

By Senator Sobel

33-00401-15

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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 psychotherapeutic medications for individuals
6 receiving such medication in the jail before
7 admission; amending s. 916.13, F.S.; providing
8 timeframes within which status hearings must be held;
9 making technical changes; amending s. 916.145, F.S.;
10 authorizing the court to dismiss certain charges
11 within a specified timeframe for defendants who remain
12 incompetent to proceed to trial; providing an
13 exception; amending s. 916.15, F.S.; providing a
14 timeframe within which status hearings must be held;
15 reenacting s. 394.658(1)(a), F.S., relating to the
16 requirements of the Criminal Justice, Mental Health,
17 and Substance Abuse Reinvestment Grant Program, to
18 incorporate the amendment made to s. 916.13, F.S., in
19 a reference thereto; reenacting ss. 916.106(9) and
20 916.17, F.S., relating to mentally deficient and
21 mentally ill defendants, to incorporate the amendment
22 made to ss. 916.13 and 916.15, F.S., in a reference
23 thereto; reenacting s. 394.467(7)(a), F.S., relating
24 to involuntary inpatient placement, to incorporate the
25 amendments made to s. 916.15, F.S., in references
26 thereto; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Subsection (3) of section 916.107, Florida
31 Statutes, is amended to read:

32 916.107 Rights of forensic clients.—

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

34 (a) A forensic client shall be asked to give express and
35 informed written consent for treatment. If a client refuses such
36 treatment as is deemed necessary and essential by the client's
37 multidisciplinary treatment team for the appropriate care of the
38 client, such treatment may be provided under the following
39 circumstances:

40 1. In an emergency situation in which there is immediate
41 danger to the safety of the client or others, such treatment may
42 be provided upon the written order of a physician for a period
43 not to exceed 48 hours, excluding weekends and legal holidays.
44 If, after the 48-hour period, the client has not given express
45 and informed consent to the treatment initially refused, the
46 administrator or designee of the civil or forensic facility
47 shall, within 48 hours, excluding weekends and legal holidays,
48 petition the committing court or the circuit court serving the
49 county in which the facility is located, at the option of the
50 facility administrator or designee, for an order authorizing the
51 continued treatment of the client. In the interim, the need for
52 treatment shall be reviewed every 48 hours and may be continued
53 without the consent of the client upon the continued written
54 order of a physician who has determined that the emergency
55 situation continues to present a danger to the safety of the
56 client or others.

57 2. In a situation other than an emergency situation, the
58 administrator or designee of the facility shall petition the

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59 court for an order authorizing necessary and essential treatment
60 for the client.

61 a. If the client was treated with psychotherapeutic
62 medications at the jail before his or her transfer to the
63 forensic or civil facility and lacks the capacity to make an
64 informed decision regarding the continuation of such treatment
65 at the time of admission, the admitting physician may order
66 continued administration of psychotherapeutic medications if, in
67 his or her clinical judgment, abrupt cessation of
68 psychotherapeutic medications could pose a risk to the health or
69 safety of the client while a court order for such medication is
70 pursued. The administrator or designee of the civil or forensic
71 facility may, within 5 business days after the client's
72 admission, petition the committing court or the circuit court
73 serving the county in which the facility is located for an order
74 authorizing the continued treatment of a client with
75 psychotherapeutic medications. At the time the client is
76 transferred to the forensic or civil facility, or upon a request
77 submitted by the admitting physician after the client is
78 evaluated, the jail physician shall provide the forensic or
79 civil facility with the current psychotherapeutic medication
80 order.

81 b. The court order shall allow such treatment for up to a
82 period not to exceed 90 days after following the date that of
83 the entry of the order was entered. Unless the court is notified
84 in writing that the client has provided, in writing, express and
85 informed consent in writing or that the client has been
86 discharged by the committing court, the administrator or
87 designee shall, before the expiration of the initial 90-day

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88 order, petition the court for an order authorizing the
89 continuation of treatment for an additional 90 days ~~another 90-~~
90 ~~day period~~. This procedure shall be repeated until the client
91 provides consent or is discharged by the committing court.

92 3. At the hearing on the issue of whether the court should
93 enter an order authorizing treatment for which a client was
94 unable to or refused to give express and informed consent, the
95 court shall determine by clear and convincing evidence that the
96 client has mental illness, intellectual disability, or autism,
97 that the treatment not consented to is essential to the care of
98 the client, and that the treatment not consented to is not
99 experimental and does not present an unreasonable risk of
100 serious, hazardous, or irreversible side effects. In arriving at
101 the substitute judgment decision, the court must consider at
102 least the following factors:

- 103 a. The client's expressed preference regarding treatment;
104 b. The probability of adverse side effects;
105 c. The prognosis without treatment; and
106 d. The prognosis with treatment.

