

HB 1045

2012

1 A bill to be entitled
2 An act relating to mental health; amending s. 916.107,
3 F.S.; authorizing, in certain circumstances,
4 continuation of psychotherapeutic medication for
5 individuals receiving such medication in a jail before
6 admission to a psychiatric or forensic facility;
7 amending s. 916.111, F.S.; requiring forensic
8 evaluator training for mental health experts appointed
9 to evaluate defendants for competency to proceed or
10 for sanity at the time of the commission of the
11 offense; amending s. 916.115, F.S.; requiring the
12 Department of Children and Family Services to maintain
13 and annually provide the courts with a forensic
14 evaluator registry; amending s. 916.13, F.S.;

15 providing timeframes for competency hearings to be
16 held; amending s. 916.145, F.S.; reducing the time for
17 dismissal of charges for defendants found
18 nonrestorable from 5 years to 2 years, except in the
19 case of capital offenses which shall remain at 5
20 years; amending s. 916.15, F.S.; providing timeframes
21 for commitment hearings to be held; amending s.
22 985.19, F.S.; standardizing the protocols, procedures,
23 and criteria used in reporting expert findings in
24 determining competency in juvenile cases; revising
25 requirements related to the forensic evaluator
26 training program that appointed experts must complete;
27 requiring experts after a specified date to have
28 completed such training; providing an effective date.

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

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

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

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

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

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency

HB 1045

2012

57 | situation continues to present a danger to the safety of the
58 | client or others.

59 | 2. In a situation other than an emergency situation, the
60 | administrator or designee of the facility shall petition the
61 | court for an order authorizing necessary and essential treatment
62 | for the client.

63 | a. If the client has been receiving psychotherapeutic
64 | medication at the jail at the time of transfer to the forensic
65 | or civil facility and lacks the capacity to make an informed
66 | decision regarding mental health treatment at the time of
67 | admission, the admitting physician may order continued
68 | administration of the psychotherapeutic medication if, in the
69 | clinical judgment of the physician, abrupt cessation of the
70 | psychotherapeutic medication could cause a risk to the health
71 | and safety of the client during the time a court order to
72 | medicate is pursued. The jail physician shall provide a current
73 | psychotherapeutic medication order at the time of transfer to
74 | the forensic or civil facility.

75 | b. The court order shall allow such treatment for up to a
76 | period not to exceed 90 days after following the date of the
77 | entry of the order. Unless the court is notified in writing that
78 | the client has provided express and informed consent in writing
79 | or that the client has been discharged by the committing court,
80 | the administrator or designee shall, before ~~prior to~~ the
81 | expiration of the initial 90-day order, petition the court for
82 | an order authorizing the continuation of treatment for another
83 | 90 days ~~90-day period~~. This procedure shall be repeated until
84 | the client provides consent or is discharged by the committing

HB 1045

2012

85 court.

86 3. At the hearing on the issue of whether the court should
87 enter an order authorizing treatment for which a client was
88 unable to or refused to give express and informed consent, the
89 court shall determine by clear and convincing evidence that the
90 client has mental illness, retardation, or autism, that the
91 treatment not consented to is essential to the care of the
92 client, and that the treatment not consented to is not
93 experimental and does not present an unreasonable risk of
94 serious, hazardous, or irreversible side effects. In arriving at
95 the substitute judgment decision, the court must consider at
96 least the following factors:

- 97 a. The client's expressed preference regarding treatment;
98 b. The probability of adverse side effects;
99 c. The prognosis without treatment; and
100 d. The prognosis with treatment.

101

102 The hearing shall be as convenient to the client as may be
103 consistent with orderly procedure and shall be conducted in
104 physical settings not likely to be injurious to the client's
105 condition. The court may appoint a general or special magistrate
106 to preside at the hearing. The client or the client's guardian,
107 and the representative, shall be provided with a copy of the
108 petition and the date, time, and location of the hearing. The
109 client has the right to have an attorney represent him or her at
110 the hearing, and, if the client is indigent, the court shall
111 appoint the office of the public defender to represent the
112 client at the hearing. The client may testify or not, as he or

HB 1045

2012

113 she chooses, and has the right to cross-examine witnesses and
 114 may present his or her own witnesses.

