

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.)

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

BILL: SB 166

INTRODUCER: Senator Hill

SUBJECT: Forensic Services

DATE: March 21, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Daniell | Walsh | CF | Pre-meeting |
| 2. | | | CJ | |
| 3. | | | JU | |
| 4. | | | BC | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill amends Florida’s laws relating to mentally deficient and mentally ill defendants to provide that forensic services must also be provided to a person charged with a misdemeanor, in addition to felony offenders.

This bill substantially amends following sections of the Florida Statutes: 916.105, 916.106, 916.107, 916.13, and 916.302.

II. Present Situation:

Forensic Mental Health¹

On any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses or substance use disorders requiring immediate treatment are placed in a Florida jail.

Over the past nine years, the population of inmates with mental illnesses or substance use disorders in Florida prisons increased from 8,000 to nearly 17, 000 individuals. In the next nine years, this number is projected to reach more than 35,000 individuals, with an average annual

¹ Information contained in this portion of the analysis is from an interim report by the Senate Committee on Children, Families, and Elder Affairs. See Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Forensic Hospital Diversion Pilot Program* (Interim Report 2011-106) (Oct. 2010), available at http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-106cf.pdf (last visited Mar. 15, 2011).

increase of 1,700 individuals. Forensic mental health services cost the state a quarter-billion dollars a year and are now the fastest growing segment of Florida's public mental health system.

Forensic Services

Chapter 916, F.S., called the "Forensic Client Services Act," addresses the treatment and training of individuals who have been charged with felonies and found incompetent to proceed to trial due to mental illness, mental retardation, or autism, or are acquitted by reason of insanity.

Department of Children and Family Services

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed to trial due to mental illness or who have been adjudicated not guilty by reason of insanity. Persons committed under ch. 916, F.S., are committed to the custody of the Department of Children and Family Services (DCF or department).

Section 916.12(3), F.S., authorizes the court to appoint experts to evaluate a criminal defendant's mental condition. In determining whether a defendant is competent to proceed, the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel, behave appropriately in court, and testify relevantly. A defendant must be evaluated by at least two experts prior to being involuntarily committed.² Any defendant charged with a felony and found incompetent to proceed may be involuntarily committed if the court finds by clear and convincing evidence that the defendant is mentally ill; all available, least restrictive alternatives are inadequate; and there is a substantial probability that the mental illness will respond to treatment.³

Under the authority of ch. 916, F.S., DCF provides mental health assessment, evaluation, and treatment of individuals committed to DCF following adjudication as incompetent to proceed or not guilty by reason of insanity. These individuals are charged with a felony offense and must be admitted to a treatment facility within 15 days of the department's receipt of the commitment packet from the court.⁴ Persons committed to the custody of DCF are treated in one of three forensic mental health treatment facilities throughout the state. These facilities contain a total of 1,700 beds and serve approximately 3,000 people each year. The cost to fund these beds is more than \$210 million annually.⁵

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD or agency) provides forensic services to defendants charged with a felony who have been found incompetent to proceed due to mental retardation or autism. Defendants with retardation or autism must be evaluated by at least one

² Section 916.12(2), F.S.

³ Section 916.13(1), F.S. *See also*, s. 916.302, F.S.

⁴ *See* s. 916.107(1)(a), F.S.

⁵ Comm. on Children, Families, and Elder Affairs, *supra* note 1.

expert with expertise in evaluating persons with retardation or autism in order to evaluate the mental condition of the defendant.⁶ A defendant is considered incompetent to proceed if the expert finds that the defendant:

- Meets the definition of retardation or autism;
- Does not have the sufficient present ability to consult with the defendant's attorney; and
- Has no rational, or factual, understanding of the proceedings against the defendant.⁷

If the expert finds that the defendant is incompetent to proceed due to the defendant's retardation or autism, the expert must prepare a report for the court recommending training for the defendant in order to attain competency.⁸ Individuals charged with a felony and found incompetent to proceed due to retardation or autism are committed to APD for appropriate training.⁹ In certain circumstances, the court may order the conditional release of a defendant found incompetent to proceed due to retardation or autism based on an approved plan for providing community-based training.¹⁰

Section 916.303, F.S., requires that the charges against a defendant found incompetent to proceed due to retardation or autism be dismissed if the defendant remains incompetent to proceed for a reasonable period of time, not to exceed two years.

Onwu v. State of Florida¹¹

In 1995, the Fourth District Court of Appeal affirmed an order directing the release of a defendant because the county court had found the defendant incompetent to proceed and had entered an order for commitment. According to the order, although the county court had the authority to determine issues of competency, it did not have the authority to commit the defendant. Accordingly, the chief judge of the circuit (Seventeenth) issued an administrative order which authorized county judges in the circuit to act as circuit judges for the purposes of determining competency of a person and entering an order of commitment.

Thereafter, a county judge in the Seventeenth Judicial Circuit found Charles Onwu incompetent to proceed on his misdemeanor charge and set a commitment hearing. Onwu filed a motion to have the administrative order declared unconstitutional. The case came before the Florida Supreme Court, which found that despite the administrative order, county court judges cannot order commitments under ch. 916, F.S., because the word "court" in s. 916.106, F.S., is defined to mean the "circuit court." Accordingly, the Court found that only the circuit court can forensically commit a defendant under ch. 916, F.S.

