

HB 317

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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.; conforming a  
12 provision to changes made by the act; requiring the  
13 Department of Children and Families to maintain and  
14 annually provide the courts with a forensic evaluator  
15 registry; amending s. 916.13, F.S.; providing  
16 timeframes for competency hearings to be held;  
17 amending s. 916.145, F.S.; making grammatical changes;  
18 amending s. 916.15, F.S.; providing timeframes for  
19 commitment hearings to be held; amending s. 985.19,  
20 F.S.; standardizing the protocols, procedures, and  
21 criteria used in reporting expert findings in  
22 determining competency in juvenile cases; revising  
23 requirements related to the forensic evaluator  
24 training program that appointed experts must complete;  
25 requiring experts after a specified date to have  
26 completed such training; providing an effective date.

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

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

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

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

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

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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

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

112 Section 2. Section 916.111, Florida Statutes, is amended

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113 to read:

114 916.111 Training of mental health experts.—

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

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

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

133 (a) Beginning July 1, 2014, if an expert chooses to remain  
134 on the registry, he or she must have completed or retaken the  
135 required training course within the previous 5 years. Once  
136 trained, experts must retake the required training course every  
137 5 years in order to remain on the registry. Those who have not  
138 completed the training course or have not retaken the training  
139 course within 5 years must be removed from the registry and may  
140 not conduct competency evaluations for the courts.

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

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

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

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

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

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

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

163 Section 3. Subsection (1) of section 916.115, Florida  
164 Statutes, is amended to read:

165 916.115 Appointment of experts.—

166 (1) The court shall appoint no more than three experts to  
167 determine the mental condition of a defendant in a criminal  
168 case, including competency to proceed, insanity, involuntary

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169 placement, and treatment. The experts may evaluate the defendant  
 170 in jail or in another appropriate local facility or in a  
 171 facility of the Department of Corrections.

172 (a) ~~To the extent possible,~~ The appointed experts shall  
 173 have completed forensic evaluator training approved by the  
 174 department, and each shall be a psychiatrist, licensed  
 175 psychologist, or physician.

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

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

182 916.13 Involuntary commitment of defendant adjudicated  
 183 incompetent.—

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

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

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

201           Section 5. Section 916.145, Florida Statutes, is amended  
202 to read:

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

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

217           916.15 Involuntary commitment of defendant adjudicated not  
218 guilty by reason of insanity.—

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

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



225 985.19 Incompetency in juvenile delinquency cases.—

226 (1) If, at any time before ~~prior to~~ or during a  
 227 delinquency case, the court has reason to believe that the child  
 228 named in the petition may be incompetent to proceed with the  
 229 hearing, the court on its own motion may, or on the motion of  
 230 the child's attorney or state attorney must, stay all  
 231 proceedings and order an evaluation of the child's mental  
 232 condition.

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

244 (b) All determinations of competency must ~~shall~~ be made at  
 245 a hearing, with findings of fact based on an evaluation of the  
 246 child's mental condition made by at least ~~not less than~~ two but  
 247 not ~~nor~~ more than three experts appointed by the court. ~~The~~  
 248 ~~basis for the determination of incompetency must be specifically~~  
 249 ~~stated in the evaluation. In addition, a recommendation as to~~  
 250 ~~whether residential or nonresidential treatment or training is~~  
 251 ~~required must be included in the evaluation.~~ Experts appointed  
 252 by the court to determine the mental condition of a child shall

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253 be allowed reasonable fees for services rendered. State  
254 employees may be paid expenses pursuant to s. 112.061. The fees  
255 shall be taxed as costs in the case.

256 (c) A child is competent to proceed if the child has  
257 sufficient present ability to consult with counsel with a  
258 reasonable degree of rational understanding and the child has a  
259 rational and factual understanding of the present proceedings.

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

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

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

284 (f) The expert's factual basis of his or her clinical  
285 findings and opinions must be supported by the diagnostic  
286 criteria found in the most recent edition of the Diagnostic and  
287 Statistical Manual of Mental Disorders of the American  
288 Psychiatric Association and must be presented in a section of  
289 his or her competency evaluation report that shall be identified  
290 as a summary of findings. This section must include:

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

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

300 3. A statement of how the child would benefit from  
301 competency restoration services in the community or in a secure  
302 residential treatment facility.

