

By Senator Gutman

34-1095-98

1 A bill to be entitled
2 An act relating to criminal procedure; revising
3 ch. 916, F.S., relating to mentally deficient
4 and mentally ill defendants; amending s.
5 916.10, F.S.; redesignating ch. 916, F.S., as
6 the "Forensic Procedure Act"; amending s.
7 916.105, F.S.; providing legislative intent
8 with respect to the treatment of defendants who
9 are guilty but insane; amending s. 916.106,
10 F.S.; revising definitions; amending s.
11 916.107, F.S.; providing for rights of
12 defendants who have been found guilty but
13 insane; amending s. 916.108, F.S.; providing
14 for the training of mental health experts;
15 amending s. 916.11, F.S.; providing for
16 appointing expert witnesses; transferring,
17 renumbering, and amending s. 916.16, F.S.;
18 providing for the committing court to retain
19 jurisdiction of a person committed under ch.
20 916, F.S.; transferring, renumbering, and
21 amending s. 916.175, F.S.; providing a penalty
22 for a person who escapes from involuntary
23 commitment; transferring, renumbering, and
24 amending s. 916.178, F.S.; prohibiting the
25 introduction or removal of certain articles
26 from a forensic facility; transferring and
27 renumbering s. 916.19, F.S., relating to
28 institutional security personnel; transferring
29 and renumbering s. 916.20, F.S., relating to
30 the authority of the Department of Health to
31 adopt rules with respect to ch. 916, F.S.;

1 creating s. 916.118, F.S.; providing
2 definitions; creating s. 916.119, F.S.;
3 providing for applicability; amending s.
4 916.12, F.S.; providing for determining a
5 person's mental competence to proceed; amending
6 s. 916.13, F.S.; providing for involuntary
7 commitment of a defendant adjudicated
8 incompetent to proceed; amending s. 916.14,
9 F.S.; providing that the statute of limitations
10 does not apply if a defendant is adjudicated
11 incompetent to proceed; amending s. 916.145,
12 F.S.; providing for dismissal of charges;
13 repealing s. 916.15, F.S., relating to the
14 involuntary commitment of a defendant
15 adjudicated not guilty by reason of insanity;
16 amending s. 916.17, F.S.; providing for the
17 conditional release of a defendant adjudicated
18 incompetent to proceed; creating s. 916.21,
19 F.S.; providing circumstances under which a
20 defendant may be found guilty but insane;
21 creating s. 916.22, F.S.; requiring that a
22 defendant give notice of intent to plead guilty
23 but insane; creating s. 916.23, F.S.; providing
24 for a mental examination of the defendant;
25 creating s. 916.24, F.S.; providing
26 requirements for the form of the verdict;
27 creating s. 916.25, F.S.; providing for entry
28 of a judgment of guilty but insane; providing
29 for notification of the victim; creating s.
30 916.26, F.S.; specifying circumstances under
31 which the court shall place a defendant under

1 the jurisdiction of the Forensic Security
2 Review Board; providing for appealing such
3 order; creating s. 916.27, F.S.; providing for
4 commitment of a defendant to the Department of
5 Health; providing a standard of proof for
6 dispositional proceedings; creating s. 916.28,
7 F.S.; providing for an order of discharge;
8 creating s. 916.29, F.S.; providing for the
9 conditional release of a defendant by the
10 Forensic Security Review Board; providing for
11 conditions of release; providing for revoking
12 such release; providing for application to the
13 board for discharge from or modification of the
14 order of conditional release; creating s.
15 916.31, F.S.; providing for the Forensic
16 Security Review Board to issue an order of
17 commitment; providing for application for
18 discharge or conditional release; creating s.
19 916.32, F.S.; providing for a hearing on
20 discharge, conditional release, or commitment;
21 specifying rights of the defendant at the
22 hearing; creating s. 916.33, F.S.; providing
23 for discharging the defendant from the
24 jurisdiction of the Forensic Security Review
25 Board; providing for review; creating s.
26 916.34, F.S.; providing requirements for the
27 court with respect to a crime committed by a
28 defendant under the jurisdiction of the board;
29 creating s. 916.35, F.S.; establishing the
30 Forensic Security Review Board within the
31 Department of Health; providing for the

