

By Senator Baxley

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1                                   A bill to be entitled  
2       An act relating to substance abuse and mental health;  
3       amending s. 394.455, F.S.; revising the definition of  
4       the term "mental illness" to exclude conditions  
5       manifested by dementia or traumatic brain injury;  
6       amending s. 394.674, F.S.; revising eligibility  
7       requirements for certain substance abuse and mental  
8       health services; providing priority for specified  
9       individuals; conforming provisions to changes made by  
10      the act; amending s. 394.908, F.S.; revising the  
11      definition of the term "individuals in need"; revising  
12      distribution of funding for substance abuse and mental  
13      health services; amending s. 394.9085, F.S.;  
14      conforming a cross-reference; amending s. 397.311,  
15      F.S.; revising definitions; amending s. 397.4012,  
16      F.S.; revising entities that are exempt from certain  
17      licensing requirements; amending s. 397.4073, F.S.;  
18      providing an exemption from background screening  
19      requirements for certain peer specialists; amending s.  
20      916.106, F.S.; revising the definition of the term  
21      "mental illness"; amending ss. 916.13 and 916.15,  
22      F.S.; requiring the Department of Children and  
23      Families to request certain medical information from  
24      jails; requiring county jails to provide such  
25      information within a specified timeframe; requiring  
26      the maintenance of psychotropic medications to  
27      specified defendants under certain circumstances;  
28      providing an exception; providing an effective date.  
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30 Be It Enacted by the Legislature of the State of Florida:

31  
32 Section 1. Subsection (28) of section 394.455, Florida  
33 Statutes, is amended to read:

34 394.455 Definitions.—As used in this part, the term:

35 (28) "Mental illness" means an impairment of the mental or  
36 emotional processes that exercise conscious control of one's  
37 actions or of the ability to perceive or understand reality,  
38 which impairment substantially interferes with the person's  
39 ability to meet the ordinary demands of living. For the purposes  
40 of this part, the term does not include a developmental  
41 disability as defined in chapter 393, intoxication, or  
42 conditions manifested only by dementia, traumatic brain injury,  
43 antisocial behavior, or substance abuse.

44 Section 2. Section 394.674, Florida Statutes, is amended to  
45 read:

46 394.674 Eligibility for publicly funded substance abuse and  
47 mental health services; fee collection requirements.—

48 (1) To be eligible to receive substance abuse and mental  
49 health services funded by the department, an individual must be  
50 indigent, uninsured, or underinsured and meet at least one of  
51 the following criteria ~~a member of at least one of the~~  
52 ~~department's priority populations approved by the Legislature.~~  
53 ~~The priority populations include:~~

54 (a) For ~~adult~~ mental health services, an individual must  
55 be:

56 1. An adult who has a serious mental illness, as defined by  
57 the department using criteria that, at a minimum, include  
58 diagnosis, prognosis, functional impairment, and receipt of

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59 disability income for a psychiatric condition.

60 2. An adult at risk of serious mental illness who:

61 a.(I) Has a primary diagnosis of a mental disorder as  
62 defined in the most recent edition of the Diagnostic and  
63 Statistical Manual of Mental Disorders published by the American  
64 Psychiatric Association that is not considered a serious mental  
65 illness; or

66 (II) Has a condition with a Z-code diagnosis code in the  
67 most recent edition of the Diagnostic and Statistical Manual of  
68 Mental Disorders published by the American Psychiatric  
69 Association; and

70 b. Experiences a severe stressful event and has problems  
71 coping or has symptoms that place the individual at risk of more  
72 restrictive interventions.

73 3. A child or adolescent at risk of emotional disturbance,  
74 as defined in s. 394.492.

75 4. A child or adolescent who has an emotional disturbance,  
76 as defined in s. 394.492.

77 5. A child or adolescent who has a serious emotional  
78 disturbance or mental illness, as defined in s. 394.492.

79 6. An individual who has a primary diagnosis of mental  
80 illness and a co-occurring substance use disorder.

81 7. An individual experiencing an acute mental or emotional  
82 crisis, as defined in s. 394.67.

