

By Senator Haridopolos

26-1114-05

1 A bill to be entitled
2 An act relating to competency to proceed;
3 amending s. 916.115, F.S.; requiring an expert
4 appointed to examine a defendant to evaluate
5 the defendant with mental illness in a facility
6 of the Department of Corrections when
7 appropriate; amending s. 916.145, F.S.;
8 requiring a defendant be returned to the
9 custody of the Department of Corrections after
10 charges against the defendant are dismissed but
11 the defendant has an active sentence with the
12 department; amending s. 916.17, F.S.;
13 prohibiting a court from ordering a conditional
14 release if the defendant with mental illness
15 has an active sentence with the Department of
16 Corrections; amending s. 916.301, F.S.;
17 authorizing an expert to examine a defendant
18 who has mental retardation or autism in a
19 facility of the Department of Corrections;
20 amending s. 916.304, F.S.; prohibiting a court
21 from ordering a conditional release if the
22 defendant who has mental retardation or autism
23 has an active sentence with the Department of
24 Corrections; amending s. 922.07, F.S.;
25 providing for procedures when a person under
26 sentence of death is alleged to be insane;
27 requiring the Department of Children and Family
28 Services to supply a treatment team to evaluate
29 and treat the person; requiring the treatment
30 team to report to the Governor within a
31 specified time; authorizing the Governor to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 appoint a commission to reexamine the person;
2 providing that if the Governor determines that
3 the person has regained the mental capacity to
4 understand the nature of the death penalty, the
5 Governor shall lift the stay and proceed with
6 the execution; amending s. 945.41, F.S.;
7 providing for legislative intent for inmates
8 sentenced to death who may not be competent to
9 participate in postconviction proceedings;
10 amending s. 945.42, F.S.; redefining the term
11 "psychologist"; creating s. 945.501, F.S.;
12 defining terms relating to inmates sentenced to
13 death who may not be competent to participate
14 in postconviction proceedings; creating s.
15 945.502, F.S.; authorizing counsel to file a
16 motion requesting the court to determine
17 whether the inmate is competent to proceed;
18 providing procedures to determine the
19 competency of the inmate; requiring the court
20 to appoint examining experts; providing for
21 responsibilities of the experts; requiring the
22 experts to file a report with the court;
23 requiring the court to hold a hearing; creating
24 s. 945.503, F.S.; providing procedures to
25 determine whether an inmate found not competent
26 to proceed should be committed to the
27 Department of Children and Family Services for
28 treatment or training; requiring the Department
29 of Children and Family Services to provide
30 treatment or training services; providing
31 procedures to reexamine the inmate; creating s.

1 945.504, F.S.; providing for involuntary
2 treatment of an inmate found not to be
3 competent to proceed who refuses to give
4 express and informed consent to the treatment
5 or training; providing procedures for emergency
6 and nonemergency situations; providing a
7 hearing, authorizing the court to appoint a
8 master to preside at the hearing; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 916.115, Florida Statutes, is
14 amended to read:

15 916.115 Appointment of experts.--

16 (1)(a) Annually, the department shall provide the
17 courts with a list of mental health professionals who have
18 completed approved training as experts.

19 (b) The court may appoint no more than three nor fewer
20 than two experts to determine issues of the mental condition
21 of a defendant in a criminal case, including the issues of
22 competency to proceed, insanity, and involuntary
23 hospitalization or placement. The panel of experts may
24 evaluate the defendant in jail, in a Department of Corrections
25 facility, or in another appropriate local facility.

26 (c) To the extent possible, the appointed experts
27 shall have completed forensic evaluator training approved by
28 the department and be either a psychiatrist, licensed
29 psychologist, or physician.

30 (2) Expert witnesses appointed by the court to
31 evaluate the mental condition of a defendant in a criminal

1 case shall be allowed reasonable fees for services rendered as
2 evaluators of competence or sanity and as witnesses, which
3 shall be paid by the county in which the indictment was found
4 or the information or affidavit was filed. State employees
5 shall be paid expenses under ~~pursuant to~~ s. 112.061. The fees
6 shall be taxed as costs in the case. In order for the experts
7 to be paid for the services rendered, the reports and
8 testimony must explicitly address each of the factors and
9 follow the procedures set out in this chapter and in the
10 Florida Rules of Criminal Procedure.