1 Governor to appoint the members of the board;
2 providing for terms of office; authorizing the
3 payment of per diem expenses; providing for
4 meetings of the board; providing for judicial
5 review of an order of the board; creating s.
6 916.37, F.S.; requiring the Department of
7 Health to adopt rules for evaluating and
8 treating defendants committed to the
9 department; providing requirements for
10 conditional release plans; creating s. 916.38,
11 F.S.; authorizing the Forensic Security Review
12 Board to issue subpoenas; providing for
13 enforcement by the circuit court; creating s.
14 916.39, F.S.; authorizing a facility
15 administrator to apply for a leave of absence
16 on behalf of a defendant; requiring review by
17 the board; creating s. 916.41, F.S.; requiring
18 the state attorneys to file certain statistical
19 records with respect to cases in which the
20 defense of guilty but insane is asserted;
21 creating s. 916.42, F.S.; requiring the
22 Forensic Security Review Board to make certain
23 reports to the Governor and Legislature;
24 amending s. 40.29, F.S., relating to pay of
25 jurors and witnesses; conforming a
26 cross-reference to changes made by the act;
27 requesting the Supreme Court to adopt rules to
28 reflect the provisions of the act; providing
29 appropriations; providing for application of
30 the act; providing an effective date.
31

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

2

3 Section 1. Section 916.10, Florida Statutes, is
4 amended to read:

5 916.10 Short title.--This chapter may be cited as the
6 "Forensic Procedure Client Services Act."

7 Section 2. Section 916.105, Florida Statutes, is
8 amended to read:

9 916.105 Legislative intent.--

10 (1) It is the intent of the Legislature that the
11 Department of Health ~~and Rehabilitative Services~~ establish,
12 locate, and maintain separate and secure facilities and
13 programs for the treatment of forensic clients who have been
14 found to be mentally retarded or mentally ill defendants, or
15 who are guilty but insane ~~have been acquitted of crimes by~~
16 ~~reason of insanity~~, and who, while still under the
17 jurisdiction of the committing court, are committed to the
18 department for mental retardation or mental health services as
19 incompetent to proceed under ss. 916.118-916.17 or, with
20 respect to forensic clients who are guilty but insane, are
21 committed to the department under the jurisdiction of the
22 Forensic Security Review Board for disposition under ss.
23 916.21-916.42 ~~the provisions of this chapter~~. The separate,
24 secure facilities designated by the department as forensic
25 facilities shall be sufficient to accommodate the number of
26 clients committed ~~under the conditions noted above~~, except
27 those clients found by the department or the Forensic Security
28 Review Board to be appropriate for treatment in a community or
29 civil mental health treatment facility. Forensic ~~Such~~
30 facilities shall be designed and administered so that ingress
31 and egress, together with other requirements of this chapter,

1 may be strictly controlled by staff responsible for security
2 in order to protect the client, hospital personnel, other
3 clients, and citizens in adjacent communities.

4 (2) It is further the intent of the Legislature that
5 treatment programs for forensic clients who are ~~found to be~~
6 ~~mentally retarded or mentally ill defendants and are~~
7 ~~involuntarily committed to certain mental retardation or~~
8 ~~mental health facilities, and who are still under the~~
9 ~~jurisdiction of the committing court,~~ be provided in such a
10 manner, subject to security requirements and other mandates of
11 this chapter, as to ensure the rights of the said clients and
12 the protection of the public, as provided in this chapter.

13 (3) It is the intent of the Legislature that
14 evaluation and treatment of mentally ill and mentally retarded
15 defendants be provided in community inpatient or outpatient
16 settings, in community residential facilities, or in civil,
17 nonforensic facilities, whenever this is a feasible
18 alternative to treatment in a state forensic facility.

19 Section 3. Section 916.106, Florida Statutes, is
20 amended to read:

21 916.106 Definitions.--As used in ~~For the purposes of~~
22 this chapter, the term:

23 (1) "Chemical weapon" means any shell, cartridge,
24 bomb, gun, or other device capable of emitting
25 chloroacetophenone (CN), chlorobenzalmalononitrile (CS) or any
26 derivatives thereof in any form, or any other agent with
27 lacrimatory properties, and shall include products such as
28 that commonly known as "mace."

