



Health Care Services Policy Committee

Meeting Packet

**Tuesday, March 16, 2010
10:15 AM - 12:00 PM
306 HOB**

**Larry Cretul
Speaker**

**Paige Kreegel
Chair**



The Florida House of Representatives

Health Care Services Policy Committee

Agenda

March 16, 2010

10:15 AM – 12:00 PM

306 HOB

- I. Call to Order/Roll Call**
- II. HB 1045 regarding Palm Beach County by Brandenburg.**
- III. HB 813 regarding Juvenile Justice Facilities and Programs by Garcia.**
- IV. HB 1189 regarding Mental Health and Substance Abuse Treatment by Snyder.**
- V. HB 907 regarding Child Support Guidelines by Flores.**
- VI. Adjournment.**

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Licensing of Child Care Facilities

Pursuant to s. 402.305(1), F.S., the Department of Children and Family Services (DCF) establishes licensing standards that must be met by each licensed child care facility in the state. The purpose of this program is to ensure that children are well cared for in a safe, healthy, positive and educational environment by trained, qualified child care staff.

Section 402.306 (1), F.S., provides that counties with child care facility licensing standards that meet or exceed the state minimum standards (chs. 65C-20, 65C-22 and 65C-25, F.A.C.) may designate a local licensing agency or contract with the DCF to delegate the administration of the state minimum standards in the county. The DCF is responsible for the inspection and licensure of child care facilities in 61 of Florida's 67 counties. The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas and Sarasota) have elected to regulate these facilities.¹

Palm Beach County

The Board of County Commissioners of Palm Beach County acting as the Child Care Facilities Board is the local licensing agency for child care facilities in the county. The Board has appointed a Child Care Advisory Council (CCAC) to act on its behalf for approving, denying or revoking licenses, and for recommending revisions to local child care rules and regulations. The CCAC meets monthly.

The Palm Beach County Health Department serves as staff to the CCAC, and is responsible for administering the child care licensing program. This includes conducting inspections of child care centers and family day care facilities to ensure that minimum standards are met and maintained for issuing and renewing licenses. The Department's child care inspectors also provide information, consultations, and technical assistance to licensed facilities and prospective facility owners and operators:

¹ <http://www.dcf.state.fl.us/childcare/licensing.shtml>.

Chapter 59-1698, L.O.F., as amended by ch. 77-620, L.O.F., provides the legal framework for child care licensing in Palm Beach County. This special act enables the county to create its own local rules and regulations for child care facilities and family day care homes.²

Effect of Proposed Changes

HB 1045 amends ch. 59-1698, L.O.F., as amended, relating to child care regulation in Palm Beach County. The bill:

- revises the definition of “children.” Currently, that term includes all persons related to the operator of a facility under 12 years of age, and all other persons under the age of 18. The bill increases the maximum age for included, related children from 12 to 13 years old.

The rationale for this change was to remove conflicts between the definition of children, as provided in the special act, and several provisions regarding household children in the Palm Beach County regulations. Although the special act defines children as persons under 12 years of age and related to the operator, the regulations—and state laws—require the counting of such children under 13 years of age for purposes of determining the number of children that can be accommodated in particular child care arrangements.

- deletes the definition of “child boarding homes.” A similar definition is not included in the current Florida Statutes, and this type of facility no longer exists in Palm Beach County.³
- revises the definition of “family day care facilities,” renaming such an entity a “family day care home,” and requiring that it be an occupied residence. This will align the special act’s terminology with that contained in s. 402.302(7), F.S.
- increases the maximum number of children allowed in family day care homes from five to six. This change is in response to a request from a local family child care association to increase the capacity of family day care homes. Local family day care providers have indicated that the current restrictions have a negative impact on their ability to operate as a viable small business. This proposed expansion in the capacity of family day care homes will result in an increase in available child care slots by more than 325 in Palm Beach County.

The current definition for the term “family day care home” found at s. 402.302(7), F.S., provides that these facilities are allowed to provide care for one of the following groups of children, which includes those children under 13 years of age who are related to the caregiver:

- a maximum of four children from birth to 12 months of age.

²Section 6 of ch. 77-620, L.O.F., provides: MINIMUM STANDARDS, REASONABLE RULES AND REGULATIONS TO BE PRESCRIBED BY THE BOARD.

1. The Board shall make, promulgate, amend and repeal such rules and regulations as are necessary to protect the health and safety of persons in child care facilities, child boarding homes, or family day care facilities; prescribing standards for living quarters, including provisions pertaining to sanitary conditions, light, air, safety, protection from fire hazards, equipment, operation, qualifications and number of staff, and such other matters as may be appropriate to protect the life and health of the occupants thereof. Standards established by rules and regulations of the Board shall meet or exceed state minimum standards, to wit: standards established by the Department of Health and Rehabilitative Services pursuant to chapter 402, Florida Statutes.

2. The Board may make, promulgate, amend, and repeal such rules and regulations as are necessary:

- a. To require facilities regulated hereunder to secure liability insurance and set minimum limits and standards for carriers; and,
- b. To establish fees for inspection and licensing under this Act.

No such rules and regulations of the Board shall be adopted or become effective until after a public hearing has been held by the Board pursuant to at least one notice published in a newspaper of general circulation in the County at least ten (10) days prior to the hearing. When approved by the Board and filed with the Clerk of the County Commission, such rules and regulations shall have the force and effect of law. Until the Board adopts rules and regulations, the State standards aforementioned shall apply to all facilities regulated by this Act.

³ March 2, 2010, e-mail from Courtney Shippey, Division of Environmental Public Health, Palm Beach County Health Department.

- a maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.
- a maximum of six preschool children if all are older than 12 months of age.
- a maximum of 10 children if no more than five are preschool age and, of those 5, no more than two are under 12 months of age.

The proposed language of the special act does not contain any limitations based on the ages of children. However, the Palm Beach County Health Department has indicated that the details of caregiver-child ratios will be laid out in their rules and regulations.⁴

The Palm Beach County Rules & Regulations Governing Family Day Care Facilities currently provide that a family day care facility is allowed to provide care for one of the following groups of children, which includes those children under the age of 13 years of age who are related to the caregiver, or who are household members:

- a maximum of four children from birth to 12 months of age for a total of four children.
- a maximum of five children from birth to 12 years of age, for a total of five children, provided that no more than three of the children are from the ages of birth to 12 months of age.⁵
- creates a new category of "large family child care home." This is an occupied residence which has at least two full-time child care personnel on the premises, including the owner or occupant. Such a home must first have operated as a licensed family day care home for two years, with an operator who has had a child development associate credential or its equivalent for one year, before seeking licensure. A large family child care home has a maximum capacity of eight children under the age of two, or a maximum of 12 children with no more than four children under the age of two. These maximums include those children under 13 years of age who are related to the caregiver.

This definition corresponds to the one provided at s. 402.302 (8), F.S. Currently, this type of child care arrangement is not allowed in Palm Beach County. Ultimately, establishment of such facilities will be dependent on local zoning approvals.⁶

- designates one of the private enterprise seats on the Child Care Advisory Council to be filled by a family day care provider. Currently, the CCAC is composed of seven members consisting of the following:
 - two members who represent and operate as a regulated facility as a private enterprise;
 - one member who represents and operates a regulated parochial facility;
 - one member who represents a consumer protection enforcement official;
 - one member for fire protection, engineering or technology;
 - one member who, at the time of appointment, is was a parent of a child in a regulated facility; and
 - one member who represents the Department of Children and Family Services.

⁴ March 4, 2010, e-mail from Courtney Shippey, Division of Environmental Public Health, Palm Beach County Health Department
⁵ http://www.pbchd.com/pdfs/environmental/familydaycare/pbchd_family_day_care-rules-regs.pdf. Regardless of the language of this regulation, it is assumed that it means a maximum of three children from birth to 12 months of age, and other children, for a maximum of five children.

⁶ Id.

There are approximately 330 family day care homes and 420 child care centers in the county. This revision will provide family day care providers with representation on the council.

- adds provisions relating to provisional licenses. This language authorizes the Board to issue provisional licenses for child care facilities, large family child care homes, or family day care homes. A provisional license may not be issued for a period that exceeds six months and may only be renewed once.
- A provisional license cannot be issued unless the child care facility, large family child care home, or family day care home is in compliance with the requirements for screening of child care personnel and the requirements for ensuring the health and safety of children. This language loosely conforms to that contained in s. 402.309, F.S.
- updates other language to conform to new definitions, correct usage, current agency names, and to fix typographical errors.

The act takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends ch. 59-1698, L.O.F., as amended by ch. 77-620, L.O.F., relating to child care in Palm Beach County.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 15, 2010

WHERE? *The Palm Beach Post*, a daily newspaper published in Palm Beach County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, the bill will result in minimal revenue generation anticipated from annual license fees for an estimated 10 new large family child care facilities. No negative impact is expected.

The Economic Impact Statement also provides:

Family day care homes comprise an important component of the child care and early education industry. These homes provide more than 300 jobs in owner-operated small businesses in Palm Beach County, in addition to tens of thousands of dollars in annual gross receipts, including federal and state funds which add to the economic base of the county. The increased capacity of children in care at these homes will enable these home-based small

businesses to increase their revenue and potentially be more viable and competitive with the larger child care industry.

Child care and early education sets the stage for a strong future economy by preparing young children to develop the attitudes, skills and abilities to be productive workers and citizens.

The availability of affordable and accessible child care and early education in underserved communities allows parents to pursue and maintain employment opportunities and thereby improve their quality of life.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments.

This bill is supported by the Palm Beach County Commission, the Palm Beach County Health Department and the Child Care Advisory Council.

The Department of Children and Families has declined to comment on the bill, other than to say that as per their Child Care Program office, the bill is specific to Palm Beach County, and that the content of the bill would not affect the child care programs it regulates.⁷ However, it should be noted that s. 402.306(2), F.S., provides that child care facilities in any county whose standards do not meet or exceed state minimum standards will be subject to licensing by the DCF.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

⁷ February 23, e-mail from Gina Sisk, Department of Children and Families, Legislative Affairs.

A bill to be entitled

An act relating to Palm Beach County; amending chapter 59-1698, Laws of Florida, as amended; revising and providing definitions; providing requirements for the operation and licensing of large family child care homes; providing for the issuance of provisional licenses to child care facilities, large family child care homes, and family day care homes; updating obsolete language; revising requirements for Child Care Advisory Council membership; providing an effective date.

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

Section 1. Chapter 59-1698, Laws of Florida, as amended by chapter 77-620, Laws of Florida, is amended to read:

Section 1. DEFINITIONS. The following words and phrases shall mean:

1.a. Children - Persons related to the operator of a facility regulated under this act under 13 ~~12~~ years of age, and all other persons under 18 years of age.

~~b. Child Boarding Homes - Any building or shelter in which, for 24 hours per day, custodial care is rendered to one to five children, inclusive, and which receives a payment, fee, or grant for any of the children receiving care, whether or not operating for profit, subject to the exemptions contained in Section 12 hereof.~~

2.e. Family Day Care Home Facilities - An occupied residence ~~Any building or shelter~~ in which custodial care is

29 rendered to one to six ~~five~~ children, inclusive, ~~for 24 hours~~
 30 ~~per day~~ and for which the owner or operator receives a payment,
 31 fee, or grant for any of the children receiving care, whether or
 32 not operating for profit, subject to the exemptions contained in
 33 Section 9 12.

34 3. Large Family Child Care Home - An occupied residence in
 35 which custodial care is regularly provided for children, and for
 36 which the owner or operator receives a payment, fee, or grant
 37 for any of the children receiving care, whether or not operated
 38 for profit, and which has at least two full-time child care
 39 personnel on the premises during the hours of operation. One of
 40 the full-time child care personnel must be the owner or occupant
 41 of the residence. A large family child care home must first have
 42 operated as a licensed family day care home for 2 years, with an
 43 operator who has had a child development associate credential or
 44 its equivalent for 1 year, before seeking licensure as a large
 45 family child care home. A large family child care home shall be
 46 allowed to provide care for one of the following groups of
 47 children, which shall include those children under 13 years of
 48 age who are related to the caregiver:

49 a. A maximum of eight children from birth to 24 months of
 50 age.

