

By Senator Wright

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A bill to be entitled

An act relating to certain defendants with mental illness; amending s. 394.658, F.S.; exempting certain fiscally constrained counties from local match requirements for specified grants; amending s. 916.105, F.S.; providing legislative intent; creating s. 916.135, F.S.; defining the terms "misdemeanor court" and "misdemeanor defendant"; encouraging communities to apply for specified grants to establish misdemeanor mental health jail diversion programs; outlining a suggested process for such programs; authorizing the court to refer a misdemeanor defendant charged with a misdemeanor crime for certain evaluation or assessment if a party or the court raises a concern regarding the misdemeanor defendant's competency to proceed due to a mental disorder; requiring the tolling of speedy trial periods and the following of certain provisions if a professional certificate is issued; authorizing the court to hold an evidentiary hearing to make a certain determination by clear and convincing evidence; authorizing the court to execute certain orders to require the misdemeanor defendant to complete a mental health assessment under certain circumstances; authorizing the state attorney to consider dismissal of the charges upon a misdemeanor defendant's successful completion of all treatment recommendations from a mental health assessment; authorizing the court to exhaust therapeutic intervention before a misdemeanor

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defendant is returned to jail; providing an effective  
date.

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

Section 1. Subsection (2) of section 394.658, Florida  
Statutes, is amended to read:

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

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

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

(c) A 3-year implementation or expansion grant may not be  
awarded unless the applicant county or consortium of counties  
makes available resources equal to the total amount of the  
grant. For fiscally constrained counties, the available  
resources may be at 50 percent of the total amount of the grant,  
except that fiscally constrained counties that are awarded  
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 may immediately be  
256 relayed to the misdemeanor court, which may provide the results  
257 to counsel for the state and defense. The misdemeanor court may  
258 then enter an order setting or amending the conditions of the  
259 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.