

By Senator Hill

1-176-07

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; amending ss.
9 916.107, 916.13, and 916.302, F.S., relating to
10 the rights of forensic clients, the involuntary
11 commitment of a defendant with mental illness,
12 and the involuntary commitment of a defendant
13 determined to be incompetent; conforming
14 provisions to changes made by the act;
15 providing an effective date.

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

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

21 916.105 Legislative intent.--

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

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

13 | Section 2. Subsection (5) of section 916.106, Florida
14 | Statutes, is amended to read:

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

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

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

20 | 916.107 Rights of forensic clients.--

21 | (1) RIGHT TO INDIVIDUAL DIGNITY.--

22 | (a) The policy of the state is that the individual
23 | dignity of the client shall be respected at all times and upon
24 | all occasions, including any occasion when the forensic client
25 | is detained, transported, or treated. Clients with mental
26 | illness, retardation, or autism ~~and~~ who are charged with
27 | committing felonies or misdemeanors shall receive appropriate
28 | treatment or training. In a criminal case involving a client
29 | who has been adjudicated incompetent to proceed or not guilty
30 | by reason of insanity, a jail may be used as an emergency
31 | facility for up to 15 days following the date the department

1 or agency receives a completed copy of the court commitment
2 order containing all documentation required by the applicable
3 Florida Rules of Criminal Procedure. For a forensic client who
4 is held in a jail awaiting admission to a facility of the
5 department or agency, evaluation and treatment or training may
6 be provided in the jail by the local community mental health
7 provider for mental health services, by the developmental
8 disabilities program for persons with retardation or autism,
9 the client's physician or psychologist, or any other
10 appropriate program until the client is transferred to a civil
11 or forensic facility.

12 (b) Forensic clients who are initially placed in, or
13 subsequently transferred to, a civil facility as described in
14 part I of chapter 394 or to a residential facility as
15 described in chapter 393 shall have the same rights as other
16 persons committed to these facilities for as long as they
17 remain there.

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

19 (a) A forensic client shall be asked to give express
20 and informed written consent for treatment. If a client
21 refuses such treatment as is deemed necessary and essential by
22 the client's multidisciplinary treatment team for the
23 appropriate care of the client, the ~~such~~ treatment may be
24 provided under the following circumstances:

25 1. In an emergency situation in which there is
26 immediate danger to the safety of the client or others, the
27 ~~such~~ treatment may be provided upon the written order of a
28 physician for a period not to exceed 48 hours, excluding
29 weekends and legal holidays. If, after the 48-hour period, the
30 client has not given express and informed consent to the
31 treatment initially refused, the administrator or designee of

1 | the civil or forensic facility shall, within 48 hours,
2 | excluding weekends and legal holidays, petition the committing
3 | court or the circuit or county court serving the county in
4 | which the facility is located, at the option of the facility
5 | administrator or designee, for an order authorizing the
6 | continued treatment of the client. In the interim, the need
7 | for treatment shall be reviewed every 48 hours and may be
8 | continued without the consent of the client upon the continued
9 | written order of a physician who has determined that the
10 | emergency situation continues to present a danger to the
11 | safety of the client or others.

12 | 2. In a situation other than an emergency situation,
13 | the administrator or designee of the facility shall petition
14 | the circuit or county court for an order authorizing necessary
15 | and essential treatment for the client. The order shall allow
16 | such treatment for a period not to exceed 90 days following
17 | the date of the entry of the order. Unless the court is
18 | notified in writing that the client has provided express and
19 | informed consent in writing or that the client has been
20 | discharged by the committing court, the administrator or
21 | designee shall, before ~~prior to~~ the expiration of the initial
22 | 90-day order, petition the court for an order authorizing the
23 | continuation of treatment for another 90-day period. This
24 | procedure shall be repeated until the client provides consent
25 | or is discharged by the committing court.

26 | 3. At the hearing on the issue of whether the court
27 | should enter an order authorizing treatment for which a client
28 | was unable to or refused to give express and informed consent,
29 | the court shall determine by clear and convincing evidence
30 | that the client has mental illness, retardation, or autism,
31 | that the treatment not consented to is essential to the care

1 of the client, and that the treatment not consented to is not
2 experimental and does not present an unreasonable risk of
3 serious, hazardous, or irreversible side effects. In arriving
4 at the substitute judgment decision, the court must consider
5 at least the following factors:

- 6 a. The client's expressed preference regarding
7 treatment;
8 b. The probability of adverse side effects;
9 c. The prognosis without treatment; and
10 d. The prognosis with treatment.

