

By Senator Hill

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

13
14 Be It Enacted by the Legislature of the State of Florida:

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

18 916.105 Legislative intent.--

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

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30 ~~Such~~ facilities must ~~shall~~ be sufficient to accommodate the
31 number of defendants committed under the conditions noted above.
32 Except for those defendants found by the department or agency to
33 be appropriate for treatment or training in a civil facility or
34 program pursuant to subsection (3), forensic facilities shall be
35 designed and administered so that ingress and egress, together
36 with other requirements of this chapter, may be strictly
37 controlled by staff responsible for security in order to protect
38 the defendant, facility personnel, other clients, and citizens in
39 adjacent communities.

40 Section 2. Subsection (5) of section 916.106, Florida
41 Statutes, is amended to read:

42 916.106 Definitions.--For the purposes of this chapter, the
43 term:

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

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

47 916.107 Rights of forensic clients.--

48 (1) RIGHT TO INDIVIDUAL DIGNITY.--

49 (a) The policy of the state is that the individual dignity
50 of the client shall be respected at all times and upon all
51 occasions, including any occasion when the forensic client is
52 detained, transported, or treated. Clients with mental illness,
53 retardation, or autism ~~and~~ who are charged with committing
54 felonies or misdemeanors shall receive appropriate treatment or
55 training. In a criminal case involving a client who has been
56 adjudicated incompetent to proceed or not guilty by reason of
57 insanity, a jail may be used as an emergency facility for up to
58 15 days following the date the department or agency receives a

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59 | completed copy of the court commitment order containing all
60 | documentation required by the applicable Florida Rules of
61 | Criminal Procedure. For a forensic client who is held in a jail
62 | awaiting admission to a facility of the department or agency,
63 | evaluation and treatment or training may be provided in the jail
64 | by the local community mental health provider for mental health
65 | services, by the developmental disabilities program for persons
66 | with retardation or autism, the client's physician or
67 | psychologist, or any other appropriate program until the client
68 | is transferred to a civil or forensic facility.

69 | (b) Forensic clients who are initially placed in, or
70 | subsequently transferred to, a civil facility as described in
71 | part I of chapter 394 or to a residential facility as described
72 | in chapter 393 shall have the same rights as other persons
73 | committed to these facilities for as long as they remain there.

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

75 | (a) A forensic client shall be asked to give express and
76 | informed written consent for treatment. If a client refuses such
77 | treatment as is deemed necessary and essential by the client's
78 | multidisciplinary treatment team for the appropriate care of the
79 | client, the ~~such~~ treatment may be provided under the following
80 | circumstances:

81 | 1. In an emergency situation in which there is immediate
82 | danger to the safety of the client or others, the ~~such~~ treatment
83 | may be provided upon the written order of a physician for a
84 | period not to exceed 48 hours, excluding weekends and legal
85 | holidays. If, after the 48-hour period, the client has not given
86 | express and informed consent to the treatment initially refused,
87 | the administrator or designee of the civil or forensic facility

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88 shall, within 48 hours, excluding weekends and legal holidays,
89 petition the committing court or the circuit or county court
90 serving the county in which the facility is located, at the
91 option of the facility administrator or designee, for an order
92 authorizing the continued treatment of the client. In the
93 interim, the need for treatment shall be reviewed every 48 hours
94 and may be continued without the consent of the client upon the
95 continued written order of a physician who has determined that
96 the emergency situation continues to present a danger to the
97 safety of the client or others.

98 2. In a situation other than an emergency situation, the
99 administrator or designee of the facility shall petition the
100 circuit or county court for an order authorizing necessary and
101 essential treatment for the client. The order shall allow such
102 treatment for a period not to exceed 90 days following the date
103 of the entry of the order. Unless the court is notified in
104 writing that the client has provided express and informed consent
105 in writing or that the client has been discharged by the
106 committing court, the administrator or designee shall, before
107 ~~prior to~~ the expiration of the initial 90-day order, petition the
108 court for an order authorizing the continuation of treatment for
109 another 90-day period. This procedure shall be repeated until the
110 client provides consent or is discharged by the committing court.

111 3. At the hearing on the issue of whether the court should
112 enter an order authorizing treatment for which a client was
113 unable to or refused to give express and informed consent, the
114 court shall determine by clear and convincing evidence that the
115 client has mental illness, retardation, or autism, that the
116 treatment not consented to is essential to the care of the

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117 client, and that the treatment not consented to is not
118 experimental and does not present an unreasonable risk of
119 serious, hazardous, or irreversible side effects. In arriving at
120 the substitute judgment decision, the court must consider at
121 least the following factors:

- 122 a. The client's expressed preference regarding treatment;
- 123 b. The probability of adverse side effects;
- 124 c. The prognosis without treatment; and
- 125 d. The prognosis with treatment.

