

CF OPERATING PROCEDURE
NO. 155-13

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, September 21, 2021

Mental Health/Substance Abuse

INCOMPETENCE TO PROCEED AND NON-RESTORABLE STATUS

1. Purpose. This operating procedure is a guideline to address individuals with non-restorable competency whether determined to be non-restorable at the five-year mark or in less than five years. Pursuant to Mosher v. State, 876 So.2d 1230 (Fla. 1st DCA 2004), individuals who are found to be non-restorable in less than five years of involuntary commitment under section 916.13, Florida Statutes require civil commitment proceedings or release. This operating procedure describes the process by which the Department will do what it can to ensure the provisions of law as set forth in chapter 394, part I, Florida Statutes, are followed for individuals found non-restorable in less than five years and when applying Florida Rule of Criminal Procedure 3.213(b), and section 916.145, Florida Statutes, for individuals requiring dismissal of charges due to non-restorability at three years of incompetency (for those without listed violent offenses) or at five years of incompetency. See Amador v. State, 712 So.2d 1179 (Fla. 3rd DCA 1998) and s. 916.145, Florida Statutes, for the list of violent offenses. Individuals should be returned to the jurisdiction of the committing court for further evaluation and disposition of pending charges.
2. Scope. This operating procedure applies to individuals committed to the Department as incompetent to proceed to trial due to mental illness pursuant to section 916.13, Florida Statutes, and whose competency cannot be restored in the foreseeable future.
3. References.
 - a. Amador v. State, 712 So.2d 1179 (Fla. 3rd DCA 1998).
 - b. Chapter 394, Florida Statutes (F.S.), "Florida Mental Health Act."
 - c. Chapter 916, Florida Statutes (F.S.), "Forensic Client Services Act."
 - d. Children and Families Operating Procedure 155-19, Evaluation and Reporting of Competency to Proceed.
 - e. Florida Rules of Criminal Procedure, 3.212 and 3.213(b).
 - f. Mosher v. State, 876 So.2d 1230 (Fla. 1st DCA 2004).
 - g. Children and Families Operating Procedure 155-22, Leave of Absence and Discharge of Residents Committed to a State Mental Health Treatment Facility Pursuant to Chapter 916, Florida Statutes.
4. Definitions. For this operating procedure, the following terms shall be understood to mean:
 - a. Clinical Psychologist. An individual licensed under chapter 490, F.S., and by education and experience practices clinical psychology, and has at least three years experience.

This operating procedure supersedes CFOP 155-13 dated January 15, 2018.

OPR: Mental Health

DCF Tracker Assignment Number: A21-004122.

- b. Committing Circuit. The judicial circuit in which the defendant was committed.
- c. Competency. A felony criminal defendant's status of capacity to understand the adversarial nature of criminal proceedings and to assist an attorney in his or her defense.
- d. Competency Evaluation Report to the Circuit Court. A standardized mental health document addressing relevant mental health issues and the individual's clinical status regarding competence to proceed. The report is completed pursuant to section 916.13(2), F.S., and Children and Families Operating Procedure CFOP 155-19 (Evaluation and Reporting of Competency to Proceed).
- e. Conditional Release. A court ordered plan for providing appropriate outpatient care and treatment for individuals found incompetent to proceed or not guilty by reason of insanity.
- f. Continuity of Care Liaisons. In the state mental health treatment facilities, staff designated to facilitate the process of procuring treatment services in the community, by assisting the individual through a recovery team, DCF Regional staff, community-based providers of treatment, circuit courts, and other interested parties including families and friends when possible.
- g. Court. The court is the circuit court.
- h. Department. The Department of Children and Families (DCF), also known as the Department of Children and Family Services.
- i. Evaluator of Competency. The mental health professional designated to complete a face-to-face interview of an individual's competency and to report his or her status while in a state mental health treatment facility.
- j. Forensic Specialist/Forensic Case Manager. A staff member employed by a community mental health provider, under contract with a Managing Entity, to provide an array of services to individuals who are at risk or have been committed to the Department of Children and Families pursuant to the provisions of Chapter 916, F.S., by one of the state's twenty circuit courts. Specifically, these services are for individuals who have been adjudicated as Incompetent to Proceed (ITP) or Not Guilty by Reason of Insanity (NGI) due to mental illness.
- k. Incompetent to Proceed (ITP). An individual who does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or an individual who has no rational, as well as factual, understanding of the proceedings against him or her.
- l. Involuntary Inpatient Placement. Placement of an individual in a state mental health treatment facility pursuant to section 394.467(6), F.S.
- m. Not Guilty by Reason of Insanity (NGI). A determination made by the circuit court that an individual is acquitted of criminal charges because the individual is found insane at the time of the offense.
- n. Non-Restorable. An individual's competency is non-restorable when it is not likely that he or she will regain competency in the foreseeable future.
- o. Receiving Facility. As defined in section 394.455(26), F.S., a public or private facility designated by the Department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. The term does not include a county jail.
- p. Recovery Team. An assigned group of individuals with specific responsibilities identified on the recovery plan including the resident, psychiatrist, guardian/guardian advocate (if resident has a

guardian/guardian advocate), community case manager, family member and other treatment professionals commensurate with the resident's needs, goals, and preferences.