11 Section 2. Section 916.145, Florida Statutes, is
12 amended to read:

13 916.145 Adjudication of incompetency due to mental
14 illness; dismissal of charges.--The charges against any
15 defendant adjudicated incompetent to proceed to trial due to
16 the defendant's mental illness shall be dismissed without
17 prejudice to the state if the defendant remains incompetent to
18 proceed 5 years after such determination, unless the court in
19 its order specifies its reasons for believing that the
20 defendant will become competent to proceed within the
21 foreseeable future and specifies the time within which the
22 defendant is expected to become competent to proceed. The
23 charges against the defendant are dismissed without prejudice
24 to the state to refile the charges should the defendant be
25 declared competent to proceed in the future. The defendant
26 shall be returned to the custody of the Department of
27 Corrections after the charges against the defendant are
28 dismissed, if the defendant has an active sentence with the
29 Department of Corrections.

30 Section 3. Subsections (1) and (3) of section 916.17,
31 Florida Statutes, are amended to read:

1 916.17 Conditional release.--

2 (1) The committing court may order a conditional
3 release of any defendant who has been found to be incompetent
4 to proceed or not guilty by reason of insanity, based on an
5 approved plan for providing appropriate outpatient care and
6 treatment, provided that the defendant does not have an active
7 sentence with the Department of Corrections. The committing
8 court may order a conditional release of any defendant in lieu
9 of an involuntary commitment to a facility under ~~pursuant to~~
10 s. 916.13 or s. 916.15. Upon a recommendation that outpatient
11 treatment of the defendant is appropriate, a written plan for
12 outpatient treatment, including recommendations from qualified
13 professionals, must be filed with the court, with copies to
14 all parties. ~~The~~ ~~Such a~~ plan may also be submitted by the
15 defendant and filed with the court with copies to all parties.
16 The plan shall include:

- 17 (a) Special provisions for residential care or
18 adequate supervision of the defendant.
- 19 (b) Provisions for outpatient mental health services.
- 20 (c) If appropriate, recommendations for auxiliary
21 services such as vocational training, educational services, or
22 special medical care.

23

24 In its order of conditional release, the court shall specify
25 the conditions of release based upon the release plan and
26 shall direct the appropriate agencies or persons to submit
27 periodic reports to the court regarding the defendant's
28 compliance with the conditions of the release and progress in
29 treatment, with copies to all parties.

30 (3) If at any time it is determined after a hearing
31 that the defendant no longer requires court-supervised

1 followup care, the court shall terminate its jurisdiction in
2 the cause and discharge the defendant, provided that the
3 defendant does not have an active sentence with the Department
4 of Corrections.

5 Section 4. Subsections (6) and (7) of section 916.301,
6 Florida Statutes, are amended to read:

7 916.301 Appointment of experts.--

8 (6) The panel of experts may examine the defendant in
9 jail, in a Department of Corrections facility, in another
10 appropriate ~~local~~ facility, or on an outpatient basis.

11 (7) Expert witnesses appointed by the court to
12 evaluate the mental condition of a defendant in a criminal
13 case shall be allowed reasonable fees for services rendered as
14 evaluators and as witnesses, which shall be paid by the county
15 in which the indictment was found or the information or
16 affidavit was filed. State employees shall be paid expenses
17 under ~~pursuant to~~ s. 112.061. The fees shall be taxed as costs
18 in the case. In order for the experts to be paid for the
19 services rendered, the reports and testimony must explicitly
20 address each of the factors and follow the procedures set out
21 in this chapter and in the Florida Rules of Criminal
22 Procedure.

23 Section 5. Subsections (1) and (3) of section 916.304,
24 Florida Statutes, are amended to read:

25 916.304 Conditional release.--

26 (1) If the defendant does not have an active sentence
27 with the Department of Corrections, the committing court may
28 order a conditional release of any defendant who has been
29 found to be incompetent to proceed, based on an approved plan
30 for providing continuing community-based training. The
31 committing criminal court may order a conditional release of

1 any defendant in lieu of an involuntary commitment to a
2 forensic facility under ~~pursuant to~~ s. 916.302. Upon a
3 recommendation that community-based training for the defendant
4 is appropriate, a written plan for community-based training,
5 including recommendations from qualified professionals, may be
6 filed with the court, with copies to all parties. ~~The Such a~~
7 plan may also be submitted by the defendant and filed with the
8 court, with copies to all parties. The plan shall include:

9 (a) Special provisions for residential care and
10 adequate supervision of the defendant, including recommended
11 location of placement.

