

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 9, 1998 Revised: \_\_\_\_\_

Subject: Forensic Client Services Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wyrough</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>_____</u>	<u>_____</u>	<u>CF</u>	<u>Withdrawn</u>
3.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

**I. Summary:**

Senate Bill 378 amends the definition of the term “court” for the purposes of ch. 916, F.S., to include county courts as well as circuit courts. This bill would give county court judges statutory authority to commit defendants who have been found to be mentally ill or mentally retarded, or individuals acquitted of crimes by reason of insanity, to the Department of Children and Family Services, pursuant to ch. 916, F.S., for mental health or mental retardation services.

This bill substantially amends section 916.102 of the Florida Statutes.

**II. Present Situation:**

Chapter 916, F.S., includes the statutory provisions for the Department of Children and Family Services (hereafter referred to as the “department”) to establish and maintain separate and secure facilities and programs for the treatment of forensic clients who have been found to be mentally retarded or mentally ill defendants, or who have been acquitted of crimes by reason of insanity. While still under the jurisdiction of the committing court, these defendants are committed to the department for mental retardation or mental health services. The Florida Rules of Criminal Procedure (Rules 3.210-3.219) contain court procedures for forensic clients in areas such as the appointment of experts, mental competency examination and report, competence to proceed hearing and disposition, judgment of not guilty by reason of insanity disposition, and conditional release.

Section 916.106(4), F.S., defines “forensic client” as a mentally retarded or mentally ill person committed to the department who: 1) has been determined to need treatment for mental retardation or a mental illness; 2) has been found incompetent to stand trial or incompetent for sentencing, has been acquitted of a criminal offense by reason of insanity, has criminal charges

pending, or has been found guilty of a criminal offense but is not an inmate of the Department of Corrections or any other correctional facility; and 3) has been determined by the department to be dangerous to self or others or to present a clear and present potential to escape.

Chapter 916, F.S., makes no differentiation between felonies and misdemeanors in reference to “criminal charges.” Section 916.106(2), F.S., defines “court” as the circuit court. Even though s. 26.012(2)(d), F.S., specifies that circuit courts have exclusive original jurisdiction of all felonies and of all misdemeanors arising out of the same circumstances as a felony, the department reports that prior to April 1997, the county courts committed 60 to 80 persons who were charged with or guilty of misdemeanors annually to the department for mental health treatment under ch. 916, F.S. Additionally, s. 34.01(1), F.S., specifies that county courts have original jurisdiction in all misdemeanor cases that are not cognizable by the circuit courts. The department usually admitted those defendants charged with a misdemeanor to one of the state civil treatment facilities.

However, the department’s admission practices changed after a Supreme Court opinion was issued on April 24, 1997, that substantially reduced forensic commitments from the county courts. In the case of *Onwu v. Florida*, 692 So.2d 881 (Fla. 1997), the Florida Supreme Court declared as invalid an administrative order issued by Chief Judge Ross that directed county judges in the Seventeenth Judicial Circuit to act as circuit judges. The Supreme Court found that only a circuit court as defined in s. 916.106(2), F.S., may commit a person to the Department of Children and Family Services for services under ch. 916, F.S., and further noted that the legislature could, if it wished, amend the statute to authorize county court judges to make forensic commitments. According to the department, subsequent to the *Onwu* decision the department discharged all individuals in its custody who were committed by county court judges and did not accept any new referrals from county court judges.

Section 916.16, F.S., provides that the committing court retains jurisdiction of any patient who is hospitalized for mental health treatment or who is in a retardation residential facility. Only the committing court can order the release of such patient from the residential facility. Section 916.17, F.S., specifies that the committing court may order a conditional release of any defendant who has been committed according to a finding of incompetency to stand trial or an adjudication of not guilty by reason of insanity based on an approved plan for providing appropriate outpatient care and treatment. The department reports that until recently the courts did not use the conditional release provision for mentally retarded defendants. Section 916.17, F.S., does not currently specify that the committing court may order conditional release of a defendant instead of an involuntary commitment to a forensic facility.

### **III. Effect of Proposed Changes:**

The proposed change would amend the law to give county court judges the authority to commit forensic clients to the department. Accordingly, the department would be responsible for the treatment and training of individuals charged with misdemeanor offenses. According to the department, in previous years as many as 90 misdemeanor defendants were accepted annually and that number would likely increase to at least 250 per year if this legislation goes into effect. The

department has stated that the likely increase in referrals caused by adding individuals charged with misdemeanors could result in an inability to comply with statutory placement requirements, and thus the department would have to consider adding capacity to its forensic treatment facilities.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The department states that if the number of misdemeanor referrals becomes substantial, the department would have to consider adding capacity to existing treatment facilities. However, the non-recurring costs are unknown because the number of new beds needed to meet the potential short-term increase in demand is not known.

According to the department, additional residential capacity in forensic facilities costs as much as \$90,000 per person, per year. Assuming the department receives 250 additional misdemeanor referrals per year, as predicted by the department, the cost would be \$22.5 million per year in recurring costs.

In addition to the costs of expanding forensic facilities, local governments may have additional costs for evaluations of each misdemeanor defendant committed to the department. According to s. 916.11, F.S., the court may appoint not more than three nor fewer than two experts to determine issues of the mental condition of a defendant in a criminal case,

including the issues of competency to stand trial, insanity, and involuntary hospitalization or placement. Section 916.11, F.S., also states that the expert witness appointed by the court shall be allowed reasonable fees which shall be paid by the county in which the indictment was found or the information or affidavit was filed. Such mental status evaluations typically cost the county approximately \$300 to \$500 per examiner. According to the department, 1,000 additional misdemeanor defendants could be evaluated by two evaluators each at a cost of as much as \$1 million. Additionally, if half of the evaluations require a third opinion, another \$250,000 in costs would be incurred by the counties.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The 1998 Legislature is currently considering CS/CS/SB 442 (Campbell and Forman) and HB 3247 (Argenziano) which substantially amend ch. 916, F.S., to, among other things, amend the legislative intent in s. 916.105, F.S., by restricting commitment to the department to defendants charged with a felony who have been found to be incompetent to proceed due to mental illness, retardation, autism, or who have been acquitted of felonies by reason of insanity. Because SB 378 would authorize county judges, who handle misdemeanor cases, to commit individuals to the department, SB 378 would be in conflict with the intent of the CS/CS/SB 442 and HB 3247.

**VIII. Amendments:**

None.