q. Regional Forensic Coordinator. A Department of Children and Families (DCF) staff member employed by the Regional Substance Abuse and Mental Health Program Office, or an individual providing services under a contractual relationship with the Department, who has programmatic oversight responsibility for forensic services for adults in his or her region.

r. Restorable. An expectation an individual is likely to regain competency to proceed in the foreseeable future.

s. State Mental Health Treatment Facility. A facility operated by the Department of Children and Families or by a private provider under contract with the Department to serve individuals committed pursuant to Chapter 394, F.S., or Chapter 916, F.S.

5. Non-Restorable Competency to Proceed and Recommendations for Disposition.

a. After an evaluator of competency has completed a competency evaluation and opined that there is not a substantial probability of competency restoration in the current environment in the foreseeable future, the evaluator will notify the appropriate recovery team coordinator that the individual's competency does not appear to be restorable.

b. The recovery team shall meet and consider the individual's restorability. The recovery team shall have a minimum of three members present and include a psychiatrist, a clinical psychologist, and the competency evaluator if he or she is someone other than a psychiatrist or clinical psychologist. Prior to the recovery team meeting, the psychiatrist and clinical psychologist participating in the meeting shall complete independent evaluations to examine suitability for involuntary inpatient placement. When the recovery team convenes it will consider, at a minimum, the following information:

- (1) Mental and emotional symptoms affecting competency to proceed;
- (2) Medical conditions affecting competency to proceed;
- (3) Current treatments and activities to restore competency to proceed;
- (4) Whether relevant symptoms and conditions are likely to demonstrate substantive improvement;
- (5) Whether relevant and feasible treatments remain that have not been attempted, including competency restoration training in a less restrictive, step-down facility; and,
- (6) Additional information as needed (including barriers to discharge, pending warrants and detainers, dangerousness, self-neglect).

c. The department shall make every effort to restore the competency of those individuals committed pursuant to Chapter 916, F.S. as Incompetent to Proceed. To ensure all possible treatment options have been exhausted, the recovery team should consider additional competency restoration attempts in a less restrictive, step-down facility prior to making a recommendation of non-restorability, particularly for individuals with violent charges.

d. The recovery team shall document the team meeting and considerations for review required in paragraph 5b, and, if applicable, the extent to which the individual meets the criteria for involuntary examination pursuant to Section 394.463, F.S. or involuntary inpatient placement pursuant to Section 394.467(1), F.S., as reported by a psychiatrist and clinical psychologist. The recovery team may meet

or otherwise communicate as many times as necessary to examine an individual's status and recommend outcomes.

e. Following the completion of paragraph 5b, and in the same meeting, whenever possible, each member of the recovery team shall provide recommendations for disposition. Individuals with competency reported as non-restorable may be considered, as appropriate, for recommendations of release without legal conditions or involuntary examination or inpatient placement pursuant to Chapter 394, F.S. or *Mosher v. State*, 876 So. 2d 1230 (Fla. 1st DCA 2004).

(1) Conditional release for an individual found non-restorable prolongs the Chapter 916, F.S., commitment and should only be used when ordered by the court.

(2) When the recovery team is recommending a release without conditions or a conditional release, the recovery team will work with the forensic specialist or forensic case manager in arranging medical, mental health and residential aftercare services in the committing circuit's community in order to ensure continuity of care. An aftercare services plan should be developed to include housing, services, benefits, and an appointment with a medical/psychiatric provider to ensure the resident can receive prescriptions to remain on his/her medications.

f. When the recovery team has recommended a disposition, the recovery team shall notify the appropriate continuity of care liaison within two working days. The recovery team and the liaison will provide additional information to each other as needed.