115 Section 2. Section 916.111, Florida Statutes, is amended
 116 to read:

117 916.111 Training of mental health experts.—

118 (1) The evaluation of defendants for competency to proceed
 119 or for sanity at the time of the commission of the offense shall
 120 be conducted in such a way as to ensure uniform application of
 121 the criteria enumerated in Rules 3.210 and 3.216, Florida Rules
 122 of Criminal Procedure.

123 (2) Appointed experts shall have completed forensic
 124 evaluator training as specified in this section.

125 (3) A forensic evaluator training course approved by the
 126 department must be provided at least annually to ensure that
 127 mental health professionals have the opportunity to be placed on
 128 the department's forensic evaluator registry.

129 (a) Beginning July 1, 2013, if an expert chooses to remain
 130 on the registry, he or she must have completed or retaken the
 131 required training course within the previous 5 years. Those who
 132 have not completed the training course must be removed from the
 133 registry and may not conduct evaluations for the courts.

134 (b) A mental health professional who has completed the
 135 training course within the previous 5 years must maintain
 136 documentation of completion of the required training course and
 137 provide current contact information to the department.

138 (4) The department shall develop, and may contract with
 139 accredited institutions:

140 (a)-(1) To provide:

141 1.(a) A plan for training mental health professionals to
 142 perform forensic evaluations and to standardize the criteria and
 143 procedures to be used in these evaluations;

144 2.(b) Clinical protocols and procedures based upon the
 145 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
 146 Procedure; and

147 3.(e) Training for mental health professionals in the
 148 application of these protocols and procedures in performing
 149 forensic evaluations and providing reports to the courts; and

150 (b)(2) To compile and maintain the necessary information
 151 for evaluating the success of this program, including the number
 152 of persons trained, the cost of operating the program, and the
 153 effect on the quality of forensic evaluations as measured by
 154 appropriateness of admissions to state forensic facilities and
 155 to community-based care programs.

156 Section 3. Paragraph (b) of subsection (1) of section
 157 916.115, Florida Statutes, is amended to read:

158 916.115 Appointment of experts.—

159 (1) The court shall appoint no more than three experts to
 160 determine the mental condition of a defendant in a criminal
 161 case, including competency to proceed, insanity, involuntary
 162 placement, and treatment. The experts may evaluate the defendant
 163 in jail or in another appropriate local facility or in a
 164 facility of the Department of Corrections.

165 (b) The department shall maintain and annually provide the
 166 courts with a forensic evaluator registry ~~list~~ of available
 167 mental health professionals who have completed the approved
 168 training as experts.

HB 1045

2012

169 Section 4. Subsection (2) of section 916.13, Florida
 170 Statutes, is amended to read:

171 916.13 Involuntary commitment of defendant adjudicated
 172 incompetent.—

173 (2) A defendant who has been charged with a felony and who
 174 has been adjudicated incompetent to proceed due to mental
 175 illness, and who meets the criteria for involuntary commitment
 176 ~~to the department under the provisions of~~ this chapter, may be
 177 committed to the department, and the department shall retain and
 178 treat the defendant.

179 (a) Within ~~No later than~~ 6 months after the date of
 180 admission and at the end of any period of extended commitment,
 181 or at any time the administrator or designee has ~~shall have~~
 182 determined that the defendant has regained competency to proceed
 183 or no longer meets the criteria for continued commitment, the
 184 administrator or designee shall file a report with the court
 185 pursuant to the applicable Florida Rules of Criminal Procedure.

186 (b) A competency hearing must be held within 30 days after
 187 a court receives notification that the defendant is competent to
 188 proceed or no longer meets the criteria for continued
 189 commitment.

