

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN	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

1 Committee/Subcommittee hearing bill: Healthy Families  
 2 Subcommittee  
 3 Representative Schwartz 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:

9 916.107 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; or  
148       (o) Aggravated stalking;  
149       (p) Any forcible felony as defined in Section 776.08,  
150 Florida Statutes, not listed above;  
151       (q) Any offense involving the possession, use, or discharge  
152 of a firearm;  
153       (r) An attempt to commit any of the above offenses;  
154       (s) Committed by a defendant who has had a forcible or  
155 violent felony conviction within the five years preceding the  
156 date of arrest of the non-violent felony sought to be dismissed;  
157       (t) Committed by a defendant who, after having been found  
158 incompetent and under court supervision in a community based  
159 program, is formally charged by a State Attorney with a new  
160 felony offense; or  
161       (u) Where there is an identifiable victim and such victim  
162 has not consented.  
163       (2) This section does not prohibit the state from refileing  
164 dismissed charges if the defendant is declared to be competent  
165 to proceed in the future.  
166       Section 4. Subsection (5) is added to section 916.15,  
167 Florida Statutes, to read:  
168       916.15 Involuntary commitment of defendant adjudicated not  
169 guilty by reason of insanity.—

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

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

175       985.19 Incompetency in juvenile delinquency cases.—

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

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

193       (b) All determinations of competency must ~~shall~~ be made at  
194 a hearing, with findings of fact based on an evaluation of the  
195 child's mental condition made by at least ~~not less than~~ two but



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196 ~~not nor~~ more than three experts appointed by the court. ~~The~~  
197 ~~basis for the determination of incompetency must be specifically~~  
198 ~~stated in the evaluation. In addition, a recommendation as to~~  
199 ~~whether residential or nonresidential treatment or training is~~  
200 ~~required must be included in the evaluation.~~ Experts appointed  
201 by the court to determine the mental condition of a child shall  
202 be allowed reasonable fees for services rendered. State  
203 employees may be paid expenses pursuant to s. 112.061. The fees  
204 shall be taxed as costs in the case.

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

- 212 1. Identify the specific matters referred for evaluation.  
213 2. Identify the sources of information used by the expert.  
214 3. Describe the procedures, techniques, and diagnostic  
215 tests used in the examination to determine the basis of the  
216 child's mental condition.  
217 4. Address the child's capacity to:  
218 a. Appreciate the charges or allegations against the  
219 child.

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- 220        b. Appreciate the range and nature of possible penalties  
221 that may be imposed in the proceedings against the child, if  
222 applicable.
- 223        c. Understand the adversarial nature of the legal process.
- 224        d. Disclose to counsel facts pertinent to the proceedings  
225 at issue.
- 226        e. Display appropriate courtroom behavior.
- 227        f. Testify relevantly.
- 228        5. Present the factual basis for the expert's clinical  
229 findings and opinions of the child's mental condition. The  
230 expert's factual basis of his or her clinical findings and  
231 opinions must be supported by the diagnostic criteria found in  
232 the most recent edition of the Diagnostic and Statistical Manual  
233 of Mental Disorders (DSM) published by the American Psychiatric  
234 Association and must be presented in a separate section of the  
235 report entitled "summary of findings." This section must  
236 include:
- 237            a. The day, month, year, and length of time of the face-  
238 to-face diagnostic clinical interview to determine the child's  
239 mental condition.
- 240            b. A statement that identifies the DSM clinical name and  
241 associated diagnostic code for the specific mental disorder that  
242 forms the basis of the child's incompetency.
- 243            c. A statement of how the child would benefit from  
244 competency restoration services in the community or in a secure  
245 residential treatment facility.

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

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

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

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

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

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

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271 ~~(f) A child is competent to proceed if the child has~~  
272 ~~sufficient present ability to consult with counsel with a~~  
273 ~~reasonable degree of rational understanding and the child has a~~  
274 ~~rational and factual understanding of the present proceedings.~~  
275 ~~The report must address the child's capacity to:~~

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

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

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

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

284 ~~5. Display appropriate courtroom behavior.~~

285 ~~6. Testify relevantly.~~

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

294 (h) After placement of the child in the appropriate  
295 setting, the Department of Children and Families ~~Family Services~~  
296 in consultation with the Agency for Persons with Disabilities,

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297 as appropriate, must, within 30 days after placement of the  
298 child, prepare and submit to the court a treatment or training  
299 plan for the child's restoration of competency. A copy of the  
300 plan must be served upon the child's attorney, the state  
301 attorney, and the attorneys representing the Department of  
302 Juvenile Justice.

303 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**

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Remove everything before the enacting clause and insert:

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