83 ~~Adults who have severe and persistent mental illness, as~~  
84 ~~designated by the department using criteria that include~~  
85 ~~severity of diagnosis, duration of the mental illness, ability~~  
86 ~~to independently perform activities of daily living, and receipt~~  
87 ~~of disability income for a psychiatric condition. Included~~

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88 ~~within this group are:~~

89 ~~a. Older adults in crisis.~~

90 ~~b. Older adults who are at risk of being placed in a more~~  
91 ~~restrictive environment because of their mental illness.~~

92 ~~c. Persons deemed incompetent to proceed or not guilty by~~  
93 ~~reason of insanity under chapter 916.~~

94 ~~d. Other persons involved in the criminal justice system.~~

95 ~~e. Persons diagnosed as having co-occurring mental illness~~  
96 ~~and substance abuse disorders.~~

97 ~~2. Persons who are experiencing an acute mental or~~  
98 ~~emotional crisis as defined in s. 394.67(17).~~

99 (b) For substance abuse services, an individual must  
100 ~~children's mental health services:~~

101 1. Have a substance use disorder that meets one of the  
102 diagnostic categories specified in the most recent edition of  
103 the Diagnostic and Statistical Manual of Mental Disorders  
104 published by the American Psychiatric Association.

105 2. Have a substance use disorder that meets one of the  
106 diagnostic categories specified in the most recent edition of  
107 the Diagnostic and Statistical Manual of Mental Disorders  
108 published by the American Psychiatric Association as the primary  
109 diagnosis and a co-occurring mental illness or serious emotional  
110 disturbance.

111 3. Be at risk for initiating alcohol or drug use.

112 ~~Children who are at risk of emotional disturbance as~~  
113 ~~defined in s. 394.492(4).~~

114 ~~2. Children who have an emotional disturbance as defined in~~  
115 ~~s. 394.492(5).~~

116 ~~3. Children who have a serious emotional disturbance as~~

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117 defined in ~~s. 394.492(6)~~.

118 ~~4. Children diagnosed as having a co-occurring substance~~  
119 ~~abuse and emotional disturbance or serious emotional~~  
120 ~~disturbance.~~

121 ~~(c) For substance abuse treatment services:~~

122 ~~1. Adults who have substance abuse disorders and a history~~  
123 ~~of intravenous drug use.~~

124 ~~2. Persons diagnosed as having co-occurring substance abuse~~  
125 ~~and mental health disorders.~~

126 ~~3. Parents who put children at risk due to a substance~~  
127 ~~abuse disorder.~~

128 ~~4. Persons who have a substance abuse disorder and have~~  
129 ~~been ordered by the court to receive treatment.~~

130 ~~5. Children at risk for initiating drug use.~~

131 ~~6. Children under state supervision.~~

132 ~~7. Children who have a substance abuse disorder but who are~~  
133 ~~not under the supervision of a court or in the custody of a~~  
134 ~~state agency.~~

135 ~~8. Persons identified as being part of a priority~~  
136 ~~population as a condition for receiving services funded through~~  
137 ~~the Center for Mental Health Services and Substance Abuse~~  
138 ~~Prevention and Treatment Block Grants.~~

139 (2) Providers receiving funds from the department for  
140 behavioral health services must give priority to:

141 (a) Pregnant women and women with dependent children.

142 (b) Intravenous drug users.

143 (c) Individuals who have a substance use disorder and have  
144 been ordered by the court to receive treatment.

145 (d) Parents, legal guardians, or caregivers with child

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146 welfare involvement and parents, legal guardians, or caregivers  
147 who put children at risk due to substance abuse.

148 (e) Children and adolescents under state supervision.

149 (f) Individuals involved in the criminal justice system,  
150 including those deemed incompetent to proceed or not guilty by  
151 reason of insanity under chapter 916.

152 (3)~~(2)~~ Crisis services, as defined in s. 394.67, must,  
153 within the limitations of available state and local matching  
154 resources, be available to each individual ~~person~~ who is  
155 eligible for services under subsection (1), regardless of the  
156 individual's ~~person's~~ ability to pay for such services. An  
157 individual ~~A person~~ who is experiencing a mental health crisis  
158 and who does not meet the criteria for involuntary examination  
159 under s. 394.463(1), or an individual ~~a person~~ who is  
160 experiencing a substance abuse crisis and who does not meet the  
161 involuntary admission criteria in s. 397.675, must contribute to  
162 the cost of his or her care and treatment pursuant to the  
163 sliding fee scale developed under subsection (5) ~~(4)~~, unless  
164 charging a fee is contraindicated because of the crisis  
165 situation.

