

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1712

INTRODUCER: Senator Storms

SUBJECT: Mental Health

DATE: February 14, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.			CF	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

The bill amends certain statutes that govern mental health issues with criminal defendants and juveniles charged with delinquent acts. Defendants whose competency to proceed is in question or found by a court to be lacking, are committed to the Department of Children and Family Services (department) for “competency training” in an effort to restore them to competency. If a defendant meets the definition of mental retardation or autism, the Agency for Persons with Disabilities generally serves their needs in this process. Defendants who are found not guilty by reason of insanity are likewise committed to the department.

The bill provides for the continuation of treatment with psychotropic drugs, under limited circumstances, by the department for defendants and forensic clients that have been administered such treatment in a jail prior to relocation to a department facility.

The bill requires that experts who wish to be named on the registry of witnesses who may be appointed by the court to evaluate and render an opinion as to a defendant’s competency or sanity complete forensic evaluator training. The department is required by the bill to maintain an active registry for the courts. The bill applies the same training and registry requirements for experts and the department in juvenile cases.

The bill specifies a timeframe within which a hearing must be held on matters of competency and continued commitment.

The bill provides for standard report and recommendation criteria in reports issued by experts called upon to evaluate juveniles.

This bill substantially amends the following sections of the Florida Statutes: 916.107, 916.111, 916.115, 916.13, 916.15, and 985.19.

## II. Present Situation:

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.<sup>1</sup> The states must have procedures in place that adequately protect the defendant's right to a fair trial which includes his or her participation in all material stages of the process.<sup>2</sup> Specifically, defendants (and juveniles charged with having committed felony-level delinquent acts) must be able to appreciate the range and nature of the charges and penalties that may be imposed, and must be able to understand the adversarial nature of the legal process and disclose to counsel facts pertinent to the proceedings at issue. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.<sup>3</sup>

If a defendant is suspected of being incompetent, the court or counsel for the defendant or the state may file a motion for examination to have the defendant's cognitive state assessed. If the motion is well-founded the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing. If the defendant is found to be competent, the criminal proceeding resumes. If, however, the defendant is found to be incompetent to proceed, competency must be restored before the criminal proceeding may resume.<sup>4</sup>

### Restoration of Competency

Competency restoration is designed to help defendants meaningfully participate in their own defense. The Department of Children and Family Services has oversight of felony defendants who are found incompetent to proceed due to mental illness, while the Agency for Persons with Disabilities is charged with oversight of felony defendants who are incompetent to proceed due to developmental disabilities.<sup>5</sup> The department 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>6</sup>

If the court determines that the defendant is a danger to himself or others, it may involuntarily commit the defendant to a secure forensic facility.<sup>7</sup> Defendants may be placed on conditional release to receive competency restoration training in the community if the court finds they do not pose a risk to public safety.<sup>8</sup>

Once a defendant is determined to have regained his or her competence to proceed, the court is notified and a hearing is set for the judge to determine the defendant's competency.<sup>9</sup> If the court

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<sup>1</sup> See *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).

<sup>2</sup> *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P., Rule 8.095(d)(1), Fla.R.Juv.P.

<sup>3</sup> *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.

<sup>4</sup> Rule 3.210(b), 3.211, 3.212, Fla.R.Crim.P.; Rule 8.095(a)(1)-(6), Fla.R.Juv.P.

<sup>5</sup> Ch. 916, F.S.

<sup>6</sup> s. 985.19(4), F.S.

<sup>7</sup> s. 916.13, F.S.

<sup>8</sup> s. 916.17, F.S.

