

By Senator Margolis

35-627-07

1 A bill to be entitled
2 An act relating to the mental health treatment
3 of prisoners; creating s. 951.271, F.S.;
4 providing that a prisoner in a county or
5 municipal detention facility who has the
6 capacity to make an informed decision regarding
7 his or her mental health treatment must be
8 asked to give express and informed consent for
9 the treatment of mental illness; defining the
10 terms "express and informed consent" and
11 "mental illness"; describing conditions and
12 criteria that must be met if a county or
13 municipal detention facility involuntarily
14 treats prisoners who have a mental illness;
15 describing legal procedures that must be used
16 in order for a detention facility to provide
17 involuntary mental health treatment to a
18 prisoner in an emergency situation or
19 nonemergency situation; authorizing the
20 prisoner to withdraw consent for receiving
21 psychotropic medications; providing an
22 effective date.
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24 Be It Enacted by the Legislature of the State of Florida:
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26 Section 1. Section 951.271, Florida Statutes, is
27 created to read:

28 951.271 Treatment for mental illness; county and
29 municipal prisoners' right to give express and informed
30 consent for treatment of mental illness; hearings.--
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1 (1) A prisoner in a county or municipal detention
2 facility who has the capacity to make an informed decision
3 regarding his or her mental health treatment must be asked to
4 give express and informed consent in writing for the treatment
5 of mental illness.

6 (2) As used in this section, the term:

7 (a) "Express and informed consent" or "consent" means
8 consent given voluntarily in writing after a conscientious and
9 sufficient explanation and disclosure of the purpose of the
10 proposed treatment, the common side effects of the treatment,
11 if any, the expected duration of the treatment, and any
12 alternative treatment available.

13 (b) "Mental illness" means an impairment of the
14 emotional processes that exercise conscious control of one's
15 actions, or of the ability to perceive or understand reality,
16 which impairment substantially interferes with a prisoner's
17 ability to meet the ordinary demands of living. For purposes
18 of this section, the term does not apply to prisoners with
19 only mental retardation or autism and does not include
20 intoxication or conditions manifested only by antisocial
21 behavior or substance abuse impairment.

22 (3) If a prisoner in a county or municipal detention
23 facility is unable to give express and informed consent or
24 refuses to give express and informed consent to treatment for
25 mental illness which is deemed necessary by the facility's
26 mental health professional for the appropriate care of the
27 prisoner and the safety of the prisoner or others, involuntary
28 medical treatment for mental illness, as described in this
29 section, may be provided only in a county or municipal
30 detention facility that has:

1 (a) An adequate medical staff to monitor the effects
2 of the treatment;

3 (b) A distinct residential medical unit in which
4 treated prisoners may reside while their medical condition is
5 being monitored; and

6 (c) Internal procedures that are designed to provide
7 or coordinate continuity of medication by community service
8 organizations upon release of the prisoner from custody.

9 (4) The criteria set forth in subsection (3) must
10 include, at a minimum:

11 (a) Onsite coverage of mental health treatment
12 services by a registered nurse, 24 hours per day, 7 days per
13 week.

14 (b) Access to an on-call psychiatrist who is licensed
15 under chapter 458 or chapter 459, or onsite coverage by a
16 psychiatric advanced registered nurse practitioner who is
17 licensed under chapter 464, 24 hours per day, 7 days per week.

18 (c) A distinct residential-medical-services area that
19 is suitable for the residence and protection of prisoners who
20 are being monitored for the effects of psychotropic
21 medication, until medically appropriate psychiatric
22 stabilization is achieved.

23 (5) If the requirements of subsections (3) and (4) are
24 met, involuntary medical treatment for mental illness may be
25 provided to prisoners in a county or municipal detention
26 facility under the following circumstances:

27 (a)1. In an emergency situation in which there is
28 immediate danger to the safety of the prisoner or others,
29 psychotropic medication therapy may be provided upon the
30 written or telephone order of a physician for a period that
31 may not exceed 24 hours. If the order is given by telephone,

1 the order must be reduced to writing upon receipt and signed
2 by the physician within 24 hours.

3 2. If, after the 24-hour period, the prisoner has not
4 given express and informed consent to psychotropic medication
5 therapy that is necessary to stabilize the prisoner's mental
6 illness, the administrator of the detention facility shall,
7 within 24 hours, excluding weekends and legal holidays,
8 petition the circuit court serving the county in which the
9 facility is located for an order authorizing continued
10 treatment as prescribed by a mental health practitioner.

