

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1045 Mental Health  
**SPONSOR(S):** Schwartz  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1712

| REFERENCE   | ACTION    | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY<br>CHIEF |
|---|-----------|-----------|---|
| 1) Health & Human Services Access<br>Subcommittee | 13 Y, 0 N | Mathieson | Schoolfield                                 |
| 2) Criminal Justice Subcommittee                  |           |           |   |
| 3) Appropriations Committee                       |           |           |   |
| 4) Health & Human Services Committee              |           |           |   |

### SUMMARY ANALYSIS

House Bill 1045 makes changes to Chapter 916, F.S., Mentally Deficient and Mentally Ill Defendants and Section 985.19, F.S., Incompetency in Juvenile Delinquency Cases as follows:

- An admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication.
- Court appointed mental health experts who conduct competency evaluations in both adult and juvenile settings, must complete training once every five years in order to conduct evaluations for the court and remain on the forensic evaluator registry.
- The bill establishes a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- The timeframe for dismissal of charges for people determined to be non-restorable is reduced from five to two years, except for capital felonies.
- The bill establishes standards for the evaluation of competency and the mental condition of juveniles, under s. 985.19, F.S.

The bill does not appear to have a fiscal impact on the state.

The bill provides an effective date of July 1, 2012.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

The Department of Children and Families (DCF) serves individuals who have been adjudicated incompetent to proceed at trial due to mental illness or not guilty by reason of insanity and are committed to the department, pursuant to ch. 916, F.S. Competency restoration training and mental health services are provided in four state forensic facilities, with a total of 1,098 beds.<sup>1</sup> In FY 2010-11, DCF reported serving 2,581 adults as a result of a chapter 916, F.S., commitment.<sup>2</sup>

Chapter 985, F.S., relating to juvenile justice, provides DCF, the Agency for Persons with Disabilities (APD), and the Department of Juvenile Justice (DJJ) with delegated authority and legislative guidance as to delinquency and competency issues for juveniles. Court proceedings are stayed until an evaluation of the juvenile has occurred.<sup>3</sup> The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.<sup>4</sup> DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.<sup>5</sup> In FY 2010-11, DCF reported that it served 412 children who were adjudicated incompetent to proceed.

#### Competency Evaluation

Current law provides for adult competency evaluations that to the extent possible, the appointed experts shall have completed forensic evaluator training approved by the department, and each shall be a psychiatrist, licensed psychologist, or physician. The department shall maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.<sup>6</sup> However, current law does not require attendance at a department authorized training or training renewal.<sup>7</sup> In the juvenile system, the court appoints mental health experts to conduct competency evaluations. DCF provides the court a list of experts to choose from who have completed a department approved training.<sup>8</sup>

#### Competency Hearing

Currently, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.<sup>9</sup>

#### Dismissal of Charges following Competency Training

Currently, charges against an adult person adjudicated as incompetent to proceed due to mental illness may be dismissed after five years of incompetency.<sup>10</sup> This occurs unless the court makes findings that the person will become competent in the future.<sup>11</sup> Charges are dismissed without prejudice, so that the state may re-file if the person become competent in the future.<sup>12</sup>

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<sup>1</sup> DCF Analysis of HB 1045 dated January 5, 2012 on file with Health and Human Services Access Subcommittee staff,

<sup>2</sup> *Id.*

<sup>3</sup> S. 985.19(1), F.S.

<sup>4</sup> S. 985.19, F.S.

<sup>5</sup> S. 985.19(4), F.S.

<sup>6</sup> S. 916.115, (1)(a),(b),F.S.,

<sup>7</sup> S. 916.115, (1)(a),F.S.,

<sup>8</sup> S. 985.19(1)(d), F.S.

<sup>9</sup> 33.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure

<sup>10</sup> S. 916.145, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

### Psychotherapeutic Medication Treatment

Current law requires that forensic clients must give express and informed consent to treatment. If they refuse and the situation is deemed an emergency putting the client's safety at risk then treatment may be given for 48 hours. If the person still refuses to give consent then a court order must be sought for continuation of the treatment. In non-emergency situations the treatment may not be given (without consent) and a court order must be sought for continued treatment.<sup>13</sup> DCF reports that in the non-emergency situations the abrupt halt of medications to the individual can place the individual at risk for significant harm to their health and safety.<sup>14</sup>

### **Effect of Proposed changes**

#### Continuation of Psychotherapeutic Medication

The bill provides that an admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is for non-emergency situations<sup>15</sup> and is limited to the time period required to obtain a court order for the medication. This provision would apply to all forensic clients since it appears in the general provisions of Chapter 916, F.S. Therefore, forensic clients who are either mentally ill, have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or the Agency for Persons with Disabilities. This provision would also apply to situations other than an emergency since current law provides a process for continued medication in emergencies.

