

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1420

INTRODUCER: Health Policy Committee and Senator Sobel

SUBJECT: Mental Health Treatment

DATE: April 16, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davlantes</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	<u>Brown</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1420 amends certain statutes that govern mental health issues for criminal defendants and juveniles charged with delinquent acts.

The bill:

- Provides for the continuation of treatment with psychotherapeutic drugs, under limited circumstances, by the Department of Children and Families (DCF) for defendants and forensic clients that have received such treatment in a jail prior to relocation to a DCF facility;
- Changes the period of time under which certain charges against a defendant adjudicated incompetent due to mental illness will be dismissed, under specified conditions and exceptions, from five years to three years; and
- Provides additional parameters for how incompetency is determined in juvenile delinquency cases.

The bill has no fiscal impact on the DCF and is likely to reduce the workload of the state courts system by an indeterminate amount.

The bill provides an effective date of July 1, 2013.

This bill substantially amends the following sections the Florida Statutes: 916.107, 916.13, 916.145, 916.15, and 985.19.

II. Present Situation:

The Due Process Clause of the 14th Amendment to the U.S. Constitution prohibits states from trying and convicting defendants who are incompetent to stand trial.¹ States must have procedures in place that adequately protect a defendant's right to a fair trial, which includes his or her participation in all material stages of the process.² Defendants (including juveniles charged with having committed felony-level delinquent acts) must be able to appreciate the range and nature of the charges and penalties that may be imposed and must be able to understand the adversarial nature of the legal process and disclose to counsel facts pertinent to the proceedings. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.³

If a defendant is suspected of being incompetent, the court or counsel for the defendant or the state may file a motion for examination to have the defendant's cognitive state assessed. If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing. If the defendant is found to be competent, the criminal proceeding resumes. If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.⁴

Restoration of Competency

Competency restoration is designed to help defendants meaningfully participate in their own defense. In Florida, the DCF has oversight of felony defendants who are found incompetent to proceed due to mental illness, while the Agency for Persons with Disabilities (APD) is charged with oversight of felony defendants who are incompetent to proceed due to developmental disabilities.⁵ Competency restoration training and mental health services are provided in four state forensic facilities that have a total of 1,108 beds. Two facilities are state-operated and two are operated under contract with a private provider.⁶ The DCF served 2,531 adults who were committed for competency restoration services during Fiscal Year 2011-2012.⁷

The DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation, or autism.⁸ The DCF has outsourced competency restoration training by contract in both the community and

¹ See *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S. 961, 76 S. Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).

² *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P., Rule 8.095(d)(1), Fla.R.Juv.P.

³ *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.

⁴ Rule 3.210(b), 3.211, 3.212, Fla.R.Crim.P.; Rule 8.095(a)(1)-(6), Fla.R.Juv.P.

⁵ Ch. 916, F.S.

⁶ DCF Analysis of SB 1420 dated March 7, 2013. On file with Health Policy Committee staff.

⁷ *Id.*

⁸ s. 985.19(4), F.S.

secure residential settings. The DCF served 405 incompetent-to-proceed children in Fiscal Year 2011-2012.⁹

If a court determines that a defendant is a danger to himself or herself or others, the court may commit the defendant to a secure forensic facility.¹⁰ Defendants may be placed on conditional release to receive competency restoration training in the community if the court finds they do not pose a risk to public safety.¹¹

Once a defendant is determined to have regained his or her competence to proceed, the court is notified and a hearing is set for the judge to determine the defendant's competency.¹² If the court finds the defendant to be competent, the criminal proceeding resumes. If, however, the court finds the defendant incompetent to proceed, the defendant is returned to a forensic facility or community restoration on conditional release until competency is restored.¹³

Qualifications of Competency Experts

Section 916.115 (1)(a), F.S., provides that experts appointed by the court to conduct competency evaluations shall, to the extent possible, have completed forensic evaluator training approved by the DCF and each shall be a psychiatrist, licensed psychologist, or physician. The DCF is required by s. 916.115 (1)(b), F.S., to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.

