

CHAPTER 2023-270

House Bill No. 1349

An act relating to mental health treatment; amending s. 394.461, F.S.; authorizing the Department of Children and Families to issue a conditional designation to certain facilities for a limited period to allow such facilities to implement corrective measures; amending s. 916.107, F.S.; providing that forensic clients must receive psychiatric medication therapy before admission to a state mental health treatment facility in certain circumstances; authorizing the sheriff to administer such medication within a county jail; amending s. 916.12, F.S.; specifying some possible treatment alternatives appropriate for the mental illness of a criminal defendant who is incompetent to proceed; requiring an examining expert to report why alternative treatment options are inappropriate in certain circumstances; amending s. 916.13, F.S.; providing that a court order committing a defendant to the department may include certain information; requiring a court to determine that alternative treatment options have been fully considered and found insufficient; revising the deadline for a report on certain persons committed for treatment; revising provisions relating to competency hearings; providing an effective date.

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

Section 1. Section 394.461, Florida Statutes, is amended to read:

394.461 Designation of receiving and treatment facilities and receiving systems.—The department is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and may suspend or withdraw such designation for failure to comply with this part and rules adopted under this part. The department may issue a conditional designation for up to 60 days to allow the implementation of corrective measures. Unless designated by the department, facilities are not permitted to hold or treat involuntary patients under this part.

(1) RECEIVING FACILITY.—The department may designate any community facility as a receiving facility. Any other facility within the state, including a private facility or a federal facility, may be so designated by the department, provided that such designation is agreed to by the governing body or authority of the facility.

(2) TREATMENT FACILITY.—The department may designate any state-owned, state-operated, or state-supported facility as a state treatment facility. A civil patient shall not be admitted to a state treatment facility without previously undergoing a transfer evaluation. Before a court hearing for involuntary placement in a state treatment facility, the court shall receive and consider the information documented in the transfer evaluation. Any other facility, including a private facility or a federal facility, may be designated as a treatment facility by the department, provided that such

designation is agreed to by the appropriate governing body or authority of the facility.

(3) PRIVATE FACILITIES.—Private facilities designated as receiving and treatment facilities by the department may provide examination and treatment of involuntary patients, as well as voluntary patients, and are subject to all the provisions of this part.

(4) REPORTING REQUIREMENTS.—

(a) A facility designated as a public receiving or treatment facility under this section shall report to the department on an annual basis the following data, unless these data are currently being submitted to the Agency for Health Care Administration:

1. Number of licensed beds.
2. Number of contract days.
3. Number of admissions by payor class and diagnoses.
4. Number of bed days by payor class.
5. Average length of stay by payor class.
6. Total revenues by payor class.

(b) For the purposes of this subsection, “payor class” means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-pay health insurance, private-pay health maintenance organization, private preferred provider organization, the Department of Children and Families, other government programs, self-pay patients, and charity care.

(c) The data required under this subsection shall be submitted to the department no later than 90 days following the end of the facility’s fiscal year.

(d) The department shall issue an annual report based on the data required pursuant to this subsection. The report shall include individual facilities’ data, as well as statewide totals. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) RECEIVING SYSTEM.—The department shall designate as a receiving system one or more facilities serving a defined geographic area developed pursuant to s. 394.4573 which is responsible for assessment and evaluation, both voluntary and involuntary, and treatment, stabilization, or triage for patients who have a mental illness, a substance use disorder, or co-occurring disorders. Any transportation plans developed pursuant to s. 394.462 must support the operation of the receiving system.

(6) RULES.—The department may adopt rules relating to:

(a) Procedures and criteria for receiving and evaluating facility applications for designation, which may include onsite facility inspection and evaluation of an applicant's licensing status and performance history, as well as consideration of local service needs.

(b) Minimum standards consistent with this part that a facility must meet and maintain in order to be designated as a receiving or treatment facility and procedures for monitoring continued adherence to such standards.

