

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Healthy Families
 2 Subcommittee
 3 Representative Berman offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (3) of section
 8 916.107, Florida Statutes, is amended to read: 916.107
 9 Rights of forensic clients.—

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

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

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

34 2. In a situation other than an emergency situation, the
35 administrator or designee of the facility shall petition the
36 court for an order authorizing necessary and essential treatment
37 for the client.

38 a. If the client has been receiving psychotherapeutic
39 medications at the jail at the time of transfer to the forensic
40 or civil facility and lacks the capacity to make an informed
41 decision regarding mental health treatment at the time of
42 admission, the admitting physician may order continued

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43 administration of psychotherapeutic medications if, in the
44 clinical judgment of the physician, abrupt cessation of
45 psychotherapeutic medications could pose a risk to the health or
46 safety of the client during the time a court order to medicate
47 is pursued. The administrator or designee of the civil or
48 forensic facility shall, within 5 days after admission,
49 excluding weekends and legal holidays, petition the committing
50 court or the circuit court serving the county in which the
51 facility is located, at the option of the facility administrator
52 or designee, for an order authorizing the continued treatment of
53 a client. The jail physician shall provide a current
54 psychotherapeutic medication order at the time of transfer to
55 the forensic or civil facility or upon request of the admitting
56 physician after the client is evaluated.

57 b. The court order shall allow such treatment for up to a
58 period not to exceed 90 days after following the date of the
59 entry of the order. Unless the court is notified in writing that
60 the client has provided express and informed consent in writing
61 or that the client has been discharged by the committing court,
62 the administrator or designee shall, before the expiration of
63 the initial 90-day order, petition the court for an order
64 authorizing the continuation of treatment for another 90 days
65 90-day period. This procedure shall be repeated until the client
66 provides consent or is discharged by the committing court.

67 3. At the hearing on the issue of whether the court should
68 enter an order authorizing treatment for which a client was

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69 unable to or refused to give express and informed consent, the
70 court shall determine by clear and convincing evidence that the
71 client has mental illness, intellectual disability, or autism,
72 that the treatment not consented to is essential to the care of
73 the client, and that the treatment not consented to is not
74 experimental and does not present an unreasonable risk of
75 serious, hazardous, or irreversible side effects. In arriving at
76 the substitute judgment decision, the court must consider at
77 least the following factors:

- 78 a. The client's expressed preference regarding treatment;
- 79 b. The probability of adverse side effects;
- 80 c. The prognosis without treatment; and
- 81 d. The prognosis with treatment.

82

83 The hearing shall be as convenient to the client as may be
84 consistent with orderly procedure and shall be conducted in
85 physical settings not likely to be injurious to the client's
86 condition. The court may appoint a general or special magistrate
87 to preside at the hearing. The client or the client's guardian,
88 and the representative, shall be provided with a copy of the
89 petition and the date, time, and location of the hearing. The
90 client has the right to have an attorney represent him or her at
91 the hearing, and, if the client is indigent, the court shall
92 appoint the office of the public defender to represent the
93 client at the hearing. The client may testify or not, as he or

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94 she chooses, and has the right to cross-examine witnesses and
95 may present his or her own witnesses.

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

98 916.13 Involuntary commitment of defendant adjudicated
99 incompetent.—

100 (2) A defendant who has been charged with a felony and who
101 has been adjudicated incompetent to proceed due to mental
102 illness, and who meets the criteria for involuntary commitment
103 ~~to the department under the provisions of this chapter,~~ may be
104 committed to the department, and the department shall retain and
105 treat the defendant.

106 (a) Within ~~No later than~~ 6 months after the date of
107 admission and at the end of any period of extended commitment,
108 or at any time the administrator or designee has ~~shall have~~
109 determined that the defendant has regained competency to proceed
110 or no longer meets the criteria for continued commitment, the
111 administrator or designee shall file a report with the court
112 pursuant to the applicable Florida Rules of Criminal Procedure.

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

117 Section 3. Section 916.145, Florida Statutes, is amended
118 to read: (Substantial rewording of section. See s. 916.145,
119 F.S., for present text.)

