

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 status  
8 hearings must be held; amending s. 916.145, F.S.;  
9 revising the time for dismissal of certain charges for  
10 defendants that remain incompetent to proceed to  
11 trial; providing exceptions; amending s. 916.15, F.S.;  
12 providing a timeframe within which status hearings  
13 must be held; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Paragraph (a) of subsection (3) of section  
18 916.107, Florida Statutes, is amended to read:

19 916.107 Rights of forensic clients.—

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

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

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

44           2. In a situation other than an emergency situation, the  
45 administrator or designee of the facility shall petition the  
46 court for an order authorizing necessary and essential treatment  
47 for the client.

48           a. If the client has been receiving psychotherapeutic  
49 medications at the jail at the time of transfer to the forensic  
50 or civil facility and lacks the capacity to make an informed  
51 decision regarding mental health treatment at the time of  
52 admission, the admitting physician may order continued

53 administration of psychotherapeutic medications if, in the  
54 clinical judgment of the physician, abrupt cessation of  
55 psychotherapeutic medications could pose a risk to the health or  
56 safety of the client during the time a court order to medicate  
57 is pursued. The administrator or designee of the civil or  
58 forensic facility shall, within 5 days after admission,  
59 excluding weekends and legal holidays, petition the committing  
60 court or the circuit court serving the county in which the  
61 facility is located, at the option of the facility administrator  
62 or designee, for an order authorizing the continued treatment of  
63 a client. The jail physician shall provide a current  
64 psychotherapeutic medication order at the time of transfer to  
65 the forensic or civil facility or upon request of the admitting  
66 physician after the client is evaluated.

67 b. The court order shall allow such treatment for up to a  
68 period not to exceed 90 days after following the date of the  
69 entry of the order. Unless the court is notified in writing that  
70 the client has provided express and informed consent in writing  
71 or that the client has been discharged by the committing court,  
72 the administrator or designee shall, before ~~the~~ expiration of  
73 the initial 90-day order, petition the court for an order  
74 authorizing the continuation of treatment for another 90 days  
75 ~~90-day period~~. This procedure shall be repeated until the client  
76 provides consent or is discharged by the committing court.

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

79 unable to or refused to give express and informed consent, the  
80 court shall determine by clear and convincing evidence that the  
81 client has mental illness, intellectual disability, or autism,  
82 that the treatment not consented to is essential to the care of  
83 the client, and that the treatment not consented to is not  
84 experimental and does not present an unreasonable risk of  
85 serious, hazardous, or irreversible side effects. In arriving at  
86 the substitute judgment decision, the court must consider at  
87 least the following factors:

- 88 a. The client's expressed preference regarding treatment;
- 89 b. The probability of adverse side effects;
- 90 c. The prognosis without treatment; and
- 91 d. The prognosis with treatment.

92  
93 The hearing shall be as convenient to the client as may be  
94 consistent with orderly procedure and shall be conducted in  
95 physical settings not likely to be injurious to the client's  
96 condition. The court may appoint a general or special magistrate  
97 to preside at the hearing. The client or the client's guardian,  
98 and the representative, shall be provided with a copy of the  
99 petition and the date, time, and location of the hearing. The  
100 client has the right to have an attorney represent him or her at  
101 the hearing, and, if the client is indigent, the court shall  
102 appoint the office of the public defender to represent the  
103 client at the hearing. The client may testify or not, as he or  
104 she chooses, and has the right to cross-examine witnesses and

105 may present his or her own witnesses.

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

108 916.13 Involuntary commitment of defendant adjudicated  
 109 incompetent.—

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

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

123 (b) A status hearing must be held within 30 days after the  
 124 court receives notification that the defendant is competent to  
 125 proceed or no longer meets the criteria for continued  
 126 commitment.

127 Section 3. Section 916.145, Florida Statutes, is amended  
 128 to read:

129 (Substantial rewording of section. See  
 130 s. 916.145, F.S., for present text.)

131           916.145 Dismissal of charges.—  
 132           (1) The charges against a defendant adjudicated  
 133 incompetent to proceed due to mental illness shall be dismissed  
 134 without prejudice to the state if the defendant remains  
 135 incompetent to proceed 5 years after such determination, unless  
 136 the court in its order specifies its reasons for believing that  
 137 the defendant will become competent to proceed within the  
 138 foreseeable future and specifies the time within which the  
 139 defendant is expected to become competent to proceed. The court  
 140 may dismiss such charges at least 3 and no more than 5 years  
 141 after such determination, unless the charge is:  
 142           (a) Arson;  
 143           (b) Sexual battery;  
 144           (c) Robbery;  
 145           (d) Kidnapping;  
 146           (e) Aggravated child abuse;  
 147           (f) Aggravated abuse of an elderly person or disabled  
 148 adult;  
 149           (g) Aggravated assault with a deadly weapon;  
 150           (h) Murder;  
 151           (i) Manslaughter;  
 152           (j) Aggravated manslaughter of an elderly person or  
 153 disabled adult;  
 154           (k) Aggravated manslaughter of a child;  
 155           (l) Unlawful throwing, projecting, placing, or discharging  
 156 of a destructive device or bomb;

157        (m) Armed burglary;  
 158        (n) Aggravated battery;  
 159        (o) Aggravated stalking;  
 160        (p) A forcible felony as defined in s. 776.08 and not  
 161 listed elsewhere in this subsection;  
 162        (q) An offense involving the possession, use, or discharge  
 163 of a firearm;  
 164        (r) An attempt to commit an offense listed in this  
 165 subsection;  
 166        (s) An offense allegedly committed by a defendant who has  
 167 had a forcible or violent felony conviction within the 5 years  
 168 preceding the date of arrest for the nonviolent felony sought to  
 169 be dismissed;  
 170        (t) An offense allegedly committed by a defendant who,  
 171 after having been found incompetent and under court supervision  
 172 in a community-based program, is formally charged by a State  
 173 Attorney with a new felony offense; or  
 174        (u) One for which there is an identifiable victim and such  
 175 victim has not consented to the dismissal.  
 176        (2) This section does not prohibit the state from refileing  
 177 dismissed charges if the defendant is declared to be competent  
 178 to proceed in the future.  
 179        Section 4. Subsection (5) is added to section 916.15,  
 180 Florida Statutes, to read:  
 181        916.15 Involuntary commitment of defendant adjudicated not  
 182 guilty by reason of insanity.—

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183        (5) A status hearing must be held within 30 days after the  
184 court receives notification that the defendant no longer meets  
185 the criteria for continued commitment.

186        Section 5. This act shall take effect July 1, 2014.