

By Senator Harrell

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1                                   A bill to be entitled  
2       An act relating to defendants with mental illness;  
3       amending s. 916.105, F.S.; revising legislative  
4       intent; amending s. 916.106, F.S.; redefining the term  
5       "defendant"; creating s. 916.135, F.S.; requiring a  
6       jail's staff to screen each defendant booked into a  
7       jail on misdemeanor charges using a certain instrument  
8       to determine if there is an indication of a mental  
9       health disorder; requiring an authorized professional  
10      completing a certain evaluation to issue a  
11      professional certificate if an evaluation of the  
12      defendant demonstrates that the defendant appears to  
13      meet the criteria for involuntary examination under  
14      the Baker Act; requiring the jail, upon issuance of  
15      the professional certificate, to immediately send a  
16      copy of the certificate to the appropriate judge,  
17      state attorney, and public defender or private  
18      counsel; requiring the judge to sign a transport  
19      order; providing requirements for such transport  
20      order; requiring that the defendant, once at a  
21      designated receiving facility, be assessed and  
22      evaluated to determine whether he or she meets the  
23      criteria to file a petition for involuntary inpatient  
24      placement; providing procedures and requirements  
25      depending on the evaluation outcome and decisions of  
26      the defendant; providing for the return of the  
27      defendant to the custody of the jail under certain  
28      circumstances; requiring a judge to refer a defendant  
29      charged with a misdemeanor crime for certain

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30 assessment if a party or the court raises a concern  
31 regarding the defendant's competency to proceed due to  
32 a mental illness; requiring the tolling of speedy  
33 trial and the following of certain provisions if a  
34 professional certificate is issued; requiring a judge  
35 to hold an evidentiary hearing to make a certain  
36 determination by clear and convincing evidence;  
37 requiring a judge to enter certain orders to require  
38 the defendant to complete a mental health assessment  
39 under certain circumstances; providing for certain  
40 considerations upon a defendant's successful  
41 completion of all recommendations from a mental health  
42 assessment; providing an effective date.

43  
44 Be It Enacted by the Legislature of the State of Florida:

45  
46 Section 1. Present subsection (4) of section 916.105,  
47 Florida Statutes, is redesignated as subsection (5), and a new  
48 subsection (4) and subsections (6) and (7) are added to that  
49 section, to read:

50 916.105 Legislative intent.—

51 (4) It is the intent of the Legislature that a defendant  
52 who is charged with a misdemeanor and who has a mental illness,  
53 intellectual disability, or autism be evaluated and provided  
54 services in a community setting.

55 (6) It is the intent of the Legislature that law  
56 enforcement agencies in this state provide law enforcement  
57 officers with crisis intervention team training.

58 (7) It is the intent of the Legislature that, in all

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59 instances in which a person meeting the criteria for involuntary  
60 placement under the Baker Act commits a nonviolent misdemeanor,  
61 that person be committed civilly under that act in lieu of, and  
62 not in addition to, criminal prosecution.

63 Section 2. Subsection (6) of section 916.106, Florida  
64 Statutes, is amended to read:

65 916.106 Definitions.—For the purposes of this chapter, the  
66 term:

67 (6) "Defendant" means an adult, or a juvenile who is  
68 prosecuted as an adult, who has been arraigned and charged with  
69 a felony offense or a misdemeanor offense as described in s.  
70 916.135 under the laws of this state.

71 Section 3. Section 916.135, Florida Statutes, is created to  
72 read:

73 916.135 Mental health screening of defendants who commit  
74 misdemeanors; mental health diversion program.—

75 (1) Within 24 hours after a defendant is booked into a jail  
76 on a misdemeanor charge, the jail's staff shall screen the  
77 defendant using a standardized validated mental health screening  
78 instrument to determine if there is an indication of a mental  
79 health disorder. If there is an indication of a mental health  
80 disorder, the defendant must be evaluated by an authorized  
81 professional to determine if the person appears to meet the  
82 criteria for involuntary examination under the Baker Act, as  
83 provided in s. 394.463.

84 (a) If the evaluation demonstrates that the defendant  
85 appears to meet the criteria for involuntary examination under  
86 the Baker Act, the authorized professional completing the  
87 evaluation must issue a professional certificate stating that he

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88 or she has examined the person and finds that the person appears  
89 to meet the criteria for involuntary examination and stating the  
90 observations upon which that conclusion is based.

