

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1045 Mental Health  
**SPONSOR(S):** Criminal Justice Subcommittee; Schwartz  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	13 Y, 0 N	Mathieson	Schoolfield
2) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Krol	Cunningham
3) Appropriations Committee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill makes changes to ch. 916, F.S., Mentally Deficient and Mentally Ill Defendants, and Section 985.19, F.S., Incompetency in Juvenile Delinquency Cases as follows:

- An admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication.
- Court appointed mental health experts who conduct competency evaluations in both adult and juvenile settings, must complete training once every five years in order to conduct evaluations for the court and remain on the forensic evaluator registry.
- The bill establishes a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- The timeframe for dismissal of charges for people determined to be non-restorable is reduced from five to two years, except for capital felonies.
- The bill establishes standards for the evaluation of competency and the mental condition of juveniles, under s. 985.19, F.S.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

The Department of Children and Families (DCF) serves individuals who have been committed to DCF, pursuant to ch. 916, F.S. because they have been adjudicated incompetent to proceed at trial due to mental illness or because they have been found not guilty by reason of insanity. DCF currently provides competency restoration training and mental health services in four state forensic facilities, with a total of 1,098 beds.<sup>1</sup> In FY 2010-11, DCF reported serving 2,581 adults as a result of a chapter 916, F.S., commitment.<sup>2</sup>

Chapter 985, F.S., relating to juvenile justice, provides DCF, the Agency for Persons with Disabilities (APD), and the Department of Juvenile Justice (DJJ) with delegated authority and legislative guidance as to delinquency and competency issues for juveniles. If the court has reason to believe that a child named in a petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.<sup>3</sup> The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.<sup>4</sup> DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.<sup>5</sup> In FY 2010-11, DCF reported that it served 412 children who were adjudicated incompetent to proceed.<sup>6</sup>

#### Competency Evaluation

Currently, courts are required to appoint to more than three experts to provide adult competency evaluations.<sup>7</sup> Each expert must be a psychiatrist, licensed psychologist, or physician and must, to the extent possible, have completed DCF-approved forensic evaluator training.<sup>8</sup> DCF is required to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.<sup>9</sup> However, current law does not *require* attendance at a DCF approved training or training renewal in order for a person to be appointed as an expert.<sup>10</sup> In the juvenile system, the court appoints 2-3 mental health experts to conduct competency evaluations.<sup>11</sup> For incompetency evaluations related to mental illness, DCF must provide the court a list of experts who have completed DCF-approved training.<sup>12</sup>

#### Competency Hearing

Currently, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.<sup>13</sup>

#### Dismissal of Charges following Competency Training

Currently, charges against an adult who has been adjudicated incompetent to proceed due to mental illness may be dismissed after five years of incompetency.<sup>14</sup> This occurs unless the court makes

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<sup>1</sup> DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

<sup>2</sup> *Id.*

<sup>3</sup> S. 985.19(1), F.S.

<sup>4</sup> S. 985.19(1)(b), F.S.

<sup>5</sup> S. 985.19(4), F.S.

<sup>6</sup> DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

<sup>7</sup> S. 916.115(1), F.S.

<sup>8</sup> S. 916.115(1)(a), F.S.

<sup>9</sup> S. 916.115, (1)(b), F.S.

<sup>10</sup> S. 916.115, (1)(a), F.S.

<sup>11</sup> S. 985.19(1)(b), F.S.

<sup>12</sup> S. 985.19(1)(d), F.S.

<sup>13</sup> Rules 33.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

<sup>14</sup> S. 916.145, F.S.

findings that the person will become competent in the future.<sup>15</sup> Charges are dismissed without prejudice, which allows the state to re-file charges if the person become competent in the future.<sup>16</sup>

### Psychotherapeutic Medication Treatment

Current law requires that forensic clients must give express and informed consent to treatment. If they refuse and the situation is deemed an emergency that puts the client's safety at risk, then treatment may be given for 48 hours. If the person still refuses to give consent, then a court order must be sought for continuation of the treatment. In non-emergency situations, the treatment may not be given (without consent) and a court order must be sought for continued treatment.<sup>17</sup> DCF reports that in the non-emergency situations, the abrupt halt of medications to the individual can place them at risk for significant harm to their health and safety.<sup>18</sup>

## **Effect of Proposed changes**

### Continuation of Psychotherapeutic Medication

The bill requires jail physicians to provide a current psychotherapeutic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations<sup>19</sup> and is limited to the time period required to obtain a court order for the medication. This provision would apply to all forensic clients since it appears in the general provisions of ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or the APD.