6. Completion of the Competency Evaluation Report to the Circuit Court (CFOP 155-19).

a. Following the completion of procedures in paragraph 5 of this operating procedure, the evaluator of competency will complete a Competency Evaluation Report to the Circuit Court as required in Children and Families Operating Procedure 155-19 (Evaluation and Reporting of Competency to Proceed). The report will include the following:

(1) A description of mental, emotional, and behavioral disturbances;

(2) An explanation to support the opinion of incompetence to proceed;

(3) The rationale to support why the individual is unlikely to gain competence to proceed in the foreseeable future;

(4) A clinical opinion that the individual no longer meets the criteria for involuntary forensic commitment pursuant to Section 916.13, F.S.; and,

(5) A recommendation whether the individual meets the criteria for involuntary examination pursuant to Section 394.463, F.S.

b. State mental health treatment facility staff must verify the name of the presiding judge assigned to the individual's case, the names of the defense and state attorneys, and their current mailing addresses, email addresses and fax numbers.

c. The summary will be mailed to the judge and faxed or emailed with a return receipt, appropriate encryption and password protection to the assistant state attorney and defense counsel.

d. State mental health treatment facility staff must prepare one of the model cover letters attached to this operating procedure (see appendices A through F). Refer to s. 916.145, F.S., to determine if the resident does not have capital or other violent offenses listed in section 916.145, as the resident may be eligible for dismissal of charges at three years instead of five years.

(1) Use Appendix A to this operating procedure when recommending the individual appears to meet Chapter 394, F.S., criteria when found non-restorable in less than three or five years (potential Mosher cases). Attach the model order in Appendix G, Order for Involuntary Baker Act Examination, and a standard transport order.

(2) Use Appendix B to this operating procedure when recommending the individual appears to meet Chapter 394, F.S., criteria at five years of incompetence to proceed and dismissal of his/her charge(s) is applicable. Attach the model order in Appendix H, Order Dismissing Charges without Prejudice and Transporting Defendant to a Receiving Facility for Further Evaluation, and a standard transport order.

(3) Use Appendix C to this operating procedure when recommending the individual appears to meet Chapter 394, F.S., criteria at three years of incompetence to proceed and dismissal of his/her charge(s) is applicable. Attach the model order in Appendix H, Order Dismissing Charges without Prejudice and Transporting Defendant to a Receiving Facility for Further Evaluation, and a standard transport order.

(4) Use Appendix D to this operating procedure if the individual does not appear to meet Chapter 394, F.S., criteria when competency is non-restorable in less than three or five years (potential Mosher cases). Attach the model order in Appendix I, Order Finding Defendant Non-Restorable, and a standard transport order.

(5) Use Appendix E to this operating procedure if the individual does not appear to meet Chapter 394, F.S., criteria at five years of incompetence to proceed and dismissal of his/her charges(s) is applicable. Attach the model order in Appendix J, Order Dismissing Charges without Prejudice, and a standard transport order.

(6) Use Appendix F to this operating procedure if the individual does not appear to meet Chapter 394, F.S., criteria at three years of incompetence to proceed of incompetence to proceed and dismissal of his/her charge(s) is applicable. Attach the model order in Appendix J, Order Dismissing Charges without Prejudice, and a standard transport order.

7. Continuity of Care Liaisons and Preparation for Involuntary Examination Pursuant to Section 394.463, Florida Statutes. The Continuity of Care Liaison shall complete the following procedures:

a. Inform the appropriate regional forensic coordinator, and forensic specialist or forensic case manager of the individual's pending return to the jurisdiction of the committing criminal court for further evaluation and possible initiation of involuntary inpatient placement proceedings within the circuit.

b. This serves as notice to Department regional staff and circuit contract provider staff that the individual will be returning to the area in the near future.

c. The regional forensic coordinator may involve the regional legal counsel as needed.

8. Preparation for Judicial Responses. Judicial responses may vary when a state mental health treatment facility reports that competence to proceed is without a substantial probability of restoration in the foreseeable future. If a court concurs that restoration is unlikely, the court will either release the individual or order an involuntary examination pursuant to Chapter 394.463 F.S., or as directed in Mosher v. State, 876 So.2d 1230 (Fla. 1st DCA 2004).

- a. In response to a finding that competency is non-restorable, judges of the circuit courts may arrange for additional mental health evaluations, review numerous sources of information, and ensure continuity of care.
- b. State mental health treatment facility staff should remain available to respond as appropriate following judicial decisions.
- c. Individuals evaluated to be non-restorable to competency in less than five years should not be discharged, in the event the court chooses to continue the commitment to the Department. Individuals remaining incompetent to proceed for five years should be discharged from the state mental health treatment facility when picked up for transport to jail to await a hearing.
- d. If there is any issue with this process, counsel for the state mental health treatment facility or the appropriate regional legal counsel may contact local counsel for the parties or the court in order to address any concerns or answer questions.
- e. Regional legal counsel may contact the regional mental health program office, regional forensic coordinator, receiving facility director and the forensic specialist or forensic case manager if their participation in the proceeding is appropriate.
- f. The regional legal counsel, or their designee, depending on the location of the hearing, should be present at forensic termination hearings, as needed to resolve issues affecting the Department.
- g. The regional legal counsel or designee is expected to maintain relationships with the local state attorney, public defender's office and the chief administrative judge and make available sample model orders as needed.

