

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/CS/SB 862

INTRODUCER: Children, Families, and Elder Affairs Committee; Criminal Justice Committee and Senator Legg

SUBJECT: Mental Health Treatment

DATE: February 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 862 amends s.916.107(3), F.S., by authorizing a physician in a state forensic or civil facility to continue the administration of psychotropic medication previously prescribed in jail when a forensic client lacks the capacity to make an informed decision and in the physician's opinion, the abrupt cessation of the medication could pose a risk to the health or safety of the client.

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.

The bill permits a court to dismiss charges for specified nonviolent offenses for an individual whom the court has determined to be incompetent to proceed and who remains incompetent for 3 years rather than 5 years after the original determination. The bill clarifies that the timeframe for mandatory dismissal of all charges for an incompetent individual who remains incompetent is 5 continuous, uninterrupted years since the court's original determination of incompetency.

The bill may have a positive fiscal impact to the state and has an effective date of July 1, 2016.

II. Present Situation:

Competency

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.¹ The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.² Defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, understand the adversarial nature of the legal process, and disclose to counsel facts pertinent to the proceedings. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.³

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.⁴ If the motion is well-founded the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.⁵ If the defendant is found to be competent, the criminal proceeding resumes.⁶ If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.⁷

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed⁸ and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil⁹ and forensic¹⁰ treatment facilities by the circuit court,¹¹ or in lieu of such commitment, may be released on conditional release¹² by the circuit court if the person is

¹ See *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).

² *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P.

³ *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.

⁴ Rule 3.210, Fla.R.Crim.P.

⁵ *Id.*

⁶ Rule 3.212, Fla.R.Crim.P.

⁷ *Id.*

⁸ "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." s. 916.12(1), F.S.

⁹ A "civil facility" is: a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. Section 916.106(4), F.S. DCF oversees two state-operated forensic facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center.

¹⁰ A "forensic facility" is a separate and secure facility established within DCF or APD to service forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents. s. 916.106(10), F.S.

¹¹ Sections 916.13, 916.15, and 916.302, F.S.

¹² Conditional release is release into the community accompanied by outpatient care and treatment. s. 916.17, F.S.

not serving a prison sentence.¹³ Conditional release is release into the community accompanied by outpatient care and treatment. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.¹⁴

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.¹⁵

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. The statutes are additionally silent as to transportation of the defendant to the committing court's jurisdiction for these hearings. The time frame for the hearings are set forth in Florida Rules of Criminal Procedure which 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.¹⁶ However, there is no express requirement within the Florida Rules of Criminal Procedure to transport the defendant to the committing court's jurisdiction for these hearings.

Dismissal of Charges

Section 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 5 years after the initial determination. However, a court may extend the time period to dismiss the charges beyond 5 years if in its order specifies its reasons for believing that a defendant will become competent to proceed within the foreseeable future and specifies the time within which a defendant is expected to become competent to proceed.¹⁷ Any charges dismissed under this section are dismissed without prejudice which allows the state to refile the charges should a defendant be declared competent to proceed in the future.¹⁸

Psychotropic Medication Treatment

Currently, forensic clients¹⁹ must give express and informed consent to treatment.²⁰ If they refuse and the situation is deemed an emergency that puts the client's safety at risk, treatment may be

¹³ Section 916.17(1), F.S.

¹⁴ Section 916.16(1), F.S.

¹⁵ Section 916.13(2), F.S.; section 916.15(3), F.S.

¹⁶ Rules 3.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

¹⁷ Section 916.145, F.S.

¹⁸ Id.

¹⁹ Forensic clients are individuals who have been committed to DCF, pursuant to ch. 916, F.S., because they have been charged with committing a felony but have been adjudicated incompetent, adjudicated not guilty by reason of insanity, or determined to be incompetent to proceed.

