the staffs of these
 104 institutions.

105 Section 2. Paragraph (a) of subsection (2) of section
 106 394.4655, Florida Statutes, is amended to read:

107 394.4655 Involuntary outpatient placement.—

108 (2) INVOLUNTARY OUTPATIENT PLACEMENT.—

109 (a)1. A patient who is being recommended for involuntary
 110 outpatient placement by the administrator of the receiving
 111 facility where the patient has been examined may be retained by

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112 the facility after adherence to the notice procedures provided
113 in s. 394.4599. The recommendation must be supported by the
114 opinion of a psychiatrist and the second opinion of a clinical
115 psychologist or another psychiatrist, both of whom have
116 personally examined the patient within the preceding 72 hours,
117 that the criteria for involuntary outpatient placement are met.
118 However, in a county having a population of fewer than 50,000,
119 if the administrator certifies that a psychiatrist or clinical
120 psychologist is not available to provide the second opinion, the
121 second opinion may be provided by a licensed physician who has
122 postgraduate training and experience in diagnosis and treatment
123 of mental and nervous disorders or by a psychiatric nurse. Any
124 second opinion authorized in this subparagraph may be conducted
125 through a face-to-face examination, in person or by electronic
126 means. Such recommendation must be entered on an involuntary
127 outpatient placement certificate that authorizes the receiving
128 facility to retain the patient pending completion of a hearing.
129 The certificate shall be made a part of the patient's clinical
130 record.

131 2. If the patient has been stabilized and no longer meets
132 the criteria for involuntary examination pursuant to s.
133 394.463(1), the patient must be released from the receiving
134 facility while awaiting the hearing for involuntary outpatient
135 placement. Before filing a petition for involuntary outpatient
136 treatment, the administrator of a receiving facility or a
137 designated department representative must identify the service
138 provider that will have primary responsibility for service
139 provision under an order for involuntary outpatient placement,

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140 unless the person is otherwise participating in outpatient
141 psychiatric treatment and is not in need of public financing for
142 that treatment, in which case the individual, if eligible, may
143 be ordered to involuntary treatment pursuant to the existing
144 psychiatric treatment relationship.

145 3. The service provider shall prepare a written proposed
146 treatment plan in consultation with the patient or the patient's
147 guardian advocate, if appointed, for the court's consideration
148 for inclusion in the involuntary outpatient placement order. The
149 service provider shall also provide a copy of the proposed
150 treatment plan to the patient and the administrator of the
151 receiving facility. The treatment plan must specify the nature
152 and extent of the patient's mental illness, address the
153 reduction of symptoms that necessitate involuntary outpatient
154 placement, and include measurable goals and objectives for the
155 services and treatment that are provided to treat the person's
156 mental illness and assist the person in living and functioning
157 in the community or to prevent a relapse or deterioration.
158 Service providers may select and supervise other individuals to
159 implement specific aspects of the treatment plan. The services
160 in the treatment plan must be deemed clinically appropriate by a
161 physician, clinical psychologist, psychiatric nurse, mental
162 health counselor, marriage and family therapist, or clinical
163 social worker who consults with, or is employed or contracted
164 by, the service provider. The service provider must certify to
165 the court in the proposed treatment plan whether sufficient
166 services for improvement and stabilization are currently
167 available and whether the service provider agrees to provide

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168 those services. If the service provider certifies that the
169 services in the proposed treatment plan are not available, the
170 petitioner may not file the petition.

171 4. If the patient is to be supervised by a forensic mental
172 health case manager, the plan may require the patient to take
173 all prescribed medications.

