

By Representative Argenziano

1 A bill to be entitled
2 An act relating to forensic client services;
3 amending s. 40.29, F.S., relating to estimated
4 amount of pay for expert witnesses, to conform
5 a reference; creating s. 393.112, F.S.;
6 providing for a court order involuntarily
7 admitting a mentally retarded or autistic
8 defendant to a specialized involuntary
9 residential training program; providing
10 departmental responsibilities, procedures, and
11 guidelines relating to court petition and
12 hearing thereon, notice, examination of
13 defendant, continuing jurisdiction, and appeal;
14 providing for fees of examining committee;
15 providing for appointment of public defender or
16 other counsel for the defendant or appointment
17 of guardian ad litem; amending and reorganizing
18 ch. 916, F.S., the Forensic Client Services
19 Act; creating pt. I of ch. 916, F.S.; providing
20 general provisions of the chapter; amending s.
21 916.105, F.S.; revising legislative intent;
22 amending s. 916.106, F.S.; revising definitions
23 with respect to the chapter; redefining
24 "department" to refer to the Department of
25 Children and Family Services in lieu of the
26 Department of Health and Rehabilitative
27 Services; amending s. 916.107, F.S.; revising
28 state policy with respect to the rights of
29 forensic clients, and conforming terminology;
30 amending and renumbering s. 916.175, F.S.,
31 relating to criminal escape by client;

1 prohibiting escape or attempted escape from a
2 facility or program by a client under specified
3 circumstances, and providing penalties
4 therefor; amending and renumbering s. 916.178,
5 F.S.; prohibiting the introduction of certain
6 articles into or upon, or the taking or attempt
7 to take or send certain articles from, facility
8 grounds, under specified circumstances, and
9 providing penalties therefor; providing for
10 enforcement by institutional security personnel
11 or law enforcement officers; amending and
12 renumbering s. 916.19, F.S.; providing for
13 client protection and security; renumbering s.
14 916.20, F.S., relating to departmental
15 rulemaking; creating pt. II of ch. 916, F.S.,
16 relating to forensic services for persons who
17 are mentally ill; amending and renumbering s.
18 916.108, F.S.; providing for evaluation of
19 defendant for competency to proceed or for
20 sanity, under specified circumstances; amending
21 and renumbering s. 916.11, F.S.; revising time
22 limits and guidelines relating to appointment
23 of experts; amending s. 916.12, F.S.; providing
24 duties of examining experts and guidelines with
25 respect to reports on defendant's mental
26 competence to proceed and recommended treatment
27 for defendant to attain competence to proceed;
28 amending s. 916.13, F.S.; providing criteria
29 for involuntary commitment of defendant
30 adjudicated incompetent to proceed due to
31 mental illness; providing for admission to a

1 mental health facility; amending s. 916.14,
2 F.S.; providing for inapplicability of statute
3 of limitations and former jeopardy under
4 specified circumstances when defendant is
5 incompetent to proceed; amending s. 916.145,
6 F.S.; revising time limits and guidelines with
7 respect to dismissal of charges against a
8 defendant adjudicated incompetent to proceed;
9 providing for dismissal without prejudice under
10 specified circumstances; amending s. 916.15,
11 F.S., relating to involuntary commitment of
12 defendant adjudicated not guilty by reason of
13 insanity; conforming terminology; providing for
14 mandatory departmental retention and treatment
15 of defendant; reenacting s. 394.467(7)(a),
16 F.S., relating to procedure for continued
17 involuntary placement, to incorporate said
18 amendment in a reference; amending s. 916.16,
19 F.S.; providing for retention of jurisdiction
20 by committing court over a defendant
21 hospitalized as incompetent to proceed or
22 because of a finding of not guilty by reason of
23 insanity or a defendant placed on conditional
24 release; amending s. 916.17, F.S.; revising
25 procedures and guidelines relating to
26 conditional release and modification of release
27 conditions, including filing requirements for
28 plans for outpatient treatment; creating pt.
29 III of ch. 916, F.S., relating to forensic
30 persons who are mentally retarded or autistic;
31 creating s. 916.301, F.S.; providing for

1 appointment of experts who are mental
2 retardation or autism professionals, under
3 specified circumstances; providing for certain
4 witness fees and evaluator fees as court costs;
5 providing for reimbursement of certain travel
6 and per diem expenses of state employees;
7 creating s. 916.3012, F.S.; providing for
8 determination of incompetence to proceed when
9 the defendant's suspected mental condition is
10 mental retardation or autism; creating s.
11 916.302, F.S.; providing for involuntary
12 commitment of defendant determined to be
13 incompetent to proceed due to mental
14 retardation or autism; requiring the department
15 to notify the court of transfer of a defendant;
16 creating s. 916.3025, F.S.; providing for
17 retention of jurisdiction over certain
18 defendants found incompetent to proceed and
19 ordered into a secure facility for mentally
20 retarded or autistic defendants; creating s.
21 916.303, F.S.; providing for dismissal of
22 charges without prejudice or involuntary
23 admission to residential services or a training
24 program under specified circumstances when the
25 defendant is found incompetent to proceed due
26 to mental retardation or autism; creating s.
27 916.304, F.S.; providing for conditional
28 release based on an approved plan for providing
29 continuing community-based training of
30 defendant; providing for modification of
31 release conditions or termination of

1 jurisdiction under specified circumstances;
2 requiring certain written notice of the
3 involuntarily admitted defendant's right to
4 petition for writ of habeas corpus; providing
5 an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Subsection (1) of section 40.29, Florida
10 Statutes, is amended to read:

11 40.29 Clerks to estimate amount for pay of jurors and
12 witnesses and make requisition.--

13 (1) The clerk of the court in and for any county shall
14 make an estimate of the amount necessary during any quarterly
15 fiscal period beginning July 1 and during each succeeding
16 quarterly fiscal period for the payment by the state of:

17 (a) Jurors in the circuit court and the county court;

18 (b) Witnesses before the grand jury;

19 (c) Witnesses summoned to appear for an investigation,
20 preliminary hearing, or trial in a criminal case when the
21 witnesses are summoned by a state attorney or on behalf of an
22 indigent defendant;

23 (d) Mental health professionals who are appointed
24 pursuant to s. 394.473 and required in a court hearing
25 involving an indigent; and

26 (e) Expert witnesses who are appointed pursuant to s.
27 916.115(2)~~916.11(3)~~ and required in a court hearing involving
28 an indigent;

29

30 and shall forward each such estimate to the State Courts
31 Administrator no later than the date scheduled by the State

1 Courts Administrator. At the time of any forwarding of such
2 estimate, the clerk of such court shall make a requisition
3 upon the State Courts Administrator for the amount of such
4 estimate; and the State Courts Administrator may reduce the
5 amount if in his or her judgment the requisition is excessive.

6 Section 2. Section 393.112, Florida Statutes, is
7 created to read:

8 393.112 Specialized involuntary residential training
9 program.--

10 (1) JURISDICTION.--When a defendant in a criminal
11 matter arising under chapter 916 is mentally retarded or
12 autistic, has had felony charges dismissed, and requires
13 involuntary admission to a specialized involuntary residential
14 training program provided by the developmental services
15 program of the Department of Children and Family Services, the
16 circuit court of the county which committed the defendant
17 pursuant to chapter 916 shall have jurisdiction to conduct a
18 hearing and enter an order involuntarily admitting the
19 defendant to a specialized involuntary residential training
20 program in order that the person may receive the care,
21 treatment, habilitation, and rehabilitation which the
22 defendant needs. Except as otherwise specified, the
23 proceedings under this section shall be governed by the
24 Florida Rules of Civil Procedure.

25 (2) PETITION.--

26 (a) A petition for involuntary admission to a
27 specialized involuntary residential training program may be
28 executed by any person, including, but not limited to, the
29 department, a state attorney, a public defender, or a circuit
30 court judge.

31 (b) The petition shall be verified and shall:

1 1. State the name, age, and present address of the
2 person filing the petition and the person's relationship to
3 the defendant with mental retardation or autism.

4 2. State the name, age, county of residence, and
5 present address of the defendant with mental retardation or
6 autism.

7 3. Allege that the person filing the petition believes
8 that the defendant needs a specialized involuntary residential
9 training program and specify the factual information on which
10 such belief is based.

11 4. Allege that the defendant has had charges dismissed
12 pursuant to s. 916.303, lacks sufficient capacity to give
13 express and informed consent to a voluntary application for
14 services, and lacks the basic survival and self-care skills to
15 provide for the defendant's well-being or is likely to
16 physically injure others if allowed to remain at liberty; that
17 there exists a substantial likelihood that in the near future
18 the defendant will inflict serious bodily harm on himself or
19 herself or another person, as evidenced by recent behavior
20 causing, attempting, or threatening such harm; that there
21 continues to present a danger of escape; and that all
22 available, less restrictive alternatives, including services
23 in community residential facilities or other community
24 settings, which would offer an opportunity for improvement of
25 the condition have been judged to be inappropriate.

26 (c) The petition shall be filed in the circuit court
27 of the county which committed the defendant with mental
28 retardation or autism pursuant to chapter 916.

29 (3) NOTICE.--

30 (a) Notice of the filing of the petition shall be
31 given to the defendant, the defendant's legal guardian, the

1 state attorney and the public defender of the circuit which
2 committed the defendant, the defendant's attorney, and the
3 department. The notice shall be given both orally and in
4 writing in the language of the defendant, or in other modes of
5 communication of the defendant, and in English. Notice shall
6 also be given to such other persons as the court may direct.
7 The petition for involuntary admission to a specialized
8 involuntary residential training program shall be served with
9 the notice.

10 (b) The notice shall state that a hearing shall be set
11 to inquire into the need of the defendant with mental
12 retardation or autism for a specialized involuntary
13 residential training program. The notice shall also state the
14 date of the hearing on the petition.

15 (c) The notice shall state that the defendant with
16 mental retardation or autism has the right to be represented
17 by counsel of his or her own choice and that, if the defendant
18 cannot afford an attorney, the court shall appoint one.

19 (4) DEVELOPMENTAL SERVICES PARTICIPATION.--

20 (a) Upon receiving the petition, the court shall
21 immediately order the developmental services program of the
22 department to examine the defendant being considered for
23 involuntary admission to a specialized involuntary residential
24 training program.

25 (b) After the developmental services program examines
26 the defendant, a written report shall be filed with the court
27 not less than 10 working days before the date of the hearing.
28 The report shall be served on the petitioner, the defendant
29 with mental retardation or autism, and the defendant's
30 attorney at the time the report is filed with the court.

