

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 19, 1998 Revised: \_\_\_\_\_

Subject: Forensic Client Services

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barnes</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>CJ</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

**I. Summary:**

Committee Substitute for SB 442 amends and reorganizes chapter 916, F.S., into three distinct parts. Part I includes general provisions that pertain to all forensic clients, Part II relates specifically to forensic services for adult defendants found incompetent to proceed due to mental illness, and Part III relates specifically to forensic services for adult defendants found incompetent to proceed due to retardation or autism.

The major new provisions in CS for Senate Bill 442 are as follows:

- Commitment to the Department of Children and Family Services is restricted to defendants charged with a felony who have been found to be incompetent to proceed due to mental illness, retardation, or autism or who have been acquitted of felonies by reason of insanity.
- The right for clients to contact and receive communication from their attorney at any reasonable time is specified.
- The authority of a facility administrator is broadened to allow release of sufficient information to provide adequate warning to the person being threatened with harm by a client and to the committing court, the state attorney, and the client’s attorney rather than being limited to disclosure of the threat to the declaration only.
- Reports and testimony by experts are required to be completed as required in chapter 916, F.S., or in the Florida Rules of Criminal Procedure before payment is rendered for their professional services.

- The committing court is authorized to order conditional release of a defendant instead of involuntary commitment to a forensic facility.
- The department is required to provide the court on an annual basis with a list of qualified professionals who may perform evaluations on defendants alleged to have retardation or autism.
- A social service professional is added to the experts responsible for providing a social and developmental history of the defendant suspected of having retardation or autism.
- The court is authorized to appoint no more than two experts to independently evaluate the defendant who is suspected of having retardation or autism for determination of competency if requested by any party.

This bill substantially amends sections 40.29, 393.11, 916.105, 916.106, 916.107, 916.175, 916.178, 916.19, 916.108, 916.11, 916.12, 916.13, 916.14, 916.145, 916.15, 916.16, 916.17, and 916.20; reenacts section 394.467; and creates sections 916.301, 916.3012, 916.302, 916.3025, 916.303, and 916.304 of the Florida Statutes.

## **II. Present Situation:**

Chapter 916, F.S., includes the statutory provisions for the Department of Children and Family Services (hereafter referred to as the department) to establish and maintain separate and secure facilities and programs for the treatment of forensic clients who have been found to be mentally retarded or mentally ill defendants, or who have been acquitted of crimes by reason of insanity. While still under the jurisdiction of the committing court, these defendants are committed to the department for mental retardation or mental health services. The Florida Rules of Criminal Procedure (Rules 3.210-3.219) contain court procedures for forensic clients in areas such as the appointment of experts, mental competency examination and report, competence to proceed hearing and disposition, judgment of not guilty by reason of insanity disposition, and conditional release.

Chapter 916, F.S., does not differentiate between the evaluation and treatment or training of clients with mental retardation and clients with mental illness. Because the terms “mental illness” and “mental retardation” are intermingled throughout chapter 916, F.S., the department reports that there is a misconception that persons who have a mental illness and persons who have mental retardation or autism require the same services or treatment and training milieu. This lack of clear distinction between the service needs of defendants has created significant difficulties for law enforcement officers, judges, state attorneys, public defenders, and state program professionals in interpreting specific sections of Florida law. Also, Chapter 916, F.S., does not include a definition of autism. Autism is a developmental disability as defined in s. 393.063(2), F.S.

Section 916.106(4)(b), F.S., defines “forensic client” as a mentally retarded or mentally ill person committed to the department who: 1) has been determined to need treatment for mental

retardation or a mental illness; 2) has been found incompetent to stand trial or incompetent for sentencing, has been acquitted of a criminal offense by reason of insanity, has criminal charges pending, or has been found guilty of a criminal offense but is not an inmate of the Department of Corrections or any other correctional facility; and 3) has been determined by the department to be dangerous to self or others or to present a clear and present potential to escape.

