

By Senator Hill

1-395-06

1 A bill to be entitled
2 An act relating to forensic client services;
3 amending s. 916.105, F.S.; providing
4 legislative intent that forensic client
5 services be provided to a person charged with a
6 misdemeanor as well as with a felony; amending
7 s. 916.106, F.S.; redefining the term "court"
8 to include the county court and the term
9 "forensic client" to include a person charged
10 with a misdemeanor; amending ss. 916.107,
11 916.13, and 916.302, F.S., relating to the
12 rights of forensic clients, the involuntary
13 commitment of a defendant with mental illness,
14 and the involuntary commitment of a defendant
15 with mental retardation or autism; conforming
16 provisions to changes made by the act;
17 providing an effective date.

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

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21 Section 1. Subsection (1) of section 916.105, Florida
22 Statutes, is amended to read:

23 916.105 Legislative intent.--

24 (1) It is the intent of the Legislature that the
25 Department of Children and Family Services establish, locate,
26 and maintain separate and secure facilities and programs for
27 the treatment or training of defendants who are charged with a
28 felony or a misdemeanor and who have been found to be
29 incompetent to proceed due to their mental illness,
30 retardation, or autism, or who have been acquitted of felonies
31 or misdemeanors by reason of insanity, and who, while still

1 under the jurisdiction of the committing court, are committed
2 to the department under ~~the provisions of~~ this chapter. The
3 separate, secure facilities must ~~shall~~ be sufficient to
4 accommodate the number of defendants committed under the
5 conditions noted above, except those defendants found by the
6 department to be appropriate for treatment or training in a
7 civil treatment facility or program. ~~The~~ Such secure
8 facilities shall be designed and administered so that ingress
9 and egress, together with other requirements of this chapter,
10 may be strictly controlled by staff responsible for security
11 in order to protect the defendant, facility personnel, other
12 clients, and citizens in adjacent communities.

13 Section 2. Subsections (4) and (7) of section 916.106,
14 Florida Statutes, are amended to read:

15 916.106 Definitions.--For the purposes of this
16 chapter:

17 (4) "Court" means the circuit or county court.

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

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

24 (b) Who has been found incompetent to proceed on a
25 felony or misdemeanor offense or has been acquitted of a
26 felony or misdemeanor offense by reason of insanity;

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

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

30 and

31

1 (d) Who is an adult or a juvenile prosecuted as an
2 adult.

3 Section 3. Subsections (1) and (3) of section 916.107,
4 Florida Statutes, are amended to read:

5 916.107 Rights of forensic clients.--

6 (1) RIGHT TO INDIVIDUAL DIGNITY.--

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

29 (b) Mentally ill, retarded, or autistic defendants who
30 are committed to the department under ~~pursuant to~~ this chapter
31 and who are initially placed in, or subsequently transferred

1 to, a civil facility as described in part I of chapter 394 or
2 to a residential facility as described in chapter 393 shall
3 have the same rights as other persons committed to these
4 facilities for as long as they remain there.

5 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

6 (a) A client committed to the department under
7 ~~pursuant to this chapter act~~ shall be asked to give express
8 and informed written consent for treatment. If a client in a
9 forensic facility refuses such treatment as is deemed
10 necessary by the client's multidisciplinary treatment team at
11 the forensic facility for the appropriate care of the client
12 and the safety of the client or others, ~~the such~~ treatment may
13 be provided under the following circumstances:

14 1. In an emergency situation in which there is
15 immediate danger to the safety of the client or others, the
16 ~~such~~ treatment may be provided upon the written order of a
17 physician for a period not to exceed 48 hours, excluding
18 weekends and legal holidays. If, after the 48-hour period,
19 the client has not given express and informed consent to the
20 treatment initially refused, the administrator or designee of
21 the forensic facility shall, within 48 hours, excluding
22 weekends and legal holidays, petition the committing court or
23 the circuit or county court serving the county in which the
24 facility is located, at the option of the facility
25 administrator or designee, for an order authorizing the
26 continued treatment of the client. In the interim, treatment
27 may be continued without the consent of the client upon the
28 continued written order of a physician who has determined that
29 the emergency situation continues to present a danger to the
30 safety of the client or others.