12 (b) Recommendations for auxiliary services such as
13 vocational training, psychological training, educational
14 services, leisure services, and special medical care.

15
16 In its order of conditional release, the court shall specify
17 the conditions of release based upon the release plan and
18 shall direct the appropriate agencies or persons to submit
19 periodic reports to the courts regarding the defendant's
20 compliance with the conditions of the release and progress in
21 training, with copies to all parties.

22 (3) If at any time it is determined after a hearing
23 that the defendant no longer requires court-supervised
24 followup care, the court shall terminate its jurisdiction in
25 the cause and discharge the defendant. If the defendant has an
26 active sentence with the Department of Corrections, he or she
27 must be released to the custody of the Department of
28 Corrections.

29 Section 6. Section 922.07, Florida Statutes, is
30 amended to read:

1 922.07 Proceedings when person under sentence of death
2 is alleged ~~appears~~ to be insane.--

3 (1) If, at least 10 days before a scheduled execution,
4 ~~When~~ the Governor receives written notification from the
5 counsel of record of the inmate or a prison administrator is
6 ~~informed~~ that a person under sentence of death may be insane,
7 the Governor shall stay execution of the sentence and appoint
8 a commission of three psychiatrists to examine the convicted
9 person. The Governor shall notify the psychiatrists in writing
10 that they are to examine the convicted person to determine
11 whether he or she understands the nature and effect of the
12 death penalty and why it is to be imposed upon him or her.
13 The examination of the convicted person shall take place with
14 all three psychiatrists present at the same time. Counsel for
15 the convicted person and the state attorney may be present at
16 the examination. If the convicted person does not have
17 counsel, the court that imposed the sentence shall appoint
18 counsel to represent him or her.

19 (2) After receiving the report of the commission, if
20 the Governor decides that the convicted person has the mental
21 capacity to understand the nature of the death penalty and the
22 reasons why it was imposed upon him or her, the Governor shall
23 immediately lift the stay and notify the Attorney General of
24 such action. Within 10 days after ~~such~~ notification, the
25 Governor must set the new date for execution of the death
26 sentence. When the new date for execution of the death
27 sentence is set by the Governor under this subsection, the
28 Attorney General shall notify the inmate's counsel of record
29 of the date and time of execution.

30 (3) If the Governor decides that the convicted person
31 does not have the mental capacity to understand the nature of

1 | the death penalty and why it was imposed on him or her, the
2 | Governor shall have the convicted person transferred ~~committed~~
3 | to a Department of Corrections mental health treatment
4 | facility capable of housing death row inmates. A treatment
5 | team from the Department of Children and Family Services shall
6 | provide evaluation and treatment services to the inmate
7 | according to the contract provisions of s. 945.41(1). The
8 | treatment team shall report to the Governor on the mental
9 | condition of the inmate every 30 days.

10 | (4) At any time after the convicted person is
11 | transferred to the Department of Corrections mental health
12 | treatment facility, the Governor may appoint a commission to
13 | reexamine the convicted person. After receiving a report from
14 | the commission, if the Governor determines that the convicted
15 | person has regained the mental capacity to understand the
16 | nature of the death penalty and the reasons why it was imposed
17 | upon him or her, the Governor shall lift the stay and proceed
18 | as provided in subsection (2). ~~When a person under sentence of~~
19 | ~~death has been committed to a Department of Corrections mental~~
20 | ~~health treatment facility, he or she shall be kept there until~~
21 | ~~the facility administrator determines that he or she has been~~
22 | ~~restored to sanity. The facility administrator shall notify~~
23 | ~~the Governor of his or her determination, and the Governor~~
24 | ~~shall appoint another commission to proceed as provided in~~
25 | ~~subsection (1).~~

26 | (5) The Governor shall allow reasonable fees to
27 | psychiatrists appointed under ~~the provisions of this section,~~
28 | which shall be paid by the state.

