

By the Committees on Criminal Justice; and Health Policy; and
Senator Sobel

591-03465-14

2014944c2

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:

16
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

591-03465-14

2014944c2

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,

591-03465-14

2014944c2

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:

591-03465-14

2014944c2

- 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

591-03465-14

2014944c2

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

- 142 (a) Arson;
143 (b) Sexual battery;
144 (c) Robbery;
145 (d) Kidnapping;

591-03465-14

2014944c2

- 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

591-03465-14

2014944c2

175 victim has not consented to the dismissal.

176 (2) This section does not prohibit the state from refiling
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.—

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.