

By the Committee on Health Policy; and Senator Sobel

588-02833-14

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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.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
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

588-02833-14

2014944c1

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

588-02833-14

2014944c1

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

588-02833-14

2014944c1

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

588-02833-14

2014944c1

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 to  
132 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 incompetent  
137 to proceed due to mental illness shall be dismissed without  
138 prejudice to the state if the defendant remains incompetent to  
139 proceed 5 years after such determination, unless the court in  
140 its order specifies its reasons for believing that the defendant  
141 will become competent to proceed within the foreseeable future  
142 and specifies the time within which the defendant is expected to  
143 become competent to proceed. The court may dismiss these charges  
144 between 3 and 5 years after such determination, unless the  
145 charge is:

588-02833-14

2014944c1

- 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) Any forcible felony as defined in s. 776.08, not listed  
165 in paragraphs (a)-(o);  
166       (q) Any offense involving the possession, use, or discharge  
167 of a firearm;  
168       (r) An attempt to commit any of the offenses listed in  
169 paragraphs (a)-(q);  
170       (s) Committed by a defendant who has had a forcible or  
171 violent felony conviction within the 5 years preceding the date  
172 of arrest for the nonviolent felony sought to be dismissed;  
173       (t) Committed by a defendant who, after having been found  
174 incompetent and under court supervision in a community based

588-02833-14

2014944c1

175 program, is formally charged by a state attorney with a new  
176 felony offense; or

177 (u) Where there is an identifiable victim and such victim  
178 has not consented.

179 (2) This section does not prohibit the state from refileing  
180 dismissed charges if the defendant is declared to be competent  
181 to proceed in the future.

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

184 916.15 Involuntary commitment of defendant adjudicated not  
185 guilty by reason of insanity.—

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

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

191 985.19 Incompetency in juvenile delinquency cases.—

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

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

588-02833-14

2014944c1

204 the child's competency to proceed with the hearing must be  
205 served upon the child's attorney, the state attorney, the  
206 attorneys representing the Department of Juvenile Justice, and  
207 the attorneys representing the Department of Children and  
208 Families ~~Family Services~~.

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

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

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



588-02833-14

2014944c1

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

588-02833-14

2014944c1

262 to restore competence and the probability that the child will  
263 attain competence to proceed in the foreseeable future.

264 e. A description of recommended treatment or education  
265 appropriate for the mental disorder.

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

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

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

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

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

588-02833-14

2014944c1

291 ~~1. Appreciate the charges or allegations against the child.~~

292 ~~2. Appreciate the range and nature of possible penalties~~  
293 ~~that may be imposed in the proceedings against the child, if~~  
294 ~~applicable.~~

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

296 ~~4. Disclose to counsel facts pertinent to the proceedings~~  
297 ~~at issue.~~

298 ~~5. Display appropriate courtroom behavior.~~

299 ~~6. Testify relevantly.~~

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

308 (h) After placement of the child in the appropriate  
309 setting, the Department of Children and Families ~~Family Services~~  
310 in consultation with the Agency for Persons with Disabilities,  
311 as appropriate, must, within 30 days after placement of the  
312 child, prepare and submit to the court a treatment or training  
313 plan for the child's restoration of competency. A copy of the  
314 plan must be served upon the child's attorney, the state  
315 attorney, and the attorneys representing the Department of  
316 Juvenile Justice.

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