

By Senator Sobel

33-00539B-13

20131420__

1 A bill to be entitled
2 An act relating to mental health treatment; amending
3 s. 916.107, F.S.; authorizing forensic and civil
4 facilities to order the continuation of
5 psychotherapeutics for individuals receiving such
6 medications in the jail before admission; amending s.
7 916.13, F.S.; providing timeframes within which
8 competency hearings must be held; amending s. 916.145,
9 F.S.; revising the time for dismissal of certain
10 charges for defendants that remain incompetent to
11 proceed to trial; amending s. 916.15, F.S.; providing
12 a timeframe within which commitment hearings must be
13 held; amending s. 985.19, F.S.; standardizing the
14 protocols, procedures, diagnostic criteria, and
15 information and findings that must be included in an
16 expert's competency evaluation report; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:
20

21 Section 1. Paragraph (a) of subsection (3) of section
22 916.107, Florida Statutes, is amended to read:

23 916.107 Rights of forensic clients.—

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

25 (a) A forensic client shall be asked to give express and
26 informed written consent for treatment. If a client refuses such
27 treatment as is deemed necessary and essential by the client's
28 multidisciplinary treatment team for the appropriate care of the
29 client, such treatment may be provided under the following

33-00539B-13

20131420__

30 circumstances:

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

48 2. In a situation other than an emergency situation, the
49 administrator or designee of the facility shall petition the
50 court for an order authorizing necessary and essential treatment
51 for the client.

52 a. If the client has been receiving psychotherapeutic
53 medications at the jail at the time of transfer to the forensic
54 or civil facility and lacks the capacity to make an informed
55 decision regarding mental health treatment at the time of
56 admission, the admitting physician may order continued
57 administration of psychotherapeutic medications if, in the
58 clinical judgment of the physician, abrupt cessation of

33-00539B-13

20131420__

59 psychotherapeutic medications could pose a risk to the health or
60 safety of the client during the time a court order to medicate
61 is pursued. The administrator or designee of the civil or
62 forensic facility shall, within 5 days after admission,
63 excluding weekends and legal holidays, petition the committing
64 court or the circuit court serving the county in which the
65 facility is located, at the option of the facility administrator
66 or designee, for an order authorizing the continued treatment of
67 a client. The jail physician shall provide a current
68 psychotherapeutic medication order at the time of transfer to
69 the forensic or civil facility or upon request of the admitting
70 physician after the client is evaluated.

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

33-00539B-13

20131420__

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. Subsection (2) of section 916.13, Florida
112 Statutes, is amended to read:

113 916.13 Involuntary commitment of defendant adjudicated
114 incompetent.—

115 (2) A defendant who has been charged with a felony and who
116 has been adjudicated incompetent to proceed due to mental

33-00539B-13

20131420__

117 illness, and who meets the criteria for involuntary commitment
118 ~~to the department under the provisions of~~ this chapter, may be
119 committed to the department, and the department shall retain and
120 treat the defendant.

121 (a) Within ~~No later than~~ 6 months after the date of
122 admission and at the end of any period of extended commitment,
123 or at any time the administrator or designee has ~~shall have~~
124 determined that the defendant has regained competency to proceed
125 or no longer meets the criteria for continued commitment, the
126 administrator or designee shall file a report with the court
127 pursuant to the applicable Florida Rules of Criminal Procedure.

128 (b) A competency hearing must be held within 30 days after
129 the court receives notification that the defendant is competent
130 to proceed or no longer meets the criteria for continued
131 commitment.

132 Section 3. Section 916.145, Florida Statutes, is amended to
133 read:

134 916.145 Dismissal of charges.—The charges against any
135 defendant adjudicated incompetent to proceed due to the
136 defendant's mental illness shall be dismissed without prejudice
137 to the state if the defendant remains incompetent to proceed 3 5
138 years after such determination or 5 years after such
139 determination if a charge related to commitment includes an
140 allegation of a violent crime against a person, unless the court
141 in its order specifies its reasons for believing that the
142 defendant will become competent to proceed within the
143 foreseeable future and specifies the time within which the
144 defendant is expected to become competent to proceed. The
145 charges against the defendant are dismissed without prejudice to

33-00539B-13

20131420__

146 the state to refile the charges should the defendant be declared
147 competent to proceed in the future.

148 Section 4. Subsection (5) is added to section 916.15,
149 Florida Statutes, to read:

150 916.15 Involuntary commitment of defendant adjudicated not
151 guilty by reason of insanity.—

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

155 Section 5. Subsection (1) of section 985.19, Florida
156 Statutes, is amended to read:

157 985.19 Incompetency in juvenile delinquency cases.—

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

164 (a) Any motion questioning the child's competency to
165 proceed must be served upon the child's attorney, the state
166 attorney, the attorneys representing the Department of Juvenile
167 Justice, and the attorneys representing the Department of
168 Children and Families ~~Family Services~~. Thereafter, any motion,
169 notice of hearing, order, or other legal pleading relating to
170 the child's competency to proceed with the hearing must be
171 served upon the child's attorney, the state attorney, the
172 attorneys representing the Department of Juvenile Justice, and
173 the attorneys representing the Department of Children and
174 Families ~~Family Services~~.

