

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 317 Mental Health Treatment  
**SPONSOR(S):** Healthy Families Subcommittee, Schwartz and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	10 Y, 0 N, As CS	Entress	Schoolfield
2) Criminal Justice Subcommittee	11 Y, 0 N	Cox	Cunningham
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

### SUMMARY ANALYSIS

The bill makes changes to ch. 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.
- 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 bill establishes standards for the evaluation of competency and the mental condition of juveniles, under s. 985.19, F.S.
- The bill reduces the number of years, from five to three, that an individual charged with a nonviolent crime and declared incompetent to proceed, must wait until the charges against that individual are dismissed under s. 916.145, F.S.

Department of Children and Families and the Agency for Persons with Disabilities report that the bill does not have a fiscal impact on their agencies.

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Adult Competency and Competency Evaluations – Generally**

The Department of Children and Families (DCF) serves individuals who have been committed to DCF, pursuant to ch. 916, F.S., due to having been adjudicated incompetent to proceed at trial due to mental illness or because they have been found not guilty by reason of insanity. DCF currently provides competency restoration training and mental health services in four state forensic facilities (two state operated and two operated under contract with a private provider), with a total of 1,108 beds.<sup>1</sup> In FY 2011-12, DCF reported serving 2,531 individuals as a result of a chapter 916, F.S., commitment.<sup>2</sup>

##### **Competency Hearings**

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.<sup>3</sup>

The statutes are silent as to a time frame in which the court must hold a hearing to determine continued competency or the continued need for involuntary commitment. However, 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 that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.<sup>4</sup>

##### *Effect of the Bill*

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to 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. This requirement is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure and should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

##### **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 that puts 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>5</sup> DCF reports that in the non-emergency situations, the abrupt halt of medications to the individual can place them at risk for significant harm to their health and safety.<sup>6</sup>

##### *Effect of the Bill*

The bill requires jail physicians to provide a current psychotherapeutic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to order the continued administration of psychotherapeutic medications previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and

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<sup>1</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff.

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

<sup>3</sup> S. 916.13(2), F.S.; S. 916.15(3), F.S.

<sup>4</sup> Rules 3.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

<sup>5</sup> S. 916.107(3), F.S.

<sup>6</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff.

the cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations<sup>7</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 ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or the APD.

The bill specifies that the administrator or designee of the civil or forensic facility must petition the committing court or the circuit court serving the county where the facility is located within 5 days after the inmate's admission, excluding weekends and legal holidays, for an order authorizing the continued treatment.<sup>8</sup> Court ordered medication of an individual has been the subject of judicial review.<sup>9</sup>

### **Dismissal of Charges Based on Continued Incompetency**

Currently, Florida Statute requires all charges against any defendant adjudicated incompetent to proceed due to mental illness be dropped if the defendant remains incompetent to proceed after five years of the initial determination. However, the charges will not be dropped if the court specifies in its order reasons for believing that the defendant will become competent to proceed in the foreseeable future and specifies a timeframe in which the defendant is expected to become competent to proceed.<sup>10</sup> According to the Department of Children and Families, forensic data from the last thirteen fiscal years shows that 99.6% of individuals restored to competency were restored in three years or less.<sup>11</sup>

#### *Effect of the Bill*

The bill amends s. 916.145, F.S., to require that charges be dismissed for an individual who is incompetent to proceed after 3 years, rather than the current 5 year requirement, unless the court in its order specifies its reason for believing that the defendant will become competent to proceed in the foreseeable future and specifies a timeframe in which the defendant is expected to become competent to proceed. However, the bill maintains the 5 year requirement if the individual who is incompetent to proceed is charged with allegations related to a violent crime against a person.

### **Juvenile Competency and Competency Evaluations**

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. If the court has reason to believe that a child named in a petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.<sup>12</sup> The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.<sup>13</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>14</sup> In FY 2011-12, DCF reported that it served 405 children who were adjudicated incompetent to proceed.<sup>15</sup>

In the juvenile system, the court appoints 2-3 mental health experts to conduct competency evaluations.<sup>16</sup> For incompetency evaluations related to mental illness, DCF must provide the court a list of experts who have completed DCF-approved training.<sup>17</sup> A child is deemed competent to proceed if

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<sup>7</sup> Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

<sup>8</sup> The administrator or designee has the authority to choose which court is petition or the order authorizing continued treatment.

