

By Senator Crist

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See HB

1 A bill to be entitled
2 An act relating to mentally ill defendants;
3 creating s. 775.028, F.S.; authorizing a
4 finding of guilty but mentally ill for certain
5 criminal defendants; providing burdens of
6 proof; providing conditions for the acceptance
7 of a plea of guilty but mentally ill; providing
8 for a hearing on the issue of mental illness;
9 permitting defendants to withdraw pleas of
10 guilty but mentally ill if a judge refuses to
11 accept such plea; providing that if such plea
12 is withdrawn and the right to jury trial is
13 waived, a different judge must preside at
14 trial; providing definitions of "guilty but
15 mentally ill person" and "legally insane
16 person"; preserving existing insanity defense;
17 amending s. 916.105, F.S.; revising legislative
18 intent; amending s. 916.106, F.S.; redefining
19 "forensic client" of the Department of Children
20 and Family Services to include persons found
21 guilty but mentally ill; incorporating the
22 expanded definition into the definition of
23 "forensic facility"; amending s. 916.107, F.S.;
24 providing that persons found guilty but
25 mentally ill shall be entitled to individual
26 dignity; amending s. 916.115, F.S.; providing
27 for the appointment of experts on the issue of
28 mental illness; creating s. 916.155, F.S.;
29 amending s. 916.16, F.S.; providing continuing
30 jurisdiction for the committing court over a
31 person found guilty but mentally ill for

1 certain purposes; providing exclusive
2 jurisdiction of such court over the decision to
3 release such person; amending s. 921.011, F.S.;
4 providing definitions of "guilty but mentally
5 ill person" and "legally insane person";
6 amending s. 921.09, F.S.; providing for the
7 payment by the county of physicians appointed
8 by the court to advise on the issue of mental
9 illness; creating s. 921.30, F.S.; providing
10 for the sentencing of persons found guilty but
11 mentally ill; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 775.028, Florida Statutes, is
16 created to read:

17 775.028 Guilty but mentally ill.--

18 (1) GENERAL RULE.--A defendant who timely offers a
19 defense of insanity in accordance with the Florida Rules of
20 Criminal Procedure may be found guilty but mentally ill at
21 trial if the trier of facts finds:

22 (a) The prosecution has established, beyond a
23 reasonable doubt, that the defendant is guilty of an offense.

24 (b) The defendant has failed to establish the defense
25 of insanity in accordance with s. 775.027.

26 (c) The defendant has established by clear and
27 convincing evidence that she or he was mentally ill at the
28 time of the commission of the offense.

29 (2) PLEA OF GUILTY BUT MENTALLY ILL.--A person who
30 waives her or his right to trial may plead guilty but mentally
31 ill. No plea of guilty but mentally ill may be accepted by the

1 trial judge until the judge has examined; has held a hearing
2 on the sole issue of the defendant's mental illness, at which
3 hearing either party may present evidence; and is satisfied
4 that the defendant was mentally ill at the time of the offense
5 to which the plea is entered. If the trial judge refuses to
6 accept a plea of guilty but mentally ill, the defendant shall
7 be permitted to withdraw her or his plea. A defendant whose
8 plea is not accepted by the court shall be entitled to a jury
9 trial, except that if a defendant subsequently waives her or
10 his right to a jury trial, the judge who presided at the
11 hearing on mental illness shall not preside at the trial.

12 (3) DEFINITION.--For the purposes of this section,
13 "mentally ill" means a condition under which a person, as a
14 result of mental disease or defect, lacks substantial capacity
15 either to appreciate the wrongfulness of her or his conduct or
16 to conform her or his conduct to the requirements of the law.

17 (4) PRESERVATION OF EXISTING INSANITY
18 DEFENSE.--Nothing in this section shall be deemed to repeal or
19 otherwise abrogate s. 775.027.

20 (5) BURDEN OF PROOF.--The state shall have the burden
21 of proof with respect to guilt, but the defendant has the
22 burden of proof with respect to proving that she or he was
23 mentally ill at the time the offense was committed.