51 b. A maximum of 12 children with no more than four
 52 children under 24 months of age.

53 ~~4.d.~~ Child Care Facility Facilities - Any building or
 54 shelter in which custodial care is rendered to six or more
 55 children, and for which the owner or operator receives a
 56 payment, fee, or grant for any of the children receiving care,

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57 | whether or not operating for profit, or which is held out to the
 58 | public to be an establishment which regularly provides child
 59 | custodial services.

60 | Section 2. PERMIT REQUIRED FOR ESTABLISHMENT, MAINTENANCE
 61 | AND OPERATION. It shall be unlawful for any person, firm, or
 62 | corporation to establish, maintain, or operate in Palm Beach
 63 | County, Florida, a child care facility, large family child care
 64 | boarding home, or family day care home facility without first
 65 | obtaining a permit therefor from a board, to be designated as
 66 | the Child Care Facilities Board, and without permanently posting
 67 | such permit in the child care facility, large family child care
 68 | boarding home, or family day care home facility. Such Child Care
 69 | Facilities Board shall be composed of the Board of County
 70 | Commissioners of Palm Beach County, hereafter referred to as the
 71 | Board. The Chairman of the Board of County Commissioners of Palm
 72 | Beach County shall be the Chairman of the Child Care Facilities
 73 | Board, and the Board shall meet at least once every 3 ~~three (3)~~
 74 | months at a time and place designated by the Board.

75 | Section 3. APPLICATION FOR PERMIT. Application for a
 76 | permit to operate a child care facility, large family child care
 77 | boarding home, or family day care home facility shall be made to
 78 | the Board in writing, and on a form, and under regulations
 79 | prescribed by the Board. The application shall state the name
 80 | and address of the applicant, his or her occupational history
 81 | and qualifications, the type and location of proposed operation,
 82 | the number of persons to be accommodated, and such other
 83 | information the Board may require.

84 | Section 4. ISSUANCE OF LICENSE.

85 1. The Director of the Palm Beach County Health Department
 86 shall be charged with the administrative and financial
 87 responsibility of carrying out the duties of the Board, and the
 88 Director ~~he~~ or his or her representative shall inspect child
 89 care facilities, large family child care ~~boarding~~ homes, and
 90 family day care homes ~~facilities~~ as required by the Board. Said
 91 Board, when satisfied that minimum standards are met, shall
 92 issue a license in writing on a form prescribed by the Board.
 93 Such license shall be valid for a period of 1 ~~one~~ year unless
 94 revoked. It shall not be transferable or assignable.

95 2. The Board may issue a provisional license for child
 96 care facilities, large family child care homes, or family day
 97 care homes. A provisional license shall not be issued for a
 98 period that exceeds 6 months and may only be renewed by the
 99 Board one time for a period not to exceed 6 months.

100 3. A provisional license shall not be issued unless the
 101 child care facility, large family child care home, or family day
 102 care home is in compliance with the requirements for screening
 103 of child care personnel and the requirements for ensuring the
 104 health and safety of the children in care.

105 Section 5. REVOCATION OF LICENSE. The Board may revoke a
 106 license if it finds that the operator has failed to comply with
 107 any provisions of this Act, or of any rule or regulation issued
 108 hereunder.

109 Section 6. MINIMUM STANDARDS, REASONABLE RULES AND
 110 REGULATIONS TO BE PRESCRIBED BY THE BOARD.

111 1. The Board shall make, adopt ~~promulgate~~, amend, and
 112 repeal such rules and regulations as are necessary to protect

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113 the health and safety of persons in child care facilities, large
 114 family child care ~~boarding~~ homes, or family day care homes
 115 ~~facilities~~; prescribing standards for living quarters, including
 116 provisions pertaining to sanitary conditions, light, air,
 117 safety, protection from fire hazards, equipment, operation,
 118 qualifications and number of staff, and such other matters as
 119 may be appropriate to protect the life and health of the
 120 occupants thereof. Standards established by rules and
 121 regulations of the Board shall meet or exceed state minimum
 122 standards, to wit: standards established by the Department of
 123 Children and Family Health and Rehabilitative Services pursuant
 124 to chapter 402, Florida Statutes.

125 2. The Board may make, adopt ~~promulgate~~, amend, and repeal
 126 such rules and regulations as are necessary:

127 a. To require facilities regulated hereunder to secure
 128 liability insurance and set minimum limits and standards for
 129 carriers; and,

130 b. To establish fees for inspection and licensing under
 131 this Act.

132
 133 No such rules and regulations of the Board shall be adopted or
 134 become effective until after a public hearing has been held by
 135 the Board pursuant to at least one notice published in a
 136 newspaper of general circulation in the County at least 10 ~~ten~~
 137 ~~(10)~~ days prior to the hearing. When approved by the Board and
 138 filed with the Clerk of the County Commission, such rules and
 139 regulations shall have the force and effect of law. Until the
 140 Board adopts rules and regulations, the state standards

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141 | aforementioned shall apply to all facilities regulated by this
 142 | Act.

143 | Section 7. CHILD CARE ADVISORY COUNCIL.

144 | 1. The Board shall appoint a Child Care Advisory Council
 145 | which shall be appointed by the Board of County Commissioners no
 146 | later than 60 ~~sixty (60)~~ days after the effective date of this
 147 | Act. Members of the Council shall serve at the pleasure of the
 148 | Board of County Commissioners. The Council shall be composed of
 149 | seven ~~(7)~~ members consisting of the following:

150 | a. Two ~~(2)~~ members who represent and operate as a private
 151 | enterprise a facility regulated hereunder, one of whom operates
 152 | a family day care home or large family child care home.

153 | b. One ~~(1)~~ member who represents and operates a parochial
 154 | facility regulated hereunder.

155 | c. One ~~(1)~~ member who represents a consumer protection
 156 | enforcement official.

157 | d. One ~~(1)~~ member for fire protection, engineering, or
 158 | technology.

159 | e. One ~~(1)~~ member who, at the time of appointment, is was
 160 | a parent of a child in a facility regulated hereunder.

161 | f. One ~~(1)~~ member who represents the Department of
 162 | Children and Family Health and Rehabilitative Services.

163 | 2. The Council shall advise the Board and make
 164 | recommendations as to the issuance and revocation of licenses
 165 | and as to rules and regulations necessary to protect the health
 166 | and safety of persons in child care facilities, large family
 167 | child care boarding homes, or family day care homes facilities.

168 | Section 8. RIGHT OF ENTRY. Members of the Board and its

169 representatives may enter and inspect child care facilities,
 170 large family child care ~~boarding~~ homes, or family day care homes
 171 ~~facilities~~ at reasonable hours, and may question such persons
 172 and investigate such facts, conditions, and practices or matters
 173 as may be necessary or appropriate to determine whether any
 174 person has violated any provisions of this Act, or of any rule
 175 or regulation issued hereunder.

176 Section 9. EXEMPTIONS. The provisions of this Act shall
 177 not apply to any public or nonpublic school which is in
 178 compliance with the compulsory school attendance law, chapter
 179 232, Florida Statutes, any summer camp having children in full
 180 time residence, summer day camp, or vacation Bible school, or
 181 any foster home, home for mentally retarded or handicapped
 182 children, juvenile detention facility, hospital, or other
 183 similar institution otherwise regulated for health standards by
 184 a governmental agency. However, this section shall not be deemed
 185 to exempt institutions or facilities otherwise ~~other wise~~
 186 regulated by the Department of Children and Family Health and
 187 ~~Rehabilitative~~ Services pursuant to s. 402.301, et seq., Florida
 188 Statutes, as it may from time to time be amended or transferred.

189 Section 10. CIVIL ENFORCEMENT. Any violation of this Act
 190 or the rules and regulations of the Board adopted ~~promulgated~~
 191 pursuant hereto shall be subject to enforcement by the Palm
 192 Beach County Environmental Control Officer and the Palm Beach
 193 County Environmental Control Act, chapter 70-862, Laws of
 194 Florida, as amended, and as it may in the future be amended or
 195 reenacted ~~renacted~~.

196 Section 11. CRIMINAL PENALTY. Any person failing to

197 | comply with the provisions of this Act is guilty of a
 198 | misdemeanor of the second degree punishable as provided by
 199 | general law.

200 | Section 12. ADVERTISING BY FACILITIES. It shall be
 201 | unlawful for any person, persons, associations, partnerships,
 202 | corporations, or institutions to offer or advertise to the
 203 | public, in any way or by any medium whatsoever, large family
 204 | child care ~~boarding~~ home, family day care home, ~~facility~~ or
 205 | child care facility service without ~~unless it has first having~~
 206 | secured a license under the provisions of this Act. All
 207 | advertisements advertising any such services shall include the
 208 | license number of the license issued pursuant to this Act.

209 | Section 13. SEVERABILITY. If any provision of this Act,
 210 | or the application thereof to any person or circumstances, is
 211 | held invalid, such invalidity shall not affect other provisions
 212 | or applications of this Act which can be given effect without
 213 | the invalid provision or invalid application and to this end the
 214 | provisions of the Act are declared severable.

215 | Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 813

Juvenile Justice Facilities and Programs

SPONSOR(S): Garcia

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N	Cunningham	Cunningham
2)	Health Care Services Policy Committee		Schoonover <i>ms</i>	Schoolfield <i>ES</i>
3)	Criminal & Civil Justice Appropriations Committee			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

HB 813 amends chapter 985, F.S., to improve the quality and delivery of service in the juvenile justice system.

There is currently no definition of the term "ordinary medical care" in ch. 985, F.S. The bill amends s. 985.03, F.S., to define "ordinary medical care" as follows:

"Ordinary medical care" means medical procedures that are administered or performed on a routine basis and include, but are not limited to, inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventative services, medical management, chronic disease detection and treatment, and other medical procedures that are administered or performed on a routine basis and do not involve hospitalization, surgery, use of general anesthesia, or the provision of psychotropic medications for which a separate court order, power of attorney, or informed consent as provided by law is required.

The bill also amends s. 985.64, F.S., to require DJJ to adopt rules for ordinary medical care, mental health services, substance abuse treatment services, and developmental disabilities services and to coordinate its rulemaking effort with the Department of Children and Families and the Agency for Persons with Disabilities.

This bill does not appear to have a fiscal impact on state or local governments.

The bill becomes effective on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Various sections within Chapter 985, F.S., which relates to juvenile justice, imply or specifically state that the Department of Juvenile Justice (DJJ) is responsible for providing health services to the youth it serves. For example, s. 985.039(1)(b), F.S., provides that when a child is placed in detention or on committed status, DJJ has temporary legal custody of such child and must provide ordinary medical, dental, psychiatric, and psychological care.¹ There is currently no definition of the term "ordinary medical care" in ch. 985, F.S.

Section 985.601(9)(b)7., F.S., requires DJJ to adopt rules governing medical attention, health, and comfort items in detention facilities; however, there is no such requirement in the rules for providing medical attention in other DJJ facilities or programs. DJJ reports that because they are only authorized to develop rules governing medical care in *detention* facilities, the provision of care in other areas of the continuum of care is governed by policies that are subject to challenge.

Effect of the Bill

The bill amends s. 985.03, F.S., to define "ordinary medical care" as follows:

"Ordinary medical care" means medical procedures that are administered or performed on a routine basis and include, but are not limited to, inoculations, physical examinations, remedial treatment for minor illnesses and injuries, preventative services, medical management, chronic disease detection and treatment, and other medical procedures that are administered or performed on a routine basis and do not involve hospitalization, surgery, use of general anesthesia, or the provision of psychotropic medications for which a separate court order, power of attorney, or informed consent as provided by law is required.

The bill also amends s. 985.64, F.S., to require DJJ to adopt rules to ensure the effective provision of health services to youth in facilities or programs operated or contracted by DJJ. The bill specifies that such rules must address delivery of ordinary medical care, mental health services, substance abuse

¹ See s. 985.03(31), F.S. See also, Section 985.441(1)(b) F.S., which authorizes a court to commit a child to DJJ and requires DJJ to provide treatment to the child; and ss. 985.18 and 985.185, F.S., which indicate that DJJ is responsible for the provision of medical care.

treatment services, and developmental disabilities services. Additionally, the bill requires DJJ to coordinate its rulemaking effort with the Department of Children and Families and the Agency for Persons with Disabilities to ensure there is no encroachment on either agency's substantive jurisdiction. The effect of these changes will ensure quality care for all youth involved with DJJ, including foster care children.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.03, F.S., relating to definitions.

