

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>    </u>	

1 Committee/Subcommittee hearing bill: Healthy Families  
 2 Subcommittee

3 Representative Schwartz offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (3) of section  
 8 916.107, Florida Statutes, is amended to read:

9 916.107 Rights of forensic clients.—

10 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

11 (a) A forensic client shall be asked to give express and  
 12 informed written consent for treatment. If a client refuses such  
 13 treatment as is deemed necessary and essential by the client's  
 14 multidisciplinary treatment team for the appropriate care of the  
 15 client, such treatment may be provided under the following  
 16 circumstances:

17 1. In an emergency situation in which there is immediate  
 18 danger to the safety of the client or others, such treatment may  
 19 be provided upon the written order of a physician for a period  
 20 not to exceed 48 hours, excluding weekends and legal holidays.

Amendment No.

21 If, after the 48-hour period, the client has not given express  
22 and informed consent to the treatment initially refused, the  
23 administrator or designee of the civil or forensic facility  
24 shall, within 48 hours, excluding weekends and legal holidays,  
25 petition the committing court or the circuit court serving the  
26 county in which the facility is located, at the option of the  
27 facility administrator or designee, for an order authorizing the  
28 continued treatment of the client. In the interim, the need for  
29 treatment shall be reviewed every 48 hours and may be continued  
30 without the consent of the client upon the continued written  
31 order of a physician who has determined that the emergency  
32 situation continues to present a danger to the safety of the  
33 client or others.

34 2. In a situation other than an emergency situation, the  
35 administrator or designee of the facility shall petition the  
36 court for an order authorizing necessary and essential treatment  
37 for the client.

38 a. If the client has been receiving psychotherapeutic  
39 medication at the jail at the time of transfer to the forensic  
40 or civil facility and lacks the capacity to make an informed  
41 decision regarding mental health treatment at the time of  
42 admission, the admitting physician may order continued  
43 administration of the psychotherapeutic medication if, in the  
44 clinical judgment of the physician, abrupt cessation of the  
45 psychotherapeutic medication could pose a risk to the health or  
46 safety of the client during the time a court order to medicate  
47 is pursued. The administrator or designee of the civil or  
48 forensic facility shall, within 5 days, excluding weekends and

Amendment No.

49 legal holidays, petition the committing court or the circuit  
50 court serving the county in which the facility is located, at  
51 the option of the facility administrator or designee, for an  
52 order authorizing the continued treatment of a client. The jail  
53 physician shall provide a current psychotherapeutic medication  
54 order at the time of transfer to the forensic or civil facility  
55 or upon request of the admitting physician after the client has  
56 been evaluated.

57       b. The court order shall allow such treatment for up to a  
58 period not to exceed 90 days after following the date of the  
59 entry of the order. Unless the court is notified in writing that  
60 the client has provided express and informed consent in writing  
61 or that the client has been discharged by the committing court,  
62 the administrator or designee shall, before ~~prior to~~ the  
63 expiration of the initial 90-day order, petition the court for  
64 an order authorizing the continuation of treatment for another  
65 90 days ~~90-day period~~. This procedure shall be repeated until  
66 the client provides consent or is discharged by the committing  
67 court.

68       3. At the hearing on the issue of whether the court should  
69 enter an order authorizing treatment for which a client was  
70 unable to or refused to give express and informed consent, the  
71 court shall determine by clear and convincing evidence that the  
72 client has mental illness, retardation, or autism, that the  
73 treatment not consented to is essential to the care of the  
74 client, and that the treatment not consented to is not  
75 experimental and does not present an unreasonable risk of  
76 serious, hazardous, or irreversible side effects. In arriving at

Amendment No.

77 the substitute judgment decision, the court must consider at  
78 least the following factors:

- 79 a. The client's expressed preference regarding treatment;
- 80 b. The probability of adverse side effects;
- 81 c. The prognosis without treatment; and
- 82 d. The prognosis with treatment.

83  
84 The hearing shall be as convenient to the client as may be  
85 consistent with orderly procedure and shall be conducted in  
86 physical settings not likely to be injurious to the client's  
87 condition. The court may appoint a general or special magistrate  
88 to preside at the hearing. The client or the client's guardian,  
89 and the representative, shall be provided with a copy of the  
90 petition and the date, time, and location of the hearing. The  
91 client has the right to have an attorney represent him or her at  
92 the hearing, and, if the client is indigent, the court shall  
93 appoint the office of the public defender to represent the  
94 client at the hearing. The client may testify or not, as he or  
95 she chooses, and has the right to cross-examine witnesses and  
96 may present his or her own witnesses.

97 Section 2. Subsection (2) of section 916.13, Florida  
98 Statutes, is amended to read:

99 916.13 Involuntary commitment of defendant adjudicated  
100 incompetent.—

101 (2) A defendant who has been charged with a felony and who  
102 has been adjudicated incompetent to proceed due to mental  
103 illness, and who meets the criteria for involuntary commitment  
104 ~~to the department under the provisions of this chapter,~~ may be

Amendment No.

