

By Senator Siplin

19-00168-09

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1 A bill to be entitled
2 An act relating to juveniles incompetent to proceed;
3 amending s. 985.19, F.S.; authorizing the attorney
4 representing a child named in a petition for
5 delinquency, the state attorney, the attorney
6 representing the Department of Juvenile Justice, or
7 the attorney representing the Department of Children
8 and Family Services to move to allow the presentment
9 of findings from a mental health expert retained by
10 the child's attorney, the state attorney, the
11 Department of Juvenile Justice, or the Department of
12 Children and Family Services; authorizing the court to
13 grant the motion under certain circumstances;
14 requiring that each expert appointed by the court or
15 retained by a party be licensed as a psychologist or
16 as a psychiatrist; authorizing the Department of
17 Children and Family Services to place a child
18 committed to the department in a detention center or
19 other facility as an emergency placement under
20 specified circumstances; limiting the emergency
21 placement to no more than 15 days; revising the period
22 within which the mental health service provider must
23 file a report with the court after the date the child
24 is committed to the department; revising the period
25 that the court retains jurisdiction of the child after
26 the date of the order of incompetency; requiring the
27 court to dismiss the delinquency petition if, at the
28 end of 18 months, the child has not attained
29 competency and there is no evidence that the child

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30 will attain competency within 1 year; eliminating a
31 provision making implementation of procedures
32 governing incompetency in juvenile delinquency cases
33 contingent upon funding; providing an effective date.
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35 Be It Enacted by the Legislature of the State of Florida:
36

37 Section 1. Paragraphs (b) and (d) of subsection (1),
38 subsection (4), paragraphs (a) and (c) of subsection (5), and
39 subsection (7) of section 985.19, Florida Statutes, are amended
40 to read:

41 985.19 Incompetency in juvenile delinquency cases.—

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

48 (b)1. All determinations of competency shall be made at a
49 hearing, with findings of fact based on an evaluation of the
50 child's mental condition made by no fewer ~~not less~~ than two or
51 no ~~not~~ more than three experts appointed by the court.

52 2. The child's attorney, the state attorney, the attorney
53 representing the Department of Juvenile Justice, or the attorney
54 representing the Department of Children and Family Services may
55 move to present findings from a mental health expert retained by
56 the child's attorney, the state attorney, the Department of
57 Juvenile Justice, or the Department of Children and Family
58 Services. The court shall grant the motion if the court

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59 determines that the court-appointed experts are in conflict or
60 may grant the motion for other reasons within the court's
61 discretion.

62 3. The basis for the determination of incompetency must be
63 specifically stated in the evaluation. In addition, a
64 recommendation as to whether residential or nonresidential
65 treatment or training is required must be included in the
66 evaluation.

67 4. Experts appointed by the court to determine the mental
68 condition of a child shall be allowed reasonable fees for
69 services rendered. State employees may be paid expenses pursuant
70 to s. 112.061. The fees shall be taxed as costs in the case.

71 (d) For incompetency evaluations related to mental illness,
72 the Department of Children and Family Services shall maintain
73 and annually provide the courts with a list of available mental
74 health professionals who have completed a training program
75 approved by the Department of Children and Family Services to
76 perform the evaluations. Each expert appointed by the court or
77 retained by a party must be licensed as a psychologist or as a
78 psychiatrist.

79 (4) A child who is determined to have mental illness,
80 mental retardation, or autism, who has been adjudicated
81 incompetent to proceed, and who meets the criteria set forth in
82 subsection (3), must be committed to the Department of Children
83 and Family Services and receive treatment or training in a
84 secure facility or program that is the least restrictive
85 alternative consistent with public safety. Any placement of a
86 child to a secure residential program must be separate from
87 adult forensic programs. The Department of Children and Family

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88 Services may place a child committed to the department in a
89 detention center or other facility as an emergency placement for
90 up to 15 days following the date the department receives a copy
91 of the order committing the child. If the child attains
92 competency, the ~~then~~ custody, case management, and supervision
93 of the child shall ~~will~~ be transferred to the department in
94 order to continue delinquency proceedings; however, the court
95 retains authority to order the Department of Children and Family
96 Services to provide continued treatment or training to maintain
97 competency.

98 (a) A child who is adjudicated incompetent due to mental
99 retardation or autism may be ordered into a secure program or
100 facility designated by the Department of Children and Family
101 Services for children having ~~with~~ mental retardation or autism.

102 (b) A child who is adjudicated incompetent due to mental
103 illness may be ordered into a secure program or facility
104 designated by the Department of Children and Family Services for
105 children having mental illnesses.

106 (c) Whenever a child is placed in a secure residential
107 facility, the department shall ~~will~~ provide transportation to
108 the secure residential facility for admission and from the
109 secure residential facility upon discharge.

110 (d) The purpose of the treatment or training is the
111 restoration of the child's competency to proceed.

112 (e) The service provider must file a written report with
113 the court pursuant to the applicable Florida Rules of Juvenile
114 Procedure not later than 3 ~~6~~ months after the date of
115 commitment, or at the end of any period of extended treatment or
116 training, and at any time the Department of Children and Family

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117 Services, through its service provider determines the child has
118 attained competency or no longer meets the criteria for secure
119 placement, or at such shorter intervals as ordered by the court.
120 A copy of a written report evaluating the child's competency
121 must be filed by the provider with the court and with the state
122 attorney, the child's attorney, the department, and the
123 Department of Children and Family Services.

124 (5) (a) If a child is determined to be incompetent to
125 proceed, the court shall retain jurisdiction of the child for up
126 to 18 months ~~2 years~~ after the date of the order of
127 incompetency, with reviews at least every 6 months to determine
128 competency.

129 (c) If the court determines at any time that the child will
130 never become competent to proceed, the court may dismiss the
131 delinquency petition. If, at the end of the 18-month ~~2-year~~
132 period following the date of the order of incompetency, the
133 child has not attained competency and there is no evidence that
134 the child will attain competency within 1 ~~a~~ year, the court must
135 dismiss the delinquency petition. If appropriate, the court may
136 order that proceedings under chapter 393 or chapter 394 be
137 instituted. Such proceedings must be instituted not less than 60
138 days prior to the dismissal of the delinquency petition.

139 ~~(7) The provisions of this section shall be implemented~~
140 ~~only subject to specific appropriation.~~

141 Section 2. This act shall take effect July 1, 2009.