

By the Committee on Criminal Justice; and Senator Wright

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1 A bill to be entitled
2 An act relating to certain defendants with mental
3 illness; amending s. 394.658, F.S.; exempting certain
4 fiscally constrained counties from local match
5 requirements for specified grants; amending s.
6 916.105, F.S.; providing legislative intent; creating
7 s. 916.135, F.S.; defining the terms "misdemeanor
8 court" and "misdemeanor defendant"; encouraging
9 communities to apply for specified grants to establish
10 misdemeanor mental health jail diversion programs;
11 outlining a suggested process for such programs;
12 authorizing the court to refer a misdemeanor defendant
13 charged with a misdemeanor crime for certain
14 evaluation or assessment if a party or the court
15 raises a concern regarding the misdemeanor defendant's
16 competency to proceed due to a mental disorder;
17 requiring the tolling of speedy trial periods and the
18 following of certain provisions if a professional
19 certificate is issued; authorizing the court to hold
20 an evidentiary hearing to make a certain determination
21 by clear and convincing evidence; authorizing the
22 court to execute certain orders to require the
23 misdemeanor defendant to complete a mental health
24 assessment under certain circumstances; authorizing
25 the state attorney to consider dismissal of the
26 charges upon a misdemeanor defendant's successful
27 completion of all treatment recommendations from a
28 mental health assessment; authorizing the court to
29 exhaust therapeutic intervention before a misdemeanor

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30 defendant is returned to jail; providing an effective
31 date.

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33 Be It Enacted by the Legislature of the State of Florida:
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35 Section 1. Subsection (2) of section 394.658, Florida
36 Statutes, is amended to read:

37 394.658 Criminal Justice, Mental Health, and Substance
38 Abuse Reinvestment Grant Program requirements.—

39 (2) (a) As used in this subsection, the term "available
40 resources" includes in-kind contributions from participating
41 counties.

42 (b) A 1-year planning grant may not be awarded unless the
43 applicant county makes available resources in an amount equal to
44 the total amount of the grant. A planning grant may not be used
45 to supplant funding for existing programs. For fiscally
46 constrained counties, the available resources may be at 50
47 percent of the total amount of the grant, except that fiscally
48 constrained counties that are awarded reinvestment grants to
49 establish programs to divert misdemeanor defendants with mental
50 disorders from jails to community-based treatment pursuant to s.
51 916.135 may not be required to provide local matching funds.

52 (c) A 3-year implementation or expansion grant may not be
53 awarded unless the applicant county or consortium of counties
54 makes available resources equal to the total amount of the
55 grant. For fiscally constrained counties, the available
56 resources may be at 50 percent of the total amount of the grant,
57 except that fiscally constrained counties that are awarded
58 reinvestment grants to establish programs to divert misdemeanor

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59 defendants with mental disorders from jails to community-based
60 treatment pursuant to s. 916.135 may not be required to provide
61 local matching funds. This match shall be used for expansion of
62 services and may not supplant existing funds for services. An
63 implementation or expansion grant must support the
64 implementation of new services or the expansion of services and
65 may not be used to supplant existing services.

66 Section 2. Present subsection (4) of section 916.105,
67 Florida Statutes, is renumbered as subsection (5), and a new
68 subsection (4) and subsections (6) and (7) are added to that
69 section, to read:

70 916.105 Legislative intent.—

71 (4) It is the intent of the Legislature that a defendant
72 who is charged with a misdemeanor or an ordinance violation and
73 who has a mental disorder, intellectual disability, or autism be
74 evaluated and provided services in a community setting.

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

78 (7) It is the intent of the Legislature that all
79 communities in this state be encouraged to apply for Criminal
80 Justice, Mental Health, and Substance Abuse Reinvestment Grants
81 pursuant to s. 394.656 to establish programs for defendants who
82 are charged with misdemeanors or ordinance violations and who
83 have mental disorders to divert these persons from jails to
84 community-based treatment to increase public safety, improve the
85 accessibility of treatment services, and avert increased
86 spending on criminal justice.

87 Section 3. Section 916.135, Florida Statutes, is created to

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88 read:

89 916.135 Misdemeanor mental health diversion and competency
90 program.-

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

92 (a) "Misdemeanor court" means the county court or any court
93 presiding over misdemeanors or ordinance violations under the
94 laws of this state or any of its political subdivisions.

95 (b) "Misdemeanor defendant" means an adult who has been
96 charged by law enforcement or the state attorney with a
97 misdemeanor offense or an ordinance violation under the laws of
98 this state or any of its political subdivisions.