9. Discharge of Involuntary Individuals with Pending Charges.

- a. Individuals whose competence has been adjudicated non-restorable with charges that have not been dismissed, and who have been committed to the Department for involuntary inpatient placement pursuant to section 394.467(1), F.S., may not be discharged from the state mental health treatment facility without first contacting the committing court and law enforcement and advising that the individual no longer meets Baker Act criteria and is ready for return to the jurisdiction of the committing criminal court for disposition of pending charges (section 394.469(1)(a), F.S.).
- b. The recovery team will work with the appropriate Regional Substance Abuse and Mental Health Program Office and/or Managing Entity and community mental health provider agency to arrange medical, mental health and residential aftercare services in the committing circuit's community in order to ensure continuity of care.

10. Dismissal of Charges. Florida Rules of Criminal Procedure 3.213 and section 916.145, Florida Statutes, require dismissal of charges if an individual remains incompetent to proceed for five years (with the exception of individuals adjudicated incompetent to proceed with sentencing) unless the court specifically finds that the individual will become competent within the foreseeable future and specifies the timeframe in which the individual is expected to become competent.

a. Individuals committed to the Department as incompetent to proceed pursuant to section 916.13, F.S., and who reach five years of incompetence to proceed without being declared non-restorable by the court will continue to require reports to the court to advise of the individual's non-restorability, if the court does not dismiss his/her charge(s).

b. Pursuant to Rule 3.213(b)(1), Florida Rules of Criminal Procedure, the facility administrator shall notify the state attorney of the committing court circuit no less than 30 days prior to the individual's anticipated release.

11. Reporting of Data for Dismissal of Charges of Residents in Mental Health Treatment Facilities. All forensic and civil facilities with ITP residents whose charges have been dismissed must report dismissal data on a semi-annual basis on form CF-MH 1075 (available in DCF Forms) to the Director of Mental Health Treatment Facilities Policy and Programs at the department's Headquarters office in Tallahassee. July through December data should be reported by January 10 of each year; and fiscal year data for July through June should be reported by July 10 of each year. Facility Administrators must designate the appropriate position to fulfil this requirement.

a. The position compiling the information must ensure the accuracy of the data to be submitted and should consult with the facility attorney when there are questions pertaining to an individual's charges and legal status. Data reporting shall include:

(1) The number of ITPs with non-violent offenses whose charges were dismissed in 3 years or less. These individuals must not have any of the violent or capital felony offenses listed in s. 916.145, F.S.

(2) The number of all other ITPs whose charges were dismissed in less than 5 years. Facilities must distinguish in their reporting which individuals did not have any of the violent or capital felony offenses listed in 916.145, F.S.

(3) The resident's name, date of birth, legal status (ITP), county of commitment, date of the original ITP commitment order, date of admission to the original admitting facility, date of admission to the current admitting facility if different, date of order dismissing charges, date of discharge, resident's case numbers, resident's charges, and confirmation if the resident has a violent offense as listed in s. 916.145, F.S.

b. As needed, facility staff may contact the Headquarters Office of State Mental Health Treatment Facilities Policy and Programs unit to receive assistance on identifying original admitting facility and date of admission to the original admitting facility.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

JACQUELINE A. YOUNG
Director, State Mental Health Treatment Facilities, Policy and Programs

SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

Amended paragraph 4j updating Forensic Specialist/Forensic Case Manager definition. Amended paragraph 5e(3) removing reference to the Seeking Placement List Process previously described in CFOP 155-22.

**Model Cover Letter Recommending That Individual Appears to Meet
Chapter 394, F.S., Criteria in Less Than Three or Five Years of
Incompetency**

(use letterhead paper)

[Date]

The Honorable [Judge's Name]
[Address 1]
[Address 2]
[City], Florida [Zip Code]

Re: State of Florida vs. [Individual's Name]
Case No.: [Case Number/s]

Dear Judge [Name]:

Enclosed is the most recent competency evaluation for [Insert Individual's Name], prepared by his/her recovery team/psychologist at the [Insert Treatment Facility Name].

As indicated in the attached competency evaluation, [Insert Individual's Name] has been incompetent to proceed since [Original Commitment Date] and is considered unlikely to regain competency in the foreseeable future. Pursuant to *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004), individuals whose competence is non-restorable no longer meets criteria for commitment pursuant to section 916.13, F.S., and therefore, should either be released or the State shall initiate civil commitment proceedings.

