

By Senator Margolis

35-452A-07

1                                   A bill to be entitled  
2           An act relating to forensic client services;  
3           creating s. 26.58, F.S.; requiring the chief  
4           judge of each judicial circuit to appoint at  
5           least one mental health coordinator; providing  
6           duties for the coordinator; requiring the  
7           mental health coordinator to report to the  
8           chief judge of the circuit each week on the  
9           status of each defendant detained in the county  
10          detention facility who has been adjudicated  
11          incompetent to proceed or has been found not  
12          guilty by reason of insanity and to monitor  
13          each defendant who has regained competency to  
14          proceed or no longer meets the criteria for  
15          involuntary hospitalization; requiring the  
16          mental health coordinator to collect certain  
17          data and to prepare a report from the data  
18          collected by a specified date; amending s.  
19          916.105, F.S.; providing legislative intent  
20          that forensic client services be provided to a  
21          person charged with a misdemeanor as well as  
22          with a felony; amending s. 916.106, F.S.;  
23          redefining the term "court" to include the  
24          county court; amending ss. 916.107, 916.13, and  
25          916.302, F.S., relating to the rights of  
26          forensic clients, the involuntary commitment of  
27          a defendant that has a mental illness, the  
28          involuntary commitment of a defendant  
29          determined to be incompetent and involuntary  
30          outpatient community treatment services;  
31          conforming provisions to changes made by the

1 act; creating s. 951.275, F.S.; requiring each  
2 county and municipal detention facility to have  
3 a written procedure for the psychiatric  
4 assessment and treatment of prisoners housed in  
5 the detention facility; requiring the staff of  
6 the detention facility to interview each  
7 prisoner and gather such information as is  
8 reasonably available and deemed necessary by  
9 the staff; requiring the staff to determine  
10 whether the prisoner needs a comprehensive  
11 mental health assessment; requiring that the  
12 comprehensive assessment be completed within a  
13 specified time; requiring the community mental  
14 health service provider to conduct the  
15 comprehensive assessment; providing an  
16 effective date.

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

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20 Section 1. Section 26.58, Florida Statutes, is created  
21 to read:

22 26.58 Circuit court mental health coordinators.--

23 (1) The chief judge of each judicial circuit shall  
24 appoint, at a minimum, one mental health coordinator to assist  
25 in diverting defendants who have a mental illness from the  
26 criminal justice system to the community mental health care  
27 and treatment systems. In order to divert persons from the  
28 criminal justice system, the mental health coordinator shall  
29 collaborate with representatives of the district or regional  
30 substance abuse and mental health program office of the  
31 Department of Children and Family Services, the public

1 defender, the state attorney, the area office of the Agency  
2 for Health Care Administration, state mental health treatment  
3 facilities, local sheriffs, community mental health service  
4 providers, and other community agencies in order to plan and  
5 develop appropriate treatment alternatives for the defendant.

6 (2) The duties of each mental health coordinator shall  
7 include, but are not limited to:

8 (a) Monitoring the progress of the case of each  
9 defendant who has a mental illness and has been identified as  
10 a candidate for diversion, and working with the circuit court  
11 and others to ensure that these cases move through the  
12 judicial process as quickly as possible.

13 (b) Advising the circuit court and others of the  
14 appropriate mental-health-treatment alternatives to judicial  
15 proceedings which are present in the community.

16 (c) Collaborating with the district or regional  
17 substance abuse and mental health program office of the  
18 Department of Children and Family Services to determine the  
19 availability of mental health treatment services in the  
20 community for a defendant who has a mental illness.

21 (d) Ensuring that public safety risks, mental health  
22 treatment services, and social needs of a defendant are  
23 evaluated and that an appropriate diversion plan, with  
24 adequate treatment and other services, is prepared for the  
25 defendant.

26 (e) Coordinating, at least twice each year, meetings  
27 of key participants in the judicial system in order to improve  
28 the effectiveness of efforts to divert defendants who have a  
29 mental illness to effective community alternative treatment  
30 services. The coordinator shall invite representatives of:

31 1. The chief judge of the judicial circuit.

