

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; providing exceptions; amending s.
12 916.15, F.S.; providing a timeframe within which
13 commitment hearings must be held; amending s. 985.19,
14 F.S.; standardizing the protocols, procedures,
15 diagnostic criteria, and information and findings that
16 must be included in an expert's competency evaluation
17 report; providing an effective date.

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

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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
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
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 ~~the~~ expiration of
77 the initial 90-day order, petition the court for an order
78 authorizing the continuation of treatment for another 90 days

79 ~~90-day period.~~ This procedure shall be repeated until the client
80 provides consent or is discharged by the committing court.

81 3. At the hearing on the issue of whether the court should
82 enter an order authorizing treatment for which a client was
83 unable to or refused to give express and informed consent, the
84 court shall determine by clear and convincing evidence that the
85 client has mental illness, intellectual disability, or autism,
86 that the treatment not consented to is essential to the care of
87 the client, and that the treatment not consented to is not
88 experimental and does not present an unreasonable risk of
89 serious, hazardous, or irreversible side effects. In arriving at
90 the substitute judgment decision, the court must consider at
91 least the following factors:

- 92 a. The client's expressed preference regarding treatment;
93 b. The probability of adverse side effects;
94 c. The prognosis without treatment; and
95 d. The prognosis with treatment.

96
97 The hearing shall be as convenient to the client as may be
98 consistent with orderly procedure and shall be conducted in
99 physical settings not likely to be injurious to the client's
100 condition. The court may appoint a general or special magistrate
101 to preside at the hearing. The client or the client's guardian,
102 and the representative, shall be provided with a copy of the
103 petition and the date, time, and location of the hearing. The
104 client has the right to have an attorney represent him or her at

105 the hearing, and, if the client is indigent, the court shall
 106 appoint the office of the public defender to represent the
 107 client at the hearing. The client may testify or not, as he or
 108 she chooses, and has the right to cross-examine witnesses and
 109 may present his or her own witnesses.

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

112 916.13 Involuntary commitment of defendant adjudicated
 113 incompetent.—

114 (2) A defendant who has been charged with a felony and who
 115 has been adjudicated incompetent to proceed due to mental
 116 illness, and who meets the criteria for involuntary commitment
 117 ~~to the department under the provisions of this chapter,~~ may be
 118 committed to the department, and the department shall retain and
 119 treat the defendant.

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

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

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

133 (Substantial rewording of section. See
 134 s. 916.145, F.S., for present text.)
 135 916.145 Dismissal of charges.-

136 (1) The charges against a defendant adjudicated
 137 incompetent to proceed due to mental illness shall be dismissed
 138 without prejudice to the state if the defendant remains
 139 incompetent to proceed 5 years after such determination, unless
 140 the court in its order specifies its reasons for believing that
 141 the defendant will become competent to proceed within the
 142 foreseeable future and specifies the time within which the
 143 defendant is expected to become competent to proceed. The court
 144 may dismiss such charges at least 3 and no more than 5 years
 145 after such determination, unless the charge is:

- 146 (a) Arson;
- 147 (b) Sexual battery;
- 148 (c) Robbery;
- 149 (d) Kidnapping;
- 150 (e) Aggravated child abuse;
- 151 (f) Aggravated abuse of an elderly person or disabled
 152 adult;
- 153 (g) Aggravated assault with a deadly weapon;
- 154 (h) Murder;
- 155 (i) Manslaughter;
- 156 (j) Aggravated manslaughter of an elderly person or

157 disabled adult;
158 (k) Aggravated manslaughter of a child;
159 (l) Unlawful throwing, projecting, placing, or discharging
160 of a destructive device or bomb;
161 (m) Armed burglary;
162 (n) Aggravated battery;
163 (o) Aggravated stalking;
164 (p) A forcible felony as defined in s. 776.08 and not
165 listed elsewhere in this subsection;
166 (q) An offense involving the possession, use, or discharge
167 of a firearm;
168 (r) An attempt to commit an offense listed in this
169 subsection;
170 (s) An offense allegedly committed by a defendant who has
171 had a forcible or violent felony conviction within the 5 years
172 preceding the date of arrest for the nonviolent felony sought to
173 be dismissed;
174 (t) An offense allegedly committed by a defendant who,
175 after having been found incompetent and under court supervision
176 in a community-based program, is formally charged by a State
177 Attorney with a new felony offense; or
178 (u) One for which there is an identifiable victim and such
179 victim has not consented to the dismissal.
180 (2) This section does not prohibit the state from refileing
181 dismissed charges if the defendant is declared to be competent
182 to proceed in the future.

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

185 916.15 Involuntary commitment of defendant adjudicated not
 186 guilty by reason of insanity.—

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

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

192 985.19 Incompetency in juvenile delinquency cases.—

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

199 (a) Any motion questioning the child's competency to
 200 proceed must be served upon the child's attorney, the state
 201 attorney, the attorneys representing the Department of Juvenile
 202 Justice, and the attorneys representing the Department of
 203 Children and Families ~~Family Services~~. Thereafter, any motion,
 204 notice of hearing, order, or other legal pleading relating to
 205 the child's competency to proceed with the hearing must be
 206 served upon the child's attorney, the state attorney, the
 207 attorneys representing the Department of Juvenile Justice, and
 208 the attorneys representing the Department of Children and

209 Families ~~Family Services~~.

210 (b) All determinations of competency must ~~shall~~ be made at
 211 a hearing, with findings of fact based on an evaluation of the
 212 child's mental condition made by at least ~~not less than~~ two but
 213 not ~~nor~~ more than three experts appointed by the court. ~~The~~
 214 ~~basis for the determination of incompetency must be specifically~~
 215 ~~stated in the evaluation. In addition, a recommendation as to~~
 216 ~~whether residential or nonresidential treatment or training is~~
 217 ~~required must be included in the evaluation.~~ Experts appointed
 218 by the court to determine the mental condition of a child shall
 219 be allowed reasonable fees for services rendered. State
 220 employees may be paid expenses pursuant to s. 112.061. The fees
 221 shall be taxed as costs in the case.

