

Amendment No.

CHAMBER ACTION

SenateHouse

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Representative Cobb offered the following:

Amendment (with title amendment)

Remove lines 295-513 and insert:

(2) Each judicial circuit must establish a misdemeanor or ordinance violation mental health diversion program to divert clinically appropriate defendants from jails to treatment. Each judicial circuit shall adopt the program model established in this section.

(a) Local sheriffs' departments, the state attorney, the public defender, courts, and local treatment providers shall collaborate to establish policies and procedures to meet the

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

13 specific needs of each community and to develop a form that a
14 participating defendant must sign to consent to treatment.

15 (b) A consent form must include the defendant's consent to
16 treatment and to the release of any records necessary to
17 demonstrate compliance with and completion of treatment.
18 Additionally, the consent form must include that the defendant
19 agrees to waive his or her right to a speedy trial by
20 participating in the diversion program. A defendant must sign
21 the consent form to participate in the diversion program.

22 (3) Within 24 hours after a defendant is booked into a
23 jail, the jail's corrections or medical staff must screen the
24 defendant using a standardized, validated mental health
25 screening instrument to determine if there is an indication of a
26 mental illness. If there is an indication of a mental illness,
27 the defendant must be promptly evaluated for involuntary
28 examination under chapter 394 by a qualified mental health
29 professional. In conducting this evaluation, the qualified
30 mental health professional must evaluate the defendant as if he
31 or she is at liberty in the community and may not rely on the
32 person's incarcerated status to defeat the involuntary
33 examination criteria provided for in s. 394.463.

34 (a) If the evaluation demonstrates that the defendant
35 meets the criteria for involuntary examination under s. 394.463,
36 the qualified mental health professional may issue a

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

37 professional certificate referring the defendant to a receiving
38 facility.

39 (b) Upon the issuance of a professional certificate, the
40 defendant must be transported within 72 hours to a receiving
41 facility for further evaluation for involuntary examination
42 under chapter 394. Such transport may be made with a hold for
43 jail custody notation so that the receiving facility may only
44 release the defendant back to jail custody. Alternatively, the
45 court may request on the transport order that the defendant be
46 transported back to appear before the court, depending upon the
47 outcome of the evaluation at the receiving facility, the court's
48 availability of other resources and diversion programs, and the
49 willingness of the defendant to receive treatment.

50 (c) Once at the receiving facility, the defendant must be
51 assessed and evaluated to determine whether he or she meets the
52 criteria for involuntary services under chapter 394. If the
53 criteria are met, the receiving facility must forward the court
54 a discharge plan when the defendant no longer meets criteria for
55 inpatient treatment, or an outpatient treatment plan, as
56 appropriate, as soon as such a plan is developed. If the
57 defendant does not meet the criteria for involuntary services,
58 the receiving facility must issue an outpatient treatment plan
59 and forward it to the court as soon as such plan is developed.
60 If appropriate, the receiving facility must notify the court
61 that no treatment is necessary.

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

(d) Upon receipt of a discharge plan or an outpatient treatment plan, the court may consider releasing the defendant on his or her own recognizance on the condition that he or she comply fully with the discharge plan or outpatient treatment plan. The state attorney and the defense attorney must have an opportunity to be heard before the court releases the defendant.

(e) If a professional certificate is not issued under paragraph (a), but the defendant has a mental illness, the court must order that the defendant be assessed for outpatient treatment by a local mental health treatment center. This assessment must be completed:

1. At the jail via telehealth assessment by the local mental health treatment center;

2. At the local mental health treatment center after the sheriff or jail authorities transport the defendant to and from the treatment center; or

3. By releasing the defendant on his or her own recognizance on the conditions that the assessment be completed at the local mental health treatment center within 48 hours after his or her release and that all treatment recommendations be followed.

If the assessment under this paragraph results in an outpatient treatment plan, and the defendant has not already been released, the defendant may be released on his or her own recognizance on

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

87 the condition that all treatment recommendations must be
88 followed. The state attorney and the defense attorney must have
89 an opportunity to be heard before the court releases the
90 defendant.

