

1 A bill to be entitled
2 An act relating to defendants with mental illness;
3 amending s. 916.105, F.S.; revising legislative
4 intent; amending s. 916.106, F.S.; redefining the term
5 "defendant"; creating s. 916.135, F.S.; requiring a
6 jail's staff to screen each defendant booked into a
7 jail on misdemeanor charges using a certain instrument
8 to determine if there is an indication of a mental
9 health disorder; requiring an authorized professional
10 completing a certain evaluation to issue a
11 professional certificate if an evaluation of the
12 defendant demonstrates that the defendant appears to
13 meet the criteria for involuntary examination under
14 the Baker Act; requiring the jail, upon issuance of
15 the professional certificate, to immediately send a
16 copy of the certificate to the appropriate judge,
17 state attorney, and public defender or private
18 counsel; requiring the judge to sign a transport
19 order; providing requirements for such transport
20 order; requiring that the defendant, once at a
21 designated receiving facility, be assessed and
22 evaluated to determine whether he or she meets the
23 criteria to file a petition for involuntary inpatient
24 placement; providing procedures and requirements
25 depending on the evaluation outcome and decisions of

26 | the defendant; providing for the return of the
27 | defendant to the custody of the jail under certain
28 | circumstances; requiring a judge to refer a defendant
29 | charged with a misdemeanor crime for certain
30 | assessment if a party or the court raises a concern
31 | regarding the defendant's competency to proceed due to
32 | a mental illness; requiring the tolling of speedy
33 | trial and the following of certain provisions if a
34 | professional certificate is issued; requiring a judge
35 | to hold an evidentiary hearing to make a certain
36 | determination by clear and convincing evidence;
37 | requiring a judge to enter certain orders to require
38 | the defendant to complete a mental health assessment
39 | under certain circumstances; providing for certain
40 | considerations upon a defendant's successful
41 | completion of all recommendations from a mental health
42 | assessment; providing an effective date.

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44 | Be It Enacted by the Legislature of the State of Florida:

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46 | Section 1. Present subsection (4) of section 916.105,
47 | Florida Statutes, is redesignated as subsection (5), and a new
48 | subsection (4) and subsections (6) and (7) are added to that
49 | section, to read:

50 | 916.105 Legislative intent.—

51 (4) It is the intent of the Legislature that a defendant
52 who is charged with a misdemeanor and who has a mental illness,
53 intellectual disability, or autism be evaluated and provided
54 services in a community setting.

55 (6) It is the intent of the Legislature that law
56 enforcement agencies in this state provide law enforcement
57 officers with crisis intervention team training.

58 (7) It is the intent of the Legislature that, in all
59 instances in which a person meeting the criteria for involuntary
60 placement under the Baker Act commits a nonviolent misdemeanor,
61 that person be committed civilly under that act in lieu of, and
62 not in addition to, criminal prosecution.

63 Section 2. Subsection (6) of section 916.106, Florida
64 Statutes, is amended to read:

65 916.106 Definitions.—For the purposes of this chapter, the
66 term:

67 (6) "Defendant" means an adult, or a juvenile who is
68 prosecuted as an adult, who has been arraigned and charged with
69 a felony offense or a misdemeanor offense as described in s.
70 916.135 under the laws of this state.

71 Section 3. Section 916.135, Florida Statutes, is created
72 to read:

73 916.135 Mental health screening of defendants who commit
74 misdemeanors; mental health diversion program.—

75 (1) Within 24 hours after a defendant is booked into a

76 | jail on a misdemeanor charge, the jail's staff shall screen the
77 | defendant using a standardized validated mental health screening
78 | instrument to determine if there is an indication of a mental
79 | health disorder. If there is an indication of a mental health
80 | disorder, the defendant must be evaluated by an authorized
81 | professional to determine if the person appears to meet the
82 | criteria for involuntary examination under the Baker Act, as
83 | provided in s. 394.463.

84 | (a) If the evaluation demonstrates that the defendant
85 | appears to meet the criteria for involuntary examination under
86 | the Baker Act, the authorized professional completing the
87 | evaluation must issue a professional certificate stating that he
88 | or she has examined the person and finds that the person appears
89 | to meet the criteria for involuntary examination and stating the
90 | observations upon which that conclusion is based.