31

1 (c) The report shall contain the findings of the
2 developmental services program evaluation and any
3 recommendations deemed appropriate.

4 (5) EXAMINING COMMITTEE.--

5 (a) Upon receiving the petition, the court shall
6 immediately appoint an examining committee to examine the
7 defendant being considered for involuntary admission to a
8 specialized involuntary residential training program.

9 (b) The court shall appoint no fewer than three
10 disinterested experts who have demonstrated to the court an
11 expertise in the diagnosis, evaluation, and treatment of
12 defendants with mental retardation or autism. The committee
13 shall include at least one licensed and qualified physician,
14 one licensed and qualified psychologist, and one qualified
15 professional with a minimum of a master's degree in social
16 work, special education, or vocational rehabilitation
17 counseling to examine the defendant and to testify at the
18 hearing on the involuntary admission to a specialized
19 involuntary residential training program.

20 (c) Counsel for the defendant who is being considered
21 for involuntary admission to a specialized involuntary
22 residential training program shall have the right to challenge
23 the qualifications of those appointed to the examining
24 committee.

25 (d) Members of the committee shall not be employees of
26 the department, be associated with each other in practice, or
27 be employed by or employ any member of the committee. Members
28 of the committee shall not be employees of the petitioner or
29 be associated in practice with the petitioner.

30 (e) The committee shall prepare a written report for
31 the court. The report shall explicitly document the extent to

1 which the defendant meets the criteria for involuntary
2 admission to a specialized involuntary residential training
3 program. The report, and expert testimony, shall include, but
4 not be limited to:
5 1. The degree of the defendant's mental retardation or
6 autism.
7 2. Whether, because of the defendant's degree of
8 mental retardation or autism, the defendant:
9 a. Lacks sufficient capacity to give express and
10 informed consent to a voluntary application for services
11 pursuant to s. 393.065.
12 b. Lacks basic survival and self-care skills to such a
13 degree that close supervision and habilitation in a
14 specialized involuntary residential training program are
15 necessary and, if such supervision and habilitation were not
16 provided, a real and present threat of harm to the defendant's
17 well-being would result.
18 c. Is likely to physically injure others if allowed to
19 remain at liberty.
20 d. Presents a substantial likelihood that in the near
21 future the defendant will inflict serious bodily harm on
22 himself or herself or another person, as evidenced by recent
23 behavior causing, attempting, or threatening such harm.
24 e. Continues to present a danger of escape, and that
25 all available, less restrictive alternatives, including
26 services in community residential facilities or other
27 community settings, which would offer an opportunity for
28 improvement of the condition have been judged to be
29 inappropriate.
30 3. The purpose to be served by residential care.
31

1 4. A recommendation as to why the specialized
2 involuntary residential training program would be the most
3 appropriate and least restrictive for the defendant.

4 5. The appropriate care, habilitation, and treatment.

5 (f) The committee shall file the report with the court
6 not less than 10 working days before the date of the hearing.
7 The report shall be served on the petitioner, the defendant
8 with mental retardation or autism, and the defendant's
9 attorney at the time the report is filed with the court.

10 (g) Members of the examining committee shall receive a
11 reasonable fee to be determined by the court. The fees are to
12 be paid from the general revenue fund of the county from which
13 the defendant with mental retardation or autism was committed.

14 (6) COUNSEL; GUARDIAN AD LITEM.--

15 (a) The defendant with mental retardation or autism
16 shall be represented by counsel at all stages of the judicial
17 proceeding for involuntary admission to a specialized
18 involuntary residential training program. In the event the
19 defendant is indigent and cannot afford counsel, the court
20 shall appoint a public defender not less than 20 working days
21 before the scheduled hearing. The defendant's counsel shall
22 have full access to the records of the service provider and
23 the department. In all cases, the attorney shall represent
24 the rights and legal interests of the defendant with mental
25 retardation or autism, regardless of who may initiate the
26 proceedings or pay the attorney's fee.

27 (b) If the attorney, during the course of his or her
28 representation, reasonably believes that the defendant with
29 mental retardation or autism cannot adequately act in his or
30 her own interest, the attorney may seek the appointment of a
31 guardian ad litem.

1 (7) HEARING.--

2 (a) The hearing for involuntary admission to a
3 specialized involuntary residential training program shall be
4 conducted, and the order shall be entered, in the county from
5 which the defendant was committed. The hearing shall be
6 conducted in a physical setting not likely to be injurious to
7 the defendant's condition.

8 (b) A hearing on the petition shall be held as soon as
9 practicable after the petition is filed, but continuance for
10 reasonable delay for the purpose of investigation, discovery,
11 or procuring counsel or witnesses shall be granted.

12 (c) The court may appoint a master to preside. Except
13 as otherwise specified, the master's proceeding shall be
14 governed by Rule 1.490, Florida Rules of Civil Procedure.

15 (d) The defendant with mental retardation or autism
16 shall be physically present throughout the entire proceeding,
17 unless the defendant's presence is waived. If the defendant's
18 attorney believes that the defendant's presence at the hearing
19 is not in the defendant's best interest, the defendant's
20 presence may be waived once the court has seen the defendant
21 and the hearing has commenced.

22 (e) The defendant shall have the right to present
23 evidence and to cross-examine all witnesses and respond to or
24 refute other evidence alleging the appropriateness of the
25 defendant's admission to a specialized involuntary residential
26 training program. Other relevant and material evidence
27 regarding the appropriateness of the defendant's admission to
28 a specialized involuntary residential training program;
29 reasons why the specialized involuntary residential training
30 program is the most appropriate residence for the defendant,
31

1 including written or oral reports, may be introduced at the
2 hearing by any interested person.

3 (f) The petitioner may be represented by counsel at
4 the hearing. The petitioner shall have the right to call
5 witnesses, present evidence, cross-examine witnesses, and
6 present argument on behalf of the petitioner.

7 (g) All evidence shall be presented according to
8 chapter 90. The burden of proof shall be on the party
9 alleging the appropriateness of the defendant's admission to a
10 specialized involuntary residential training program. The
11 burden of proof shall be met by clear and convincing evidence.

12 (h) All stages of each proceeding shall be
13 stenographically reported.

14 (8) ORDER.--

15 (a) In all cases, the court shall issue written
16 findings of fact and conclusions of law to support its
17 decision. The order shall state the basis for such findings
18 of fact.

19 (b) An order of involuntary admission to a specialized
20 involuntary residential training program shall not be entered
21 unless the court finds that:

22 1. The defendant is mentally retarded or autistic.

23 2. Placement in a specialized involuntary residential
24 training program is the least restrictive and most appropriate
25 alternative to meet the defendant's needs.

26 3. Because of the defendant's degree of mental
27 retardation or autism the defendant:

28 a. Lacks sufficient capacity to give express and
29 informed consent to a voluntary application for services
30 pursuant to s. 393.065 and lacks basic survival and self-care
31 skills to such a degree that close supervision and

1 habilitation in a specialized involuntary residential training
2 program are necessary and, if such supervision and
3 habilitation were not provided, a real and present threat of
4 harm to the defendant's well-being would result.

5 b. Is likely to physically injure others if allowed to
6 remain at liberty.

7 c. Presents a substantial likelihood that in the near
8 future the defendant will inflict serious bodily harm on
9 himself or herself or another person, as evidenced by recent
10 behavior causing, attempting, or threatening such harm.

11 d. Continues to present a danger of escape, and that
12 all available, less restrictive alternatives, including
13 services in community residential facilities or other
14 community settings, which would offer an opportunity for
15 improvement of the condition have been judged to be
16 inappropriate.

17 (c) If the evidence presented to the court is not
18 sufficient to warrant involuntary admission to a specialized
19 involuntary residential training program, but the court feels
20 that other residential services would be beneficial, the court
21 may involuntarily admit the defendant to a less restrictive
22 placement or recommend that the defendant seek voluntary
23 admission.

24 (d) If an order of involuntary admission to a
25 specialized involuntary residential training program provided
26 by the department is entered by the court, a copy of the
27 written order shall be served upon the defendant, the
28 defendant's counsel, the state attorney, the public defender,
29 and the department. The order of involuntary admission to a
30 specialized involuntary residential training program sent to
31 the department shall also be accompanied by a copy of the

1 examining committee's report and other reports contained in
2 the court file.

3 (e) Upon receiving the order, the department shall,
4 within 45 days, provide the court with a copy of the
5 defendant's individual support plan and copies of all
6 examinations and evaluations, outlining the treatment and
7 rehabilitative programs. The department shall document that
8 the defendant has been placed in the specialized involuntary
9 residential training program or, if so ordered, into a less
10 restrictive involuntary residential program. A copy of the
11 individual support plan and other examinations and evaluations
12 shall be served upon the defendant and the defendant's counsel
13 at the same time the documents are filed with the court.

14 (f) The order of involuntary admission to a
15 specialized involuntary residential training program sent to
16 the department shall contain a provision which requires the
17 administrator of the facility to which the defendant is sent
18 to review at least annually the progress of the defendant to
19 determine whether the defendant still requires placement in a
20 specialized involuntary residential training program.

21 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO A
22 SPECIALIZED INVOLUNTARY RESIDENTIAL TRAINING PROGRAM.--In no
23 case shall an order authorizing an admission to a specialized
24 involuntary residential training program be considered an
25 adjudication of mental incompetency. No person shall be
26 presumed incompetent solely by reason of the defendant's
27 involuntary admission to a specialized involuntary residential
28 training program. No defendant shall be denied the full
29 exercise of all legal rights guaranteed to citizens of this
30 state and of the United States.

31 (10) CONTINUING JURISDICTION.--

1 (a) The court which issues the initial order for
2 involuntary admission to a specialized involuntary residential
3 training program under this section shall have continuing
4 jurisdiction to enter further orders to ensure that the
5 defendant is receiving adequate care, treatment, habilitation,
6 and rehabilitation, including psychotropic medication and
7 behavioral programming.

8 (b) Each person committed pursuant to this section
9 shall have an annual review conducted by the court to
10 determine whether the defendant continues to need secure
11 residential services. At any such review, the least
12 restrictive setting appropriate for the person must be
13 considered.

14 (11) APPEAL.--

15 (a) Any party to the proceeding who is affected by an
16 order of the court may appeal to the appropriate district
17 court of appeal within the time and in the manner prescribed
18 by the Florida Rules of Appellate Procedure.