174 Section 3. Subsection (12) is added to section 916.107,
175 Florida Statutes, to read:

176 916.107 Rights of forensic clients.—

177 (12) FORENSIC MENTAL HEALTH TRANSITION PLAN.—Adults with
178 serious and persistent mental illnesses who are incarcerated in
179 state correctional facilities and who do not pose a public
180 safety risk as determined by a judge and can be cared for in a
181 less expensive residential setting that will generate state
182 savings are eligible to participate in a forensic mental health
183 transition plan created by the Department of Corrections in
184 cooperation with the Department of Children and Family Services.
185 The forensic mental health transition plan shall allow a person
186 with serious and persistent mental illness to be transitioned to
187 a licensed and Department of Children and Family Services
188 approved step-down bed under a court-approved plan of
189 conditional release for the purpose of improving the care and
190 treatment of psychiatric symptoms while ensuring public safety.

191 Section 4. Subsection (2) of section 916.13, Florida
192 Statutes, is amended to read:

193 916.13 Involuntary commitment of defendant adjudicated
194 incompetent.—

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195 (2) A defendant who has been charged with a felony and who
196 has been adjudicated incompetent to proceed due to mental
197 illness, and who meets the criteria for involuntary commitment
198 ~~to the department under the provisions of this chapter,~~ may be
199 committed to the department, and the department shall retain and
200 treat the defendant.

201 (a) Within ~~No later than~~ 6 months after the date of
202 admission and at the end of any period of extended commitment,
203 or at any time the administrator or designee ~~has shall have~~
204 determined that the defendant has regained competency to proceed
205 or no longer meets the criteria for continued commitment, the
206 administrator or designee shall file a report with the court
207 pursuant to the applicable Florida Rules of Criminal Procedure.

208 (b) Within 20 days after the court receives notification
209 that a defendant is competent to proceed or no longer meets the
210 criteria for continued commitment, the defendant shall be
211 transported back to jail pursuant to s. 916.107(10) for the
212 purpose of holding a competency hearing, unless the defendant
213 can be transported directly to the competency hearing without
214 first returning to a county jail. Whenever feasible, defendants
215 should be released to community placement without returning to a
216 county jail.

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

220 Section 5. Subsection (4) of section 916.15, Florida
221 Statutes, is renumbered as subsection (5), and a new subsection
222 (4) is added to that section to read:

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223 916.15 Involuntary commitment of defendant adjudicated not
 224 guilty by reason of insanity.—

225 (4) (a) Within 20 days after the court is notified that a
 226 defendant no longer meets the criteria for involuntary
 227 commitment placement, the defendant shall be transported back to
 228 jail for the purpose of holding a commitment hearing, unless the
 229 defendant can be transported directly to the commitment hearing
 230 without first returning to a county jail. Whenever feasible,
 231 defendants should be released to community placement without
 232 returning to a county jail.

233 (b) The commitment hearing must be held within 30 days
 234 after the court receives notification that the defendant no
 235 longer meets the criteria for continued commitment placement.

236 Section 6. Section 916.145, Florida Statutes, is amended
 237 to read:

238 916.145 Dismissal of charges.—

239 (1) The charges against any defendant adjudicated
 240 incompetent to proceed due to the defendant's mental illness
 241 shall be dismissed without prejudice to the state if the
 242 defendant remains incompetent to proceed ~~2~~ 5 years after such
 243 determination or the court believes that an extension is needed,
 244 in which case the court may extend the period for 1 additional
 245 year at a time until the total time since the determination has
 246 been 5 years, unless the court in its order specifies its
 247 reasons for believing that the defendant will become competent
 248 to proceed within the foreseeable future and specifies the time
 249 within which the defendant is expected to become competent to
 250 proceed. The charges against the defendant are dismissed without

251 | prejudice to the state to refile the charges should the
 252 | defendant be declared competent to proceed in the future.

253 | (2) (a) The charges against any defendant adjudicated
 254 | incompetent to proceed due to the defendant's mental illness may
 255 | be dismissed before the period provided in subsection (1) has
 256 | expired if the defendant enters into an agreement with the
 257 | department and the prosecution to participate in a plan of
 258 | conditional release as follows:

259 | 1. The department shall create a plan for compliance that
 260 | requires treatment of the defendant's mental illness.

