

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

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

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

20 916.105 Legislative intent.--

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

29 | the jurisdiction of the committing court, are committed to the
 30 | department under ~~the provisions of~~ this chapter. The separate,
 31 | secure facilities must ~~shall~~ be sufficient to accommodate the
 32 | number of defendants committed under the conditions noted above,
 33 | except those defendants found by the department to be
 34 | appropriate for treatment or training in a civil treatment
 35 | facility or program. The ~~Such~~ secure facilities shall be
 36 | designed and administered so that ingress and egress, together
 37 | with other requirements of this chapter, may be strictly
 38 | controlled by staff responsible for security in order to protect
 39 | the defendant, facility personnel, other clients, and citizens
 40 | in adjacent communities.

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

43 | 916.106 Definitions.--For the purposes of this chapter:

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

45 | (7) "Forensic client" or "client" means any defendant who
 46 | is mentally ill, retarded, or autistic and who is committed to
 47 | the department under ~~pursuant to~~ this chapter and:

48 | (a) Who has been determined to need treatment for a mental
 49 | illness or training for retardation or autism;

50 | (b) Who has been found incompetent to proceed on a felony
 51 | or misdemeanor offense or has been acquitted of a felony or
 52 | misdemeanor offense by reason of insanity;

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

54 | 1. Be dangerous to himself or herself or others; or

55 | 2. Present a clear and present potential to escape; and

56 | (d) Who is an adult or a juvenile prosecuted as an adult.

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

59 916.107 Rights of forensic clients.--

60 (1) RIGHT TO INDIVIDUAL DIGNITY.--

61 (a) The policy of the state is that the individual dignity
62 of the client shall be respected at all times and upon all
63 occasions, including any occasion when the forensic client is
64 detained, transported, or treated. Defendants who are mentally
65 ill, retarded, or autistic and who are charged with committing
66 felonies or misdemeanors shall receive appropriate treatment or
67 training. In a criminal case involving a defendant who has been
68 adjudicated incompetent to proceed or not guilty by reason of
69 insanity, a jail may be used as an emergency facility for up to
70 15 days from the date the department receives a completed copy
71 of the commitment order containing the documentation required by
72 Rules 3.212 and 3.217, Florida Rules of Criminal Procedure. For
73 a defendant who is mentally ill, retarded, or autistic, who is
74 held in a jail, and who has been adjudicated incompetent to
75 proceed or not guilty by reason of insanity, evaluation and
76 treatment or training shall be provided in the jail by the local
77 public receiving facility for mental health services or by the
78 developmental services program for persons with retardation or
79 autism, the client's physician or psychologist, or any other
80 appropriate program until the client is transferred to the
81 custody of the department.

82 (b) Mentally ill, retarded, or autistic defendants who are
83 committed to the department under ~~pursuant to~~ this chapter and
84 who are initially placed in, or subsequently transferred to, a

85 civil facility as described in part I of chapter 394 or to a
 86 residential facility as described in chapter 393 shall have the
 87 same rights as other persons committed to these facilities for
 88 as long as they remain there.

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

90 (a) A client committed to the department under ~~pursuant to~~
 91 this chapter ~~act~~ shall be asked to give express and informed
 92 written consent for treatment. If a client in a forensic
 93 facility refuses such treatment as is deemed necessary by the
 94 client's multidisciplinary treatment team at the forensic
 95 facility for the appropriate care of the client and the safety
 96 of the client or others, the ~~such~~ treatment may be provided
 97 under the following circumstances:

- 98 1. In an emergency situation in which there is immediate
 99 danger to the safety of the client or others, the ~~such~~ treatment
 100 may be provided upon the written order of a physician for a
 101 period not to exceed 48 hours, excluding weekends and legal
 102 holidays. If, after the 48-hour period, the client has not given
 103 express and informed consent to the treatment initially refused,
 104 the administrator or designee of the forensic facility shall,
 105 within 48 hours, excluding weekends and legal holidays, petition
 106 the committing court or the circuit or county court serving the
 107 county in which the facility is located, at the option of the
 108 facility administrator or designee, for an order authorizing the
 109 continued treatment of the client. In the interim, treatment may
 110 be continued without the consent of the client upon the
 111 continued written order of a physician who has determined that
 112 the emergency situation continues to present a danger to the

113 safety of the client or others.

114 2. In a situation other than an emergency situation, the
 115 administrator or designee of the forensic facility shall
 116 petition the circuit or county court for an order authorizing
 117 the treatment to the client. The order shall allow such
 118 treatment for a period not to exceed 90 days from the date of
 119 the entry of the order. Unless the court is notified in writing
 120 that the client has provided express and informed consent in
 121 writing or that the client has been discharged by the committing
 122 court, the administrator or designee shall, before ~~prior to~~ the
 123 expiration of the initial 90-day order, petition the court for
 124 an order authorizing the continuation of treatment for another
 125 90-day period. This procedure shall be repeated until the client
 126 provides consent or is discharged by the committing court.

127 3. At the hearing on the issue of whether the court should
 128 enter an order authorizing treatment for which a client has
 129 refused to give express and informed consent, the court shall
 130 determine by clear and convincing evidence that the client is
 131 mentally ill, retarded, or autistic as defined in this chapter,
 132 that the treatment not consented to is essential to the care of
 133 the client, and that the treatment not consented to is not
 134 experimental and does not present an unreasonable risk of
 135 serious, hazardous, or irreversible side effects. In arriving at
 136 the substitute judgment decision, the court must consider at
 137 least the following factors:

- 138 a. The client's expressed preference regarding treatment;
- 139 b. The probability of adverse side effects;
- 140 c. The prognosis without treatment; and

141 d. The prognosis with treatment.