19 (b) The filing of an appeal by the defendant with
20 mental retardation or autism shall stay admission of the
21 defendant into a specialized involuntary residential training
22 program. The stay shall remain in effect during the pendency
23 of all review proceedings in courts of this state until a
24 mandate issues.

25 (12) HABEAS CORPUS.--At any time and without notice,
26 any defendant involuntarily admitted to a specialized
27 involuntary residential training program, or the defendant's
28 legal guardian in his or her behalf, is entitled to a writ of
29 habeas corpus to question the cause, legality, and
30 appropriateness of the defendant's involuntary admission to a
31 specialized involuntary residential training program. Each

1 defendant, or the defendant's legal guardian, shall receive
2 specific written notice of the right to petition for a writ of
3 habeas corpus at the time of his or her involuntary placement.

4 Section 3. For the purpose of incorporating the
5 amendment to section 916.15, Florida Statutes, in a reference
6 thereto, paragraph (a) of subsection (7) of section 394.467,
7 Florida Statutes, 1996 Supplement, is reenacted to read:

8 394.467 Involuntary placement.--

9 (7) PROCEDURE FOR CONTINUED INVOLUNTARY PLACEMENT.--

10 (a) Hearings on petitions for continued involuntary
11 placement shall be administrative hearings and shall be
12 conducted in accordance with the provisions of s. 120.57(1),
13 except that any order entered by the hearing officer shall be
14 final and subject to judicial review in accordance with s.
15 120.68. Orders concerning patients committed after
16 successfully pleading not guilty by reason of insanity shall
17 be governed by the provisions of s. 916.15.

18 Section 4. Part I of chapter 916, Florida Statutes,
19 consisting of sections 916.10, 916.105, 916.106, 916.107,
20 916.1081, 916.1085, 916.1091, and 916.1093, is created and
21 entitled "General Provisions."

22 Section 5. Section 916.105, Florida Statutes, is
23 amended to read:

24 916.105 Legislative intent.--

25 (1) It is the intent of the Legislature that the
26 Department of Children and Family ~~Health and Rehabilitative~~
27 Services establish, locate, and maintain separate and secure
28 facilities and programs for the treatment or training of
29 defendants forensic clients who are charged with a felony and
30 who have been found to be incompetent to proceed due to their
31 mental illness, mental retardation, or autism ~~mentally~~

1 ~~retarded or mentally ill defendants~~, or who have been
2 acquitted of felonies ~~crimes~~ by reason of insanity, and who,
3 while still under the jurisdiction of the committing court,
4 are committed to the department ~~for mental retardation or~~
5 ~~mental health services~~ under the provisions of this chapter.
6 The separate, secure facilities shall be sufficient to
7 accommodate the number of defendants ~~clients~~ committed under
8 the conditions noted above, except those defendants ~~clients~~
9 found by the department to be appropriate for treatment or
10 training in a civil ~~mental health~~ treatment facility or
11 program. Such secure facilities shall be designed and
12 administered so that ingress and egress, together with other
13 requirements of this chapter, may be strictly controlled by
14 staff responsible for security in order to protect the
15 defendant ~~client~~, facility ~~hospital~~ personnel, other clients,
16 and citizens in adjacent communities.

17 (2) It is further the intent of the Legislature that
18 treatment or training programs for defendants ~~clients~~ who are
19 found to be ~~mentally retarded or mentally ill~~, mentally
20 retarded, or autistic ~~defendants~~ and are involuntarily
21 committed to the department ~~certain mental retardation or~~
22 ~~mental health facilities~~, and who are still under the
23 jurisdiction of the committing court, be provided in such a
24 manner, subject to security requirements and other mandates of
25 this chapter, as to ensure the rights of the defendants ~~said~~
26 ~~clients~~ as provided in this chapter.

27 (3) It is the intent of the Legislature that
28 evaluation and services to defendants who are ~~treatment of~~
29 ~~mentally ill, and mentally retarded~~, or autistic ~~defendants~~ be
30 provided in community ~~inpatient or outpatient~~ settings, in
31 community residential facilities, or in civil, nonforensic

1 facilities, whenever this is a feasible alternative to
2 treatment or training in a state forensic facility.

3 Section 6. Section 916.106, Florida Statutes, is
4 amended to read:

5 916.106 Definitions.--For the purposes of this
6 chapter:

7 (1) "Autism" means a pervasive, neurologically based
8 developmental disability of extended duration which causes
9 severe learning, communication, and behavior disorders, with
10 the age of onset of autism occurring during infancy or
11 childhood. Individuals with autism exhibit impairment in
12 reciprocal social interaction, impairment in verbal and
13 nonverbal communication and imaginative ability, and a
14 markedly restricted repertoire of activities and interests.

15 (2)~~(1)~~ "Chemical weapon" means any shell, cartridge,
16 bomb, gun, or other device capable of emitting
17 chloroacetophenone (CN), chlorobenzalmalonitrile (CS) or any
18 derivatives thereof in any form, or any other agent with
19 lacrimatory properties, and shall include products such as
20 that commonly known as "mace."

21 (3) "Civil facility" means a mental health facility
22 established within the department to serve individuals
23 committed pursuant to chapter 394 and those defendants
24 committed pursuant to this chapter who do not require the
25 security provided in a forensic facility.

26 (4)~~(2)~~ "Court" means the circuit court.

27 (5)~~(3)~~ "Department" means the Department of Children
28 and Family Health and Rehabilitative Services.

29 (6) "Express and informed consent" or "consent" means
30 consent given voluntarily in writing after a conscientious and
31 sufficient explanation and disclosure of the purpose of the

1 proposed treatment, the common side effects of the treatment,
2 if any, the expected duration of the treatment, and any
3 alternative treatment available.

4 (7)(4) "Forensic client" or "client" "patient" means
5 any defendant who is mentally ill, mentally retarded, or
6 autistic and mentally ill person who is committed to the
7 department pursuant to this chapter and:

8 (a) Who has been determined to need treatment for a
9 mental illness or training for mental retardation or autism;

10 (b) Who has been found incompetent to proceed on a
11 felony offense stand trial or incompetent for sentencing, has
12 been acquitted of a felony criminal offense by reason of
13 insanity; ~~has criminal charges pending, or has been found~~
14 ~~guilty of a criminal offense but is not an inmate of the~~
15 ~~Department of Corrections or any other correctional facility;~~
16 and

17 (c) Who has been determined by the department to:
18 1. Be dangerous to himself or herself or others; or
19 2. Present a clear and present potential to escape;
20 and-

21 (d) Who is an adult or juvenile prosecuted as an
22 adult.

23 (8)(5) "Forensic facility" means a separate and secure
24 facility established within the department to serve for the
25 treatment of forensic clients. Such separate and secure
26 facilities shall be security-grade buildings located on
27 grounds distinct in location from other ~~treatment~~ facilities
28 for persons who are mentally ill, mentally retarded, or
29 autistic. The Florida State Hospital shall not be required to
30 maintain separate ~~treatment~~ facilities for mentally ill, or
31 mentally retarded, or autistic defendants who are persons

1 found incompetent to proceed ~~for trial~~ or who are acquitted of
2 a criminal offense by reason of insanity.

3 (9) "Incompetent" means unable to proceed at any
4 material stage of a criminal proceeding, which shall include
5 trial of the case, pretrial hearings involving questions of
6 fact on which the defendant might be expected to testify,
7 entry of a plea violation of probation or violation of
8 community control proceedings, sentencing, and hearings on
9 issues regarding a defendant's failure to comply with court
10 orders or conditions or other matters in which the mental
11 competence of the defendant is necessary for a just resolution
12 of the issues being considered.

13 (10)(6) "Institutional security personnel" means staff
14 members who meet or exceed the requirements of s. 943.13 and
15 who are responsible for providing security, for protection of
16 clients and personnel, for the enforcement of rules, for
17 prevention and investigation of unauthorized activities, and
18 for safeguarding the interests of citizens in the surrounding
19 communities.

20 (11)(7) "Mental illness" ~~"Mentally ill"~~ means having
21 an impairment of the emotional processes that, ~~of the ability~~
22 ~~to~~ exercise conscious control of one's actions, or of the
23 ability to perceive or understand reality ~~or to understand~~,
24 which impairment substantially interferes with a defendant's
25 ~~person's~~ ability to meet the ordinary demands of living,
26 regardless of etiology. ~~except that~~, For the purposes of
27 this chapter, the term does not include ~~simple~~ intoxication,
28 defendants ~~persons~~ who are solely mentally retarded or
29 autistic, or conditions manifested only by antisocial behavior
30 or substance abuse impairment ~~drug addiction~~.

31

1 ~~(12)~~~~(8)~~ "Mental retardation" means significantly
2 subaverage general intellectual functioning existing
3 concurrently with deficits in adaptive behavior and manifested
4 during the period from conception to age 18. "Significantly
5 subaverage general intellectual functioning," for the purpose
6 of this definition, means performance which is two or more
7 standard deviations from the mean score on a standardized
8 intelligence test specified in the rules of the department.
9 "Adaptive behavior," for the purpose of this definition, means
10 the effectiveness or degree with which an individual meets the
11 standards of personal independence and social responsibility
12 expected of the individual's ~~his~~ age, cultural group, and
13 community.

14 (13) "Social service professional," for the purposes
15 of part III, means a person whose minimum qualifications
16 include a bachelor's degree and at least 2 years of social
17 work, clinical practice, or equivalent experience working
18 directly with persons with mental retardation, autism or other
19 developmental disabilities, special education, or habilitation
20 programs.

21 (14) "Specialized involuntary residential training
22 program" means a program which provides a residential training
23 program to defendants who have mental retardation or autism
24 and who have had felony charges dismissed due to the
25 defendant's incompetency to proceed. A defendant may be
26 eligible for a specialized involuntary residential training
27 program if the individual has mental retardation or autism, is
28 considered to lack sufficient capacity to give express and
29 informed consent to a voluntary application for services, and
30 lacks the basic survival and self-care skills to provide for
31 the defendant's well-being; there is a substantial likelihood

1 that in the near future the defendant will inflict serious
2 bodily harm on himself or herself or another person, as
3 evidenced by recent behavior causing, attempting, or
4 threatening such harm; the defendant continues to present a
5 danger of escape; and all available, less restrictive
6 alternatives, including services in community residential
7 facilities or other community settings, which would offer an
8 opportunity for improvement of the condition have been judged
9 to be inappropriate.