- 1           2. The public defender.  
2           3. The state attorney.  
3           4. The area office of the Agency for Health Care  
4 Administration.  
5           5. The district or regional substance abuse and mental  
6 health program office of the Department of Children and Family  
7 Services.  
8           6. The sheriff of each county in the circuit.  
9           7. The public safety coordinating councils.  
10          8. A vendor providing mental health treatment services  
11 in the community.  
12          (3) Operating pursuant to chapter 916, the mental  
13 health coordinator shall:  
14          (a) Report to the chief judge of the circuit each week  
15 the status of each defendant detained in the county detention  
16 facility who has been adjudicated incompetent to proceed or  
17 who has been found not guilty by reason of insanity. The  
18 report must identify each defendant in the detention facility  
19 who remains in the facility in excess of the 15-day limit  
20 established by statute. A copy of the report shall be given to  
21 the district or regional substance abuse and mental health  
22 program office of the Department of Children and Family  
23 Services.  
24          (b) Monitor each defendant involuntarily hospitalized  
25 by the judicial circuit as incompetent to proceed and whom the  
26 Department of Children and Family Services determines has  
27 regained competency to proceed or no longer meets the criteria  
28 for involuntary hospitalization. The mental health  
29 coordinator, cooperating with the department, the state  
30 attorney, and counsel for the defendant, shall ensure that the  
31 defendant is returned to the county detention facility within

1 15 days after receiving notice of the department's  
2 determination and the court shall set a hearing within 30 days  
3 after receiving notice of the department's determination.

4 (4)(a) Each mental health coordinator shall, with the  
5 approval of the chief judge of the judicial circuit, establish  
6 a methodology to collect the following data:

7 1. The number of defendants who have a mental illness  
8 and were diverted from the criminal justice system;

9 2. The length of stay in jail of the defendant before  
10 he or she was diverted to a community treatment service;

11 3. A description of the community diversionary  
12 programs and how much each community program is used;

13 4. The percentage of defendants diverted from the  
14 criminal justice system who were ordered to receive  
15 residential mental health treatment when diverted;

16 5. The percentage of defendants diverted from the  
17 criminal justice system who were ordered to receive outpatient  
18 mental health treatment when diverted;

19 6. The percentage of defendants diverted from the  
20 criminal justice system who were subsequently rearrested; and

21 7. The percentage of mental health evaluations  
22 prepared for a defendant which contained a recommendation for  
23 the defendant to receive mental health treatment services in  
24 the community as an alternative to placement in a forensic  
25 hospital.

26 (b) Each mental health coordinator shall prepare a  
27 written report of the data and present the report to the chief  
28 judge, the state attorney, the public defender, the sheriff,  
29 the Mental Health Program Office, and the district or regional  
30 substance abuse and mental health program office of the  
31 Department of Children and Family Services. The report shall

1 be delivered by February 1 of each year for the period of  
2 January 1 through December 31 of the previous year.

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

5 916.105 Legislative intent.--

6 (1) It is the intent of the Legislature that the  
7 Department of Children and Family Services and the Agency for  
8 Persons with Disabilities, as appropriate, establish, locate,  
9 and maintain separate and secure forensic facilities and  
10 community and facility programs for the treatment or training  
11 of defendants who have been charged with a felony and who have  
12 been found to be incompetent to proceed due to their mental  
13 illness, mental retardation, or autism, or who have been  
14 acquitted of a felony by reason of insanity, and who, while  
15 still under the jurisdiction of the committing court, are  
16 committed to the department or agency under ~~the provisions of~~  
17 this chapter. The Such facilities and community programs must  
18 ~~shall~~ be sufficient to accommodate the number of defendants  
19 committed under the conditions noted above. Except for those  
20 defendants found by the department or agency to be appropriate  
21 for treatment or training in a civil facility or program  
22 pursuant to subsection (3), forensic facilities shall be  
23 designed and administered so that ingress and egress, together  
24 with other requirements of this chapter, may be strictly  
25 controlled by staff responsible for security in order to  
26 protect the defendant, facility personnel, other clients, and  
27 citizens in adjacent communities.

28 Section 3. Subsection (5) of section 916.106, Florida  
29 Statutes, is amended to read:

30 916.106 Definitions.--For the purposes of this  
31 chapter, the term:

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

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

4 916.107 Rights of forensic clients.--

5 (1) RIGHT TO INDIVIDUAL DIGNITY.--

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

27 (b) Forensic clients who are initially placed in, or  
28 subsequently transferred to, a civil facility as described in  
29 part I of chapter 394 or to a residential facility as  
30 described in chapter 393 shall have the same rights as other  
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1 persons committed to these facilities for as long as they  
2 remain there.

