

By the Committee on Children, Families, and Elder Affairs; and
Senator Bradley

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1 A bill to be entitled
2 An act relating to mental health; amending s. 394.461,
3 F.S.; authorizing the Department of Children and
4 Families to issue a conditional designation for up to
5 a certain number of days to allow the implementation
6 of certain corrective measures by receiving
7 facilities, treatment facilities, and receiving
8 systems; amending s. 916.107, F.S.; requiring the
9 sheriff to administer or to permit the department to
10 administer the appropriate psychotropic medication to
11 forensic clients before admission to a state mental
12 health treatment facility; amending s. 916.12, F.S.;
13 revising what an expert is required to specifically
14 report on for recommended treatment for a defendant to
15 attain competence to proceed, if the expert finds that
16 a defendant is incompetent to proceed; providing
17 report requirements; amending s. 916.13, F.S.;
18 revising the circumstances under which every defendant
19 who is charged with a felony and who is adjudicated
20 incompetent to proceed may be involuntarily committed
21 for treatment upon specified findings by the court;
22 requiring a court to review the examining expert's
23 report before issuing a commitment order; decreasing
24 the timeframe in which an administrator or his or her
25 designee is required to file a certain report with the
26 court; requiring that a defendant be transported to
27 the committing court's jurisdiction within a certain
28 number of days after certain occurrences; requiring
29 that the referring mental health facility transfer the

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30 defendant with medication and assist in discharge
31 planning with medical teams at the receiving county
32 jail to ensure continuity of care; reenacting ss.
33 394.658(1)(a), 916.106(9), and 916.17(1) and (2),
34 F.S., relating to the Criminal Justice, Mental Health,
35 and Substance Abuse Reinvestment Grant Program
36 requirements; the definition of the term "forensic
37 client" or "client"; and conditional release;
38 respectively, to incorporate the amendment made to s.
39 916.13, F.S., in references thereto; providing an
40 effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 394.461, Florida Statutes, is amended to
45 read:

46 394.461 Designation of receiving and treatment facilities
47 and receiving systems.—The department is authorized to designate
48 and monitor receiving facilities, treatment facilities, and
49 receiving systems and may suspend or withdraw such designation
50 for failure to comply with this part and rules adopted under
51 this part. The department may issue a conditional designation
52 for up to 60 days to allow the implementation of corrective
53 measures. Unless designated by the department, facilities are
54 not permitted to hold or treat involuntary patients under this
55 part.

56 (1) RECEIVING FACILITY.—The department may designate any
57 community facility as a receiving facility. Any other facility
58 within the state, including a private facility or a federal

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59 facility, may be so designated by the department, provided that
60 such designation is agreed to by the governing body or authority
61 of the facility.

62 (2) TREATMENT FACILITY.—The department may designate any
63 state-owned, state-operated, or state-supported facility as a
64 state treatment facility. A civil patient may ~~shall~~ not be
65 admitted to a state treatment facility without previously
66 undergoing a transfer evaluation. Before a court hearing for
67 involuntary placement in a state treatment facility, the court
68 shall receive and consider the information documented in the
69 transfer evaluation. Any other facility, including a private
70 facility or a federal facility, may be designated as a treatment
71 facility by the department, provided that such designation is
72 agreed to by the appropriate governing body or authority of the
73 facility.

74 (3) PRIVATE FACILITIES.—Private facilities designated as
75 receiving and treatment facilities by the department may provide
76 examination and treatment of involuntary patients, as well as
77 voluntary patients, and are subject to all the provisions of
78 this part.

79 (4) REPORTING REQUIREMENTS.—

80 (a) A facility designated as a public receiving or
81 treatment facility under this section shall report to the
82 department on an annual basis the following data, unless these
83 data are currently being submitted to the Agency for Health Care
84 Administration:

- 85 1. Number of licensed beds.
- 86 2. Number of contract days.
- 87 3. Number of admissions by payor class and diagnoses.

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88 4. Number of bed days by payor class.

89 5. Average length of stay by payor class.

90 6. Total revenues by payor class.

91 (b) For the purposes of this subsection, "payor class"
92 means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-
93 pay health insurance, private-pay health maintenance
94 organization, private preferred provider organization, the
95 Department of Children and Families, other government programs,
96 self-pay patients, and charity care.

97 (c) The data required under this subsection shall be
98 submitted to the department no later than 90 days following the
99 end of the facility's fiscal year.