10 Section 7. Section 916.107, Florida Statutes, 1996
11 Supplement, is amended to read:

12 916.107 Rights of forensic clients.--

13 (1) RIGHT TO INDIVIDUAL DIGNITY.--

14 (a) The policy of the state is that the individual
15 dignity of the client ~~patient~~ shall be respected at all times
16 and upon all occasions, including any occasion when the
17 forensic client ~~patient~~ is detained, transported, or treated.
18 ~~<U>Defendants~~ Persons who are mentally ill, ~~or~~ mentally retarded,
19 or autistic and who are charged with, ~~or who have been~~
20 ~~convicted of,~~ committing felonies ~~criminal acts~~ shall receive
21 appropriate treatment or training. In a criminal case
22 involving a defendant ~~person~~ who has been adjudicated
23 incompetent to proceed ~~stand trial~~ or not guilty by reason of
24 insanity, ~~or who has otherwise been found by the court to meet~~
25 ~~the criteria for involuntary commitment,~~ a jail may be used as
26 an emergency facility for up to 15 days from the date the
27 department receives a completed copy of the commitment order
28 containing the documentation required by Rules 3.212 and
29 3.217, Florida Rules of Criminal Procedure. In every case in
30 which a defendant who is ~~mentally ill,~~ mentally retarded,
31 or autistic ~~person~~ is held in a jail, evaluation and treatment

1 <U>or training shall be provided in the jail by the local public
2 receiving facility for mental health services or by the
3 developmental services program for persons with mental
4 retardation or autism, the client's ~~patient's~~ physician or
5 clinical psychologist, or any other appropriate mental health
6 program available to provide such treatment until the client
7 person is transferred to the custody of the department.

8 (b) Mentally ill, or mentally retarded, or autistic
9 defendants ~~persons~~ who are committed to the department
10 pursuant to this chapter and who are initially placed in, or
11 subsequently transferred to, a civil mental health treatment
12 facility shall have the same rights as other persons committed
13 to civil facilities as described in chapter 393 or part I of
14 chapter 394, as long as they remain in a civil facility.

15 (2) RIGHT TO TREATMENT.--

16 (a) The policy of the state is that the department
17 shall not deny treatment or training of mental illness or
18 mental retardation to any client and that no services shall be
19 delayed at a forensic mental health treatment facility because
20 the forensic client is unable to pay. However, every
21 reasonable effort to collect appropriate reimbursement for the
22 cost of providing mental health services to clients ~~persons~~
23 able to pay for the services, including reimbursement from
24 insurance or other third-party payments, shall be made by
25 forensic facilities providing services pursuant to this
26 chapter and in accordance with the provisions of s. 402.33.

27 (b) Each forensic client who is a patient at a
28 forensic facility shall be given, at the time of admission and
29 at regular intervals thereafter, a physical examination, which
30 shall include screening for communicable disease by a health
31

1 practitioner authorized by law to give such screenings and
2 examinations.

3 (c) Every client ~~patient~~ committed pursuant to this
4 act shall be afforded the opportunity to participate in
5 activities designed to enhance self-image and the beneficial
6 effects of other treatments or training, as determined by the
7 facility.

8 (d) Not more than 30 days after admission, each client
9 ~~patient~~ shall have and receive, in writing, an individualized
10 treatment or training plan which the client ~~patient~~ has had an
11 opportunity to assist in preparing.

12 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

13 (a) A client ~~person~~ committed to the department
14 pursuant to this act shall be asked to give express and
15 informed written consent for treatment. "~~Express and informed~~
16 ~~consent~~" or "~~consent~~" means consent given voluntarily in
17 ~~writing after a conscientious and sufficient explanation and~~
18 ~~disclosure of the purpose of the proposed treatment, the~~
19 ~~common side effects of the treatment, if any, the expected~~
20 ~~duration of the treatment, and any alternative treatment~~
21 ~~available.~~ If a client ~~patient~~ in a forensic facility refuses
22 such treatment as is deemed necessary by the client's
23 ~~patient's~~ multidisciplinary treatment team at the forensic
24 facility for the appropriate care of the client ~~patient~~ and
25 the safety of the client ~~patient~~ or others, such treatment may
26 be provided under the following circumstances:

27 1. In an emergency situation in which there is
28 immediate danger to the safety of the client ~~patient~~ or
29 others, such treatment may be provided upon the written order
30 of a physician for a period not to exceed 48 hours, excluding
31 weekends and legal holidays. If, after the 48-hour period,

1 the client ~~patient~~ has not given express and informed consent
2 to the treatment initially refused, the administrator or
3 designee of the forensic facility shall, within 48 hours,
4 excluding weekends and legal holidays, petition the committing
5 court or the circuit court serving the county in which the
6 facility is located, at the option of the facility
7 administrator or designee, for an order authorizing the
8 continued treatment of the client ~~patient~~. In the interim,
9 treatment may be continued without the consent of the client
10 ~~patient~~ upon the continued written order of a physician who
11 has determined that the emergency situation continues to
12 present a danger to the safety of the client ~~patient~~ or
13 others.

14 2. In a situation other than an emergency situation,
15 the administrator or designee of the forensic facility shall
16 petition the court for an order authorizing the treatment to
17 of the client patient. The petition may be filed without fees
18 or costs being charged to the department.The order shall
19 allow such treatment for a period not to exceed 90 days from
20 the date of the entry of the order. Unless the court is
21 notified in writing that the client ~~patient~~ has provided
22 express and informed consent in writing or that the client
23 ~~patient~~ has been discharged by the committing court, the
24 administrator or designee shall, prior to the expiration of
25 the initial 90-day order, petition the court for an order
26 authorizing the continuation of treatment for another 90-day
27 period. This procedure shall be repeated until the client
28 ~~patient~~ provides consent or is discharged by the committing
29 court.

30 3. At the hearing on the issue of whether the court
31 should enter an order authorizing treatment for which a client

1 ~~patient~~ has refused to give express and informed consent, the
2 court shall determine by clear and convincing evidence that
3 the client ~~patient~~ is mentally ill, ~~or~~ mentally retarded, or
4 autistic as defined in this chapter, that the treatment not
5 consented to is essential to the care of the client ~~patient~~,
6 and that the treatment not consented to is not experimental
7 and does not present an unreasonable risk of serious,
8 hazardous, or irreversible side effects. In arriving at the
9 substitute judgment decision, the court must consider at least
10 the following factors:

- 11 a. The client's ~~patient's~~ expressed preference
12 regarding treatment;
13 b. The probability of adverse side effects;
14 c. The prognosis without treatment; and
15 d. The prognosis with treatment.

16
17 The hearing shall be as convenient to the client ~~patient~~ as
18 may be consistent with orderly procedure and shall be
19 conducted in physical settings not likely to be injurious to
20 the client's ~~patient's~~ condition. The court may appoint a
21 master to preside at the hearing. The client ~~patient~~ or his or
22 her guardian, and the ~~his~~ representative, shall be provided
23 with a copy of the petition and the date, time, and location
24 of the hearing. The client ~~patient~~ has the right to have an
25 attorney represent him or her at the hearing, and, if the
26 client ~~patient~~ is indigent, the court shall appoint the office
27 of the public defender to represent the client ~~him~~ at the
28 hearing. The client ~~patient~~ may testify or not, as he or she
29 chooses, and has the right to cross-examine witnesses
30 ~~testifying on behalf of the facility~~ and may present his or
31 her own witnesses.

1 (b) In addition to the provisions of paragraph (a), in
2 the case of surgical procedures requiring the use of a general
3 anesthetic or electroconvulsive treatment or nonpsychiatric
4 medical procedures, and prior to performing the procedure,
5 written permission shall be obtained from the client patient,
6 if the client ~~he~~ is legally competent, from the parent or
7 guardian of a minor client patient, or from the guardian of an
8 incompetent client patient. The administrator or designee of
9 the forensic facility or a his designated representative may,
10 with the concurrence of the client's patient's attending
11 physician, authorize emergency surgical or nonpsychiatric
12 medical treatment if such treatment is deemed lifesaving or
13 for a situation threatening serious bodily harm to the client
14 ~~patient~~ and permission of the client patient or the his
15 guardian cannot be obtained.

16 (4) QUALITY OF TREATMENT.--Each client patient
17 committed pursuant to this chapter shall receive treatment or
18 training suited to the client's his needs, which shall be
19 administered skillfully, safely, and humanely with full
20 respect for the client's his dignity and personal integrity.
21 Each client patient shall receive such medical, vocational,
22 social, educational, and rehabilitative services as his or her
23 condition requires to bring about a return to court for
24 disposition of charges or a an early return to the client's
25 his community. In order to achieve this goal, the department
26 is directed to coordinate the services of the Alcohol, Drug
27 Abuse, and Mental Health Program Office and the Developmental
28 Services Program Office ~~its forensic mental health and mental~~
29 ~~retardation programs~~ with all other programs of the department
30 and other appropriate state agencies.

31 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

1 (a) Each client ~~patient~~ committed pursuant to the
2 provisions of this chapter has the right to communicate freely
3 and privately with persons outside the facility unless it is
4 determined that such communication is likely to be harmful to
5 the client ~~patient~~ or others. Clients shall have the right to
6 contact and to receive communication from their attorneys at
7 any reasonable time.

8 (b) Each client ~~patient~~ committed under the provisions
9 of this chapter shall be allowed to receive, send, and mail
10 sealed, unopened correspondence; and no client's ~~patient's~~
11 incoming or outgoing correspondence shall be opened, delayed,
12 held, or censored by the facility unless there is reason to
13 believe that it contains items or substances which may be
14 harmful to the client ~~patient~~ or others, in which case the
15 administrator or designee may direct reasonable examination of
16 such mail and may regulate the disposition of such items or
17 substances. "Correspondence" shall not include parcels or
18 packages. Forensic facilities are authorized to promulgate
19 reasonable institutional policies ~~rules~~ to provide for the
20 inspection of parcels or packages and for the removal of
21 contraband items for health or security reasons prior to the
22 contents being given to a client ~~resident~~.

23 (c) If a client's ~~patient's~~ right to communicate is
24 restricted by the administrator, written notice of such
25 restriction shall be served on the client ~~patient~~ or his or
26 her legal guardian or representatives, and such restriction
27 shall be recorded on the client's ~~patient's~~ clinical record
28 with the reasons therefor. The restriction of a client's
29 ~~patient's~~ right to communicate shall be reviewed at least
30 every 7 ~~90~~ days.