29 | Section 7. Section 945.41, Florida Statutes, is
30 | amended to read:

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1 945.41 Legislative intent of ss. 945.40-945.49.--It is
2 the intent of the Legislature that mentally ill inmates in the
3 custody of the Department of Corrections receive evaluation
4 and appropriate treatment for their mental illness through a
5 continuum of services. It is further the intent of the
6 Legislature that:

7 (1) Inmates in the custody of the department who have
8 mental illnesses that require hospitalization and intensive
9 psychiatric inpatient treatment or care shall receive
10 appropriate treatment or care in Department of Corrections
11 mental health treatment facilities designated for that
12 purpose. ~~The department shall contract with the Department of~~
13 ~~Children and Family Services for the provision of mental~~
14 ~~health services in any departmental mental health treatment~~
15 ~~facility.~~ The Department of Corrections shall provide mental
16 health services to inmates in its custody ~~committed to it~~ and
17 may contract with any persons or agencies qualified to provide
18 these ~~such~~ services.

19 (2) Inmates sentenced to death who are in the custody
20 of the department, but whose competence to proceed with
21 postconviction proceedings is at issue, shall remain in the
22 custody of the department but shall receive mental health
23 evaluation and treatment services from the Department of
24 Children and Family Services. The definition of terms, the
25 determination of an inmate's competence, the mental health
26 commitment of an inmate, the discharge of the commitment
27 order, and the involuntary administration of treatment or
28 medications shall be conducted according to ss. 945.501-
29 945.504.

30 (3)~~(2)~~ Mental health treatment facilities must be
31 secure and adequately equipped and staffed for the provision

1 of mental health services and that, to the extent possible,
2 ~~the such~~ services must be provided in the least restrictive
3 manner consistent with optimum improvement of the inmate's
4 condition.

5 ~~(4)(3)~~ Inmates who are transferred to any facility for
6 the purpose of mental health treatment shall be given
7 consideration for parole and be eligible for release by reason
8 of gain-time allowances as provided in s. 944.291 and release
9 by expiration of sentence, consistent with guidelines
10 established for that purpose by the department.

11 ~~(5)(4)~~ Any inmate sentenced as a youthful offender, or
12 designated as a youthful offender by the department under
13 ~~pursuant to~~ chapter 958, who is transferred under ~~pursuant to~~
14 this act to a mental health treatment facility shall be
15 separated from other inmates, if necessary, as determined by
16 the warden of the treatment facility. ~~A In no case shall any~~
17 youthful offender may not be placed at the Florida State
18 Prison or the Union Correctional Institution for mental health
19 treatment.

20 ~~(6)(5)~~ The department may designate a mental health
21 treatment facility for adult and youthful female offenders or
22 may contract with other appropriate agencies for these such
23 services.

24 Section 8. Subsection (10) of section 945.42, Florida
25 Statutes, is amended to read:

26 945.42 Definitions; ss. 945.40-945.49.--As used in ss.
27 945.40-945.49, the following terms shall have the meanings
28 ascribed to them, unless the context shall clearly indicate
29 otherwise:

30 (10) "Psychologist" means a behavioral practitioner
31 who ~~has an approved degree in psychology that is primarily~~

1 ~~clinical in nature from a university or professional graduate~~
2 ~~school that is state authorized or accredited by an~~
3 ~~accrediting agency approved by the United States Department of~~
4 ~~Education and who is professionally certified by the~~
5 ~~appropriate professional psychology association or is licensed~~
6 as a psychologist under ~~pursuant to~~ chapter 490.

7 Section 9. Section 945.501, Florida Statutes, is
8 created to read:

9 945.501 Definitions.--As used in ss. 945.501-945.504,
10 the term:

11 (1) "Court" means the circuit court.

12 (2) "Inmate" means an inmate who has been sentenced to
13 death and who either has been found incompetent to proceed in
14 his or her postconviction proceeding or whose competence is at
15 issue.

16 (3) "Psychotropic medication" means any drug or
17 compound used to treat mental or emotional disorders affecting
18 the mind, behavior, intellectual functions, perception, moods,
19 or emotions and includes antipsychotic, antidepressant,
20 antimanic, and antianxiety drugs.