11 (b)1. In a situation other than an emergency
12 situation, if the facility's mental health practitioner
13 determines that a prisoner is in need of treatment for mental
14 illness and the prisoner is unable or refuses to give express
15 and informed consent to treatment, the administrator of the
16 detention facility shall petition the circuit court serving
17 the county in which the facility is located for an order
18 authorizing the necessary treatment for the prisoner.

19 2. The order may allow such treatment for a period not
20 to exceed 180 days following the date of entry of the order.

21 3. Unless the court is notified in writing that the
22 prisoner has given express and informed consent in writing or
23 that the prisoner has been released from custody, the
24 administrator shall, before the expiration of the initial
25 180-day order, petition the court for an order authorizing the
26 continuation of treatment for another 180-day period.

27 4. This procedure shall be repeated until the prisoner
28 provides consent or is released from custody.

29 (6)(a) The prisoner, his or her guardian, if any, or a
30 health care surrogate or proxy as described in chapter 765
31 and the prisoner's attorney shall be given a copy of the

1 petition to the circuit court requesting authorization for
2 involuntary mental health treatment for which the prisoner has
3 refused to give express and informed consent.

4 (b) The petition must be accompanied by a notice of
5 the date, time, and location of the hearing on the petition.
6 The hearing shall be as convenient to the prisoner as is
7 consistent with orderly procedure and shall be conducted in a
8 physical setting that is not likely to be injurious to the
9 prisoner's condition.

10 (c) The prisoner has the right to have an attorney
11 represent him or her at the hearing, and, if the prisoner is
12 indigent, the court shall appoint the office of the public
13 defender to represent the prisoner at the hearing.

14 (d) The prisoner may testify or not, as he or she
15 chooses, and has the right to cross-examine witnesses
16 testifying on behalf of the petitioner and may present his or
17 her own witnesses.

18 (e) At the hearing on the issue of whether the court
19 should enter an order authorizing treatment for which a
20 prisoner was unable to or has refused to give express and
21 informed consent, the court shall determine by clear and
22 convincing evidence that the prisoner has a mental illness,
23 that the treatment not consented to is essential to the care
24 of the prisoner, and that the treatment not consented to is
25 not experimental and does not present an unreasonable risk of
26 serious, hazardous, or irreversible side effects. In arriving
27 at its decision, the court must consider at least the
28 following:

29 1. The prisoner's expressed preference regarding
30 treatment;

31 2. The probability of adverse side effects;

1 3. The prisoner's prognosis without treatment; and
2 4. The prisoner's prognosis following treatment.
3 (7)(a)1. Psychotropic medication for the treatment of
4 a prisoner's mental illness may be provided at the time of the
5 prisoner's confinement to a county or municipal detention
6 facility if the prisoner has a current, valid prescription for
7 psychotropic medication, the prisoner is unable to give
8 express and informed consent for the treatment, and the
9 facility's physician determines it is essential to continue
10 the psychotropic medication for the prisoner.
11 2. Administration of the psychotropic medication shall
12 continue during the proceedings initiated under this section
13 to obtain a court order authorizing the involuntary treatment
14 of the prisoner.
15 (b) A prisoner has the right to withdraw consent for
16 mental health treatment in writing at any time. If withdrawal
17 of consent for treatment poses an immediate danger to the
18 safety of the prisoner or others, or a potentially severe
19 adverse reaction may result from an abrupt withdrawal of a
20 psychotropic medication, the medication shall be continued if
21 the facility's physician finds that continued administration
22 of the psychotropic medication is essential for the treatment
23 of the prisoner.
24 Section 2. This act shall take effect July 1, 2007.
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SENATE SUMMARY

Provides that a prisoner in a county or municipal detention facility who has the capacity to make an informed decision regarding his or her mental health treatment must be asked to give express and informed consent for the treatment of mental illness. Describes conditions and criteria that must be met if a county or municipal detention facility wants to involuntarily treat prisoners who have a mental illness. Describes the legal procedures that must be used in order to provide involuntary mental health services to prisoners in emergency and nonemergency situations. Authorizes a prisoner to withdraw consent for receiving psychotropic medications.