31

1 (d) Each ~~forensic~~ facility shall establish reasonable
2 institutional policies ~~rules~~ governing visitors, visiting
3 hours, and the use of telephones by clients ~~patients~~ in the
4 least restrictive possible manner.

5 (e) Each client ~~patient~~ committed pursuant to this
6 chapter shall have ready access to a telephone in order to
7 report an alleged abuse. The facility or program staff shall
8 orally ~~verbally~~ and in writing inform each client ~~patient~~ of
9 the procedure for reporting abuse and shall present the
10 information in a language the client understands. A written
11 copy of that procedure, including the telephone number of the
12 abuse registry and reporting forms, shall be posted in plain
13 view.

14 (f) The department shall adopt institutional policies
15 ~~rules~~ providing a procedure for reporting abuse. Facility
16 staff shall be required, as a condition of employment, to
17 become familiar with the procedures for the reporting of
18 abuse.

19 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS
20 ~~PATIENTS~~.--A client's ~~patient's~~ right to possession of his
21 clothing and personal effects shall be respected. The
22 department by rule, or the administrator of any facility by
23 written institutional policy, may declare certain items to be
24 hazardous to the welfare of clients ~~patients~~ or others or to
25 the operation of the facility. Such items may be restricted
26 from introduction into the facility or may be restricted from
27 being in a client's ~~patient's~~ possession. The administrator
28 or designee may take temporary custody of such effects when
29 required for medical and safety reasons. Custody of such
30 personal effects shall be recorded in the client's ~~patient's~~
31 clinical record.

1 (7) VOTING IN PUBLIC ELECTIONS.--A client ~~patient~~
2 committed pursuant to this chapter who is eligible to vote
3 according to the laws of the state has the right to vote in
4 the primary and general elections. The department shall
5 establish rules to enable clients ~~patients~~ to obtain voter
6 registration forms, applications for absentee ballots, and
7 absentee ballots.

8 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical
9 record for each client ~~patient~~ shall be maintained. The record
10 shall include data pertaining to admission and such other
11 information as may be required under rules of the department.
12 Unless waived by express and informed consent by the client
13 ~~patient~~ or his or her legal guardian or, if the client ~~patient~~
14 is deceased, by the client's ~~patient's~~ personal representative
15 or by that family member who stands next in line of intestate
16 succession or except as otherwise provided in this subsection,
17 the clinical record is confidential and exempt from the
18 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
19 Constitution.

20 (a) Such clinical record may be released:

21 1. To such persons and agencies as are designated by
22 the client ~~patient~~ or the client's ~~his~~ legal guardian.

23 2. To persons authorized by order of court and to the
24 client's counsel when the records are needed by the counsel
25 for adequate representation.

26 3. To a qualified researcher, as defined by rule; a
27 staff member of the facility; or an employee of the department
28 when the administrator of the facility or secretary of the
29 department deems it necessary for treatment of the client
30 ~~patient~~, maintenance of adequate records, compilation of
31 treatment data, or evaluation of programs.

1 4. For statistical and research purposes if the
2 information is abstracted in such a way as to protect the
3 identity of individuals.

4 5. If a client ~~patient~~ receiving services pursuant to
5 this chapter has declared an intention to harm other persons.
6 When such a declaration has been made, the administrator shall
7 authorize the release of sufficient information to provide
8 adequate warning to the person threatened with harm by the
9 client, and to the committing court, the state attorney, and
10 the attorney representing the client; ~~however, only the~~
11 ~~declaration may be disclosed.~~

12 6. To the parent or next of kin of a mentally ill, ~~or~~
13 mentally retarded, or autistic person who is committed to, or
14 is being served ~~treated~~ by, a ~~forensic mental health~~ facility
15 or program when such information is limited to that person's
16 service ~~treatment~~ plan and current physical and mental
17 condition. Release of such information shall be in accordance
18 with the code of ethics of the profession involved.

19 (b) Notwithstanding other provisions of this
20 subsection, the department may request or receive from or
21 provide to any of the following entities client information to
22 facilitate treatment, habilitation, rehabilitation, and
23 continuity of care of any forensic client:

24 1. The Social Security Administration and the United
25 States Department of Veterans Affairs;

26 2. Law enforcement agencies, state attorneys, defense
27 attorneys ~~public defenders or other attorneys defending the~~
28 ~~patient~~, and judges in regard to the client's ~~patient's~~
29 status;

30 3. Jail personnel in the jail to which a client may be
31 returned; and

1 4. Community agencies and others expected to provide
2 followup care to the client ~~patient~~ upon the client's ~~his~~
3 return to the community.

4 (c) The department may provide notice to any client's
5 ~~patient's~~ next of kin or first representative regarding any
6 serious medical illness or the death of the client ~~patient~~.

7 (d)1. Any law enforcement agency, ~~treatment~~ facility,
8 or other governmental agency that receives information
9 pursuant to this subsection shall maintain the confidentiality
10 of such information except as otherwise provided herein.

11 2. Any agency or private practitioner who acts in good
12 faith in releasing information pursuant to this subsection is
13 not subject to civil or criminal liability for such release.

14 (9) HABEAS CORPUS.--

15 (a) At any time, and without notice, a client ~~person~~
16 detained by a facility, or a relative, friend, guardian,
17 representative, or attorney on behalf of such client ~~person~~,
18 may petition for a writ of habeas corpus to question the cause
19 and legality of such detention and request that the committing
20 circuit court issue a writ for release. Each client ~~patient~~
21 committed pursuant to this chapter shall receive a written
22 notice of the right to petition for a writ of habeas corpus.

23 (b) A client ~~patient~~ or his or her legal guardian or
24 representatives or attorney may file a petition in the circuit
25 court in the county where the client ~~patient~~ is committed
26 alleging that the client ~~patient~~ is being unjustly denied a
27 right or privilege granted herein or that a procedure
28 authorized herein is being abused. Upon the filing of such a
29 petition, the circuit court shall have the authority to
30 conduct a judicial inquiry and to issue any appropriate order
31 to correct an abuse of the provisions of this chapter.

1 (10) TRANSPORTATION.--

2 (a) The sheriff shall consult with the governing board
3 of the county as to the most appropriate and cost-effective
4 means of transportation for forensic clients committed for
5 treatment or training. Such consultation shall include, but
6 is not limited to, consideration of the cost to the county of
7 transportation performed by sheriff's department personnel as
8 opposed to transportation performed by other means and, if
9 sheriff's department personnel are to be used for
10 transportation, the effect such use will have, if any, on
11 service delivery levels of the sheriff's road patrol. After
12 such consultation with the governing board of the county, the
13 sheriff shall determine the most appropriate and
14 cost-effective means of transportation for forensic clients
15 committed for treatment or training.

16 (b) The governing board of each county is authorized
17 to contract with private transport companies for the
18 transportation of such clients ~~patients~~ to and from a ~~forensic~~
19 facility.

20 (c) Any company that transports a client ~~patient~~
21 pursuant to this section is considered an independent
22 contractor and is solely liable for the safe and dignified
23 transportation of the client ~~patient~~. Any transport company
24 that contracts with the governing board of a county for the
25 transport of clients ~~patients~~ as provided for in this section
26 shall be insured and provide no less than \$100,000 in
27 liability insurance with respect to the transportation of the
28 clients ~~patients~~.

29 (d) Any company that contracts with a governing board
30 of a county to transport clients ~~patients~~ shall comply with
31

1 the applicable rules of the department to ensure the safety
2 and dignity of the clients ~~patients~~.

3 (11) LIABILITY FOR VIOLATIONS.--Any person who
4 violates or abuses any rights or privileges of a client
5 ~~patient~~ provided by this act is liable for damages as
6 determined by law. Any person who acts in good faith in
7 complying with the provisions of this act is immune from civil
8 or criminal liability for his or her actions in connection
9 with the admission, diagnosis, treatment, training, or
10 discharge of a client ~~patient~~ to or from a facility. However,
11 this subsection does not relieve any person from liability if
12 he or she is negligent.

13 Section 8. Section 916.175, Florida Statutes, is
14 renumbered as section 916.1081, Florida Statutes, and amended
15 to read:

16 916.1081 ~~916.175~~ Escape from ~~treatment~~ program;
17 penalty.--A defendant ~~client~~ involuntarily committed to the
18 department under the provisions of this chapter who escapes or
19 attempts to escape from a facility or program ~~commits the~~
20 ~~department is guilty of~~ a felony of the second degree,
21 punishable as provided in s. 775.082, s. 775.083, or s.
22 775.084.

23 Section 9. Section 916.178, Florida Statutes, is
24 renumbered as section 916.1085, Florida Statutes, and amended
25 to read:

26 916.1085 ~~916.178~~ Introduction or removal of certain
27 articles unlawful; penalty.--

28 (1)(a) Except as authorized by law or as specifically
29 authorized by the person in charge of a ~~forensic~~ facility, it
30 is unlawful to introduce into or upon the grounds of any
31 ~~forensic~~ facility under the supervision or control of the

1 department, or to take or attempt to take or send therefrom,
2 any of the following articles, which are hereby declared to be
3 contraband for the purposes of this section:

- 4 1. Any intoxicating beverage or beverage which causes
5 or may cause an intoxicating effect;
- 6 2. Any controlled substance as defined in chapter 893;
- 7 3. Any firearm or deadly weapon; or
- 8 4. Any other item ~~items~~ as determined by the
9 department, and as designated by departmental rule or by the
10 administrator of any facility, and designated by written
11 institutional policies, to be hazardous to the welfare of
12 patients or the operation of the facility.

13 (b) It is unlawful to transmit to, attempt to transmit
14 to, or cause or attempt to cause to be transmitted to or
15 received by any client ~~patient~~ of any facility any article or
16 thing declared by this section to be contraband, at any place
17 which is outside of the grounds of such facility, except as
18 authorized by law or as specifically authorized by the person
19 in charge of such facility.

20 (2)(a) All individuals or vehicles entering upon the
21 grounds of any ~~forensic~~ facility under the supervision or
22 control of the department shall be subject to reasonable
23 search and seizure of any contraband materials introduced
24 thereon, for the purpose of enforcement of this chapter.

25 (b) These provisions shall be enforced by
26 institutional security personnel as defined in s.
27 916.106(10)(6) ~~or by a law enforcement officer as defined in~~
28 s. 943.10.

