

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  
 5           psychotherapeutics for individuals receiving such  
 6           medications in the jail before admission; amending s.  
 7           916.13, F.S.; providing timeframes within which  
 8           competency hearings must be held; amending s. 916.145,  
 9           F.S.; revising the time for dismissal of certain  
 10          charges for defendants that remain incompetent to  
 11          proceed to trial; amending s. 916.15, F.S.; providing  
 12          a timeframe within which commitment hearings must be  
 13          held; amending s. 985.19, F.S.; standardizing the  
 14          protocols, procedures, diagnostic criteria, and  
 15          information and findings that must be included in an  
 16          expert's competency evaluation report; providing an  
 17          effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:  
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21           Section 1. Paragraph (a) of subsection (3) of section  
 22   916.107, Florida Statutes, is amended to read:

23           916.107 Rights of forensic clients.—

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

25           (a) A forensic client shall be asked to give express and  
 26   informed written consent for treatment. If a client refuses such  
 27   treatment as is deemed necessary and essential by the client's  
 28   multidisciplinary treatment team for the appropriate care of the

29 client, such treatment may be provided under the following  
30 circumstances:

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

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

52 a. If the client has been receiving psychotherapeutic  
53 medications at the jail at the time of transfer to the forensic  
54 or civil facility and lacks the capacity to make an informed  
55 decision regarding mental health treatment at the time of  
56 admission, the admitting physician may order continued

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

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

82 |       3. At the hearing on the issue of whether the court should  
83 | enter an order authorizing treatment for which a client was  
84 | unable to or refused to give express and informed consent, the

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85 | court shall determine by clear and convincing evidence that the  
86 | client has mental illness, retardation, or autism, that the  
87 | treatment not consented to is essential to the care of the  
88 | client, and that the treatment not consented to is not  
89 | experimental and does not present an unreasonable risk of  
90 | serious, hazardous, or irreversible side effects. In arriving at  
91 | the substitute judgment decision, the court must consider at  
92 | least the following factors:

- 93 |       a. The client's expressed preference regarding treatment;  
94 |       b. The probability of adverse side effects;  
95 |       c. The prognosis without treatment; and  
96 |       d. The prognosis with treatment.

97 |  
98 | The hearing shall be as convenient to the client as may be  
99 | consistent with orderly procedure and shall be conducted in  
100 | physical settings not likely to be injurious to the client's  
101 | condition. The court may appoint a general or special magistrate  
102 | to preside at the hearing. The client or the client's guardian,  
103 | and the representative, shall be provided with a copy of the  
104 | petition and the date, time, and location of the hearing. The  
105 | client has the right to have an attorney represent him or her at  
106 | the hearing, and, if the client is indigent, the court shall  
107 | appoint the office of the public defender to represent the  
108 | client at the hearing. The client may testify or not, as he or  
109 | she chooses, and has the right to cross-examine witnesses and  
110 | may present his or her own witnesses.

111 |       Section 2. Subsection (2) of section 916.13, Florida  
112 | Statutes, is amended to read:

113 916.13 Involuntary commitment of defendant adjudicated  
 114 incompetent.—

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

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

128 (b) A competency hearing must be held within 30 days after  
 129 the court receives notification that the defendant is competent  
 130 to proceed or no longer meets the criteria for continued  
 131 commitment.

132 Section 3. Section 916.145, Florida Statutes, is amended  
 133 to read:

134 916.145 Dismissal of charges.—The charges against any  
 135 defendant adjudicated incompetent to proceed due to the  
 136 defendant's mental illness shall be dismissed without prejudice  
 137 to the state if the defendant remains incompetent to proceed 3 ~~5~~  
 138 years after such determination or 5 years after such  
 139 determination if a charge related to commitment includes an  
 140 allegation of a violent crime against a person, unless the court

141 in its order specifies its reasons for believing that the  
 142 defendant will become competent to proceed within the  
 143 foreseeable future and specifies the time within which the  
 144 defendant is expected to become competent to proceed. The  
 145 charges against the defendant are dismissed without prejudice to  
 146 the state to refile the charges should the defendant be declared  
 147 competent to proceed in the future.

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

150 916.15 Involuntary commitment of defendant adjudicated not  
 151 guilty by reason of insanity.—

152 (5) The commitment hearing must be held within 30 days  
 153 after the court receives notification that the defendant no  
 154 longer meets the criteria for continued commitment.

155 Section 5. Subsection (1) of section 985.19, Florida  
 156 Statutes, is amended to read:

157 985.19 Incompetency in juvenile delinquency cases.—

158 (1) If, at any time prior to or during a delinquency case,  
 159 the court has reason to believe that the child named in the  
 160 petition may be incompetent to proceed with the hearing, the  
 161 court on its own motion may, or on the motion of the child's  
 162 attorney or state attorney must, stay all proceedings and order  
 163 an evaluation of the child's mental condition.

164 (a) Any motion questioning the child's competency to  
 165 proceed must be served upon the child's attorney, the state  
 166 attorney, the attorneys representing the Department of Juvenile  
 167 Justice, and the attorneys representing the Department of  
 168 Children and Families ~~Family Services~~. Thereafter, any motion,

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169 notice of hearing, order, or other legal pleading relating to  
170 the child's competency to proceed with the hearing must be  
171 served upon the child's attorney, the state attorney, the  
172 attorneys representing the Department of Juvenile Justice, and  
173 the attorneys representing the Department of Children and  
174 Families ~~Family Services~~.