166 (4)~~(3)~~ Mental health services, substance abuse services,  
167 and crisis services, as defined in s. 394.67, must, within the  
168 limitations of available state and local matching resources, be  
169 available to each individual ~~person~~ who is eligible for services  
170 under subsection (1). Such individual ~~person~~ must contribute to  
171 the cost of his or her care and treatment pursuant to the  
172 sliding fee scale developed under subsection (5) ~~(4)~~.

173 (5)~~(4)~~ The department shall adopt rules to implement ~~client~~  
174 eligibility, ~~client~~ enrollment, and fee collection requirements

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175 for publicly funded substance abuse and mental health services.

176 (a) The rules must require each provider under contract  
177 with the department or a managing entity that ~~which~~ enrolls  
178 eligible individuals ~~persons~~ into treatment to develop a sliding  
179 fee scale for individuals ~~persons~~ who have a net family income  
180 at or above 150 percent of the Federal Poverty Income  
181 Guidelines, unless otherwise required by state or federal law.  
182 The sliding fee scale must use the uniform schedule of discounts  
183 by which a provider under contract with the department or a  
184 managing entity discounts its established ~~client~~ charges for  
185 services supported with state, federal, or local funds, using,  
186 at a minimum, factors such as family income, financial assets,  
187 and family size as declared by the individual ~~person~~ or the  
188 individual's ~~person's~~ guardian. The rules must include uniform  
189 criteria to be used by all service providers in developing the  
190 schedule of discounts for the sliding fee scale.

191 (b) The rules must address the most expensive types of  
192 treatment, such as residential and inpatient treatment, in order  
193 to make it possible for an individual ~~a client~~ to responsibly  
194 contribute to his or her mental health or substance abuse care  
195 without jeopardizing the family's financial stability. An  
196 individual ~~A person~~ who is not eligible for Medicaid and whose  
197 net family income is less than 150 percent of the Federal  
198 Poverty Income Guidelines must pay a portion of his or her  
199 treatment costs which is comparable to the copayment amount  
200 required by the Medicaid program for Medicaid clients under  
201 ~~pursuant to~~ s. 409.9081.

202 (c) The rules must require that individuals ~~persons~~ who  
203 receive financial assistance from the Federal Government because

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204 of a disability and are in long-term residential treatment  
205 settings contribute to their board and care costs and treatment  
206 costs and must be consistent with ~~the provisions in~~ s. 409.212.

207 (6)~~(5)~~ An individual ~~A person~~ who meets the eligibility  
208 criteria in subsection (1) shall be served in accordance with  
209 the appropriate district substance abuse and mental health  
210 services plan specified in s. 394.75 and within available  
211 resources.

212 Section 3. Section 394.908, Florida Statutes, is amended to  
213 read:

214 394.908 Substance abuse and mental health funding equity;  
215 distribution of appropriations.—In recognition of the historical  
216 inequity in the funding of substance abuse and mental health  
217 services for the department's districts and regions and to  
218 rectify this inequity and provide for equitable funding in the  
219 future throughout the state, the following funding process shall  
220 be used:

221 (1) Funding thresholds for substance abuse and mental  
222 health services in each of the current districts, statewide,  
223 shall be established based on the current number of individuals  
224 in need per district of substance abuse and mental health  
225 services, respectively.

226 (2) "Individuals in need" means those persons who meet  
227 eligibility criteria under s. 394.674 ~~fit the profile of the~~  
228 ~~respective priority populations~~ and require mental health or  
229 substance abuse services.

230 (3) Any additional funding beyond the 2005-2006 fiscal year  
231 base appropriation for substance abuse ~~alcohol, drug abuse,~~ and  
232 mental health services shall be allocated to districts for



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233 substance abuse and mental health services based on:

234 (a) Epidemiological estimates of disabilities that apply to  
235 individuals in need ~~the respective priority populations.~~

236 (b) A pro rata share distribution that ensures districts  
237 below the statewide average funding level per ~~individual in each~~  
238 ~~priority population of~~ "individuals in need" receive funding  
239 necessary to achieve equity.