<sup>9</sup> Rule 3.212, Fla.R.Crim.P.

finds the defendant to be competent, the criminal proceeding resumes. If, however, the court finds the defendant incompetent to proceed, the defendant is returned to a forensic facility or community restoration on conditional release until competency is restored.<sup>10</sup>

Competency restoration training and mental health services are provided in four state forensic facilities, that have a total of 1,098 beds (two facilities are state-operated and two are operated under contract with a private provider).<sup>11</sup> The department served 2,581 adults who were committed for competency restoration services during FY 2010-11.<sup>12</sup> The department reports that 412 juveniles received competency training during FY 2010-11.<sup>13</sup>

### **Qualifications of Competency Experts**

Section 916.115 (1)(a), F.S., provides that experts appointed by the court to conduct competency evaluations shall, to the extent possible, have completed forensic evaluator training approved by the department and each shall be a psychiatrist, licensed psychologist, or physician. The department is required by s. 916.115 (1)(b), F.S., to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts. However, current law does not require attendance at a department-authorized training or training renewal.

In the juvenile system, the court appoints mental health experts to conduct competency evaluations although there does not appear to be a specific requirement in the juvenile competency statute that the expert be a psychiatrist, licensed psychologist, or physician as is the case in the adult system.<sup>14</sup> As in the adult system, the department provides the court a list of experts who have completed a department-approved training program but there is no statute that requires any attendance or on-going forensic training for the purpose of competency evaluation and reporting.<sup>15</sup> The Agency for Persons with Disabilities conducts the evaluations and makes the reports to the court regarding juveniles who meet the definition of “retardation” or “autism.”<sup>16</sup> Although there is a requirement in s. 916.301(2)(b)1., F.S., that the expert appointed to examine adult defendants be a psychologist, the juvenile statute does not make such a specification.

### **Hearing to Determine Restoration of Competency or Need for Continued Commitment**

When the court adjudicates a defendant incompetent to proceed and the defendant is committed to the department to be restored to competency, or if the defendant has been found not guilty by reason of insanity and committed to the department, the defendant is returned to court periodically for a review and report on his or her condition.<sup>17</sup> Generally, a review is conducted:

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<sup>10</sup> *Id.*

<sup>11</sup> Information provided by the department, January 5, 2012. (Note: The department’s analysis was provided on House Bill 1045 which is similar to Senate Bill 1712. Report is on file with Senate Criminal Justice staff.)

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> s. 985.19(1)(b), F.S.

<sup>15</sup> s. 985.19(1)(d), F.S.

<sup>16</sup> s. 985.19(1)(e), F.S.

<sup>17</sup> ss. 916.13(2), 916.15(3) and 916.302(2)(a), F.S. See also s. 985.19(4)(e), (5) and (6), F.S., related to the court’s jurisdiction and reporting requirements in juvenile cases.

- No later than 6 months after the date of admission;
- At the end of any extended period of commitment;
- At any time upon the facility administrator's communication to the court that the defendant no longer meets commitment criteria; or
- Upon counsel's Motion for Review having been granted.

Rules of Criminal and Juvenile Procedure require that a hearing be held within 30 days of the court's receiving the administrator's pre-hearing report.<sup>18</sup> There is no corresponding statutory time constraint on the court conducting a hearing.

The court also retains jurisdiction for purposes of dismissing charges if a defendant has not become competent within 5 years.<sup>19</sup>

### **Psychotropic Medication**

Forensic clients of the department, which includes defendants who have been committed to the department for competency restoration or because they have been found not guilty by reason of insanity, must be treated with dignity and respect. The department, however, is responsible for providing treatment deemed necessary to fulfill its obligation under the statutes governing competency restoration and mental illness.

Forensic clients are, therefore, asked to give express and informed consent for treatment.<sup>20</sup> When treatment is refused, it may nonetheless be provided in an emergency situation for periods of up to 48 hours (excluding weekends and holidays, subject to review in 48-hour increments by a physician until a court rules) unless or until the department obtains a court order authorizing continued treatment.<sup>21</sup>

### **III. Effect of Proposed Changes:**

*Section 1* of the bill amends s. 916.107(3), F.S., to allow for psychotherapeutic medication that has been administered to a department client who was previously administered the medication at the jail to be ordered by the department's admitting physician. The department physician's opinion must be that abrupt cessation of the medication could cause a risk to the client's health and safety. The jail physician is required to provide a current medication order at the time of the client's transfer to the forensic or civil facility.