(c) Procedures and criteria for designating receiving systems which may include consideration of the adequacy of services provided by facilities within the receiving system to meet the needs of the geographic area using available resources.

(d) Procedures for receiving complaints against a designated facility or designated receiving system and for initiating inspections and investigations of facilities or receiving systems alleged to have violated the provisions of this part or rules adopted under this part.

(e) Procedures and criteria for the suspension or withdrawal of designation as a receiving facility or receiving system.

Section 2. Subsection (1) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(1) RIGHT TO INDIVIDUAL DIGNITY.—

(a) The policy of the state is that the individual dignity of the client shall be respected at all times and upon all occasions, including any occasion when the forensic client is detained, transported, or treated. Clients with mental illness, intellectual disability, or autism and who are charged with committing felonies shall receive appropriate treatment or training. In a criminal case involving a client who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following the date the department or agency receives a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure. For a forensic client who is held in a jail awaiting admission to a facility of the department or agency, evaluation and treatment or training may be provided in the jail by the local community mental health provider for mental health services, by the developmental disabilities program for persons with intellectual disability or autism, the client's physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility. The sheriff shall administer or permit the department to administer the appropriate psychotropic medication to forensic clients before admission to a state mental health treatment facility.

(b) Forensic clients who are initially placed in, or subsequently transferred to, a civil facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these facilities for as long as they remain there.

Section 3. Subsection (4) of section 916.12, Florida Statutes, is amended to read:

916.12 Mental competence to proceed.—

(4) If an expert finds that the defendant is incompetent to proceed, the expert shall report on any recommended treatment for the defendant to attain competence to proceed. In considering the issues relating to treatment, the examining expert shall specifically report on:

(a) The mental illness causing the incompetence.;

(b) The completion of a clinical assessment by approved mental health experts trained by the department to ensure safety of the patient and the community.

~~(c)(b)~~ The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives, including, at a minimum, mental health services, treatment services, rehabilitative services, support services, and case management services as described in s. 394.67, which may be provided by or within multi-disciplinary community treatment teams, such as Florida Assertive Community Treatment, conditional release programs, outpatient services or intensive outpatient treatment programs, and supportive employment and supportive housing opportunities in treating and supporting the recovery of the patient. in order of choices;

~~(d)(e)~~ The availability of acceptable treatment and, if treatment is available in the community, the expert shall so state in the report.; and

~~(e)(d)~~ The likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future.

The examining expert's report to the court shall include a full and detailed explanation regarding why the alternative treatment options referenced in the evaluation are insufficient to meet the needs of the defendant.

Section 4. Section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.

(1) Every defendant who is charged with a felony and who is adjudicated incompetent to proceed may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) The defendant has a mental illness and because of the mental illness:

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

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

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities, ~~or~~ community inpatient or outpatient settings, and any other mental health services, treatment services, rehabilitative services, support services, and case management services as described in s. 394.67, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and

(c) There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

Before issuing a commitment order, the court shall review the examining expert's report to ensure alternative treatment options have been fully considered and found insufficient to meet the needs of the defendant.

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant.

(a) Immediately after receipt of a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure, the department shall request all medical information relating to the defendant from the jail. The jail shall provide the department with all medical information relating to the defendant within 3 business days after receipt of the department's request or at the time the defendant enters the physical custody of the department, whichever is earlier.

(b) Within 60 days ~~6 months~~ after the date of admission and at the end of any period of extended commitment, or at any time the administrator or his or her designee determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(c) ~~A competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. The defendant must be transported, in accordance with s. 916.107, to the committing court's jurisdiction within 7 days of notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. A determination on the issue of competency must be made at a hearing within 30 days of the notification for the hearing.~~ If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. To ensure continuity of care, the referring mental health facility must transfer the patient with up to 30 days of medications and assist in discharge planning with medical teams at the receiving county jail. The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.

Section 5. This act shall take effect July 1, 2023.

Approved by the Governor June 20, 2023.

Filed in Office Secretary of State June 20, 2023.