21 (4) "Treatment team" means the personnel assigned by
22 the Department of Children and Family Services to evaluate and
23 treat an inmate who is competent and is in the custody of the
24 department.

25 Section 10. Section 945.502, Florida Statutes, is
26 created to read:

27 945.502 Mental competence to proceed during capital
28 postconviction litigation for an inmate.--

29 (1) The postconviction collateral counsel of an inmate
30 may file a motion requesting the court to determine the
31 competency of the inmate. Counsel must include with the motion

1 a certificate attesting that the motion is filed in good faith
2 and on reasonable grounds to believe that the inmate is
3 incompetent to proceed. The motion and certificate replaces
4 the signed oath of the inmate that otherwise accompanies a
5 motion filed under Rule 3.851, Rules of Criminal Procedure.

6 (2) The motion for a competency examination must be in
7 writing and must allege with specificity the factual matters
8 at issue and the reason that competent consultation with the
9 inmate is necessary with respect to each factual matter
10 specified. To the extent that it does not invade the
11 lawyer-client privilege with collateral counsel, the motion
12 must contain a recital of the specific observations of, and
13 conversations with, the inmate which have formed the basis of
14 the motion.

15 (3) The court shall determine whether there are facts
16 at issue the development or resolution of which requires the
17 inmate to be able to consult with his or her attorney with a
18 reasonable degree of rational understanding. Postconviction or
19 collateral relief issues that involve only matters of record
20 or claims that do not require the participation of the inmate
21 shall proceed notwithstanding the incompetence of the inmate.

22 (4) If the court finds that there are reasonable
23 grounds to believe that an inmate is not competent to proceed
24 in a capital postconviction proceeding in which facts are at
25 issue, the development or resolution of which requires the
26 participation of the inmate, the court shall order the inmate
27 examined by no more than three, but not less than two, experts
28 before setting the matter for a hearing. The experts appointed
29 by the court may not be employed by or under contract with the
30 department. The court may seek input from the inmate's
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1 collateral counsel and the state attorney before appointing
2 the experts.

3 (5) The court shall appoint the mental health
4 professionals as experts to determine postconviction legal
5 competency.

6 (6) The order appointing experts shall:

7 (a) Identify the purpose of the evaluation and specify
8 the area of inquiry that should be addressed;

9 (b) Specify the legal criteria to be applied; and

10 (c) Specify the date by which a report must be filed
11 with the court and to whom copies must be sent.

12 (7) Counsel for the inmate, the department, and the
13 state attorney may be present at the examination that must be
14 conducted at a date and time convenient for all parties.

15 (8) In considering whether the inmate is competent to
16 proceed, the experts shall consider and include in their
17 report:

18 (a) The capacity of the inmate to understand the
19 adversary nature of the legal process and the postconviction
20 capital collateral proceeding;

21 (b) The capacity of the inmate to disclose to
22 collateral counsel facts pertinent to the postconviction
23 proceeding at issue; and

24 (c) Any other factors considered relevant by the
25 experts and the court as specified in the order appointing the
26 experts.

27 (9) Each expert must file a written report with the
28 court that:

29 (a) Identifies the specific matters referred for
30 evaluation;

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1 (b) Describes the evaluative procedures, techniques,
2 and tests used in the examination and the purpose for each
3 procedure;

4 (c) States the expert's clinical observations,
5 findings, and opinions on each issue referred by the court for
6 evaluation, and indicates with specificity those issues, if
7 any, for which the expert could not give an opinion; and

8 (d) Identifies the sources of information used by the
9 expert and presents the factual basis for the clinical
10 findings and opinion of the expert.

11 (10) If the experts find that the inmate is
12 incompetent to proceed, the experts shall report on any
13 recommended treatment or training for the inmate to attain
14 competence to proceed. In considering the issues relating to
15 treatment or training, the experts shall report on:

16 (a) The mental illness or mental retardation causing
17 the incompetence;

18 (b) The treatment appropriate for the mental illness
19 or the training appropriate for the mental retardation of the
20 inmate and an explanation of each of the possible treatment or
21 training alternatives in order of choices; and

22 (c) The likelihood of the inmate attaining competence
23 under the treatment or training recommended, an assessment of
24 the probable duration of the treatment or training required to
25 restore competence, and the probability that the inmate will
26 attain competence to proceed in the foreseeable future.