261 | 2. The plan shall allow a forensic probation officer and
 262 | the department to track the defendant's compliance with the
 263 | plan.

264 | 3. The supervision of the plan is conducted by a forensic
 265 | case manager and a forensic probation officer.

266 | (b) The criminal charges against a defendant who agrees to
 267 | the plan shall be continued without final disposition for a
 268 | period set out in the plan after the date the defendant was
 269 | released to the plan, if the defendant's participation in the
 270 | plan is satisfactory.

271 | (c) Resumption of pending criminal proceedings shall be
 272 | undertaken at any time if the forensic case manager or state
 273 | attorney finds that the defendant is not fulfilling his or her
 274 | obligations under this plan or if the public interest so
 275 | requires.

276 | (d) At the end of the period set out in the plan, the
 277 | forensic case manager and forensic probation officer shall
 278 | recommend:

279 1. That the case revert to normal channels for prosecution
 280 when the defendant's participation in the plan has been
 281 unsatisfactory;

282 2. That the defendant is in need of further supervision;
 283 or

284 3. That dismissal of charges without prejudice shall be
 285 entered in instances in which prosecution is not deemed
 286 necessary.

287 Section 7. Section 916.17, Florida Statutes, is amended to
 288 read:

289 916.17 Conditional release.—

290 (1) (a) Except for an inmate currently serving a prison
 291 sentence, the committing court may order a conditional release
 292 of any defendant in lieu of an involuntary commitment to a
 293 facility pursuant to s. 916.13 or s. 916.15 based upon an
 294 approved plan for providing appropriate outpatient care and
 295 treatment for a period not to exceed 24 months after the date of
 296 the order. Upon a recommendation that outpatient treatment of
 297 the defendant is appropriate, a written plan for outpatient
 298 treatment, including recommendations from qualified
 299 professionals, must be filed with the court, with copies to all
 300 parties. Such a plan may also be submitted by the defendant and
 301 filed with the court with copies to all parties. The plan shall
 302 include:

303 1.(a) Special provisions for residential care or adequate
 304 supervision of the defendant.

305 2.(b) Provisions for outpatient mental health services.

306 3.(c) If appropriate, recommendations for auxiliary

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307 services such as vocational training, educational services, or
308 special medical care.

309 4. Medication compliance requirements while under
310 conditional release.

311
312 In its order of conditional release, the court shall specify the
313 conditions of release based upon the release plan and shall
314 direct the appropriate agencies or persons to submit periodic
315 reports to the court regarding the defendant's compliance with
316 the conditions of the release and progress in treatment, with
317 copies to all parties.

318 (b) The court shall review the conditional release and the
319 defendant's compliance with those provisions at least once every
320 6 months or, in the court's discretion, more frequently.

321 (c) The court may, upon good cause shown, modify the
322 conditional release order at any time to expand the conditions
323 of the order to comply with the defendant's physician-prescribed
324 medication regimen.

325 (2) Upon the filing of an affidavit or statement under
326 oath by any person that the defendant has failed to comply with
327 the conditions of release, that the defendant's condition has
328 deteriorated to the point that inpatient care is required, or
329 that the release conditions should be modified, the court shall
330 hold a hearing within 7 days after receipt of the affidavit or
331 statement under oath. After the hearing, the court may modify
332 the release conditions. The court may also order that the
333 defendant be returned to the department if it is found, after
334 the appointment and report of experts, that the person meets the

335 criteria for involuntary commitment under s. 916.13 or s.
 336 916.15.

337 (3) If at any time it is determined after a hearing that
 338 the defendant who has been conditionally released under
 339 subsection (1) no longer requires court-supervised followup
 340 care, the court shall terminate its jurisdiction in the cause
 341 and discharge the defendant.