In the juvenile justice system, the court appoints mental health experts to conduct competency evaluations although there does not appear to be a specific requirement in the juvenile competency statute that the expert be a psychiatrist, licensed psychologist, or physician as is the case in the adult system.¹⁴ As in the adult system, the DCF provides the court with a list of experts who have completed a DCF-approved training program.¹⁵

The APD conducts evaluations and makes reports to the court regarding juveniles who meet the definition of "retardation" or "autism."¹⁶ Although there is a requirement in s. 916.301(2)(b)1., F.S., that the expert appointed to examine adult defendants be a psychologist, the juvenile statute does not make such a specification.

Hearing to Determine Restoration of Competency or Need for Continued Commitment

When the court adjudicates a defendant incompetent to proceed and the defendant is committed to the DCF to be restored to competency, or if the defendant has been found not guilty by reason

⁹ DCF Analysis of SB 1420 dated March 7, 2013. On file with Health Policy Committee staff.

¹⁰ s. 916.13, F.S.

¹¹ s. 916.17, F.S.

¹² Rule 3.212, Fla.R.Crim.P.

¹³ *Id.*

¹⁴ s. 985.19(1)(b), F.S.

¹⁵ s. 985.19(1)(d), F.S.

¹⁶ s. 985.19(1)(e), F.S.

of insanity and committed to the DCF, the defendant is returned to court periodically for a review and report on his or her condition.¹⁷ Generally, a review is conducted:

- No later than six months after the date of admission;
- At the end of any extended period of commitment;
- At any time the facility administrator communicates to the court that the defendant no longer meets commitment criteria; or
- Upon counsel's motion for review having been granted.

Rules of Criminal and Juvenile Procedure require that a hearing be held within 30 days of the court receiving the administrator's pre-hearing report.¹⁸ There is no corresponding statutory time constraint on the court conducting a hearing.

The court also retains jurisdiction for purposes of dismissing charges if a defendant has not become competent within five years.¹⁹

Psychotropic Medication

The DCF is responsible for providing treatment deemed necessary to fulfill its obligation under the statutes governing competency restoration and mental illness. Forensic clients of the DCF, which include defendants who have been committed to the DCF for competency restoration or because they have been found not guilty by reason of insanity, must be treated with dignity and respect.

When treatment is needed, forensic clients are asked to give express and informed consent.²⁰ When needed treatment is refused, treatment may nonetheless be provided in an emergency situation for periods of up to 48 hours (excluding weekends and holidays, subject to review in 48-hour increments by a physician until a court rules), unless or until the DCF obtains a court order authorizing continued treatment.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 916.107, F.S., concerning administration of psychotherapeutic medications to forensic clients. If a client has been receiving psychotherapeutic medications in jail at the time of transfer to the forensic or civil facility and lacks informed decision-making capacity with respect to mental health treatment, the admitting physician at the facility may order continued administration of these medications if he or she judges that abrupt cessation could jeopardize the health or safety of the client during the period before acquisition of a court order for medication administration. To continue the psychotherapeutic medication, the facility administrator or his or her designee must petition the committing court or the local circuit court for an authorization order. This petition must be made within five business days after admission of the client. The jail

¹⁷ ss. 916.13(2), 916.15(3) and 916.302(2)(a), F.S. See also s. 985.19(4)(e), (5) and (6), F.S., related to the court's jurisdiction and reporting requirements in juvenile cases.

¹⁸ Rules 3.212 and 3.218, Fla.R.Crim.P.; Rule 8.095(a)(5), Fla.R.Juv.P. See also Rule 8.095(e), Fla.R.Juv.P.

¹⁹ s. 916.145, 916.303, F.S. Regarding dismissal of charges of juvenile delinquency, see s. 985.19(5)(c), F.S.

²⁰ s. 916.107(3), F.S.

²¹ *Id.*

physician must also provide a current therapeutic medication order for the client at the admitting physician's request or at the time of transfer to the facility.

Section 2 amends s. 916.13, F.S., to require the court to hold a competency hearing within 30 days after receiving notification that any facility client adjudicated mentally incompetent no longer meets the criteria for continued commitment.