27 (11) The court shall schedule a hearing to determine
28 the competence of the inmate to proceed within 30 days after
29 the experts have filed their reports with the court.

30 (12) If, after a hearing, the court finds the inmate
31 competent to proceed, or, after having found the inmate

1 incompetent, finds that competency has been restored, the
2 court shall enter its order and proceed with the
3 postconviction proceeding.

4 (13) An inmate who, because of psychotropic
5 medication, is able to understand the nature of proceedings
6 and assist in the inmate's own defense is not assumed to be
7 incompetent to proceed simply because the satisfactory mental
8 functioning of the inmate is dependent upon the medication.

9 Section 11. Section 945.503, Florida Statutes, is
10 created to read:

11 945.503 Involuntary commitment of an inmate who has
12 been adjudicated incompetent to proceed with capital
13 postconviction litigation.--

14 (1) An inmate who has been found not competent to
15 proceed in a capital postconviction proceeding under s.
16 945.502 and has, in addition, met the criteria for involuntary
17 commitment shall be committed to the Department of Children
18 and Family Services for evaluation and treatment or training.
19 However, the inmate shall remain in the physical custody of
20 the department and be placed in a department facility designed
21 and equipped to treat and house death-row inmates.

22 (2) If the court finds the inmate is not competent to
23 proceed, or that the inmate is competent to proceed but that
24 competence depends on the continuation of appropriate
25 treatment for a mental illness or training for mental
26 retardation, the court may not issue an involuntary commitment
27 order to the Department of Children and Family Services unless
28 the additional criteria for involuntary commitment has been
29 satisfied. The court must find by clear and convincing
30 evidence that:

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1 (a) The inmate is mentally ill or mentally retarded
2 and, as a result, there is a substantial likelihood that in
3 the near future the inmate will inflict serious bodily harm on
4 herself or himself or another person; and

5 (b) All available, less-restrictive treatment
6 alternatives have been judged inappropriate or unavailable;
7 and

8 (c) There is a substantial probability that the mental
9 illness or mental retardation causing the inmate's
10 incompetence will respond to treatment or training and that
11 the inmate will regain competency to proceed in the reasonably
12 foreseeable future.

13 (3) If the court commits the inmate, the order of
14 commitment must contain:

15 (a) Findings of fact relating to the issues of
16 competency and commitment, addressing the factors set forth in
17 ss. 945.502 and 945.503;

18 (b) Copies of the reports of the experts filed with
19 the court under the order of examination;

20 (c) Copies of any other psychiatric, psychological, or
21 social work reports filed with the court relating to the
22 mental state of the inmate; and

23 (d) Copies of the criminal commitment papers,
24 including the judgment and sentencing documents.

25 (4) The department facility shall admit the inmate.
26 The Department of Children and Family Services must evaluate
27 and treat or train the inmate according to the contract
28 provisions of s. 945.41(1). Within 6 months from the date of
29 admission, the treatment team shall file with the court a
30 report describing the treatment or training provided to the
31 inmate and the prognosis and behavior of the inmate. The

1 report must discuss whether the inmate is cooperating with the
2 treatment or the training offered, whether the inmate
3 continues to be incompetent to proceed, and whether the
4 criteria for involuntary commitment continues to be met. A
5 copy of the report must be sent to counsel for the inmate,
6 counsel for the department, and the state attorney.

7 (a)1. If, at any time during the 6-month period or
8 during any period of extended commitment that may be
9 subsequently ordered, the treatment team determines that the
10 inmate no longer meets the criteria for commitment or has
11 become competent to proceed, the team must notify the court by
12 filing a report, with copies to all parties, including the
13 department.

14 2. If, during the 6-month period of commitment and
15 treatment or training, or during any period of extended
16 commitment that may be subsequently ordered, counsel for the
17 inmate has reasonable grounds to believe that the inmate is
18 competent to proceed or no longer meets the criteria for
19 commitment, counsel may move for a hearing on the issue of the
20 inmate's competence or commitment. The motion must contain a
21 certificate of counsel that the motion is made in good faith
22 and on reasonable grounds to believe that the inmate is now
23 competent to proceed or no longer meets the criteria for
24 commitment. To the extent that it does not invade the
25 attorney-client privilege, the motion must contain a recital
26 of the specific observations of and conversations with the
27 inmate which have formed the basis for the motion.