Section 2. Amends s. 985.64, F.S., relating to rulemaking.

Section 3. Amends s. 985.721, F.S., relating to escapes from secure detention or residential commitment facility.

Section 4. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DJJ rule-making authority to govern the procedure for ordinary medical care, mental health, substance abuse, and developmental disability services in DJJ facilities and programs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled

2 An act relating to juvenile justice facilities and
 3 programs; amending s. 985.03, F.S.; defining the term
 4 "ordinary medical care"; amending s. 985.64, F.S.;
 5 requiring that the Department of Juvenile Justice adopt
 6 rules to ensure the effective delivery of services to
 7 youth in facilities or programs operated or contracted by
 8 the department; requiring the department to coordinate its
 9 rule-adoption process with the Department of Children and
 10 Family Services and the Agency for Persons with
 11 Disabilities to ensure that the department's rules do not
 12 encroach upon the substantive jurisdiction of those
 13 agencies; amending s. 985.721, F.S.; conforming a cross-
 14 reference; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Present subsections (39) through (57) of
 19 section 985.03, Florida Statutes, are renumbered as subsections
 20 (40) through (58), respectively, and a new subsection (39) is
 21 added to that section to read:

22 985.03 Definitions.—As used in this chapter, the term:
 23 (39) "Ordinary medical care" means medical procedures that
 24 are administered or performed on a routine basis and include,
 25 but are not limited to, inoculations, physical examinations,
 26 remedial treatment for minor illnesses and injuries, preventive
 27 services, medication management, chronic disease detection and
 28 treatment, and other medical procedures that are administered or

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29 performed on a routine basis and do not involve hospitalization,
 30 surgery, use of general anesthesia, or the provision of
 31 psychotropic medications for which a separate court order, power
 32 of attorney, or informed consent as provided by law is required.

33 Section 2. Section 985.64, Florida Statutes, is amended to
 34 read:

35 985.64 Rulemaking.—

36 (1) The department shall adopt rules pursuant to ss.
 37 120.536(1) and 120.54 to implement the provisions of this
 38 chapter. Such rules may not conflict with the Florida Rules of
 39 Juvenile Procedure. All rules and policies must conform to
 40 accepted standards of care and treatment.

41 (2) The department shall adopt rules to ensure the
 42 effective provision of health services to youth in facilities or
 43 programs operated or contracted by the department. The rules
 44 must address the delivery of the following:

45 (a) Ordinary medical care.

46 (b) Mental health services.

47 (c) Substance abuse treatment services.

48 (d) Services to youth with developmental disabilities.

49
 50 The department shall coordinate its rulemaking with the
 51 Department of Children and Family Services and the Agency for
 52 Persons with Disabilities to ensure that the rules adopted under
 53 this section do not encroach upon the substantive jurisdiction
 54 of those agencies. The department shall include the above-
 55 mentioned entities in the rulemaking process, as appropriate.

56 Section 3. Section 985.721, Florida Statutes, is amended

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57 | to read:

58 | 985.721 Escapes from secure detention or residential
59 | commitment facility.—An escape from:

60 | (1) Any secure detention facility maintained for the
61 | temporary detention of children, pending adjudication,
62 | disposition, or placement;

63 | (2) Any residential commitment facility described in s.
64 | 985.03(45)~~(44)~~, maintained for the custody, treatment,
65 | punishment, or rehabilitation of children found to have
66 | committed delinquent acts or violations of law; or

67 | (3) Lawful transportation to or from any such secure
68 | detention facility or residential commitment facility,

69 |

70 | constitutes escape within the intent and meaning of s. 944.40
71 | and is a felony of the third degree, punishable as provided in
72 | s. 775.082, s. 775.083, or s. 775.084.

73 | Section 4. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1189

Mental Health and Substance Abuse Treatment

SPONSOR(S): Snyder

TIED BILLS:

IDEN./SIM. BILLS: SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care Services Policy Committee</u>	_____	Schoolfield 	Schoolfield 
2) <u>Public Safety & Domestic Security Policy Committee</u>	_____	_____	_____
3) <u>Health Care Appropriations Committee</u>	_____	_____	_____
4) <u>Health & Family Services Policy Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill is based on a plan developed by a statewide task force, convened by the Supreme Court of Florida and consisting of representatives from all three branches of government, as well as leaders from the mental health, substance abuse, and criminal justice fields. It allows the Department of Children and Family Services (DCF) to identify demonstration sites to develop and implement community-based services targeting individuals with severe mental illnesses and/or substance abuse disorders involved in or at risk of becoming involved in the criminal justice system. The bill creates the Community Mental Health and Substance Abuse Crime Reduction Act. Key elements of the bill include:

- Demonstration of a community substance abuse and mental health system targeting individuals at highest risk of involvement in the criminal justice, juvenile justice, and state mental health systems. The demonstrations are to build upon the existing county-based Criminal Justice, Mental Health, Substance Abuse Reinvestment Grant Programs;
- Development of collaborative working relationships with state and local criminal justice and community stakeholders;
- A directive to the Agency for Health Care Administration (AHCA) to seek federal financial participation for participants in the Crime Reduction Act ;
- A provision for continued treatment of persons in the community on conditional release who are experiencing an emergency and continued psychotherapeutic medication treatment for persons transferred from jails to state facilities;
- Training and requirements for appointment of forensic mental health experts who evaluate adults and juveniles;
- A requirement for committing courts to place a person on conditional release who meets certain criteria into community residential facilities for competency restoration.

The bill has an estimated fiscal impact which is subject to an appropriation of \$67,275 for FY 2010-11 and \$12.6 million for FY 2011-12.

The effective date of the bill is July 1, 2010,

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2007, the Florida Supreme Court published a report entitled *Mental Health, Transforming Florida's Mental Health System*. According to the report, on any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses and/or substance use disorders requiring immediate treatment are arrested and booked into Florida jails. Of the 150,000 children and adolescents who are referred to Florida's Department of Juvenile Justice every year, more than 70 percent have at least one mental health disorder. The report provided a list of various recommendations to improve Florida's mental health and substance abuse system, reduce recidivism, increase public safety, and increase spending efficiency. This bill seeks to enact some of the recommendations.

In Florida, the cost for forensic mental health services in state treatment facilities is approximately \$200 million annually to fund 1,677 secure and non-secure forensic beds. These beds provide treatment to approximately 3,000 people each year. The demand for forensic beds in Florida reached crisis proportions in 2006, when 300 individuals were on a waitlist for nearly 3 months to be admitted to a forensic bed. To address the backlog, the Legislature appropriated funds to open another 413 beds in treatment facilities and the community.¹

Community Mental Health and Substance Abuse Treatment and Crime Reduction Act

This bill creates the Community Mental Health and Substance Abuse Crime Reduction Act in section 394.4656, Florida Statutes. The Act includes legislative intent and seven specific goals for the new program. Goals include the following:

- Ensure public safety;

¹ Department of Children and Families Bill Analysis for HB 1189 on file with the Committee.

- Ensure that forensic competency restoration services are provided in the least restrictive, least costly, and most effective environment;
- Provide competency restoration services in the community when appropriate, based on consideration of public safety, needs of the individual and available resources;
- Reduce admissions for competency restoration to state forensic mental health treatment facilities;
- Reduce rates of arrest, incarceration, and re-incarceration for persons in the program;
- Increase outreach and services to individuals at risk of involvement in the criminal justice system, juvenile justice system and forensic mental health system; and
- Support collaboration among state and local stakeholders

The bill adds substantive definitions defining what constitutes *best practices*, *community forensic system*, *community residential facility*, *evidence-based practices*, *forensic intensive care management*, and *geographic area*.

The bill directs the Department of Children and Families (DCF) in consultation with the Agency for Health Care Administration (AHCA), to develop and implement a community mental health and substance abuse forensic treatment system. The community forensic system must build on local community diversion and reentry initiatives and strategies that are consistent with the Substance Abuse and Mental Health Reinvestment Grant Program,² or geographic areas that have piloted community diversion programs.

Services to be included in the Forensic System:

The bill specifies that the community forensic system initiatives may include, but aren't limited to:

- Mental health courts;
- Diversion programs;
- Alternative prosecution and sentencing techniques;
- Crisis intervention teams;
- Specialized training for criminal justice, juvenile justice, and treatment service professionals;
- Specialized probation officer at the state and county levels to serve individuals under correctional control in the community;
- Collateral services such as supported, transitional, and permanent housing, and supported employment; and
- Reentry services and supports for affected individuals.

Further, this bill dictates that the community forensic treatment system must include a comprehensive continuum of care and services that use evidence-based and best practices to address co-occurring mental health and substance abuse disorders. The system must include, at a minimum, the following services and elements:

² s. 394.658(1), F.S.

- Competency-restoration and treatment services provided in a variety of settings from least restrictive to progressively more restrictive settings;
- Secure residential placement for initial service and stabilization;
- Forensic intensive care management;
- Supported housing;
- Supported employment;
- Medication management;
- Trauma-specific services;
- Residential services;
- Treatment for co-occurring mental health and substance abuse disorders;
- Outreach and education; and
- Involuntary outpatient placement and conditional release for individuals meeting the criteria for these services.

Eligibility:

The bill specifies that initial eligibility for the program shall be limited to adults who are adjudicated incompetent to proceed or not guilty by reason of insanity, whose current most serious charge is a felony of the third degree or a felony of the second degree if the felony did not involve violence, and who meet public safety criteria established by the court and treatability criteria established by the department for placement in a community setting and who otherwise would be admitted to a state mental health treatment facility.

Contingent on Legislative approval the bill provides authority for DCF to serve the following additional groups:

- Adults who experience serious and persistent mental illnesses re-entering the community from state prisons;
- Adults who have been committed to a state forensic mental health treatment facility after being adjudicated incompetent to proceed or not guilty by reason of insanity, and are released or are pending release to the community by the court after completing competency restoration services or being found to no longer meet the criteria for continued commitment placement;
- Adults who experience serious and persistent mental illnesses, who have a history of involvement in the criminal justice system, or who are at risk of entering or are already involved with the criminal justice system; and
- Children deemed incompetent to proceed under s. 985.19, F.S.

DCF Responsibilities:

The bill directs DCF to develop a continuum of services to implement the Act. The bill specifies that DCF may:

- Define requirements for all providers in the community forensic system;
- Implement demonstration sites for participation,
- Enter into memorandums of agreement with county planning councils or committees;
- Identify providers to implement the continuum of services;
- Establish performance measures and reporting requirements for providers, including, at a minimum:
 - The number of individuals diverted from state forensic mental health treatment facilities;
 - The number of individuals diverted from the criminal justice system;
 - The rates of arrest, incarceration, and re-incarceration for new criminal offenses;
 - The rates of employment; and
 - The annual number of days in a crisis stabilization unit, detoxification facility, short-term residential treatment program, state civil mental health treatment facility, or state forensic mental health treatment facility; and
- Monitor contracts and assess contract performance, and;
- Provide an annual report by October 1 on implementation status.

Implementation of Pilot Sites:

The bill provides that DCF may implement the act within available resources. The bill also provides that DCF in consultation with AHCA may identify geographic areas for initial implementation of pilot program sites. Subsection (6)(b) of the bill further defines that implementation sites must demonstrate active and sustained community collaborations. The effect of this section is to require that funding for implementation must come from existing appropriations. In addition the bill does not limit the number of geographic areas or pilot sites which DCF may select for implementation.

The bill provides that future expansion will be based on community readiness and the potential for affecting the greatest number of individuals entering the mental health and criminal justice systems. Also included among the criteria for selecting a pilot area are: community readiness, a high bed-utilization rate, successful application for implementation grant funding under the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program, and other elements. This language is not clear as to whether the criteria applies to initial implementation or statewide expansion or both. In addition the bill does not require Legislative approval for expansion of the pilot.

