

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 Children, Families, and Elder Affairs

BILL: SB 1284

INTRODUCER: Senator Simon

SUBJECT: Criminal Defendants Adjudicated Incompetent to Proceed

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1284 requires the Department of Children and Families (the DCF) to initiate a transfer evaluation to determine if a defendant deemed incompetent to proceed meets the criteria for involuntary civil commitment in instances where the DCF determines the defendant is unlikely to regain competence. It also requires that a copy of that evaluation be provided to the court and counsel before initiating any transfer of the defendant back to the committing jurisdiction.

The bill will likely have an indeterminate impact on state government and the private sector. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Competency Restoration Treatment and Forensic Facilities

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism, and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed¹ and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil and forensic treatment facilities by the circuit court,² or in lieu of such commitment, may be released on conditional release³ by

¹ “Incompetent to proceed” means “the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding” or “the defendant has no rational, as well as factual, understanding of the proceedings against her or him.” Section 916.12(1), F.S.

² Sections 916.13, 916.15, and 916.302, F.S.

³ Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.

the circuit court if the person is not serving a prison sentence.⁴ The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release and a defendant may not be released from either commitment or conditional release except by order of the committing court.⁵

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. Florida law provides for the ability to commit a person under either basis; however, the goals for the commitment are different for each basis of the commitment. Persons committed under s. 916.13, F.S., after an adjudication of incompetency to proceed have a primary goal of restoration of competency; whereas persons who have been found not guilty by reason of insanity that are committed have a primary goal of stabilization and post-hospital planning.

A civil facility is, in part, a mental health facility established within the DCF or by contract with the DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.⁶

A forensic facility is a separate and secure facility established within the DCF or the Agency for Persons with Disabilities (the APD) to service forensic clients committed pursuant to ch. 916, F.S.⁷ A separate and secure facility means a security-grade building for the purposes of separately housing individuals with mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed from non-forensic residents.⁸

State Forensic System – Mental Health Treatment for Criminal Defendants

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental health issues and who are involved with the criminal justice system.

Mental Health Treatment Facilities

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH), the Northeast Florida State Hospital (NEFSH), and the North Florida Evaluation and Treatment Center (NFETC).⁹ The DCF also contracts with a private provider to operate three additional facilities that provide competency restoration training. The facilities are the South Florida

⁴ Section 916.17(1), F.S.

⁵ Section 916.16(1), F.S.

⁶ Section 916.106(4), F.S.

⁷ Section 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to ch. 916, F.S., from non-forensic residents.

⁸ *Id.*

⁹ The DCF, *State Mental Health Treatment Facilities*, available at <https://www2.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml> last visited March 22, 2023).

Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility which are operated by Wellpath Recovery Solutions (Wellpath).¹⁰

The FSH, located in Chattahoochee, Florida, is a state psychiatric hospital that provides civil and forensic services.¹¹ The hospital's civil services are comprised of the following three units with a total of 490 beds:

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.¹²

The hospital's forensic services section evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and
- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.¹³

The NEFSH, located in Macclenny, Florida, is a state psychiatric hospital that provides civil services.¹⁴ The facility operates 633 beds and is the largest state-owned provider of psychiatric care and treatment to civilly committed individuals in Florida. Referrals are based upon community and regional priorities for admission.¹⁵

The NFETC, located in Gainesville, Florida, is an evaluation and treatment center for people with mental illnesses who are involved in the criminal justice system.¹⁶ The center has 193 beds open for the evaluation and treatment of residents who have major mental disorders. These residents are either incompetent to proceed to trial or have been judged to be not guilty by reason of insanity.¹⁷

¹⁰ *Id.*

¹¹ The DCF, *Forensic Facilities*, available at <https://www2.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml> (last visited March 22, 2023).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

As of March 15, 2023, there were a total of 330 individuals on the waitlist for forensic beds at the state's mental health facilities.¹⁸ Individuals spend 59 days on the waitlist on average.¹⁹

Determination of Incompetency

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.²⁰ 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.²¹ If the defendant is found to be competent, the criminal proceeding resumes.²² If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.²³

Judicial Determination of Incompetency and Commitment

A defendant is deemed incompetent to proceed if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.²⁴

Mental health experts appointed pursuant to s. 916.115, F.S., must first determine whether the defendant has a mental illness and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed.²⁵ A defendant must be evaluated by no fewer than two experts before the court commits the defendant or takes other action, except if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding. The court may commit the defendant or take other action without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant.²⁶ Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.²⁷

In considering the issue of competence to proceed, an examining expert must first consider and specifically include in his or her report the defendant's capacity to:

- Appreciate the charges or allegations against the defendant;
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- Understand the adversarial nature of the legal process;

¹⁸ The DCF, E-mail from John Paul Fiore, Legislative Affairs Director, *Forensic Bed Waitlist*, March 15, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁹The DCF, E-mail from John Paul Fiore, Legislative Affairs Director, *Re: SB 1600*, January 29, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁰ Rule 3.210, Fla.R.Crim.P.