28 3. If during the 6-month period of commitment and
29 either treatment or training, or during any period of extended
30 commitment that may be subsequently ordered, personnel of the
31 department have reasonable grounds to believe that the inmate

1 is competent to proceed or no longer meets the criteria for
2 commitment, counsel for the department may move for a hearing
3 on the issue of the inmate's competence or commitment. The
4 motion must contain a certificate of counsel that the motion
5 is made in good faith and on reasonable grounds to believe
6 that the inmate is now competent to proceed or no longer meets
7 the criteria for commitment. To the extent possible, the
8 motion must contain a recital of the specific observations of
9 and conversations with the inmate that have formed the basis
10 for the motion.

11 4. If, during the 6-month period of commitment and
12 treatment or training or during any period of extended
13 commitment that may be subsequently ordered, the state
14 attorney has reasonable grounds to believe that the inmate is
15 competent to proceed or no longer meets the criteria for
16 commitment, the state attorney may move for a hearing on the
17 issue of the inmate's competence or commitment. The motion
18 shall contain a certificate of counsel that the motion is made
19 in good faith and on reasonable grounds to believe that the
20 inmate is now competent to proceed or no longer meets the
21 criteria for commitment. To the extent possible, the motion
22 must contain a recital of the specific observations of and
23 conversations with the inmate that have formed the basis for
24 the motion.

25 (b) If, after considering a motion filed with the
26 court or after receipt of other information from other
27 sources, the court has reasonable grounds to believe that the
28 inmate may have regained competence to proceed or no longer
29 meets the criteria for commitment, the court shall order the
30 treatment team or appoint independent experts to report to the
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1 court on these issues, with copies to all parties, and shall
2 order a hearing to be held on those issues.

3 (c) The court must hold a hearing within 30 days after
4 receiving a report on the issue of competency. If, after the
5 hearing, the court determines that the inmate continues to be
6 incompetent to proceed and continues to meet the criteria for
7 continued commitment and treatment or training, the court
8 shall order continued commitment and treatment or training for
9 a period not to exceed 1 year.

10 (5) If, at any time after commitment, the court
11 determines, after a hearing, that the inmate is competent to
12 proceed, it must enter its order, discharge the involuntary
13 commitment order as to the Department of Children and Family
14 Services, and proceed with the inmate's postconviction
15 litigation.

16 (6) If, after a hearing, the court determines that the
17 defendant remains incompetent to proceed but no longer meets
18 the criteria for involuntary commitment, the court must
19 discharge the involuntary commitment order to the Department
20 of Children and Family Services.

21 (7) After discharge of the involuntary commitment
22 order, the department shall house the inmate at the
23 correctional facility it determines appropriate.

24 (8) If the court finds the inmate competent to
25 proceed, the order must contain:

26 (a) Findings of fact relating to the issues of
27 competency;

28 (b) Copies of the reports of the examining experts;
29 and

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1 (c) Copies of any other psychiatric, psychological, or
2 social work reports filed with the court relating to the
3 mental state of the inmate.

4 Section 12. Section 945.504, Florida Statutes, is
5 created to read:

6 945.504 Involuntary treatment of an inmate who has
7 been found incompetent to proceed in a postconviction
8 proceeding.--If an inmate who has been involuntarily committed
9 under s. 945.503, is unable or refuses to give express and
10 informed written consent for treatment or training, including
11 psychotropic medications, which treatment the treatment team
12 believes is necessary to restore the competency of the inmate
13 and for the safety of the inmate or others, the treatment or
14 training may be provided under the following circumstances:

15 (1) In an emergency in which there is immediate danger
16 to the safety of the inmate or others, the treatment may be
17 provided upon the written order of a physician from the
18 Department of Children and Family Services for a period not to
19 exceed 48 hours, excluding weekends and legal holidays. If,
20 after the 48-hour period, the inmate has not given express and
21 informed consent to the treatment initially refused, the
22 treatment team must, within 48 hours, excluding weekends and
23 legal holidays, petition the committing court or other
24 authorized circuit court, at the option of the team, for an
25 order authorizing the continued treatment of the inmate. In
26 the interim, treatment may be continued without the consent of
27 the inmate upon the continued written order of a physician
28 from the Department of Children and Family Services who has
29 determined that the emergency continues to present a danger to
30 the safety of the inmate or others.