24 Section 2. Subsection (1) of section 916.105, Florida
25 Statutes, is amended to read:

26 916.105 Legislative intent.--

27 (1) It is the intent of the Legislature that the
28 Department of Children and Family Services establish, locate,
29 and maintain separate and secure facilities and programs for
30 the treatment or training of defendants who are charged with a
31 felony and who have been found to be incompetent to proceed

1 due to their mental illness, retardation, or autism, who have
2 been found guilty but mentally ill, or who have been acquitted
3 of felonies by reason of insanity, and who, while still under
4 the jurisdiction of the committing court, are committed to the
5 department under the provisions of this chapter. The separate,
6 secure facilities shall be sufficient to accommodate the
7 number of defendants committed under the conditions noted
8 above, except those defendants found by the department to be
9 appropriate for treatment or training in a civil treatment
10 facility or program. Such secure facilities shall be designed
11 and administered so that ingress and egress, together with
12 other requirements of this chapter, may be strictly controlled
13 by staff responsible for security in order to protect the
14 defendant, facility personnel, other clients, and citizens in
15 adjacent communities.

16 Section 3. Subsection (7) of section 916.106, Florida
17 Statutes, is amended to read:

18 916.106 Definitions.--For the purposes of this
19 chapter:

20 (7) "Forensic client" or "client" means any defendant
21 who is mentally ill, retarded, or autistic and who is
22 committed to the department pursuant to this chapter and:

23 (a) Who has been determined to need treatment for a
24 mental illness or training for retardation or autism;

25 (b) Who has been found incompetent to proceed on a
26 felony offense, has been found guilty but mentally ill with
27 respect to a felony offense, or has been acquitted of a felony
28 offense by reason of insanity;

29 (c) Who has been determined by the department to:

30 1. Be dangerous to himself or herself or others; or
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1 2. Present a clear and present potential to escape;
2 and

3 (d) Who is an adult or a juvenile prosecuted as an
4 adult.

5 Section 4. Paragraph (a) of subsection (1) of section
6 916.107, Florida Statutes, is amended to read:

7 916.107 Rights of forensic clients.--

8 (1) RIGHT TO INDIVIDUAL DIGNITY.--

9 (a) The policy of the state is that the individual
10 dignity of the client shall be respected at all times and upon
11 all occasions, including any occasion when the forensic client
12 is detained, transported, or treated. Defendants who are
13 mentally ill, retarded, or autistic and who are charged with
14 committing felonies shall receive appropriate treatment or
15 training. In a criminal case involving a defendant who has
16 been adjudicated incompetent to proceed, guilty but mentally
17 ill, or not guilty by reason of insanity, a jail may be used
18 as an emergency facility for up to 15 days from the date the
19 department receives a completed copy of the commitment order
20 containing the documentation required by Rules 3.212 and
21 3.217, Florida Rules of Criminal Procedure. For a defendant
22 who is mentally ill, retarded, or autistic, who is held in a
23 jail, and who has been adjudicated incompetent to proceed or
24 not guilty by reason of insanity, evaluation and treatment or
25 training shall be provided in the jail by the local public
26 receiving facility for mental health services or by the
27 developmental services program for persons with retardation or
28 autism, the client's physician or psychologist, or any other
29 appropriate program until the client is transferred to the
30 custody of the department.

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1 Section 5. Section 916.115, Florida Statutes, is
2 amended to read:

3 916.115 Appointment of experts.--

4 (1)(a) Annually, the department shall provide the
5 courts with a list of mental health professionals who have
6 completed approved training as experts.

7 (b) The court may appoint no more than three nor fewer
8 than two experts to determine issues of the mental condition
9 of a defendant in a criminal case, including the issues of
10 competency to proceed, mental illness, insanity, and
11 involuntary hospitalization or placement. The panel of experts
12 may evaluate the defendant in jail or in another appropriate
13 local facility.

14 (c) To the extent possible, the appointed experts
15 shall have completed forensic evaluator training approved by
16 the department and be either a psychiatrist, licensed
17 psychologist, or physician.

18 (2) Expert witnesses appointed by the court to
19 evaluate the mental condition of a defendant in a criminal
20 case shall be allowed reasonable fees for services rendered as
21 evaluators of competence or sanity and as witnesses, which
22 shall be paid by the county in which the indictment was found
23 or the information or affidavit was filed. State employees
24 shall be paid expenses pursuant to s. 112.061. The fees shall
25 be taxed as costs in the case. In order for the experts to be
26 paid for the services rendered, the reports and testimony must
27 explicitly address each of the factors and follow the
28 procedures set out in this chapter and in the Florida Rules of
29 Criminal Procedure.