99 (2) Communities desiring to establish programs to divert
100 clinically appropriate misdemeanor defendants from jails to
101 treatment are encouraged to apply for Criminal Justice, Mental
102 Health, and Substance Abuse Reinvestment Grants pursuant to s.
103 394.656 for the purpose of obtaining funds to plan, implement,
104 or expand such programs. This section provides a model process
105 for diverting such misdemeanor defendants to treatment, but this
106 process may be modified according to each community's particular
107 resources. Communities that obtain grants pursuant to s. 394.658
108 must adhere to the processes in this section to the extent that
109 local resources are available to do so.

110 (3) Within 24 hours after a misdemeanor defendant is booked
111 into a jail, the jail's corrections or medical staff may screen
112 the misdemeanor defendant using a standardized validated mental
113 health screening instrument to determine if there is an
114 indication of a mental disorder. If there is an indication of a
115 mental disorder, the misdemeanor defendant may be promptly
116 evaluated for involuntary commitment under the Baker Act by a

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117 qualified mental health professional. In conducting this
118 evaluation, the qualified mental health professional may
119 evaluate the misdemeanor defendant as though he or she were at
120 liberty in the community and may not rely on the person's
121 incarcerated status to defeat a finding of imminent danger under
122 the Baker Act criteria.

123 (a) If the evaluation demonstrates that the misdemeanor
124 defendant meets the criteria for involuntary examination under
125 the Baker Act, the mental health professional may issue a
126 professional certificate referring the misdemeanor defendant to
127 a qualified crisis stabilization unit.

128 (b) Upon the issuance of a professional certificate, the
129 misdemeanor defendant must be transported within 72 hours to a
130 qualified crisis stabilization unit for further evaluation under
131 the Baker Act pursuant to the professional certificate. Such
132 transport may be made with a hold for jail custody notation so
133 that the qualified crisis stabilization unit may only release
134 the misdemeanor defendant back to jail custody. Alternatively,
135 the misdemeanor court may request on its transport order that
136 the misdemeanor defendant be transported back to appear before
137 the misdemeanor court, depending upon the outcome of the
138 evaluation at the qualified crisis stabilization unit and the
139 misdemeanor court's availability of other resources and
140 diversion programs.

141 (c) Once at the designated receiving facility, the
142 misdemeanor defendant may be assessed and evaluated to determine
143 whether he or she meets the criteria for involuntary commitment
144 or involuntary outpatient treatment under the Baker Act. If
145 either set of criteria is met, the crisis stabilization unit

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146 staff or staff at the local mental health treatment center may
147 forward to the misdemeanor court a discharge plan or an
148 outpatient treatment plan, as appropriate, as soon as the plan
149 is developed. If the misdemeanor defendant is found not to meet
150 either set of criteria, the qualified crisis stabilization unit
151 staff or staff at the local mental health treatment center may
152 issue an outpatient treatment plan and forward it promptly to
153 the misdemeanor court, or may notify the misdemeanor court that
154 no treatment is necessary.

155 (d) Upon receipt of a discharge plan or an outpatient
156 treatment plan, the misdemeanor court may consider releasing the
157 misdemeanor defendant on his or her own recognizance on the
158 condition that he or she comply fully with the discharge plan or
159 outpatient treatment plan.

160 (e) If no professional certificate is issued under
161 paragraph (a), but the misdemeanor defendant has been found to
162 have a mental disorder, the misdemeanor court must order that
163 the misdemeanor defendant be assessed for outpatient treatment.
164 This assessment may be completed by a local mental health
165 treatment center. This assessment may be completed by jail
166 medical staff, at the jail via tele-assessment by the local
167 mental health treatment center, by transport of the misdemeanor
168 defendant to and from the local mental health treatment center
169 by the sheriff or jail authorities, or by release of the
170 misdemeanor defendant on his or her own recognizance on the
171 conditions that the assessment be completed at the local mental
172 health treatment center within 48 hours after his or her release
173 and that all treatment recommendations must be followed. If the
174 assessment results in an outpatient treatment plan, and the

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175 misdemeanor defendant has not already been released, the
176 misdemeanor defendant may be released on his or her own
177 recognizance on the condition that all treatment recommendations
178 must be followed.

179 (f) If the misdemeanor defendant is released from the
180 custody of the jail on pretrial release at any point before
181 completion of the process in this section, evaluation or
182 assessment of the misdemeanor defendant under this section by a
183 qualified mental health professional may be initiated at any
184 time by order of the misdemeanor court at the request of either
185 party or on the misdemeanor court's own motion. If this process
186 results in the creation of a discharge plan by a qualified
187 crisis stabilization unit or an outpatient treatment plan by the
188 local mental health treatment center, the misdemeanor court may
189 set as a condition of the misdemeanor defendant's continued
190 pretrial release compliance with all terms of the discharge plan
191 or outpatient treatment plan.