107
108 The hearing shall be as convenient to the client as may be
109 consistent with orderly procedure and shall be conducted in
110 physical settings not likely to be injurious to the client's
111 condition. The court may appoint a general or special magistrate
112 to preside at the hearing. The client or the client's guardian,
113 and the representative, shall be provided with a copy of the
114 petition and the date, time, and location of the hearing. The
115 client has the right to have an attorney represent him or her at
116 the hearing, and, if the client is indigent, the court shall

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117 appoint the office of the public defender to represent the
118 client at the hearing. The client may testify or not, as he or
119 she chooses, and has the right to cross-examine witnesses and
120 may present his or her own witnesses.

121 (b) In addition to the provisions of paragraph (a), in the
122 case of surgical procedures requiring the use of a general
123 anesthetic or electroconvulsive treatment or nonpsychiatric
124 medical procedures, and prior to performing the procedure,
125 written permission shall be obtained from the client, if the
126 client is legally competent, from the parent or guardian of a
127 minor client, or from the guardian of an incompetent client. The
128 administrator or designee of the forensic facility or a
129 designated representative may, with the concurrence of the
130 client's attending physician, authorize emergency surgical or
131 nonpsychiatric medical treatment if such treatment is deemed
132 lifesaving or for a situation threatening serious bodily harm to
133 the client and permission of the client or the client's guardian
134 could not be obtained before provision of the needed treatment.

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

137 916.13 Involuntary commitment of defendant adjudicated
138 incompetent.—

139 (2) A defendant who has been charged with a felony and ~~who~~
140 ~~has been~~ adjudicated incompetent to proceed due to mental
141 illness, ~~and~~ who meets the criteria for involuntary commitment
142 ~~to the department under the provisions of this chapter,~~ may be
143 committed to the department, and the department shall retain and
144 treat the defendant.

145 (a) Within ~~No later than~~ 6 months after the date of

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146 admission and at the end of any period of extended commitment,
147 or at any time the administrator or designee determines ~~shall~~
148 ~~have determined~~ that the defendant has regained competency to
149 proceed or no longer meets the criteria for continued
150 commitment, the administrator or designee shall file a report
151 with the court pursuant to the applicable Florida Rules of
152 Criminal Procedure.

153 (b) A status hearing shall be held within 30 days after the
154 court receives notification that the defendant is competent to
155 proceed or no longer meets the criteria for continued
156 commitment.

157 Section 3. Section 916.145, Florida Statutes, is amended to
158 read:

159 916.145 Dismissal of charges.—

160 (1) The charges against a ~~any~~ defendant adjudicated
161 incompetent to proceed due to ~~the defendant's~~ mental illness
162 shall be dismissed without prejudice to the state if the
163 defendant remains incompetent to proceed 5 years after such
164 determination, unless the court ~~in its order~~ specifies in its
165 order its reasons for believing that the defendant will become
166 competent to proceed within the foreseeable future and ~~specifies~~
167 the time within which the defendant is expected to become
168 competent to proceed. The court may dismiss such charges 3 years
169 or more after such determination, up to the 5 years after the
170 determination, unless the charge is: ~~The charges against the~~
171 defendant are dismissed without prejudice to the state to refile
172 the charges should the defendant be declared competent to
173 proceed in the future.

174 (a) Arson;

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- 175 (b) Sexual battery;
176 (c) Robbery;
177 (d) Kidnapping;
178 (e) Aggravated child abuse;
179 (f) Aggravated abuse of an elderly person or disabled
180 adult;
181 (g) Aggravated assault with a deadly weapon;
182 (h) Murder;
183 (i) Manslaughter;
184 (j) Aggravated manslaughter of an elderly person or
185 disabled adult;
186 (k) Aggravated manslaughter of a child;
187 (l) Unlawful throwing, projecting, placing, or discharging
188 of a destructive device or bomb;
189 (m) Armed burglary;
190 (n) Aggravated battery;
191 (o) Aggravated stalking;
192 (p) A forcible felony as defined in s. 776.08 and not
193 listed elsewhere in this subsection;
194 (q) An offense involving the possession, use, or discharge
195 of a firearm;
196 (r) An attempt to commit an offense listed in this
197 subsection;
198 (s) An offense allegedly committed by a defendant who has
199 had a forcible or violent felony conviction within the 5 years
200 preceding the date of arrest for the nonviolent felony sought to
201 be dismissed;
202 (t) An offense allegedly committed by a defendant who,
203 after having been found incompetent and under court supervision

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204 in a community-based program, is formally charged by a state
205 attorney with a new felony offense; or

206 (u) An offense for which there is an identifiable victim
207 and such victim has not consented to the dismissal.

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

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

213 916.15 Involuntary commitment of defendant adjudicated not
214 guilty by reason of insanity.—

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

218 Section 5. For the purpose of incorporating the amendment
219 made by this act to section 916.13, Florida Statutes, in a
220 reference thereto, paragraph (a) of subsection (1) of section
221 394.658, Florida Statutes, is reenacted to read:

222 394.658 Criminal Justice, Mental Health, and Substance
223 Abuse Reinvestment Grant Program requirements.—

224 (1) The Criminal Justice, Mental Health, and Substance
225 Abuse Statewide Grant Review Committee, in collaboration with
226 the Department of Children and Families, the Department of
227 Corrections, the Department of Juvenile Justice, the Department
228 of Elderly Affairs, and the Office of the State Courts
229 Administrator, shall establish criteria to be used to review
230 submitted applications and to select the county that will be
231 awarded a 1-year planning grant or a 3-year implementation or
232 expansion grant. A planning, implementation, or expansion grant

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233 may not be awarded unless the application of the county meets
234 the established criteria.