The bill does not specify a timeframe for the pursuit of a court order or place any limits on the continuation of the medication while awaiting the order. Court ordered medication of an individual has been the subject of judicial review.<sup>16</sup>

#### Competency Hearings

The bill provides that a competency hearing must be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. For defendants who have been adjudicated not guilty by reason of insanity, a competency hearing must be held within 30 days after the court has been notified the defendant no longer meets the criteria for continued commitment. The requirement for a hearing within 30 days is consistent with Rule 3.212(c)(6) Florida Rules of Criminal Procedure. This change should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

#### Forensic Evaluator Training

The bill provides that mental health experts must complete a DCF approved evaluator training course that will be provided at least annually. The bill renames the DCF list of mental health experts as a registry of forensic evaluators, and completion of the department approved training is a condition of conducting evaluations for the court and being placed on the registry. Beginning July 1, 2013, the training must be completed every five years, and failure to do so will result in removal from the list. The court can only appoint forensic evaluators from the registry. The bill creates the same process for evaluators in the juvenile system.

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<sup>13</sup> S. 916.107(3), F.S.

<sup>14</sup> DCF Analysis of HB 1045 dated January 5, 2012 on file with Health and Human Services Access Subcommittee staff

<sup>15</sup> Emergency treatment is already addressed in s.916.107(3)(a)1., F.S.

<sup>16</sup> See *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006), noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available. Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S. The nonconsensual administration of medication by judicial order was challenged in Florida, in *Moreland v. State*, 706 So.2d 71, (Fla. 1st DCA), where the court struck down a judicial order for failure to comply with the statutory requirement of a multidisciplinary treatment team.

### Dismissal of Charges

The bill reduces the timeframe in which a person adjudicated as incompetent to proceed due to mental illness may have their charges dismissed from five to two years. The bill provides an exception for capital felonies, which will remain at five years.<sup>17</sup> DCF reports that data from the past 12 years shows that 98.7 percent of individuals were restored to competency in two years or less.<sup>18</sup>

### Determinations of Incompetency for Juvenile Delinquency Cases

The bill establishes criteria that a forensic evaluator shall use when reporting to the court as to whether a child is competent to proceed. If the child is determined to be incompetent, the evaluator must provide a mental disorder that forms the basis of the incompetency. The evaluator must also present a summary of findings that includes:

- The date and length of time of the face to face diagnostic clinical interview;
- A statement that identifies the mental health disorder;
- A statement of how the child would benefit from competency restoration in the community or in a residential setting;
- An assessment of treatment length, and whether the juvenile will attain competence in the future; and
- A description of appropriate mental health treatment and education.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.

**Section 2:** Amends s. 916.111, F.S., relating to training of mental health experts.

**Section 3:** Amends s. 916.115, F.S., relating to appointment of experts.

**Section 4:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

**Section 5:** Amends s. 916.145, F.S., relating to dismissal of charges.

**Section 6:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

**Section 7:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.

**Section 8:** Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

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<sup>17</sup> A capital felony must be designated as such by statute. S. 775.081, F.S.

<sup>18</sup> DCF data shows that from FY 1998-99 to FY 2009-10, of a total of 12,016 individuals adjudicated not competent to proceed, 98.7% of them were restored in less than two years. DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mental health experts who wish to participate in forensic evaluations will be required to pay for the department authorized training every 5 years to be on the registry. The cost for this training is currently \$445 or \$395 for state or non-profit employees.<sup>19</sup>

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 71 could be clarified by providing a timeframe for pursuing court orders for continued medication and limits on the amount of time a medication may be continued while awaiting the order. Similar constraints are provided for in emergency situation under s. 916.107(3)(a)(1), F.S..

Lines 275 and 282 incorrectly refer to the most current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association as the DSM-IV,<sup>20</sup> and could be amended to not specifically name the edition.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>19</sup> DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

<sup>20</sup> <http://www.psych.org/MainMenu/Research/DSMIV/FAQs/WhatisthemostrecentversionoftheDSM.aspx>, site last visited January 14, 2012.