For your convenience, enclosed is a sample model transport order directing the sheriff, or designee, of [Insert Commitment County] County to arrange to transport and return [Insert Individual's Name] to your jurisdiction for further evaluation and hearing. The recovery team is of the opinion that [Insert Individual's Name] meets the criteria for involuntary examination, pursuant to section 394.463, F.S. A sample model order for involuntary Baker Act examination is also provided for the benefit of the court and counsel for the parties. [Attach Order for Involuntary Baker Act Examination, Appendix G]

Sincerely,

[Name of Treatment Facility Administrator/Legal Counsel]
Administrator/Hospital Legal Counsel

Enclosures

cc: Clerk of the Court
Office of the State Attorney
Legal Representative
Community Care Providers

**Model Cover Letter Recommending That Individual Appears To Meet
Chapter 394, F.S., Criteria at the Five Year Mark of Incompetency**

(use letterhead paper)

[Date]

The Honorable [Judge's Name]

[Address 1]

[Address 2]

[City], Florida [Zip Code]

Re: State of Florida vs. [Individual's Name]

Case No.: [Case Number/s]

Dear Judge [Name]:

Enclosed is the most recent competency evaluation for [Insert Individual's Name], prepared by his/her recovery team/psychologist at the [Insert Treatment Facility Name].

As indicated in the attached competency evaluation, [Insert Individual's Name] has been incompetent to proceed since [Original Commitment Date] and is considered unlikely to regain competency in the foreseeable future. [He/She] has remained Incompetent to Proceed for almost five years. Florida Rules of Criminal Procedure 3.213 and Section 916.145, Florida Statutes, require dismissal of the charges if the defendant remains incompetent to proceed for five years unless the court specifically finds that the defendant will become competent within the foreseeable future and specifies the time the defendant is expected to become competent.

For your convenience, enclosed is a sample model transport order directing the sheriff, or designee, of [Insert Commitment County] County to arrange to transport and return [Insert Individual's Name] to your jurisdiction so a hearing might be held pursuant to the provisions of Florida Rules of Criminal Procedure 3.213. The recovery team is of the opinion that [Insert Individual's Name] meets the criteria for involuntary examination pursuant to Section 394.463, Florida Statutes. A sample model order dismissing charges without prejudice and transporting the defendant to a receiving facility for further evaluation is also provided for the benefit of the court and counsel for the parties. [Attach Order Dismissing Charges without Prejudice and Transporting Defendant to Receiving Facility for Further Evaluation, Appendix H]

Sincerely,

[Name of Treatment Facility Administrator/Legal Counsel]
Administrator/Hospital Legal Counsel

Enclosures

cc: Clerk of the Court, Criminal Division
Office of the State Attorney
Legal Representative
Community Care Providers

**Model Cover Letter Recommending That Individual Appears To Meet
Chapter 394, F.S., Criteria at the Three Year Mark of Incompetency**

(use letterhead paper)

[Date]

The Honorable [Judge's Name]
[Address 1]
[Address 2]
[City], Florida [Zip Code]

Re: State of Florida vs. [Individual's Name]
Case No.: [Case Number/s]

Dear Judge [Name]:

Enclosed is the most recent competency evaluation for [Insert Individual's Name], prepared by his/her recovery team/psychologist at the [Insert Treatment Facility Name].

As indicated in the attached competency evaluation, [Insert Individual's Name] has been incompetent to proceed since [Original Commitment Date] and is considered unlikely to regain competency in the foreseeable future. [He/She] has remained Incompetent to Proceed for almost three years. Section 916.145, Florida Statutes, requires dismissal of the charges if the defendant does not have a capital or violent offense as listed in this section and remains incompetent to proceed for three years, unless the court specifically finds that the defendant will become competent within the foreseeable future and specifies the time the defendant is expected to become competent.

For your convenience, enclosed is a sample model transport order directing the sheriff, or designee, of [Insert Commitment County] County to arrange to transport and return [Insert Individual's Name] to your jurisdiction so a hearing might be held. The recovery team is of the opinion that [Insert Individual's Name] meets the criteria for involuntary examination pursuant to Section 394.463, Florida Statutes. A sample model order dismissing charges without prejudice and transporting the defendant to a receiving facility for further evaluation is also provided for the benefit of the court and counsel for the parties. [Attach Order Dismissing Charges without Prejudice and Transporting Defendant to Receiving Facility for Further Evaluation, Appendix H]

Sincerely,

[Name of Treatment Facility Administrator/Legal Counsel]
Administrator/Hospital Legal Counsel

Enclosures

cc: Clerk of the Court, Criminal Division
Office of the State Attorney
Legal Representative
Community Care Providers

**Model Cover Letter Recommending That Individual Appears Not to Meet
Chapter 394, F.S., Criteria in Less Than Three or Five Years of
Incompetency**

(use letterhead paper)

[Date]

The Honorable [Judge's Name]
[Address 1]
[Address 2]
[City], Florida [Zip Code]

Re: State of Florida vs. [Individual's Name]
Case No.: [Case Number/s]

Dear Judge [Name]:

Enclosed is the most recent competency evaluation for [Insert Individual's Name], prepared by his/her recovery team/psychologist at the [Insert Treatment Facility Name].

