

By Senator Farmer

34-00776-21

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1 A bill to be entitled
2 An act relating to defendants with a traumatic brain
3 injury; creating s. 916.181, F.S.; defining the term
4 "traumatic brain injury"; requiring the Agency for
5 Persons with Disabilities, along with the Department
6 of Children and Families, to establish and implement
7 within each judicial circuit a diversion program for
8 defendants who are found to have a traumatic brain
9 injury; specifying circumstances under which a
10 defendant is incompetent to proceed due to a traumatic
11 brain injury; providing for the required evaluation of
12 such defendants by mental health experts; authorizing
13 a court to commit such defendants to a traumatic brain
14 injury diversion program or to appoint additional
15 experts under certain circumstances; authorizing a
16 court to require a hearing with testimony before
17 committing a defendant to a traumatic brain injury
18 diversion program; requiring that a defendant who is
19 found incompetent to proceed due to traumatic brain
20 injury be sent to a traumatic brain injury diversion
21 program and receive mandated treatment; requiring a
22 state attorney to dismiss the charges against a
23 defendant who successfully completes the diversion
24 program; requiring the department to assist such
25 defendants with transitioning into a certain long-term
26 care partnership program; providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 916.181, Florida Statutes, is created to
31 read:

32 916.181 Traumatic brain injury diversion program.-

33 (1) As used in this section, the term "traumatic brain
34 injury" means a disruption in the normal function of the brain
35 which can be caused by a bump, blow, or jolt to the head or a
36 penetrating head injury.

37 (2) The agency, along with the department, shall establish
38 and implement within each judicial circuit in this state a
39 diversion program for defendants who have a traumatic brain
40 injury and are thus incompetent to proceed.

41 (3) A defendant is incompetent to proceed within the
42 meaning of this chapter if due to a traumatic brain injury the
43 defendant does not have sufficient present ability to consult
44 with her or his lawyer with a reasonable degree of rational
45 understanding or if the defendant has no rational or factual
46 understanding of the proceedings against her or him.

47 (4) Mental health experts appointed pursuant to s. 916.115
48 shall first determine whether the defendant has a traumatic
49 brain injury and, if so, consider the factors related to the
50 issue of whether the defendant meets the criteria for
51 incompetence to proceed as described in subsection (3). A
52 defendant must be evaluated by no fewer than two experts before
53 the court commits the defendant to a traumatic brain injury
54 diversion program, except if one expert finds that the defendant
55 is incompetent to proceed due to a traumatic brain injury and
56 the parties stipulate to that finding, the court may commit the
57 defendant to a diversion program under this section or the court
58 may appoint no more than two additional experts to evaluate the

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59 defendant. Notwithstanding any stipulation by the state and the
60 defendant, the court may require a hearing with testimony from
61 the expert or experts before ordering the commitment of a
62 defendant to a traumatic brain injury diversion program.

63 (5) A defendant who is found incompetent to proceed due to
64 a traumatic brain injury shall be sent to a traumatic brain
65 injury diversion program, which must be an in-patient civil
66 facility, and receive mandated treatment based on her or his
67 evaluation. Upon the defendant's successful completion of the
68 mandated traumatic brain injury diversion program, the state
69 attorney's office shall dismiss the charges against the
70 defendant.

71 (6) The department shall assist the defendant with
72 transitioning into a long-term care partnership program under
73 chapter 409.

74 Section 2. This act shall take effect July 1, 2021.