190 Section 5. Section 916.145, Florida Statutes, is amended
 191 to read:

192 916.145 Dismissal of charges.—The charges against any
 193 defendant adjudicated incompetent to proceed due to the
 194 defendant's mental illness shall be dismissed without prejudice
 195 to the state if the defendant remains incompetent to proceed 2 5
 196 years after such determination or 5 years after such

HB 1045

2012

197 determination if the charge is a capital offense, unless the
 198 court in its order specifies its reasons for believing that the
 199 defendant will become competent to proceed within the
 200 foreseeable future and specifies the time within which the
 201 defendant is expected to become competent to proceed. The
 202 charges against the defendant shall be ~~are~~ dismissed without
 203 prejudice to the state to refile the charges if ~~should~~ the
 204 defendant is ~~be~~ declared competent to proceed in the future.

205 Section 6. Subsection (5) is added to section 916.15,
 206 Florida Statutes, to read:

207 916.15 Involuntary commitment of defendant adjudicated not
 208 guilty by reason of insanity.—

209 (5) The commitment hearing must be held within 30 days
 210 after the court receives notification that the defendant no
 211 longer meets the criteria for continued commitment.

212 Section 7. Subsection (1) of section 985.19, Florida
 213 Statutes, is amended, subsection (7) is renumbered as subsection
 214 (8), and a new subsection (7) is added to that section, to read:

215 985.19 Incompetency in juvenile delinquency cases.—

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

222 (a) Any motion questioning the child's competency to
 223 proceed must be served upon the child's attorney, the state
 224 attorney, the attorneys representing the Department of Juvenile

HB 1045

2012

225 Justice, and the attorneys representing the Department of
226 Children and Family Services. Thereafter, any motion, notice of
227 hearing, order, or other legal pleading relating to the child's
228 competency to proceed with the hearing must be served upon the
229 child's attorney, the state attorney, the attorneys representing
230 the Department of Juvenile Justice, and the attorneys
231 representing the Department of Children and Family Services.

232 (b) All determinations of competency must ~~shall~~ be made at
233 a hearing, with findings of fact based on an evaluation of the
234 child's mental condition made by at least ~~not less than~~ two but
235 not ~~nor~~ more than three experts appointed by the court. ~~The~~
236 ~~basis for the determination of incompetency must be specifically~~
237 ~~stated in the evaluation. In addition, a recommendation as to~~
238 ~~whether residential or nonresidential treatment or training is~~
239 ~~required must be included in the evaluation.~~ Experts appointed
240 by the court to determine the mental condition of a child shall
241 be allowed reasonable fees for services rendered. State
242 employees may be paid expenses pursuant to s. 112.061. The fees
243 shall be taxed as costs in the case.

244 (c) A child is competent to proceed if the child has
245 sufficient present ability to consult with counsel with a
246 reasonable degree of rational understanding and the child has a
247 rational and factual understanding of the present proceedings.

248 (d) The basis for the determination of a child's mental
249 condition must be specifically stated in the expert's competency
250 evaluation report and must include written findings that:

- 251 1. Identify the specific matters referred for evaluation.
252 2. Identify the sources of information used by the expert.

HB 1045

2012

253 3. Describe the procedures, techniques, and diagnostic
254 tests used in the examination to determine the basis of the
255 child's mental condition.

256 4. Address the child's capacity to:

257 a. Appreciate the charges or allegations against the
258 child.

259 b. Appreciate the range and nature of possible penalties
260 that may be imposed in the proceedings against the child, if
261 applicable.

262 c. Understand the adversarial nature of the legal process.

263 d. Disclose to counsel facts pertinent to the proceedings
264 at issue.

265 e. Display appropriate courtroom behavior.

266 f. Testify relevantly.

267 5. Present the factual basis for the expert's clinical
268 findings and opinions of the child's mental condition.

269 (e) If the evaluator determines the child to be
270 incompetent to proceed to trial, the evaluator must report on
271 the mental disorder that forms the basis of the incompetency.

272 (f) The expert's factual basis of his or her clinical
273 findings and opinions must be supported by the diagnostic
274 criteria found in the most recent edition of the Diagnostic and
275 Statistical Manual of the American Psychiatric Association (DSM-
276 IV) and must be presented in a section of his or her competency
277 evaluation report that shall be identified as a summary of
278 findings. This section must include:

279 1. The day, month, year, and length of time of the face-
280 to-face diagnostic clinical interview to determine the child's

281 mental condition.