As indicated in the attached competency evaluation, [Insert Individual's Name] has been incompetent to proceed since [Original Commitment Date] and is considered unlikely to regain competency in the foreseeable future. [Insert Individual's Name] recovery team is requesting [he/she] be returned to court for further proceedings. Pursuant to *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004), individuals whose competence is non-restorable no longer meets criteria for commitment pursuant to section 916.13, F.S., and therefore, should either be released or the State shall initiate civil commitment proceedings. See *Mosher v. State*, 876 So. 2d 1230 (Fla. 1st DCA 2004).

For your convenience, we have enclosed a sample transport order directing the sheriff, or designee, of [Insert Commitment County] to arrange to transport and return [Insert Individual's Name] to your jurisdiction so a hearing might be held to consider [his/her] restorability. It is the opinion of the recovery team that [Insert Individual's Name] does not appear to meet the criteria for involuntary examination or commitment under Chapter 394, Florida Statutes. An aftercare service plan has been developed and incorporated as a recommendation in the attached competency evaluation. A sample model order finding the defendant non-restorable is also being provided for the benefit of the court and counsel for the parties. [Attach the Order Finding Defendant Non-Restorable, Appendix I]

Sincerely,

[Name of Treatment Facility Administrator/Legal Counsel]
Administrator/Hospital Legal Counsel

Enclosures

cc: Clerk of the Court, Criminal Division
Office of the State Attorney
Legal Representative
Community Care Providers

Model Cover Letter Recommending That Individual Appears Not To Meet Chapter 394, F.S., Criteria at the Five Year Mark of Incompetency

(use letterhead paper)

[Date]

The Honorable [Judge's Name]

[Address 1]

[Address 2]

[City], Florida [Zip Code]

Re: State of Florida vs. [Individual's Name]

Case No.: [Case Number/s]

Dear Judge [Name]:

Enclosed is the most recent competency evaluation for [Insert Individual's Name] prepared by his/her recovery team/psychologist at the [Insert Treatment Facility Name].

As indicated in the attached competency evaluation, [Insert Individual's Name] has been incompetent to proceed since [Original Commitment Date] and is considered unlikely to regain competency in the foreseeable future. [He/She] has remained Incompetent to Proceed for almost five years. Upon the five-year mark, [Insert Individual's Name] recovery team is requesting [he/she] be returned to the jurisdiction of the committing court for a hearing pursuant to the provisions of Florida Rules of Criminal Procedure 3.213. That rule and Section 916.145, Florida Statutes, require dismissal of the charges if the defendant remains incompetent to proceed for five years unless the court specifically finds the defendant will become competent within the foreseeable future and specifies the time the defendant is expected to become competent.

For your convenience, we have enclosed a sample model transport order directing the sheriff, or designee, of [Insert Commitment County] to arrange to transport and return [Insert Individual's Name] to your jurisdiction so a hearing might be held pursuant to the provisions of Florida Rules of Criminal Procedure 3.213. It is the opinion of the recovery team that [Insert Individual's Name] does not appear to meet the criteria for involuntary examination or commitment under Chapter 394, Florida Statute. An aftercare services plan has been developed and incorporated as a recommendation in the attached competency evaluation. A sample model order dismissing charges without prejudice is also being provided for the benefit of the court and counsel for the parties. [Attach the Order Dismissing Charges without Prejudice, Appendix J.]

Sincerely,

[Name of Treatment Facility Administrator/Legal Counsel]
Administrator/Hospital Legal Counsel

Enclosures

cc: Clerk of the Court, Criminal Division
Office of the State Attorney
Legal Representative
Community Care Providers

Model Cover Letter Recommending That Individual Appears Not To Meet Chapter 394, F.S., Criteria at the Three Year Mark of Incompetency

(use letterhead paper)

[Date]

The Honorable [Judge's Name]

[Address 1]

[Address 2]

[City], Florida [Zip Code]

Re: State of Florida vs. [Individual's Name]

Case No.: [Case Number/s]

Dear Judge [Name]:

Enclosed is the most recent competency evaluation for [Insert Individual's Name] prepared by his/her recovery team/psychologist at the [Insert Treatment Facility Name].

As indicated in the attached competency evaluation, [Insert Individual's Name] has been incompetent to proceed since [Original Commitment Date] and is considered unlikely to regain competency in the foreseeable future. [He/She] has remained Incompetent to Proceed for almost three years. Upon the three-year mark, [Insert Individual's Name] recovery team is requesting [he/she] be returned to the jurisdiction of the committing court for a hearing pursuant to the provisions of s.916.145, Florida Statutes. That section requires dismissal of the charges if the defendant does not have a capital or violent offense as listed in this section and remains incompetent to proceed for three years, unless the court specifically finds that the defendant will become competent within the foreseeable future and specifies the time the defendant is expected to become competent.