91 (b) Upon the issuance of a professional certificate, the  
92 jail shall immediately send a copy of the certificate to the  
93 assigned misdemeanor judge, or to a designated mental health  
94 judge if available, who shall sign a transport order requiring  
95 the sheriff or jail authorities to transport the defendant  
96 within 48 hours to a designated receiving facility as defined in  
97 s. 394.455(12) for further evaluation under the Baker Act  
98 pursuant to the professional certificate. The jail shall also  
99 send a copy of the professional certificate to the state  
100 attorney and the public defender or private counsel. Such  
101 transport order must indicate that the transfer is made with a  
102 hold for jail custody notation so that the designated receiving  
103 facility may only release the defendant back to jail custody,  
104 and must reset the misdemeanor case for return to court within  
105 14 days.

106 (c) Once at the designated receiving facility, the  
107 defendant must be assessed and evaluated to determine whether he  
108 or she meets the criteria to file a petition for involuntary  
109 inpatient placement under the Baker Act, as provided in s.  
110 394.467

111 1. If the defendant appears to meet the criteria for  
112 involuntary inpatient placement under the Baker Act and refuses  
113 voluntary treatment, the facility must file with the court a  
114 petition for involuntary inpatient placement, as provided in s.  
115 394.467. Upon discharge from involuntary inpatient placement,  
116 the involuntary inpatient treatment provider must submit a

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117 written proposed outpatient treatment plan to the assigned  
118 misdemeanor judge, state attorney, and public defender or  
119 private counsel for the continued supervision and compliance of  
120 the defendant.

121 2. If the defendant meets the criteria for involuntary  
122 inpatient placement under the Baker Act and chooses to accept  
123 the terms of a treatment plan on a voluntary basis, the  
124 defendant, upon discharge from the designated receiving  
125 facility, must be returned to court before the assigned judge  
126 for issuance of an order releasing the defendant on his or her  
127 own recognizance, on the condition that the defendant comply  
128 with all aspects of the treatment plan. As a condition of  
129 participating in a mental health diversion program, the  
130 defendant must be required to authorize the release of  
131 information and clinical records to appropriate persons to  
132 ensure the continuity of the patient's health care or mental  
133 health care and to appear for all court appearances. The  
134 defendant must be advised that failure to comply fully with any  
135 aspect of the treatment plan or release order may cause the  
136 court to issue a warrant for the defendant's arrest and return  
137 to jail. The defendant's successful completion of the treatment  
138 plan may also be a requirement of a diversion contract that the  
139 state attorney may offer and the defendant may accept in  
140 resolution of a misdemeanor charge.

141 (d) If the defendant does not meet the criteria for  
142 involuntary inpatient placement under the Baker Act and the  
143 defendant does not choose to accept the terms of an outpatient  
144 treatment plan on a voluntary basis, the designated receiving  
145 facility must further evaluate the defendant to determine if he

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146 or she meets the criteria to file a petition for involuntary  
147 outpatient placement under the Baker Act, as provided in s.  
148 394.4655.

149 1. If the defendant meets the criteria for involuntary  
150 outpatient placement under the Baker Act, the facility must file  
151 with the court a petition for involuntary outpatient services,  
152 along with a written proposed treatment plan, as provided in s.  
153 394.4655. If necessary, the defendant may be returned to the  
154 custody of the jail to await the hearing on involuntary  
155 outpatient services.

156 2. The assigned judge shall promptly review the defendant's  
157 case and charges with the assigned assistant state attorney and  
158 assistant public defender or private counsel. The parties shall  
159 consider diverting the defendant's case to a mental health  
160 diversion program on the condition that the defendant must  
161 comply with the involuntary outpatient placement treatment plan.  
162 If the defendant is assigned an assistant public defender or  
163 regional counsel or if private counsel is retained, a guardian  
164 does not need to be appointed for the purpose of the involuntary  
165 outpatient treatment statute.