Criminal Justice, Mental Health, and Substance Abuse Policy Council

The Criminal Justice, Mental Health, and Substance Abuse Policy Council is currently established within the Substance Abuse and Mental Health Corporation under section 394.655(11), F.S. The council's purpose is to align policy initiatives in the criminal justice, juvenile justice, and mental health systems to ensure the most effective use of resources and to coordinate the development of legislation relating to various mental health needs.

This bill requires the council to align policy initiatives in the substance abuse systems. The bill also would include as a purpose of the council to provide consultation in the development of comprehensive and cost-effective community-based mental health and substance abuse treatment services.

Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program

The 2007 Legislature created the Reinvestment Grant Program to provide funding to counties to expand initiatives to increase public safety and the effectiveness of treatment to individuals with substance abuse, mental health or co-occurring disorders who encounter the criminal justice system.³ This bill specifies that, in implementing the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act, DCF and ACHA will work in coordination with counties that received grants under the Reinvestment Grant Program or who have piloted community-based diversion programs.

County Planning Councils or Committees

Each board of county commissioners is required to designate a county public safety coordinating council or another criminal or juvenile justice mental health and substance abuse council or committee, under section 394.657, Florida Statutes. This bill amends the duties of that council to include consulting with local governing bodies when planning or implementing the Act.

Optional Medicaid Services

This bill provides that, subject to specific appropriations, AHCA may seek a federal state plan amendment to implement home and community-based services for individuals that have disabilities that cause them to become, or put them at risk of becoming, involved in the criminal justice system because of their mental illness. Eligible individuals may have incomes up to 150 percent of the federal poverty level. The state plan amendment is to be in accordance with 1915i of the Social Security Act. The effect of this change would provide federal financial participation (matching funds to state general revenue) to individuals served under the Crime Reduction Act established under this bill.

The bill specifies that ACHA shall disenroll individuals receiving services under this subsection from enrollment in MediPass,⁴ or any capitated or other Medicaid managed care arrangements. The effect of this change would allow AHCA to provide Medicaid benefits on a fee for service basis to individuals enrolled in the Crime Reduction Act.

The bills provides that enrollment in state plan services may not exceed 1,000 individuals unless additional approval is obtained from the Legislature. In addition, after July 1, 2013, the bill provides that ACHA may capitate Medicaid behavioral health services under this subsection.

Cost Effective Purchasing of Health Care

Section 409.912, Florida Statutes, is amended to allow any persons who have serious and persistent mental illnesses, who are receiving services under the Crime Reduction Act, and who are eligible for and receiving services under the state plan implemented under section 1915i of the Social Security Act, as approved by the Centers for Medicare and Medicare Services, an exemption from MediPass and managed care plans authorized under chapter 409.91211. The effect of this change would allow AHCA to provide Medicaid benefits on a fee for service basis to individuals enrolled in the Crime Reduction Act.

³ s. 394.656, F.S.

⁴ The Medicaid Provider Access System (MediPass) is a primary care case management program for Medicaid beneficiaries developed and administered by Florida Medicaid. MediPass was established in 1991 to assure adequate access to coordinated primary care while decreasing the inappropriate utilization of medical services. See generally <http://ahca.myflorida.com/medicaid/medipass/index.shtml>

Forensic definitions

New definitions are added to s. 916.106 to include:

“Aquittee” which means a defendant who has been adjudicated not guilty by reason of insanity, and
“Conditional releasee” means a person placed on conditional release pursuant to s. 916.17, F.S.

Rights of Forensic Clients

Chapter 916, Part 1, Florida Statutes is known as the Forensic Client Services Act. Within the Act, s. 916.107, F.S., provides for rights to forensic clients including rights to individual dignity, rights to treatment, and rights to express and informed consent. This applies to forensic clients who have been adjudicated incompetent, not guilty by reason of insanity or persons found incompetent to proceed due to retardation or autism.⁵ The definition of forensic client used in the section does not appear to apply to individuals who have been granted conditional release status by the court in lieu of involuntary commitment. A person on conditional release who becomes a danger to self or others and refuses treatment or violates the terms of conditional release can sometimes receive services in a short term residential treatment facility⁶ or crisis stabilization unit⁷ in the community as an alternative to a state mental health treatment facility.⁸

The bill provides rights to persons on conditional release status to express and informed consent for treatment. Further, the bill provides that if a conditional releasee refuses treatment such as taking medications, then treatment may still be provided under certain circumstances including when the individual is a danger to self or others. This treatment is for individuals in a crisis stabilization unit or short-term residential treatment facility and treatment authorization must be made by a physician for not more than 48 hours. After 48 hours, a petition must be made to the court seeking authorization of further treatment. The effect of this change may allow an individual to remain in the community and receive treatment without having to be admitted to a forensic state mental health treatment facility.

Psychotherapeutic Medication Treatment

Currently, the law does not provide for continued treatment of medications (without petitioning the court) for an individual who refuses treatment after being transferred from jail to a state mental health treatment facility. This bill provides for uninterrupted treatment for individuals who have been receiving psychotherapeutic medication at a jail at the time of transfer to a state forensic mental health treatment facility. This applies to individuals who lack the capacity to make an informed decision regarding mental health treatment. The admitting physician may order a continuation of psychotherapeutic medication if, in the physician’s judgment, abrupt cessation of the medication could cause a risk to the health and safety of the client during the time a court order to medicate is pursued.⁹

Training of Mental Health Experts and Appointment of Experts

The evaluation of defendants for competency to proceed or sanity, subsequent to a felony offense must be conducted by mental health experts who apply uniform criteria based on the Florida Rules of Criminal Procedure. Chapter 916.111, Florida Statutes, provides the authority and guidance for the development of training for mental health experts to complete the forensic evaluations.

The court appoints the experts who conduct the forensic evaluations. Since the late 1980s, DCF has maintained a list of evaluators for the court to choose from who have completed forensic evaluator training. This list is required to be given to the courts annually. Current statute specifies “to the extent

⁵ s. 916.106(9), F.S.

⁶ s. 394.67(3), F.S.

⁷ s. 394.67(4), F.S.

⁸ s. 394.461(2), F.S.

⁹ Under s. 916.107, F.S., which would be amended by this bill, an administrator or designee of a mental health facility is required to petition for a court order authorizing necessary and essential treatment for a client, if a client refuses treatment.

possible" the appointed experts shall have completed the forensic evaluator training.¹⁰ Therefore, statute does not mandate that experts performing evaluations must complete the training. In addition, the law does not specify how long an expert may remain on the list of evaluators before they are required to retake the training.

The bill requires the forensic evaluator training course to be provided at least annually. In addition, beginning July 1, 2011, mental health experts who wish to be on the forensic evaluator list must take the training at least once in every five years. Those who have not completed the training within this time frame will be removed from the registry. The bill also clarifies that all experts appointed by the court must have completed the forensic evaluator training in the previous five years.

Hearings for Forensic Residents

Current statute does not require a timeframe for transporting an individual back to jail or scheduling and holding the court hearing for individuals whose competency has been restored or no longer meet criteria for commitment. However, Florida Rules of Criminal Procedure¹¹ requires the court to hold a hearing to determine if the defendant continues to be incompetent within 30 days of the receipt of a report from the department. When delays occur in the transporting of defendants and the scheduling of competency hearings, the department is unable to make these forensic beds available to new defendants who have been committed by the court and are waiting on placement. Further, the longer a person must wait in jail to have their competency or commitment hearing, the more likely they will decompensate and require a return admission to the state mental health treatment facility for re-stabilization.¹²

The bill amends sections 916.13 and 916.15, F.S., to require a court hearing to be scheduled and occur within 30 days of the court receiving notification that the person is competent to proceed or no longer meets commitment criteria. The purpose of these requirements is to improve timely movement of defendants out of treatment facilities and back to the court system.

*Conditional Release*¹³

Current law allows the committing court to order a conditional release of a person in lieu of an involuntary commitment to a state facility under s. 916.13, F.S. or s.916.15, F.S. The conditional release is based on an approved plan for outpatient care and treatment.

The bill requires the court to place individuals who meet the criteria for involuntary commitment under section 916.13, F.S., in a community residential facility¹⁴ for competency restoration if their current most serious charge is a third degree or second degree non-violent felony. The court will not place individuals in the community for competency restoration if bed space or funding is not available or if the court makes a finding that the individual cannot be safely placed in the community. The bill provides criteria for the court to use in making the findings related to safe placement of the individual.¹⁵

The effect of this change is to use community services for competency restoration and treatment when appropriate. However, the language in the bill reads as a statewide mandate for courts to place individuals who meet criteria. It is not clear whether community residential services would be available for people placed by the court under this section beyond the pilot sites referenced as part of the Crime Reduction Act.

¹⁰ s. 916.115(1)(a), F.S.

¹¹ Fla. R. Crim. Pro. 3.212(c)(6).

¹² Department of Children and Families Staff Analysis of HB 1189, on file with the Committee.

¹³ s. 916.17, F.S.

¹⁴ Community Residential Facility is defined in this bill as a community based treatment setting licensed under s. 394.875, ss. 429.075, or 397.401, F.S.

¹⁵ Including consideration of all of the following: the nature and seriousness of the crime allegedly committed, the individual's criminal history, the individual's psychiatric history, the individual's history of violent behavior or threats of violent behavior and risk of harm to self or others, the likelihood that the individual will comply with and benefit from the mental health treatment and services being recommended, the availability of appropriate community-based services and treatment settings, and other information considered relevant by the court.

Incompetency in Juvenile Delinquency Cases

At any time prior to, or during a juvenile delinquency case the court believes a child named in the petition may be incompetent, the court must order an evaluation of the child's mental condition.¹⁶ Current law provides that the evaluation of a child's mental condition must be made by two or three experts appointed by the court. The law does not specify training requirements or credentials for these experts. The basis for determinations of juvenile competency must be specifically stated in an evaluation of the child's mental condition. If the child is found not competent to proceed the court will notify DCF for placement in an appropriate facility for treatment and training.¹⁷

This bill requires that the competency evaluation be conducted in such a way as to ensure uniform application of the criteria enumerated in Rule 8.095, Florida Rules of Juvenile Procedure. This procedure is for when a child is believed to be incompetent or insane. The bill requires DCF to develop the following:

- A plan for training professionals to perform forensic evaluations and standardized criteria;
- Clinical protocols and procedures;
- Training for professionals in clinical protocols and procedures;
- Procedures for evaluating success of the program.

Further, the bill would require experts appointed by the court to determine juvenile competency to have completed forensic evaluator training approved by the DCF within five years prior to conducting evaluations for the court, and each expert must be a psychiatrist or licensed psychologist. Beginning July 1, 2011, this bill provides for removal from the DCF's registry if the expert does not comply with the training requirements and these experts may not perform competency evaluations..

B. SECTION DIRECTORY:

Section 1. Creates s. 394.4656, F.S., relating to the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act.

Section 2. Amends s. 394.655, F.S., relating to the Substance Abuse and Mental Health Corporation.

Section 3. Amends s. 394.656, F.S., relating to the Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program.

Section 4. Amends s. 394.657, F.S., relating to county planning councils or committees.

Section 5. Amends s. 409.906, F.S., relating to optional Medicaid services.

Section 6. Amends s. 409.912, F.S., relating to cost-effective purchasing of health care.

Section 7. Amends s. 916.106, F.S., relating to definitions.

Section 8. Amends s. 916.107, F.S., relating to rights of forensic clients.

Section 9. Amends s. 916.111, F.S., relating to training of mental health experts.

Section 10. Amends s. 916.115, F.S., relating to appointment of experts.

Section 11. Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

¹⁶ s. 985.19,(1), F.S.

¹⁷ s. 958.19(1)and (2), F.S.

Section 12. Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

Section 13. Amends s. 916.17, F.S., relating to conditional release.

Section 14. Amends s. 985.19, F.S., relating to incompetency in juvenile delinquency cases.

Section 15. Provides for an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

none

2. Expenditures: The following costs are associated with implementation of the 1915i Medicaid state plan amendment proposed in section 5 of the bill. The 1915i home and community based services cost is based on 1,000 persons @ \$12,453 per person annually.

