

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 837 Mental Health Treatment

SPONSOR(S): Criminal Justice Subcommittee; Healthy Families Subcommittee; Schwartz

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	8 Y, 0 N, As CS	Entress	Brazzell
2) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
3) Health & Human Services Committee	18 Y, 0 N	Entress	Calamas

SUMMARY ANALYSIS

The bill addresses issues related to administration of psychotherapeutic medications, evaluations of individuals' competency, and dismissal of charges. The bill makes changes to ch. 916, F.S., and s. 985.19, F.S., as follows:

- Permits an admitting physician in a state forensic or civil facility to continue the administration of psychotherapeutic medication previously prescribed in jail when a forensic client lacks the capacity to make an informed decision and the abrupt cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication;
- Establishes a 30-day time frame for a status hearing after the court receives notification that the defendant no longer meets criteria for continued commitment; and
- Permits a court, under s. 916.145, F.S., to dismiss charges of specified nonviolent offenses of an individual who has been deemed incompetent to proceed after three years, instead of five.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Competency

The Department of Children and Families (DCF) and the Agency for Persons with Disabilities (APD) serve individuals who have been committed to DCF, pursuant to ch. 916, F.S., due to having been adjudicated incompetent to proceed at trial due to mental illness, intellectual disability, or autism, or because they have been found not guilty by reason of insanity.¹

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.²

The statutes are silent as to a time frame in which the court must hold a hearing to determine continued competency or the continued need for involuntary commitment. However, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.³

Dismissal of Charges

Currently, s. 916.145, F.S., requires all charges against any defendant adjudicated incompetent to proceed due to mental illness be dropped if the defendant remains incompetent to proceed five years after the initial determination. However, the charges will not be dropped if the court specifies in its order the reasons for believing that the defendant will become competent to proceed in the foreseeable future, and specifies a timeframe in which the defendant is expected to become competent to proceed.⁴ According to DCF, forensic data from the last fifteen fiscal years shows that 99.6% of individuals restored to competency were restored in three years or less.⁵

Psychotherapeutic Medication Treatment

Currently, forensic clients⁶ must give express and informed consent to treatment.⁷ If they refuse and the situation is deemed an emergency that puts the client's safety at risk, treatment may be given for 48 hours.⁸ If the person still refuses to give consent, a court order must be sought for continuation of the treatment.⁹ In non-emergency situations, treatment may not be given without the client's consent and a

¹ S. 916.105(1), F.S.

² S. 916.13(2), F.S.; S. 916.15(3), F.S.

³ Rules 3.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

⁴ S. 916.145, F.S.

⁵ DCF Analysis of HB 837 dated February 13, 2014, on file with Healthy Families Subcommittee staff.

⁶ Forensic clients are individuals who have been committed to DCF, pursuant to ch. 916, F.S., because they are adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed.

⁷ S. 916.107(3)(a), F.S.

⁸ S. 916.107(3)(a)1., F.S.

⁹ Id.

court order must be sought for continued treatment.¹⁰ Court ordered medication of an individual has been the subject of judicial review.¹¹

Effect of Proposed Changes

Competency

The bill amends ss. 916.13 and 916.15, F.S., to require a status hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. This requirement is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure, and should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

Dismissal of Charges

The bill keeps the current requirement that charges be dismissed if the defendant remains incompetent to proceed 5 years after the initial determination. However, the bill amends s. 916.145, F.S., to authorize the court to dismiss charges for an individual who is incompetent to proceed after 3 years, unless the charge is:

- Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, projecting, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; a forcible felony as defined in s. 776.08, F.S., that is not otherwise listed; an offense involving the possession, use, or discharge of a firearm; or an attempt to commit any of these offenses;
- Any offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest for the nonviolent felony sought to be dismissed;
- Any offense allegedly committed by a defendant who, after having been found incompetent and under court supervision in a community-based program, is formally charged by a State Attorney with a new felony offense; or
- An offense for which there is an identifiable victim and the victim has not consented to the dismissal.

Psychotherapeutic Medication Treatment

The bill requires jail physicians to provide a current psychotherapeutic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the abrupt cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations¹² and is limited to the time period required to obtain a court order for the medication. This provision applies to all forensic clients since it appears in the general provisions of ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or APD.

¹⁰ S. 916.107(3)2., F.S.

¹¹ See *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006)(Noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available.) Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S.

¹² Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

The bill requires the administrator or designee of the civil or forensic facility to petition the committing court or the circuit court serving the county where the facility is located within 5 days of the inmate's admission, excluding weekends and legal holidays, for an order authorizing continued treatment.¹³

B. SECTION DIRECTORY:

Section 1: Amends s. 916.107, F.S., relating to rights of forensic clients.

Section 2: Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

Section 3: Amends s. 916.145, F.S., relating to dismissal of charges.

Section 4: Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

Section 5: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DCF reports that this bill will not have a fiscal impact on DCF.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹³ The administrator or designee has the authority to choose which court is petition or the order authorizing continued treatment.

¹⁴ DCF Analysis of HB 837 dated February 13, 2014, on file with Healthy Families Subcommittee staff.

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Healthy Families Subcommittee adopted a strike-all amendment to address issues in the Governor's veto message for HB 317 (2013), which contained identical language. The strike-all amendment prohibits a court from dismissing charges against a defendant for:

- An attempted violent offense as listed in the bill;
- An offense committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest of the non-violent felony sought to be dismissed;
- An offense committed by a defendant who, after having been found incompetent and under court supervision in a community based program, is formally charged by a State Attorney with a new felony offense; or
- An offense committed where there is an identifiable victim and such victim has not consented.

On March 24, 2014, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Correct terminology to ensure that a status hearing, rather than a competency hearing, is conducted within 30 days of after the court receives notification that the defendant no longer meets the criteria for commitment; and
- Remove the provisions amending s. 985.19, F.S., which address competency in the juvenile justice system.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.