235 (a) The application criteria for a 1-year planning grant
236 must include a requirement that the applicant county or counties
237 have a strategic plan to initiate systemic change to identify
238 and treat individuals who have a mental illness, substance abuse
239 disorder, or co-occurring mental health and substance abuse
240 disorders who are in, or at risk of entering, the criminal or
241 juvenile justice systems. The 1-year planning grant must be used
242 to develop effective collaboration efforts among participants in
243 affected governmental agencies, including the criminal,
244 juvenile, and civil justice systems, mental health and substance
245 abuse treatment service providers, transportation programs, and
246 housing assistance programs. The collaboration efforts shall be
247 the basis for developing a problem-solving model and strategic
248 plan for treating adults and juveniles who are in, or at risk of
249 entering, the criminal or juvenile justice system and doing so
250 at the earliest point of contact, taking into consideration
251 public safety. The planning grant shall include strategies to
252 divert individuals from judicial commitment to community-based
253 service programs offered by the Department of Children and
254 Families in accordance with ss. 916.13 and 916.17.

255 Section 6. For the purpose of incorporating the amendments
256 made by this act to sections 916.13 and 916.15, Florida
257 Statutes, in a reference thereto, subsection (9) of section
258 916.106, Florida Statutes, is reenacted to read:

259 916.106 Definitions.—For the purposes of this chapter, the
260 term:

261 (9) "Forensic client" or "client" means any defendant who

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262 has been committed to the department or agency pursuant to s.
263 916.13, s. 916.15, or s. 916.302.

264 Section 7. For the purpose of incorporating the amendments
265 made by this act to sections 916.13 and 916.15, Florida
266 Statutes, in references thereto, section 916.17, Florida
267 Statutes, is reenacted to read:

268 916.17 Conditional release.—

269 (1) Except for an inmate currently serving a prison
270 sentence, the committing court may order a conditional release
271 of any defendant in lieu of an involuntary commitment to a
272 facility pursuant to s. 916.13 or s. 916.15 based upon an
273 approved plan for providing appropriate outpatient care and
274 treatment. Upon a recommendation that outpatient treatment of
275 the defendant is appropriate, a written plan for outpatient
276 treatment, including recommendations from qualified
277 professionals, must be filed with the court, with copies to all
278 parties. Such a plan may also be submitted by the defendant and
279 filed with the court with copies to all parties. The plan shall
280 include:

281 (a) Special provisions for residential care or adequate
282 supervision of the defendant.

283 (b) Provisions for outpatient mental health services.

284 (c) If appropriate, recommendations for auxiliary services
285 such as vocational training, educational services, or special
286 medical care.

287
288 In its order of conditional release, the court shall specify the
289 conditions of release based upon the release plan and shall
290 direct the appropriate agencies or persons to submit periodic

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291 reports to the court regarding the defendant's compliance with
292 the conditions of the release and progress in treatment, with
293 copies to all parties.

294 (2) Upon the filing of an affidavit or statement under oath
295 by any person that the defendant has failed to comply with the
296 conditions of release, that the defendant's condition has
297 deteriorated to the point that inpatient care is required, or
298 that the release conditions should be modified, the court shall
299 hold a hearing within 7 days after receipt of the affidavit or
300 statement under oath. After the hearing, the court may modify
301 the release conditions. The court may also order that the
302 defendant be returned to the department if it is found, after
303 the appointment and report of experts, that the person meets the
304 criteria for involuntary commitment under s. 916.13 or s.
305 916.15.

306 (3) If at any time it is determined after a hearing that
307 the defendant who has been conditionally released under
308 subsection (1) no longer requires court-supervised followup
309 care, the court shall terminate its jurisdiction in the cause
310 and discharge the defendant.

311 Section 8. For the purpose of incorporating the amendment
312 made by this act to section 916.15, Florida Statutes, in a
313 reference thereto, paragraph (a) of subsection (7) of section
314 394.467, Florida Statutes, is reenacted to read:

315 394.467 Involuntary inpatient placement.—

316 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
317 PLACEMENT.—

318 (a) Hearings on petitions for continued involuntary
319 inpatient placement shall be administrative hearings and shall

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320 be conducted in accordance with the provisions of s. 120.57(1),
321 except that any order entered by the administrative law judge
322 shall be final and subject to judicial review in accordance with
323 s. 120.68. Orders concerning patients committed after
324 successfully pleading not guilty by reason of insanity shall be
325 governed by the provisions of s. 916.15.

326 Section 9. This act shall take effect October 1, 2015.