²⁰ Section 916.107(3)(a), F.S.

given for 48 hours.²¹ If the person still refuses to give consent, a court order must be sought for continuation of the treatment.²² In non-emergency situations, treatment may not be given without the client's consent.²³ Instead, the facility administrator or designee must petition the court for an order authorizing necessary and essential treatment for the client, including administration of psychotropic medication.²⁴ There will be a delay between the time in which the petition is filed and the hearing for the petition. In this interim the client will not receive any psychotropic medication, even if he or she was receiving this medication at the jail. This creates a delay in treatment which could potentially lead to a client's decompensation and prolong the client's length of stay at the facility.

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.²⁵

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. The statutes are additionally silent as to transportation of the defendant to the committing court's jurisdiction for these hearings. The time frame for the hearings are set forth in Florida Rules of Criminal Procedure which 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.²⁶ However, there is no express requirement within the Florida Rules of Criminal Procedure to transport the defendant to the committing court's jurisdiction for these hearings.

III. Effect of Proposed Changes:

Rights of Forensic Clients

Section 1 of the bill amends s. 916.107(3), F.S., by authorizing a physician in a state forensic or civil facility to continue the administration of psychotropic medication previously prescribed in jail when a forensic client lacks the capacity to make an informed decision and in the physician's opinion, the abrupt cessation of the medication could pose a risk to the health or safety of the client.

This authority is limited to the time period required to obtain a court order for the medication. Within 5 days after admission, the administrator or designee of the civil or forensic facility may petition the committing court or the circuit court of the county the facility is located, for an order authorizing the continued treatment of a client using the psychotropic medication. The jail

²¹ Section 916.107(3)(a)1., F.S.

²² Id.

²³ Section 916.107(3)(a)2., F.S.

²⁴ Id.

²⁵ Section 916.13(2), F.S.; section 916.15(3), F.S.

²⁶ Rules 3.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

physician must provide a current psychotropic medication order at the time of transfer to the forensic or civil facility or upon request of the admitting physician after the client is evaluated.

Dismissal of Charges

Section 3 of the bill amends s. 916.145, F.S., to require that all charges be dismissed if the defendant remains incompetent to proceed for 5 continuous, uninterrupted years after the initial determination. The bill also permits a court to dismiss charges for an individual whom the court has determined to be incompetent to proceed and who remains incompetent for at least 3 years after the original determination, unless the charge is:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, projecting, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery;
- Aggravated stalking;
- A forcible felony as defined in s. 776.08, F.S., that is not otherwise listed;
- An offense involving the possession, use, or discharge of a firearm; or an attempt to commit any of these offenses;
- Any offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest for the nonviolent felony sought to be dismissed;
- Any offense allegedly 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 for which there is an identifiable victim and the victim has not consented to the dismissal.

Competency

Sections 2 and 4 of the bill amends ss. 916.13 and 916.15, F.S., respectively, 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. The bill also requires that the defendant be transported to the committing court's jurisdiction for these hearings. These requirements are consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure, and should help make vacancies available at secure facilities for individuals awaiting

admission. As statutorily mandated, forensic individuals committed to the care of DCF for involuntary hospitalization must be admitted within 15 days of commitment.

Sections 5 and 6 of the bill reenact ss. 916.106 and 394.467, F.S., respectively, to incorporate the changes made in the bill to ss. 916.13 and 916.15, F.S.

Section 7 of the bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a positive fiscal impact to the state if individuals charged with nonviolent offenses who have not regained competency after 3 years have their charges dismissed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 916.107, 916.13, 916.145, and 916.15.

This bill reenacts sections 916.106 and 394.467 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Children, Families, and Elder Affairs on February 10, 2016:

The Committee Substitute clarifies when a court can dismiss charges for individuals whose competency has not been restored after 3 years.

CS by Criminal Justice on February 1, 2016:

The Committee Substitute permits a court to dismiss charges for specified nonviolent offenses for an individual whom the court has determined to be incompetent to proceed and who remains incompetent for 3 years after the original determination.

It also changes the timeframe for mandatory dismissal of all charges for an individual whom the court has determined to be incompetent to proceed and who remains incompetent to 5 continuous, uninterrupted years since the court's original determination of incompetency.

- B. **Amendments:**

None.