

By Senator Hill

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1                   A bill to be entitled  
2           An act relating to forensic services; amending s.  
3           916.105, F.S.; providing legislative intent that  
4           forensic services be provided to a person charged with  
5           a misdemeanor as well as a felony offense; amending  
6           ss. 916.106, 916.107, 916.13, and 916.302, F.S.,  
7           relating to definitions, the rights of forensic  
8           clients, the involuntary commitment of a defendant  
9           with mental illness, and the involuntary commitment of  
10          a defendant determined to be incompetent; conforming  
11          provisions to changes made by the act; providing an  
12          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           misdemeanor or felony, 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 misdemeanor or felony by  
27           reason of insanity, and who, while still under the jurisdiction  
28           of the committing court, are committed to the department or  
29           agency under the provisions of this chapter. Such facilities

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30 must be able ~~shall be sufficient~~ to accommodate the number of  
31 defendants committed under the conditions noted above. Except  
32 for those defendants found by the department or agency to be  
33 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  
39 in adjacent communities.

40 Section 2. Subsections (6) and (7) of section 916.106,  
41 Florida Statutes, are amended to read:

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

44 (6) "Defendant" means an adult, or a juvenile who is  
45 prosecuted as an adult, who has been arraigned and charged with  
46 a misdemeanor or felony offense under the laws of this state.

47 (7) "Department" means the Department of Children and  
48 Family Services. The department is responsible for the treatment  
49 of forensic clients who have been determined incompetent to  
50 proceed due to mental illness or who have been acquitted of a  
51 misdemeanor or felony by reason of insanity.

52 Section 3. Paragraph (a) of subsection (1) of section  
53 916.107, Florida Statutes, is amended to read:

54 916.107 Rights of forensic clients.—

55 (1) RIGHT TO INDIVIDUAL DIGNITY.—

56 (a) The policy of the state is that the individual dignity  
57 of the client shall be respected at all times and upon all  
58 occasions, including any occasion when the forensic client is

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59 detained, transported, or treated. Clients with mental illness,  
60 retardation, or autism and who are charged with committing a  
61 misdemeanor or felony ~~felonies~~ shall receive appropriate  
62 treatment or training. In a criminal case involving a client who  
63 has been adjudicated incompetent to proceed or not guilty by  
64 reason of insanity, a jail may be used as an emergency facility  
65 for up to 15 days following the date the department or agency  
66 receives a completed copy of the court commitment order  
67 containing all documentation required by the applicable Florida  
68 Rules of Criminal Procedure. For a forensic client who is held  
69 in a jail awaiting admission to a facility of the department or  
70 agency, evaluation and treatment or training may be provided in  
71 the jail by the local community mental health provider for  
72 mental health services, by the developmental disabilities  
73 program for persons with retardation or autism, the client's  
74 physician or psychologist, or any other appropriate program  
75 until the client is transferred to a civil or forensic facility.

76 Section 4. Section 916.13, Florida Statutes, is amended to  
77 read:

78 916.13 Involuntary commitment of defendant adjudicated  
79 incompetent.—

80 (1) Every defendant who is charged with a misdemeanor or  
81 felony and who is adjudicated incompetent to proceed may be  
82 involuntarily committed for treatment upon a finding by the  
83 court of clear and convincing evidence that:

84 (a) The defendant has a mental illness and because of the  
85 mental illness:

86 1. The defendant is manifestly incapable of surviving alone  
87 or with the help of willing and responsible family or friends,

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88 including available alternative services, and, without  
89 treatment, the defendant is likely to suffer from neglect or  
90 refuse to care for herself or himself and such neglect or  
91 refusal poses a real and present threat of substantial harm to  
92 the defendant's well-being; or

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

97 (b) All available, less restrictive treatment alternatives,  
98 including treatment in community residential facilities or  
99 community inpatient or outpatient settings, which ~~would~~ offer an  
100 opportunity for improvement of the defendant's condition have  
101 been judged to be inappropriate; and

102 (c) There is a substantial probability that the mental  
103 illness causing the defendant's incompetence will respond to  
104 treatment and the defendant will regain competency to proceed in  
105 the reasonably foreseeable future.

106 (2) A defendant who has been charged with a misdemeanor or  
107 felony and who has been adjudicated incompetent to proceed due  
108 to mental illness, and who meets the criteria for involuntary  
109 commitment to the department under ~~the provisions of~~ this  
110 chapter, may be committed to the department, and the department  
111 shall retain and treat the defendant. No later than 6 months  
112 after the date of admission and at the end of any period of  
113 extended commitment, or at any time the administrator or  
114 designee shall have determined that the defendant has regained  
115 competency to proceed or no longer meets the criteria for  
116 continued commitment, the administrator or designee shall file a

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117 report with the court pursuant to the applicable Florida Rules  
118 of Criminal Procedure.

119 Section 5. Subsection (1) and paragraph (a) of subsection  
120 (2) of section 916.302, Florida Statutes, are amended to read:

121 916.302 Involuntary commitment of defendant determined to  
122 be incompetent to proceed.—

123 (1) CRITERIA.—Every defendant who is charged with a  
124 misdemeanor or felony and who is adjudicated incompetent to  
125 proceed due to retardation or autism may be involuntarily  
126 committed for training upon a finding by the court of clear and  
127 convincing evidence that:

128 (a) The defendant has retardation or autism;

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

133 (c) All available, less restrictive alternatives, including  
134 services provided in community residential facilities or other  
135 community settings, which would offer an opportunity for  
136 improvement of the condition have been judged to be  
137 inappropriate; and

138 (d) There is a substantial probability that the retardation  
139 or autism causing the defendant's incompetence will respond to  
140 training and the defendant will regain competency to proceed in  
141 the reasonably foreseeable future.

142 (2) ADMISSION TO A FACILITY.—

143 (a) A defendant who has been charged with a misdemeanor or  
144 felony and who is found to be incompetent to proceed due to  
145 retardation or autism, and who meets the criteria for

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146 involuntary commitment to the agency under ~~the provisions of~~  
147 this chapter, shall be committed to the agency, and the agency  
148 shall retain and provide appropriate training for the defendant.  
149 No later than 6 months after the date of admission or at the end  
150 of any period of extended commitment or at any time the  
151 administrator or designee shall have determined that the  
152 defendant has regained competency to proceed or no longer meets  
153 the criteria for continued commitment, the administrator or  
154 designee shall file a report with the court pursuant to this  
155 chapter and the applicable Florida Rules of Criminal Procedure.  
156 Section 6. This act shall take effect July 1, 2010.