29 (c) Whoever violates any provision of subparagraph
30 (1)(a)2. or subparagraph (1)(a)3. commits ~~is guilty of a~~

31

1 felony of the third degree, punishable as provided in s.
2 775.082, s. 775.083, or s. 775.084.

3 Section 10. Section 916.19, Florida Statutes, is
4 renumbered as section 916.1091, Florida Statutes, and amended
5 to read:

6 916.1091 ~~916.19~~ Duties, functions, and powers of
7 institutional security personnel.--In case of emergency, and
8 when necessary to provide protection and security to any
9 client patient, to the personnel, equipment, buildings, or
10 grounds of a department facility, or to citizens in the
11 surrounding community, institutional security personnel may,
12 when authorized by the administrator of the facility or his or
13 her designee when the administrator is not present, use a
14 chemical weapon against a patient housed in a forensic
15 facility. However, such weapon shall be used only to the
16 extent necessary to provide such protection and security.
17 Under no circumstances shall any such officer carry a chemical
18 weapon on his or her person except during the period of the
19 emergency for which its use was authorized. All chemical
20 weapons shall be placed in secure storage when their use is
21 not authorized as provided in this section.

22 Section 11. Section 916.20, Florida Statutes, is
23 renumbered as section 916.1093, Florida Statutes, and amended
24 to read:

25 916.1093 ~~916.20~~ Operation and administration; rules.--

26 (1) The department is authorized to promulgate rules,
27 enter into contracts, and do such things as may be necessary
28 and incidental to assure compliance with and to carry out the
29 provisions of this chapter in accordance with the stated
30 legislative intent.

31

1 (2) Rules of the department shall be adopted in
2 accordance with the provisions of chapter 120, the
3 Administrative Procedure Act.

4 Section 12. Part II of chapter 916, Florida Statutes,
5 consisting of sections 916.111, 916.115, 916.12, 916.13,
6 916.14, 916.145, 916.15, 916.16, and 916.17, is created and
7 entitled "Forensic Services for Persons Who Are Mentally Ill."

8 Section 13. Section 916.108, Florida Statutes, is
9 renumbered as section 916.111, Florida Statutes, and amended
10 to read:

11 916.111 ~~916.108~~ Training of mental health
12 experts.--The evaluation of defendants for competency to
13 proceed stand trial or for sanity at the time of the
14 commission of the offense shall be conducted in such a way as
15 to ensure uniform application of the criteria enumerated in
16 Rules 3.210 and 3.216, Florida Rules of Criminal Procedure.
17 The department shall develop, and may contract with accredited
18 institutions:

19 (1) To provide:

20 (a) A plan for training community mental health
21 professionals to perform forensic evaluations and to
22 standardize the criteria and procedures to be used in these
23 evaluations;

24 (b) Clinical protocols and procedures based upon the
25 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
26 Procedure; and

27 (c) Training for community mental health professionals
28 in the application of these protocols and procedures in
29 performing forensic evaluations and providing reports to the
30 courts; and

31

1 (2) To compile and maintain, the necessary information
2 for evaluating the success of this program, including the
3 number of persons trained, the cost of operating the program,
4 and the effect on the quality of forensic evaluations as
5 measured by appropriateness of admissions to state forensic
6 facilities and to community-based care programs.

7 Section 14. Section 916.11, Florida Statutes, is
8 renumbered as section 916.115, Florida Statutes, and amended
9 to read:

10 916.115 ~~916.11~~ Appointment of experts.--

11 (1)(a) Annually ~~Semiannually~~, the department shall
12 provide the courts with a list of mental health professionals
13 who have completed approved training as experts.

14 (b) The court may appoint no ~~more than three nor~~ fewer
15 than two experts to determine issues of the mental condition
16 of a defendant in a criminal case, including the issues of
17 competency to proceed stand trial, insanity, and involuntary
18 hospitalization or placement. The panel of experts may
19 evaluate the defendant in jail or in another appropriate local
20 facility.

21 (c) To the extent possible, at least one of the
22 appointed experts shall have completed forensic evaluator
23 training approved by the department and be either a
24 ~~state-employed psychiatrist, clinical~~ psychologist, or
25 physician ~~if in the local vicinity; a psychiatrist,~~
26 ~~psychologist, or physician designated by the district alcohol,~~
27 ~~drug abuse, and mental health program office; or a community~~
28 ~~mental health center psychiatrist, psychologist, or physician.~~

29 ~~(d) If a defendant's suspected mental condition is~~
30 ~~mental retardation, the court shall appoint the developmental~~
31 ~~services program of the Department of Health and~~

1 ~~Rehabilitative Services to examine the defendant and determine~~
2 ~~whether he meets the definition of "retardation" in s. 393.063~~
3 ~~and, if so, whether he is competent to stand trial.~~

4 (2) Expert witnesses appointed by the court to
5 evaluate ~~determine~~ the mental condition of a defendant in a
6 criminal case shall be allowed reasonable fees for services
7 rendered as evaluators of competence or sanity and as
8 witnesses, which shall be paid by the county in which the
9 indictment was found or the information or affidavit was
10 filed. State employees shall be paid expenses pursuant to s.
11 112.061. The fees shall be taxed as costs in the case. In
12 order for the experts to be paid for the services rendered,
13 the reports and testimony must explicitly address each of the
14 factors and follow the procedures set out in this chapter and
15 in the Rules of Criminal Procedure.

16 Section 15. Section 916.12, Florida Statutes, is
17 amended to read:

18 916.12 Mental competence to proceed ~~stand trial~~.--

19 (1) A defendant ~~person~~ is incompetent to proceed ~~stand~~
20 ~~trial~~ within the meaning of this chapter if the defendant ~~he~~
21 does not have sufficient present ability to consult with his
22 or her lawyer with a reasonable degree of rational
23 understanding or if the defendant ~~he~~ has no rational, as well
24 as factual, understanding of the proceedings against him or
25 her.

26 (2) The experts shall first consider factors related
27 to the issue of whether the defendant meets the criteria for
28 competence to proceed; that is, whether the defendant has
29 sufficient present ability to consult with counsel with a
30 reasonable degree of rational understanding and whether the
31

1 defendant has a rational, as well as factual, understanding of
2 the pending proceedings.
3 (3) In considering the issue of competence to proceed,
4 the examining experts shall first consider and specifically
5 include in their report the defendant's capacity to:
6 (a) Appreciate the charges or allegations against the
7 defendant;
8 (b) Appreciate the range and nature of possible
9 penalties, if applicable, that may be imposed in the
10 proceedings against the defendant;
11 (c) Understand the adversary nature of the legal
12 process;
13 (d) Disclose to counsel facts pertinent to the
14 proceedings at issue;
15 (e) Manifest appropriate courtroom behavior; and
16 (f) Testify relevantly;
17
18 and include in their report any other factor deemed relevant
19 by the experts.
20 (4) If the experts should find that the defendant is
21 incompetent to proceed, the experts shall report on any
22 recommended treatment for the defendant to attain competence
23 to proceed. In considering the issues relating to treatment,
24 the examining experts shall specifically report on each of the
25 following:
26 (a) The mental illness causing the incompetence.
27 (b) The treatment or treatments appropriate for the
28 mental illness of the defendant and an explanation of each of
29 the possible treatment alternatives in order of choices.
30
31

1 (c) The availability of acceptable treatment. If
2 treatment is available in the community, the expert shall so
3 state in the report.

4 (d) The likelihood of the defendant attaining
5 competence under the treatment recommended, an assessment of
6 the probable duration of the treatment required to restore
7 competence, and the probability that the defendant will attain
8 competence to proceed in the foreseeable future.

9 (5)(2) A defendant who, because of psychotropic
10 medication, is able to understand the nature of proceedings
11 and assist in the defendant's own ~~his~~ defense shall not
12 automatically be deemed incompetent to proceed ~~stand trial~~
13 simply because the defendant's ~~his~~ satisfactory mental
14 functioning is dependent upon such medication. As used in
15 this subsection, "psychotropic medication" means any drug or
16 compound used to treat mental or emotional disorders affecting
17 the mind, behavior, intellectual functions, perception, moods,
18 or emotions and includes antipsychotic, antidepressant,
19 antimanic, and antianxiety drugs.

20 Section 16. Section 916.13, Florida Statutes, is
21 amended to read:

22 916.13 Involuntary commitment of defendant adjudicated
23 incompetent to proceed ~~stand trial or incompetent for~~
24 ~~sentencing.--~~

25 (1) CRITERIA.--Every defendant who is charged with a
26 felony and who is ~~person~~ adjudicated incompetent to proceed
27 ~~stand trial or incompetent for sentencing~~, pursuant to the
28 applicable Florida Rules of Criminal Procedure, may be
29 involuntarily committed for treatment upon a finding by the
30 court of clear and convincing evidence that:

31

1 (a) The defendant ~~He~~ is mentally ill and because of
2 the his mental illness, ~~or that he is mentally retarded and~~
3 ~~because of his mental retardation:~~

4 1. The defendant ~~He~~ is manifestly incapable of
5 surviving alone or with the help of willing and responsible
6 family or friends, including available alternative services,
7 and, without treatment, the defendant ~~he~~ is likely to suffer
8 from neglect or refuse to care for himself or herself and such
9 neglect or refusal poses a real and present threat of
10 substantial harm to the defendant's ~~his~~ well-being; and or

11 2. There is a substantial likelihood that in the near
12 future the defendant ~~he~~ will inflict serious bodily harm on
13 himself or herself or another person, as evidenced by recent
14 behavior causing, attempting, or threatening such harm. ~~† and~~

15 (b) All available, less restrictive treatment
16 alternatives, including treatment in community residential
17 facilities or community inpatient or outpatient settings,
18 which would offer an opportunity for improvement of the
19 defendant's ~~his~~ condition have been judged to be
20 inappropriate.

21 (c) There is a substantial probability that the mental
22 illness causing the defendant's incompetence will respond to
23 treatment and the defendant will regain competency to proceed
24 in the reasonably foreseeable future.

25 (2) ADMISSION TO A MENTAL HEALTH FORENSIC FACILITY.--

26 (a) A defendant ~~Every person~~ who has been charged with
27 a felony and who has been adjudicated incompetent to proceed
28 ~~stand trial or incompetent for sentencing~~, and who meets the
29 criteria for commitment to the department under the provisions
30 of this chapter, may ~~shall~~ be committed to the department, and
31 the department shall ~~may~~ retain and treat the defendant. No

1 later than 6 months after the date of admission ~~commitment~~ or
2 at the end of any period of extended commitment, or at any
3 time the administrator or designee shall have determined that
4 the defendant has regained competency to proceed ~~stand trial~~
5 or no longer meets the criteria for continued commitment, the
6 administrator or designee shall file a report with the court
7 pursuant to the applicable Florida Rules of Criminal
8 Procedure.