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1 2. In a situation other than an emergency situation,
2 the administrator or designee of the forensic facility shall
3 petition the circuit or county court for an order authorizing
4 the treatment to the client. The order shall allow such
5 treatment for a period not to exceed 90 days from the date of
6 the entry of the order. Unless the court is notified in
7 writing that the client has provided express and informed
8 consent in writing or that the client has been discharged by
9 the committing court, the administrator or designee shall,
10 before ~~prior to~~ the expiration of the initial 90-day order,
11 petition the court for an order authorizing the continuation
12 of treatment for another 90-day period. This procedure shall
13 be repeated until the client provides consent or is discharged
14 by the committing court.

15 3. At the hearing on the issue of whether the court
16 should enter an order authorizing treatment for which a client
17 has refused to give express and informed consent, the court
18 shall determine by clear and convincing evidence that the
19 client is mentally ill, retarded, or autistic as defined in
20 this chapter, that the treatment not consented to is essential
21 to the care of the client, and that the treatment not
22 consented to is not experimental and does not present an
23 unreasonable risk of serious, hazardous, or irreversible side
24 effects. In arriving at the substitute judgment decision, the
25 court must consider at least the following factors:

- 26 a. The client's expressed preference regarding
27 treatment;
- 28 b. The probability of adverse side effects;
- 29 c. The prognosis without treatment; and
- 30 d. The prognosis with treatment.
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1 The hearing shall be as convenient to the client as may be
2 consistent with orderly procedure and shall be conducted in
3 physical settings not likely to be injurious to the client's
4 condition. The court may appoint a general or special
5 magistrate to preside at the hearing. The client or the
6 client's guardian, and the representative, shall be provided
7 with a copy of the petition and the date, time, and location
8 of the hearing. The client has the right to have an attorney
9 represent him or her at the hearing, and, if the client is
10 indigent, the court shall appoint the office of the public
11 defender to represent the client at the hearing. The client
12 may testify or not, as he or she chooses, and has the right to
13 cross-examine witnesses and may present his or her own
14 witnesses.

15 (b) In addition to ~~the provisions of~~ paragraph (a), in
16 the case of surgical procedures requiring the use of a general
17 anesthetic or electroconvulsive treatment or nonpsychiatric
18 medical procedures, and prior to performing the procedure,
19 written permission shall be obtained from the client, if the
20 client is legally competent, from the parent or guardian of a
21 minor client, or from the guardian of an incompetent client.
22 The administrator or designee of the forensic facility or a
23 designated representative may, with the concurrence of the
24 client's attending physician, authorize emergency surgical or
25 nonpsychiatric medical treatment if the ~~such~~ treatment is
26 deemed lifesaving or for a situation threatening serious
27 bodily harm to the client and permission of the client or the
28 client's guardian cannot be obtained.

29 Section 4. Section 916.13, Florida Statutes, is
30 amended to read:
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1 916.13 Involuntary commitment of defendant adjudicated
2 incompetent.--

3 (1) Every defendant who is charged with a felony or
4 misdemeanor and who is adjudicated incompetent to proceed,
5 pursuant to the applicable Florida Rules of Criminal
6 Procedure, may be involuntarily committed for treatment upon a
7 finding by the court of clear and convincing evidence that:

8 (a) The defendant is mentally ill and because of the
9 mental illness:

10 1. The defendant is manifestly incapable of surviving
11 alone or with the help of willing and responsible family or
12 friends, including available alternative services, and,
13 without treatment, the defendant is likely to suffer from
14 neglect or refuse to care for herself or himself and such
15 neglect or refusal poses a real and present threat of
16 substantial harm to the defendant's well-being; and

17 2. There is a substantial likelihood that in the near
18 future the defendant will inflict serious bodily harm on
19 herself or himself or another person, as evidenced by recent
20 behavior causing, attempting, or threatening such harm;

21 (b) All available, less restrictive treatment
22 alternatives, including treatment in community residential
23 facilities or community inpatient or outpatient settings,
24 which would offer an opportunity for improvement of the
25 defendant's condition have been judged to be inappropriate;
26 and

27 (c) There is a substantial probability that the mental
28 illness causing the defendant's incompetence will respond to
29 treatment and the defendant will regain competency to proceed
30 in the reasonably foreseeable future.

