

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 769 Mental Health Treatment  
**SPONSOR(S):** Children, Families & Seniors Subcommittee, Peters  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 862

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	8 Y, 0 N, As CS	McElroy	Brazzell
2) Appropriations Committee	22 Y, 0 N	Smith	Leznoff
3) Judiciary Committee			

### SUMMARY ANALYSIS

HB 769 addresses issues related to administration of psychotropic medications, evaluations of individuals' competency and transportation to competency and commitment hearings for forensic clients. The bill makes changes to ch. 916, F.S., as follows:

- Requires an admitting physician in a state forensic or civil facility to continue the administration of psychotropic medication previously prescribed in jail when a forensic client lacks the capacity to make an informed decision and, in the physician's opinion, the abrupt cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication;
- Requires that a court hold a hearing within 30 days after receiving notification from a treatment facility that a defendant who was previously adjudicated incompetent or was previously adjudicated not guilty by reason of insanity is now competent to proceed or no longer meets criteria for continued commitment;
- Requires the defendant to be transported to the committing court's jurisdiction for the hearing.
- Permits a court to dismiss charges for specified nonviolent offenses for an individual whom the court has determined to be incompetent to proceed and who remains incompetent for 3 years after the original determination.
- Changes the timeframe for mandatory dismissal of all charges for an individual whom the court has determined to be incompetent to proceed and who remains incompetent to 5 continuous, uninterrupted years since the court's original determination of incompetency.

The bill would have an insignificant fiscal impact to state expenditures.

The bill provides an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Competency

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.<sup>1</sup> The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.<sup>2</sup> Defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, understand the adversarial nature of the legal process, and disclose to counsel facts pertinent to the proceedings. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.<sup>3</sup>

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.<sup>4</sup> If the motion is well-founded the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.<sup>5</sup> If the defendant is found to be competent, the criminal proceeding resumes.<sup>6</sup> If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.<sup>7</sup>

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed<sup>8</sup> and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil<sup>9</sup> and forensic<sup>10</sup> treatment facilities by the circuit court,<sup>11</sup> or in lieu of such commitment, may be released on conditional release<sup>12</sup> by the circuit court if the person is not serving a prison sentence.<sup>13</sup> Conditional release is release into the community accompanied by outpatient care and treatment. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.<sup>14</sup>

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<sup>1</sup> See *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).

<sup>2</sup> *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P.

<sup>3</sup> *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.

<sup>4</sup> Rule 3.210, Fla.R.Crim.P.

<sup>5</sup> *Id.*

<sup>6</sup> Rule 3.212, Fla.R.Crim.P.

<sup>7</sup> *Id.*

<sup>8</sup> "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." s. 916.12(1), F.S.

<sup>9</sup> A "civil facility" is: a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. Section 916.106(4), F.S. DCF oversees two state-operated forensic facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center.

<sup>10</sup> A "forensic facility" is a separate and secure facility established within DCF or APD to service forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents. Section 916.106(10), F.S.

<sup>11</sup> Sections 916.13, 916.15, and 916.302, F.S.

<sup>12</sup> Conditional release is release into the community accompanied by outpatient care and treatment. S. 916.17, F.S.

<sup>13</sup> Section 916.17(1), F.S.

<sup>14</sup> Section 916.16(1), F.S.

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.<sup>15</sup>

The statutes are silent as to a time frame in which the court must hold a hearing to determine continued competency or the continued need for involuntary commitment. The statutes are additionally silent as to transportation of the defendant to the committing court's jurisdiction for these hearings. The time frame for the hearings are set forth in Florida Rules of Criminal Procedure which require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.<sup>16</sup> However, there is no express requirement within the Florida Rules of Criminal Procedure to transport the defendant to committing court's jurisdiction for these hearings.

### Dismissal of Charges

Section 916.145, F.S., requires all charges against any defendant adjudicated incompetent to proceed due to mental illness be dropped if the defendant remains incompetent to proceed five years after the initial determination. However, court may extend the time period to dismiss the charges beyond 5 years if in its order specifies its reasons for believing that a defendant will become competent to proceed within the foreseeable future and specifies the time within which a defendant is expected to become competent to proceed.<sup>17</sup> Any charges dismissed under this section are dismissed without prejudice which allows the state to refile the charges should a defendant be declared competent to proceed in the future.<sup>18</sup>

### Psychotropic Medication Treatment

Currently, forensic clients<sup>19</sup> must give express and informed consent to treatment.<sup>20</sup> If they refuse and the situation is deemed an emergency that puts the client's safety at risk, treatment may be given for 48 hours.<sup>21</sup> If the person still refuses to give consent, a court order must be sought for continuation of the treatment.<sup>22</sup> In non-emergency situations, treatment may not be given without the client's consent.<sup>23</sup> Instead, the facility administrator or designee must petition the court for an order authorizing necessary and essential treatment for the client, including administration of psychotropic medication.<sup>24</sup> There will be a delay between the time in which the petition is filed and the hearing for the petition. In this interim the client will not receive any psychotropic medication, even if he or she was receiving this medication at the jail. This creates a delay in treatment which could potentially lead to a client's decompensation and prolong the client's length of stay at the facility.

