

CS/CS/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.; making grammatical
17 changes; amending s. 916.15, F.S.; providing
18 timeframes for commitment hearings to be held;
19 amending s. 985.19, F.S.; standardizing the protocols,
20 procedures, and criteria used in reporting expert
21 findings in determining competency in juvenile cases;
22 revising requirements related to the forensic
23 evaluator training program that appointed experts must
24 complete; requiring experts after a specified date to
25 have completed such training; providing an effective
26 date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Paragraph (a) of subsection (3) of section
31 916.107, Florida Statutes, is amended to read:
32 916.107 Rights of forensic clients.—
33 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—
34 (a) A forensic client shall be asked to give express and
35 informed written consent for treatment. If a client refuses such
36 treatment as is deemed necessary and essential by the client's
37 multidisciplinary treatment team for the appropriate care of the
38 client, such treatment may be provided under the following
39 circumstances:
40 1. In an emergency situation in which there is immediate
41 danger to the safety of the client or others, such treatment may
42 be provided upon the written order of a physician for a period
43 not to exceed 48 hours, excluding weekends and legal holidays.
44 If, after the 48-hour period, the client has not given express
45 and informed consent to the treatment initially refused, the
46 administrator or designee of the civil or forensic facility
47 shall, within 48 hours, excluding weekends and legal holidays,
48 petition the committing court or the circuit court serving the
49 county in which the facility is located, at the option of the
50 facility administrator or designee, for an order authorizing the
51 continued treatment of the client. In the interim, the need for
52 treatment shall be reviewed every 48 hours and may be continued
53 without the consent of the client upon the continued written
54 order of a physician who has determined that the emergency
55 situation continues to present a danger to the safety of the
56 client or others.

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

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

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

84 3. At the hearing on the issue of whether the court should

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

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

99
100 The hearing shall be as convenient to the client as may be
101 consistent with orderly procedure and shall be conducted in
102 physical settings not likely to be injurious to the client's
103 condition. The court may appoint a general or special magistrate
104 to preside at the hearing. The client or the client's guardian,
105 and the representative, shall be provided with a copy of the
106 petition and the date, time, and location of the hearing. The
107 client has the right to have an attorney represent him or her at
108 the hearing, and, if the client is indigent, the court shall
109 appoint the office of the public defender to represent the
110 client at the hearing. The client may testify or not, as he or
111 she chooses, and has the right to cross-examine witnesses and
112 may present his or her own witnesses.

113 Section 2. Section 916.111, Florida Statutes, is amended
114 to read:

115 916.111 Training of mental health experts.—

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

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

123 (3) A forensic evaluator training course must be approved
124 by the department, or given by a statewide professional
125 association of physicians in Florida accredited to provide
126 educational activities designated for American Medical
127 Association Physician's Recognition Award Category I credit,
128 American Osteopathic Association Category 1-A credit, or
129 American Psychological Association continuing education credit,
130 using department-approved curriculum. The course must be
131 provided at least annually to ensure that mental health
132 professionals have the opportunity to be placed on the
133 department's forensic evaluator registry.

134 (a) Beginning July 1, 2013, if an expert chooses to remain
135 on the registry, he or she must have completed or retaken the
136 required training course within the previous 5 years. Once
137 trained, experts must retake the required training course every
138 5 years in order to remain on the registry. Those who have not
139 completed the training course or have not retaken the training
140 course within 5 years must be removed from the registry and may

141 not conduct competency evaluations for the courts.

142 (b) A mental health professional who has completed the
 143 training course within the previous 5 years must maintain
 144 documentation of completion of the required training course and
 145 provide current contact information to the department.

146 (4) The department shall develop, and may contract with
 147 accredited institutions:

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

149 1.~~(a)~~ A plan for training mental health professionals to
 150 perform forensic evaluations and to standardize the criteria and
 151 procedures to be used in these evaluations;

152 2.~~(b)~~ Clinical protocols and procedures based upon the
 153 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
 154 Procedure; and

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

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

164 Section 3. Paragraph (b) of subsection (1) of section
 165 916.115, Florida Statutes, is amended to read:

166 916.115 Appointment of experts.—

167 (1) The court shall appoint no more than three experts to
 168 determine the mental condition of a defendant in a criminal

169 case, including competency to proceed, insanity, involuntary
 170 placement, and treatment. The experts may evaluate the defendant
 171 in jail or in another appropriate local facility or in a
 172 facility of the Department of Corrections.

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

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

179 916.13 Involuntary commitment of defendant adjudicated
 180 incompetent.—

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

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

194 (b) A competency hearing must be held within 30 days after
 195 a court receives notification that the defendant is competent to
 196 proceed or no longer meets the criteria for continued

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197 commitment.