For your convenience, we have enclosed a sample model transport order directing the sheriff, or designee, of [Insert Commitment County] to arrange to transport and return [Insert Individual's Name] to your jurisdiction so a hearing might be held. It is the opinion of the recovery team that [Insert Individual's Name] does not appear to meet the criteria for involuntary examination or commitment under Chapter 394, Florida Statute. An aftercare services plan has been developed and incorporated as a recommendation in the attached competency evaluation. A sample model order dismissing charges without prejudice is also being provided for the benefit of the court and counsel for the parties. [Attach the Order Dismissing Charges without Prejudice, Appendix J.]

Sincerely,

[Name of Treatment Facility Administrator/Legal Counsel]
Administrator/Hospital Legal Counsel

Enclosures

cc: Clerk of the Court, Criminal Division
Office of the State Attorney
Legal Representative
Community Care Providers

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

STATE OF FLORIDA,

v.

Case No. (s):

Defendant

_____ /

ORDER FOR INVOLUNTARY BAKER ACT EXAMINATION

Pursuant to section 394.463(2)(a)1., Florida Statutes, this Court finds that the above Defendant, appears to meet the following criteria for involuntary examination.

1. There is reason to believe the above named Defendant has a mental illness as defined in Section 394.455(18), F.S., and because of his mental illness he or she has:

(a) refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

(b) is unable to determine for himself/herself whether examination is necessary, **AND** without care and treatment the above named Defendant is likely to suffer from neglect or refuse to care for himself/herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well being and is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; **OR**, There is substantial likelihood that without care or treatment the Defendant will cause serious bodily harm to himself/herself or another person in the near future, as evidenced by recent behavior.

The Court further finds:

2. The defendant has previously been found incompetent to proceed and further, it appears that he or she may meet criteria for involuntary examination under section 394.463, et seq., Florida Statutes. "The Baker Act" (see attached report from the State Hospital).

THEREFORE, IT IS ORDERED AND ADJUDGED:

3. The Sheriff's Office of _____ County, Florida, or its designee, shall transport the Defendant to the nearest crisis stabilization unit within the jurisdiction of this Court for evaluation of

whether he or she meets the criteria for involuntary examination as set forth in section 394.463, et seq., Florida Statutes, "The Baker Act". A copy of this order shall be delivered to the administrator of the crisis stabilization unit where the Defendant is transported to.

4. If the Defendant is not be committed pursuant to section 394.463, F.S. the administrator of the crisis stabilization unit is directed to notify the Sheriff's Office of _____ County, Florida, of same so the Defendant may be transported by the Sheriff, or its designee, back to the appropriate detention center.

DONE AND ORDERED in Chambers at _____, _____ County, Florida
this _____ day of _____, 20__.

Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to Office of the Public Defender, Office of the State Attorney, Office of the Sheriff, and to the Department of Children and Families, Mental Health Office, this _____ day of _____, 20__.

Judicial Assistant

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

STATE OF FLORIDA,

Case No. (s):

v.

Div:

Defendant

_____ /

ORDER DISMISSING CHARGES WITHOUT PREJUDICE AND TRANSPORTING
DEFENDANT TO RECEIVING FACILITY FOR FURTHER EVALUATION

THIS CAUSE having come before the Court pursuant to the provisions of section 916.145, Florida Statutes, and upon review of the report dated _____ from the Administrator of _____ [Treatment Facility Name], this Court finds:

(1) The State has filed an indictment charging the defendant with the crime/s of

_____ [List charge/s]. The offense allegedly occurred on _____ in the County of _____.

(2) After appropriate notice from the defense, the Court ordered psychiatric evaluations and the reports from the experts were received. The Court determined that the defendant,

_____, was incompetent to proceed to trial or participate in any hearings in this cause. The defendant was committed to the Department of Children and Families on _____.

(3) On _____, the defendant was admitted to _____

[Treatment Facility Name] in _____, Florida.

(4) During the _____ years the defendant has been in treatment at

_____ [Treatment Facility Name], the Administrator has provided regular reports documenting his/her psychiatric status and treatment.

(5) The defendant, _____, has been

incompetent to proceed for _____ consecutive years. The defendant remains incompetent to stand trial and there is no substantial probability that said defendant will become mentally competent to stand trial in the foreseeable future, and further,

(6) It is the recommendation of the Department of Children and Families, contained within the competency evaluation, that the defendant appears to meet the criteria for involuntary examination pursuant to section 394.463, Florida Statutes.

It is therefore,

ORDERED AND ADJUDGED:

1. The charge of _____ [List charge/s], Case No. _____, is dismissed without prejudice to said charge being refiled should defendant become mentally competent to stand trial in the future.

2. The defendant shall be transported by the _____ County Sheriff's Office to _____ [Receiving Facility Name, Address and Phone Number] for an involuntary examination, pursuant to section 394.463, F.S., as suggested by the Administrator of _____ [Treatment Facility Name] no later than _____.