142
 143 The hearing shall be as convenient to the client as may be
 144 consistent with orderly procedure and shall be conducted in
 145 physical settings not likely to be injurious to the client's
 146 condition. The court may appoint a general or special magistrate
 147 to preside at the hearing. The client or the client's guardian,
 148 and the representative, shall be provided with a copy of the
 149 petition and the date, time, and location of the hearing. The
 150 client has the right to have an attorney represent him or her at
 151 the hearing, and, if the client is indigent, the court shall
 152 appoint the office of the public defender to represent the
 153 client at the hearing. The client may testify or not, as he or
 154 she chooses, and has the right to cross-examine witnesses and
 155 may present his or her own witnesses.

156 (b) In addition to ~~the provisions of~~ paragraph (a), in the
 157 case of surgical procedures requiring the use of a general
 158 anesthetic or electroconvulsive treatment or nonpsychiatric
 159 medical procedures, and prior to performing the procedure,
 160 written permission shall be obtained from the client, if the
 161 client is legally competent, from the parent or guardian of a
 162 minor client, or from the guardian of an incompetent client. The
 163 administrator or designee of the forensic facility or a
 164 designated representative may, with the concurrence of the
 165 client's attending physician, authorize emergency surgical or
 166 nonpsychiatric medical treatment if the ~~such~~ treatment is deemed
 167 lifesaving or for a situation threatening serious bodily harm to
 168 the client and permission of the client or the client's guardian

169 cannot be obtained.

170 Section 4. Section 916.13, Florida Statutes, is amended to
 171 read:

172 916.13 Involuntary commitment of defendant adjudicated
 173 incompetent.--

174 (1) Every defendant who is charged with a felony or
 175 misdemeanor and who is adjudicated incompetent to proceed, under
 176 ~~pursuant to~~ the applicable Florida Rules of Criminal Procedure,
 177 may be involuntarily committed for treatment upon a finding by
 178 the court of clear and convincing evidence that:

179 (a) The defendant is mentally ill and because of the
 180 mental illness:

181 1. The defendant is manifestly incapable of surviving
 182 alone or with the help of willing and responsible family or
 183 friends, including available alternative services, and, without
 184 treatment, the defendant is likely to suffer from neglect or
 185 refuse to care for herself or himself and such neglect or
 186 refusal poses a real and present threat of substantial harm to
 187 the defendant's well-being; and

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

192 (b) All available, less restrictive treatment
 193 alternatives, including treatment in community residential
 194 facilities or community inpatient or outpatient settings, which
 195 would offer an opportunity for improvement of the defendant's
 196 condition have been judged to be inappropriate; and

197 (c) There is a substantial probability that the mental
 198 illness causing the defendant's incompetence will respond to
 199 treatment and the defendant will regain competency to proceed in
 200 the reasonably foreseeable future.

201 (2) A defendant who has been charged with a felony or
 202 misdemeanor and who has been adjudicated incompetent to proceed,
 203 and who meets the criteria for commitment to the department
 204 under ~~the provisions of~~ this chapter, may be committed to the
 205 department, and the department shall retain and treat the
 206 defendant. No later than 6 months after the date of admission or
 207 at the end of any period of extended commitment, or at any time
 208 the administrator or designee shall have determined that the
 209 defendant has regained competency to proceed or no longer meets
 210 the criteria for continued commitment, the administrator or
 211 designee shall file a report with the court under ~~pursuant to~~
 212 the applicable Florida Rules of Criminal Procedure.

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

215 916.302 Involuntary commitment of defendant determined to
 216 be incompetent to proceed due to retardation or autism.--

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

- 223 (a) The defendant is retarded or autistic;
- 224 (b) There is a substantial likelihood that in the near

225 future the defendant will inflict serious bodily harm on himself
226 or herself or another person, as evidenced by recent behavior
227 causing, attempting, or threatening such harm;

228 (c) All available, less restrictive alternatives,
229 including services provided in community residential facilities
230 or other community settings, which would offer an opportunity
231 for improvement of the condition have been judged to be
232 inappropriate; and

233 (d) There is a substantial probability that the
234 retardation or autism causing the defendant's incompetence will
235 respond to training and the defendant will regain competency to
236 proceed in the reasonably foreseeable future.

237 (2) ADMISSION TO A FACILITY.--

238 (a) A defendant who has been charged with a felony or
239 misdemeanor and who is found to be incompetent to proceed, and
240 who meets the criteria for commitment to the department under
241 ~~the provisions of~~ this chapter, shall be committed to the
242 department, and the department shall retain and serve the
243 defendant. No later than 6 months after the date of admission or
244 at the end of any period of extended commitment or at any time
245 the administrator or designee shall have determined that the
246 defendant has regained competency to proceed or no longer meets
247 the criteria for continued commitment, the administrator or
248 designee shall file a report with the court under ~~pursuant to~~
249 this chapter and the applicable Florida Rules of Criminal
250 Procedure.

251 (b) A defendant determined to be incompetent to proceed
252 due to retardation or autism may be ordered by a ~~circuit~~ court

253 into a secure facility designated by the department for retarded
254 or autistic defendants.

255 (c) The department may transfer a defendant from a
256 designated secure facility to another designated secure facility
257 and must notify the court of the transfer within 30 days after
258 the transfer is completed.

259 (d) The department may not transfer a defendant from a
260 designated secure facility to a nonsecure facility without first
261 notifying the court, and all parties, 30 days before the
262 proposed transfer. If the court objects to the proposed transfer
263 to a nonsecure facility, it must send its written objection to
264 the department. The department may transfer the defendant unless
265 it receives the written objection from the court within 30 days
266 after the court's receipt of the notice of the proposed
267 transfer.

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