

HB 769

2016

1 A bill to be entitled
2 An act relating to mental health treatment; amending
3 s. 916.107, F.S.; provides for continuation of
4 psychotropic medication by forensic and civil
5 facilities for individuals receiving such medication
6 before admission; amending s. 916.13, F.S.; providing
7 a timeframe within which competency hearings must be
8 held; requiring that a defendant be transported for
9 the hearing; amending s. 916.15, F.S.; providing a
10 timeframe within which commitment hearings must be
11 held; requiring that a defendant be transported for
12 the hearing; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Paragraph (a) of subsection (3) of section
17 916.107, Florida Statutes, is amended to read:

18 916.107 Rights of forensic clients.—

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

20 (a) A forensic client shall be asked to give express and
21 informed written consent for treatment. If a client refuses such
22 treatment as is deemed necessary and essential by the client's
23 multidisciplinary treatment team for the appropriate care of the
24 client, such treatment may be provided under the following
25 circumstances:

26 1. In an emergency situation in which there is immediate

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27 | danger to the safety of the client or others, such treatment may
28 | be provided upon the written order of a physician for up to a
29 | ~~period not to exceed~~ 48 hours, excluding weekends and legal
30 | holidays. If, after the 48-hour period, the client has not given
31 | express and informed consent to the treatment initially refused,
32 | the administrator or designee of the civil or forensic facility
33 | shall, within 48 hours, excluding weekends and legal holidays,
34 | petition the committing court or the circuit court serving the
35 | county in which the facility is located, at the option of the
36 | facility administrator or designee, for an order authorizing the
37 | continued treatment of the client. In the interim, the need for
38 | treatment shall be reviewed every 48 hours and may be continued
39 | without the consent of the client upon the continued written
40 | order of a physician who has determined that the emergency
41 | situation continues to present a danger to the safety of the
42 | client or others.

43 | 2. In a situation other than an emergency situation, the
44 | administrator or designee of the facility shall petition the
45 | court for an order authorizing necessary and essential treatment
46 | for the client.

47 | a. If the client has been receiving psychotropic
48 | medication at the jail at the time of transfer to the forensic
49 | or civil facility and lacks the capacity to make an informed
50 | decision regarding mental health treatment at the time of
51 | admission, the admitting physician shall order continued
52 | administration of psychotropic medication if, in the clinical

53 judgment of the physician, abrupt cessation of that psychotropic
54 medication could pose a risk to the health or safety of the
55 client while a court order to medicate is pursued. The
56 administrator or designee of the forensic or civil facility
57 shall, within 5 days after a client's admission, excluding
58 weekends and legal holidays, petition the committing court or
59 the circuit court serving the county in which the facility is
60 located, at the option of the facility administrator or
61 designee, for an order authorizing the continued treatment of a
62 client with psychotropic medication. The jail physician shall
63 provide a current psychotropic medication order at the time of
64 transfer to the forensic or civil facility or upon request of
65 the admitting physician after the client is evaluated.

66 b. The court order shall allow such treatment for up to a
67 ~~period not to exceed~~ 90 days after following the date that of
68 ~~the entry of the order was entered~~. Unless the court is notified
69 in writing that the client has provided express and informed
70 written consent ~~in writing~~ or that the client has been
71 discharged by the committing court, the administrator or
72 designee of the facility shall, before the expiration of the
73 initial 90-day order, petition the court for an order
74 authorizing the continuation of treatment for an additional 90
75 days ~~another 90-day period~~. This procedure shall be repeated
76 until the client provides consent or is discharged by the
77 committing court.

78 3. At the hearing on the issue of whether the court should

79 | enter an order authorizing treatment for which a client was
80 | unable to or refused to give express and informed consent, the
81 | court shall determine by clear and convincing evidence that the
82 | client has mental illness, intellectual disability, or autism,
83 | that the treatment not consented to is essential to the care of
84 | the client, and that the treatment not consented to is not
85 | experimental and does not present an unreasonable risk of
86 | serious, hazardous, or irreversible side effects. In arriving at
87 | the substitute judgment decision, the court must consider at
88 | least the following factors:

- 89 | a. The client's expressed preference regarding treatment;
- 90 | b. The probability of adverse side effects;
- 91 | c. The prognosis without treatment; and
- 92 | d. The prognosis with treatment.

93 |
94 | The hearing shall be as convenient to the client as may be
95 | consistent with orderly procedure and shall be conducted in
96 | physical settings not likely to be injurious to the client's
97 | condition. The court may appoint a general or special magistrate
98 | to preside at the hearing. The client or the client's guardian,
99 | and the representative, shall be provided with a copy of the
100 | petition and the date, time, and location of the hearing. The
101 | client has the right to have an attorney represent him or her at
102 | the hearing, and, if the client is indigent, the court shall
103 | appoint the office of the public defender to represent the
104 | client at the hearing. The client may testify or not, as he or

105 she chooses, and has the right to cross-examine witnesses and
 106 may present his or her own witnesses.

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

109 916.13 Involuntary commitment of defendant adjudicated
 110 incompetent.—

111 (2) A defendant who has been charged with a felony and who
 112 has been adjudicated incompetent to proceed due to mental
 113 illness, and who meets the criteria for involuntary commitment
 114 ~~to the department under the provisions of this chapter,~~ may be
 115 committed to the department, and the department shall retain and
 116 treat the defendant.

117 (a) Within ~~No later than~~ 6 months after the date of
 118 admission and at the end of any period of extended commitment,
 119 or at any time the administrator or designee determines ~~shall~~
 120 ~~have determined~~ that the defendant has regained competency to
 121 proceed or no longer meets the criteria for continued
 122 commitment, the administrator or designee shall file a report
 123 with the court pursuant to the applicable Florida Rules of
 124 Criminal Procedure.

125 (b) A competency hearing shall be held within 30 days
 126 after the court receives notification that the defendant is
 127 competent to proceed or no longer meets the criteria for
 128 continued commitment. The defendant must be transported to the
 129 committing court's jurisdiction for the hearing.

130 Section 3. Subsection (5) is added to section 916.15,

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131 Florida Statutes, to read:

132 916.15 Involuntary commitment of defendant adjudicated not
133 guilty by reason of insanity.—

134 (5) The commitment hearing shall be held within 30 days
135 after the court receives notification that the defendant no
136 longer meets the criteria for continued commitment. The
137 defendant must be transported to the committing court's
138 jurisdiction for the hearing.

139 Section 4. This act shall take effect July 1, 2016.