

CHAPTER 2016-135

Committee Substitute for Committee Substitute for House Bill No. 769

An act relating to mental health treatment; amending s. 916.107, F.S.; provides for continuation of psychotropic medication by forensic and civil facilities for individuals receiving such medication before admission; amending s. 916.13, F.S.; providing a timeframe within which competency hearings must be held; requiring that a defendant be transported for the hearing; amending s. 916.145, F.S.; revising the time for dismissal of certain charges for defendants who remain incompetent to proceed to trial; providing exceptions; amending s. 916.15, F.S.; providing a timeframe within which commitment hearings must be held; requiring that a defendant be transported for the hearing; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for up to a ~~period not to exceed~~ 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client or others.

2. In a situation other than an emergency situation, the administrator or designee of the facility shall petition the court for an order authorizing necessary and essential treatment for the client.

a. If the client has been receiving psychotropic medication at the jail at the time of transfer to the forensic or civil facility and lacks the capacity to make an informed decision regarding mental health treatment at the time of admission, the admitting physician shall order continued administration of psychotropic medication if, in the clinical judgment of the physician, abrupt cessation of that psychotropic medication could pose a risk to the health or safety of the client while a court order to medicate is pursued. The administrator or designee of the forensic or civil facility shall, within 5 days after a client's admission, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of a client with psychotropic medication. The jail physician shall 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.

b. ~~The court order shall allow such treatment for up to a period not to exceed 90 days after following the date that of the entry of the order was entered.~~ Unless the court is notified in writing that the client has provided express and informed written consent ~~in writing~~ or that the client has been discharged by the committing court, the administrator or designee of the facility shall, before the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for an additional 90 days ~~another 90-day period~~. This procedure shall be repeated until the client provides consent or is discharged by the committing court.

3. At the hearing on the issue of whether the court should enter an order authorizing treatment for which a client was unable to or refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client has mental illness, intellectual disability, or autism, that the treatment not consented to is essential to the care of the client, and that the treatment not consented to is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

- a. The client's expressed preference regarding treatment;
- b. The probability of adverse side effects;
- c. The prognosis without treatment; and
- d. The prognosis with treatment.

The hearing shall be as convenient to the client as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate to preside at the hearing. The client or the client's guardian, and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney

represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

Section 2. Subsection (2) of section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment to the department under the provisions of this chapter, may be committed to the department, and the department shall retain and treat the defendant.

(a) ~~Within No later than~~ 6 months after the date of admission and at the end of any period of extended commitment, or at any time the administrator or designee determines ~~shall have determined~~ that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(b) A competency hearing shall be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. The defendant must be transported to the committing court’s jurisdiction for the hearing.

Section 3. Section 916.145, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 916.145, F.S., for present text.)

916.145 Dismissal of charges.—

(1) The charges against a defendant adjudicated incompetent to proceed due to mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed for 5 continuous, uninterrupted years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The court may dismiss such charges at least 3 years after such determination, unless the charge is:

- (a) Arson;
- (b) Sexual battery;
- (c) Robbery;

- (d) Kidnapping;
 - (e) Aggravated child abuse;
 - (f) Aggravated abuse of an elderly person or disabled adult;
 - (g) Aggravated assault with a deadly weapon;
 - (h) Murder;
 - (i) Manslaughter;
 - (j) Aggravated manslaughter of an elderly person or disabled adult;
 - (k) Aggravated manslaughter of a child;
 - (l) Unlawful throwing, projecting, placing, or discharging of a destructive device or bomb;
 - (m) Armed burglary;
 - (n) Aggravated battery;
 - (o) Aggravated stalking;
 - (p) A forcible felony as defined in s. 776.08 and not listed elsewhere in this subsection;
 - (q) An offense where an element of the offense requires the possession, use, or discharge of a firearm;
 - (r) An attempt to commit an offense listed in this subsection;
 - (s) An offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the 5 years immediately preceding the date of arrest for the nonviolent felony sought to be dismissed;
 - (t) An offense allegedly committed by a defendant who, after having been found incompetent and placed under court supervision in a community-based program, is formally charged by a state attorney or the Office of the Statewide Prosecutor with a new felony offense; or
 - (u) An offense for which there is an identifiable victim and such victim has not consented to the dismissal.
- (2) This section does not prohibit the state from refileing dismissed charges if the defendant is declared to be competent to proceed in the future.

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

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

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

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

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.