Section 3 amends s. 916.145, F.S., to state that charges against any defendant adjudicated mentally incompetent will be dismissed without prejudice, which allows for refileing the case, if he or she remains incompetent three years after the initial competency decision was made (instead of five years as provided under current law), unless the court believes that he or she will become competent in the future. However, if the defendant was committed in relation to an allegation of certain crimes, the period before charge dismissal remains five years. Such crimes include:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; and
- Aggravated stalking.

Section 4 amends s. 916.15, F.S., to require the court to hold a competency hearing within 30 days after receiving notification that any facility client adjudicated not guilty by reason of insanity no longer meets the criteria for continued commitment.

Section 5 amends s. 985.19, F.S., to change references to the Department of Children and Family Services to the Department of Children and Families and provides additional details for how incompetency is determined in juvenile delinquency cases. A child is considered competent to proceed if he or she has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and has a rational and factual understanding of the proceedings.²²

A child's competency evaluation report must specifically state the basis for the determination of his or her mental condition and must also include written findings that:

²² This definition is very similar to how competency and incompetency are described in s. 916.12(1), F.S., governing adults.

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Assess the child's capacity to:
 - Appreciate the charges or allegations against him or her;
 - Appreciate the range and nature of possible penalties that may be imposed in proceedings against him or her, if applicable;
 - Understand the adversarial nature of the legal process;
 - Disclose to counsel facts pertinent to the proceedings at issue;
 - Display appropriate courtroom behavior; and
 - Testify relevantly.

The evaluation report must also include a summary of findings which presents the factual basis for the expert's clinical findings and opinions of the child's mental condition, and this factual basis must be supported by the diagnostic criteria found in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association. The summary of findings must include:

- The day, month, year, and length of time of the face-to-face diagnostic clinical interview to determine the child's mental condition;
- A statement that identifies the DSM clinical name and associated diagnostic code for the specific mental disorder that forms the basis of the child's incompetency;
- A statement of how the child would benefit from competency restoration services in the community or in a secure residential treatment facility;
- An assessment of the probable duration of the treatment to restore competence and the probability that the child will attain competence to proceed in the foreseeable future; and
- A description of recommended treatment or education appropriate for the mental disorder.

If the evaluator finds the child to be incompetent to proceed to trial, he or she must report on the mental disorder that forms the basis of the incompetency.

The bill also changes the term "incompetency evaluations" to "competency evaluations" in this section.

For competency evaluations related to mental retardation or autism, the bill requires the evaluator to provide a clinical opinion as to whether the child is competent to proceed with delinquency hearings.

Section 6 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Adults and children with mental illness will be evaluated and treated differently in the justice system. Some adults with mental illness may be released from facilities earlier.

C. Government Sector Impact:

The Office of the State Courts Administrator reports that the bill should significantly reduce the workload of the judiciary and the state courts system.

- The bill's amendment to s. 916.145, F.S., allows for the dismissal of charges against defendants found incompetent to proceed after three years instead of the current five years, except for alleged violent crimes specifically enumerated in the bill.
- Criminal courts have to monitor and hold status hearings for these defendants until their charges are dismissed or competency is restored. The majority of these defendants are non-violent and on conditional release in community placements.
- Reducing the period to three years would eliminate two years of monitoring and status hearings by the criminal courts.
- The amendments to current law requiring the courts to hold competency and commitment hearings within 30 days will have no impact because the courts are already required to do so pursuant to the Florida Rules of Criminal Procedure 3.212 and 3.218.²³
- Without data that incorporates changes made by the bill, the effect on judicial workload cannot be accurately quantified. Any judicial workload impact as a result of the bill will be reflected in the Supreme Court's annual opinion *In re: Certification of Need for Additional Judges*.

The DCF reports no fiscal impact.²⁴

²³ Office of the State Courts Administrator, Analysis of CS/SB 1420, March 26, 2012. On file with Senate Criminal Justice Committee staff.

²⁴ DCF Analysis of SB 1420 dated March 7, 2013. On file with Senate Health Policy Committee staff.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 20, 2013:

The CS specifies the crimes for which the period before charge dismissal for a defendant adjudicated mentally incompetent is five years.

- B. **Amendments:**

None.