222 (c) A child is competent to proceed if the child has
 223 sufficient present ability to consult with counsel with a
 224 reasonable degree of rational understanding and the child has a
 225 rational and factual understanding of the present proceedings.
 226 The expert's competency evaluation report must specifically
 227 state the basis for the determination of the child's mental
 228 condition and must include written findings that:

- 229 1. Identify the specific matters referred for evaluation.
- 230 2. Identify the sources of information used by the expert.
- 231 3. Describe the procedures, techniques, and diagnostic
 232 tests used in the examination to determine the basis of the
 233 child's mental condition.
- 234 4. Address the child's capacity to:

- 235 a. Appreciate the charges or allegations against the
 236 child.
- 237 b. Appreciate the range and nature of possible penalties
 238 that may be imposed in the proceedings against the child, if
 239 applicable.
- 240 c. Understand the adversarial nature of the legal process.
- 241 d. Disclose to counsel facts pertinent to the proceedings
 242 at issue.
- 243 e. Display appropriate courtroom behavior.
- 244 f. Testify relevantly.
- 245 5. Present the factual basis for the expert's clinical
 246 findings and opinions of the child's mental condition. The
 247 expert's factual basis of his or her clinical findings and
 248 opinions must be supported by the diagnostic criteria found in
 249 the most recent edition of the Diagnostic and Statistical Manual
 250 of Mental Disorders (DSM) published by the American Psychiatric
 251 Association and must be presented in a separate section of the
 252 report entitled "summary of findings." This section must
 253 include:
- 254 a. The day, month, year, and length of time of the face-
 255 to-face diagnostic clinical interview to determine the child's
 256 mental condition.
- 257 b. A statement that identifies the DSM clinical name and
 258 associated diagnostic code for the specific mental disorder that
 259 forms the basis of the child's incompetency.
- 260 c. A statement of how the child would benefit from

261 competency restoration services in the community or in a secure
 262 residential treatment facility.

263 d. An assessment of the probable duration of the treatment
 264 to restore competence and the probability that the child will
 265 attain competence to proceed in the foreseeable future.

266 e. A description of recommended treatment or education
 267 appropriate for the mental disorder.

268 6. If the evaluator determines the child to be incompetent
 269 to proceed to trial, the evaluator must report on the mental
 270 disorder that forms the basis of the incompetency.

271 (d)-(e) All court orders determining incompetency must
 272 include specific written findings by the court as to the nature
 273 of the incompetency and whether the child requires secure or
 274 nonsecure treatment or training environment ~~environments~~.

275 (e)-(d) For competency ~~incompetency~~ evaluations related to
 276 mental illness, the Department of Children and Families ~~Family~~
 277 ~~Services~~ shall maintain and annually provide the courts with a
 278 list of available mental health professionals who have completed
 279 a training program approved by the Department of Children and
 280 Families ~~Family Services~~ to perform the evaluations.

281 (f)-(e) For competency ~~incompetency~~ evaluations related to
 282 intellectual disability or autism, the court shall order the
 283 Agency for Persons with Disabilities to examine the child to
 284 determine if the child meets the definition of "intellectual
 285 disability" or "autism" in s. 393.063 and, provide a clinical
 286 opinion as to if so, whether the child is competent to proceed

287 with delinquency proceedings.

288 ~~(f) A child is competent to proceed if the child has~~
289 ~~sufficient present ability to consult with counsel with a~~
290 ~~reasonable degree of rational understanding and the child has a~~
291 ~~rational and factual understanding of the present proceedings.~~
292 ~~The report must address the child's capacity to:~~

293 ~~1. Appreciate the charges or allegations against the~~
294 ~~child.~~

295 ~~2. Appreciate the range and nature of possible penalties~~
296 ~~that may be imposed in the proceedings against the child, if~~
297 ~~applicable.~~

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

299 ~~4. Disclose to counsel facts pertinent to the proceedings~~
300 ~~at issue.~~

301 ~~5. Display appropriate courtroom behavior.~~

302 ~~6. Testify relevantly.~~

303 (g) Immediately upon the filing of the court order finding
304 a child incompetent to proceed, the clerk of the court shall
305 notify the Department of Children and Families ~~Family Services~~
306 and the Agency for Persons with Disabilities and fax or hand
307 deliver to the department and to the agency a referral packet
308 that includes, at a minimum, the court order, the charging
309 documents, the petition, and the court-appointed evaluator's
310 reports.

311 (h) After placement of the child in the appropriate
312 setting, the Department of Children and Families ~~Family Services~~

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313 | in consultation with the Agency for Persons with Disabilities,
314 | as appropriate, must, within 30 days after placement of the
315 | child, prepare and submit to the court a treatment or training
316 | plan for the child's restoration of competency. A copy of the
317 | plan must be served upon the child's attorney, the state
318 | attorney, and the attorneys representing the Department of
319 | Juvenile Justice.

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