

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 862

INTRODUCER: Children, Families, and Elder Affairs Committee; Criminal Justice Committee; and Senator Legg

SUBJECT: Mental Health Treatment

DATE: February 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 862 authorizes a physician in a forensic or civil facility to continue the administration of psychotropic medication previously prescribed in jail under certain circumstances.

The bill requires 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 involuntary commitment.

The bill also permits a court to dismiss charges for an incompetent individual who remains incompetent for at least 3 years rather than 5 years after the original determination, unless the charge is for certain violent crimes. The bill clarifies that the timeframe for mandatory dismissal of all charges for an incompetent individual who remains incompetent is 5 continuous, uninterrupted years since the court's original determination.

The bill may have a positive fiscal impact to the state.

II. 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.¹ 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.² Defendants must have the capacity to appreciate the range and nature of the charges and possible penalties, understand the adversarial nature of the legal process, disclose to counsel facts pertinent to the proceedings, manifest appropriate courtroom behavior, and be able to testify relevantly.³

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.⁴ 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.⁵ If the defendant is found to be competent, the criminal proceeding resumes.⁶ If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.⁷

Defendants adjudicated incompetent to proceed⁸ or not guilty by reason of insanity may be involuntarily committed to a state civil⁹ or forensic¹⁰ treatment facility by the court.¹¹ The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment and the defendant may not be released except by order of the committing court.¹²

¹ See *Pate v. Robinson*, 383 U.S. 375, (1966) and *Jones v. State*, 740 So.2d 520 (Fla. 1999).

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

³ *Id.* See also ss. 916.12, 916.3012, and 985.19, F.S.

⁴ Rule 3.210, Fla.R.Crim.P.

⁵ *Id.*

⁶ Rule 3.212(b), Fla.R.Crim.P.

⁷ *Id.*

⁸ "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." See s. 916.12(1), F.S.

⁹ A "civil facility" is a mental health facility established within the DCF or by contract with DCF to serve individuals committed pursuant to ch. 394, F.S. (the Baker Act), and defendants pursuant to ch. 916, F.S. (the Forensic Client Service Act), 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 APD to serve defendants who do not require the security provided in a forensic facility. See s. 916.106(4), F.S.

¹⁰ A "forensic facility" is a separate and secure facility established within DCF or APD to serve 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 ch. 916, F.S., from non-forensic residents. See s. 916.106(10), 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.

¹¹ See ss. 916.13, 916.15, and 916.302, F.S.

¹² Section 916.16(1), F.S.

The defendant may be committed for treatment to restore competency if the court believes competency can be restored in the foreseeable future.¹³ The administrator of 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.¹⁴

The Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a defendant has regained competency and no longer meets the criteria for involuntary commitment.¹⁵ Currently, Florida statutes are silent on the time frame in which a court must hold a hearing to determine competency or the continued need for involuntary commitment. Additionally, Florida statutes and the Florida Rules of Criminal Procedure are silent as to transportation of the defendant to the committing court's jurisdiction for these hearings.¹⁶

Dismissal of Charges

All charges against a defendant adjudicated incompetent to proceed due to mental illness are dismissed if the defendant remains incompetent to proceed 5 years after the initial determination, unless the court believes that a defendant will become competent within the foreseeable future. The court must specify the reasons and the time frame within which a defendant is expected to become competent to proceed. The state may refile the charges should a defendant be declared competent to proceed in the future.¹⁷

Rights of Forensic Clients

A defendant adjudicated incompetent to proceed or not guilty by reason of insanity, and involuntarily committed by the court may be held in a jail for up to 15 days. Evaluation, treatment, or training may be provided in jail until the client is transferred to a civil or forensic facility.¹⁸

Forensic clients¹⁹ are asked to give express and informed written consent for treatment.²⁰ If a client refuses treatment, such treatment can be provided without consent under the following circumstances:

- In emergency situations in which there is an immediate danger to the safety of the client and others, a physician may order treatment for a period not to exceed 48 hours. After the 48 hour period, if the client continues to refuse treatment, then the facility administrator must petition

¹³ Rule 3.212(c)(3), Fl.R.Crim.P.

¹⁴ See ss. 916.13(2), F.S. and 916.15(3), F.S.

