

By the Committee on Criminal Justice; and Senator Storms

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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:

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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.

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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

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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

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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 or given by a statewide professional association of
123 physicians in Florida accredited to provide educational
124 activities designated for AMA PRA Category I credit or AOA
125 Category 1-A credit must be provided at least annually to ensure
126 that mental health professionals have the opportunity to be
127 placed on the department's forensic evaluator registry.

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

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

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

142 (a)-~~1~~ To provide:

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

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

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

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

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

160 916.115 Appointment of experts.—

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

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

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

173 916.13 Involuntary commitment of defendant adjudicated
174 incompetent.—

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

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

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

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

194 916.15 Involuntary commitment of defendant adjudicated not
195 guilty by reason of insanity.—

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

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

202 985.19 Incompetency in juvenile delinquency cases.—

203 (1) If, at any time prior to or during a delinquency case,

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204 the court has reason to believe that the child named in the
205 petition may be incompetent to proceed with the hearing, the
206 court on its own motion may, or on the motion of the child's
207 attorney or state attorney must, stay all proceedings and order
208 an evaluation of the child's mental condition.

209 (a) Any motion questioning the child's competency to
210 proceed must be served upon the child's attorney, the state
211 attorney, the attorneys representing the Department of Juvenile
212 Justice, and the attorneys representing the Department of
213 Children and Family Services. Thereafter, any motion, notice of
214 hearing, order, or other legal pleading relating to the child's
215 competency to proceed with the hearing must be served upon the
216 child's attorney, the state attorney, the attorneys representing
217 the Department of Juvenile Justice, and the attorneys
218 representing the Department of Children and Family Services.

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

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

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233 reasonable degree of rational understanding and the child has a
234 rational and factual understanding of the present proceedings.

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

238 1. Identify the specific matters referred for evaluation.

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

240 3. Describe the procedures, techniques, and diagnostic
241 tests used in the examination to determine the basis of the
242 child's mental condition.

243 4. Address the child's capacity to:

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

245 b. Appreciate the range and nature of possible penalties
246 that may be imposed in the proceedings against the child, if
247 applicable.

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

249 d. Disclose to counsel facts pertinent to the proceedings
250 at issue.

251 e. Display appropriate courtroom behavior.

252 f. Testify relevantly.

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

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

258 (f) The expert's factual basis of his or her clinical
259 findings and opinions must be supported by the diagnostic
260 criteria found in the most recent edition of the Diagnostic and
261 Statistical Manual of Mental Disorders of the American

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262 Psychiatric Association and must be presented in a section of
263 his or her competency evaluation report that shall be identified
264 as a summary of findings. This section must include:

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

268 2. A statement that identifies the mental disorder causing
269 the child's incompetence. In reporting on the mental disorder,
270 the evaluator shall use the clinical name and associated
271 diagnostic code found in the most recent edition of the
272 Diagnostic and Statistical Manual of Mental Disorders of the
273 American Psychiatric Association.

274 3. A statement of how the child would benefit from
275 competency restoration services in the community or in a secure
276 residential treatment facility.

277 4. An assessment of the probable duration of the treatment
278 to restore competence, and the probability that the child will
279 attain competence to proceed in the foreseeable future.

280 5. A description of recommended treatment or education
281 appropriate for the mental disorder.

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

286 (h)~~(d)~~ For competency ~~incompetency~~ evaluations related to
287 mental illness, the Department of Children and Family Services
288 shall maintain and annually provide the courts with a forensic
289 evaluator registry ~~list~~ of available mental health professionals
290 who have completed the approved ~~a~~ training as experts pursuant

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291 ~~to this section program approved by the Department of Children~~
292 ~~and Family Services to perform the evaluations.~~

293 (i) ~~(e)~~ For competency ~~incompetency~~ evaluations related to
294 mental retardation or autism, the court shall order the Agency
295 for Persons with Disabilities to examine the child to determine
296 if the child meets the definition of "retardation" or "autism"
297 in s. 393.063 and provide a clinical opinion as to, ~~if so~~,
298 whether the child is competent to proceed with delinquency
299 proceedings.

300 ~~(f) A child is competent to proceed if the child has~~
301 ~~sufficient present ability to consult with counsel with a~~
302 ~~reasonable degree of rational understanding and the child has a~~
303 ~~rational and factual understanding of the present proceedings.~~
304 ~~The report must address the child's capacity to:~~

- 305 ~~1. Appreciate the charges or allegations against the child.~~
- 306 ~~2. Appreciate the range and nature of possible penalties~~
307 ~~that may be imposed in the proceedings against the child, if~~
308 ~~applicable.~~
- 309 ~~3. Understand the adversarial nature of the legal process.~~
- 310 ~~4. Disclose to counsel facts pertinent to the proceedings~~
311 ~~at issue.~~
- 312 ~~5. Display appropriate courtroom behavior.~~
- 313 ~~6. Testify relevantly.~~

314 (j) ~~(g)~~ Immediately upon the filing of the court order
315 finding a child incompetent to proceed, the clerk of the court
316 shall notify the Department of Children and Family Services and
317 the Agency for Persons with Disabilities and fax or hand deliver
318 to the department and to the agency a referral packet that
319 includes, at a minimum, the court order, the charging documents,

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320 the petition, and the court-appointed evaluator's reports.

321 (k)~~(h)~~ After placement of the child in the appropriate
322 setting, the Department of Children and Family Services in
323 consultation with the Agency for Persons with Disabilities, as
324 appropriate, must, within 30 days after placement of the child,
325 prepare and submit to the court a treatment or training plan for
326 the child's restoration of competency. A copy of the plan must
327 be served upon the child's attorney, the state attorney, and the
328 attorneys representing the Department of Juvenile Justice.

329 (7) Effective July 1, 2013, court-appointed experts must
330 have completed forensic evaluator training approved by the
331 Department of Children and Family Services or given by a
332 statewide professional association of physicians in Florida
333 accredited to provide educational activities designated for AMA
334 PRA Category I credit or AOA Category 1-A credit. Court-
335 appointed experts must also comply with these additional
336 requirements:

337 (a) If an expert chooses to remain on the registry, the
338 expert must have completed or retaken the required training
339 course within the previous 5 years. Once trained, an expert must
340 retake the required training course every 5 years in order to
341 remain on the registry. An expert who has not completed the
342 required training course or has not retaken the training course
343 within 5 years must be removed from the registry and may not
344 conduct competency evaluations for the courts.

345 (b) A mental health professional who has completed the
346 training course within the previous 5 years must maintain
347 documentation of having completed the required training and
348 provide current contact information to the Department of

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349 Children and Family Services.

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