

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 778

INTRODUCER: Senator Simon

SUBJECT: Forensic Services for Certain Defendants

DATE: January 16, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	<b>Pre-meeting</b>
2.			AHS	
3.			FP	

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## **I. Summary:**

Chapter 916, F.S. requires the state to maintain facilities that house individuals with intellectual disabilities or autism that have had criminal charges against them dropped due to an incompetency to proceed in a criminal proceeding. Additionally, the state is required to maintain facilities to house defendants who are adjudicated not guilty by reason of insanity. Generally, this network of facilities managed by the Agency for Persons with Disabilities (APD) is part of the state's larger criminal forensic system, and the APD is not allowed to house forensic clients with non-forensic clients.

SB 778 amends the definition of "forensic client" to include individuals involuntarily committed to the APD that have had their charges dismissed due to an intellectual disability or autism. This allows the APD to house such individuals with other Ch. 916, F.S. residents, which is estimated to reduce duplicative staffing requirements.

The bill has an indeterminate positive fiscal impact on the APD due to the cost savings associated with the reduction of duplicative staffing requirements.

The bill is effective July 1, 2026.

## **II. Present Situation:**

### **Florida's Forensic System**

Chapter 916, F.S., governs the state's forensic system, which is a network of state facilities and programs for individuals who have mental health issues, an intellectual disability, or autism, and

are involved with the criminal justice system.<sup>1</sup> The state considers such individuals “forensic clients” and requires the Department of Children and Families (DCF) and the Agency for Persons with Disabilities (APD) to establish and maintain separate and secure forensic facilities to treat felony defendants found incompetent to proceed<sup>2</sup> in their criminal proceedings due to their intellectual disability or autism, as well as defendants who are adjudicated not guilty by reason of insanity.<sup>3</sup> The following chart displays the different circumstances in which a defendant may be involuntarily committed for treatment based on if they have mental illness or an intellectual disability or autism:

Statute	Type of Defendant	Goal of Involuntary Commitment
Defendants with Mental Illness		
Section 916.13, F.S.	Felony defendant adjudicated incompetent to proceed in a criminal proceeding due to mental illness.	Provides for the involuntary commitment for treatment of mental illness to restore the defendant’s competence.
Section 916.15, F.S.	Defendant found not guilty by reason of insanity.	Provides for the involuntary commitment for treatment to restore the defendant’s competence, or stabilization of the defendant’s mental illness.
Defendants with an Intellectual Disability or Autism		
Section 916.302, F.S.	Felony defendant adjudicated incompetent to proceed due to intellectual disability or autism.	Provides for the involuntary commitment for training of intellectual disability or autism to restore the defendant’s competence.
Section 916.303, F.S.	Defendant that has had his or her charges dismissed due to the defendant’s incompetency to proceed due to intellectual disability or autism.	Provides for the involuntary commitment for the defendant. The goal is not competency restoration, but merely placement in a secure facility for safety and treatment.

Some defendants are dually diagnosed; meaning, they have both an intellectual disability or autism and mental illness. In these circumstances, an evaluation must be conducted to address if the defendant’s incompetency to proceed is primarily affected by the defendant’s mental illness or intellectual disability or autism.<sup>4</sup> The defendant will be referred to the appropriate civil or forensic facility based on such an evaluation.<sup>5</sup>

A circuit court<sup>6</sup> may involuntarily commit the defendant to state civil and forensic treatment facilities, or in lieu of such commitment, may be released on conditional release<sup>7</sup> by the circuit

<sup>1</sup> Section 916.105(1), F.S.

<sup>2</sup> A defendant is “incompetent to proceed” if the “defendant does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.” Section 916.12(1), F.S.

<sup>3</sup> Section 916.105(1), F.S.

<sup>4</sup> Section 916.302(3), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 916.13, 916.15, and 916.302, F.S.

<sup>7</sup> Conditional release refers to release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.

court if the person is not serving a prison sentence.<sup>8</sup> The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release and a defendant may not be released from either commitment or conditional release except by order of the committing court.<sup>9</sup>

### ***Incompetent to Proceed***

An individual is considered “incompetent to proceed” during a criminal proceeding if he or she cannot proceed at any material stage of a criminal proceeding, including the trial, pretrial hearings, entry of a plea, proceedings for violation of probation or community control, sentencing, and hearing.<sup>10</sup> To determine a defendant’s competency to proceed, the court appoints a mental health expert<sup>11</sup> to determine if the defendant has a mental illness, and if he or she has the capacity to:<sup>12</sup>

- Appreciate the charges or allegations against himself or herself.
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against him or her.
- Understand the adversarial nature of the legal process.
- Disclose to counsel facts pertinent to the proceedings at issue.
- Manifest appropriate courtroom behavior.
- Testify relevantly.