9 ~~(b) A defendant adjudicated incompetent to stand trial
10 due to his mental retardation may be ordered into a secure
11 facility designated by the department for retarded defendants.
12 The department may not transfer a client from the secure
13 facility to another residential setting without first
14 notifying the court; the department may transfer such
15 defendant unless the department receives written objection to
16 the transfer from the court within 30 days after receipt of
17 the notice by the court. No retarded client may be placed in
18 the designated secure facility except by criminal court order.
19 However, if criminal charges are subsequently dropped and the
20 client is involuntarily admitted to retardation residential
21 services, the placement at the secure facility may be
22 continued if so ordered by the committing court following a
23 hearing with the same due process requirements as set out in
24 s. 393.11 for an initial involuntary admission. Such court
25 hearings shall be held at least annually, with notice to the
26 state attorney, and each order of continuing placement shall
27 be based on a finding that the client is likely to physically
28 injure others as specified in s. 393.11(1)(c)2. In no case may
29 a client's placement in a secure facility exceed the maximum
30 sentence for the crime for which he was charged.~~

31

1 Section 17. Section 916.14, Florida Statutes, is
2 amended to read:

3 916.14 Statute of limitations; former jeopardy.--The
4 statute of limitations shall not be applicable to criminal
5 charges dismissed because of the incompetency of the defendant
6 to proceed ~~stand trial~~. If a defendant is declared
7 incompetent to proceed ~~stand trial~~ during trial and afterwards
8 is declared competent to proceed, ~~the defendant's stand trial,~~
9 ~~his~~ other, uncompleted trial shall not constitute former
10 jeopardy.

11 Section 18. Section 916.145, Florida Statutes, is
12 amended to read:

13 916.145 Adjudication of incompetency due to mental
14 illness ~~retardation~~; dismissal of charges.--The charges
15 against any defendant adjudicated incompetent to proceed ~~stand~~
16 ~~trial~~ due to the defendant's ~~his~~ mental illness ~~retardation~~
17 shall be dismissed without prejudice if the defendant remains
18 incompetent to proceed within a reasonable time after such
19 determination, not to exceed 5 years ~~stand trial 2 years after~~
20 ~~such adjudication~~, unless the court in its order specifies its
21 reasons for believing that the defendant will become competent
22 to proceed within the foreseeable future ~~stand trial~~ and
23 specifies the time within which the defendant is expected to
24 become competent to proceed ~~stand trial~~. The charges against
25 the defendant are dismissed without prejudice to the state to
26 refile the charges should the defendant be declared competent
27 to proceed in the future.

28 Section 19. Section 916.15, Florida Statutes, is
29 amended to read:

30 916.15 Involuntary commitment of defendant adjudicated
31 not guilty by reason of insanity.--

1 (1) A defendant ~~person~~ who is acquitted of criminal
2 charges because of a finding of not guilty by reason of
3 insanity may be involuntarily committed pursuant to such
4 finding if the defendant ~~he~~ is mentally ill and, because of
5 the ~~his~~ illness, is manifestly dangerous to himself or herself
6 or others.

7 (2) Every defendant ~~person~~ acquitted of criminal
8 charges by reason of insanity and found to meet the criteria
9 for involuntary commitment may be committed and treated in
10 accordance with the provisions of this section and the
11 applicable Florida Rules of Criminal Procedure. The
12 department shall admit a defendant so adjudicated to an
13 appropriate facility or program for treatment and shall ~~may~~
14 retain and treat such defendant. No later than 6 months after
15 the date of admission, prior to the end of any period of
16 extended commitment, or at any time the administrator or
17 designee shall have determined that the defendant no longer
18 meets the criteria for continued commitment placement, the
19 administrator or designee shall file a report with the court
20 pursuant to the applicable Florida Rules of Criminal
21 Procedure.

22 (3) In all proceedings under this subsection, both the
23 ~~<U>~~defendant ~~patient~~ and the state shall have the right to a
24 hearing before the committing court. Evidence at such hearing
25 may be presented by the hospital administrator or the
26 administrator's ~~his~~ designee as well as by the state and the
27 defendant. The defendant shall have the right to counsel at
28 any such hearing. In the event that a defendant cannot afford
29 counsel, the court shall appoint the public defender to
30 represent the defendant ~~him~~. The parties shall have access to
31 the defendant's records at the treating facilities and may

1 interview or depose personnel who have had contact with the
2 defendant at the treating facilities.

3 Section 20. Section 916.16, Florida Statutes, is
4 amended to read:

5 916.16 Jurisdiction of committing court.--

6 (a) The committing court shall retain jurisdiction in
7 the case of any ~~defendant patient~~ hospitalized ~~as incompetent~~
8 to proceed or because of a finding of not guilty by reason of
9 insanity or, if retarded, admitted to retardation residential
10 services pursuant to this chapter. No such ~~defendant person~~
11 may be released except by order of the committing court. The
12 administrative hearing examiner shall have no jurisdiction to
13 determine issues of continuing hospitalization or release of
14 any ~~defendant person~~ admitted pursuant to this chapter.

15 (b) The committing court shall retain jurisdiction in
16 the case of any defendant placed on conditional release. No
17 such defendant may be released from the conditions of release
18 except by order of the committing court.

19 Section 21. Section 916.17, Florida Statutes, is
20 amended to read:

21 916.17 Conditional release.--

22 (1) The committing court may order a conditional
23 release of any defendant who has been found to be incompetent
24 to proceed or committed according to a finding of incompetency
25 to stand trial or an adjudication of not guilty by reason of
26 insanity, based on an approved plan for providing appropriate
27 outpatient care and treatment. Upon a recommendation that At
28 such time as the administrator shall determine outpatient
29 treatment of the defendant is to be appropriate, ~~he may file~~
30 with the court, with copies to all parties, a written plan for
31 outpatient treatment, including recommendations from qualified

1 professionals, must be filed with the court, with copies to
2 all parties. Such a plan may also be submitted by the
3 defendant and filed with the court with copies to all parties.

4 The plan shall include:

5 (a) Special provisions for residential care or
6 adequate supervision of the defendant.

7 (b) Provisions for outpatient mental health services.

8 (c) If appropriate, recommendations for auxiliary
9 services such as vocational training, educational services, or
10 special medical care.

11

12 In its order of conditional release, the court shall specify
13 the conditions of release based upon the release plan and
14 shall direct the appropriate agencies or persons to submit
15 periodic reports to the court regarding the defendant's
16 compliance with the conditions of the release and progress in
17 treatment, with copies to all parties.

18 (2) Upon the filing of an affidavit or statement under
19 oath by any person ~~if at any time it appears~~ that the
20 defendant has failed to comply with the conditions of release,
21 that the defendant's condition has deteriorated to the point
22 that inpatient care is required, or that the release
23 conditions should be modified, the court shall hold a hearing
24 within 7 days after receipt of the affidavit or statement
25 under oath. After the hearing, the court ~~and~~ may modify the
26 release conditions. The court may also ~~or~~ order that the
27 defendant be returned to the department if it is found, after
28 the appointment and report of experts, that the person meets
29 the criteria for involuntary further treatment.

30 (3) If at any time it is determined after a hearing
31 that the defendant no longer requires court-supervised

1 followup care, the court shall terminate its jurisdiction in
2 the cause and discharge the defendant.

3 Section 22. Part III of chapter 916, Florida Statutes,
4 consisting of sections 916.301, 916.3012, 916.302, 916.3025,
5 916.303, and 916.304, is created and entitled "Forensic
6 Services for Persons Who Are Mentally Retarded or Autistic."

7 Section 23. Section 916.301, Florida Statutes, is
8 created to read:

9 916.301 Appointment of experts.--

10 (1) Annually the department shall provide the courts
11 with a list of mental retardation and autism professionals who
12 are qualified to perform evaluations of defendants who are
13 alleged to be incompetent to proceed due to mental retardation
14 or autism. The courts may use professionals from this list
15 when ordering evaluations for defendants suspected of being
16 retarded or autistic.

17 (2) If a defendant's suspected mental condition is
18 mental retardation or autism, the court shall appoint the
19 Developmental Services Program Office of the department who
20 will select two experts to evaluate whether the defendant
21 meets the definition of retardation or autism and, if so,
22 whether the defendant is competent to proceed. One of the
23 experts selected by the Developmental Services Program Office
24 must be a psychologist and the other must be a social service
25 professional.

26 (3) The Developmental Services Program Office shall
27 obtain evaluations from a psychologist licensed or authorized
28 by law to practice psychology in this state, with experience
29 in evaluating persons suspected of having mental retardation
30 or autism, and a social service professional with experience
31 in working with persons with mental retardation or autism.

1 (a) The psychologist shall evaluate whether the
2 defendant meets the definition of mental retardation or autism
3 and, if so, whether the defendant is incompetent to proceed
4 due to mental retardation or autism.

5 (b) The social service professional shall provide a
6 social and developmental history of the defendant.

7 (4) At the request of any party, the court must
8 appoint at least one, but not more than two, additional
9 experts to evaluate the defendant. The expert or experts
10 appointed by the court will evaluate whether the defendant
11 meets the definition of mental retardation or autism and, if
12 so, whether the defendant is competent to proceed. All
13 evaluations ordered by the court must be from qualified
14 experts licensed in this state with experience in evaluating
15 persons with mental retardation or autism.

16 (5) Expert witnesses selected by the Developmental
17 Services Program Office or appointed by the court to evaluate
18 the mental condition of an indigent defendant in a criminal
19 case shall be allowed reasonable fees for services rendered as
20 evaluators and as witnesses, which shall be paid by the county
21 in which the indictment was found or in which the information
22 or affidavit was filed. State employees shall be paid
23 expenses pursuant to s. 112.061. The fees shall be taxed as
24 costs in the case. In order for the experts to be paid for
25 the services rendered, the reports and testimony must
26 explicitly address each of the factors and follow the
27 procedures set out in this chapter and in the Rules of
28 Criminal Procedure.