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

4 (a) A forensic client shall be asked to give express  
5 and informed written consent for treatment. If a client  
6 refuses such treatment as is deemed necessary and essential by  
7 the client's multidisciplinary treatment team for the  
8 appropriate care of the client, the ~~such~~ treatment may be  
9 provided under the following circumstances:

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

28 2. In a situation other than an emergency situation,  
29 the administrator or designee of the facility shall petition  
30 the circuit or county court for an order authorizing necessary  
31 and essential treatment for the client. The order shall allow



1 such treatment for a period not to exceed 90 days following  
2 the date of the entry of the order. Unless the court is  
3 notified in writing that the client has provided express and  
4 informed consent in writing or that the client has been  
5 discharged by the committing court, the administrator or  
6 designee shall, before ~~prior to~~ the expiration of the initial  
7 90-day order, petition the court for an order authorizing the  
8 continuation of treatment for another 90-day period. This  
9 procedure shall be repeated until the client provides consent  
10 or is discharged by the committing court.

11 3. At the hearing on the issue of whether the court  
12 should enter an order authorizing treatment for which a client  
13 was unable to or refused to give express and informed consent,  
14 the court shall determine by clear and convincing evidence  
15 that the client has mental illness, retardation, or autism,  
16 that the treatment not consented to is essential to the care  
17 of the client, and that the treatment not consented to is not  
18 experimental and does not present an unreasonable risk of  
19 serious, hazardous, or irreversible side effects. In arriving  
20 at the substitute judgment decision, the court must consider  
21 at least the following factors:

- 22 a. The client's expressed preference regarding  
23 treatment;
- 24 b. The probability of adverse side effects;
- 25 c. The prognosis without treatment; and
- 26 d. The prognosis with treatment.

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28 The hearing shall be as convenient to the client as may be  
29 consistent with orderly procedure and shall be conducted in  
30 physical settings not likely to be injurious to the client's  
31 condition. The court may appoint a general or special

1 magistrate to preside at the hearing. The client or the  
2 client's guardian, and the representative, shall be provided  
3 with a copy of the petition and the date, time, and location  
4 of the hearing. The client has the right to have an attorney  
5 represent him or her at the hearing, and, if the client is  
6 indigent, the court shall appoint the office of the public  
7 defender to represent the client at the hearing. The client  
8 may testify or not, as he or she chooses, and has the right to  
9 cross-examine witnesses and may present his or her own  
10 witnesses.

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

26 Section 5. Section 916.13, Florida Statutes, is  
27 amended to read:

28 916.13 Involuntary commitment of defendant adjudicated  
29 incompetent.--

30 (1)(a) Every defendant who is charged with a felony or  
31 misdemeanor and who is adjudicated incompetent to proceed

1 shall ~~may~~ be involuntarily committed to the department for  
2 treatment. A defendant who is charged with a felony may be  
3 involuntarily committed to a forensic facility if a court  
4 finds ~~upon a finding by the court of~~ clear and convincing  
5 evidence that:

6 1.(a) The defendant has a mental illness and because  
7 of the mental illness:

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

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

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

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

29 (b) Every defendant who is charged with a misdemeanor  
30 and who is adjudicated incompetent to proceed may be  
31 involuntarily committed for outpatient community treatment

1 services upon a finding by the court of clear and convincing  
2 evidence that:

3 1. The defendant has a mental illness and is 18 years  
4 of age or older;

5 2. The defendant is unlikely to survive safely in the  
6 community without supervision, based on a clinical  
7 determination;

8 3. The defendant has a history of lack of compliance  
9 with treatment for mental illness;

10 4. The defendant has:

11 a. At least twice within the immediately preceding 36  
12 months been involuntarily admitted to a receiving or treatment  
13 facility as defined in s. 394.455, or has received mental  
14 health services in a forensic or correctional facility. The  
15 36-month period does not include any period during which the  
16 defendant was admitted or incarcerated; or

17 b. Engaged in one or more acts of serious violent  
18 behavior toward himself or herself or others, or attempts at  
19 serious bodily harm to himself or herself or others, within  
20 the preceding 36 months;

