

1 A bill to be entitled
2 An act relating to involuntary civil commitment of
3 sexually violent predators; amending s. 394.9155,
4 F.S.; specifying that the Florida Rules of Criminal
5 Procedure apply to certain proceedings relating to
6 competency; requiring proceedings to cease when a
7 person is found to be mentally incompetent to proceed;
8 providing requirements for determining competency;
9 requiring a secure facility to admit a person found
10 mentally incompetent; requiring the facility to file
11 specified reports with the court under certain
12 circumstances; authorizing counsel to move for a
13 hearing on the issue of the respondent's competence;
14 providing requirements relating to such hearing;
15 requiring a court to hold a hearing within a specified
16 timeframe after a facility files a report; providing
17 requirements relating to such hearing; requiring a
18 court to enter a specified order and proceed
19 expeditiously with a hearing or trial upon determining
20 that the respondent is competent to proceed; amending
21 s. 394.918, F.S.; requiring a court to conduct
22 biannual evaluations for competency for certain
23 persons; providing requirements relating to the
24 outcome of such evaluations; providing an effective
25 date.

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

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

Section 1. Subsection (8) is added to section 394.9155, Florida Statutes, to read:

394.9155 Rules of procedure and evidence.—In all civil commitment proceedings for sexually violent predators under this part, the following shall apply:

(8) The Florida Rules of Criminal Procedure apply when competency is at issue unless otherwise specified in this part.

(a) If at any time during a proceeding a person is found to be mentally incompetent to proceed, the proceedings must cease until the person is determined to be mentally competent.

(b) If the court on its own motion, or on the motion of counsel for the respondent or for the state, has reasonable grounds to believe that the respondent is not mentally competent to proceed, the court must immediately enter an order setting a time for a hearing to determine the respondent's mental condition and may order the respondent to be examined by no more than three experts before the hearing date. Attorneys for the state and the respondent may be present at any examination ordered by the court.

(c) If the court finds the respondent is incompetent to proceed during a hearing or before trial, or if the court finds that the respondent is competent to proceed but that the

51 person's competence depends on continuation of appropriate
52 treatment for mental illness or intellectual disability, the
53 court must order the person into treatment at an appropriate
54 secure facility to have his or her competency restored or to
55 maintain his or her competence to proceed, as applicable.

56 1. The facility shall admit the person for treatment. No
57 later than 6 months after the date of admission, the facility
58 shall file with the court a report that addresses the issue of
59 the person's competency and that considers the factors in Rule
60 3.211, Florida Rules of Criminal Procedure. The clerk of the
61 court shall provide copies of the report to all parties.

62 a. If, at any time during the initial 6 month period or
63 any period of extended time ordered pursuant to this section,
64 the administrator of the facility determines that the respondent
65 no longer meets the criteria for commitment for incompetency or
66 has become competent to proceed, the facility must file a report
67 with the court stating such determination and the clerk of the
68 court shall provide copies of the report to all parties.

69 b. If, at any time during the initial 6 month period or
70 any period of extended treatment ordered pursuant to this
71 section, counsel for the respondent has reasonable grounds to
72 believe that the respondent is competent to proceed or no longer
73 meets the criteria for continued treatment, counsel may move for
74 a hearing on the issue of the respondent's competence. The
75 motion must contain a certificate of counsel certifying that the

76 motion is made in good faith and on reasonable grounds that the
77 respondent is competent to proceed or no longer meets criteria
78 for commitment for incompetency. Such certification must contain
79 a recital of the specific observations and, to the extent
80 ethically permissible, any conversations with the respondent
81 that formed the basis for the motion.

82 c. If, upon consideration of a motion filed by counsel for
83 the respondent or the prosecuting attorney and any information
84 offered the court in support thereof, the court has reasonable
85 grounds to believe that the respondent is competent to proceed,
86 the court must order the facility to file a report addressing
87 such issues and must order a hearing to be held on the issues.
88 The clerk of the court shall provide copies of such report to
89 all parties.

90 2. The court must hold a hearing within 30 days after a
91 report is filed by a facility pursuant to sub-subparagraph 1.a
92 or 1.c. If, after the hearing, the court determines that the
93 respondent is still incompetent to proceed and that the
94 respondent meets the criteria for continued treatment, the court
95 must order continued treatment and the facility must file a
96 second report pursuant to subparagraph 1.

97 3. If the court determines that the respondent is
98 competent to proceed at any time after his or her commitment and
99 a hearing, the court must enter an order stating such finding
100 and must proceed expeditiously with a hearing or trial.

HB 1081

2021

101
102 The failure of any party to comply with such rules shall not
103 constitute a defense in any judicial proceedings under this
104 part.

105 Section 2. Subsection (5) is added to section 394.918,
106 Florida Statutes, to read:

107 394.918 Examinations; notice; court hearings for release
108 of committed persons; burden of proof.—

109 (5) The court shall biannually evaluate the competency of
110 a person committed under this part who has been found
111 incompetent. If the court finds that the person's competency has
112 been restored, the court must proceed with the annual review
113 proceedings as set forth in this section. If the court finds
114 that the person's competency has not been restored, treatment
115 for competency must continue at the commitment facility pursuant
116 to s. 394.9155.

117 Section 3. This act shall take effect July 1, 2021.