240 (4) ~~Priority populations for~~ Individuals in need shall be  
241 displayed for each district and distributed concurrently with  
242 the approved operating budget. The display ~~by priority~~  
243 ~~population~~ shall show: The annual number of individuals served  
244 based on prior year actual numbers, the annual cost per  
245 individual served, and the estimated number of the total  
246 ~~priority population for~~ individuals in need.

247 (5) The annual cost per individual served shall be defined  
248 as the total actual funding for mental health or substance abuse  
249 services ~~each priority population~~ divided by the number of  
250 individuals receiving mental health or substance abuse services  
251 ~~served in the priority population for~~ that year.

252 Section 4. Subsection (6) of section 394.9085, Florida  
253 Statutes, is amended to read:

254 394.9085 Behavioral provider liability.—

255 (6) For purposes of this section, the terms "detoxification  
256 services," "addictions receiving facility," and "receiving  
257 facility" have the same meanings as those provided in ss.  
258 397.311(26)(a)3. ~~ss. 397.311(26)(a)4.~~, 397.311(26)(a)1., and  
259 394.455(39), respectively.

260 Section 5. Paragraph (a) of subsection (26) of section  
261 397.311, Florida Statutes, is amended to read:

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262 397.311 Definitions.—As used in this chapter, except part  
263 VIII, the term:

264 (26) Licensed service components include a comprehensive  
265 continuum of accessible and quality substance abuse prevention,  
266 intervention, and clinical treatment services, including the  
267 following services:

268 (a) "Clinical treatment" means a professionally directed,  
269 deliberate, and planned regimen of services and interventions  
270 that are designed to reduce or eliminate the misuse of drugs and  
271 alcohol and promote a healthy, drug-free lifestyle. As defined  
272 by rule, "clinical treatment services" include, but are not  
273 limited to, the following licensable service components:

274 1. "Addictions receiving facility" is a secure, acute care  
275 facility that provides, at a minimum, detoxification and  
276 stabilization services; is operated 24 hours per day, 7 days per  
277 week; and is designated by the department to serve individuals  
278 found to be substance use impaired as described in s. 397.675  
279 who meet the placement criteria for this component.

280 2. "Day or night treatment" is a service provided in a  
281 nonresidential environment, with a structured schedule of  
282 treatment and rehabilitative services.

283 ~~3. "Day or night treatment with community housing" means a~~  
284 ~~program intended for individuals who can benefit from living~~  
285 ~~independently in peer community housing while participating in~~  
286 ~~treatment services for a minimum of 5 hours a day for a minimum~~  
287 ~~of 25 hours per week.~~

288 3.4. "Detoxification" is a service involving subacute care  
289 that is provided on an inpatient or an outpatient basis to  
290 assist individuals to withdraw from the physiological and

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291 psychological effects of substance abuse and who meet the  
292 placement criteria for this component.

293 ~~4.5.~~ "Intensive inpatient treatment" includes a planned  
294 regimen of evaluation, observation, medical monitoring, and  
295 clinical protocols delivered through an interdisciplinary team  
296 approach provided 24 hours per day, 7 days per week, in a highly  
297 structured, live-in environment.

298 ~~5.6.~~ "Intensive outpatient treatment" is a service that  
299 provides individual or group counseling in a more structured  
300 environment, is of higher intensity and duration than outpatient  
301 treatment, and is provided to individuals who meet the placement  
302 criteria for this component.

303 ~~6.7.~~ "Medication-assisted treatment for opioid use  
304 disorders ~~opiate addiction~~" is a service that uses methadone or  
305 other medication as authorized by state and federal law, in  
306 combination with medical, rehabilitative, supportive, and  
307 counseling services in the treatment of individuals who are  
308 dependent on opioid drugs.

309 ~~7.8.~~ "Outpatient treatment" is a service that provides  
310 individual, group, or family counseling by appointment during  
311 scheduled operating hours for individuals who meet the placement  
312 criteria for this component.

313 ~~8.9.~~ "Residential treatment" is a service provided in a  
314 structured live-in environment within a nonhospital setting on a  
315 24-hours-per-day, 7-days-per-week basis, and is intended for  
316 individuals who meet the placement criteria for this component.

317 Section 6. Section 397.4012, Florida Statutes, is amended  
318 to read:

319 397.4012 Exemptions from licensure.—The following are

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320 exempt from the licensing provisions of this chapter:

321 (1) A hospital or hospital-based component licensed under  
322 chapter 395.

