



422194

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2010	.	
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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Between lines 1136 and 1137
insert:

Section 28. Paragraph (a) of subsection (1) and paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(1) RIGHT TO INDIVIDUAL DIGNITY.—

(a) The policy of the state is that the individual dignity of the client shall be respected at all times and upon all occasions, including any occasion when the forensic client is



422194

13 detained, transported, or treated. Clients with mental illness,
14 intellectual disability ~~retardation~~, or autism and who are
15 charged with committing felonies shall receive appropriate
16 treatment or training. In a criminal case involving a client who
17 has been adjudicated incompetent to proceed or not guilty by
18 reason of insanity, a jail may be used as an emergency facility
19 for up to 15 days following the date the department or agency
20 receives a completed copy of the court commitment order
21 containing all documentation required by the applicable Florida
22 Rules of Criminal Procedure. For a forensic client who is held
23 in a jail awaiting admission to a facility of the department or
24 agency, evaluation and treatment or training may be provided in
25 the jail by the local community mental health provider for
26 mental health services, by the developmental disabilities
27 program for persons with intellectual disability ~~retardation~~ or
28 autism, the client's physician or psychologist, or any other
29 appropriate program until the client is transferred to a civil
30 or forensic facility.

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

32 (a) A forensic client shall be asked to give express and
33 informed written consent for treatment. If a client refuses such
34 treatment as is deemed necessary and essential by the client's
35 multidisciplinary treatment team for the appropriate care of the
36 client, such treatment may be provided under the following
37 circumstances:

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



422194

42 If, after the 48-hour period, the client has not given express
43 and informed consent to the treatment initially refused, the
44 administrator or designee of the civil or forensic facility
45 shall, within 48 hours, excluding weekends and legal holidays,
46 petition the committing court or the circuit court serving the
47 county in which the facility is located, at the option of the
48 facility administrator or designee, for an order authorizing the
49 continued treatment of the client. In the interim, the need for
50 treatment shall be reviewed every 48 hours and may be continued
51 without the consent of the client upon the continued written
52 order of a physician who has determined that the emergency
53 situation continues to present a danger to the safety of the
54 client or others.

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



422194

71 court shall determine by clear and convincing evidence that the
72 client has mental illness, intellectual disability ~~retardation~~,
73 or autism, that the treatment not consented to is essential to
74 the care of the client, and that the treatment not consented to
75 is not experimental and does not present an unreasonable risk of
76 serious, hazardous, or irreversible side effects. In arriving at
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
98 ===== T I T L E A M E N D M E N T =====

99 And the title is amended as follows:



422194

100 Delete line 24
101 and insert:
102 for the term "mental retardation"; amending s.
103 916.107, F.S.; substituting the term "intellectual
104 disability" for the term "retardation"; providing a