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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2014	.	
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The Committee on Health Policy (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and
informed written consent for treatment. If a client refuses such



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11 treatment as is deemed necessary and essential by the client's
12 multidisciplinary treatment team for the appropriate care of the
13 client, such treatment may be provided under the following
14 circumstances:

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

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

36 a. If the client has been receiving psychotherapeutic
37 medications at the jail at the time of transfer to the forensic
38 or civil facility and lacks the capacity to make an informed
39 decision regarding mental health treatment at the time of



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

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

65 3. At the hearing on the issue of whether the court should
66 enter an order authorizing treatment for which a client was
67 unable to or refused to give express and informed consent, the
68 court shall determine by clear and convincing evidence that the



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69 client has mental illness, intellectual disability, or autism,
70 that the treatment not consented to is essential to the care of
71 the client, and that the treatment not consented to is not
72 experimental and does not present an unreasonable risk of
73 serious, hazardous, or irreversible side effects. In arriving at
74 the substitute judgment decision, the court must consider at
75 least the following factors:

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

80

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

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

96 916.13 Involuntary commitment of defendant adjudicated
97 incompetent.-



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

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

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

115 Section 3. Section 916.145, Florida Statutes, is amended to
116 read:

117 (Substantial rewording of section. See
118 s. 916.145, F.S., for present text.)
119 916.145 Dismissal of charges.-

120 (1) The charges against a defendant adjudicated incompetent
121 to proceed due to mental illness shall be dismissed without
122 prejudice to the state if the defendant remains incompetent to
123 proceed 5 years after such determination, unless the court in
124 its order specifies its reasons for believing that the defendant
125 will become competent to proceed within the foreseeable future
126 and specifies the time within which the defendant is expected to



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127 become competent to proceed. The court may dismiss these charges
128 between 3 and 5 years after such determination, unless the
129 charge is:

130 (a) Arson;

131 (b) Sexual battery;

132 (c) Robbery;

133 (d) Kidnapping;

134 (e) Aggravated child abuse;

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

137 (g) Aggravated assault with a deadly weapon;

138 (h) Murder;

139 (i) Manslaughter;

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

142 (k) Aggravated manslaughter of a child;

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

145 (m) Armed burglary;

146 (n) Aggravated battery; or

147 (o) Aggravated stalking;

148 (p) Any forcible felony as defined in s. 776.08, not listed
149 in paragraphs (a)-(o);

150 (q) Any offense involving the possession, use, or discharge
151 of a firearm;

152 (r) An attempt to commit any of the offenses listed in
153 paragraphs (a)-(q);

154 (s) Committed by a defendant who has had a forcible or
155 violent felony conviction within the 5 years preceding the date



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156 of arrest for the nonviolent 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.—

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



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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
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.



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- 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 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.
- 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-to-
237 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



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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.

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~~



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272 ~~reasonable degree of rational understanding and the child has a~~
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 child.~~

276 ~~2. Appreciate the range and nature of possible penalties~~

277 ~~that may be imposed in the proceedings against the child, if~~

278 ~~applicable.~~

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

280 ~~4. Disclose to counsel facts pertinent to the proceedings~~

281 ~~at issue.~~

282 ~~5. Display appropriate courtroom behavior.~~

283 ~~6. Testify relevantly.~~

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

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



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

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

304 And the title is amended as follows:

305 Delete everything before the enacting clause
306 and insert:

307 A bill to be entitled
308 An act relating to mental health treatment; amending
309 s. 916.107, F.S.; authorizing forensic and civil
310 facilities to order the continuation of
311 psychotherapeutics for individuals receiving such
312 medications in the jail before admission; amending s.
313 916.13, F.S.; providing timeframes within which
314 competency hearings must be held; amending s. 916.145,
315 F.S.; revising the time for dismissal of certain
316 charges for defendants that remain incompetent to
317 proceed to trial; providing exceptions; amending s.
318 916.15, F.S.; providing a timeframe within which
319 commitment hearings must be held; amending s. 985.19,
320 F.S.; standardizing the protocols, procedures,
321 diagnostic criteria, and information and findings that
322 must be included in an expert's competency evaluation
323 report; providing an effective date.