29 ~~(2) "Court" means the circuit court.~~

30 ~~(2)(3)~~ (2) "Department" means the Department of Health ~~and~~
31 ~~Rehabilitative Services.~~

1 ~~(3)(4)~~ "Forensic client" or "patient" means any
2 mentally retarded or mentally ill defendant, or any person
3 found guilty but insane,~~person~~ who is committed to the
4 department or to the Forensic Security Review Board and placed
5 into treatment as provided in this chapter. The terms apply to
6 an adult or a juvenile who is prosecuted as an adult.~~and:~~

7 ~~(a) Who has been determined to need treatment for a~~
8 ~~mental illness or mental retardation;~~

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

15 ~~(c) Who has been determined by the department to:~~

16 ~~1. Be dangerous to himself or herself or others; or~~

17 ~~2. Present a clear and present potential to escape.~~

18 ~~(4)(5)~~ "Forensic facility" means a separate and secure
19 facility established within the department for the treatment
20 of forensic clients. Such separate and secure facilities
21 shall be security-grade buildings located on grounds distinct
22 in location from other treatment facilities for persons who
23 are mentally ill. The Florida State Hospital may ~~shall~~ not be
24 required to maintain separate treatment facilities for
25 forensic clients ~~mentally ill or mentally retarded persons~~
26 ~~found incompetent for trial or acquitted of a criminal offense~~
27 ~~by reason of insanity.~~

28 ~~(5)(6)~~ "Institutional security personnel" means staff
29 members who meet or exceed the requirements of s. 943.13 and
30 who are responsible for providing security, for protection of
31 forensic clients and personnel, for the enforcement of rules,

1 for prevention and investigation of unauthorized activities,
2 and for safeguarding the interests of citizens in the
3 surrounding communities.

4 ~~(7) "Mentally ill" means having an impairment of the~~
5 ~~emotional processes, of the ability to exercise conscious~~
6 ~~control of one's actions, or of the ability to perceive~~
7 ~~reality or to understand, which impairment substantially~~
8 ~~interferes with a person's ability to meet the ordinary~~
9 ~~demands of living, regardless of etiology; except that, for~~
10 ~~the purposes of this chapter, the term does not include simple~~
11 ~~intoxication, persons who are solely mentally retarded, or~~
12 ~~conditions manifested only by antisocial behavior or drug~~
13 ~~addiction.~~

14 ~~(8) "Mental retardation" means significantly~~
15 ~~subaverage general intellectual functioning existing~~
16 ~~concurrently with deficits in adaptive behavior and manifested~~
17 ~~during the period from conception to age 18. "Significantly~~
18 ~~subaverage general intellectual functioning," for the purpose~~
19 ~~of this definition, means performance which is two or more~~
20 ~~standard deviations from the mean score on a standardized~~
21 ~~intelligence test specified in the rules of the department.~~
22 ~~"Adaptive behavior," for the purpose of this definition, means~~
23 ~~the effectiveness or degree with which an individual meets the~~
24 ~~standards of personal independence and social responsibility~~
25 ~~expected of the individual's age, cultural group, and~~
26 ~~community.~~

27 Section 4. Section 916.107, Florida Statutes, is
28 amended to read:

29 916.107 Rights of forensic clients.--

30 (1) RIGHT TO INDIVIDUAL DIGNITY.--

31

1 (a) The policy of the state is that the individual
2 dignity of the patient shall be respected at all times and
3 upon all occasions, including any occasion when the patient is
4 detained, transported, or treated. Persons who are mentally
5 ill or mentally retarded and who are charged with, or who have
6 been convicted of, committing criminal acts, or who have been
7 found guilty but insane, shall receive appropriate treatment.
8 In a criminal case involving a person who has been adjudicated
9 incompetent to proceed ~~stand trial~~ or who has been found not
10 guilty but insane ~~by reason of insanity~~, or who has otherwise
11 been found by the court to meet the criteria for involuntary
12 commitment, a jail may be used as an emergency facility for up
13 to 15 days after ~~from~~ the date the department receives a
14 completed copy of the commitment order containing the
15 documentation required by law ~~Rules 3.212 and 3.217, Florida~~
16 ~~Rules of Criminal Procedure~~. In every case in which a
17 mentally ill or mentally retarded person is held in a jail,
18 evaluation and treatment shall be provided in the jail by the
19 local receiving facility, the patient's physician or clinical
20 psychologist, or any other mental health program available to
21 provide such treatment until the person is transferred to the
22 custody of the department.

23 (b) Mentally ill or mentally retarded persons who are
24 committed to the department pursuant to this chapter and who
25 are initially placed in, or subsequently transferred to, a
26 civil mental health treatment facility shall have the same
27 rights as other persons committed to civil facilities as
28 described in part I of chapter 394, as long as they remain in
29 a civil facility.