<sup>9</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.

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

<sup>11</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff.

<sup>12</sup> S. 985.19(1), F.S.

<sup>13</sup> S. 985.19(1)(b), F.S.

<sup>14</sup> S. 985.19(4), F.S.

<sup>15</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff.

<sup>16</sup> S. 985.19(1)(b), F.S.

<sup>17</sup> S. 985.19(1)(d), F.S.

the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.<sup>18</sup>

#### *Effect of the Bill*

The bill establishes criteria that a forensic evaluator must use when reporting to the court as to whether a child is competent to proceed. The bill keeps the standard that a child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings, but changes the finding which must be included in the report. The expert's competency evaluation report must specifically state the basis for the determination of the child's mental condition and include written findings which:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Address the child's capacity to:
  - Appreciate the charges or allegations against the child.
  - Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
  - Understand the adversarial nature of the legal process.
  - Disclose to counsel facts pertinent to the proceedings at issue.
  - Display appropriate courtroom behavior.
  - Testify relevantly.
- Present the factual basis for the expert's clinical findings and opinions of the child's mental condition, with a separate section of "summary of the findings" including:
  - The date and length of time of the face-to-face diagnostic clinical interview;
  - A statement that identifies the mental health disorder, including the DSM name and associated diagnostic code;
  - A statement of how the child would benefit from competency restoration in the community or in a secure residential treatment facility;
  - An assessment of probable treatment length, and whether the juvenile will attain competence in the future; and
  - A description of recommended mental health treatment and education; and
- Report the mental disorder that forms the basis of the finding that the child is incompetent to proceed.

#### B. SECTION DIRECTORY:

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

**Section 2:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.

**Section 3:** Amends s. 916.145, F.S., relating to dismissal of charges.

**Section 4:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.

**Section 5:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.

**Section 6:** Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

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<sup>18</sup> S. 985.19(1)(f), F.S.

2. Expenditures:

Department of Children and Families and the Agency for Persons with Disabilities report that the bill will not have a fiscal impact on their agencies.<sup>19</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

Statutes which purport to create or modify a procedural rule of court, rather than substantive rule of court, are constitutionally infirm.<sup>20</sup> This principle is grounded in Art. V, Section 2(a) of the Florida Constitution, which requires the Florida Supreme Court to adopt rules for the practice and procedure in all courts. Furthermore, Art. II, Section 3, of the Florida Constitution, the separation of powers provision, provides that powers constitutionally bestowed upon the courts may not be exercised by the Legislature.

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to 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. This provision could be challenged on grounds that it violates the separation of powers provision of the state constitution by dealing with procedural matters that are the province of the court.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>19</sup> DCF Analysis of HB 317 dated February 1, 2013. On file with Healthy Families Subcommittee staff; APD Analysis of HB 317 dated February 8, 2013. On file with Criminal Justice Subcommittee.

<sup>20</sup> *State v. Raymond*, 906 So.2d 1045 (Fla. 2005) citing *Markert v. Johnston*, 367 So.2d 1003 (Fla.1978) and *Military Park Fire Control Tax Dist. No. 4 v. DeMarois*, 407 So.2d 1020 (Fla. 4th DCA 1981).

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Healthy Families Subcommittee adopted a strike-all amendment and an amendment to the strike-all amendment for House Bill 317.

The amendments made the following changes to the bill:

- Retained the provision to allow an admitting physician for a state forensic or civil facility 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.
- Retained the provision to establish a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- Retained the provision to establish standards for the evaluation of competency and the mental condition of juveniles.
- Added a provision to reduce the number of years that an individual charged with a nonviolent crime and declared incompetent to proceed must wait until the charges against that individual are dismissed.
- Deleted the provision which would require court appointed mental health experts who conduct competency evaluations in both adult and juvenile settings to complete training once every five years in order to conduct evaluations for the court and remain on the forensic evaluator registry.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.