323 (2) A nursing home facility as defined in s. 400.021.

324 (3) A substance abuse education program established  
325 pursuant to s. 1003.42.

326 (4) A facility or institution operated by the Federal  
327 Government.

328 (5) A physician or physician assistant licensed under  
329 chapter 458 or chapter 459.

330 (6) A psychologist licensed under chapter 490.

331 (7) A social worker, marriage and family therapist, or  
332 mental health counselor licensed under chapter 491.

333 (8) A legally cognizable church or nonprofit religious  
334 organization or denomination providing substance abuse services,  
335 including prevention services, which are solely religious,  
336 spiritual, or ecclesiastical in nature. A church or nonprofit  
337 religious organization or denomination providing any of the  
338 licensed service components itemized under s. 397.311(26) is not  
339 exempt from substance abuse licensure but retains its exemption  
340 with respect to all services which are solely religious,  
341 spiritual, or ecclesiastical in nature.

342 (9) Facilities licensed under chapter 393 which, in  
343 addition to providing services to persons with developmental  
344 disabilities, also provide services to persons developmentally  
345 at risk as a consequence of exposure to alcohol or other legal  
346 or illegal drugs while in utero.

347 (10) DUI education and screening services provided pursuant  
348 to ss. 316.192, 316.193, 322.095, 322.271, and 322.291. Persons

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349 or entities providing treatment services must be licensed under  
350 this chapter unless exempted from licensing as provided in this  
351 section.

352 (11) A facility licensed under s. 394.875 as a crisis  
353 stabilization unit.

354

355 The exemptions from licensure in subsections (3), (4), (8), (9),  
356 and (10) ~~this section~~ do not apply to any service provider that  
357 receives an appropriation, grant, or contract from the state to  
358 operate as a service provider as defined in this chapter or to  
359 any substance abuse program regulated under ~~pursuant to~~ s.  
360 397.4014. Furthermore, this chapter may not be construed to  
361 limit the practice of a physician or physician assistant  
362 licensed under chapter 458 or chapter 459, a psychologist  
363 licensed under chapter 490, a psychotherapist licensed under  
364 chapter 491, or an advanced practice registered nurse licensed  
365 under part I of chapter 464, who provides substance abuse  
366 treatment, so long as the physician, physician assistant,  
367 psychologist, psychotherapist, or advanced practice registered  
368 nurse does not represent to the public that he or she is a  
369 licensed service provider and does not provide services to  
370 individuals under ~~pursuant to~~ part V of this chapter. Failure to  
371 comply with any requirement necessary to maintain an exempt  
372 status under this section is a misdemeanor of the first degree,  
373 punishable as provided in s. 775.082 or s. 775.083.

374 Section 7. Paragraph (a) of subsection (1) of section  
375 397.4073, Florida Statutes, is amended to read:

376 397.4073 Background checks of service provider personnel.-

377 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND

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378 EXCEPTIONS.—

379 (a) For all individuals screened on or after July 1, 2019,  
380 background checks shall apply as follows:

381 1. All owners, directors, chief financial officers, and  
382 clinical supervisors of service providers are subject to level 2  
383 background screening as provided under s. 408.809 and chapter  
384 435. Inmate substance abuse programs operated directly or under  
385 contract with the Department of Corrections are exempt from this  
386 requirement.

387 2. All service provider personnel who have direct contact  
388 with children receiving services or with adults who are  
389 developmentally disabled receiving services are subject to level  
390 2 background screening as provided under s. 408.809 and chapter  
391 435.

392 3. All peer specialists who have direct contact with  
393 individuals receiving services are subject to level 2 background  
394 screening as provided under s. 408.809 and chapter 435. Peer  
395 specialists employed or certified before July 1, 2019, are  
396 exempt from this requirement if, at the time of their employment  
397 or certification, the department knew about any disqualifying  
398 offenses of the peer specialist.