91 (f) If the defendant is released from the custody of the
92 jail on pretrial release at any point before the completion of
93 the process in this section, evaluation or assessment of the
94 defendant under this section by a qualified mental health
95 professional may be initiated at any time by order of the court
96 at the request of the state attorney or the defense attorney, or
97 on the court's own motion. If this process results in the
98 creation of a discharge plan by a receiving facility or an
99 outpatient treatment plan by the local mental health treatment
100 center, the court must set as a condition of the defendant's
101 continued pretrial release compliance with all of the terms of
102 the discharge plan or outpatient treatment plan.

103 (4) If a defendant has not been referred to the diversion
104 program under this section, the state attorney, the defense
105 attorney, or the court may, at any stage of the criminal
106 proceedings, request that the defendant be screened pursuant to
107 subsection (3) to determine if there is an indication of mental
108 illness. If the defendant is no longer in custody, the defendant
109 may be evaluated or assessed pursuant to paragraph (3)(f).

110 (5) Upon the defendant's successful completion of all of
111 the treatment recommendations from any mental health evaluation

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

or assessment completed pursuant to this section, the state attorney may dismiss the charges. If dismissal of the charges is deemed inappropriate by the state attorney, the state attorney may refer the defendant's case to mental health court or another available mental health diversion program.

(6) If the defendant fails to comply with any aspect of his or her discharge or outpatient treatment plan under this section, the court may exhaust therapeutic interventions aimed at improving compliance before considering returning the defendant to the jail.

Section 5. Section 916.136, Florida Statutes, is created to read:

916.136 Pretrial felony mental health diversion program.—

(1) As used in this section, the term:

(a) "Conviction" means a determination of guilt that is the result of a plea agreement, including a plea of nolo contendere, or trial. For purposes of this section, a conviction does not include an offense for which an adjudication of guilt was withheld.

(b) "Court" means a circuit court or any court presiding over felony violations under the laws of this state or any of its political subdivisions.

(c) "Defendant" means a person who has been charged as an adult by a law enforcement agency or a state attorney with a felony of the second degree or felony of the third degree, and

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

137 who is eligible for the diversion program as provided in
138 subsection (3).

139 (d) "Qualified mental health professional" means a
140 physician, a physician assistant, a clinical psychologist, a
141 psychiatric nurse, an advanced practice registered nurse
142 registered under s. 464.0123, or a mental health counselor, a
143 marriage and family therapist, or a clinical social worker, as
144 those terms are defined in s. 394.455.

145 (2) Each judicial circuit must establish a pretrial felony
146 mental health diversion program to divert clinically appropriate
147 defendants from jails to treatment. Each judicial circuit must
148 follow the model process established in this section.

149 (a) Local sheriffs' departments, the state attorney, the
150 public defender, courts, and local treatment providers must
151 collaborate to establish policies and procedures to meet the
152 specific needs of each community and to develop a form that a
153 participating defendant must sign to consent to treatment.

154 (b) A consent form must include the defendant's consent to
155 treatment and to the release of any records necessary to
156 demonstrate compliance with and completion of treatment.
157 Additionally, such form must include that the defendant agrees
158 to waive his or her right to a speedy trial by participating in
159 the diversion program. A defendant must sign the consent form to
160 participate in the diversion program.

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

161 (3) A defendant may be eligible for the pretrial felony
162 mental health diversion program under this section if he or she
163 meets the following criteria:

164 (a) Has a mental illness;

165 (b) Has no more than three prior felony convictions in the
166 past 5 years;

167 (c) Is not charged with a violent felony; and

168 (d) Does not have a significant history of violence.

169
170 The state attorney has the sole discretion to determine a
171 defendant's eligibility for the pretrial felony mental health
172 diversion program. Meeting the criteria in this subsection does
173 not guarantee eligibility. Additionally, the state attorney may,
174 in extenuating circumstances, waive the criteria in this
175 subsection if he or she finds that it is in the interest of
176 justice.