29 Section 24. Section 916.3012, Florida Statutes, is
30 created to read:

31 916.3012 Mental competence to proceed.--

1 (1) A defendant whose suspected mental condition is
2 mental retardation or autism is incompetent to proceed within
3 the meaning of this chapter if the defendant does not have
4 sufficient present ability to consult with the defendant's
5 lawyer with a reasonable degree of rational understanding or
6 if the defendant has no rational, as well as factual,
7 understanding of the proceedings against the defendant.

8 (2) The experts shall first consider whether the
9 defendant meets the definition of mental retardation or autism
10 and, if so, consider the factors related to the issue of
11 whether the defendant meets the criteria for competence to
12 proceed; that is, whether the defendant has sufficient present
13 ability to consult with counsel with a reasonable degree of
14 rational understanding and whether the defendant has a
15 rational, as well as factual, understanding of the pending
16 proceedings.

17 (3) In considering the issue of competence to proceed,
18 the examining experts shall first consider and specifically
19 include in their report the defendant's capacity to:

20 (a) Appreciate the charges or allegations against the
21 defendant;

22 (b) Appreciate the range and nature of possible
23 penalties, if applicable, that may be imposed in the
24 proceedings against the defendant;

25 (c) Understand the adversary nature of the legal
26 process;

27 (d) Disclose to counsel facts pertinent to the
28 proceedings at issue;

29 (e) Manifest appropriate courtroom behavior; and

30 (f) Testify relevantly;

31

1 and include in their report any other factor deemed relevant
2 by the experts.

3 (4) If the experts should find that the defendant is
4 incompetent to proceed, the experts shall report on any
5 recommended training for the defendant to attain competence to
6 proceed. In considering the issues relating to training, the
7 examining experts shall specifically report on each of the
8 following:

9 (a) The mental retardation or autism causing the
10 incompetence.

11 (b) The training appropriate for the mental
12 retardation or autism of the defendant and an explanation of
13 each of the possible training alternatives in order of
14 choices.

15 (c) The availability of acceptable training. If
16 training is available in the community, the expert shall so
17 state in the report.

18 (d) The likelihood of the defendant attaining
19 competence under the training recommended, an assessment of
20 the probable duration of the training required to restore
21 competence, and the probability that the defendant will attain
22 competence to proceed in the foreseeable future.

23 Section 25. Section 916.302, Florida Statutes, is
24 created to read:

25 916.302 Involuntary commitment of defendant determined
26 to be incompetent to proceed due to mental retardation or
27 autism.--

28 (1) CRITERIA.--Every defendant who is charged with a
29 felony and who is found to be incompetent to proceed, pursuant
30 to this chapter and the applicable Florida Rules of Criminal
31

1 Procedure, may be involuntarily committed for training upon a
2 finding by the court of clear and convincing evidence:
3 (a) That the defendant is mentally retarded or
4 autistic.
5 (b) There is a substantial likelihood that in the near
6 future the defendant will inflict serious bodily harm on
7 himself or herself or another person, as evidenced by recent
8 behavior causing, attempting, or threatening such harm.
9 (c) All available, less restrictive alternatives,
10 including services provided in community residential
11 facilities or other community settings, which would offer an
12 opportunity for improvement of the defendant's condition have
13 been judged to be inappropriate.
14 (d) There is a substantial probability that the mental
15 retardation or autism causing the defendant's incompetence
16 will respond to training and the defendant will regain
17 competency to proceed in the reasonably foreseeable future.
18 (2) ADMISSION TO A FACILITY.--
19 (a) A defendant who has been charged with a felony and
20 who is found to be incompetent to proceed, and who meets the
21 criteria for commitment to the department under the provisions
22 of this chapter, shall be committed to the department, and the
23 department shall retain and serve the defendant. No later
24 than 6 months after the date of admission or at the end of any
25 period of extended commitment or at any time the administrator
26 or designee shall have determined that the defendant has
27 regained competency to proceed or no longer meets the criteria
28 for continued commitment, the administrator or designee shall
29 file a report with the court pursuant to this chapter and the
30 applicable Florida Rules of Criminal Procedure.
31

1 (b) A defendant determined to be incompetent to
2 proceed due to mental retardation or autism may be ordered by
3 a criminal circuit court into a secure facility designated by
4 the department for mentally retarded or autistic defendants.

5 (c) The department may transfer a defendant from a
6 designated secure facility to another designated secure
7 facility and must notify the court of the transfer within 30
8 days after the transfer is completed.

9 (d) The department may not transfer a defendant from a
10 designated secure facility to a nonsecure facility without
11 first notifying the court, and all parties, 30 days before the
12 proposed transfer. If the court objects to the proposed
13 transfer to a nonsecure facility, it must send its written
14 objection to the department. The department may transfer the
15 defendant unless it receives the written objection from the
16 court within 30 days after the court's receipt of the notice
17 of the proposed transfer.

18 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

19 (a) If a defendant is both retarded or autistic and
20 mentally ill, and mental illness is the primary disability,
21 the mental illness must be ameliorated before the defendant
22 can benefit from training from the developmental services
23 program. Therefore, a dually diagnosed defendant must first
24 be placed for treatment with the appropriate forensic mental
25 illness treatment program until the mental illness is
26 controlled to the extent that the defendant can benefit from
27 training.

28 (b) Placement in a training program for retarded or
29 autistic defendants may not be made until the defendant's
30 mental condition is stable, the defendant's medications are at
31

1 a minimum dosage and have been unchanged for at least 45 days,
2 and the defendant can benefit from training.

3 (c) Transfer of a dually diagnosed defendant from a
4 mental illness treatment program to a retardation or autism
5 training program may not be made until the committing court
6 approves the transfer and issues an order authorizing the
7 transfer.

8 Section 26. Section 916.3025, Florida Statutes, is
9 created to read:

10 916.3025 Jurisdiction of committing court.--

11 (a) The committing court shall retain jurisdiction in
12 the case of any defendant found to be incompetent to proceed
13 and ordered into a secure facility designated by the
14 department for mentally retarded or autistic defendants. No
15 defendant may be released except by the order of the
16 committing court.

17 (b) The committing court shall retain jurisdiction in
18 the case of any defendant placed on conditional release. No
19 such defendant may be released from the conditions of release
20 except by order of the committing court.

21 Section 27. Section 916.303, Florida Statutes, is
22 created to read:

23 916.303 Determination of incompetency due to mental
24 retardation or autism; dismissal of charges.--

25 (1) The charges against any defendant found to be
26 incompetent to proceed due to mental retardation or autism
27 shall be dismissed without prejudice if the defendant remains
28 incompetent to proceed within a reasonable time after such
29 determination, not to exceed 2 years, unless the court in its
30 order specifies its reasons for believing that the defendant
31 will become competent to proceed within the foreseeable future

1 and specifies the time within which the defendant is expected
2 to become competent to proceed. The charges against the
3 defendant are dismissed without prejudice to the state to
4 refile the charges should the defendant be declared competent
5 to proceed in the future.

6 (2) If the charges are dismissed and if the defendant
7 is considered to lack sufficient capacity to give express and
8 informed consent to a voluntary application for services and
9 lacks the basic survival and self-care skills to provide for
10 the person's well-being or is likely to physically injure
11 himself or herself or others if allowed to remain at liberty,
12 the department may apply to involuntarily admit the defendant
13 to residential services under chapter 393. If the defendant is
14 involuntarily admitted under chapter 393 and there is a
15 substantial likelihood that in the near future the defendant
16 will inflict serious bodily harm on himself or herself or
17 another person, as evidenced by recent behavior causing,
18 attempting, or threatening such harm; the defendant continues
19 to present a danger of escape; and all available, less
20 restrictive alternatives, including services provided in
21 community residential facilities or other community settings,
22 which would offer an opportunity for improvement of the
23 defendant's condition have been judged to be inappropriate,
24 then the defendant may be ordered into a specialized
25 involuntary residential training program designated by the
26 department for mentally retarded or autistic defendants whose
27 charges have been dismissed. The department shall file a
28 petition for involuntary admission under chapter 393 in the
29 circuit court which committed the defendant.

30 Section 28. Section 916.304, Florida Statutes, is
31 created to read:

1 916.304 Conditional release.--
2 (1) The committing court may order a conditional
3 release of any defendant who has been found to be incompetent
4 to proceed, based on an approved plan for providing continuing
5 community-based training. Upon a recommendation that
6 communty-based training for the defendant is appropriate, a
7 written plan for community-based training, including
8 recommendations from qualified professionals, may be filed
9 with the court, with copies to all parties. Such a plan may
10 also be submitted by the defendant to the court with copies to
11 all parties. The plan shall include:
12 (a) Special provisions for residential care and
13 adequate supervision of the defendant including recommended
14 location of placement.
15 (b) Recommendations for auxiliary services such as
16 vocational training, psychological training, educational
17 services, leisure services, and special medical care.
18
19 In its order of conditional release, the court shall specify
20 the conditions of release based upon the release plan and
21 shall direct the appropriate agencies or persons to submit
22 periodic reports to the courts regarding the defendant's
23 compliance with the conditions of the release and progress in
24 training, with copies to all parties.
25 (2) Upon the filing of an affidavit or statement under
26 oath by any person that the defendant has failed to comply
27 with the conditions of release, that the defendant's condition
28 has deteriorated, or that the release conditions should be
29 modified, the court shall hold a hearing within 7 days after
30 receipt of the affidavit or statement under oath. After the
31 hearing, the court may modify the release conditions. The

1 court may also order that the defendant be placed into more
2 appropriate programs for further training or may order the
3 defendant to be involuntarily admitted to residential services
4 of the department if it is found, after the appointment and
5 report of experts, that the defendant meets the criteria for
6 involuntary residential services.

7 (3) If at any time it is determined after a hearing
8 that the defendant no longer requires court-supervised
9 followup care, the court shall terminate its jurisdiction in
10 the cause and discharge the defendant.

11 Section 29. This act shall take effect October 1,
12 1997.

13
14 *****

15 HOUSE SUMMARY

16 Revises and reorganizes ch. 916, F.S., the Forensic
17 Client Services Act. Creates pt. I of ch. 916, F.S.,
18 containing general provisions, pt. II of ch. 916, F.S.,
19 relating to forensic services for persons who are
20 mentally ill, and pt. III of ch. 916, F.S., relating to
21 forensic services for persons who are mentally retarded
22 or autistic. Revises specified provisions relating to
23 estimated amount of pay for jurors and witnesses, to
24 conform a reference. Provides for a specialized
25 involuntary residential training program for certain
26 mentally retarded or autistic defendants.
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