Chapter 916, F.S., makes no differentiation between felonies and misdemeanors in reference to “criminal charges.” Section 916.106(2), F.S., defines “court” as the circuit court. Even though s. 26.012(2)(d), F.S., specifies that circuit courts have exclusive original jurisdiction of all felonies and of all misdemeanors arising out of the same circumstances as a felony, the department reports that prior to April, 1997, the county courts committed 60 to 80 persons annually to the department for mental health treatment under chapter 916, F.S., who were charged with or guilty of misdemeanors. Section 34.01(1), F.S., specifies that county courts have original jurisdiction in all misdemeanor cases that are not cognizable by the circuit courts. The department usually admitted those defendants charged with a misdemeanor to one of the state civil treatment facilities. A Supreme Court opinion was issued on April 24, 1997, that substantially reduced forensic commitments from the county courts. In the case of *Onwu v. Florida*, 692 So.2d 881 (Fla. 1997), the Florida Supreme Court declared an administrative order issued by Chief Judge Ross as invalid that directed county judges in the Seventeenth Judicial Circuit to act as circuit judges. The Supreme court ruling states that only a “circuit court” as defined in s. 916.106(2), F.S., may commit a person to the Department of Children and Family Services for services under chapter 916, F.S. The department has received only 5 commitments from the county courts during the past 10 months. According to the department, those clients were not committed to the department under chapter 916, F.S., as the courts “vacated” those orders.

Section 916.11(1)(d), F.S., states that the developmental services program of the department must examine the defendant to determine if he or she meets the definition of “retardation” in s. 393.063, F.S., and if so, to determine competency for standing trial. There are no provisions in chapter 916, F.S., for the department to provide the courts with a list of mental retardation professionals to be used for this examination, unlike s. 916.11(1)(a), F.S., which directs the department to provide the courts with a list of mental health professionals who have completed approved training.

The Florida Rules of Criminal Procedure contain the diagnostic criteria used by the experts appointed by the court in their determination of mental competence. The department reports that these diagnostic reports from professionals do not always include all of the essential factors for determining mental competence as specified in Rule 3.211, *Competence to proceed: Scope of examination and report*, Florida Rules of Criminal Procedure.

The rights of forensic clients are contained in s. 916.107, F.S. The right to express and informed consent, s. 916.107(3), F.S., requires that the administrator of the forensic facility petition the court for an order authorizing treatment when the client refuses to give written consent. There is no provision in chapter 916, F.S., to prohibit the department from being charged a filing fee for this petition. The right to communication, abuse reporting, and visits that is contained in

s. 916.107(5), F.S., does not specify that the forensic client has the right to contact and receive communication from his attorney. The provision concerning the confidentiality of clinical records contained in s. 916.107(8), F.S., only specifies that the declaration of harm expressed by a forensic client may be disclosed. The provision does not provide for sufficient information to be released to provide adequate warning to the person being threatened by the client.

Section 916.16, F.S., provides that the committing court retains jurisdiction of any patient who is hospitalized for mental health treatment or in a retardation residential facility and is released from the facility only upon order of the committing court. Section 916.17, F.S., specifies that the committing court may order a conditional release of any defendant who has been committed according to a finding of incompetency to stand trial or an adjudication of not guilty by reason of insanity based on an approved plan for providing appropriate outpatient care and treatment. The department reports that until recently the courts did not use the conditional release provision for mentally retarded defendants. Section 916.17, F.S., does not currently specify that the committing court may order conditional release of a defendant instead of an involuntary commitment to a forensic facility.

### III. Effect of Proposed Changes:

Committee Substitute for SB 442 amends and reorganizes chapter 916, F.S., into three distinct parts. Part I includes general provisions that pertain to all forensic clients, Part II relates specifically to forensic services for adult defendants found incompetent to proceed due to mental illness, and Part III relates specifically to forensic services for adult defendants found incompetent to proceed due to retardation or autism.

The major provisions in CS for SB 442 are included in the following section-by-section summary:

Section 1. Includes technical changes to s. 40.29, F.S.

Section 2. Amends s. 393.11, F.S., by expanding those persons who can petition for involuntary admission to residential services under chapter 916, F.S.; requiring that the defendant's attorney and the state attorney receive a copy of the notice of the filed petition for involuntary admission to residential services and a copy of the order of involuntary admission; and requiring a court order prior to the release from residential services.

Section 3. Includes technical changes to s. 394.467, F.S.

Section 4. Specifies those sections that comprise Part I of chapter 916, F.S., pertaining to "General Provisions."

Section 5. Amends s. 916.105, F.S., *legislative intent*, by restricting commitment to the department to defendants charged with a **felony** who have been found to be incompetent to proceed due to mental illness, retardation, or autism or who have been acquitted of felonies by reason of insanity.