177 (4) At any stage in the pretrial process, the state
178 attorney may recommend that a defendant be screened using a
179 standardized, validated mental health screening instrument to
180 determine if there is an indication of mental illness. Such
181 screening must be completed by the jail's corrections or medical
182 staff or by any qualified mental health professional. The
183 results of such screening must be forwarded to the state
184 attorney and the defense attorney.

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

185 (5) If a defendant meets the eligibility criteria in
186 subsection (3), the state attorney may consider an offer of
187 pretrial felony mental health diversion under this section.
188 Entry into the diversion program is voluntary, and the defendant
189 must sign the consent form as described in subsection (2) before
190 participating in the program.

191 (6) Upon the defendant agreeing to participate in pretrial
192 felony mental health diversion under this section, the defendant
193 must be assessed for outpatient treatment by a local mental
194 health treatment center. This assessment must be completed:

195 (a) At the jail via telehealth assessment by the local
196 mental health treatment center;

197 (b) At the local mental health treatment center after the
198 sheriff or jail authorities transport the defendant to and from
199 the treatment center; or

200 (c) By releasing the defendant on his or her own
201 recognizance on the conditions that the assessment be completed
202 at the local mental health treatment center within 48 hours
203 after his or her release and that all treatment recommendations
204 be followed.

205
206 If the assessment under this subsection results in an outpatient
207 treatment plan, and the defendant has not already been released,
208 the defendant may be released on his or her own recognizance on
209 the condition that all treatment recommendations be followed.

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

210 (7) Upon the defendant's successful completion of all
211 treatment recommendations from the mental health evaluation or
212 assessment completed pursuant to this section, the state
213 attorney may dismiss the charges.

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216 **T I T L E A M E N D M E N T**

217 Remove lines 12-68 and insert:

218 s. 916.135, F.S.; defining terms; requiring judicial
219 circuits to establish misdemeanor or ordinance
220 violation mental health diversion programs; requiring
221 judicial circuits to adopt a program model for such
222 mental health diversion programs; requiring specified
223 entities to collaborate to establish certain policies
224 and procedures and to develop a certain consent form;
225 providing consent form requirements; requiring
226 defendants to sign the consent form to participate in
227 the diversion program; requiring the screening of
228 certain defendants and prompt evaluation for
229 involuntary examination under certain circumstances;
230 specifying procedures if the evaluation demonstrates
231 that the defendant meets the criteria for involuntary
232 examination; authorizing a court to consider releasing
233 a defendant on his or her own recognizance under
234 certain circumstances; requiring a court to order that

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

a defendant be assessed for outpatient treatment under certain circumstances; authorizing the state attorney, the defense attorney, or the court to, at any stage of the criminal proceedings, request that such a defendant be screened pursuant to certain provisions; authorizing defendants no longer in custody to be evaluated pursuant to certain provisions; authorizing the state attorney to dismiss charges or take other specified action upon a defendant's successful completion of all treatment recommendations from a mental health evaluation or assessment; authorizing the court to exhaust therapeutic interventions aimed at improving compliance before a defendant is returned to jail; creating s. 916.136, F.S.; defining terms; requiring judicial circuits to establish pretrial felony mental health diversion programs; requiring judicial circuits to follow a model process for such mental health diversion programs; requiring specified entities to collaborate to establish certain policies and procedures and to develop a certain consent form; providing consent form requirements; requiring defendants to sign the consent form to participate in the diversion program; specifying criteria under which a defendant may be eligible for the mental health diversion program; authorizing the state attorney to

870331

Approved For Filing: 4/29/2025 10:51:04 PM

Amendment No.

260 recommend that certain defendants be screened and
261 offered pretrial felony mental health diversion;
262 requiring defendants to sign the consent form to
263 participate in the diversion program; requiring that a
264 defendant be assessed for outpatient treatment upon
265 his or her agreeing to participate in mental health
266 diversion; authorizing the state attorney to dismiss
267 the charges upon a defendant's successful completion
268 of all treatment recommendations from a mental health
269 evaluation or assessment; authorizing the state
270 attorney to revoke

870331

Approved For Filing: 4/29/2025 10:51:04 PM