

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.

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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

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

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.

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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

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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. Once
132 trained, experts must retake the required training course every
133 5 years in order to remain on the registry. Those who have not
134 completed the training course or have not retaken the training
135 course within 5 years must be removed from the registry and may
136 not conduct competency evaluations for the courts.

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

141 (4) The department shall develop, and may contract with
 142 accredited institutions:

143 ~~(a)(1)~~ To provide:

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

147 ~~2.(b)~~ Clinical protocols and procedures based upon the
 148 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
 149 Procedure; and

150 ~~3.(e)~~ Training for mental health professionals in the
 151 application of these protocols and procedures in performing
 152 forensic evaluations and providing reports to the courts; and

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

159 Section 3. Paragraph (b) of subsection (1) of section
 160 916.115, Florida Statutes, is amended to read:

161 916.115 Appointment of experts.—

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

168 (b) The department shall maintain and annually provide the

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169 courts with a forensic evaluator registry ~~list~~ of available
170 mental health professionals who have completed the approved
171 training as experts.

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

174 916.13 Involuntary commitment of defendant adjudicated
175 incompetent.—

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

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

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

193 Section 5. Section 916.145, Florida Statutes, is amended
194 to read:

195 916.145 Dismissal of charges.—The charges against any
196 defendant adjudicated incompetent to proceed due to the

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197 defendant's mental illness shall be dismissed without prejudice
 198 to the state if the defendant remains incompetent to proceed 2 5
 199 years after such determination or 5 years after such
 200 determination if the charge is a capital offense, unless the
 201 court in its order specifies its reasons for believing that the
 202 defendant will become competent to proceed within the
 203 foreseeable future and specifies the time within which the
 204 defendant is expected to become competent to proceed. The
 205 charges against the defendant shall be ~~are~~ dismissed without
 206 prejudice to the state to refile the charges if ~~should~~ the
 207 defendant is ~~be~~ declared competent to proceed in the future.

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

210 916.15 Involuntary commitment of defendant adjudicated not
 211 guilty by reason of insanity.—

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

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

218 985.19 Incompetency in juvenile delinquency cases.—

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

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

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

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

251 (d) The basis for the determination of a child's mental
 252 condition must be specifically stated in the expert's competency

253 evaluation report and must include written findings that:
 254 1. Identify the specific matters referred for evaluation.
 255 2. Identify the sources of information used by the expert.
 256 3. Describe the procedures, techniques, and diagnostic
 257 tests used in the examination to determine the basis of the
 258 child's mental condition.
 259 4. Address the child's capacity to:
 260 a. Appreciate the charges or allegations against the
 261 child.
 262 b. Appreciate the range and nature of possible penalties
 263 that may be imposed in the proceedings against the child, if
 264 applicable.
 265 c. Understand the adversarial nature of the legal process.
 266 d. Disclose to counsel facts pertinent to the proceedings
 267 at issue.
 268 e. Display appropriate courtroom behavior.
 269 f. Testify relevantly.
 270 5. Present the factual basis for the expert's clinical
 271 findings and opinions of the child's mental condition.
 272 (e) If the evaluator determines the child to be
 273 incompetent to proceed to trial, the evaluator must report on
 274 the mental disorder that forms the basis of the incompetency.
 275 (f) The expert's factual basis of his or her clinical
 276 findings and opinions must be supported by the diagnostic
 277 criteria found in the most recent edition of the Diagnostic and
 278 Statistical Manual of Mental Disorders of the American
 279 Psychiatric Association and must be presented in a section of
 280 his or her competency evaluation report that shall be identified

281 as a summary of findings. This section must include:

282 1. The day, month, year, and length of time of the face-
 283 to-face diagnostic clinical interview to determine the child's
 284 mental condition.

285 2. A statement that identifies the mental disorder causing
 286 the child's incompetence. In reporting on the mental disorder,
 287 the evaluator shall use the clinical name and associated
 288 diagnostic code found in the most recent edition of the
 289 Diagnostic and Statistical Manual of Mental Disorders of the
 290 American Psychiatric Association.

291 3. A statement of how the child would benefit from
 292 competency restoration services in the community or in a secure
 293 residential treatment facility.

294 4. An assessment of the probable duration of the treatment
 295 to restore competence, and the probability that the child will
 296 attain competence to proceed in the foreseeable future.

297 5. A description of recommended treatment or education
 298 appropriate for the mental disorder.

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

303 (h)-(d) For competency ~~incompetency~~ evaluations related to
 304 mental illness, the Department of Children and Family Services
 305 shall maintain and annually provide the courts with a forensic
 306 evaluator registry ~~list~~ of available mental health professionals
 307 who have completed the approved ~~a~~ training as experts pursuant
 308 to this section ~~program approved by the Department of Children~~

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309 ~~and Family Services to perform the evaluations.~~

310 ~~(i)(e)~~ For competency ~~incompetency~~ evaluations related to
311 mental retardation or autism, the court shall order the Agency
312 for Persons with Disabilities to examine the child to determine
313 if the child meets the definition of "retardation" or "autism"
314 in s. 393.063 and provide a clinical opinion as to, ~~if so~~,
315 whether the child is competent to proceed with delinquency
316 proceedings.

317 ~~(f) A child is competent to proceed if the child has~~
318 ~~sufficient present ability to consult with counsel with a~~
319 ~~reasonable degree of rational understanding and the child has a~~
320 ~~rational and factual understanding of the present proceedings.~~
321 ~~The report must address the child's capacity to:~~

322 ~~1. Appreciate the charges or allegations against the~~
323 ~~child.~~

324 ~~2. Appreciate the range and nature of possible penalties~~
325 ~~that may be imposed in the proceedings against the child, if~~
326 ~~applicable.~~

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

328 ~~4. Disclose to counsel facts pertinent to the proceedings~~
329 ~~at issue.~~

330 ~~5. Display appropriate courtroom behavior.~~

331 ~~6. Testify relevantly.~~

332 ~~(j)(g)~~ Immediately upon the filing of the court order
333 finding a child incompetent to proceed, the clerk of the court
334 shall notify the Department of Children and Family Services and
335 the Agency for Persons with Disabilities and fax or hand deliver
336 to the department and to the agency a referral packet that

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337 includes, at a minimum, the court order, the charging documents,
338 the petition, and the court-appointed evaluator's reports.

339 ~~(k)-(h)~~ After placement of the child in the appropriate
340 setting, the Department of Children and Family Services in
341 consultation with the Agency for Persons with Disabilities, as
342 appropriate, must, within 30 days after placement of the child,
343 prepare and submit to the court a treatment or training plan for
344 the child's restoration of competency. A copy of the plan must
345 be served upon the child's attorney, the state attorney, and the
346 attorneys representing the Department of Juvenile Justice.

347 (7) Effective July 1, 2013, court-appointed experts must
348 have completed forensic evaluator training approved by the
349 Department of Children and Family Services and comply with these
350 additional requirements:

351 (a) If an expert chooses to remain on the registry, the
352 expert must have completed or retaken the required training
353 course within the previous 5 years. Once trained, an expert must
354 retake the required training course every 5 years in order to
355 remain on the registry. An expert who has not completed the
356 required training course or has not retaken the training course
357 within 5 years must be removed from the registry and may not
358 conduct competency evaluations for the courts.

359 (b) A mental health professional who has completed the
360 training course within the previous 5 years must maintain
361 documentation of having completed the required training and
362 provide current contact information to the Department of
363 Children and Family Services.

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