105 committed to the department, and the department shall retain and  
106 treat the defendant.

107 (a) Within ~~No later than~~ 6 months after the date of  
108 admission and at the end of any period of extended commitment,  
109 or at any time the administrator or designee has ~~shall have~~  
110 determined that the defendant has regained competency to proceed  
111 or no longer meets the criteria for continued commitment, the  
112 administrator or designee shall file a report with the court  
113 pursuant to the applicable Florida Rules of Criminal Procedure.

114 (b) A competency hearing must be held within 30 days after  
115 the court receives notification that the defendant is competent  
116 to proceed or no longer meets the criteria for continued  
117 commitment.

118 Section 3. Section 916.145, Florida Statutes, is amended  
119 to read:

120 916.145 Dismissal of charges.—

121 The charges against any defendant adjudicated incompetent  
122 to proceed due to the defendant's mental illness shall be  
123 dismissed without prejudice to the state if the defendant  
124 remains incompetent to proceed 3\_5 years after such  
125 determination or 5 years after such determination if a charge  
126 related to commitment includes an allegation of a violent crime  
127 against person, unless the court in its order specifies its  
128 reasons for believing that the defendant will become competent  
129 to proceed within the foreseeable future and specifies the time  
130 within which the defendant is expected to become competent to  
131 proceed. The charges against the defendant are dismissed without

Amendment No.

132 prejudice to the state to refile the charges should the  
133 defendant be declared competent to proceed in the future.

134 Section 4. Subsection (5) is added to section 916.15,  
135 Florida Statutes, to read:

136 916.15 Involuntary commitment of defendant adjudicated not  
137 guilty by reason of insanity.—

138 (5) The commitment hearing must be held within 30 days  
139 after the court receives notification that the defendant no  
140 longer meets the criteria for continued commitment.

141 Section 5. Present paragraphs (c) through (e) of subsection  
142 (1) of section 985.19, Florida Statutes, are redesignated as  
143 paragraphs (d) through (f), respectively, and a new paragraph  
144 (c) is added to that subsection, to read:

145 985.19 Incompetency in juvenile delinquency cases.—

146 (1) If, at any time prior to or during a delinquency case,  
147 the court has reason to believe that the child named in the  
148 petition may be incompetent to proceed with the hearing, the  
149 court on its own motion may, or on the motion of the child's  
150 attorney or state attorney must, stay all proceedings and order  
151 an evaluation of the child's mental condition.

152 (a) Any motion questioning the child's competency to  
153 proceed must be served upon the child's attorney, the state  
154 attorney, the attorneys representing the Department of Juvenile  
155 Justice, and the attorneys representing the Department of  
156 Children and Families. ~~Family Services.~~ Thereafter, any motion,  
157 notice of hearing, order, or other legal pleading relating to  
158 the child's competency to proceed with the hearing must be  
159 served upon the child's attorney, the state attorney, the

Amendment No.

160 attorneys representing the Department of Juvenile Justice, and  
161 the attorneys representing the Department of Children and  
162 Families. ~~Family Services.~~

163 (b) All determinations of competency must ~~shall~~ be made at  
164 a hearing, with findings of fact based on an evaluation of the  
165 child's mental condition made by at least ~~not less than~~ two but  
166 not ~~nor~~ more than three experts appointed by the court. ~~The~~  
167 ~~basis for the determination of incompetency must be specifically~~  
168 ~~stated in the evaluation. In addition, a recommendation as to~~  
169 ~~whether residential or nonresidential treatment or training is~~  
170 ~~required must be included in the evaluation.~~ Experts appointed  
171 by the court to determine the mental condition of a child shall  
172 be allowed reasonable fees for services rendered. State  
173 employees may be paid expenses pursuant to s. 112.061. The fees  
174 shall be taxed as costs in the case.

175 (c) A child is competent to proceed if the child has  
176 sufficient present ability to consult with counsel with a  
177 reasonable degree of rational understanding and the child has a  
178 rational and factual understanding of the present proceedings.  
179 The expert's competency evaluation report must specifically  
180 state the basis for the determination of the child's mental  
181 condition and must include written findings that:

- 182 1. Identify the specific matters referred for evaluation.
- 183 2. Identify the sources of information used by the expert.
- 184 3. Describe the procedures, techniques, and diagnostic  
185 tests used in the examination to determine the basis of the  
186 child's mental condition.
- 187 4. Address the child's capacity to:

Amendment No.

188 a. Appreciate the charges or allegations against the child.

189 b. Appreciate the range and nature of possible penalties  
190 that may be imposed in the proceedings against the child, if  
191 applicable.

192 c. Understand the adversarial nature of the legal process.

193 d. Disclose to counsel facts pertinent to the proceedings  
194 at issue.

195 e. Display appropriate courtroom behavior.

196 f. Testify relevantly.