*Section 2* amends s. 916.111, F.S., to require forensic evaluator training for experts appointed by the courts to evaluate defendants who appear to be incompetent to proceed or who may have been insane at the time of the criminal offense with which they are charged.

The department is required to provide a department-approved course at least annually. Beginning in July of 2013 an expert who is on the expert forensic evaluator registry must have completed or repeated training within the previous 5 years (no earlier than June 30, 2008) or the expert will be removed from the registry and may not conduct evaluations for the courts. If it is the intent of the

<sup>18</sup> Rules 3.212 and 3.218, Fla.R.Crim.P.; Rule 8.095(a)(5), Fla.R.Juv.P. See also Rule 8.095(e), Fla.R.Juv.P.

<sup>19</sup> s. 916.145, 916.303, F.S. Regarding dismissal of charges of juvenile delinquency, see s. 985.19(5)(c), F.S.

<sup>20</sup> s. 916.107(3), F.S.

<sup>21</sup> *Id.*

bill that training be completed *every five years*, this intent does not appear to be specified in the bill.

Experts on the registry must maintain documentation of course completion and provide the department with up-to-date contact information.

**Section 3** makes a conforming technical change to s. 916.115, F.S., to refer to the “forensic evaluator registry” (rather than “list”) to be maintained and provided to the courts.

**Section 4** amends s. 916.13(2), F.S., to insert a statutory requirement which mirrors the court Rule requirement that a competency hearing be held within 30 days of the court receiving notification that the defendant no longer meets the criteria for continued commitment.

**Section 5** amends s. 916.15, F.S., to require a commitment hearing be held within 30 days of the court receiving notification that the defendant no longer meets the criteria for continued commitment.

**Section 6** of the bill amends s. 985.19, F.S., to establish criteria that a forensic evaluator must use when reporting to the court as to whether a child is competent to proceed. If the child is determined to be incompetent, the evaluator must provide a mental disorder that forms the basis of the incompetency. The evaluator must also present a summary of findings 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.

It also requires the expert training required of forensic experts in Section 2 of the bill for experts on the registry who may render opinions as to competency and commitment in adult court.

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

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The 30-day court hearing time restrictions for certain competency and commitment hearings (Sections 4 and 5 of the bill) may be viewed as a Separation of Powers issue. It could be argued to be a procedural matter that falls within the power of the court, rather than a substantive matter of the law, a legislative matter. The issue may not arise, however, as the statutory change set forth in the bill mirrors the current court rules.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The department reports that the current cost for forensic evaluator training, for nonprofit or state government employees, is \$445 or \$395.<sup>22</sup>

**C. Government Sector Impact:**

It is unclear from the department's report whether the state pays for forensic evaluator training for state government employees, but if this is the case, it is not likely to be a new fiscal impact.<sup>23</sup>

The department reports that it expects no new fiscal impact as a result of the bill.<sup>24</sup>

The Department of Juvenile Justice reports an indeterminate fiscal impact.<sup>25</sup>

The Agency for Persons with Disabilities reports that the bill is not expected to have any fiscal impact on the Agency.<sup>26</sup>

**VI. Technical Deficiencies:**

In Section 6 of the bill, on lines 255-256 and line 262, reference is made to a specific edition of the Diagnostic and Statistical Manual of the American Psychiatric Association. It is suggested that this specific reference be eliminated in favor of a more general reference such as "the most current edition."

<sup>22</sup> Information provided by the department, January 5, 2012. (Note: The department's analysis was provided on House Bill 1045 which is similar to Senate Bill 1712. Report is on file with Senate Criminal Justice staff.)

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> January 18, 2012 report from the Department of Juvenile Justice is on file with Senate Criminal Justice Committee staff.

<sup>26</sup> January 24, 2012 email from APD staff on file with the Senate Criminal Justice Committee.

In Sections 2 and 6 of the bill, clarity with regard to the forensic evaluator training being an *on-going* requirement with *renewal* of training every five years is suggested, if that is the intent of the bill.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.