¹⁵ See Rules 3.212(c)(6) and 3.218(b), Fl.R.Crim.P.

¹⁶ According to the DCF, a statutorily mandated timeframe to hold a competency hearing and guidelines for transportation may create vacancies at civil and forensic facilities for incoming clients. See *infra* note 22.

¹⁷ Section 916.145, F.S.

¹⁸ Section 916.107(1)(a), F.S.

¹⁹ Forensic clients are individuals who have been committed to the DCF, pursuant to ch. 916, F.S., because they have been charged with a felony and adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed. See s. 916.106(9), F.S.

²⁰ Section 916.107(3)(a), F.S.

the court for an order authorizing the continuation of the treatment. In the interim, treatment may be provided upon the continued written order of a physician who has determined that the emergency situation persists.

- In non-emergency situations, treatment may not be given without the client's consent. The facility administrator must petition the court for an order authorizing treatment, including the administration of psychotropic medication. The court order may allow treatment for a period not to exceed 90 days. The facility administrator may request a continuation of treatment for an additional 90 days and this process may be repeated until the client provides consent or is discharged by the committing court.²¹

Typically, there is a delay between the time a facility administrator files a petition requesting court authorization to provide treatment and a hearing for the petition. During this delay, a client does not receive treatment, including psychotropic medication, even if he or she was receiving this medication while in jail. The delay can create a lapse in treatment which could potentially lead to a client's decompensation, instability, and prolonged stay at the facility.²²

III. Effect of Proposed Changes:

Competency

Sections 2 and 4 of the bill amends ss. 916.13 and 916.15, F.S., respectively, to require a competency hearing to be held within 30 days after the court has been notified by a facility administrator that a defendant is competent to proceed, or no longer meets the criteria for continued involuntary commitment. This timeframe is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure. The bill also requires that the defendant be transported back to the committing court's jurisdiction for the competency hearing.

Sections 5 and 6 of the bill reenact ss. 916.106 and 394.467, F.S., respectively, to incorporate the changes made in the bill to ss. 916.13 and 916.15, F.S.

Dismissal of Charges

Section 3 of the bill amends s. 916.145, F.S., to clarify that the timeframe for mandatory dismissal of all charges for an incompetent individual who remains incompetent is 5 *continuous, uninterrupted* years since the court's original determination. The bill also permits a court to dismiss charges for an incompetent individual who remains incompetent for at least 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;

²¹ *Id.*

²² DCF, 2016 Agency Bill Analysis SB 862, (Feb. 2, 2016) (on file with the Senate Health Policy Committee).

- 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;
- An attempt to commit any of these offenses listed above;
- 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.

Rights of Forensic Clients

Section 1 of the bill amends s. 916.107(3), F.S., to authorize a physician of a state forensic or civil facility to continue the administration of psychotropic medication without the consent of the client under all the following circumstances:

- It is a non-emergency situation;
- A petition has been filed with the court for an order authorizing the treatment for the client;
- The client has been receiving psychotropic medication while in jail;
- The client lacks the capacity to make an informed decision regarding mental health treatment; and
- In the physician's opinion, the abrupt cessation of the medication could pose a risk to the health or safety of the client.

This authority to provide psychotropic medication without consent is limited to the time period required to obtain a court order for the medication. Within 5 days after admission, the administrator of the forensic or civil facility may petition the committing court or the circuit court of the county where the facility is located, for an order authorizing the continued treatment of a client using the psychotropic medication. The jail physician must provide a current psychotropic medication order at the time of transfer from the jail to the forensic or civil facility or upon request of the admitting physician after the client is evaluated.

Section 7 provides that the bill is effective on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a positive fiscal impact to the state if individuals charged with nonviolent offenses who have not regained competency after 3 years have their charges dismissed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 916.107, 916.13, 916.145, and 916.15.

This bill reenacts sections 916.106 and 394.467 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Children, Families, and Elder Affairs on February 10, 2016:

The Committee Substitute clarifies when a court can dismiss charges for individuals whose competency has not been restored after 3 years.

CS by Criminal Justice on February 1, 2016:

The Committee Substitute 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.

It also 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.

- B. **Amendments:**

None.