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916.145 Dismissal of charges.—

(1) The charges against a defendant adjudicated incompetent to proceed due to mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed 5 years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The court may dismiss these charges between 3 and 5 years after such determination, unless the charge is:

(a) Arson;

(b) Sexual battery;

(c) Robbery;

(d) Kidnapping;

(e) Aggravated child abuse;

(f) Aggravated abuse of an elderly person or disabled adult;

(g) Aggravated assault with a deadly weapon;

(h) Murder;

(i) Manslaughter;

(j) Aggravated manslaughter of an elderly person or disabled adult;

(k) Aggravated manslaughter of a child;

(l) Unlawful throwing, projecting, placing, or discharging of a destructive device or bomb;

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- 146 (m) Armed burglary;
147 (n) Aggravated battery;
148 (o) Aggravated stalking; (p) Any forcible felony as
149 defined in Section 776.08, Florida Statutes, not listed above;
150 (q) Any offense involving the possession, use, or discharge
151 of a firearm;
152 (r) An attempt to commit any of the above offenses;
153 (s) Committed by a defendant who has had a forcible or
154 violent felony conviction within the five years preceding the
155 date of arrest of the non-violent felony sought to be dismissed;
156 (t) Committed by a defendant who, after having been found
157 incompetent and under court supervision in a community based
158 program, is formally charged by a State Attorney with a new
159 felony offense; or
160 (u) Where there is an identifiable victim and such victim
161 has not consented.
162 (2) This section does not prohibit the state from refileing
163 dismissed charges if the defendant is declared to be competent
164 to proceed in the future.
165 Section 4. Subsection (5) is added to section 916.15,
166 Florida Statutes, to read:
167 916.15 Involuntary commitment of defendant adjudicated not
168 guilty by reason of insanity.—
169 (5) The commitment hearing must be held within 30 days
170 after the court receives notification that the defendant no
171 longer meets the criteria for continued commitment.

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

174 985.19 Incompetency in juvenile delinquency cases.—

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

181 (a) Any motion questioning the child's competency to
182 proceed must be served upon the child's attorney, the state
183 attorney, the attorneys representing the Department of Juvenile
184 Justice, and the attorneys representing the Department of
185 Children and Families ~~Family Services~~. Thereafter, any motion,
186 notice of hearing, order, or other legal pleading relating to
187 the child's competency to proceed with the hearing must be
188 served upon the child's attorney, the state attorney, the
189 attorneys representing the Department of Juvenile Justice, and
190 the attorneys representing the Department of Children and
191 Families ~~Family Services~~.

192 (b) All determinations of competency must ~~shall~~ be made at
193 a hearing, with findings of fact based on an evaluation of the
194 child's mental condition made by at least ~~not less than~~ two but
195 not ~~nor~~ more than three experts appointed by the court. ~~The~~
196 ~~basis for the determination of incompetency must be specifically~~
197 ~~stated in the evaluation. In addition, a recommendation as to~~

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198 ~~whether residential or nonresidential treatment or training is~~
199 ~~required must be included in the evaluation.~~ Experts appointed
200 by the court to determine the mental condition of a child shall
201 be allowed reasonable fees for services rendered. State
202 employees may be paid expenses pursuant to s. 112.061. The fees
203 shall be taxed as costs in the case.

204 (c) A child is competent to proceed if the child has
205 sufficient present ability to consult with counsel with a
206 reasonable degree of rational understanding and the child has a
207 rational and factual understanding of the present proceedings.
208 The expert's competency evaluation report must specifically
209 state the basis for the determination of the child's mental
210 condition and must include written findings that:

- 211 1. Identify the specific matters referred for evaluation.
212 2. Identify the sources of information used by the expert.
213 3. Describe the procedures, techniques, and diagnostic
214 tests used in the examination to determine the basis of the
215 child's mental condition.
216 4. Address the child's capacity to:
217 a. Appreciate the charges or allegations against the
218 child.
219 b. Appreciate the range and nature of possible penalties
220 that may be imposed in the proceedings against the child, if
221 applicable.

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

223 d. Disclose to counsel facts pertinent to the proceedings
224 at issue.

225 e. Display appropriate courtroom behavior.

226 f. Testify relevantly.