11
12 The hearing shall be as convenient to the client as may be
13 consistent with orderly procedure and shall be conducted in
14 physical settings not likely to be injurious to the client's
15 condition. The court may appoint a general or special
16 magistrate to preside at the hearing. The client or the
17 client's guardian, and the representative, shall be provided
18 with a copy of the petition and the date, time, and location
19 of the hearing. The client has the right to have an attorney
20 represent him or her at the hearing, and, if the client is
21 indigent, the court shall appoint the office of the public
22 defender to represent the client at the hearing. The client
23 may testify or not, as he or she chooses, and has the right to
24 cross-examine witnesses and may present his or her own
25 witnesses.

26 (b) In addition to ~~the provisions of~~ paragraph (a), in
27 the case of surgical procedures requiring the use of a general
28 anesthetic or electroconvulsive treatment or nonpsychiatric
29 medical procedures, and prior to performing the procedure,
30 written permission shall be obtained from the client, if the
31 client is legally competent, from the parent or guardian of a

1 | minor client, or from the guardian of an incompetent client.
2 | The administrator or designee of the forensic facility or a
3 | designated representative may, with the concurrence of the
4 | client's attending physician, authorize emergency surgical or
5 | nonpsychiatric medical treatment if the ~~such~~ treatment is
6 | deemed lifesaving or for a situation threatening serious
7 | bodily harm to the client and permission of the client or the
8 | client's guardian could not be obtained before provision of
9 | the needed treatment.

10 | Section 4. Section 916.13, Florida Statutes, is
11 | amended to read:

12 | 916.13 Involuntary commitment of defendant adjudicated
13 | incompetent.--

14 | (1) Every defendant who is charged with a felony or
15 | misdemeanor and who is adjudicated incompetent to proceed may
16 | be involuntarily committed for treatment upon a finding by the
17 | court of clear and convincing evidence that:

18 | (a) The defendant has a mental illness and because of
19 | the mental illness:

20 | 1. The defendant is manifestly incapable of surviving
21 | alone or with the help of willing and responsible family or
22 | friends, including available alternative services, and,
23 | without treatment, the defendant is likely to suffer from
24 | neglect or refuse to care for herself or himself and such
25 | neglect or refusal poses a real and present threat of
26 | substantial harm to the defendant's well-being; or

27 | 2. There is a substantial likelihood that in the near
28 | future the defendant will inflict serious bodily harm on
29 | herself or himself or another person, as evidenced by recent
30 | behavior causing, attempting, or threatening such harm;
31 |

1 (b) All available, less restrictive treatment
2 alternatives, including treatment in community residential
3 facilities or community inpatient or outpatient settings,
4 which would offer an opportunity for improvement of the
5 defendant's condition have been judged to be inappropriate;
6 and

7 (c) There is a substantial probability that the mental
8 illness causing the defendant's incompetence will respond to
9 treatment and the defendant will regain competency to proceed
10 in the reasonably foreseeable future.

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

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

26 916.302 Involuntary commitment of defendant determined
27 to be incompetent to proceed.--

28 (1) CRITERIA.--Every defendant who is charged with a
29 felony or misdemeanor and who is adjudicated incompetent to
30 proceed due to retardation or autism may be involuntarily
31

1 committed for training upon a finding by the court of clear
2 and convincing evidence that:

3 (a) The defendant has retardation or autism;

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

8 (c) All available, less restrictive alternatives,
9 including services provided in community residential
10 facilities or other community settings, which would offer an
11 opportunity for improvement of the condition have been judged
12 to be inappropriate; and

13 (d) There is a substantial probability that the
14 retardation or autism causing the defendant's incompetence
15 will respond to training and the defendant will regain
16 competency to proceed in the reasonably foreseeable future.

17 (2) ADMISSION TO A FACILITY.--

18 (a) A defendant who has been charged with a felony or
19 misdemeanor and who is found to be incompetent to proceed due
20 to retardation or autism, and who meets the criteria for
21 involuntary commitment to the agency under ~~the provisions of~~
22 this chapter, shall be committed to the agency, and the agency
23 shall retain and provide appropriate training for the
24 defendant. No later than 6 months after the date of admission
25 or at the end of any period of extended commitment or at any
26 time the administrator or designee shall have determined that
27 the defendant has regained competency to proceed or no longer
28 meets the criteria for continued commitment, the administrator
29 or designee shall file a report with the court pursuant to
30 this chapter and the applicable Florida Rules of Criminal
31 Procedure.