33-00539B-13

20131420__

175 (b) All determinations of competency must ~~shall~~ be made at
176 a hearing, with findings of fact based on an evaluation of the
177 child's mental condition made by at least ~~not less than~~ two but
178 not ~~nor~~ more than three experts appointed by the court. ~~The~~
179 ~~basis for the determination of incompetency must be specifically~~
180 ~~stated in the evaluation. In addition, a recommendation as to~~
181 ~~whether residential or nonresidential treatment or training is~~
182 ~~required must be included in the evaluation.~~ Experts appointed
183 by the court to determine the mental condition of a child shall
184 be allowed reasonable fees for services rendered. State
185 employees may be paid expenses pursuant to s. 112.061. The fees
186 shall be taxed as costs in the case.

187 (c) A child is competent to proceed if the child has
188 sufficient present ability to consult with counsel with a
189 reasonable degree of rational understanding and the child has a
190 rational and factual understanding of the present proceedings.
191 The expert's competency evaluation report must specifically
192 state the basis for the determination of the child's mental
193 condition and must include written findings that:

- 194 1. Identify the specific matters referred for evaluation.
- 195 2. Identify the sources of information used by the expert.
- 196 3. Describe the procedures, techniques, and diagnostic
197 tests used in the examination to determine the basis of the
198 child's mental condition.
- 199 4. Address the child's capacity to:
 - 200 a. Appreciate the charges or allegations against the child.
 - 201 b. Appreciate the range and nature of possible penalties
202 that may be imposed in the proceedings against the child, if
203 applicable.

33-00539B-13

20131420

- 204 c. Understand the adversarial nature of the legal process.
205 d. Disclose to counsel facts pertinent to the proceedings
206 at issue.
207 e. Display appropriate courtroom behavior.
208 f. Testify relevantly.
209 5. Present the factual basis for the expert's clinical
210 findings and opinions of the child's mental condition. The
211 expert's factual basis of his or her clinical findings and
212 opinions must be supported by the diagnostic criteria found in
213 the most recent edition of the Diagnostic and Statistical Manual
214 of Mental Disorders (DSM) published by the American Psychiatric
215 Association and must be presented in a separate section of the
216 report entitled "summary of findings." This section must
217 include:
218 a. The day, month, year, and length of time of the face-to-
219 face diagnostic clinical interview to determine the child's
220 mental condition.
221 b. A statement that identifies the DSM clinical name and
222 associated diagnostic code for the specific mental disorder that
223 forms the basis of the child's incompetency.
224 c. A statement of how the child would benefit from
225 competency restoration services in the community or in a secure
226 residential treatment facility.
227 d. An assessment of the probable duration of the treatment
228 to restore competence and the probability that the child will
229 attain competence to proceed in the foreseeable future.
230 e. A description of recommended treatment or education
231 appropriate for the mental disorder.
232 6. If the evaluator determines the child to be incompetent

33-00539B-13

20131420__

233 to proceed to trial, the evaluator must report on the mental
234 disorder that forms the basis of the incompetency.

235 (d)~~(e)~~ All court orders determining incompetency must
236 include specific written findings by the court as to the nature
237 of the incompetency and whether the child requires secure or
238 nonsecure treatment or training environment ~~environments~~.

239 (e)~~(d)~~ For competency ~~incompetency~~ evaluations related to
240 mental illness, the Department of Children and Families ~~Family~~
241 ~~Services~~ shall maintain and annually provide the courts with a
242 list of available mental health professionals who have completed
243 a training program approved by the Department of Children and
244 Families ~~Family Services~~ to perform the evaluations.

245 (f)~~(e)~~ For competency ~~incompetency~~ evaluations related to
246 mental retardation or autism, the court shall order the Agency
247 for Persons with Disabilities to examine the child to determine
248 if the child meets the definition of "retardation" or "autism"
249 in s. 393.063 and, provide a clinical opinion as to if so,
250 whether the child is competent to proceed with delinquency
251 proceedings.

252 ~~(f) A child is competent to proceed if the child has~~
253 ~~sufficient present ability to consult with counsel with a~~
254 ~~reasonable degree of rational understanding and the child has a~~
255 ~~rational and factual understanding of the present proceedings.~~
256 ~~The report must address the child's capacity to:~~

- 257 1. ~~Appreciate the charges or allegations against the child.~~
258 2. ~~Appreciate the range and nature of possible penalties~~
259 ~~that may be imposed in the proceedings against the child, if~~
260 ~~applicable.~~
261 3. ~~Understand the adversarial nature of the legal process.~~

33-00539B-13

20131420__

262 4. ~~Disclose to counsel facts pertinent to the proceedings~~
263 ~~at issue.~~

264 5. ~~Display appropriate courtroom behavior.~~

265 6. ~~Testify relevantly.~~

266 (g) Immediately upon the filing of the court order finding
267 a child incompetent to proceed, the clerk of the court shall
268 notify the Department of Children and Families ~~Family Services~~
269 and the Agency for Persons with Disabilities and fax or hand
270 deliver to the department and to the agency a referral packet
271 that includes, at a minimum, the court order, the charging
272 documents, the petition, and the court-appointed evaluator's
273 reports.

274 (h) After placement of the child in the appropriate
275 setting, the Department of Children and Families ~~Family Services~~
276 in consultation with the Agency for Persons with Disabilities,
277 as appropriate, must, within 30 days after placement of the
278 child, prepare and submit to the court a treatment or training
279 plan for the child's restoration of competency. A copy of the
280 plan must be served upon the child's attorney, the state
281 attorney, and the attorneys representing the Department of
282 Juvenile Justice.

283 Section 6. This act shall take effect July 1, 2013.