If a defendant is deemed incompetent to proceed and meets the criteria for involuntary commitment, the defendant is committed to the DCF.<sup>13</sup> Through training and education, the DCF aims to restore the defendant’s competency, at which time the defendant would resume the legal proceedings against him or her.<sup>14</sup> If the defendant remains incompetent to proceed for five continuous, uninterrupted years, the charges against the defendant shall be dismissed without prejudice to the state. The court may dismiss charges three years after a determination the defendant’s competency cannot be restored, based on the severity of the offense. The state may refile dismissed charges if the defendant regains competency in the future.<sup>15</sup>

### ***Defendant Found Not Guilty by Reason of Insanity***

Florida law provides for an affirmative defense against criminal prosecution if, at the time of the commission of the acts constituting the offense, the defendant was insane. The law establishes insanity as when:<sup>16</sup>

- The defendant had a mental infirmity, disease, or defect; and
- Because of this condition, the defendant:

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<sup>8</sup> Section 916.17(1), F.S.

<sup>9</sup> Section 916.16(1), F.S.

<sup>10</sup> Section 916.106(11), F.S.

<sup>11</sup> Court-appointed experts must (1) be a psychiatrist, licensed psychologist, or physician; (2) have completed initial and annual forensic evaluator training, provided by the DCF; and (3) if performing juvenile evaluations, have completed initial and annual juvenile forensic competency evaluation training provided by the department. Section 916.115, F.S.

<sup>12</sup> Section 916.12(3), F.S.

<sup>13</sup> Section 916.13, F.S.

<sup>14</sup> Section 916.13, F.S.

<sup>15</sup> Section 916.145, F.S.

<sup>16</sup> Section 775.027, F.S.

- Did not know what he or she was doing or its consequences; or
- Although the defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong.

To be acquitted of criminal charges by reason of insanity, the defendant must have a mental illness that causes him or her to be manifestly dangerous to himself or herself or others.<sup>17</sup> Upon such an acquittal, the DCF admits the defendant to the appropriate facility for treatment.<sup>18</sup>

### **Developmental Disabilities Defendant Program (DDDP) and Pathways**

The APD operates the Developmental Disabilities Defendant Program (DDDP) and Pathways forensic programs that serve individuals with developmental disabilities that have been charged with a felony crime.<sup>19</sup> At such programs, defendants receive competency training to restore their competency to stand trial and acquire skills to prepare them for future success.<sup>20</sup> The program also serves individuals whose felony charges have been dismissed but still require a secure placement per court order for full time supervision, treatment, and care.<sup>21</sup>

As of November 1, 2025, there were 95 residents at DDDP and 32 residents at Pathways.<sup>22</sup> The DDDP facility in Chattahoochee has a capacity of 146 secure beds and the Pathways facility at the Sunland campus in Marianna has a capacity of 34 secure beds.<sup>23</sup> The average population for DDDP/Pathways between October 2021 and October 2025 was 125.24 residents with a minimum total population of 107 residents and a maximum total number of residents at 149 residents.<sup>24</sup>

### **Forensic and Non-forensic Clients**

The Legislature requires the DCF or APD to serve forensic clients in a “forensic facility” which separately houses persons with mental illness from persons with intellectual disabilities or autism. Additionally, forensic facilities separately house individuals who have been involuntarily committed pursuant to Ch. 916, F.S. from non-forensic residents.<sup>25</sup> Current Florida law defines forensic clients as any defendant who has been committed to the DCF or APD pursuant to the following statutes:<sup>26</sup>

- **Section 916.13, F.S.:** Felony defendant adjudicated incompetent to proceed in a criminal proceeding due to mental illness.
- **Section 916.15, F.S.:** Defendant found not guilty by reason of insanity.

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<sup>17</sup> Section 916.15, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Agency for Persons with Disabilities, *Developmental Disabilities Defendant Program*, available at: <https://apd.myflorida.com/dddp/index.htm> (last visited 1/15/25).

<sup>20</sup> *Id.*

<sup>21</sup> 2026 Agency Bill Analysis, pg. 2 (on file with the Senate committee on Children, Families, and Elder Affairs).

<sup>22</sup> *Id.*

<sup>23</sup> Office of Program Policy Analysis and Government Accountability, *Agency for Persons with Disabilities*, available at: <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5060> (last visited 1/15/25).

<sup>24</sup> *Id.*

<sup>25</sup> Section 916.106(10), F.S.

<sup>26</sup> Section 916.106(9), F.S.

- **Section 916.302, F.S.:** Felony defendant adjudicated incompetent to proceed due to intellectual disability or autism.

The definition does not include individuals under s. 916.303(3), F.S., who have had their charges dismissed but remain committed to the APD under the jurisdiction of the committing court.<sup>27</sup> Thus, the APD is required to separate these residents, leading to reports of bed underutilization and a duplication of APD's resources.<sup>28</sup> Further, the APD reports this statute creates safety concerns, as the APD is required to house residents based off of secure orders, rather than individual behavioral needs.<sup>29</sup>

According to the APD, the underutilization of beds is approximately 20% at any given time, due to various requirements to separate residents.<sup>30</sup> If more residents enter the facility, current placement restrictions can pose a challenge for APD staff to determine how to separate residents, due to the inability to combine residents based on behavioral appropriateness.<sup>31</sup>

