

By the Committee on Criminal Justice; and Senator Legg

591-02913-16

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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. 916.145, F.S.; revising
12 the time for dismissal of certain charges for
13 defendants that remain incompetent to proceed to
14 trial; providing exceptions; amending s. 916.15, F.S.;
15 requiring that a commitment hearing be held within a
16 specified time; reenacting s. 916.106(9), F.S.,
17 relating to the definition of the terms "forensic
18 client" or "client," to incorporate the amendments
19 made to ss. 916.13 and 916.15, F.S., in references
20 thereto; reenacting s. 394.467(7)(a), F.S., relating
21 to involuntary inpatient placement, to incorporate the
22 amendments made to s. 916.15, F.S., in a reference
23 thereto; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraph (a) of subsection (3) of section
28 916.107, Florida Statutes, is amended to read:

29 916.107 Rights of forensic clients.—

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

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

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

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

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

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

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

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

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

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

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

104

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

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

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120 916.13 Involuntary commitment of defendant adjudicated
121 incompetent.—

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

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

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

141 Section 3. Section 916.145, Florida Statutes, is amended to
142 read:

143 916.145 Dismissal of charges.—

144 (1) The charges against a any defendant adjudicated
145 incompetent to proceed due to ~~the defendant's~~ mental illness
146 shall be dismissed without prejudice to the state if the
147 defendant remains incompetent to proceed 5 continuous
148 uninterrupted years after such determination, unless the court in

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149 its order specifies its reasons for believing that the defendant
150 will become competent to proceed within the foreseeable future
151 and specifies the time within which the defendant is expected to
152 become competent to proceed. The court may dismiss such charges
153 at least 3 and no more than 5 years after such determination,
154 unless the charge is:

155 (a) Arson;

156 (b) Sexual battery;

157 (c) Robbery;

158 (d) Kidnapping;

159 (e) Aggravated child abuse;

160 (f) Aggravated abuse of an elderly person or disabled

161 adult;

162 (g) Aggravated assault with a deadly weapon;

163 (h) Murder;

164 (i) Manslaughter;

165 (j) Aggravated manslaughter of an elderly person or
166 disabled adult;

167 (k) Aggravated manslaughter of a child;

168 (l) Unlawful throwing, projecting, placing, or discharging
169 of a destructive device or bomb;

170 (m) Armed burglary;

171 (n) Aggravated battery;

172 (o) Aggravated stalking;

173 (p) A forcible felony as defined in s. 776.08 and not
174 listed elsewhere in this subsection;

175 (q) An offense involving the possession, use, or discharge
176 of a firearm;

177 (r) An attempt to commit an offense listed in this

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178 subsection;

179 (s) An offense allegedly committed by a defendant who has
180 had a forcible or violent felony conviction within the 5 years
181 preceding the date of arrest for the nonviolent felony sought to
182 be dismissed;

183 (t) An offense allegedly committed by a defendant who,
184 after having been found incompetent and under court supervision
185 in a community-based program, is formally charged by a State
186 Attorney with a new felony offense; or

187 (u) One for which there is an identifiable victim and such
188 victim has not consented to the dismissal.

189 (2) This section does not prohibit the state from refileing
190 dismissed charges if the defendant is declared to be competent
191 to proceed in the future against the defendant are dismissed
192 without prejudice to the state to refile the charges should the
193 defendant be declared competent to proceed in the future.

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

196 916.15 Involuntary commitment of defendant adjudicated not
197 guilty by reason of insanity.—

198 (5) The commitment hearing shall be held within 30 days
199 after the court receives notification that the defendant is
200 competent to proceed and no longer meets the criteria for
201 continued commitment. The defendant must be transported back to
202 the committing court's jurisdiction for the hearing.

203 Section 5. For the purpose of incorporating the amendments
204 made by this act to sections 916.13 and 916.15, Florida
205 Statutes, in references thereto, subsection (9) of section
206 916.106, Florida Statutes, is reenacted to read:

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207 916.106 Definitions.—For the purposes of this chapter, the
208 term:

209 (9) "Forensic client" or "client" means any defendant who
210 has been committed to the department or agency pursuant to s.
211 916.13, s. 916.15, or s. 916.302.

212 Section 6. For the purpose of incorporating the amendment
213 made by this act to section 916.15, Florida Statutes, in a
214 reference thereto, paragraph (a) of subsection (7) of section
215 394.467, Florida Statutes, is reenacted to read:

216 394.467 Involuntary inpatient placement.—

217 (7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT
218 PLACEMENT.—

219 (a) Hearings on petitions for continued involuntary
220 inpatient placement shall be administrative hearings and shall
221 be conducted in accordance with the provisions of s. 120.57(1),
222 except that any order entered by the administrative law judge
223 shall be final and subject to judicial review in accordance with
224 s. 120.68. Orders concerning patients committed after
225 successfully pleading not guilty by reason of insanity shall be
226 governed by the provisions of s. 916.15.

227 Section 7. This act shall take effect July 1, 2016.