	FY 10-11	FY 11-12 ¹⁸
2 FTEs including benefits (during FY 10-11 only 1 FTE)	67,275	131,540
1915i Home & Community Based Services Waiver		\$12,453,000
TOTAL	\$67,275	\$12,584,540
General Revenue Fund	\$33,368	\$5,481,535
Medical Care Trust Fund	\$33,907	\$7,102,915

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

DCF anticipates lower demand for costly services in jails, emergency rooms and other crisis settings, less crime, enhanced public safety, fewer injuries to law enforcement officers, and decreased rates of chronic homelessness.¹⁹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who are required to take the Department-approved Forensic Evaluator Training course in order to be placed on the forensic evaluator registry must pay a fee for the training, estimated to be approximately \$445 per person. The fee for state employees and non-profit companies is \$395 per person. This fee is not new as the training has been in existence for 23 years.²⁰

D. FISCAL COMMENTS:

As this legislation is implemented and an increasing number of individuals are served in the community, the Department of Children and Families anticipates a decreased demand for forensic state mental

¹⁸ Email from W. Moore dated 3-12-2010 on file with the Committee.

¹⁹ Department of Children and Families Analysis of HB 1189, on file with Committee.

²⁰ Id.

health treatment facility beds. The Department will continue to monitor the utilization of forensic beds as demonstration sites are identified and community forensic programs are implemented and expanded. This will be done with some degree of caution based on the continued need to meet the statutory requirement to move individuals from the jail system to a forensic bed once they are deemed incompetent to proceed. In 2009, the Department successfully contracted with a private provider to operate a short-term residential treatment facility serving forensic clients in Miami-Dade County. Due to available forensic capacity, the Department was able to transfer funding from the facilities budget to the community for this purpose. *As more individuals are able to be served in the community and diverted from forensic treatment facility placement, the Department expects to have additional funding to support this legislation.*²¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 271-291: The Crime Reduction Act is referred to as a pilot, however, the bill does not limit the number of pilot sites for implementation. Under language in the bill the pilot could conceivably be implemented statewide. Also, further, expansion of the pilot program should require Legislative approval.

The bill language in this section is not clear as to whether the selection criteria for demonstration sites applies to initial implementation or expansion or both.

Line 271 The department "*may*" should probably read "*shall*" implement this section...

Line 274, "*may* identify geographic areas of the state" should probably read "*shall* identify geographic areas of the state"

Line 740- 761 The bill reads as a statewide mandate for courts to place individuals who meet criteria. It is not clear whether community residential services would be available statewide for people placed by the court under this section beyond the pilot sites referenced as part of the Crime Reduction Act. This section should probably be limited to the pilot sites for the Crime Reduction Act.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

²¹ Id.

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

29 councils to consult with local governing bodies when
30 planning or implementing the Community Mental Health and
31 Substance Abuse Treatment and Crime Reduction Act;
32 amending s. 409.906, F.S.; adding home and community-based
33 mental health services to the optional Medicaid services
34 offered by the state Medicaid program; amending s.
35 409.912, F.S.; allowing an exemption for persons who have
36 serious and persistent mental illnesses and who are
37 receiving services under the Community Mental Health and
38 Substance Abuse Treatment and Crime Reduction Act from
39 MediPass and managed care plans; amending s. 916.106,
40 F.S.; providing definitions; amending s. 916.107, F.S.;
41 including certain conditional releasees within certain
42 provisions relating to procedures for persons admitted to
43 state forensic mental health treatment facilities who lack
44 capacity to make informed decisions regarding mental
45 health treatment; specifying treatment procedures for a
46 client admitted to a state forensic mental health
47 treatment facility who lacks the capacity to make an
48 informed decision regarding mental health treatment at the
49 time of admission; amending s. 916.111, F.S.; providing
50 for forensic evaluator training for mental health experts;
51 amending s. 916.115, F.S.; requiring court-appointed
52 experts to have completed forensic evaluator training;
53 requiring the court-appointed expert to be a psychiatrist
54 or a licensed psychologist; requiring the Department of
55 Children and Family Services to maintain and annually
56 provide the courts with a forensic evaluator registry;

57 amending s. 916.13, F.S.; providing a timeframe for the
 58 holding of a competency hearing; amending s. 916.15, F.S.;
 59 providing a timeframe for the holding of a commitment
 60 hearing; amending s. 916.17, F.S.; requiring that certain
 61 defendants be placed in a community residential facility
 62 for competency restoration in demonstration areas
 63 established under the Community Mental Health and
 64 Substance Abuse Treatment and Crime Reduction Act;
 65 providing exceptions; providing requirements for a report
 66 concerning a child who is found incompetent to proceed;
 67 amending s. 985.19, F.S.; requiring that the basis for the
 68 determination of incompetency of juveniles be conducted so
 69 as to ensure uniform application of specified criteria;
 70 requiring development of plans and requirements relating
 71 to forensic evaluations; requiring that appointed experts
 72 complete the forensic evaluator training program by
 73 specified dates; providing an effective date.

74
 75 Be It Enacted by the Legislature of the State of Florida:

76
 77 Section 1. Section 394.4656, Florida Statutes, is created
 78 to read:

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

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

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

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

100 (a) Ensure public safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 167 5. Specialized training for criminal justice, juvenile
 168 justice, and treatment services professionals.
- 169 6. Specialized probation officers at the state and county
 170 levels to serve individuals under correctional control in the
 171 community.
- 172 7. Collateral services such as supported, transitional,
 173 and permanent housing, and supported employment.
- 174 8. Reentry services to create or expand mental health and
 175 co-occurring treatment and support for affected individuals.
- 176 (b) The community forensic system must include a
 177 comprehensive continuum of care and services that use evidence-
 178 based and best practices to address co-occurring mental health
 179 and substance abuse disorders, including the following minimum
 180 services and elements:
- 181 1. Competency-restoration and treatment services provided
 182 in a variety of settings from least restrictive to progressively
 183 more restrictive settings.
- 184 2. Secure residential placement for initial service
 185 delivery and stabilization.
- 186 3. Forensic intensive care management.
- 187 4. Supported housing.
- 188 5. Supported employment.
- 189 6. Medication management.
- 190 7. Trauma-specific services for treatment of the effects
 191 of sexual, physical, and emotional abuse or trauma experienced
 192 by individuals who have mental illnesses and are involved in the
 193 criminal justice system.

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

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

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

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

206 12. Other services or supports as identified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

297 (11)

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

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

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

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

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

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

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

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

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

336 394.657 County planning councils or committees.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

497 916.107 Rights of forensic clients.—

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

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

508 1. In an emergency situation in which there is immediate
509 danger to the safety of the client or conditional releasee or
510 others, such treatment may be provided upon the written order of of
511 a physician for a period not to exceed 48 hours, excluding
512 weekends and legal holidays. If, after the 48-hour period, the
513 client or conditional releasee has not given express and
514 informed consent to the treatment initially refused, the
515 administrator or designee of the civil or forensic facility,
516 crisis stabilization unit, or short-term residential treatment
517 facility serving individuals placed on conditional release
518 pursuant to s. 916.17(2) shall, within 48 hours, excluding
519 weekends and legal holidays, petition the committing court or
520 the circuit court serving the county in which the facility is
521 located, at the option of the facility administrator or
522 designee, for an order authorizing the continued treatment of
523 the client or conditional releasee. In the interim, the need for
524 treatment shall be reviewed every 48 hours and may be continued
525 without the consent of the client or conditional releasee upon
526 the continued written order of a physician who has determined

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

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

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

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

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

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

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

576
 577 The hearing shall be as convenient to the client or conditional
 578 releasee as may be consistent with orderly procedure and shall
 579 be conducted in physical settings not likely to be injurious to
 580 his or her ~~the client's~~ condition. The court may appoint a
 581 general or special magistrate to preside at the hearing. The
 582 client or conditional releasee or his or her ~~the client's~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

635 916.115 Appointment of experts.—

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

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

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

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

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

652 916.13 Involuntary commitment of defendant adjudicated
 653 incompetent.-

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

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

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

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

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

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

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

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

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695 pursuant to the applicable Florida Rules of Criminal Procedure.

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

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

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

714 916.17 Conditional release.—

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

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

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

729 (b) Provisions for outpatient mental health services.

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

733

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

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

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

752 (b) The individual's criminal history.

753 (c) The individual's psychiatric history.

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

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

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

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

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

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

778 and discharge the defendant or acquittee.

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

781 985.19 Incompetency in juvenile delinquency cases.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1189 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Services Policy
2 Committee
3 Representative(s) Snyder offered the following:

4

5 **Amendment**

6 Remove line 233 and insert:

7 (6) DEPARTMENT RESPONSIBILITIES. - The department shall

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Services Policy
2 Committee
3 Representative Snyder offered the following:
4

5 **Amendment**

6 Remove lines 271-279 and insert:

7 (7) IMPLEMENTATION.-The department shall implement this section
8 within available resources. In expectation of statewide
9 implementation of this section, the department, in consultation
10 with the agency, may identify geographic areas of the state for
11 initial implementation of up to three pilot program sites.
12 Future expansion must have legislative approval and shall be
13 based on findings of community readiness and the potential for
14 affecting the greatest number of individuals entering the
15 forensic mental health and criminal justice systems. Criteria
16 for selection of the pilot program sites and future expansion
17 may include:
18

Amendment No.

20
21
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25

T I T L E A M E N D M E N T

Remove line 32 and insert:

Amending s. 409.906, F.S.; requiring recommendations and a
report on adding home and community-based

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Services Policy
 2 Committee
 3 Representative Snyder offered the following:

Amendment (with title amendment)

Remove lines 474-482

T I T L E A M E N D M E N T

12 Remove lines 34-39 and insert:
 13 offered by the state Medicaid program; amending s. 916.106,

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Services Policy
2 Committee

3 Representative Snyder offered the following:

4
5 **Amendment**

6 Remove lines 500-518 and insert:

7 release in a crisis stabilization unit or a short-term
8 residential treatment facility shall be asked to give express
9 and informed written consent for treatment. If a client or such
10 a conditional releasee refuses such treatment as is deemed
11 necessary and essential by his or her ~~the client's~~
12 multidisciplinary treatment team for his or her ~~the~~ appropriate
13 care ~~of the client~~, such treatment may be provided under the
14 following circumstances:

15 1. In an emergency situation in which there is immediate
16 danger to the safety of the client or conditional releasee or
17 others, such treatment may be provided upon the written order of
18 a physician for a period not to exceed 48 hours, excluding
19 weekends and legal holidays. If, after the 48-hour period, the

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1189 (2010)

Amendment No.

20 client or conditional releasee has not given express and
21 informed consent to the treatment initially refused, the
22 administrator or designee of the civil or forensic facility,
23 crisis stabilization unit, or short-term residential treatment
24 facility serving individuals placed on conditional release
25 shall, within 48 hours, excluding

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1189 (2010)

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Services Policy
2 Committee
3 Representative Snyder offered the following:

4
5
6
7
8
9

Amendment

Remove line 744 and insert:
be placed in a community residential facility in a pilot program
site referenced in s. 394.4656(7), for competency

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Termination of Child Support at Majority

In general, child support ends as the child reaches the age of majority, that is, upon the child reaching 18 years of age. However, s. 743.07(2), F.S., provides that a child support obligation may be extended beyond the 18th birthday in two different circumstances:

- If the child will continue to be dependent upon his or her parents for support beyond his or her 18th birthday because of a physical or mental incapacity that existed prior to the child turning 18.
- If the child is still in high school, performing in good faith and with a reasonable expectation of graduation before the age of 19.

An order establishing child support is a continuing obligation owed by the parent paying support. Many parents paying and receiving child support are surprised to learn that the child support obligation does not automatically end by operation of law. Instead, the parties must obtain a court order modifying the support obligation when a child reaches the age at which support should end.¹ Where one child reaches the age of majority, the parties must return to court and re-litigate child support based on then-current incomes and the number of children remaining to whom child support applies. Obviously, couples often have two or more children of differing ages. One appellate court explained:

It is well established that a trial court may, in its discretion, award lump sum support for two or more children, rather than award a separate amount of support for each child, and that the parent paying such unallocated support "has the duty to petition the court to reduce the amount when one child attains majority." *State v. Segrera*, 661 So.2d 922, 923 (Fla. 3d DCA 1995); *Hammond v. Hammond*, 492 So.2d 837, 838 (Fla. 5th DCA 1986) (confirming that a trial court may award lump sum child support for several children and when it does so, the payor parent must "petition for an order reducing the amount when one child attains majority"). It is equally well settled that because support obligations become the vested rights of the payee and vested obligations of the payor at the time the payments are due, child support payments are not subject to retroactive modification.²

¹ s. 61.13, F.S.