126

127 The hearing shall be as convenient to the client as may be
128 consistent with orderly procedure and shall be conducted in
129 physical settings not likely to be injurious to the client's
130 condition. The court may appoint a general or special magistrate
131 to preside at the hearing. The client or the client's guardian,
132 and the representative, shall be provided with a copy of the
133 petition and the date, time, and location of the hearing. The
134 client has the right to have an attorney represent him or her at
135 the hearing, and, if the client is indigent, the court shall
136 appoint the office of the public defender to represent the client
137 at the hearing. The client may testify or not, as he or she
138 chooses, and has the right to cross-examine witnesses and may
139 present his or her own witnesses.

140 (b) In addition to ~~the provisions of~~ paragraph (a), in the
141 case of surgical procedures requiring the use of a general
142 anesthetic or electroconvulsive treatment or nonpsychiatric
143 medical procedures, and prior to performing the procedure,
144 written permission shall be obtained from the client, if the
145 client is legally competent, from the parent or guardian of a

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146 | minor client, or from the guardian of an incompetent client. The
147 | administrator or designee of the forensic facility or a
148 | designated representative may, with the concurrence of the
149 | client's attending physician, authorize emergency surgical or
150 | nonpsychiatric medical treatment if the ~~such~~ treatment is deemed
151 | lifesaving or for a situation threatening serious bodily harm to
152 | the client and permission of the client or the client's guardian
153 | could not be obtained before provision of the needed treatment.

154 | Section 4. Section 916.13, Florida Statutes, is amended to
155 | read:

156 | 916.13 Involuntary commitment of defendant adjudicated
157 | incompetent.--

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

162 | (a) The defendant has a mental illness and because of the
163 | mental illness:

164 | 1. The defendant is manifestly incapable of surviving alone
165 | or with the help of willing and responsible family or friends,
166 | including available alternative services, and, without treatment,
167 | the defendant is likely to suffer from neglect or refuse to care
168 | for herself or himself and such neglect or refusal poses a real
169 | and present threat of substantial harm to the defendant's well-
170 | being; or

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

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

180 (c) There is a substantial probability that the mental
181 illness causing the defendant's incompetence will respond to
182 treatment and the defendant will regain competency to proceed in
183 the reasonably foreseeable future.

184 (2) A defendant who has been charged with a felony or
185 misdemeanor and who has been adjudicated incompetent to proceed
186 due to mental illness, and who meets the criteria for involuntary
187 commitment to the department under ~~the provisions of this~~
188 chapter, may be committed to the department, and the department
189 shall retain and treat the defendant. No later than 6 months
190 after the date of admission and at the end of any period of
191 extended commitment, or at any time the administrator or designee
192 shall have determined that the defendant has regained competency
193 to proceed or no longer meets the criteria for continued
194 commitment, the administrator or designee shall file a report
195 with the court under ~~pursuant to~~ the applicable Florida Rules of
196 Criminal Procedure.

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

199 916.302 Involuntary commitment of defendant determined to
200 be incompetent to proceed.--

201 (1) CRITERIA.--Every defendant who is charged with a felony
202 or misdemeanor and who is adjudicated incompetent to proceed due
203 to retardation or autism may be involuntarily committed for

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204 training upon a finding by the court of clear and convincing
205 evidence that:

206 (a) The defendant has retardation or autism;

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

211 (c) All available, less restrictive alternatives, including
212 services provided in community residential facilities or other
213 community settings, which would offer an opportunity for
214 improvement of the condition have been judged to be
215 inappropriate; and

216 (d) There is a substantial probability that the retardation
217 or autism causing the defendant's incompetence will respond to
218 training and the defendant will regain competency to proceed in
219 the reasonably foreseeable future.

220 (2) ADMISSION TO A FACILITY.--

221 (a) A defendant who has been charged with a felony or
222 misdemeanor and who is found to be incompetent to proceed due to
223 retardation or autism, and who meets the criteria for involuntary
224 commitment to the agency under ~~the provisions of~~ this chapter,
225 shall be committed to the agency, and the agency shall retain and
226 provide appropriate training for the defendant. No later than 6
227 months after the date of admission or at the end of any period of
228 extended commitment or at any time the administrator or designee
229 shall have determined that the defendant has regained competency
230 to proceed or no longer meets the criteria for continued
231 commitment, the administrator or designee shall file a report
232 with the court pursuant to this chapter and the applicable

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233 Florida Rules of Criminal Procedure.

234 (b) A defendant determined to be incompetent to proceed due
235 to retardation or autism may be ordered by a ~~circuit~~ court into a
236 forensic facility designated by the agency for defendants who
237 have mental retardation or autism.

238 (c) The agency may transfer a defendant from a designated
239 forensic facility to another designated forensic facility and
240 must notify the court of the transfer within 30 days after the
241 transfer is completed.

242 (d) The agency may not transfer a defendant from a
243 designated forensic facility to a civil facility without first
244 notifying the court, and all parties, 30 days before the proposed
245 transfer. If the court objects to the proposed transfer, it must
246 send its written objection to the agency. The agency may transfer
247 the defendant unless it receives the written objection from the
248 court within 30 days after the court's receipt of the notice of
249 the proposed transfer.

250 Section 6. This act shall take effect July 1, 2008.