30 Section 6. Section 916.155, Florida Statutes, is
31 created to read:

1 916.155 Involuntary commitment of defendant found
2 guilty but mentally ill.--

3 (1) A defendant who is found guilty but mentally ill
4 may be involuntarily committed pursuant to such finding if the
5 defendant is mentally ill and, because of the illness, is
6 manifestly dangerous to himself or herself or others.

7 (2) Defendants found guilty but mentally ill and found
8 to meet the criteria for involuntary commitment may be
9 committed for a period not to exceed the length of sentence
10 imposed for the offense, and treated in accordance with the
11 provisions of this section and the applicable Florida Rules of
12 Criminal Procedure. The department shall admit a defendant so
13 adjudicated to an appropriate facility or program for
14 treatment and shall retain and treat such defendant. The
15 defendant, the state, the department, or the Department of
16 Corrections may, at any time, request a hearing to determine
17 whether the defendant should remain in the custody of the
18 department or should be recommitted to the Department of
19 Corrections for the remainder of the sentence.

20 (3) In all proceedings under this section, both the
21 defendant and the state shall have the right to a hearing
22 before the committing court. Evidence at such hearing may be
23 presented by the hospital administrator or the administrator's
24 designee as well as by the state, the Department of
25 Corrections, and the defendant. The defendant shall have the
26 right to counsel at any such hearing. In the event that a
27 defendant is determined to be indigent pursuant to s. 27.52,
28 the public defender shall represent the defendant. The parties
29 shall have access to the defendant's records at the treating
30 facilities and may interview or depose personnel who have had
31 contact with the defendant at the treating facilities.

1 Section 7. Section 916.16, Florida Statutes, is
2 amended to read:

3 916.16 Jurisdiction of committing court.--

4 (1) The committing court shall retain jurisdiction in
5 the case of any defendant hospitalized as incompetent to
6 proceed or because of a finding of not guilty by reason of
7 insanity or guilty but mentally ill pursuant to this chapter.
8 No such defendant may be released except by order of the
9 committing court. The administrative hearing examiner shall
10 have no jurisdiction to determine issues of continuing
11 hospitalization or release of any defendant admitted pursuant
12 to this chapter.

13 (2) The committing court shall retain jurisdiction in
14 the case of any defendant placed on conditional release. No
15 such defendant may be released from the conditions of release
16 except by order of the committing court.

17 Section 8. Subsections (4) through (7) of section
18 921.0011, Florida Statutes, are renumbered as subsections (6)
19 through (9), respectively, and new subsections (4) and (5) are
20 added to that section, to read:

21 921.0011 Definitions.--As used in this chapter, the
22 term:

23 (4) "Legally insane" means a condition under which the
24 person, at the time of the commission of the act, was laboring
25 under such a defect of reason, from disease of the mind, as
26 not to know the nature and quality of the act she or he was
27 doing or, if she or he did know it, that she or he did not
28 know she or he was doing what was wrong.

29 (5) "Mentally ill person" means a person who, as a
30 result of mental disease or defect, lacks substantial capacity
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1 either to appreciate the wrongfulness of his conduct or to
2 conform his conduct to the requirements of the law.

3 Section 9. Section 921.09, Florida Statutes, is
4 amended to read:

5 921.09 Fees of physicians who determine mental
6 condition ~~sanity~~ at time of sentence.--The court shall allow
7 reasonable fees to physicians appointed by the court to
8 determine the mental condition of a defendant who has alleged
9 insanity as a cause for not pronouncing sentence or who has
10 raised a defense of mental illness. The fees shall be paid by
11 the county in which the indictment was found or the
12 information or affidavit filed.

13 Section 10. Section 921.30, Florida Statutes, is
14 created to read:

15 921.30 Disposition of persons found guilty but
16 mentally ill.--

17 (1) A defendant found guilty but mentally ill or whose
18 plea of guilty but mentally ill is accepted under the
19 provisions of s. 775.028 may have any sentence imposed on her
20 or him which may lawfully be imposed on any defendant
21 convicted of the same offense. Before imposing a sentence, the
22 court shall hear testimony and make a finding on the issue of
23 whether the defendant at the time of sentencing is mentally
24 ill, retarded, or autistic and in need of treatment.

25 (2) Defendants who are mentally ill, retarded, or
26 autistic and who are convicted of felonies shall receive
27 appropriate treatment as is psychiatrically or psychologically
28 indicated for his or her mental illness. Treatment and the
29 payment of such treatment shall be provided in accordance with
30 s. 916.107(2).

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1 Section 11. This act shall take effect upon becoming a
2 law.
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