

ENROLLED

CS/CS/HB 769

2016 Legislature

1  
 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. 916.145, F.S.; revising the  
 10 time for dismissal of certain charges for defendants  
 11 who remain incompetent to proceed to trial; providing  
 12 exceptions; amending s. 916.15, F.S.; providing a  
 13 timeframe within which commitment hearings must be  
 14 held; requiring that a defendant be transported for  
 15 the hearing; providing an effective date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19 Section 1. Paragraph (a) of subsection (3) of section  
 20 916.107, Florida Statutes, is amended to read:

21 916.107 Rights of forensic clients.—

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

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

ENROLLED

CS/CS/HB 769

2016 Legislature

27 client, such treatment may be provided under the following  
28 circumstances:

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

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

50 a. If the client has been receiving psychotropic  
51 medication at the jail at the time of transfer to the forensic  
52 or civil facility and lacks the capacity to make an informed

ENROLLED

CS/CS/HB 769

2016 Legislature

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

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

ENROLLED

CS/CS/HB 769

2016 Legislature

79 | until the client provides consent or is discharged by the  
80 | committing court.

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

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

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

ENROLLED

CS/CS/HB 769

2016 Legislature

105 | the hearing, and, if the client is indigent, the court shall  
 106 | appoint the office of the public defender to represent the  
 107 | client at the hearing. The client may testify or not, as he or  
 108 | she chooses, and has the right to cross-examine witnesses and  
 109 | may present his or her own witnesses.

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

112 | 916.13 Involuntary commitment of defendant adjudicated  
 113 | incompetent.—

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

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

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

ENROLLED

CS/CS/HB 769

2016 Legislature

131 continued commitment. The defendant must be transported to the  
 132 committing court's jurisdiction for the hearing.

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

135 (Substantial rewording of section. See  
 136 s. 916.145, F.S., for present text.)  
 137 916.145 Dismissal of charges.—

138 (1) The charges against a defendant adjudicated  
 139 incompetent to proceed due to mental illness shall be dismissed  
 140 without prejudice to the state if the defendant remains  
 141 incompetent to proceed for 5 continuous, uninterrupted years  
 142 after such determination, unless the court in its order  
 143 specifies its reasons for believing that the defendant will  
 144 become competent to proceed within the foreseeable future and  
 145 specifies the time within which the defendant is expected to  
 146 become competent to proceed. The court may dismiss such charges  
 147 at least 3 years after such determination, unless the charge is:

- 148 (a) Arson;
- 149 (b) Sexual battery;
- 150 (c) Robbery;
- 151 (d) Kidnapping;
- 152 (e) Aggravated child abuse;
- 153 (f) Aggravated abuse of an elderly person or disabled  
 154 adult;
- 155 (g) Aggravated assault with a deadly weapon;
- 156 (h) Murder;

ENROLLED

CS/CS/HB 769

2016 Legislature

- 157        (i) Manslaughter;
- 158        (j) Aggravated manslaughter of an elderly person or  
 159 disabled adult;
- 160        (k) Aggravated manslaughter of a child;
- 161        (l) Unlawful throwing, projecting, placing, or discharging  
 162 of a destructive device or bomb;
- 163        (m) Armed burglary;
- 164        (n) Aggravated battery;
- 165        (o) Aggravated stalking;
- 166        (p) A forcible felony as defined in s. 776.08 and not  
 167 listed elsewhere in this subsection;
- 168        (q) An offense where an element of the offense requires  
 169 the possession, use, or discharge of a firearm;
- 170        (r) An attempt to commit an offense listed in this  
 171 subsection;
- 172        (s) An offense allegedly committed by a defendant who has  
 173 had a forcible or violent felony conviction within the 5 years  
 174 immediately preceding the date of arrest for the nonviolent  
 175 felony sought to be dismissed;
- 176        (t) An offense allegedly committed by a defendant who,  
 177 after having been found incompetent and placed under court  
 178 supervision in a community-based program, is formally charged by  
 179 a state attorney or the Office of the Statewide Prosecutor with  
 180 a new felony offense; or
- 181        (u) An offense for which there is an identifiable victim  
 182 and such victim has not consented to the dismissal.

ENROLLED

CS/CS/HB 769

2016 Legislature

183       (2) This section does not prohibit the state from refiling  
184 dismissed charges if the defendant is declared to be competent  
185 to proceed in the future.

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

188       916.15 Involuntary commitment of defendant adjudicated not  
189 guilty by reason of insanity.—

190       (5) The commitment hearing shall be held within 30 days  
191 after the court receives notification that the defendant no  
192 longer meets the criteria for continued commitment. The  
193 defendant must be transported to the committing court's  
194 jurisdiction for the hearing.

195       Section 5. This act shall take effect July 1, 2016.