342 (4) If a new conditional release order is recommended by
 343 the department at the end of the period specified in the order
 344 under subsection (1), the department must present competent
 345 evidence that establishes the need for continued court
 346 supervision due to a public safety threat or risk of violence
 347 that might require continued court supervision in order to
 348 obtain such an order. If the court concludes that this need has
 349 been established, the court shall grant a new conditional
 350 release order.

351 Section 8. Subsection (2) of section 945.025, Florida
 352 Statutes, is amended to read:

353 945.025 Jurisdiction of department.—

354 (2) In establishing, operating, and utilizing these
 355 facilities, the department shall attempt, whenever possible, to
 356 avoid the placement of nondangerous offenders who have potential
 357 for rehabilitation with repeat offenders or dangerous offenders.
 358 Medical, mental, and psychological problems shall be diagnosed
 359 and treated and prison medical facilities shall include
 360 specialized mental health treatment wards whenever possible. The
 361 department shall, within current resources, also create crisis
 362 intervention teams within the state correctional system to

363 respond to behavioral outbursts of mentally ill inmates. The
 364 Department of Children and Family Services and the Agency for
 365 Persons with Disabilities shall cooperate to ensure the delivery
 366 of services to persons under the custody or supervision of the
 367 department. When it is the intent of the department to transfer
 368 a mentally ill or retarded prisoner to the Department of
 369 Children and Family Services or the Agency for Persons with
 370 Disabilities, an involuntary commitment hearing shall be held
 371 according to the provisions of chapter 393 or chapter 394.

372 Section 9. Subsection (1) of section 945.48, Florida
 373 Statutes, is amended, and subsection (7) is added to that
 374 section, to read:

375 945.48 Rights of inmates provided mental health treatment;
 376 procedure for involuntary treatment.—

377 (1) RIGHT TO QUALITY TREATMENT.—An inmate in a mental
 378 health treatment facility has the right to receive treatment
 379 that is suited to his or her needs and that is provided in a
 380 humane psychological environment. Such treatment shall be
 381 administered skillfully, safely, and humanely with respect for
 382 the inmate's dignity and personal integrity. The department
 383 shall, within current available resources, provide mental health
 384 training, such as crisis intervention training, to correctional
 385 personnel who are likely to come in contact with mentally ill
 386 inmates.

387 (7) CHEMICAL RESTRAINTS.—The department shall adopt
 388 policies and procedures that must be followed before chemical
 389 agents may be used to control behavior of mentally ill inmates.

390 Section 10. Subsections (4) through (10) of section
 391 948.001, Florida Statutes, are renumbered as subsections (5)
 392 through (11), respectively, and a new subsection (4) is added to
 393 that section to read:

394 948.001 Definitions.—As used in this chapter, the term:

395 (4) "Department" means the Department of Corrections.

396 Section 11. Section 948.0395, Florida Statutes, is created
 397 to read:

398 948.0395 Forensic probation and parole program.—

399 (1) The department shall create a forensic mental health
 400 probation and parole program that shall be responsible for
 401 reentry of mentally ill inmates back into the community.

402 (2) The forensic probation and parole program shall be
 403 focused on compliance with care, supervision of conditional
 404 plans of release, tracking information, and reducing
 405 inappropriate placements and jail utilization. The department
 406 shall make sex offenders with a mental illness a high priority
 407 for supervision and for placement in safe housing that is not
 408 located near locations where children regularly congregate.

409 (3) This program shall be established within the current
 410 department funding and the secretary may reorganize the
 411 probation and parole staff and programs to assist with the
 412 development of the forensic mental health program. The
 413 department may have a probation officer serve in a dual role as
 414 a trained forensic mental health probation officer as well as an
 415 officer for persons who have general probation and parole.

416 (4) (a) The department may designate correctional probation
 417 officers as forensic probation officers.

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418 (b) The department shall establish requirements for such
419 forensic mental health probation officers.