100 (d) The department shall issue an annual report based on
101 the data required pursuant to this subsection. The report shall
102 include individual facilities' data, as well as statewide
103 totals. The report shall be submitted to the Governor, the
104 President of the Senate, and the Speaker of the House of
105 Representatives.

106 (5) RECEIVING SYSTEM.—The department shall designate as a
107 receiving system one or more facilities serving a defined
108 geographic area developed pursuant to s. 394.4573 which is
109 responsible for assessment and evaluation, both voluntary and
110 involuntary, and treatment, stabilization, or triage for
111 patients who have a mental illness, a substance use disorder, or
112 co-occurring disorders. Any transportation plans developed
113 pursuant to s. 394.462 must support the operation of the
114 receiving system.

115 (6) RULES.—The department may adopt rules relating to:

116 (a) Procedures and criteria for receiving and evaluating

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117 facility applications for designation, which may include onsite
118 facility inspection and evaluation of an applicant's licensing
119 status and performance history, as well as consideration of
120 local service needs.

121 (b) Minimum standards consistent with this part that a
122 facility must meet and maintain in order to be designated as a
123 receiving or treatment facility and procedures for monitoring
124 continued adherence to such standards.

125 (c) Procedures and criteria for designating receiving
126 systems which may include consideration of the adequacy of
127 services provided by facilities within the receiving system to
128 meet the needs of the geographic area using available resources.

129 (d) Procedures for receiving complaints against a
130 designated facility or designated receiving system and for
131 initiating inspections and investigations of facilities or
132 receiving systems alleged to have violated the provisions of
133 this part or rules adopted under this part.

134 (e) Procedures and criteria for the suspension or
135 withdrawal of designation as a receiving facility or receiving
136 system.

137 Section 2. Subsection (1) of section 916.107, Florida
138 Statutes, is amended to read:

139 916.107 Rights of forensic clients.—

140 (1) RIGHT TO INDIVIDUAL DIGNITY.—

141 (a) The policy of the state is that the individual dignity
142 of the client shall be respected at all times and upon all
143 occasions, including any occasion when the forensic client is
144 detained, transported, or treated. Clients with mental illness,
145 intellectual disability, or autism ~~and~~ who are charged with

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146 committing felonies shall receive appropriate treatment or
147 training. In a criminal case involving a client who has been
148 adjudicated incompetent to proceed or not guilty by reason of
149 insanity, a jail may be used as an emergency facility for up to
150 15 days following the date the department or agency receives a
151 completed copy of the court commitment order containing all
152 documentation required by the applicable Florida Rules of
153 Criminal Procedure. For a forensic client who is held in a jail
154 awaiting admission to a facility of the department or agency,
155 evaluation and treatment or training may be provided in the jail
156 by the local community mental health provider for mental health
157 services, by the developmental disabilities program for persons
158 with intellectual disability or autism, the client's physician
159 or psychologist, or any other appropriate program until the
160 client is transferred to a civil or forensic facility. The
161 sheriff shall administer or permit the department to administer
162 the appropriate psychotropic medication to a forensic client
163 before his or her admission to a state mental health treatment
164 facility.

165 (b) Forensic clients who are initially placed in, or
166 subsequently transferred to, a civil facility as described in
167 part I of chapter 394 or to a residential facility as described
168 in chapter 393 shall have the same rights as other persons
169 committed to these facilities for as long as they remain there.

170 Section 3. Subsection (4) of section 916.12, Florida
171 Statutes, is amended to read:

172 916.12 Mental competence to proceed.—

173 (4) If an expert finds that the defendant is incompetent to
174 proceed, the expert shall report on any recommended treatment

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175 for the defendant to attain competence to proceed. In
176 considering the issues relating to treatment, the examining
177 expert shall specifically report on all of the following:

178 (a) The mental illness causing the incompetence. ~~;~~

179 (b) The completion of a clinical assessment by approved
180 mental health experts trained by the department to ensure the
181 safety of the defendant and the community.

182 (c) The treatment or treatments appropriate for the mental
183 illness of the defendant and an explanation of each of the
184 possible treatment alternatives, including, at a minimum, mental
185 health services, treatment services, rehabilitative services,
186 support services, and case management services as those terms
187 are defined in s. 394.67(16), which may be provided by or within
188 multidisciplinary community treatment teams, such as Florida
189 Assertive Community Treatment, conditional release programs,
190 outpatient services or intensive outpatient treatment programs,
191 and supportive employment and supportive housing opportunities
192 in treating and supporting the recovery of the defendant. ~~in~~
193 order of choices;

194 (d) ~~(e)~~ The availability of acceptable treatment, and, if
195 treatment is available in the community, the expert shall so
196 state in the report. ~~;~~ ~~and~~

197 (e) ~~(d)~~ The likelihood of the defendant's attaining
198 competence under the treatment recommended, an assessment of the
199 probable duration of the treatment required to restore
200 competence, and the probability that the defendant will attain
201 competence to proceed in the foreseeable future.