1 (2) In a situation other than an emergency, the
2 treatment team must petition the court for an order
3 authorizing the treatment for the inmate. The order shall
4 allow the treatment for a period not to exceed 90 days from
5 the date of the entry of the order. Unless the court is
6 notified in writing that the inmate has provided express and
7 informed consent in writing, the treatment team shall, before
8 the expiration of the initial 90-day order, petition the court
9 for an order continuing treatment for another 90-day period.
10 This procedure must be repeated until the inmate provides
11 consent or the involuntary commitment order is discharged.

12 (3) At a hearing on the issue of whether the court
13 should enter an order authorizing treatment or training for
14 which an inmate has not given express and informed consent,
15 the court must determine by clear and convincing evidence that
16 the inmate is mentally ill or mentally retarded and that the
17 proposed treatment or training is necessary to restore
18 competency. In arriving at the decision, the court must
19 consider at least the following factors:

20 (a) The inmate's expressed preference regarding
21 treatment or training;

22 (b) The probability of adverse side effects;

23 (c) The prognosis for restoration to competency
24 without treatment or training; and

25 (d) The prognosis for restoration to competency with
26 treatment or training.

27 (4) The court may appoint a master to preside at the
28 hearing. The inmate or the inmate's guardian, and the
29 representative, shall be provided with a copy of the petition
30 and the date, time, and location of the hearing. The inmate
31 has the right to have an attorney represent him or her at the

1 hearing, and, if the inmate is indigent, the court shall
2 appoint an attorney, who may be from the office of the public
3 defender, to represent the inmate at the hearing. The inmate
4 may testify or not, as he or she chooses, may cross-examine
5 witnesses testifying on behalf of the facility, and may
6 present his or her own witnesses.

7 (5) Once the procedures have been provided and
8 treatment or training has been ordered, the treatment team may
9 prescribe and administer the treatment, or it may prescribe
10 the treatment and a registered nurse employed either by the
11 department or the Department of Children and Family Services
12 may administer the medication to the inmate.

13 (6) In addition, when the permission of the inmate
14 cannot be obtained, the treatment team with the inmate's
15 department treating physician's consent or the inmate's
16 department treating physician may authorize emergency surgical
17 or nonpsychiatric medical treatment if such treatment is
18 deemed lifesaving or there is a situation threatening serious
19 bodily harm to the inmate.

20 Section 13. This act shall take effect July 1, 2005.
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SENATE SUMMARY

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3 Requires a defendant to be returned to the custody of the
4 Department of Corrections after charges against the
5 defendant are dismissed if the defendant has an active
6 sentence with the department. Prohibits a court from
7 ordering a conditional release if the defendant who has
8 mental illness or mental retardation has an active
9 sentence with the Department of Corrections. Provides for
10 procedures when a person under sentence of death is
11 alleged to be insane. Requires the Department of Children
12 and Family Services to supply a treatment team to
13 evaluate and treat the person. Requires the treatment
14 team to report to the Governor within a specified time
15 period. Authorizes the Governor to appoint a commission
16 to reexamine the person. Provides that the Governor shall
17 lift the stay and proceed with the execution under
18 certain circumstances. Authorizes counsel to file a
19 motion requesting the court to determine if the inmate is
20 competent to proceed in postconviction proceedings.
21 Provides procedures to determine the competency of the
22 inmate. Requires the court to appoint examining experts.
23 Requires the experts to file a report with the court.
24 Provides procedures to determine if an inmate found not
25 competent to proceed should be committed to the
26 Department of Children and Family Services for treatment
27 or training. Provides procedures to reexamine the inmate.
28 Provides for involuntary treatment of an inmate found not
29 to be competent to proceed who refuses to give express
30 and informed consent to the treatment or training. (See
31 bill for details.)