227 5. Present the factual basis for the expert's clinical
228 findings and opinions of the child's mental condition. The
229 expert's factual basis of his or her clinical findings and
230 opinions must be supported by the diagnostic criteria found in
231 the most recent edition of the Diagnostic and Statistical Manual
232 of Mental Disorders (DSM) published by the American Psychiatric
233 Association and must be presented in a separate section of the
234 report entitled "summary of findings." This section must
235 include:

236 a. The day, month, year, and length of time of the face-
237 to-face diagnostic clinical interview to determine the child's
238 mental condition.

239 b. A statement that identifies the DSM clinical name and
240 associated diagnostic code for the specific mental disorder that
241 forms the basis of the child's incompetency.

242 c. A statement of how the child would benefit from
243 competency restoration services in the community or in a secure
244 residential treatment facility.

245 d. An assessment of the probable duration of the treatment
246 to restore competence and the probability that the child will
247 attain competence to proceed in the foreseeable future.

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248 e. A description of recommended treatment or education
249 appropriate for the mental disorder.

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

253 (d)(e) All court orders determining incompetency must
254 include specific written findings by the court as to the nature
255 of the incompetency and whether the child requires secure or
256 nonsecure treatment or training environment environments.

257 (e)(d) For competency incompetency evaluations related to
258 mental illness, the Department of Children and Families Family
259 Services shall maintain and annually provide the courts with a
260 list of available mental health professionals who have completed
261 a training program approved by the Department of Children and
262 Families Family Services to perform the evaluations.

263 (f)(e) For competency incompetency evaluations related to
264 intellectual disability or autism, the court shall order the
265 Agency for Persons with Disabilities to examine the child to
266 determine if the child meets the definition of "intellectual
267 disability" or "autism" in s. 393.063 and, provide a clinical
268 opinion as to if so, whether the child is competent to proceed
269 with delinquency proceedings.

270 ~~(f) A child is competent to proceed if the child has~~
271 ~~sufficient present ability to consult with counsel with a~~
272 ~~reasonable degree of rational understanding and the child has a~~

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273 ~~rational and factual understanding of the present proceedings.~~

274 ~~The report must address the child's capacity to:~~

275 ~~1. Appreciate the charges or allegations against the~~
276 ~~child.~~

277 ~~2. Appreciate the range and nature of possible penalties~~
278 ~~that may be imposed in the proceedings against the child, if~~
279 ~~applicable.~~

280 ~~3. Understand the adversarial nature of the legal process.~~

281 ~~4. Disclose to counsel facts pertinent to the proceedings~~
282 ~~at issue.~~

283 ~~5. Display appropriate courtroom behavior.~~

284 ~~6. Testify relevantly.~~

285 (g) Immediately upon the filing of the court order finding
286 a child incompetent to proceed, the clerk of the court shall
287 notify the Department of Children and Families ~~Family Services~~
288 and the Agency for Persons with Disabilities and fax or hand
289 deliver to the department and to the agency a referral packet
290 that includes, at a minimum, the court order, the charging
291 documents, the petition, and the court-appointed evaluator's
292 reports.

293 (h) After placement of the child in the appropriate
294 setting, the Department of Children and Families ~~Family Services~~
295 in consultation with the Agency for Persons with Disabilities,
296 as appropriate, must, within 30 days after placement of the
297 child, prepare and submit to the court a treatment or training
298 plan for the child's restoration of competency. A copy of the

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299 | plan must be served upon the child's attorney, the state
300 | attorney, and the attorneys representing the Department of
301 | Juvenile Justice.

302 | Section 6. This act shall take effect July 1, 2014.

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T I T L E A M E N D M E N T

307 |

Remove everything before the enacting clause and insert:

308 |

An act relating to mental health treatment; amending s. 916.107,

309 |

F.S.; authorizing forensic and civil facilities to order the

310 |

continuation of psychotherapeutics for individuals receiving

311 |

such medications in the jail before admission; amending s.

312 |

916.13, F.S.; providing timeframes within which competency

313 |

hearings must be held; amending s. 916.145, F.S.; revising the

314 |

time for dismissal of certain charges for defendants that remain

315 |

incompetent to proceed to trial; providing exceptions; amending

316 |

s. 916.15, F.S.; providing a timeframe within which commitment

317 |

hearings must be held; amending s. 985.19, F.S.; standardizing

318 |

the protocols, procedures, diagnostic criteria, and information

319 |

and findings that must be included in an expert's competency

320 |

evaluation report; providing an effective date.

321 |