Section 6. Amends s. 916.106, F.S., *Definitions*, to include definitions of “autism,” “civil facility,” “express and informed consent,” “incompetent to proceed,” and “social service professional.” The definition of “forensic client” is changed to specify that the client has been found incompetent to proceed on a “felony offense” or has been acquitted of a “felony offense” by reason of insanity rather than “criminal offense.” References in the definition of “forensic client” are deleted pertaining to persons with criminal charges pending and persons who have been found guilty of a criminal offense but are not inmates of the Department of Corrections or in another correctional facility. The bill specifies that “forensic client” includes adults and juveniles prosecuted as adults.

Section 7. Amends s. 916.107, F.S., *rights of forensic clients*, to make technical change and to update terminology. Provisions are added to clarify that clients have the right to contact and receive communication from their attorney at any reasonable time and to authorize facility administrators to release sufficient information to adequately warn persons threatened with harm by a client and to the committing court, the state attorney and the client’s attorney rather than limiting disclosure of the threat to the declaration only.

Section 8. Includes technical changes to s. 916.175, F.S.

Section 9. Includes technical changes to s. 916.178, F.S.

Section 10. Includes technical changes to s. 916.19, F.S.

Section 11. Includes technical changes to s. 916.20, F.S.

Section 12. Creates Part II of chapter 916, F.S., entitled “Forensic Services for Persons Who are Mentally Ill.”

Section 13. Includes technical changes to s. 916.108, F.S.

Section 14. Includes technical changes to s. 916.11, F.S., and provides that reports and testimony from clinical experts pertaining to mental competence of the defendants must be completed as required in chapter 916, F.S., or in the Florida Rules of Criminal Procedure before payment is rendered for their professional services.

Section 15. Includes technical changes to s. 916.12, F.S., and incorporates language that is currently in the Florida Rules of Criminal Procedure (Rule 3.211, *Competence to Proceed: Scope of Examination and Report*) regarding the diagnostic criteria for determining the client’s competence to proceed.

Section 16. Includes technical changes to s. 916.13, F.S., and adds a provision to the criteria for involuntary commitment that is currently in Rule 3.212(c)(3), Florida Rules of Criminal Procedure, stating that there is a substantial probability that the mental illness causing the

defendant's incompetence will respond to treatment and the defendant will be competent to proceed in the reasonably foreseeable future.

Section 17. Includes technical changes to s. 916.14, F.S.

Section 18. Amends s. 916.145, F.S., *Adjudication of incompetency due to mental retardation; dismissal of charges*, to make it apply to mental illness only and to make technical changes for clarifying existing language . The bill includes a provision that is currently in the Florida Rules of Criminal Procedure (Rule 3.213, *Continuing Incompetency to Proceed, Except Incompetency to Proceed with Sentencing: Disposition*) requiring that charges against a defendant adjudicated incompetent to proceed due to mental illness be dismissed without prejudice to the state if the defendant remains incompetent to proceed for a reasonable time after that determination but not longer than five years unless the court specifies otherwise. The bill states that charges against the defendant are dismissed without prejudice to the state to refile the charges if the defendant is declared competent to proceed in the future.

Section 19. Includes technical changes to s. 916.15, F.S.

Section 20. Includes technical changes to s. 916.16, F.S., and clarifies that the committing court retains jurisdiction over the case when the defendant is placed on conditional release. An order from the committing court is required before the defendant is released from conditional release.

Section 21. Includes technical changes to s. 916.17, F.S., and provides that the committing court may order conditional release of a defendant instead of involuntary commitment to a forensic facility pursuant to s. 916.13, F.S., or s. 916.15, F.S. The bill adds language in this section that clarifies the procedures to follow when revoking a defendant's conditional release.

Section 22. Creates Part III of chapter 916, F.S., entitled "Forensic Services for Persons Who are Retarded or Autistic."

