

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 837 Mental Health Treatment
SPONSOR(S): Healthy Families Subcommittee; Schwartz
TIED BILLS: **IDEN./SIM. BILLS:** SB 944

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	8 Y, 0 N, As CS	Entress	Brazzell
2) Criminal Justice Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill addresses issues related to administration of psychotherapeutic medications, evaluations of individuals' competency, and dismissal of charges. The bill makes changes to ch. 916, F.S., and s. 985.19, F.S., as follows:

- Permits an admitting physician in a state forensic or civil facility to 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.
- 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.
- Establishes standards for the evaluation of competency and the mental condition of juveniles, and
- 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.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Competency

The Department of Children and Families (DCF) and the Agency for Persons with Disabilities (APD) serve 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, intellectual disability, or autism, or because they have had their charges acquitted by reason of insanity.¹

Chapter 985, F.S., relating to juvenile justice, provides DCF, 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.² The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.³ 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.⁴ In FY 2012-13, DCF reported that it served 407 children who were adjudicated incompetent to proceed.⁵

Competency Evaluation

Adults

Currently, courts are required to appoint no more than three experts to provide adult competency evaluations.⁶ Experts must be a psychiatrist, licensed psychologist, or physician and must, to the extent possible, have completed DCF-approved forensic evaluator training.⁷ DCF is required to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.⁸ However, current law does not require attendance at a DCF approved training or training renewal in order for a person to be appointed as an expert.⁹

Children

In the juvenile system, the court appoints 2-3 mental health experts to conduct competency evaluations.¹⁰ For incompetency evaluations related to mental illness, DCF must provide the court a list of experts who have completed DCF-approved training.¹¹

Competency Hearing

¹ S. 985.10 (1), F.S.

² S. 985.19(1), F.S.

³ S. 985.19(1)(b), F.S.

⁴ S. 985.19(4), F.S.

⁵ DCF Analysis of HB 837, dated February 13, 2014. On file with Healthy Families Subcommittee staff.

⁶ S. 916.115(1), F.S.

⁷ S. 916.115(1)(a), F.S.

⁸ S. 916.115(1)(b), F.S.

⁹ S. 916.115(1)(a), F.S.

¹⁰ S. 985.19(1)(b), F.S.

¹¹ S. 985.19(1)(d), F.S.

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 that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.¹²

Dismissal of Charges

Currently, s. 916.145, F.S., 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 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.¹³ According to the Department of Children and Families, forensic data from the last fifteen fiscal years shows that 99.6% of individuals restored to competency were restored in three years or less.¹⁴

Psychotherapeutic Medication Treatment

Current law requires that forensic clients¹⁵ must give express and informed consent to treatment.¹⁶ 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.¹⁷ 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 the client's consent and a court order must be sought for continued treatment.¹⁸

Effect of Proposed Changes

Dismissal of Charges

The bill amends s. 916.145, F.S., to allow charges to be dismissed for an individual who is incompetent to proceed after 3 years, rather than the current 5 year requirement. 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, an attempted violent crime against a person, or a forcible felony. The bill also maintains the 5-year requirement if the defendant was convicted of a forcible felony within five years, was formally charged by a State Attorney with a new felony after being found incompetent, or if there is an identifiable victims and the victim has not consented.

Competency Hearings

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.

¹² Rules 3.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

¹³ S. 916.145, F.S.

¹⁴ DCF Analysis of HB 837 dated February 13, 2014, on file with Healthy Families Subcommittee staff.

¹⁵ Forensic clients are individuals who have been committed to DCF, pursuant to ch. 916, F.S., because they are adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed

¹⁶ S. 916.107(3)(a), F.S.

¹⁷ S. 916.107(3)(a)(1), F.S.

¹⁸ S. 916.107(3), F.S.

Determinations of Incompetency for Juvenile Delinquency Cases

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 provides 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.

If the child is determined to be incompetent, the bill requires the evaluator to specify a mental disorder that forms the basis of the incompetency. The bill requires that the basis for the determination of a child's mental condition be specifically stated in the expert's competency evaluation report and must include written findings that:

- 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;
- Present the factual basis for the expert's clinical findings and opinions of the child's mental condition; and
- 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.

The bill also requires the evaluator to include in his or her competency evaluation report a "summary of findings" section 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 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.

Continuation of Psychotherapeutic Medication

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 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 during the time a court order to medicate is pursued. This authority is for non-emergency situations¹⁹ 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 APD.

¹⁹ Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

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.²⁰

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:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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.

²⁰ 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.

2. Other:

None.

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.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Healthy Families Subcommittee adopted a strike-all amendment to address issues in the Governor's veto message for HB 317 (2013), which contained identical language. The strike-all amendment prohibits a court from dismissing charges against a defendant for:

- An attempted violent offense as listed in the bill;
- An offense committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest of the non-violent felony sought to be dismissed;
- An offense committed by a defendant who, after having been found incompetent and under court supervision in a community based program, is formally charged by a State Attorney with a new felony offense; or
- An offense committed where there is an identifiable victim and such victim has not consented.

The analysis is drafted to the committee substitute as passed by the Healthy Families Subcommittee.