197 5. Present the factual basis for the expert's clinical  
198 findings and opinions of the child's mental condition. The  
199 expert's factual basis of their clinical findings and opinions  
200 must be supported by the diagnostic criteria found in the most  
201 recent edition of the Diagnostic and Statistical Manual (DSM) of  
202 the American Psychiatric Association and must be presented in a  
203 separate section of their report that shall be entitled "Summary  
204 of Findings". This section must include:

205 a. The day, month, year, and length of time of the face-to-  
206 face diagnostic clinical interview to determine the child's  
207 mental condition;

208 b. A statement that identifies the DSM clinical name and  
209 associated diagnostic code for the specific mental disorder that  
210 forms the basis of the child's incompetency;

211 c. A statement of how the child would benefit from  
212 competency restoration services in the community or in a secure  
213 residential treatment facility;

Amendment No.

214 d. An assessment of the probable duration of the treatment  
215 to restore competence, and the probability that the child will  
216 attain competence to proceed in the foreseeable future; and

217 e. A description of recommended treatment or education  
218 appropriate for the mental disorder.

219 6. If the evaluator determines the child to be incompetent  
220 to proceed to trial, the evaluator must report on the mental  
221 disorder that forms the basis of the incompetency.

222 ~~(d)(e)~~ All court orders determining incompetency must  
223 include specific written findings by the court as to the nature  
224 of the incompetency and whether the child requires secure or  
225 nonsecure treatment or training environment. ~~environments.~~

226 ~~(e)(d)~~ For competency incompetency evaluations related to  
227 mental illness, the Department of Children and Families ~~Family~~  
228 ~~Services~~ shall maintain and annually provide the courts with a  
229 list of available mental health professionals who have completed  
230 a training program approved by the Department of Children and  
231 Families ~~Family Services~~ to perform the evaluations.

232 ~~(f)(e)~~ For competency incompetency evaluations related to  
233 mental retardation or autism, the court shall order the Agency  
234 for Persons with Disabilities to examine the child to determine  
235 if the child meets the definition of "retardation" or "autism"  
236 in s. 393.063 and, provide a clinical opinion as to if so,  
237 whether the child is competent to proceed with delinquency  
238 proceedings.

239 ~~(f)~~ ~~A child is competent to proceed if the child has~~  
240 ~~sufficient present ability to consult with counsel with a~~  
241 ~~reasonable degree of rational understanding and the child has a~~

Amendment No.

242 ~~rational and factual understanding of the present proceedings.~~

243 ~~The report must address the child's capacity to:~~

244 ~~1. Appreciate the charges or allegations against the~~  
245 ~~child.~~

246 ~~2. Appreciate the range and nature of possible penalties~~  
247 ~~that may be imposed in the proceedings against the child, if~~  
248 ~~applicable.~~

249 ~~3. Understand the adversarial nature of the legal process.~~

250 ~~4. Disclose to counsel facts pertinent to the proceedings~~  
251 ~~at issue.~~

252 ~~5. Display appropriate courtroom behavior.~~

253 ~~6. Testify relevantly.~~

254 (g) Immediately upon the filing of the court order finding  
255 a child incompetent to proceed, the clerk of the court shall  
256 notify the Department of Children and Families ~~Family Services~~  
257 and the Agency for Persons with Disabilities and fax or hand  
258 deliver to the department and to the agency a referral packet  
259 that includes, at a minimum, the court order, the charging  
260 documents, the petition, and the court-appointed evaluator's  
261 reports.

262 (h) After placement of the child in the appropriate  
263 setting, the Department of Children and Families ~~Family Services~~  
264 in consultation with the Agency for Persons with Disabilities,  
265 as appropriate, must, within 30 days after placement of the  
266 child, prepare and submit to the court a treatment or training  
267 plan for the child's restoration of competency. A copy of the  
268 plan must be served upon the child's attorney, the state

Amendment No.

269 attorney, and the attorneys representing the Department of  
270 Juvenile Justice.

271 Section 6. This act shall take effect July 1, 2013.  
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275 **T I T L E A M E N D M E N T**

276 Remove everything before the enacting clause and insert:  
277 An act relating to mental health treatment; amending s. 916.107,  
278 F.S.; authorizing forensic and civil facilities to order the  
279 continuation of psychotherapeutic medication for individuals  
280 receiving such medication in the jail prior to admission;  
281 amending s. 916.13, F.S.; providing timeframe for competency  
282 hearings to be held; amending s. 916.145, F.S.; reducing the  
283 time for dismissal of charges for defendants found non-  
284 restorable from 5 years to 3 years, except in cases of alleged  
285 violent crimes against persons which shall remain at 5 years;  
286 amending s. 916.15, F.S.; providing timeframe for commitment  
287 hearings to be held; amending s. 985.19, F.S.; standardizing the  
288 protocols, procedures, diagnostic criteria, and information and  
289 findings that must be included in an expert's competency  
290 evaluation report; and providing an effective date.