⁶ Section 916.301, F.S.

⁷ Section 916.3012, F.S.

⁸ Section 916.3012(4), F.S.

⁹ Section 916.302, F.S.

¹⁰ Section 916.304, F.S.

¹¹ *Onwu v. State of Fla.*, 692 So. 2d 881 (Fla. 1997).

III. Effect of Proposed Changes:

This bill amends provisions of ch. 916, F.S., relating to mentally deficient and mentally ill defendants, to provide that forensic services must also be provided to a person charged with a misdemeanor, in addition to felony offenders. Specifically, the bill amends s. 916.105, F.S., to provide legislative intent that forensic services be provided to a person charged with a misdemeanor. Additionally, the bill amends the definitions of “defendant” and “department,” as well as provisions relating to the rights of forensic clients and the involuntary commitment of a defendant adjudicated incompetent, to include misdemeanor crimes to the list of offenses that could result in civil commitment of criminal defendants.

The bill provides an effective date of July 1, 2011.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

This bill amends ch. 916, F.S., to provide that forensic services must also be provided to persons charged with misdemeanor offenses. Accordingly, individuals who are charged with a misdemeanor but found incompetent to proceed to trial may be involuntarily committed by the court for treatment and services.

C. Government Sector Impact:

This bill will create additional workload for many agencies and groups, such as the Florida court system, law enforcement, state attorneys and public defenders, psychologists, and particularly the Agency for Persons with Disabilities (APD or agency) and the Department of Children and Family Services (DCF or department).

Current law requires DCF and APD to place defendants committed under ch. 916, F.S., in a mental health treatment facility within 15 days after receiving a completed copy of the

commitment packet from the court. Expanding the commitments authorized under ch. 916, F.S., to include misdemeanor offenders is estimated – on the low end – to increase commitments by 320 commitments annually.¹² The department predicted that by August 2011, the number of felony and misdemeanor commitments will reach such a level that the department will not have the capabilities to admit individuals within the 15 day statutory requirement.¹³

Both APD and DCF have indicated that implementation of this bill will require additional space to house misdemeanor defendants who are committed. For example, DCF estimates that it will need an additional 400 secure forensic beds, at an annual operating cost of \$52,457,440.¹⁴ In order to accommodate the additional 400 beds, DCF would have to utilize 25 beds at the Treasure Coast Forensic Treatment Center,¹⁵ reopen 100 beds at the South Florida Evaluation and Treatment Center Annex, renovate a closed unit at Florida State Hospital, and construct a new secure forensic facility.¹⁶ According to DCF, renovations would take a minimum of six months and construction of the new facility would take a minimum of two years.¹⁷

Also, according to APD, implementation of this bill could affect APD's strategic plan. First, because of the prevalence of misdemeanor offenders, APD would have to increase its ability to service committed residents in state facilities, which would be contrary to the measures APD has taken to reduce reliance on state operated facilities.¹⁸ Also, according to APD, "there are often increased community service costs for defendants upon exit from forensic programs, since the private providers are reluctant to serve individuals with criminal charges in their history for fear of liability concerns. When the post forensic resident is served in community based settings, intensive behavioral services at significantly higher costs occur more frequently."¹⁹

VI. Technical Deficiencies:

Section 616.106(5), F.S., defines "court" to mean the circuit court; however, misdemeanor cases are usually heard in county court. According to the Florida Supreme Court, county courts do not have the authority to commit misdemeanor defendants to the Department of Children and Family Services under ch. 916, F.S.²⁰

¹² Dep't of Children and Families, *Staff Analysis and Economic Impact SB 166* (Dec. 16, 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs). The Agency for Persons with Disabilities estimated that implementation of this bill could result in an additional 1,200 commitments per year. Agency for Persons with Disabilities, *2011 Bill Analysis SB 166* (Jan. 14, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹³ Dep't of Children and Families, *supra* note 12.

¹⁴ *Id.*

¹⁵ Funding for these beds is currently being used to fund the Miami-Dade Forensic Alternative Center diversion program. *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Agency for Persons with Disabilities, *supra* note 12.

¹⁹ *Id.*

²⁰ *Onwu*, 692 So. 2d at 883.

VII. Related Issues:

In cases of misdemeanor defendants, rule 3.213(a) of the Florida Rules of Criminal Procedure requires dismissal of charges at any time after one year if, after a hearing, the court finds that the defendant is determined to remain incompetent to stand trial and there is no substantial probability that the defendant will become competent to stand trial in the future. Section 916.145, F.S., provides that charges against a defendant shall be dismissed if the defendant remains incompetent to proceed for a period of five years. Currently, ch. 916, F.S., relates only to defendants charged with felonies; however, if this bill is implemented, ch. 916, F.S., will apply to both misdemeanor and felony offenders. Accordingly, rule 3.213(a) of the Florida Rules of Criminal Procedure may need to be amended to comply with the changes made by this bill.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.