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1 (2) A defendant who has been charged with a felony or
2 misdemeanor and who has been adjudicated incompetent to
3 proceed, and who meets the criteria for commitment to the
4 department under ~~the provisions of~~ this chapter, may be
5 committed to the department, and the department shall retain
6 and treat the defendant. No later than 6 months after the
7 date of admission or at the end of any period of extended
8 commitment, or at any time the administrator or designee shall
9 have determined that the defendant has regained competency to
10 proceed or no longer meets the criteria for continued
11 commitment, the administrator or designee shall file a report
12 with the court under ~~pursuant to~~ the applicable Florida Rules
13 of Criminal Procedure.

14 Section 5. Subsections (1) and (2) of section 916.302,
15 Florida Statutes, are amended to read:

16 916.302 Involuntary commitment of defendant determined
17 to be incompetent to proceed due to retardation or autism.--

18 (1) CRITERIA.--Every defendant who is charged with a
19 felony or misdemeanor and who is found to be incompetent to
20 proceed under, ~~pursuant to~~ this chapter and the applicable
21 Florida Rules of Criminal Procedure, may be involuntarily
22 committed for training upon a finding by the court of clear
23 and convincing evidence that:

24 (a) The defendant is retarded or autistic;

25 (b) There is a substantial likelihood that in the near
26 future the defendant will inflict serious bodily harm on
27 himself or herself or another person, as evidenced by recent
28 behavior causing, attempting, or threatening such harm;

29 (c) All available, less restrictive alternatives,
30 including services provided in community residential
31 facilities or other community settings, which would offer an

1 opportunity for improvement of the condition have been judged
2 to be inappropriate; and

3 (d) There is a substantial probability that the
4 retardation or autism causing the defendant's incompetence
5 will respond to training and the defendant will regain
6 competency to proceed in the reasonably foreseeable future.

7 (2) ADMISSION TO A FACILITY.--

8 (a) A defendant who has been charged with a felony or
9 misdemeanor and who is found to be incompetent to proceed, and
10 who meets the criteria for commitment to the department under
11 ~~the provisions of~~ this chapter, shall be committed to the
12 department, and the department shall retain and serve the
13 defendant. No later than 6 months after the date of admission
14 or at the end of any period of extended commitment or at any
15 time the administrator or designee shall have determined that
16 the defendant has regained competency to proceed or no longer
17 meets the criteria for continued commitment, the administrator
18 or designee shall file a report with the court pursuant to
19 this chapter and the applicable Florida Rules of Criminal
20 Procedure.

21 (b) A defendant determined to be incompetent to
22 proceed due to retardation or autism may be ordered by a
23 ~~circuit~~ court into a secure facility designated by the
24 department for retarded or autistic defendants.

25 (c) The department may transfer a defendant from a
26 designated secure facility to another designated secure
27 facility and must notify the court of the transfer within 30
28 days after the transfer is completed.

29 (d) The department may not transfer a defendant from a
30 designated secure facility to a nonsecure facility without
31 first notifying the court, and all parties, 30 days before the

1 | proposed transfer. If the court objects to the proposed
2 | transfer to a nonsecure facility, it must send its written
3 | objection to the department. The department may transfer the
4 | defendant unless it receives the written objection from the
5 | court within 30 days after the court's receipt of the notice
6 | of the proposed transfer.

7 | Section 6. This act shall take effect July 1, 2006.

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10 | SENATE SUMMARY

11 | Provides that forensic client services be provided to a
12 | person charged with a misdemeanor as well as with a
13 | felony.
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