

By Senator Storms

10-01329B-12

20121712

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

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Paragraph (a) of subsection (3) of section
29 916.107, Florida Statutes, is amended to read:

10-01329B-12

20121712

30 916.107 Rights of forensic clients.—

31 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

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

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

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

10-01329B-12

20121712

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

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

82 3. At the hearing on the issue of whether the court should
83 enter an order authorizing treatment for which a client was
84 unable to or refused to give express and informed consent, the
85 court shall determine by clear and convincing evidence that the
86 client has mental illness, retardation, or autism, that the
87 treatment not consented to is essential to the care of the

10-01329B-12

20121712__

88 client, and that the treatment not consented to is not
89 experimental and does not present an unreasonable risk of
90 serious, hazardous, or irreversible side effects. In arriving at
91 the substitute judgment decision, the court must consider at
92 least the following factors:

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

97
98 The hearing shall be as convenient to the client as may be
99 consistent with orderly procedure and shall be conducted in
100 physical settings not likely to be injurious to the client's
101 condition. The court may appoint a general or special magistrate
102 to preside at the hearing. The client or the client's guardian,
103 and the representative, shall be provided with a copy of the
104 petition and the date, time, and location of the hearing. The
105 client has the right to have an attorney represent him or her at
106 the hearing, and, if the client is indigent, the court shall
107 appoint the office of the public defender to represent the
108 client at the hearing. The client may testify or not, as he or
109 she chooses, and has the right to cross-examine witnesses and
110 may present his or her own witnesses.

111 Section 2. Section 916.111, Florida Statutes, is amended to
112 read:

113 916.111 Training of mental health experts.—

114 (1) The evaluation of defendants for competency to proceed
115 or for sanity at the time of the commission of the offense shall
116 be conducted in such a way as to ensure uniform application of

10-01329B-12

20121712

117 the criteria enumerated in Rules 3.210 and 3.216, Florida Rules
118 of Criminal Procedure.

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

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

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

130 (b) A mental health professional who has completed the
131 training course within the previous 5 years must maintain
132 documentation of completion of the required training course and
133 provide current contact information to the department.

134 (4) The department shall develop, and may contract with
135 accredited institutions:

136 (a)-(1) To provide:

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

140 2.(b) Clinical protocols and procedures based upon the
141 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
142 Procedure; and

143 3.(c) Training for mental health professionals in the
144 application of these protocols and procedures in performing
145 forensic evaluations and providing reports to the courts; and

10-01329B-12

20121712__

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

152 Section 3. Paragraph (b) of subsection (1) of section
153 916.115, Florida Statutes, is amended to read:

154 916.115 Appointment of experts.—

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

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

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

167 916.13 Involuntary commitment of defendant adjudicated
168 incompetent.—

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

10-01329B-12

20121712__

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

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

186 Section 5. Subsection (5) is added to section 916.15,
187 Florida Statutes, to read:

188 916.15 Involuntary commitment of defendant adjudicated not
189 guilty by reason of insanity.—

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

193 Section 6. Subsection (1) of section 985.19, Florida
194 Statutes, is amended, subsection (7) is renumbered as subsection
195 (8), and a new subsection (7) is added to that section, to read:

196 985.19 Incompetency in juvenile delinquency cases.—

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

203 (a) Any motion questioning the child's competency to

10-01329B-12

20121712

204 proceed must be served upon the child's attorney, the state
205 attorney, the attorneys representing the Department of Juvenile
206 Justice, and the attorneys representing the Department of
207 Children and Family Services. Thereafter, any motion, notice of
208 hearing, order, or other legal pleading relating to the child's
209 competency to proceed with the hearing must be served upon the
210 child's attorney, the state attorney, the attorneys representing
211 the Department of Juvenile Justice, and the attorneys
212 representing the Department of Children and Family Services.

213 (b) All determinations of competency must ~~shall~~ be made at
214 a hearing, with findings of fact based on an evaluation of the
215 child's mental condition made by at least ~~not less than~~ two but
216 not ~~nor~~ more than three experts appointed by the court. ~~The~~
217 ~~basis for the determination of incompetency must be specifically~~
218 ~~stated in the evaluation. In addition, a recommendation as to~~
219 ~~whether residential or nonresidential treatment or training is~~
220 ~~required must be included in the evaluation.~~ Experts appointed
221 by the court to determine the mental condition of a child shall
222 be allowed reasonable fees for services rendered. State
223 employees may be paid expenses pursuant to s. 112.061. The fees
224 shall be taxed as costs in the case.

225 (c) A child is competent to proceed if the child has
226 sufficient present ability to consult with counsel with a
227 reasonable degree of rational understanding and the child has a
228 rational and factual understanding of the present proceedings.