91 | (b) Upon the issuance of a professional certificate, the
92 | jail shall immediately send a copy of the certificate to the
93 | assigned misdemeanor judge, or to a designated mental health
94 | judge if available, who shall sign a transport order requiring
95 | the sheriff or jail authorities to transport the defendant
96 | within 48 hours to a designated receiving facility as defined in
97 | s. 394.455(12) for further evaluation under the Baker Act
98 | pursuant to the professional certificate. The jail shall also
99 | send a copy of the professional certificate to the state
100 | attorney and the public defender or private counsel. Such

101 transport order must indicate that the transfer is made with a
102 hold for jail custody notation so that the designated receiving
103 facility may only release the defendant back to jail custody,
104 and must reset the misdemeanor case for return to court within
105 14 days.

106 (c) Once at the designated receiving facility, the
107 defendant must be assessed and evaluated to determine whether he
108 or she meets the criteria to file a petition for involuntary
109 inpatient placement under the Baker Act, as provided in s.
110 394.467

111 1. If the defendant appears to meet the criteria for
112 involuntary inpatient placement under the Baker Act and refuses
113 voluntary treatment, the facility must file with the court a
114 petition for involuntary inpatient placement, as provided in s.
115 394.467. Upon discharge from involuntary inpatient placement,
116 the involuntary inpatient treatment provider must submit a
117 written proposed outpatient treatment plan to the assigned
118 misdemeanor judge, state attorney, and public defender or
119 private counsel for the continued supervision and compliance of
120 the defendant.

121 2. If the defendant meets the criteria for involuntary
122 inpatient placement under the Baker Act and chooses to accept
123 the terms of a treatment plan on a voluntary basis, the
124 defendant, upon discharge from the designated receiving
125 facility, must be returned to court before the assigned judge

126 for issuance of an order releasing the defendant on his or her
127 own recognizance, on the condition that the defendant comply
128 with all aspects of the treatment plan. As a condition of
129 participating in a mental health diversion program, the
130 defendant must be required to authorize the release of
131 information and clinical records to appropriate persons to
132 ensure the continuity of the patient's health care or mental
133 health care and to appear for all court appearances. The
134 defendant must be advised that failure to comply fully with any
135 aspect of the treatment plan or release order may cause the
136 court to issue a warrant for the defendant's arrest and return
137 to jail. The defendant's successful completion of the treatment
138 plan may also be a requirement of a diversion contract that the
139 state attorney may offer and the defendant may accept in
140 resolution of a misdemeanor charge.

141 (d) If the defendant does not meet the criteria for
142 involuntary inpatient placement under the Baker Act and the
143 defendant does not choose to accept the terms of an outpatient
144 treatment plan on a voluntary basis, the designated receiving
145 facility must further evaluate the defendant to determine if he
146 or she meets the criteria to file a petition for involuntary
147 outpatient placement under the Baker Act, as provided in s.
148 394.4655.

149 1. If the defendant meets the criteria for involuntary
150 outpatient placement under the Baker Act, the facility must file

151 with the court a petition for involuntary outpatient services,
152 along with a written proposed treatment plan, as provided in s.
153 394.4655. If necessary, the defendant may be returned to the
154 custody of the jail to await the hearing on involuntary
155 outpatient services.

156 2. The assigned judge shall promptly review the
157 defendant's case and charges with the assigned assistant state
158 attorney and assistant public defender or private counsel. The
159 parties shall consider diverting the defendant's case to a
160 mental health diversion program on the condition that the
161 defendant must comply with the involuntary outpatient placement
162 treatment plan. If the defendant is assigned an assistant public
163 defender or regional counsel or if private counsel is retained,
164 a guardian does not need to be appointed for the purpose of the
165 involuntary outpatient treatment statute.