202
203 The examining expert's report to the court must include a full

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204 and detailed explanation regarding why the alternative treatment
205 options referenced in the evaluation are insufficient to meet
206 the needs of the defendant.

207 Section 4. Section 916.13, Florida Statutes, is amended to
208 read:

209 916.13 Involuntary commitment of defendant adjudicated
210 incompetent.—

211 (1) Every defendant who is charged with a felony and who is
212 adjudicated incompetent to proceed may be involuntarily
213 committed for treatment upon a finding by the court of clear and
214 convincing evidence that:

215 (a) The defendant has a mental illness and because of the
216 mental illness:

217 1. The defendant is manifestly incapable of surviving alone
218 or with the help of willing and responsible family or friends,
219 including available alternative services, and, without
220 treatment, the defendant is likely to suffer from neglect or
221 refuse to care for herself or himself and such neglect or
222 refusal poses a real and present threat of substantial harm to
223 the defendant's well-being; or

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

228 (b) All available, less restrictive treatment alternatives,
229 including treatment in community residential facilities, ~~or~~
230 community inpatient or outpatient settings, or any other mental
231 health services, treatment services, rehabilitative services,
232 support services, or case management services as those terms are

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233 defined or described in s. 394.67(16) which would offer an
234 opportunity for improvement of the defendant's condition have
235 been judged to be inappropriate; and

236 (c) There is a substantial probability that the mental
237 illness causing the defendant's incompetence will respond to
238 treatment and the defendant will regain competency to proceed in
239 the reasonably foreseeable future.

240

241 Before issuing a commitment order, the court must review the
242 examining expert's report to ensure alternative treatment
243 options have been fully considered and found insufficient to
244 meet the needs of the defendant.

245 (2) A defendant who has been charged with a felony and who
246 has been adjudicated incompetent to proceed due to mental
247 illness, and who meets the criteria for involuntary commitment
248 under this chapter, may be committed to the department, and the
249 department shall retain and treat the defendant.

250 (a) Immediately after receipt of a completed copy of the
251 court commitment order containing all documentation required by
252 the applicable Florida Rules of Criminal Procedure, the
253 department shall request all medical information relating to the
254 defendant from the jail. The jail shall provide the department
255 with all medical information relating to the defendant within 3
256 business days after receipt of the department's request or at
257 the time the defendant enters the physical custody of the
258 department, whichever is earlier.

259 (b) Within 60 days ~~6 months~~ after the date of admission and
260 at the end of any period of extended commitment, or at any time
261 the administrator or his or her designee determines that the

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262 defendant has regained competency to proceed or no longer meets
263 the criteria for continued commitment, the administrator or
264 designee shall file a report with the court pursuant to the
265 applicable Florida Rules of Criminal Procedure.

266 (c) ~~A competency hearing must be held within 30 days after~~
267 ~~the court receives notification that the defendant is competent~~
268 ~~to proceed or no longer meets the criteria for continued~~
269 ~~commitment.~~ The defendant must be transported in accordance with
270 s. 916.107 to the committing court's jurisdiction within 7 days
271 after notification that the defendant is competent to proceed or
272 no longer meets the criteria for continued commitment. A
273 determination on the issue of competency must be made at a
274 hearing within 30 days after the notification ~~for the hearing.~~
275 If the defendant is receiving psychotropic medication at a
276 mental health facility at the time he or she is discharged and
277 transferred to the jail, the administering of such medication
278 must continue unless the jail physician documents the need to
279 change or discontinue it. To ensure continuity of care, the
280 referring mental health facility shall transfer the defendant
281 with up to 30 days of medications and assist in discharge
282 planning with medical teams at the receiving county jail. The
283 jail and department physicians shall collaborate to ensure that
284 medication changes do not adversely affect the defendant's
285 mental health status or his or her ability to continue with
286 court proceedings; however, the final authority regarding the
287 administering of medication to an inmate in jail rests with the
288 jail physician.