²¹ *Id.*

²² Rule 3.212, Fla.R.Crim.P.

²³ *Id.*

²⁴ Section 916.12(1), F.S.

²⁵ Section 916.12(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

- Disclose to counsel facts pertinent to the proceedings at issue;
- Manifest appropriate courtroom behavior; and
- Testify relevantly.²⁸

In addition, an examining expert must consider and include in his or her report any other factor deemed relevant by the expert.²⁹

If an expert finds that the defendant is incompetent to proceed, the expert must report on any recommended treatment for the defendant to attain competence to proceed.³⁰ In considering the issues relating to treatment, the examining expert must specifically report on:

- The mental illness causing the incompetence;
- The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives in order of choices;
- The availability of acceptable treatment and, if treatment is available in the community, the expert shall so state in the report; and
 - 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.³¹

A defendant who, because of psychotropic medication,³² is able to understand the nature of proceedings and assist in the defendant's own defense must not automatically be deemed incompetent to proceed simply because the defendant's satisfactory mental functioning is dependent upon such medication.³³

If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.³⁴

²⁸ Section 916.12(3), F.S.

²⁹ *Id.*

³⁰ Section 916.12(4), F.S.

³¹ *Id.*

³² "Psychotropic medication" is defined to mean any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs. Section 916.12(5), F.S.

³³ Section 916.12(5), F.S.

³⁴ Sections 916.13(2)(b) and 916.15(3)(c), F.S. For involuntary commitment of a person under s. 916.15, F.S., the additional report must be submitted prior to the end of any period of extended commitment, rather than "at the end" of the extended commitment.

Judicial Procedure for Release and Transportation Back to Committing Jurisdiction

Current law also requires that a competency hearing must be held within 30 days after the court receives notification that a defendant is competent to proceed or no longer meets the criteria for continued commitment.³⁵ However, many defendants are either not being transported back to the committing jurisdiction in a timely manner or are not being transported for the hearing at all.³⁶ While patients await transportation back to the county with jurisdiction, they remain at a treatment facility.³⁷ There are between 80 and 100 competent individuals in treatment facilities awaiting transportation back to the committing jurisdiction on an average day.³⁸ As a result, the waitlist for state mental health services is longer as it contains some individuals left in state facilities that are occupying beds which could be utilized by those awaiting treatment.³⁹

While s. 916.13, F.S., requires that a competency hearing be held within 30 days of receiving a competency notification, there are instances in which courts do not make a determination of competency during an initial hearing, resulting in a defendant remaining at a treatment facility for longer than the maximum 30 days required by current law.⁴⁰ Additionally, in some instances individuals that are transported back to the committing jurisdiction decompensate⁴¹ before a determination of competency can be made because hearings are continued or not scheduled within the 30-day timeframe.⁴²

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.⁴³ 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.⁴⁴

Incompetent to Proceed and Non-Restorable

If after being committed the defendant does not respond to treatment and is deemed non-restorable, the administrator of the commitment facility must notify the court by filing a report in the criminal case.⁴⁵ Those who are found to be non-restorable must be civilly committed or released.⁴⁶

³⁵ Sections 916.13(2)(c) and 916.15(5), F.S.

³⁶ The DCF Analysis at p. 3.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Psychiatrists and psychologists use the term "decompensating" to describe worsening symptoms of mental illness. An "episode of decompensation" is a period of significant, often rapid, deterioration in mental health, such as a panic attack. *See Episodes of Decompensation in Mental Illness: Social Security Disability*, available at <https://www.disabilitysecrets.com/mic2.html> (last visited March 14, 2023).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Section. 916.13(2)(b), F.S.

⁴⁶ *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004).

Non-Restorable Competency

An individual's competency is considered non-restorable when it is not likely that he or she will regain competency in the foreseeable future.⁴⁷ The DCF must make every effort to restore the competency of those committed pursuant to ch. 916, F.S., as incompetent to proceed.⁴⁸ To ensure that all possible treatment options have been exhausted, all competency restoration attempts in less restrictive, step-down facilities should be considered prior to making a recommendation of non-restorability, particularly for individuals with violent charges.⁴⁹