175 (b) All determinations of competency must ~~shall~~ be made at  
176 a hearing, with findings of fact based on an evaluation of the  
177 child's mental condition made by at least ~~not less than~~ two but  
178 not ~~nor~~ more than three experts appointed by the court. ~~The~~  
179 ~~basis for the determination of incompetency must be specifically~~  
180 ~~stated in the evaluation. In addition, a recommendation as to~~  
181 ~~whether residential or nonresidential treatment or training is~~  
182 ~~required must be included in the evaluation.~~ Experts appointed  
183 by the court to determine the mental condition of a child shall  
184 be allowed reasonable fees for services rendered. State  
185 employees may be paid expenses pursuant to s. 112.061. The fees  
186 shall be taxed as costs in the case.

187 (c) A child is competent to proceed if the child has  
188 sufficient present ability to consult with counsel with a  
189 reasonable degree of rational understanding and the child has a  
190 rational and factual understanding of the present proceedings.  
191 The expert's competency evaluation report must specifically  
192 state the basis for the determination of the child's mental  
193 condition and must include written findings that:

- 194 1. Identify the specific matters referred for evaluation.
- 195 2. Identify the sources of information used by the expert.
- 196 3. Describe the procedures, techniques, and diagnostic

197 | tests used in the examination to determine the basis of the  
198 | child's mental condition.

199 | 4. Address the child's capacity to:

200 | a. Appreciate the charges or allegations against the  
201 | child.

202 | b. Appreciate the range and nature of possible penalties  
203 | that may be imposed in the proceedings against the child, if  
204 | applicable.

205 | c. Understand the adversarial nature of the legal process.

206 | d. Disclose to counsel facts pertinent to the proceedings  
207 | at issue.

208 | e. Display appropriate courtroom behavior.

209 | f. Testify relevantly.

210 | 5. Present the factual basis for the expert's clinical  
211 | findings and opinions of the child's mental condition. The  
212 | expert's factual basis of his or her clinical findings and  
213 | opinions must be supported by the diagnostic criteria found in  
214 | the most recent edition of the Diagnostic and Statistical Manual  
215 | of Mental Disorders (DSM) published by the American Psychiatric  
216 | Association and must be presented in a separate section of the  
217 | report entitled "summary of findings." This section must  
218 | include:

219 | a. The day, month, year, and length of time of the face-  
220 | to-face diagnostic clinical interview to determine the child's  
221 | mental condition.

222 | b. A statement that identifies the DSM clinical name and  
223 | associated diagnostic code for the specific mental disorder that  
224 | forms the basis of the child's incompetency.



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225 c. A statement of how the child would benefit from  
226 competency restoration services in the community or in a secure  
227 residential treatment facility.

228 d. An assessment of the probable duration of the treatment  
229 to restore competence and the probability that the child will  
230 attain competence to proceed in the foreseeable future.

231 e. A description of recommended treatment or education  
232 appropriate for the mental disorder.

233 6. If the evaluator determines the child to be incompetent  
234 to proceed to trial, the evaluator must report on the mental  
235 disorder that forms the basis of the incompetency.

236 (d)-(e) All court orders determining incompetency must  
237 include specific written findings by the court as to the nature  
238 of the incompetency and whether the child requires secure or  
239 nonsecure treatment or training environment ~~environments~~.

240 (e)-(d) For competency ~~incompetency~~ evaluations related to  
241 mental illness, the Department of Children and Families ~~Family~~  
242 ~~Services~~ shall maintain and annually provide the courts with a  
243 list of available mental health professionals who have completed  
244 a training program approved by the Department of Children and  
245 Families ~~Family Services~~ to perform the evaluations.

246 (f)-(e) For competency ~~incompetency~~ evaluations related to  
247 mental retardation or autism, the court shall order the Agency  
248 for Persons with Disabilities to examine the child to determine  
249 if the child meets the definition of "retardation" or "autism"  
250 in s. 393.063 and, provide a clinical opinion as to if so,  
251 whether the child is competent to proceed with delinquency  
252 proceedings.

253 ~~(f) A child is competent to proceed if the child has~~  
254 ~~sufficient present ability to consult with counsel with a~~  
255 ~~reasonable degree of rational understanding and the child has a~~  
256 ~~rational and factual understanding of the present proceedings.~~  
257 ~~The report must address the child's capacity to:~~

258 ~~1. Appreciate the charges or allegations against the~~  
259 ~~child.~~

260 ~~2. Appreciate the range and nature of possible penalties~~  
261 ~~that may be imposed in the proceedings against the child, if~~  
262 ~~applicable.~~

263 ~~3. Understand the adversarial nature of the legal process.~~

264 ~~4. Disclose to counsel facts pertinent to the proceedings~~  
265 ~~at issue.~~

266 ~~5. Display appropriate courtroom behavior.~~

267 ~~6. Testify relevantly.~~

268 (g) Immediately upon the filing of the court order finding  
269 a child incompetent to proceed, the clerk of the court shall  
270 notify the Department of Children and Families ~~Family Services~~  
271 and the Agency for Persons with Disabilities and fax or hand  
272 deliver to the department and to the agency a referral packet  
273 that includes, at a minimum, the court order, the charging  
274 documents, the petition, and the court-appointed evaluator's  
275 reports.

276 (h) After placement of the child in the appropriate  
277 setting, the Department of Children and Families ~~Family Services~~  
278 in consultation with the Agency for Persons with Disabilities,  
279 as appropriate, must, within 30 days after placement of the  
280 child, prepare and submit to the court a treatment or training

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281 | plan for the child's restoration of competency. A copy of the  
282 | plan must be served upon the child's attorney, the state  
283 | attorney, and the attorneys representing the Department of  
284 | Juvenile Justice.

285 |       Section 6. This act shall take effect July 1, 2013.