Section 23. Creates s. 916.301, F.S., *Appointment of experts*. A new provision is included in this section requiring that the department provide the court on an annual basis with a list of qualified professionals who may perform evaluations on defendants alleged to have retardation or autism. The bill is consistent with s. 916.11, F.S., by requiring that in cases where a defendant's suspected mental condition is retardation or autism, the court appoints the developmental services program of the department to evaluate whether or not the defendant meets the definition of retardation or autism and if so, if the defendant is competent to proceed. A new provision is added to the bill specifying that a psychologist determines if the defendant meets the definition of retardation or autism and a social service professional provides a social and developmental history of the defendant. There are no provisions for the training of experts who conduct these evaluations because these persons are employees of the department and training and experience requirements are included in their position descriptions. The bill adds a new provision allowing any party to request that the court appoint at least one but not more than two additional experts to evaluate the defendant. The bill specifies that all evaluations must have oversight by a psychiatrist, licensed

psychologist, or physician with experience in the diagnosis and treatment of autism. The bill includes an existing statutory provision that the county in which the indictment was found or the information or affidavit was filed is responsible for paying reasonable fees for services rendered by the evaluators and as expert witnesses. A new provision is added stating that in order for experts to be paid, the reports and testimony provided by them must explicitly address each of the factors and procedures specified in chapter 916, F.S., and in the Florida Rules of Criminal Procedure.

Section 24. Creates s. 916.3012, F.S., *Mental competence to proceed*, that includes language currently in the Florida Rules of Criminal Procedure (Rule 3.211. *Competence to Proceed: Scope of Examination and Report*) describing the diagnostic criteria for determining if the defendant whose suspected condition is retardation or autism is competent to proceed.

Section 25. Creates s. 916.302, F.S., *Involuntary commitment of defendant determined to be incompetent to proceed due to retardation or autism*, that includes the current statutory provisions for involuntary commitment. In order for the defendant to meet the criteria for involuntary commitment, the bill specifies that there must be a substantial probability that the defendant will be competent to proceed in the reasonably foreseeable future because the retardation or autism problem causing the defendant's incompetence will respond to training. This provision is currently in Rule 3.212(c)(3), Florida Rules of Criminal Procedure. The bill includes a new provision that allows the transfer of defendants between secure facilities without the prior approval of the court. Criteria are included for determining departmental responsibility for a defendant suspected of having both retardation or autism and a mental disorder. Any client transfer between the mental health and developmental services programs will require an amended order from the committing court.

Section 26. Creates s. 916.3025, F.S., *Jurisdiction of committing court*, to include provisions for jurisdiction of the committing court specified in s. 916.16, F.S. The bill clarifies that the committing court retains jurisdiction when the defendant is placed on conditional release and that a court order is required in order for the defendant to be discharged from conditional release.

Section 27. Creates s. 916.303, F.S., *Determination of incompetency due to retardation or autism; dismissal of charges*, specifying current statutory provisions in s. 916.145, F.S., relating to the dismissal of charges against these defendants. The bill includes a provision that requires that charges against a defendant adjudicated incompetent to proceed due to retardation or autism be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after that determination but may not exceed two years unless the court specifies otherwise. The bill states that charges against the defendant are dismissed without prejudice to the state to refile the charges if the defendant is declared competent to proceed in the future. [Section 916.145, F.S., currently requires that charges are dismissed if the defendant with mental retardation remains incompetent to stand trial 2 years after adjudication unless the court specifies otherwise. The Florida Rules of Criminal Procedure (Rule 3.213, *Continuing Incompetency to Proceed, Except Incompetency to Proceed with Sentencing: Disposition*) includes a provision for dismissing charges without prejudice to the state should the defendant be declared competent to proceed.]

Section 28. Creates s. 916.304, *Conditional release*, clarifying current statutory provisions in s. 916.17, F.S., for conditional release for defendants with retardation or autism. The bill states that the committing court may order conditional release of a defendant instead of involuntary commitment to a forensic facility pursuant to s. 916.302, F.S.

Section 29. Specifies that this act will take effect October 1 of the year in which enacted.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Because CS for SB 442 restricts criminal offenses to felony offenses only, there could continue to be fewer commitments under chapter 916, F.S., as experienced by the forensic system since the 1997 Supreme Court ruling. Therefore, CS for SB 442 could result in on-going costs savings for the state forensic facilities and civil mental health hospitals.

The State Court Administrator reports that there could be additional costs to the courts of \$28,757 per year because the new provision in CS for SB 442 requires that the court appoint no more than two additional experts to conduct a competency evaluation of the defendant with retardation or autism at the request of any party. This represents a potential increase of 100 percent or more in expert witness fees. However, the State Court Administrator states that the current level of appropriation will most likely absorb the anticipated increase.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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