² *State, Dept. of Revenue ex rel. Ortega v. Ortega*, 948 So.2d 855 (Fla.3rd DCA 2007).

This bill amends s. 61.13(1)(a), F.S., to provide that child support orders and income deduction orders entered on or after October 1, 2010, must account for the anticipated time at which the child support obligations related to dependent children should terminate. A child support award must change the support obligation at those times to account for the reduced obligation of the one child reaching the age of majority, together with the changed support obligation owed for the remaining child or children, if applicable.

Child Support Guidelines - Principles

Current statutory law does not provide principles that a court should follow when establishing or modifying child support obligations. This bill creates s. 61.29, F.S., to establish the following principles that a court must follow when establishing or modifying child support obligations:

- A parent's first and principal obligation is to support his or her minor child.
- Both parents are mutually responsible for the support of their children.
- Each parent should pay for the support of the children according to a parent's ability to pay.
- Children should share in the standard of living of both parents. Child support may therefore be appropriately used to improve the standard of living of the children's primary residence in order to improve the lives of the children.
- The guidelines schedule takes into account each parent's actual income and level of responsibility for the children.
- It is presumed that the parent having primary physical responsibility for the children contributes a significant portion of his or her available resources for the support of the children.
- The guidelines schedule is based on the parents' combined net income estimated to have been allocated to the child if the parents and children were living in an intact household.
- The guidelines schedule encourages fair and efficient settlement of conflicts between parents and minimizes the need for litigation.

Child Support Guidelines Formula -- Imputed Income

In general, a court determines support obligations of the parties based on their income and, in the case of child support, the time-sharing arrangement.³ In some circumstances, the current income of a party does not give an accurate picture of the party's ability and duty to make support payments. Where this occurs, s. 61.30(2)(b), F.S., allows the court to impute income to that party. Imputed income is an estimate of what the party should be earning. The imputed income is then used in determining child support rather than actual income.

This bill amends s. 61.30(2)(b), F.S., related to imputed income. If a parent does not provide income information, earnings must be imputed at the median wage for all full-time workers. According to the U.S Census Bureau, median income for a single earner in Florida in 2008 was \$41,226.⁴ In comparison, the income of an individual based solely on minimum wage is \$15,068.40.⁵ This bill further provides that, for a court to impute income, the court must find that the unemployment or underemployment is voluntary and must determine whether subsequent underemployment resulted from pursuit of own interests or from less than diligent efforts to find suitable employment. The bill also provides that the burden of proof is on the parent seeking to impute income to the other.

³ s. 61.30, F.S.

⁴ U.S. Census Bureau, <http://www.census.gov/hhes/www/income/medinccarnersandstate.xls> (Last visited 3/12/2010).

⁵ \$7.25 per hour effective July 24, 2009, the minimum wage is \$7.25 per hour. Multiplied by 40 hours per week and assuming 4.33 weeks in a month, yearly gross income at minimum wage in 2010 is \$15,068.40.

Child Support Guidelines Chart

A child support guideline determination references the minimum child support need chart at s. 61.30(6), F.S. The net income of the parents is added together to determine the combined monthly net income amount. The chart has \$50 increments starting at \$650 combined net income. The chart also contains separate columns for between one and six children. If the combined monthly net income is less than the lowest level on the chart (\$650), the court is directed to determine child support on a "case-by-case" basis.

This bill amends s. 61.30(6), F.S., as it refers to the low income calculation of child support, change the reference to "combined income" to a reference to the net income of the obligor parent only (net income is less than \$650 a month). The child support payment required of a parent whose net income is less than \$650 a month is the lesser of the case-by-case child support amount determination in s. 61.30(6), F.S., and 90 percent of the difference between the obligor parent's monthly net income and the current federal poverty guidelines for a single individual.⁶

Child Support Guidelines Formula - Credit for Child Care Expense

One part of the child support calculation is the apportionment of child care expenses between the parents. Under current law, the parent actually paying the child care expense is only given credit for 75% of the cost of such day care.⁷ This 25% subtraction appears to have been put into law to account for the corresponding federal child care tax credit of 25%; however, higher income parents do not qualify for the full 25% credit rate under current federal tax law (some do not qualify at all) and, because the credit was nonrefundable until the 2009 tax year, lower income parents could not utilize the full 25% credit.

This bill amends s. 61.30(7), F.S., to fully apportion child care expense without a 25% deduction. Note that other parts of this bill change s. 61.30(11)(a), F.S., to require the court to account for the effect of tax laws, including the child care tax credit actually applicable to the parties based on their financial circumstances.

Child Support Guidelines Formula -- Tax Credits

The child support guidelines formula is a formula that calculates the net income of the parents, determines a minimum child support need, and splits that need by the shared parenting plan to calculate a presumptive child support amount owed by one parent to the other. The court may not award child support that varies from the formula by more than 5% except upon limited circumstances.⁸

This first part of the formula is a determination of each parent's net income by subtracting various expenses from the parent's gross income. The first allowable subtraction from gross income, at s. 61.30(3)(a), F.S., is for income tax liabilities. To properly calculate the subtraction, the court is directed to calculate the appropriate income tax deduction that is expected in the immediate future. The formula does not use current income tax deductions as the case outcome typically affects and changes the income tax liabilities of the parents.⁹

Income tax laws provide for deductions and tax credits. A deduction reduces the gross income that is used in calculating the income tax, a tax credit is a reduction of taxes owed. Federal income tax law in the past generally prohibited tax credits from creating a negative tax situation where the federal government would owe money back to the taxpayer. In tax parlance, these tax credits were

⁶ As of 3/12/2010, the federal poverty guideline for a single individual is \$10,830.00.

<http://aspe.hhs.gov/POVERTY/09poverty.shtml> (last visited 3/12/2010).

⁷ s. 61.30(7), F.S.

⁸ s. 61.30(1)(a), F.S.

⁹ After divorce, the parents will move from married to either single or head of household. Also, the court may award a dependency deduction to one parent or the other.

"nonrefundable", they would generally be lost once a person owed no federal income tax. However, the earned income tax credit, a credit given to the working poor, was refundable under previous tax law. One aspect of the 2009 federal stimulus bill is that several tax credits have moved from nonrefundable to refundable, and thus may have the effect of increasing a parent's net. It is possible that a strict reading of s. 61.30(3)(a), F.S., which simply refers to deductions from income, may not allow the court to account for refundable tax credits when calculating income for child support purposes.

This bill amends s. 61.30(11)(a), F.S., to account for, in the child support formula, the Child & Dependent Care Tax Credit and the Earned Income Tax Credit, in addition to other tax items in current law. The effect is to account for refundable tax credits in a parent's net income used to calculate child support.

Child Support Formula Adjustment for Timesharing

The child support formula is set forth in s. 61.30, F.S. The basic formula is provided in subsections (1) through (10), and other changes to that formula are set forth in portions of the analysis above. In short, the formula uses the adjusted incomes of the parents to develop a minimum child support need based on the chart. The minimum child support need is then increased by child care costs and health insurance costs to establish a total child support need. That total need is then multiplied by a parent's percentage share of the joint income to determine that parent's minimum child support obligation.

Section 61.30(11)(b), F.S., provides that a court must adjust the minimum child support need where a parenting plan provides that each child spend a substantial amount of time with each parent. In short, the adjustment of child support requires a recalculation based on the percentage of overnight stays at each parent's home. Subparagraph 8. defines the term substantial amount of time to be where one parent has 40% or more of the overnights of the year.

This bill amends s. 61.30(11), F.S., to remove the references to substantial amount of time. The effect is that nearly all child support calculations will require adjustment based on the timesharing arrangement.¹⁰

When adjusting for timesharing arrangements, current law requires that the base child support obligation (without day care and health insurance costs) is to be multiplied by 1.5, which is then apportioned between the parties based on their relative timesharing share. The effect of using a 1.5 multiplier is to lessen the financial impact on a parent receiving child support where substantial timesharing would otherwise substantially reduce the child support award. This bill amends s. 61.30(11), F.S., to eliminate the 1.5 multiplier, thereby requiring all child support awards to be directly affected by the timesharing arrangement.

The effect of these changes will create a timesharing adjustment to the child support amount that applies to all levels of shared parenting but increases with the amount of the noncustodial parent's parenting time. In the example below and other possible scenarios, it appears that the proposed changes would result in a lower payment by the non-custodial parent.

¹⁰ There would be no timesharing adjustment in cases where the court orders that a parent have no contact with the child.
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Example

Custodial Parent's Support Obligation: \$1,000/Month
Non-Custodial Support Obligation: \$2,500/Month

Current Law

Steps Under 61.30(11)(b):

1. Multiply each parents support obligation by 1.5
Custodial: $\$1,000/\text{Month} \times 1.5 = \$1,500$
Non-Custodial: $\$2,500/\text{Month} \times 1.5 = \$3,750$
2. Percentage of Overnight Stays with each Parent
60%/40%
3. Multiply each parent's support obligation calculated in 1. by the % of the other parent's overnight stays
Custodial: $\$1,500 \times 40\% = \600
Non-Custodial: $\$3,750 \times 60\% = \2250
4. The difference between the amounts calculated in 3. is the amount owed to the custodial parent
 $2250 - 600 = \mathbf{\$1650}$

Under the current formula, prior to adjustments for day care and health insurance, the non-custodial parents would pay the custodial parent \$1,650/month

Proposed Changes

1. Custodial Parent's Support Obligation = \$1,000/Month
Non-Custodial Support Obligation = \$2,500/Month
2. Percentage of Overnight Stays with each Parent
60%/40%
3. Multiply each parent's support obligation calculated in 1. by the sum of 1 and the smaller % in 2.
Custodial Parent: $\$1,000(1+40\%) = \$1,400$
Non-custodial Parent: $\$2,500(1+40\%) = \$3,500$
4. Multiply each parent's support obligation calculated in 3. by % of the other parent's overnight stays
Custodial: $\$1,400(.40) = \560
Non-Custodial: $\$3,500(.60) = \2100
5. The difference between the amounts calculated in 4. is the amount paid to the custodial parent
 $\$2,100 - \$560 = \mathbf{\$1,540}$

B. SECTION DIRECTORY:

Section 1 amends s. 61.13, F.S., regarding calculation of child support obligations.

Section 2 creates s. 61.29, F.S., providing guidelines and principles for the setting of child support obligations.

Section 3 amends s. 61.30, F.S., regarding child support guidelines.

Section 4 provides an effective date of January 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of the bill may lessen the number of child support modification cases, lowering legal costs to parents and correspondingly lowering fees earned by lawyers and other professionals.

Any bill amending the child support calculations has the potential to affect the payment and receipt of child support awards to many families. The exact impact will differ from family to family.

The changes to the child support formula (timesharing adjustment in all cases, repeal of the 1.5 multiplier) may substantially alter the result of the formula for most families. The effect cannot be quantified as the percentage change one way or another will differ based on relative incomes and timesharing arrangements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of the bill was changed to January 1, 2011, but Section 1 of the bill contains a requirement that becomes effective October 1, 2010. Either the effective date or the text of Section 1 should be amended to conform with one another.

Lines 318-332: It appears the language in this section is intended to create two options in determining an obligor parent's payment if his/her income is less than \$650/month. However, the construction of the sections is confusing because paragraph 1. states that the parent's income should be determined on a case-by-case basis. Then paragraph 2. states that the obligor parent's child support payment shall be the lesser of actual dollar share of the total minimum support amount as determined in paragraph 1., and 90% of the difference between two specified amounts. Reference of choosing the lesser of the two amounts would be better placed in parentheses (a).