282 2. A statement that identifies the DSM-IV clinical name
 283 and associated diagnostic code for the specific mental disorder
 284 that forms the basis of the child's incompetency.

285 3. A statement of how the child would benefit from
 286 competency restoration services in the community or in a secure
 287 residential treatment facility.

288 4. An assessment of the probable duration of the treatment
 289 to restore competence, and the probability that the child will
 290 attain competence to proceed in the foreseeable future.

291 5. A description of recommended treatment or education
 292 appropriate for the mental disorder.

293 (g)-(e) All court orders determining incompetency must
 294 include specific written findings by the court as to the nature
 295 of the incompetency and whether the child requires a secure or
 296 nonsecure treatment or training environment ~~environments~~.

297 (h)-(d) For competency ~~incompetency~~ evaluations related to
 298 mental illness, the Department of Children and Family Services
 299 shall maintain and annually provide the courts with a forensic
 300 evaluator registry ~~list~~ of available mental health professionals
 301 who have completed the approved ~~a~~ training as experts pursuant
 302 to this section ~~program approved by the Department of Children~~
 303 ~~and Family Services to perform the evaluations.~~

304 (i)-(e) For competency ~~incompetency~~ evaluations related to
 305 mental retardation or autism, the court shall order the Agency
 306 for Persons with Disabilities to examine the child to determine
 307 if the child meets the definition of "retardation" or "autism"
 308 in s. 393.063 and provide a clinical opinion as to, ~~if so,~~

309 whether the child is competent to proceed with delinquency
 310 proceedings.

311 ~~(f) A child is competent to proceed if the child has~~
 312 ~~sufficient present ability to consult with counsel with a~~
 313 ~~reasonable degree of rational understanding and the child has a~~
 314 ~~rational and factual understanding of the present proceedings.~~
 315 ~~The report must address the child's capacity to:~~

316 ~~1. Appreciate the charges or allegations against the~~
 317 ~~child.~~

318 ~~2. Appreciate the range and nature of possible penalties~~
 319 ~~that may be imposed in the proceedings against the child, if~~
 320 ~~applicable.~~

321 ~~3. Understand the adversarial nature of the legal process.~~

322 ~~4. Disclose to counsel facts pertinent to the proceedings~~
 323 ~~at issue.~~

324 ~~5. Display appropriate courtroom behavior.~~

325 ~~6. Testify relevantly.~~

326 (j)~~(g)~~ Immediately upon the filing of the court order
 327 finding a child incompetent to proceed, the clerk of the court
 328 shall notify the Department of Children and Family Services and
 329 the Agency for Persons with Disabilities and fax or hand deliver
 330 to the department and to the agency a referral packet that
 331 includes, at a minimum, the court order, the charging documents,
 332 the petition, and the court-appointed evaluator's reports.

333 (k)~~(h)~~ After placement of the child in the appropriate
 334 setting, the Department of Children and Family Services in
 335 consultation with the Agency for Persons with Disabilities, as
 336 appropriate, must, within 30 days after placement of the child,

HB 1045

2012

337 | prepare and submit to the court a treatment or training plan for
338 | the child's restoration of competency. A copy of the plan must
339 | be served upon the child's attorney, the state attorney, and the
340 | attorneys representing the Department of Juvenile Justice.

341 | (7) Effective July 1, 2013, court-appointed experts must
342 | have completed forensic evaluator training approved by the
343 | Department of Children and Family Services and comply with these
344 | additional requirements:

345 | (a) If an expert chooses to remain on the registry, the
346 | expert must have completed or retaken the required training
347 | course within the previous 5 years. An expert who has not
348 | completed the required training within the previous 5 years must
349 | be removed from the registry and may not conduct competency
350 | evaluations for the courts.

351 | (b) A mental health professional who has completed the
352 | training course within the previous 5 years must maintain
353 | documentation of having completed the required training and
354 | provide current contact information to the Department of
355 | Children and Family Services.

356 | Section 8. This act shall take effect July 1, 2012.