Florida Rules of Criminal Procedure 3.213 and s. 916.145, F.S., require dismissal of charges if an individual remains incompetent to proceed for five years (with the exception of individuals adjudicated incompetent to proceed with sentencing) unless the court specifically finds that the individual will become competent within the foreseeable future and specifies the timeframe in which the individual is expected to become competent.⁵⁰ After an evaluator of competency has completed a competency evaluation and opined that there is not a substantial probability of competency restoration in the current environment in the foreseeable future, the evaluator will notify the appropriate recovery team coordinator that the individual's competency does not appear to be restorable.⁵¹ A recovery team is an assigned group of individuals with specific responsibilities identified on the recovery plan including the resident, psychiatrist, guardian/guardian advocate (if resident has a guardian/guardian advocate), community case manager, family member and other treatment professionals commensurate with the resident's needs, goals, and preferences.⁵²

The recovery team is required to meet to consider the individual's restorability.⁵³ However, prior to the team meeting, an independent evaluation must be conducted to examine suitability for involuntary placement.⁵⁴ Once the recovery team meets it must consider the following:

- Mental and emotional symptoms affecting competency to proceed;
- Medical conditions affecting competency to proceed;
- Current treatments and activities to restore competency to proceed;
- Whether relevant symptoms and conditions are likely to demonstrate substantive improvement;
- Whether relevant and feasible treatments remain that have not been attempted, including competency restoration training in a less restrictive, step-down facility; and
- Additional information as needed (including barriers to discharge, pending warrants and detainers, dangerousness, self-neglect).⁵⁵

⁴⁷ The DCF Operating Procedures No. 155-13, *Mental Health and Substance Abuse: Incompetent to Proceed and Non-Restorable Status* at p. 1., September 2021, available at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-13_incompetence_to_proceed_and_non-restorable_status.pdf (last visited March 22, 2023).

⁴⁸ *Id.* at p. 3.

⁴⁹ *Id.*

⁵⁰ *Id.* at p. 7.

⁵¹ *Id.* at p. 3.

⁵² *Id.* at p. 2.

⁵³ *Id.* at p. 3.

⁵⁴ *Id.*

⁵⁵ *Id.*

The recovery team must document the team meeting and considerations for review, and, if applicable, the extent to which the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S., or involuntary inpatient placement pursuant to s. 394.467(1), F.S. Each member of the recovery team must provide a recommendation for disposition. Individuals with competency reported as non-restorable may be considered, as appropriate, for recommendations of release without legal conditions or involuntary examination or inpatient placement.⁵⁶

Competency Evaluation Report

Following the completion of the competency evaluation, the evaluator must complete a competency evaluation report to the circuit court.⁵⁷ The report must include the following:

- A description of mental, emotional, and behavioral disturbances;
- An explanation to support the opinion of incompetence to proceed;
- The rationale to support why the individual is unlikely to gain competence to proceed in the foreseeable future;
- A clinical opinion that the individual no longer meets the criteria for involuntary forensic commitment pursuant to s. 916.13, F.S.; and
- A recommendation whether the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S.⁵⁸

The Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.⁵⁹ The Baker Act deals with Florida's mental health commitment laws, and includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations.⁶⁰ The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.⁶¹

Involuntary Examination

Individuals suffering from an acute mental health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.⁶² An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm

⁵⁶ *Id.* at p. 4.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Chapter 71-131, L.O.F.; The Baker Act is contained in ch. 394, F.S.

⁶⁰ Sections 394.451 through 394.47891, F.S.

⁶¹ Section 394.459, F.S.

⁶² Sections 394.4625 and 394.463, F.S., respectively.

to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.⁶³

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;⁶⁴
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;⁶⁵ or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.⁶⁶

Involuntary patients must be taken to either a public or private facility which has been designated by the DCF as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold, or refer, as appropriate, involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.⁶⁷ The patient must be examined by the receiving facility within 72 hours of the initiation of the involuntary examination and specified actions must be taken within that time frame to address the individual needs of the patient.⁶⁸

III. Effect of Proposed Changes:

The bill requires the DCF to, if the DCF determines that a defendant will not, or is unlikely to gain competence to proceed to trial, initiate a transfer evaluation to determine if the defendant meets the criteria for involuntary civil commitment under the Baker Act. The bill also requires a copy of the transfer to be provided to the court and counsel before initiating the transfer of the defendant back to the committing jurisdiction.

The bill will provide courts with an opportunity to ensure that individuals whose competency is likely non-restorable but who still meet Baker Act commitment criteria to receive crisis services they may otherwise not receive.

The bill is effective July 1, 2023.

⁶³ Section 394.463(1), F.S.

⁶⁴ Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.

⁶⁵ Section 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.

⁶⁶ Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record

⁶⁷ Section 394.455(40), F.S.

⁶⁸ Section 394.463(2)(g), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF states that it cannot determine how many individuals may be affected by the bill, and as such the fiscal impact to the agency is indeterminate.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶⁹ The DCF, *Agency Analysis of SB 1284*, p. 4, January 1, 2023. (On file with the Senate Committee on Children, Families, and Elder Affairs).

VIII. Statutes Affected:

This bill substantially amends section 916.13 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