The bill does not specify a timeframe for the pursuit of a court order or place any limits on the continuation of the medication while awaiting the order. Court ordered medication of an individual has been the subject of judicial review.<sup>20</sup>

### Competency Hearings

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. This requirement is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure and should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

### Forensic Evaluator Training

The bill amends s. 916.111, F.S., to require mental health experts to complete a DCF-approved forensic evaluator training course that will be provided at least annually. The bill renames the DCF list of mental health experts as a forensic evaluator registry, and specifies that only those who have completed the DCF-approved training can be placed on the registry and conduct evaluations for the court. Beginning July 1, 2013, the training must be completed and retaken every five years, and failure

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> S. 916.107(3), F.S.

<sup>18</sup> DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

<sup>19</sup> Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

<sup>20</sup> *See Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006) (Noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available.) Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S. The nonconsensual administration of medication by judicial order was challenged in Florida, in *Moreland v. State*, 706 So.2d 71, (Fla. 1st DCA), where the court struck down a judicial order for failure to comply with the statutory requirement of a multidisciplinary treatment team.

to do so will result in removal from the list. The court can only appoint forensic evaluators from the registry. The bill creates the same process for evaluators in the juvenile system.

### Dismissal of Charges

The bill reduces the timeframe in which a person adjudicated as incompetent to proceed due to mental illness may have their charges dismissed from five to two years. The bill provides an exception for capital felonies, which will remain at five years.<sup>21</sup> DCF reports that data from the past 12 years shows that 98.7 percent of individuals were restored to competency in two years or less.<sup>22</sup>

### Determinations of Incompetency for Juvenile Delinquency Cases

The bill establishes criteria that a forensic evaluator must use when reporting to the court as to whether a child is competent to proceed. The bill provides that a child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.

If the child is determined to be incompetent, the bill requires the evaluator to provide a mental disorder that forms the basis of the incompetency. The bill requires that the basis for the determination of a child's mental condition be specifically stated in the expert's competency evaluation report and must include written findings that:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Present the factual basis for the expert's clinical findings and opinions of the child's mental condition; and
- Address the child's capacity to:
  - Appreciate the charges or allegations against the child.
  - Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
  - Understand the adversarial nature of the legal process.
  - Disclose to counsel facts pertinent to the proceedings at issue.
  - Display appropriate courtroom behavior.
  - Testify relevantly.

The bill also requires the evaluator to include in his or her competency evaluation report a summary of findings" section that includes:

- The date and length of time of the face to face diagnostic clinical interview;
- A statement that identifies the mental health disorder;
- A statement of how the child would benefit from competency restoration in the community or in a residential setting;
- An assessment of treatment length, and whether the juvenile will attain competence in the future; and
- A description of appropriate mental health treatment and education.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.

**Section 2:** Amends s. 916.111, F.S., relating to training of mental health experts.

**Section 3:** Amends s. 916.115, F.S., relating to appointment of experts.

**Section 4:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

**Section 5:** Amends s. 916.145, F.S., relating to dismissal of charges.

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<sup>21</sup> A capital felony must be designated as such by statute. S. 775.081, F.S.

<sup>22</sup> DCF data shows that from FY 1998-99 to FY 2009-10, of a total of 12,016 individuals adjudicated not competent to proceed, 98.7% of them were restored in less than two years. DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

- Section 6:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.
- Section 7:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.
- Section 8:** Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mental health experts who wish to participate in forensic evaluations will be required to pay for the department authorized training every 5 years to be on the registry. The cost for this training is currently \$445, or \$395 for state or non-profit employees.<sup>23</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

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<sup>23</sup> DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 71 could be clarified by providing a timeframe for pursuing court orders for continued medication and limits on the amount of time a medication may be continued while awaiting the order. Similar constraints are provided for in emergency situation under s. 916.107(3)(a)1., F.S.

The bill amends s. 916.111, F.S., to require mental health experts to complete a DCF-approved forensic evaluator training course and specifies that only those who have completed the DCF-approved training can be placed on the registry and conduct evaluations for the court. Section 916.115(1)(a), F.S., may also need to be amended to remove the language specifying that each expert must, *to the extent possible*, have completed DCF-approved forensic evaluator training.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarify the requirements for the forensic evaluator training course by specifying that the course must be retaken every 5 years in order for an expert to remain on the Department of Children and Families' forensic evaluator registry.
- Clarify that the most recent version of the Diagnostic and Statistical Manual of Mental Health Disorders must be used to support an expert's competency evaluation report.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.