### **Effect of Proposed Changes**

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<sup>15</sup> Section 916.13(2), F.S.; section 916.15(3), F.S.

<sup>16</sup> Rules 3.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

<sup>17</sup> S. 916.145, F.S.

<sup>18</sup> Id.

<sup>19</sup> Forensic clients are individuals who have been committed to DCF, pursuant to ch. 916, F.S., because they have been charged with committing a felony but been adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed.

<sup>20</sup> Section 916.107(3)(a), F.S.

<sup>21</sup> S. 916.107(3)(a)1., F.S.

<sup>22</sup> Id.

<sup>23</sup> Section 916.107(3)(a)2., F.S.

<sup>24</sup> Id.

## Competency

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. The bill also requires that the defendant be transported to committing court's jurisdiction for these hearings. These requirements are consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure, and should help make vacancies available at secure facilities for individuals awaiting admission. As statutorily mandated, forensic individuals committed to the care of DCF for involuntary hospitalization must be admitted within 15 days of commitment.

## Dismissal of Charges

The bill amends s. 916.145, F.S., to require that all charges be dismissed if the defendant remains incompetent to proceed for 5 continuous, uninterrupted years after the initial determination. The bill also permits a court to dismiss charges for an individual whom the court has determined to be incompetent to proceed and who remains incompetent for 3 years after the original determination, unless the charge is:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon; murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, projecting, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery;
- Aggravated stalking;
- A forcible felony as defined in s. 776.08, F.S., that is not otherwise listed;
- An offense involving the possession, use, or discharge of a firearm; or an attempt to commit any of these offenses;
- Any offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest for the nonviolent felony sought to be dismissed;
- Any offense allegedly committed by a defendant who, after having been found incompetent and under court supervision in a community-based program, is formally charged by a State Attorney with a new felony offense; or
- An offense for which there is an identifiable victim and the victim has not consented to the dismissal.

## Psychotropic Medication Treatment

The bill requires jail physicians to provide a current psychotropic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to continue the administration of psychotropic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and, in the opinion of the physician, the abrupt cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations and is limited to the time period required to obtain a court order for the medication. This provision applies to all forensic clients since it appears in the general provisions of ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or APD. Continuation of the medication could be beneficial as it may help prevent possible decompensation thereby potentially decreasing the client's length of stay in the facility.

The bill requires the administrator or designee of the civil or forensic facility to petition the committing court or the circuit court serving the county where the facility is located within 5 days of the inmate's admission, excluding weekends and legal holidays, for an order authorizing continued treatment.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.

**Section 2:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

**Section 3:** Amends s. 916.145, F.S., relating to dismissal of charges.

**Section 4:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

**Section 5:** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

This bill would have an insignificant impact on the state courts.

The bill amends s. 916.145, F.S., allowing for the discretionary dismissal of charges against non-violent defendants found incompetent to proceed after 3 years instead of the current 5 years. If the charge is for an offense other than those serious crimes specifically enumerated in the bill, the court may dismiss the charges between 3 and 5 years after the determination that the defendant was incompetent to proceed. Allowing a shorter timeframe for dismissal of charges is likely to reduce the workload of the judiciary and the state courts system, as the criminal courts have to monitor and hold status hearings for these defendants until their charges are dismissed or competency is restored. The majority of these defendants are non-violent and on conditional release in community placements. Reducing the dismissal period for non-violent incompetent defendants would eliminate years of monitoring and status hearings by the criminal courts. The impact, if any, cannot be determined because the early dismissal provision is discretionary.<sup>25</sup>

The bill requires the courts to hold competency and commitment status hearings within 30 days after the court receives notice that the defendant is competent to proceed or no longer meets the criteria for continued commitment. There should be no impact to the judicial or court workload

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<sup>25</sup> Office of the State Court Administrator, "CS/HB 769 Judicial Impact Statement", 01/25/2016, On file with the House Appropriations Committee.

because the courts are already required to do so pursuant to Florida Rules of Criminal Procedure 3.212 and 3.218.<sup>26</sup>

Pursuant to s.916.106 F.S. the Department of Children and Families is responsible for the treatment of forensic clients who have been determined incompetent to proceed due to mental illness or who have been acquitted of a felony by reason of insanity. The bill requires transportation be provided by DCF for clients to the committing court's jurisdiction for competency and commitment status hearings. This should have no fiscal impact on the Department.<sup>27</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>26</sup> *Id.*

<sup>27</sup> The Department of Children and Families, "HB 769 Legislative Bill Analysis", 11/20/2015, On file with the House Appropriations Committee.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Children, Families & Seniors Subcommittee adopted an amendment to HB 769. The amendment:

- Permits a court to dismiss charges for specified nonviolent offenses for an individual whom the court has determined to be incompetent to proceed and who remains incompetent for 3 years after the original determination.
- Changes the timeframe for mandatory dismissal of all charges for an individual whom the court has determined to be incompetent to proceed and who remains incompetent to 5 continuous, uninterrupted years since the court's original determination of incompetency.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.