399 Section 8. Subsection (14) of section 916.106, Florida  
400 Statutes, is amended to read:

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

403 (14) "Mental illness" means an impairment of the emotional  
404 processes that exercise conscious control of one's actions, or  
405 of the ability to perceive or understand reality, which  
406 impairment substantially interferes with the defendant's ability

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407 to meet the ordinary demands of living. For the purposes of this  
408 chapter, the term does not apply to defendants who have only an  
409 intellectual disability or autism or a defendant with traumatic  
410 brain injury or dementia who lacks a co-occurring mental  
411 illness, and does not include intoxication or conditions  
412 manifested only by antisocial behavior or substance abuse  
413 impairment.

414 Section 9. Paragraph (b) of subsection (2) of section  
415 916.13, Florida Statutes, is amended to read:

416 916.13 Involuntary commitment of defendant adjudicated  
417 incompetent.-

418 (2) A defendant who has been charged with a felony and who  
419 has been adjudicated incompetent to proceed due to mental  
420 illness, and who meets the criteria for involuntary commitment  
421 under this chapter, may be committed to the department, and the  
422 department shall retain and treat the defendant. Within 2  
423 business days after receipt of a completed copy of the court  
424 commitment order containing all documentation required by the  
425 applicable Florida Rules of Criminal Procedure, the department  
426 shall request all medical information relating to the defendant  
427 from the jail. The jail shall provide the department with all  
428 medical information relating to the defendant within 3 business  
429 days after receipt of the department's request.

430 (b) A competency hearing shall be held within 30 days after  
431 the court receives notification that the defendant is competent  
432 to proceed or no longer meets the criteria for continued  
433 commitment. The defendant must be transported to the committing  
434 court's jurisdiction for the hearing. Each defendant returning  
435 to a jail shall continue to receive the same psychotropic

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436 medications as prescribed by the facility physician at the time  
437 of discharge from a forensic or civil facility, unless the jail  
438 physician determines there is a compelling medical reason to  
439 change or discontinue the medication for the health and safety  
440 of the defendant. If the jail physician changes or discontinues  
441 the medication and the defendant is later determined at the  
442 competency hearing to be incompetent to stand trial and is  
443 recommitted to the department, the jail physician may not change  
444 or discontinue the defendant's prescribed psychotropic  
445 medication upon the defendant's next discharge from the forensic  
446 or civil facility.

447 Section 10. Subsections (3) and (5) of section 916.15,  
448 Florida Statutes, are amended to read:

449 916.15 Involuntary commitment of defendant adjudicated not  
450 guilty by reason of insanity.—

451 (3) Every defendant acquitted of criminal charges by reason  
452 of insanity and found to meet the criteria for involuntary  
453 commitment may be committed and treated in accordance with the  
454 provisions of this section and the applicable Florida Rules of  
455 Criminal Procedure. Within 2 business days after receipt of a  
456 completed copy of the court commitment order containing all  
457 documentation required by the applicable Florida Rules of  
458 Criminal Procedure, the department shall request all medical  
459 information relating to the defendant from the jail. The jail  
460 shall provide the department with all medical information  
461 relating to the defendant within 3 business days after receipt  
462 of the department's request. The department shall admit a  
463 defendant so adjudicated to an appropriate facility or program  
464 for treatment and shall retain and treat such defendant. No



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465 later than 6 months after the date of admission, before ~~prior to~~  
466 the end of any period of extended commitment, or at any time the  
467 administrator or designee determines ~~shall have determined~~ that  
468 the defendant no longer meets the criteria for continued  
469 commitment placement, the administrator or designee shall file a  
470 report with the court pursuant to the applicable Florida Rules  
471 of Criminal Procedure.

472 (5) The commitment hearing shall be held within 30 days  
473 after the court receives notification that the defendant no  
474 longer meets the criteria for continued commitment. The  
475 defendant must be transported to the committing court's  
476 jurisdiction for the hearing. Each defendant returning to a jail  
477 shall continue to receive the same psychotropic medications as  
478 prescribed by the facility physician at the time of discharge  
479 from a forensic or civil facility, unless the jail physician  
480 determines there is a compelling medical reason to change or  
481 discontinue the medication for the health and safety of the  
482 defendant. If the jail physician changes or discontinues the  
483 medication and the defendant is later determined at the  
484 competency hearing to be incompetent to stand trial and is  
485 recommitted to the department, the jail physician may not change  
486 or discontinue the defendant's prescribed psychotropic  
487 medication upon the defendant's next discharge from the forensic  
488 or civil facility.

489 Section 11. This act shall take effect July 1, 2020.