

1 A bill to be entitled

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.

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

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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

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

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

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.

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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

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

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 after at least 3 years but not more than 5 years after such
148 determination, unless the charge is:

149 (a) Arson;

150 (b) Sexual battery;

151 (c) Robbery;

152 (d) Kidnapping;

153 (e) Aggravated child abuse;

154 (f) Aggravated abuse of an elderly person or disabled
155 adult;

156 (g) Aggravated assault with a deadly weapon;

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

183 and such victim has not consented to the dismissal.

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

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

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

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

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