21 5. The defendant is, as a result of his or her mental  
22 illness, unlikely to voluntarily participate in the  
23 recommended treatment plan and either he or she has refused  
24 voluntary placement for treatment after sufficient and  
25 conscientious explanation and disclosure of the purpose of  
26 placement for treatment or he or she is unable to determine  
27 for himself or herself whether placement is necessary;

28 6. In view of the defendant's treatment history and  
29 current behavior, the defendant is in need of involuntary  
30 outpatient community treatment services in order to prevent a  
31 relapse or deterioration that would be likely to result in

1 serious bodily harm to the defendant or others, or a  
2 substantial harm to his or her well-being as set forth in s.  
3 394.463(1);

4 7. It is likely that the defendant will benefit from  
5 involuntary outpatient placement; and

6 8. All available, less restrictive alternatives that  
7 would offer an opportunity for improvement of the defendant's  
8 condition have been judged to be inappropriate or unavailable.

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

22 Section 6. Subsections (1) and (2) of section 916.302,  
23 Florida Statutes, are amended to read:

24 916.302 Involuntary commitment of defendant determined  
25 to be incompetent to proceed.--

26 (1) CRITERIA.--Every defendant who is charged with a  
27 felony or misdemeanor and who is adjudicated incompetent to  
28 proceed due to retardation or autism may be involuntarily  
29 committed for training upon a finding by the court of clear  
30 and convincing evidence that:

31 (a) The defendant has retardation or autism;

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

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

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

14 (2) ADMISSION TO A FACILITY.--

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

29 (b) A defendant determined to be incompetent to  
30 proceed due to retardation or autism may be ordered by a  
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1 ~~ircuit~~ court into a forensic facility designated by the  
2 agency for defendants who have mental retardation or autism.

3 (c) The agency may transfer a defendant from a  
4 designated forensic facility to another designated forensic  
5 facility and must notify the court of the transfer within 30  
6 days after the transfer is completed.

7 (d) The agency may not transfer a defendant from a  
8 designated forensic facility to a civil facility without first  
9 notifying the court, and all parties, 30 days before the  
10 proposed transfer. If the court objects to the proposed  
11 transfer, it must send its written objection to the agency.  
12 The agency may transfer the defendant unless it receives the  
13 written objection from the court within 30 days after the  
14 court's receipt of the notice of the proposed transfer.

15 Section 7. Section 951.275, Florida Statutes, is  
16 created to read:

17 951.275 Psychiatric assessment of prisoners.--

18 (1) Each county and municipal detention facility must  
19 have a written procedure, developed in consultation with the  
20 facility medical provider and the community mental health  
21 provider, for the psychiatric assessment and treatment of  
22 prisoners housed in the detention facility.

23 (2) Whenever a person is placed in a county or  
24 municipal detention facility, the staff of the detention  
25 facility shall interview the prisoner and gather such  
26 information from the prisoner, the arresting officer, and  
27 others as is reasonably available and deemed necessary by the  
28 facility staff. As a part of the intake procedures at each  
29 county or municipal detention facility, the staff shall  
30 ascertain whether the prisoner needs a comprehensive mental  
31 health assessment. If it is determined that the prisoner needs

1 such an assessment, the assessment must take place within 24  
2 hours following that determination. The community mental  
3 health service provider shall conduct the comprehensive  
4 assessment.

5 Section 8. This act shall take effect July 1, 2007.

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8 SENATE SUMMARY

9 Requires the chief judge of each judicial circuit to  
10 appoint at least one mental health coordinator. Provides  
11 duties for the coordinator. Requires the mental health  
12 coordinator to collect certain data and to prepare a  
13 report from the data collected by a specified date.  
14 Requires that forensic client services be provided to a  
15 person charged with a misdemeanor as well as with a  
16 felony. Requires each county and municipal detention  
17 facility to have a written procedure for the psychiatric  
18 assessment and treatment of prisoners housed in the  
19 detention facility. Requires the staff of the detention  
20 facility to interview the prisoner and gather such  
21 information as is reasonably available and deemed  
22 necessary by the staff. Requires the staff to determine  
23 whether the prisoner needs a comprehensive mental health  
24 assessment. Requires that the comprehensive assessment be  
25 completed within a specified time.  
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