289 Section 5. For the purpose of incorporating the amendment
290 made by this act to section 916.13, Florida Statutes, in a

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291 reference thereto, paragraph (a) of subsection (1) of section
292 394.658, Florida Statutes, is reenacted to read:

293 394.658 Criminal Justice, Mental Health, and Substance
294 Abuse Reinvestment Grant Program requirements.—

295 (1) The Criminal Justice, Mental Health, and Substance
296 Abuse Statewide Grant Review Committee, in collaboration with
297 the Department of Children and Families, the Department of
298 Corrections, the Department of Juvenile Justice, the Department
299 of Elderly Affairs, and the Office of the State Courts
300 Administrator, shall establish criteria to be used to review
301 submitted applications and to select the county that will be
302 awarded a 1-year planning grant or a 3-year implementation or
303 expansion grant. A planning, implementation, or expansion grant
304 may not be awarded unless the application of the county meets
305 the established criteria.

306 (a) The application criteria for a 1-year planning grant
307 must include a requirement that the applicant county or counties
308 have a strategic plan to initiate systemic change to identify
309 and treat individuals who have a mental illness, substance abuse
310 disorder, or co-occurring mental health and substance abuse
311 disorders who are in, or at risk of entering, the criminal or
312 juvenile justice systems. The 1-year planning grant must be used
313 to develop effective collaboration efforts among participants in
314 affected governmental agencies, including the criminal,
315 juvenile, and civil justice systems, mental health and substance
316 abuse treatment service providers, transportation programs, and
317 housing assistance programs. The collaboration efforts shall be
318 the basis for developing a problem-solving model and strategic
319 plan for treating adults and juveniles who are in, or at risk of

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320 entering, the criminal or juvenile justice system and doing so
321 at the earliest point of contact, taking into consideration
322 public safety. The planning grant shall include strategies to
323 divert individuals from judicial commitment to community-based
324 service programs offered by the Department of Children and
325 Families in accordance with ss. 916.13 and 916.17.

326 Section 6. For the purpose of incorporating the amendment
327 made by this act to section 916.13, Florida Statutes, in a
328 reference thereto, subsection (9) of section 916.106, Florida
329 Statutes, is reenacted to read:

330 916.106 Definitions.—For the purposes of this chapter, the
331 term:

332 (9) "Forensic client" or "client" means any defendant who
333 has been committed to the department or agency pursuant to s.
334 916.13, s. 916.15, or s. 916.302.

335 Section 7. For the purpose of incorporating the amendment
336 made by this act to section 916.13, Florida Statutes, in
337 references thereto, subsections (1) and (2) of section 916.17,
338 Florida Statutes, are reenacted to read:

339 916.17 Conditional release.—

340 (1) Except for an inmate currently serving a prison
341 sentence, the committing court may order a conditional release
342 of any defendant in lieu of an involuntary commitment to a
343 facility pursuant to s. 916.13 or s. 916.15 based upon an
344 approved plan for providing appropriate outpatient care and
345 treatment. Upon a recommendation that outpatient treatment of
346 the defendant is appropriate, a written plan for outpatient
347 treatment, including recommendations from qualified
348 professionals, must be filed with the court, with copies to all

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349 parties. Such a plan may also be submitted by the defendant and
350 filed with the court with copies to all parties. The plan shall
351 include:

352 (a) Special provisions for residential care or adequate
353 supervision of the defendant.

354 (b) Provisions for outpatient mental health services.

355 (c) If appropriate, recommendations for auxiliary services
356 such as vocational training, educational services, or special
357 medical care.

358

359 In its order of conditional release, the court shall specify the
360 conditions of release based upon the release plan and shall
361 direct the appropriate agencies or persons to submit periodic
362 reports to the court regarding the defendant's compliance with
363 the conditions of the release and progress in treatment, with
364 copies to all parties.

365 (2) Upon the filing of an affidavit or statement under oath
366 by any person that the defendant has failed to comply with the
367 conditions of release, that the defendant's condition has
368 deteriorated to the point that inpatient care is required, or
369 that the release conditions should be modified, the court shall
370 hold a hearing within 7 days after receipt of the affidavit or
371 statement under oath. After the hearing, the court may modify
372 the release conditions. The court may also order that the
373 defendant be returned to the department if it is found, after
374 the appointment and report of experts, that the person meets the
375 criteria for involuntary commitment under s. 916.13 or s.
376 916.15.

377 Section 8. This act shall take effect July 1, 2023.