192 (4) (a) 1. At any stage of the criminal proceedings, if a
193 party or the misdemeanor court raises a concern regarding a
194 misdemeanor defendant's competency to proceed due to a mental
195 disorder, the misdemeanor court may appoint a qualified mental
196 health professional to evaluate the misdemeanor defendant for
197 issuance of a professional certificate under the Baker Act. If
198 the jail has agreed to permit its medical staff to be used for
199 this purpose, the misdemeanor court may order jail medical staff
200 to conduct this evaluation.

201 2. If a professional certificate is issued, the speedy
202 trial period is tolled immediately until the misdemeanor court
203 finds the misdemeanor defendant either to have completed all

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204 treatment that has been mandated under the Baker Act or to no
205 longer be subject to any mandatory treatment under the Baker
206 Act, and the parties may follow the procedures in paragraph
207 (3) (b), adjusting such procedures according to the
208 jurisdiction's available resources and preferred procedures.

209 (b) If the qualified mental health professional finds that
210 the misdemeanor defendant does not meet the criteria for
211 issuance of a professional certificate under the Baker Act, then
212 the professional or another qualified community-based mental
213 health professional may evaluate the misdemeanor defendant
214 regarding the criteria in this paragraph, and may promptly issue
215 a report to the misdemeanor court regarding the evaluation.

216 Following issuance of the report, the misdemeanor court may
217 promptly hold an evidentiary hearing to determine whether clear
218 and convincing evidence exists to conclude that the misdemeanor
219 defendant meets any one or more of the following criteria:

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

228 2. There is a substantial likelihood that in the near
229 future the misdemeanor defendant will inflict serious harm on
230 himself or herself or another person, as evidenced by recent
231 behavior, actions, or omissions causing, attempting, or
232 threatening such harm. Such harm includes, but is not limited

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233 to, significant property damage.

234 3. There is a substantial likelihood that a mental disorder
235 played a central role in the behavior leading to the misdemeanor
236 defendant's current arrest or there is a substantial likelihood
237 that a mental disorder will lead to repeated future arrests for
238 criminal behavior if the misdemeanor defendant does not receive
239 treatment.

240 (c) If the misdemeanor court concludes that any of the
241 criteria in paragraph (b) are met, it must immediately enter an
242 order tolling the speedy trial period in the case and requiring
243 the misdemeanor defendant to appear within 48 hours at the
244 nearest local mental health treatment center to submit to a full
245 mental health assessment. If the misdemeanor defendant is in
246 jail custody, the misdemeanor court may execute an order
247 directing the sheriff or jail authorities to transport the
248 misdemeanor defendant to and from the local mental health
249 treatment center for purposes of having the assessment
250 completed. Alternatively, a tele-assessment may be completed at
251 the jail by the local mental health treatment center, or the
252 misdemeanor court may release the misdemeanor defendant on his
253 or her own recognizance on the condition that he or she report
254 for the assessment within 48 hours after release.

255 (d) The results of the assessment shall immediately be
256 relayed to the misdemeanor court, which shall provide the
257 results to counsel for the state and defense. The misdemeanor
258 court may then enter an order setting or amending the conditions
259 of the misdemeanor defendant's pretrial release to compel the
260 misdemeanor defendant to comply with all recommendations for
261 treatment from the assessment. The misdemeanor defendant must be

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262 advised in the order that failure to comply with the order may
263 result in the issuance of a warrant revoking the misdemeanor
264 defendant's pretrial release and directing the sheriff to arrest
265 and return the misdemeanor defendant to the jail.

266 (e) If the misdemeanor court concludes that none of the
267 criteria in paragraph (b) are met, the misdemeanor defendant may
268 elect to pursue a traditional competency evaluation pursuant to
269 Rule 3.210, Florida Rules of Criminal Procedure, or may invoke
270 any other rights or procedures available in misdemeanor and
271 ordinance violation cases.

272 (5) Upon the misdemeanor defendant's successful completion
273 of all treatment recommendations from any mental health
274 evaluation or assessment completed pursuant to this section, the
275 state attorney may consider dismissal of the charges. If
276 dismissal is deemed inappropriate by the state attorney, the
277 parties may consider referral of the misdemeanor defendant's
278 case to mental health court or another available mental health
279 diversion program. Alternatively, the misdemeanor defendant may
280 avail himself or herself of the Florida Rules of Criminal
281 Procedure to contest the misdemeanor charges.

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

287 Section 4. This act shall take effect July 1, 2020.