166 (e) If the defendant does not meet the criteria for
167 involuntary placement under the Baker Act, as provided in s.
168 394.4655 or s. 394.467, but has a qualifying mental health
169 diagnosis and chooses to voluntarily participate in a mental
170 health diversion program, the defendant must be returned to
171 court before the assigned judge to be advised as provided for
172 under subparagraph (c)2. Qualifying mental health diagnoses
173 include schizophrenia spectrum and other psychotic disorders,
174 bipolar disorder, major depressive disorder, post-traumatic
175 stress disorder, or other disorders diagnosed by a qualified

176 professional, as defined in s. 394.455(38), and resulting in
177 serious functional impairment that substantially interferes with
178 or limits one or more major life activities.

179 (f) If a defendant admitted to a designated receiving
180 facility pursuant to this section does not meet the criteria for
181 involuntary inpatient placement or involuntary outpatient
182 placement under the Baker Act and the defendant does not choose
183 to accept the terms of a treatment plan on a voluntary basis, or
184 if the state attorney declines to offer a mental health
185 diversion contract to the defendant, the defendant must be
186 returned to the custody of the jail where his or her case must
187 proceed under the applicable rules of criminal procedure.

188 (2) At any stage of the criminal proceedings, if a party
189 or the court raises a concern regarding a defendant's competency
190 to proceed due to a mental illness and the defendant is in jail
191 custody, the judge must order the jail medical staff to assess
192 the defendant for issuance of a professional certificate under
193 the Baker Act. If a professional certificate is issued, speedy
194 trial must immediately be tolled and the parties must follow the
195 procedures in paragraph (1) (b).

196 (a) If the jail medical staff finds that the defendant
197 does not meet the criteria for issuance of a professional
198 certificate under the Baker Act or if the defendant is not in
199 jail custody, the assigned judge on the misdemeanor case must
200 promptly hold an evidentiary hearing to determine whether clear

201 and convincing evidence exists to conclude that the defendant
202 meets any of the following criteria:

203 1. The defendant is manifestly incapable of surviving
204 alone or without the help of willing and responsible family or
205 friends, including available alternative services, and without
206 treatment the defendant is likely to suffer from neglect or
207 refuse to care for herself or himself and such neglect or
208 refusal poses a real and present threat of substantial harm to
209 the defendant's well-being.

210 2. There is a substantial likelihood that in the near
211 future the defendant will inflict serious bodily harm on herself
212 or himself or another person, as evidenced by recent behavior
213 causing, attempting, or threatening such harm.

214 3. There is a substantial likelihood that a mental illness
215 played a central role in the behavior leading to the current
216 arrest, or there is a substantial likelihood that a mental
217 illness will lead to repeated arrests for criminal behavior if
218 the defendant does not receive treatment.

219 (b) If the assigned judge concludes that any of the
220 criteria in paragraph (a) is met, the judge must immediately
221 enter an order tolling speedy trial in the misdemeanor case and
222 enter an ex parte order stating that the person appears to meet
223 the criteria for involuntary examination and specifying the
224 findings on which that conclusion is based, as provided in s.
225 394.4655. The defendant is required to appear within 48 hours at

226 the nearest mental health treatment center to submit to a full
227 mental health assessment. If the defendant is in jail custody,
228 the assigned judge must execute an order directing the sheriff
229 or jail authorities to transport the defendant for purposes of
230 completing the assessment. The results of the assessment must be
231 immediately relayed to the assigned judge, who shall provide the
232 results to the state attorney and the public defender or private
233 counsel. The assigned judge then shall enter an order amending
234 the conditions of the defendant's pretrial release to compel the
235 defendant to comply with all recommendations for treatment from
236 the assessment. The defendant must be advised in the order that
237 failure to comply with the order may result in the issuance of a
238 warrant revoking the defendant's pretrial release and directing
239 the sheriff to arrest and return the defendant to the jail.

240 (c) Upon the defendant's successful completion of all
241 recommendations from the mental health assessment pursuant to
242 this section, the state attorney shall consider dismissal of the
243 charges. If dismissal is deemed inappropriate by the state
244 attorney, the parties must consider referral of the defendant's
245 case to mental health court or another available mental health
246 diversion program. Alternatively, the defendant may avail
247 herself or himself of the Rules of Criminal Procedure to contest
248 the misdemeanor charges.

249 Section 4. This act shall take effect July 1, 2019.