Lines 374-375 provides an update to account for tax credits. However, the proposed change does not account for future changes by the federal government relating to tax credits and children.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Civil Justice & Courts Policy Committee adopted one amendment to this bill, which amendment conformed the bill to the Senate companion. The amendment:

- Removed provisions regarding application of alimony payments.
- Added principles for child support.
- Removed the presumption, for purposes of imputed income, that a parent can earn the minimum wage.
- Added that, where the parent does not provide information regarding income, the court must impute income at the median full-time income for workers.
- Removed changes to imputed income within the laws on administrative establishment of child support.
- Removed changes to the child support chart.
- Changed for formula for low income obligor parents (net income less than \$650 a month).
- Removed changes that might have limited child support obligations of high income obligor parents (net income of greater than \$10,000 a month).
- Removed a provision that would have prohibited a child support award from leaving a parent with net income below the poverty guidelines.
- Removed the reduction of the 40% level for substantial time with a child to 20%, making the adjustment for timesharing applicable in all cases.
- Repeals the 1.5 multiplier from the child support formula.
- Removed from the bill repeal of the financial affidavit.
- Removed from the bill conforming changes in the law related to administrative establishment of a child support obligation.
- Removed change that would have prohibited compound interest on child support arrearages.
- Moved the effective date of the bill back 3 months to January 1, 2011.

The bill was then reported favorably as a committee substitute.

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A bill to be entitled
 An act relating to child support guidelines; amending s.
 61.13, F.S.; requiring all child support orders after a
 certain date to contain certain provisions; creating s.
 61.29, F.S.; providing principles for implementing the
 support guidelines schedule; amending s. 61.30, F.S.;
 requiring that census information be used if information
 about earnings level in the community is not available;
 providing that the burden of proof is on the party seeking
 to impute income to the other party; providing for the
 calculation of the obligor parent's child support payment
 under certain circumstances; revising the deviation
 factors that a court may consider when adjusting a
 parent's share of the child support award; providing an
 effective date.

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

Section 1. Paragraph (a) of subsection (1) of section
 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing;
 powers of court.—

(1)(a) In a proceeding under this chapter, the court may
 at any time order either or both parents who owe a duty of
 support to a child to pay support to the other parent or, in the
 case of both parents, to a third party who has ~~the person with~~
 custody in accordance with the child support guidelines schedule
 in s. 61.30.

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29 1. All child support orders and income deduction orders
 30 entered on or after October 1, 2010, must provide:
 31 a. For child support to terminate on a child's 18th
 32 birthday unless the court finds or previously found that s.
 33 743.07(2) applies, or is otherwise agreed to by the parties;
 34 b. A schedule, based on the record existing at the time of
 35 the order, stating the amount of the monthly child support
 36 obligation for all the minor children at the time of the order
 37 and the amount of child support that will be owed for any
 38 remaining children after one or more of the children are no
 39 longer entitled to receive child support; and
 40 c. The month, day, and year that the reduction or
 41 termination of child support becomes effective.
 42 2. The court initially entering an order requiring one or
 43 both parents to make child support payments has continuing
 44 jurisdiction after the entry of the initial order to modify the
 45 amount and terms and conditions of the child support payments if
 46 ~~when~~ the modification is found ~~necessary~~ by the court to be in
 47 the best interests of the child; if ~~when~~ the child reaches
 48 majority; if ~~when~~ there is a substantial change in the
 49 circumstances of the parties; if ~~when~~ s. 743.07(2) applies; or
 50 when a child is emancipated, marries, joins the armed services,
 51 or dies. The court initially entering a child support order has
 52 continuing jurisdiction to require the obligee to report to the
 53 court on terms prescribed by the court regarding the disposition
 54 of the child support payments.
 55 Section 2. Section 61.29, Florida Statutes, is created to
 56 read:

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57 61.29 Child support guidelines; principles.-The courts
 58 shall adhere to the following principles in implementing the
 59 child support guidelines schedule:

60 (1) A parent's first and principal obligation is to
 61 support his or her minor child.

62 (2) Both parents are mutually responsible for the support
 63 of their children.

64 (3) Each parent should pay for the support of the children
 65 according to a parent's ability to pay.

66 (4) Children should share in the standard of living of
 67 both parents. Child support may therefore be appropriately used
 68 to improve the standard of living of the children's primary
 69 residence in order to improve the lives of the children.

70 (5) The guidelines schedule takes into account each
 71 parent's actual income and level of responsibility for the
 72 children.

73 (6) It is presumed that the parent having primary physical
 74 responsibility for the children contributes a significant
 75 portion of his or her available resources for the support of the
 76 children.

77 (7) The guidelines schedule is based on the parents'
 78 combined net income estimated to have been allocated to the
 79 child if the parents and children were living in an intact
 80 household.

81 (8) The guidelines schedule encourages fair and efficient
 82 settlement of conflicts between parents and minimizes the need
 83 for litigation.

84 Section 3. Paragraph (b) of subsection (2) and subsections

85 (6), (7), and (11) of section 61.30, Florida Statutes, are
 86 amended to read:

87 61.30 Child support guidelines; retroactive child
 88 support.—

89 (2) Income shall be determined on a monthly basis for each
 90 parent as follows:

91 (b) Monthly income ~~on a monthly basis~~ shall be imputed to
 92 an unemployed or underemployed parent ~~if~~ when such unemployment
 93 ~~employment~~ or underemployment is found by the court to be
 94 voluntary on that parent's part, absent a finding of fact by the
 95 court of physical or mental incapacity or other circumstances
 96 over which the parent has no control. In the event of such
 97 voluntary unemployment or underemployment, the employment
 98 potential and probable earnings level of the parent shall be
 99 determined based upon his or her recent work history,
 100 occupational qualifications, and prevailing earnings level in
 101 the community if such information is available. If the
 102 information is unavailable or the unemployed or underemployed
 103 parent fails to supply the required financial information in a
 104 child support proceeding, the earnings level shall be based on
 105 the median income of year-round, full-time workers as derived
 106 from current population reports or replacement reports published
 107 by the United States Bureau of Census. ~~as provided in this~~
 108 ~~paragraph.~~ However, the court may refuse to impute income to a
 109 parent if the court finds it necessary for the parent to stay
 110 home with the child who is the subject of a child support
 111 calculation.

112 1. To impute income to a party in a child support

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113 proceeding, the court must:

114 a. Conclude that the unemployment or underemployment was
 115 voluntary.

116 b. Determine whether any subsequent underemployment
 117 resulted from the spouse's pursuit of his or her own interests
 118 or through less than diligent and bona fide efforts to find
 119 employment paying income at a level equal to or better than that
 120 formerly received.

121 2. The burden of proof is on the party seeking to impute
 122 income to the other party.

123 (6) The following guidelines schedule shall be applied to
 124 the combined net income to determine the minimum child support
 125 need:

126 Combined

127 Monthly Child or Children
 128 Net

Income	One	Two	Three	Four	Five	Six	
650.00		74	75	75	76	77	78
700.00		119	120	121	123	124	125
750.00		164	166	167	169	171	173

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133	800.00	190	211	213	216	218	220
134	850.00	202	257	259	262	265	268
135	900.00	213	302	305	309	312	315
136	950.00	224	347	351	355	359	363
137	1000.00	235	365	397	402	406	410
138	1050.00	246	382	443	448	453	458
139	1100.00	258	400	489	495	500	505
140	1150.00	269	417	522	541	547	553
141	1200.00	280	435	544	588	594	600
142	1250.00	290	451	565	634	641	648
143	1300.00	300	467	584	659	688	695
144	1350.00	310	482	603	681	735	743
145	1400.00	320	498	623	702	765	790
146	1450.00	330	513	642	724	789	838

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	CS/HB 907						2010
147	1500.00	340	529	662	746	813	869
148	1550.00	350	544	681	768	836	895
149	1600.00	360	560	701	790	860	920
150	1650.00	370	575	720	812	884	945
151	1700.00	380	591	740	833	907	971
152	1750.00	390	606	759	855	931	996
153	1800.00	400	622	779	877	955	1022
154	1850.00	410	638	798	900	979	1048
155	1900.00	421	654	818	923	1004	1074
156	1950.00	431	670	839	946	1029	1101
157	2000.00	442	686	859	968	1054	1128
158	2050.00	452	702	879	991	1079	1154
159	2100.00	463	718	899	1014	1104	1181
160	2150.00	473	734	919	1037	1129	1207

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

	CS/HB 907					2010	
161	2200.00	484	751	940	1060	1154	1234
162	2250.00	494	767	960	1082	1179	1261
163	2300.00	505	783	980	1105	1204	1287
164	2350.00	515	799	1000	1128	1229	1314
165	2400.00	526	815	1020	1151	1254	1340
166	2450.00	536	831	1041	1174	1279	1367
167	2500.00	547	847	1061	1196	1304	1394
168	2550.00	557	864	1081	1219	1329	1420
169	2600.00	568	880	1101	1242	1354	1447
170	2650.00	578	896	1121	1265	1379	1473
171	2700.00	588	912	1141	1287	1403	1500
172	2750.00	597	927	1160	1308	1426	1524
173	2800.00	607	941	1178	1328	1448	1549
174	2850.00	616	956	1197	1349	1471	1573

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

	CS/HB 907						2010
175	2900.00	626	971	1215	1370	1494	1598
176	2950.00	635	986	1234	1391	1517	1622
177	3000.00	644	1001	1252	1412	1540	1647
178	3050.00	654	1016	1271	1433	1563	1671
179	3100.00	663	1031	1289	1453	1586	1695
180	3150.00	673	1045	1308	1474	1608	1720
181	3200.00	682	1060	1327	1495	1631	1744
182	3250.00	691	1075	1345	1516	1654	1769
183	3300.00	701	1090	1364	1537	1677	1793
184	3350.00	710	1105	1382	1558	1700	1818
185	3400.00	720	1120	1401	1579	1723	1842
186	3450.00	729	1135	1419	1599	1745	1867
187	3500.00	738	1149	1438	1620	1768	1891
188	3550.00	748	1164	1456	1641	1791	1915

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189	3600.00	757	1179	1475	1662	1814	1940
190	3650.00	767	1194	1493	1683	1837	1964
191	3700.00	776	1208	1503	1702	1857	1987
192	3750.00	784	1221	1520	1721	1878	2009
193	3800.00	793	1234	1536	1740	1899	2031
194	3850.00	802	1248	1553	1759	1920	2053
195	3900.00	811	1261	1570	1778	1940	2075
196	3950.00	819	1275	1587	1797	1961	2097
197	4000.00	828	1288	1603	1816	1982	2119
198	4050.00	837	1302	1620	1835	2002	2141
199	4100.00	846	1315	1637	1854	2023	2163
200	4150.00	854	1329	1654	1873	2044	2185
201	4200.00	863	1342	1670	1892	2064	2207
202	4250.00	872	1355	1687	1911	2085	2229

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	CS/HB 907						2010
203	4300.00	881	1369	1704	1930	2106	2251
204	4350.00	889	1382	1721	1949	2127	2273
205	4400.00	898	1396	1737	1968	2147	2295
206	4450.00	907	1409	1754	1987	2168	2317
207	4500.00	916	1423	1771	2006	2189	2339
208	4550.00	924	1436	1788	2024	2209	2361
209	4600.00	933	1450	1804	2043	2230	2384
210	4650.00	942	1463	1821	2062	2251	2406
211	4700.00	951	1477	1838	2081	2271	2428
212	4750.00	959	1490	1855	2100	2292	2450
213	4800.00	968	1503	1871	2119	2313	2472
214	4850.00	977	1517	1888	2138	2334	2494
215	4900.00	986	1530	1905	2157	2354	2516
216	4950.00	993	1542	1927	2174	2372	2535

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

	CS/HB 907						2010
217	5000.00	1000	1551	1939	2188	2387	2551
218	5050.00	1006	1561	1952	2202	2402	2567
219	5100.00	1013	1571	1964	2215	2417	2583
220	5150.00	1019	1580	1976	2229	2432	2599
221	5200.00	1025	1590	1988	2243	2447	2615
222	5250.00	1032	1599	2000	2256	2462	2631
223	5300.00	1038	1609	2012	2270	2477	2647
224	5350.00	1045	1619	2024	2283	2492	2663
225	5400.00	1051	1628	2037	2297	2507	2679
226	5450.00	1057	1638	2049	2311	2522	2695
227	5500.00	1064	1647	2061	2324	2537	2711
228	5550.00	1070	1657	2073	2338	2552	2727
229	5600.00	1077	1667	2085	2352	2567	2743
230	5650.00	1083	1676	2097	2365	2582	2759