303 4. An assessment of the probable duration of the treatment  
304 to restore competence, and the probability that the child will  
305 attain competence to proceed in the foreseeable future.

306 5. A description of recommended treatment or education  
307 appropriate for the mental disorder.

308 (g)-(e) All court orders determining incompetency must

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309 include specific written findings by the court as to the nature  
310 of the incompetency and whether the child requires a secure or  
311 nonsecure treatment or training environment ~~environments~~.

312 ~~(h)(d)~~ For competency ~~incompetency~~ evaluations related to  
313 mental illness, the Department of Children and Families ~~Family~~  
314 ~~Services~~ shall maintain and annually provide the courts with a  
315 forensic evaluator registry ~~list~~ of available mental health  
316 professionals who have completed the approved ~~a~~ training as  
317 experts pursuant to this section ~~program approved by the~~  
318 ~~Department of Children and Family Services to perform the~~  
319 ~~evaluations~~.

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

327 ~~(f)~~ ~~A child is competent to proceed if the child has~~  
328 ~~sufficient present ability to consult with counsel with a~~  
329 ~~reasonable degree of rational understanding and the child has a~~  
330 ~~rational and factual understanding of the present proceedings.~~  
331 ~~The report must address the child's capacity to:~~

332 1. ~~Appreciate the charges or allegations against the~~  
333 ~~child.~~

334 2. ~~Appreciate the range and nature of possible penalties~~  
335 ~~that may be imposed in the proceedings against the child, if~~  
336 ~~applicable.~~

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337 | ~~3. Understand the adversarial nature of the legal process.~~

338 | ~~4. Disclose to counsel facts pertinent to the proceedings~~  
339 | ~~at issue.~~

340 | ~~5. Display appropriate courtroom behavior.~~

341 | ~~6. Testify relevantly.~~

342 | (j)~~(g)~~ Immediately upon the filing of the court order  
343 | finding a child incompetent to proceed, the clerk of the court  
344 | shall notify the Department of Children and Families ~~Family~~  
345 | ~~Services~~ and the Agency for Persons with Disabilities and fax or  
346 | hand deliver to the department and to the agency a referral  
347 | packet that includes, at a minimum, the court order, the  
348 | charging documents, the petition, and the court-appointed  
349 | evaluator's reports.

350 | (k)~~(h)~~ After placement of the child in the appropriate  
351 | setting, the Department of Children and Families ~~Family Services~~  
352 | in consultation with the Agency for Persons with Disabilities,  
353 | as appropriate, must, within 30 days after placement of the  
354 | child, prepare and submit to the court a treatment or training  
355 | plan for the child's restoration of competency. A copy of the  
356 | plan must be served upon the child's attorney, the state  
357 | attorney, and the attorneys representing the Department of  
358 | Juvenile Justice.

359 | (7) Effective July 1, 2014, court-appointed experts must  
360 | have completed forensic evaluator training approved by the  
361 | Department of Children and Families, or given by a statewide  
362 | professional association of physicians in this state which is  
363 | accredited to provide educational activities designated for  
364 | American Medical Association Physician's Recognition Award

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365 Category I credit, American Osteopathic Association Category 1-A  
366 credit, or American Psychological Association continuing  
367 education credit, using a department-approved curriculum. Court-  
368 appointed experts must also comply with these additional  
369 requirements:

370 (a) If an expert chooses to remain on the registry, the  
371 expert must have completed or retaken the required training  
372 course within the previous 5 years. Once trained, an expert must  
373 retake the required training course every 5 years in order to  
374 remain on the registry. An expert who has not completed the  
375 required training course or has not retaken the training course  
376 within 5 years must be removed from the registry and may not  
377 conduct competency evaluations for the courts.

378 (b) A mental health professional who has completed the  
379 training course within the previous 5 years must maintain  
380 documentation of having completed the required training and  
381 provide current contact information to the Department of  
382 Children and Families.

383 Section 8. This act shall take effect July 1, 2013.