198 Section 5. Section 916.145, Florida Statutes, is amended
199 to read:

200 916.145 Dismissal of charges.—The charges against any
201 defendant adjudicated incompetent to proceed due to the
202 defendant's mental illness shall be dismissed without prejudice
203 to the state if the defendant remains incompetent to proceed 5
204 years after such determination, unless the court in its order
205 specifies its reasons for believing that the defendant will
206 become competent to proceed within the foreseeable future and
207 specifies the time within which the defendant is expected to
208 become competent to proceed. The charges against the defendant
209 shall be ~~are~~ dismissed without prejudice to the state to refile
210 the charges if ~~should~~ the defendant is ~~be~~ declared competent to
211 proceed in the future.

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

214 916.15 Involuntary commitment of defendant adjudicated not
215 guilty by reason of insanity.—

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

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

222 985.19 Incompetency in juvenile delinquency cases.—

223 (1) If, at any time prior to or during a delinquency case,
224 the court has reason to believe that the child named in the

225 petition may be incompetent to proceed with the hearing, the
 226 court on its own motion may, or on the motion of the child's
 227 attorney or state attorney must, stay all proceedings and order
 228 an evaluation of the child's mental condition.

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

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

251 (c) A child is competent to proceed if the child has
 252 sufficient present ability to consult with counsel with a

253 reasonable degree of rational understanding and the child has a
 254 rational and factual understanding of the present proceedings.

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

- 258 1. Identify the specific matters referred for evaluation.
- 259 2. Identify the sources of information used by the expert.
- 260 3. Describe the procedures, techniques, and diagnostic
 261 tests used in the examination to determine the basis of the
 262 child's mental condition.
- 263 4. Address the child's capacity to:
 - 264 a. Appreciate the charges or allegations against the
 265 child.
 - 266 b. Appreciate the range and nature of possible penalties
 267 that may be imposed in the proceedings against the child, if
 268 applicable.
 - 269 c. Understand the adversarial nature of the legal process.
 - 270 d. Disclose to counsel facts pertinent to the proceedings
 271 at issue.
 - 272 e. Display appropriate courtroom behavior.
 - 273 f. Testify relevantly.

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

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

279 (f) The expert's factual basis of his or her clinical
 280 findings and opinions must be supported by the diagnostic

281 criteria found in the most recent edition of the Diagnostic and
282 Statistical Manual of Mental Disorders of the American
283 Psychiatric Association and must be presented in a section of
284 his or her competency evaluation report that shall be identified
285 as a summary of findings. This section must include:

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

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

295 3. A statement of how the child would benefit from
296 competency restoration services in the community or in a secure
297 residential treatment facility.

298 4. An assessment of the probable duration of the treatment
299 to restore competence, and the probability that the child will
300 attain competence to proceed in the foreseeable future.

301 5. A description of recommended treatment or education
302 appropriate for the mental disorder.

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

307 (h)-(d) For competency ~~incompetency~~ evaluations related to
308 mental illness, the Department of Children and Family Services

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309 shall maintain and annually provide the courts with a forensic
 310 evaluator registry ~~list~~ of available mental health professionals
 311 who have completed the approved ~~a~~ training as experts pursuant
 312 to this section ~~program approved by the Department of Children~~
 313 ~~and Family Services to perform the evaluations.~~

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

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

- 326 ~~1. Appreciate the charges or allegations against the~~
 327 ~~child.~~
- 328 ~~2. Appreciate the range and nature of possible penalties~~
 329 ~~that may be imposed in the proceedings against the child, if~~
 330 ~~applicable.~~
- 331 ~~3. Understand the adversarial nature of the legal process.~~
- 332 ~~4. Disclose to counsel facts pertinent to the proceedings~~
 333 ~~at issue.~~
- 334 ~~5. Display appropriate courtroom behavior.~~
- 335 ~~6. Testify relevantly.~~

336 (j) ~~(g)~~ Immediately upon the filing of the court order

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337 finding a child incompetent to proceed, the clerk of the court
338 shall notify the Department of Children and Family Services and
339 the Agency for Persons with Disabilities and fax or hand deliver
340 to the department and to the agency a referral packet that
341 includes, at a minimum, the court order, the charging documents,
342 the petition, and the court-appointed evaluator's reports.

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

351 (7) Effective July 1, 2013, court-appointed experts must
352 have completed forensic evaluator training approved by the
353 Department of Children and Family Services, or given by a
354 statewide professional association of physicians in this state
355 accredited to provide educational activities designated for
356 American Medical Association Physician's Recognition Award
357 Category I credit, American Osteopathic Association Category 1-A
358 credit, or American Psychological Association continuing
359 education credit, using a department-approved curriculum. Court-
360 appointed experts must also comply with these additional
361 requirements:

362 (a) If an expert chooses to remain on the registry, the
363 expert must have completed or retaken the required training
364 course within the previous 5 years. Once trained, an expert must

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365 retake the required training course every 5 years in order to
366 remain on the registry. An expert who has not completed the
367 required training course or has not retaken the training course
368 within 5 years must be removed from the registry and may not
369 conduct competency evaluations for the courts.

370 (b) A mental health professional who has completed the
371 training course within the previous 5 years must maintain
372 documentation of having completed the required training and
373 provide current contact information to the Department of
374 Children and Family Services.

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