

By Senator Legg

17-00963-16

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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 psychotropic  
5       medications for clients receiving such medication in  
6       the jail before admission to those facilities under  
7       certain circumstances; requiring a jail physician to  
8       provide a current psychotropic medication order under  
9       certain circumstances; amending s. 916.13, F.S.;  
10      requiring that a competency hearing be held within a  
11      specified time; amending s. 916.15, F.S.; requiring  
12      that a commitment hearing be held within a specified  
13      time; reenacting s. 916.106(9), F.S., relating to the  
14      definition of the terms "forensic client" or "client,"  
15      to incorporate the amendments made to ss. 916.13 and  
16      916.15, F.S., in references thereto; reenacting s.  
17      394.467(7)(a), F.S., relating to involuntary inpatient  
18      placement, to incorporate the amendments made to s.  
19      916.15, F.S., in a reference thereto; providing an  
20      effective date.

21  
22   Be It Enacted by the Legislature of the State of Florida:

23  
24       Section 1. Paragraph (a) of subsection (3) of section  
25   916.107, Florida Statutes, is amended to read:

26       916.107 Rights of forensic clients.—

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

28       (a) A forensic client shall be asked to give express and  
29   informed written consent for treatment. If a client refuses such

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30 treatment as is deemed necessary and essential by the client's  
31 multidisciplinary treatment team for the appropriate care of the  
32 client, such treatment may be provided under the following  
33 circumstances:

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

51 2. In a situation other than an emergency situation, the  
52 administrator or designee of the facility shall petition the  
53 court for an order authorizing necessary and essential treatment  
54 for the client.

55 a. If the client has been receiving psychotropic medication  
56 while incarcerated at the time of transfer to the forensic or  
57 civil facility and lacks the capacity to make an informed  
58 decision regarding mental health treatment at the time of

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59 admission, the admitting physician may order continued  
60 administration of psychotropic medication if, in the clinical  
61 judgment of the physician, abrupt cessation of psychotropic  
62 medication could pose a risk to the health or safety of the  
63 client while a court order to medicate is pursued. The  
64 administrator or designee of the civil or forensic facility may,  
65 within 5 days after admission, excluding weekends and legal  
66 holidays, petition the committing court or the circuit court  
67 serving the county in which the facility is located, at the  
68 option of the facility administrator or designee, for an order  
69 authorizing the continued treatment of a client using the  
70 psychotropic medication. The jail physician shall provide a  
71 current psychotropic medication order at the time of transfer to  
72 the forensic or civil facility or upon request of the admitting  
73 physician after the client is evaluated.

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

86 3. At the hearing on the issue of whether the court should  
87 enter an order authorizing treatment for which a client was

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88 unable to or refused to give express and informed consent, the  
89 court shall determine by clear and convincing evidence that the  
90 client has mental illness, intellectual disability, or autism,  
91 that the treatment not consented to is essential to the care of  
92 the client, and that the treatment not consented to is not  
93 experimental and does not present an unreasonable risk of  
94 serious, hazardous, or irreversible side effects. In arriving at  
95 the substitute judgment decision, the court must consider at  
96 least the following factors:

- 97 a. The client's expressed preference regarding treatment;
- 98 b. The probability of adverse side effects;
- 99 c. The prognosis without treatment; and
- 100 d. The prognosis with treatment.

101  
102 The hearing shall be as convenient to the client as may be  
103 consistent with orderly procedure and shall be conducted in  
104 physical settings not likely to be injurious to the client's  
105 condition. The court may appoint a general or special magistrate  
106 to preside at the hearing. The client or the client's guardian,  
107 and the representative, shall be provided with a copy of the  
108 petition and the date, time, and location of the hearing. The  
109 client has the right to have an attorney represent him or her at  
110 the hearing, and, if the client is indigent, the court shall  
111 appoint the office of the public defender to represent the  
112 client at the hearing. The client may testify or not, as he or  
113 she chooses, and has the right to cross-examine witnesses and  
114 may present his or her own witnesses.

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

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117 916.13 Involuntary commitment of defendant adjudicated  
118 incompetent.—

119 (2) A defendant who has been charged with a felony and ~~who~~  
120 ~~has been~~ adjudicated incompetent to proceed due to mental  
121 illness, ~~and~~ who meets the criteria for involuntary commitment  
122 ~~to the department under the provisions of this chapter,~~ may be  
123 committed to the department, and the department shall retain and  
124 treat the defendant.

125 (a) Within No later than 6 months after the date of  
126 admission and at the end of any period of extended commitment,  
127 or at any time the administrator or designee determines shall  
128 ~~have determined~~ that the defendant has regained competency to  
129 proceed or no longer meets the criteria for continued  
130 commitment, the administrator or designee shall file a report  
131 with the court pursuant to the applicable Florida Rules of  
132 Criminal Procedure.

133 (b) A competency hearing shall be held within 30 days after  
134 the court receives notification that the defendant is competent  
135 to proceed or no longer meets the criteria for continued  
136 commitment. The defendant must be transported back to the  
137 committing court's jurisdiction for the hearing.

138 Section 3. Subsection (5) is added to section 916.15,  
139 Florida Statutes, to read:

140 916.15 Involuntary commitment of defendant adjudicated not  
141 guilty by reason of insanity.—

142 (5) The commitment hearing shall be held within 30 days  
143 after the court receives notification that the defendant is  
144 competent to proceed and no longer meets the criteria for  
145 continued commitment. The defendant must be transported back to

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146 the committing court's jurisdiction for the hearing.

147 Section 4. For the purpose of incorporating the amendments  
148 made by this act to sections 916.13 and 916.15, Florida  
149 Statutes, in reference theretos, subsection (9) of section  
150 916.106, Florida Statutes, is reenacted to read:

151 916.106 Definitions.—For the purposes of this chapter, the  
152 term:

153 (9) "Forensic client" or "client" means any defendant who  
154 has been committed to the department or agency pursuant to s.  
155 916.13, s. 916.15, or s. 916.302.

156 Section 5. For the purpose of incorporating the amendment  
157 made by this act to section 916.15, Florida Statutes, in a  
158 reference thereto, paragraph (a) of subsection (7) of section  
159 394.467, Florida Statutes, is reenacted to read:

160 394.467 Involuntary inpatient placement.—

161 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT  
162 PLACEMENT.—

163 (a) Hearings on petitions for continued involuntary  
164 inpatient placement shall be administrative hearings and shall  
165 be conducted in accordance with the provisions of s. 120.57(1),  
166 except that any order entered by the administrative law judge  
167 shall be final and subject to judicial review in accordance with  
168 s. 120.68. Orders concerning patients committed after  
169 successfully pleading not guilty by reason of insanity shall be  
170 governed by the provisions of s. 916.15.

171 Section 6. This act shall take effect July 1, 2016.