The number of staff required on the ward is based on the behavioral acuity of the residents placed in the ward. However, the wards have a minimum coverage of at least two staff members, to ensure a staff member is never left alone in a ward for safety purposes.<sup>32</sup> As of December 16, 2025, there are 28 staff required per shift due to the behavioral needs of the residents, as shown below:<sup>33</sup>

Staffing Requirements based on Resident Census 12/16/25				
Male/Female	Commitment Type	Number of Residents 12/16/25	Ward Type	Staffing Requirement for Number of Residents as of 12/16/25
Male	916.302	0	Temporarily Closed	0
Male	916.302	14		3
Male	916.302	12		2
Male	916.302	20		4
Male	916.302	10	Vulnerable	2
Male	916.303(3)	13	Behavioral	4
Male	916.302	13	Honors Ward	2
Female	916.302	13	Female	3
Female	916.303(3)	2	Female	2
Male	916.303(3)	17	Pathways	3
Male	916.303(3)	16	Pathways	3
<b>Total</b>		<b>130</b>		<b>28</b>

<sup>27</sup> 2026 Agency Bill Analysis, pg. 3 (on file with the Senate committee on Children, Families, and Elder Affairs).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> 2026 Agency Bill Analysis, pg. 3 (on file with the Senate committee on Children, Families, and Elder Affairs).

<sup>32</sup> E-mail with Emily Reeves, Agency for Persons with Disabilities Legislative Affairs Director, on file with the Senate Committee on Children, Families, and Elder Affairs.

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If the DDDP/Pathways program was able to combine individuals under s. 916.303(3), F.S. with other individuals pursuant to Ch. 916, F.S. on the same ward, the APD reports the level of staffing could be lowered to 22 staff members, due to the ability for the Pathways program to house Honors Ward residents, lowering the level of staffing coverage from three staff to two staff per ward per shift. Furthermore, the APD reports an additional ward could be created from the gained bed capacity for the female residents who have been successful or to separate residents that exhibit challenging behavior.<sup>34</sup> The following chart demonstrates the potential staffing requirements if s. 393.303(3) residents are considered forensic clients and can be housed with other Ch. 916, F.S. clients.<sup>35</sup>

<b>Potential Staffing Requirements if s. 393.303(3), F.S. Clients are Considered Forensic</b>				
<b>Male/Female</b>	<b>Commitment Type</b>	<b>Number of Residents 12/16/25</b>	<b>Ward Type</b>	<b>Staffing Requirement for Number of Residents as of 12/16/25</b>
Male	916 Forensic	0	Temporarily Closed	0
Male	916 Forensic	0	Temporarily Closed	0
Female	916 Forensic	15	Female	3
Male	916 Forensic	16	Behavioral	3
Male	916 Forensic	14	Resource	2
Male	916 Forensic	13	Behavioral	4
Male	916 Forensic	15	Honors Ward	2
Male	916 Forensic	15	Honors Ward	2
Male	916 Forensic	8	Vulnerable	2
Male	916 Forensic	17	Honors Ward	2
Male	916 Forensic	17	Honors Ward	2
<b>Total</b>		<b>130</b>		<b>22</b>

The APD estimates that using current resident census numbers, six less staff will be required if s. 916.303(3) are considered forensic clients, due to the ability to combine female wards, create an additional honors ward, and adjust behavioral ward staffing requirements.<sup>36</sup>

### ***Staff Safety***

From September 1, 2024, through September 30, 2025, there were 152 reported workers compensation incidents that resulted in 3,531 days of work lost.<sup>37</sup> Of such incidents, 144 incidents were associated with resident involvement; however, none of the incidents occurred in the Honors ward, indicating there are lower workers' compensation claims in resident areas where residents are grouped based on behavioral needs opposed to commitment status.<sup>38</sup>

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> E-mail with Emily Reeves, Agency for Persons with Disabilities Legislative Affairs Director, on file with the Senate Committee on Children, Families, and Elder Affairs.

<sup>37</sup> 2026 Agency Bill Analysis, pg. 3 (on file with the Senate committee on Children, Families, and Elder Affairs).

<sup>38</sup> *Id.*

**III. Effect of Proposed Changes:**

**Section 1** of the bill amends s. 916.106 F.S. to include individuals ordered to involuntary residential services in a forensic facility pursuant to s. 916.303(3), F.S. to the definition of forensic client, allowing the APD to house residents based on behavioral appropriateness, rather than judicial determination.

**Section 2** of the bill reenacts s. 402.164, F.S., relating to the definition of “client,” to incorporate the amendment made to s. 916.106, F.S., by the bill.

**Section 3** of the bill provides an effective date of July 1, 2026.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill is expected to have an indeterminate, positive fiscal impact on the APD due to the cost savings associated with a reduction in staffing across forensic facilities. The APD reports that allowing the APD to house residents based on behavioral needs, rather than

judicial determination, will provide the APD with increased flexibility to manage bed space and staffing ratios.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 916.106

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>39</sup> 2026 Agency Bill Analysis, pg. 5 (on file with the Senate committee on Children, Families, and Elder Affairs).