3. Should the defendant be committed pursuant to section 394.467, the administrator of the facility is directed to notify the State Attorney of the committing criminal court, in the _____ Circuit, in and for _____ County, Florida, no less than thirty (30) days prior to the anticipated release of the defendant from involuntary hospitalization.

DONE AND ORDERED in Chambers at _____, _____ County, Florida this _____ day of _____, 20__.

Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to Office of the Public Defender, Office of the State Attorney, Office of the Sheriff, and to the Department of Children and Families, Mental Health Office, this _____ day of _____, 20__.

Judicial Assistant

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

STATE OF FLORIDA,

v.

Case No. (s):

Div:

Defendant

_____ /

ORDER FINDING DEFENDANT NON-RESTORABLE

THIS CAUSE having come before the Court on Defendant’s Motion for Release pursuant to *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004) and the State’s Notice of Hearing and upon review of the report dated _____ from the Administrator of _____ [Treatment Facility Name], this Court finds:

(1) The State has filed an information motion charging the defendant with the crime/s of

_____ [List charge/s]. The offense allegedly occurred on

_____ [Date] in the County of _____.

(2) After appropriate notice from the defense, the Court ordered psychiatric evaluations and the reports from the experts were received. The Court determined that the defendant, _____

[Insert Name] was incompetent to proceed to trial or participate in any hearings in this cause. The defendant was committed to the Department of Children and Families on _____ [Date].

(3) On _____ [Date], the defendant was admitted to _____

[Treatment Facility Name] in _____ [City Name], Florida.

(4) During the defendant’s commitment he/she has been in treatment at _____

[Treatment Facility Name], the Administrator has provided regular reports documenting his/her psychiatric status and treatment.

(5) The defendant remains incompetent to stand trial and there is no substantial probability that said defendant will become mentally competent to stand trial in the foreseeable future, and further,

(6) It is the recommendation of the Department of Children and Families, contained within the competency evaluation, that the defendant does not appear to meet the criteria for involuntary examination under 394.463, Florida Statutes, and is appropriate to receive available treatment in the community.

It is therefore,

ORDERED AND ADJUDGED:

1. The defendant remains incompetent to proceed and his/her competency is non-restorable.
2. The defendant does not meet the criteria for involuntary examination or commitment pursuant to Chapter 394, F.S., "The Baker Act."
3. The defendant shall be released from his/her commitment pursuant to *Mosher v. State*, 876 So.2d. (Fla. 1st DCA 2004).

DONE AND ORDERED in Chambers at _____, _____ County, Florida
this _____ day of _____, 20__.

Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to Office of the Public Defender, Office of the State Attorney, Office of the Sheriff, and to the Department of Children and Families, Mental Health Office, this _____ day of _____, 20__.

Judicial Assistant

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

STATE OF FLORIDA,

v.

Defendant

_____ /

Case No. (s):

Div:

ORDER DISMISSING CHARGES WITHOUT PREJUDICE

THIS CAUSE having come before the Court pursuant to the provisions of Section 916.145, Florida Statutes, and upon review of the report dated _____ from the Administrator of _____ [Treatment Facility Name], this Court finds:

(1) The State has filed an indictment charging the defendant with the crime/s of _____ [List charge/s]. The offense allegedly occurred on _____ in the County of _____.

(2) After appropriate notice from the defense, the Court ordered psychiatric evaluations and the reports from the experts were received. The Court determined that the defendant, _____, was incompetent to proceed to trial or participate in any hearings in this cause. The defendant was committed to the Department of Children and Families on _____.

(3) On _____, the defendant was admitted to _____ [Treatment Facility Name] in _____, Florida.

(4) During the _____ years the defendant has been in treatment at _____ [Treatment Facility Name], the Administrator has provided regular reports documenting his/her psychiatric status and treatment.

(5) The defendant, _____, has been incompetent to proceed for _____ consecutive years. The defendant remains incompetent to stand trial and there is no substantial probability that said defendant will become mentally competent to stand trial in the foreseeable future, and further,

(6) It is the recommendation of the Department of Children and Families, contained within the competency evaluation, that the defendant does not appear to meet the criteria for involuntary examination under Section 394.463, Florida Statutes, and is appropriate to receive available treatment in the community.

It is therefore,

ORDERED AND ADJUDGED:

1. The charge of _____ [List charge/s], Case No. _____, is dismissed without prejudice to said charge being refiled should defendant become mentally competent to stand trial in the future.

DONE AND ORDERED in Chambers at _____, _____ County, Florida this _____ day of _____, 20__.

Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to Office of the Public Defender, Office of the State Attorney, Office of the Sheriff, and to the Department of Children and Families, Mental Health Office, this _____ day of _____, 20__.

Judicial Assistant