

By Senator Margolis

35-866B-05

1 A bill to be entitled
2 An act relating to the arrest of an elderly
3 person; creating s. 901.243, F.S.; providing
4 legislative intent concerning an elderly person
5 who has been arrested for an alleged violation
6 of a criminal law of this state; defining the
7 term "elderly person"; requiring a law
8 enforcement officer arresting an elderly person
9 to notify the Department of Elderly Affairs and
10 request that the department examine the elderly
11 person; requiring the department to provide a
12 qualified professional to examine the elderly
13 person within a specified time and determine
14 competency to proceed; specifying the
15 responsibilities of the qualified professional
16 when examining the elderly person; requiring
17 the qualified professional to prepare a report;
18 requiring the qualified professional to
19 identify recommended treatment for the elderly
20 person to attain competency to proceed;
21 providing an effective date.

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

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25 Section 1. Section 901.243, Florida Statutes, is
26 created to read:

27 901.243 Arrest of an elderly person.--

28 (1) It is the intent of the Legislature that an
29 elderly person be promptly examined after he or she has been
30 arrested for an alleged violation of a criminal law of this
31 state. In addition, it is the intent of the Legislature that

1 an elderly person suffering from the infirmities of aging be
2 diverted from the criminal justice system and directed towards
3 appropriate treatment.

4 (2) As used in this section, the term "elderly person"
5 means a person 70 years of age or older who is or may be
6 suffering from the infirmities of aging, as manifested by
7 advanced age, organic brain damage, or other physical, mental,
8 or emotional dysfunctioning, to the extent that the ability of
9 the person to provide adequately for the person's own care,
10 behavior, or protection is impaired.

11 (3) A law enforcement officer must, within 2 hours
12 after the arrest, notify the Department of Elderly Affairs and
13 request that the department examine the elderly person taken
14 into custody for an alleged violation of a criminal law of
15 this state.

16 (4) The department shall, within 12 hours after
17 receiving notification of the elderly person's arrest, send a
18 qualified professional to the location of the elderly person's
19 detention to examine the person and determine the person's
20 competency to proceed.

21 (5)(a) The qualified professional shall first
22 determine whether the elderly person suffers from an infirmity
23 of aging or is mentally ill. If so, the qualified professional
24 must consider the factors related to the issue of whether the
25 elderly person meets the criteria for competence to proceed;
26 that is, whether the elderly person has sufficient present
27 ability to consult with counsel with a reasonable degree of
28 rational understanding and whether the elderly person has a
29 rational, as well as factual, understanding of the pending
30 proceedings.

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1 (b) In considering the issue of competence to proceed,
2 the qualified professional must first consider and
3 specifically include in a report the elderly person's capacity
4 to:

5 1. Appreciate the charges or allegations against the
6 elderly person;

7 2. Appreciate the range and nature of possible
8 penalties, if applicable, which may be imposed in the
9 proceedings against the elderly person;

10 3. Understand the adversarial nature of the legal
11 process;

12 4. Disclose to counsel facts pertinent to the
13 proceedings at issue;

14 5. Manifest appropriate courtroom behavior; and

15 6. Testify relevantly;

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17 and include in the report any other factor deemed relevant by
18 the qualified professional.

19 (c) If the qualified professional finds that the
20 elderly person is incompetent to proceed, the qualified
21 professional shall report on any recommended treatment for the
22 elderly person to attain competence to proceed. In considering
23 the issues relating to treatment, the qualified professional
24 shall specifically report on:

25 1. The infirmity of aging or mental illness causing
26 the incompetence;

27 2. The treatment or treatments appropriate for the
28 infirmity of aging or mental illness of the elderly person and
29 an explanation of each of the possible treatment alternatives
30 in order of choice;

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1 3. The availability of acceptable treatment and, if
2 treatment is available in the community, the qualified
3 professional shall so state in the report; and

4 4. The likelihood of the elderly person's attaining
5 competence under the treatment recommended, an assessment of
6 the probable duration of the treatment required to restore
7 competence, and the probability that the elderly person will
8 attain competence to proceed in the foreseeable future.

9 Section 2. This act shall take effect July 1, 2005.

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12 SENATE SUMMARY

13 Requires a law enforcement officer arresting an elderly
14 person to notify the Department of Elderly Affairs and
15 request that the department examine the elderly person.
16 Requires the department to have a qualified professional
17 examine the elderly person within a specified time.
18 Specifies the responsibilities of the qualified
19 professional when examining the elderly person. Requires
20 the qualified professional to prepare a report. Requires
21 the qualified professional to identify recommended
22 treatment for the elderly person to attain competence to
23 proceed. (See bill for details.)