166 (e) If the defendant does not meet the criteria for  
167 involuntary placement under the Baker Act, as provided in s.  
168 394.4655 or s. 394.467, but has a qualifying mental health  
169 diagnosis and chooses to voluntarily participate in a mental  
170 health diversion program, the defendant must be returned to  
171 court before the assigned judge to be advised as provided for  
172 under subparagraph (c)2. Qualifying mental health diagnoses  
173 include schizophrenia spectrum and other psychotic disorders,  
174 bipolar disorder, major depressive disorder, post-traumatic

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175 stress disorder, or other disorders diagnosed by a qualified  
176 professional, as defined in s. 394.455(38), and resulting in  
177 serious functional impairment that substantially interferes with  
178 or limits one or more major life activities.

179 (f) If a defendant admitted to a designated receiving  
180 facility pursuant to this section does not meet the criteria for  
181 involuntary inpatient placement or involuntary outpatient  
182 placement under the Baker Act and the defendant does not choose  
183 to accept the terms of a treatment plan on a voluntary basis, or  
184 if the state attorney declines to offer a mental health  
185 diversion contract to the defendant, the defendant must be  
186 returned to the custody of the jail where his or her case must  
187 proceed under the applicable rules of criminal procedure.

188 (2) At any stage of the criminal proceedings, if a party or  
189 the court raises a concern regarding a defendant's competency to  
190 proceed due to a mental illness and the defendant is in jail  
191 custody, the judge must order the jail medical staff to assess  
192 the defendant for issuance of a professional certificate under  
193 the Baker Act. If a professional certificate is issued, speedy  
194 trial must immediately be tolled and the parties must follow the  
195 procedures in paragraph (1) (b).

196 (a) If the jail medical staff finds that the defendant does  
197 not meet the criteria for issuance of a professional certificate  
198 under the Baker Act or if the defendant is not in jail custody,  
199 the assigned judge on the misdemeanor case must promptly hold an  
200 evidentiary hearing to determine whether clear and convincing  
201 evidence exists to conclude that the defendant meets any of the  
202 following criteria:

203 1. The defendant is manifestly incapable of surviving alone

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204 or without the help of willing and responsible family or  
205 friends, including available alternative services, and without  
206 treatment the defendant is likely to suffer from neglect or  
207 refuse to care for herself or himself and such neglect or  
208 refusal poses a real and present threat of substantial harm to  
209 the defendant's well-being.

210 2. There is a substantial likelihood that in the near  
211 future the defendant will inflict serious bodily harm on herself  
212 or himself or another person, as evidenced by recent behavior  
213 causing, attempting, or threatening such harm.

214 3. There is a substantial likelihood that a mental illness  
215 played a central role in the behavior leading to the current  
216 arrest, or there is a substantial likelihood that a mental  
217 illness will lead to repeated arrests for criminal behavior if  
218 the defendant does not receive treatment.

219 (b) If the assigned judge concludes that any of the  
220 criteria in paragraph (a) is met, the judge must immediately  
221 enter an order tolling speedy trial in the misdemeanor case and  
222 enter an ex parte order stating that the person appears to meet  
223 the criteria for involuntary examination and specifying the  
224 findings on which that conclusion is based, as provided in s.  
225 394.4655. The defendant is required to appear within 48 hours at  
226 the nearest mental health treatment center to submit to a full  
227 mental health assessment. If the defendant is in jail custody,  
228 the assigned judge must execute an order directing the sheriff  
229 or jail authorities to transport the defendant for purposes of  
230 completing the assessment. The results of the assessment must be  
231 immediately relayed to the assigned judge, who shall provide the  
232 results to the state attorney and the public defender or private



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233 counsel. The assigned judge then shall enter an order amending  
234 the conditions of the defendant's pretrial release to compel the  
235 defendant to comply with all recommendations for treatment from  
236 the assessment. The defendant must be advised in the order that  
237 failure to comply with the order may result in the issuance of a  
238 warrant revoking the defendant's pretrial release and directing  
239 the sheriff to arrest and return the defendant to the jail.

240 (c) Upon the defendant's successful completion of all  
241 recommendations from the mental health assessment pursuant to  
242 this section, the state attorney shall consider dismissal of the  
243 charges. If dismissal is deemed inappropriate by the state  
244 attorney, the parties must consider referral of the defendant's  
245 case to mental health court or another available mental health  
246 diversion program. Alternatively, the defendant may avail  
247 herself or himself of the Rules of Criminal Procedure to contest  
248 the misdemeanor charges.

249 Section 4. This act shall take effect July 1, 2019.