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

232 1. Identify the specific matters referred for evaluation.

10-01329B-12

20121712

233 2. Identify the sources of information used by the expert.

234 3. Describe the procedures, techniques, and diagnostic
235 tests used in the examination to determine the basis of the
236 child's mental condition.

237 4. Address the child's capacity to:

238 a. Appreciate the charges or allegations against the child.

239 b. Appreciate the range and nature of possible penalties
240 that may be imposed in the proceedings against the child, if
241 applicable.

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

243 d. Disclose to counsel facts pertinent to the proceedings
244 at issue.

245 e. Display appropriate courtroom behavior.

246 f. Testify relevantly.

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

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

252 (f) The expert's factual basis of his or her clinical
253 findings and opinions must be supported by the diagnostic
254 criteria found in the most recent edition of the Diagnostic and
255 Statistical Manual of the American Psychiatric Association (DSM-
256 IV) and must be presented in a section of his or her competency
257 evaluation report that shall be identified as a summary of
258 findings. This section must include:

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

10-01329B-12

20121712

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

265 3. A statement of how the child would benefit from
266 competency restoration services in the community or in a secure
267 residential treatment facility.

268 4. An assessment of the probable duration of the treatment
269 to restore competence, and the probability that the child will
270 attain competence to proceed in the foreseeable future.

271 5. A description of recommended treatment or education
272 appropriate for the mental disorder.

273 (g)~~(e)~~ All court orders determining incompetency must
274 include specific written findings by the court as to the nature
275 of the incompetency and whether the child requires a secure or
276 nonsecure treatment or training environment ~~environments~~.

277 (h)~~(d)~~ For competency ~~incompetency~~ evaluations related to
278 mental illness, the Department of Children and Family Services
279 shall maintain and annually provide the courts with a forensic
280 evaluator registry ~~list~~ of available mental health professionals
281 who have completed the approved ~~a~~ training as experts pursuant
282 to this section ~~program approved by the Department of Children~~
283 ~~and Family Services to perform the evaluations.~~

284 (i)~~(e)~~ For competency ~~incompetency~~ evaluations related to
285 mental retardation or autism, the court shall order the Agency
286 for Persons with Disabilities to examine the child to determine
287 if the child meets the definition of "retardation" or "autism"
288 in s. 393.063 and provide a clinical opinion as to, ~~if so,~~
289 whether the child is competent to proceed with delinquency
290 proceedings.

10-01329B-12

20121712

291 ~~(f) A child is competent to proceed if the child has~~
292 ~~sufficient present ability to consult with counsel with a~~
293 ~~reasonable degree of rational understanding and the child has a~~
294 ~~rational and factual understanding of the present proceedings.~~
295 ~~The report must address the child's capacity to:~~

- 296 ~~1. Appreciate the charges or allegations against the child.~~
297 ~~2. Appreciate the range and nature of possible penalties~~
298 ~~that may be imposed in the proceedings against the child, if~~
299 ~~applicable.~~
300 ~~3. Understand the adversarial nature of the legal process.~~
301 ~~4. Disclose to counsel facts pertinent to the proceedings~~
302 ~~at issue.~~
303 ~~5. Display appropriate courtroom behavior.~~
304 ~~6. Testify relevantly.~~

305 ~~(j)(g)~~ Immediately upon the filing of the court order
306 finding a child incompetent to proceed, the clerk of the court
307 shall notify the Department of Children and Family Services and
308 the Agency for Persons with Disabilities and fax or hand deliver
309 to the department and to the agency a referral packet that
310 includes, at a minimum, the court order, the charging documents,
311 the petition, and the court-appointed evaluator's reports.

312 ~~(k)(h)~~ After placement of the child in the appropriate
313 setting, the Department of Children and Family Services in
314 consultation with the Agency for Persons with Disabilities, as
315 appropriate, must, within 30 days after placement of the child,
316 prepare and submit to the court a treatment or training plan for
317 the child's restoration of competency. A copy of the plan must
318 be served upon the child's attorney, the state attorney, and the
319 attorneys representing the Department of Juvenile Justice.

10-01329B-12

20121712__

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

324 (a) If an expert chooses to remain on the registry, the
325 expert must have completed or retaken the required training
326 course within the previous 5 years. An expert who has not
327 completed the required training within the previous 5 years must
328 be removed from the registry and may not conduct competency
329 evaluations for the courts.

330 (b) A mental health professional who has completed the
331 training course within the previous 5 years must maintain
332 documentation of having completed the required training and
333 provide current contact information to the Department of
334 Children and Family Services.

335 Section 7. This act shall take effect July 1, 2012.