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

	CS/HB 907						2010
231	5700.00	1089	1686	2109	2379	2597	2775
232	5750.00	1096	1695	2122	2393	2612	2791
233	5800.00	1102	1705	2134	2406	2627	2807
234	5850.00	1107	1713	2144	2418	2639	2820
235	5900.00	1111	1721	2155	2429	2651	2833
236	5950.00	1116	1729	2165	2440	2663	2847
237	6000.00	1121	1737	2175	2451	2676	2860
238	6050.00	1126	1746	2185	2462	2688	2874
239	6100.00	1131	1754	2196	2473	2700	2887
240	6150.00	1136	1762	2206	2484	2712	2900
241	6200.00	1141	1770	2216	2495	2724	2914
242	6250.00	1145	1778	2227	2506	2737	2927
243	6300.00	1150	1786	2237	2517	2749	2941
244	6350.00	1155	1795	2247	2529	2761	2954

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

	CS/HB 907						2010
245	6400.00	1160	1803	2258	2540	2773	2967
246	6450.00	1165	1811	2268	2551	2785	2981
247	6500.00	1170	1819	2278	2562	2798	2994
248	6550.00	1175	1827	2288	2573	2810	3008
249	6600.00	1179	1835	2299	2584	2822	3021
250	6650.00	1184	1843	2309	2595	2834	3034
251	6700.00	1189	1850	2317	2604	2845	3045
252	6750.00	1193	1856	2325	2613	2854	3055
253	6800.00	1196	1862	2332	2621	2863	3064
254	6850.00	1200	1868	2340	2630	2872	3074
255	6900.00	1204	1873	2347	2639	2882	3084
256	6950.00	1208	1879	2355	2647	2891	3094
257	7000.00	1212	1885	2362	2656	2900	3103
258	7050.00	1216	1891	2370	2664	2909	3113

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

	CS/HB 907						2010
259	7100.00	1220	1897	2378	2673	2919	3123
260	7150.00	1224	1903	2385	2681	2928	3133
261	7200.00	1228	1909	2393	2690	2937	3142
262	7250.00	1232	1915	2400	2698	2946	3152
263	7300.00	1235	1921	2408	2707	2956	3162
264	7350.00	1239	1927	2415	2716	2965	3172
265	7400.00	1243	1933	2423	2724	2974	3181
266	7450.00	1247	1939	2430	2733	2983	3191
267	7500.00	1251	1945	2438	2741	2993	3201
268	7550.00	1255	1951	2446	2750	3002	3211
269	7600.00	1259	1957	2453	2758	3011	3220
270	7650.00	1263	1963	2461	2767	3020	3230
271	7700.00	1267	1969	2468	2775	3030	3240
272	7750.00	1271	1975	2476	2784	3039	3250

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

	CS/HB 907						2010
273	7800.00	1274	1981	2483	2792	3048	3259
274	7850.00	1278	1987	2491	2801	3057	3269
275	7900.00	1282	1992	2498	2810	3067	3279
276	7950.00	1286	1998	2506	2818	3076	3289
277	8000.00	1290	2004	2513	2827	3085	3298
278	8050.00	1294	2010	2521	2835	3094	3308
279	8100.00	1298	2016	2529	2844	3104	3318
280	8150.00	1302	2022	2536	2852	3113	3328
281	8200.00	1306	2028	2544	2861	3122	3337
282	8250.00	1310	2034	2551	2869	3131	3347
283	8300.00	1313	2040	2559	2878	3141	3357
284	8350.00	1317	2046	2566	2887	3150	3367
285	8400.00	1321	2052	2574	2895	3159	3376
286	8450.00	1325	2058	2581	2904	3168	3386

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

	CS/HB 907						2010
287	8500.00	1329	2064	2589	2912	3178	3396
288	8550.00	1333	2070	2597	2921	3187	3406
289	8600.00	1337	2076	2604	2929	3196	3415
290	8650.00	1341	2082	2612	2938	3205	3425
291	8700.00	1345	2088	2619	2946	3215	3435
292	8750.00	1349	2094	2627	2955	3224	3445
293	8800.00	1352	2100	2634	2963	3233	3454
294	8850.00	1356	2106	2642	2972	3242	3464
295	8900.00	1360	2111	2649	2981	3252	3474
296	8950.00	1364	2117	2657	2989	3261	3484
297	9000.00	1368	2123	2664	2998	3270	3493
298	9050.00	1372	2129	2672	3006	3279	3503
299	9100.00	1376	2135	2680	3015	3289	3513
300	9150.00	1380	2141	2687	3023	3298	3523

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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301	9200.00	1384	2147	2695	3032	3307	3532
302	9250.00	1388	2153	2702	3040	3316	3542
303	9300.00	1391	2159	2710	3049	3326	3552
304	9350.00	1395	2165	2717	3058	3335	3562
305	9400.00	1399	2171	2725	3066	3344	3571
306	9450.00	1403	2177	2732	3075	3353	3581
307	9500.00	1407	2183	2740	3083	3363	3591
308	9550.00	1411	2189	2748	3092	3372	3601
309	9600.00	1415	2195	2755	3100	3381	3610
310	9650.00	1419	2201	2763	3109	3390	3620
311	9700.00	1422	2206	2767	3115	3396	3628
312	9750.00	1425	2210	2772	3121	3402	3634
313	9800.00	1427	2213	2776	3126	3408	3641
314	9850.00	1430	2217	2781	3132	3414	3647

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315	9900.00	1432	2221	2786	3137	3420	3653
316	9950.00	1435	2225	2791	3143	3426	3659
317	10000.00	1437	2228	2795	3148	3432	3666

318 (a) If the obligor parent's ~~For combined monthly net~~
 319 ~~income is~~ less than the amount in ~~set out on the above~~
 320 ~~guidelines schedule:~~

321 1. The parent should be ordered to pay a child support
 322 amount, determined on a case-by-case basis, to establish the
 323 principle of payment and lay the basis for increased support
 324 orders should the parent's income increase in the future.

325 2. The obligor parent's child support payment shall be the
 326 lesser of the obligor parent's actual dollar share of the total
 327 minimum child support amount, as determined in subparagraph 1.,
 328 and 90 percent of the difference between the obligor parent's
 329 monthly net income and the current poverty guidelines as
 330 periodically updated in the Federal Register by the United
 331 States Department of Health and Human Services pursuant to 42
 332 U.S.C. s. 9902(2) for a single individual living alone.

333 (b) For combined monthly net income greater than the
 334 ~~amount set out in the above guidelines schedule, the obligation~~
 335 is shall be the minimum amount of support provided by the
 336 guidelines schedule plus the following percentages multiplied by
 337 the amount of income over \$10,000:

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Child or Children

339						
	One	Two	Three	Four	Five	Six
340						
	5.0%	7.5%	9.5%	11.0%	12.0%	12.5%
341						

342 (7) Child care costs incurred ~~on behalf of the children~~
 343 due to employment, job search, or education calculated to result
 344 in employment or to enhance income of current employment of
 345 either parent ~~shall be reduced by 25 percent and then shall be~~
 346 added to the basic obligation. After the ~~adjusted~~ child care
 347 costs are added ~~to the basic obligation~~, any moneys prepaid by a
 348 parent for child care costs for the child or children of this
 349 action shall be deducted from that parent's child support
 350 obligation for that child or those children. Child care costs
 351 may ~~shall~~ not exceed the level required to provide quality care
 352 from a licensed source ~~for the children~~.

353 (11)(a) The court may adjust the total minimum child
 354 support award, or either or both parents' share of the total
 355 minimum child support award, based upon the following deviation
 356 factors:

- 357 1. Extraordinary medical, psychological, educational, or
 358 dental expenses.
- 359 2. Independent income of the child, not to include moneys
 360 received by a child from supplemental security income.
- 361 3. The payment of support for a parent which ~~regularly~~ has
 362 been regularly paid and for which there is a demonstrated need.
- 363 4. Seasonal variations in one or both parents' incomes or

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364 expenses.

365 5. The age of the child, taking into account the greater
366 needs of older children.

367 6. Special needs, such as costs that may be associated
368 with the disability of a child, that have traditionally been met
369 within the family budget even though ~~the~~ fulfilling ~~of~~ those
370 needs will cause the support to exceed the presumptive amount
371 established by the guidelines.

372 7. Total available assets of the obligee, obligor, and the
373 child.

374 8. The impact of the Internal Revenue Service Child &
375 Dependent Care Tax Credit, Earned Income Tax Credit, and
376 dependency exemption and waiver of that exemption. The court may
377 order a parent to execute a waiver of the Internal Revenue
378 Service dependency exemption if the paying parent is current in
379 support payments.

380 9. ~~An~~ When application of the child support guidelines
381 schedule that requires a person to pay another person more than
382 55 percent of his or her gross income for a child support
383 obligation for current support resulting from a single support
384 order.

385 10. The particular parenting plan, ~~such as where the child~~
386 ~~spends a significant amount of time, but less than 40 percent of~~
387 ~~the overnights, with one parent, thereby reducing the financial~~
388 ~~expenditures incurred by the other parent, or the refusal of a~~
389 parent to become involved in the activities of the child.

390 11. Any other adjustment that ~~which~~ is needed to achieve
391 an equitable result which may include, but not be limited to, a

392 reasonable and necessary existing expense or debt. Such expense
 393 or debt may include, but is not limited to, a reasonable and
 394 necessary expense or debt that ~~which~~ the parties jointly
 395 incurred during the marriage.

396 (b) ~~If Whenever~~ a particular parenting plan provides that
 397 each child spend ~~a substantial amount of~~ time with each parent,
 398 the court shall adjust any award of child support, as follows:

399 1. In accordance with subsections (9) and (10), calculate
 400 the amount of support obligation apportioned to each parent
 401 without including day care and health insurance costs in the
 402 calculation ~~and multiply the amount by 1.5.~~

403 2. Calculate the percentage of overnight stays the child
 404 spends with each parent.

405 3. Multiply each parent's support obligation as calculated
 406 in subparagraph 1. by the sum of one and the smaller percentage
 407 calculated in subparagraph 2.

408 ~~4.3.~~ Multiply each parent's support obligation as
 409 calculated in subparagraph 3. ~~1.~~ by the percentage of the other
 410 parent's overnight stays with the child as calculated in
 411 subparagraph 2.

412 ~~5.4.~~ The difference between the amounts calculated in
 413 subparagraph 4. ~~is 3.~~ shall be the monetary transfer necessary
 414 between the parents for the care of the child, subject to an
 415 adjustment for day care and health insurance expenses.

416 ~~6.5.~~ Pursuant to subsections (7) and (8), calculate the
 417 net amounts owed by each parent for the expenses incurred for
 418 day care and health insurance coverage for the child. ~~Day care~~
 419 ~~shall be calculated without regard to the 25 percent reduction~~

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420 ~~applied by subsection (7).~~

421 7.6. Adjust the support obligation owed by each parent
422 pursuant to subparagraph 5. 4. by crediting or debiting the
423 amount calculated in subparagraph 6. 5. This amount represents
424 the child support which must be exchanged between the parents.

425 8.7. The court may deviate from the child support amount
426 calculated pursuant to subparagraph 7. 6. based upon the
427 deviation factors in paragraph (a), as well as the obligee
428 parent's low income and ability to maintain the basic
429 necessities of the home for the child, the likelihood that
430 either parent will actually exercise the time-sharing schedule
431 set forth in the parenting plan granted by the court, and
432 whether all of the children are exercising the same time-sharing
433 schedule.

434 ~~8. For purposes of adjusting any award of child support~~
435 ~~under this paragraph, "substantial amount of time" means that a~~
436 ~~parent exercises visitation at least 40 percent of the~~
437 ~~overnights of the year.~~

438 (c) A parent's failure to regularly exercise the court-
439 ordered or agreed time-sharing schedule not caused by the other
440 parent which resulted in the adjustment of the amount of child
441 support pursuant to subparagraph (a)10. or paragraph (b) shall
442 be deemed a substantial change of circumstances for purposes of
443 modifying the child support award. A modification pursuant to
444 this paragraph is ~~shall be~~ retroactive to the date the
445 noncustodial parent first failed to regularly exercise the
446 court-ordered or agreed time-sharing schedule.

447 Section 4. This act shall take effect January 1, 2011.