420 (c) Forensic mental health probation officers shall
421 coordinate issues and compliance with the Department of Children
422 and Family Services' forensic case manager and establish plans
423 with the goal of improving plan compliance and reducing the need
424 for incarcerations due to violations.

425 (d) Forensic mental health probation officers shall work
426 with all relevant agencies to further the goals of the forensic
427 mental health program.

428 (5) The department may establish an advisory workgroup to
429 assist it with gathering input, providing professional
430 expertise, and assisting in developing appropriate policies and
431 procedures to ensure implementation of this section.

432 (6) The department shall adopt rules pursuant to ss.
433 120.536(1) and 120.54 to implement the provisions of this
434 section conferring duties upon it.

435 Section 12. (1) The chief judge of each circuit may
436 establish a mental health court to help reduce the cost of
437 managing cases that pertain to persons with mental illnesses who
438 have court involvement and shall supervise the court.

439 (2) Each mental health court shall:

440 (a) Have an advisory workgroup for the purpose of
441 providing input, which shall serve as a coordinating workgroup
442 to help improve access to community-based services and improve
443 access to care for individuals involved with the criminal
444 justice system.

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445 (b) Establish eligibility criteria. Individuals charged
446 with felonies who upon evaluation are considered a minimal
447 threat to public safety may be considered for mental health
448 court involvement.

449 (c) Be focused on improving compliance with mental health
450 care and treatment and may require state agencies to comply with
451 its orders and directives.

452 (d) Supervise the processing of felonies and misdemeanors
453 and determine which cases shall be referred for criminal
454 prosecution and incarceration and those who would be eligible
455 for diversion programs and alternatives.

456 (e) Be the ongoing contact with the criminal justice
457 system for persons found incompetent to proceed and supervise
458 the community control for such persons under s. 916.145(2),
459 Florida Statutes.

460 (f) Process all evaluations for persons charged with a
461 felony and require evaluations for competency to proceed or not
462 guilty by reason of insanity determinations.

463 (3) A mental health court may:

464 (a) Establish drug repository programs and accept unused
465 medications from nursing homes and licensed assisted living
466 facilities to be repackaged and used for mental health court
467 participants who need medications.

468 (b) Provide a waiver of charges and allow the court
469 flexibility in dispositions.

470 (c) Authorize the use of medication algorithms for mental
471 health court participants.

472 (d) Require individuals who are enrolled in Medicaid,
 473 prepaid mental health plans, or Medicaid HMOs to obtain maximum
 474 available reimbursement for all medically necessary services.

475 (4) (a) Each mental health court shall have a coordinator
 476 to run the day-to-day elements of the program.

477 (b) The coordinator shall supervise the forensic mental
 478 health case managers and shall receive reports from the case
 479 managers.

480 (c) The coordinator shall evaluate the threat to public
 481 safety and make recommendations to the court regarding
 482 compliance or appropriateness for court involvement.

483 (5) A mental health court may supervise compliance with
 484 the assisted outpatient treatment laws as such laws relate to
 485 court requirements that outpatients take their medications.

486 (6) Mental health courts shall be funded from within
 487 existing resources or from grants under s. 394.658, Florida
 488 Statutes.

489 Section 13. The Department of Children and Family Services
 490 shall adopt rules pursuant to ss. 120.536(1) and 120.54, Florida
 491 Statutes, that relate to supportive housing for persons released
 492 from inpatient forensic mental health programs to define such
 493 housing and to address the health and safety of and the use of
 494 any state subsidies appropriated for such housing.

495 Section 14. The Office of Program Policy Analysis and
 496 Government Accountability (OPPAGA) shall perform a study of the
 497 forensic mental health system. The study shall examine the
 498 causes that impact the incarceration of the mentally ill in
 499 state and local correctional facilities. The report shall be

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500 | submitted to the President of the Senate and the Speaker of the
501 | House of Representatives by December 31, 2010.

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