30 (2) RIGHT TO TREATMENT.--

31

1 (a) The policy of the state is that the department
2 shall not deny treatment of mental illness or mental
3 retardation to any client and that ~~no~~ services shall not be
4 delayed at a forensic mental health treatment facility because
5 the client is unable to pay. However, every reasonable effort
6 to collect appropriate reimbursement for the cost of providing
7 mental health services to persons able to pay for the
8 services, including reimbursement from insurance or other
9 third-party payments, shall be made by forensic facilities and
10 jails that provide ~~providing~~ services pursuant to this chapter
11 and in accordance with the provisions of s. 402.33.

12 (b) Each client who is a patient at a forensic
13 facility shall be given, at the time of admission and at
14 regular intervals thereafter, a physical examination, which
15 shall include screening for communicable disease by a health
16 practitioner authorized by law to give such screenings and
17 examinations.

18 (c) Every patient committed pursuant to this chapter
19 ~~act~~ shall be afforded the opportunity to participate in
20 activities designed to enhance self-image and the beneficial
21 effects of other treatments, as determined by the facility.

22 (d) Not more than 30 days after admission, each
23 patient shall ~~have and~~ receive, in writing, an individualized
24 treatment plan that ~~which~~ the patient has had an opportunity
25 to assist in preparing.

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

27 (a) A person committed to the department pursuant to
28 this chapter ~~act~~ shall be asked to give express and informed
29 written consent for treatment. "Express and informed consent"
30 or "consent" means consent given voluntarily in writing after
31 a conscientious and sufficient explanation and disclosure of

1 the purpose of the proposed treatment, the common side effects
2 of the treatment, if any, the expected duration of the
3 treatment, and any alternative treatment available. If a
4 patient in a forensic facility refuses such treatment as is
5 deemed necessary by the patient's multidisciplinary treatment
6 team at the forensic facility for the appropriate care of the
7 patient and the safety of the patient or others, such
8 treatment may be provided under the following circumstances:

9 1. In an emergency situation in which there is
10 immediate danger to the safety of the patient or others, such
11 treatment may be provided upon the written order of a
12 physician for a period not to exceed 48 hours, excluding
13 weekends and legal holidays. If, after the 48-hour period,
14 the patient has not given express and informed consent to the
15 treatment initially refused, the administrator of the forensic
16 facility shall, within 48 hours, excluding weekends and legal
17 holidays, petition the committing court or the circuit court
18 serving the county in which the facility is located, at the
19 option of the facility administrator, for an order authorizing
20 the continued treatment of the patient. In the interim,
21 treatment may be continued without the consent of the patient
22 upon the continued written order of a physician who has
23 determined that the emergency situation continues to present a
24 danger to the safety of the patient or others.

25 2. In a situation other than an emergency situation,
26 the administrator of the forensic facility shall petition the
27 court for an order authorizing the treatment of the patient.
28 The order shall allow such treatment for a period not to
29 exceed 90 days from the date of the entry of the order. Unless
30 the court is notified in writing that the patient has provided
31 express and informed consent in writing or that the patient

1 has been discharged by the committing court, the administrator
2 shall, prior to the expiration of the initial 90-day order,
3 petition the court for an order authorizing the continuation
4 of treatment for another 90-day period. This procedure shall
5 be repeated until the patient provides consent or is
6 discharged by the committing court.

7 3. At the hearing on the issue of whether the court
8 should enter an order authorizing treatment for which a
9 patient has refused to give express and informed consent, the
10 court shall determine by clear and convincing evidence that
11 the patient is mentally ill or mentally retarded as defined in
12 this chapter, that the treatment not consented to is essential
13 to the care of the patient, and that the treatment not
14 consented to is not experimental and does not present an
15 unreasonable risk of serious, hazardous, or irreversible side
16 effects. In arriving at the substitute judgment decision, the
17 court must consider at least the following factors:

- 18 a. The patient's expressed preference regarding
19 treatment;
20 b. The probability of adverse side effects;
21 c. The prognosis without treatment; and
22 d. The prognosis with treatment.

23
24 The hearing shall be as convenient to the patient as may be
25 consistent with orderly procedure and shall be conducted in
26 physical settings not likely to be injurious to the patient's
27 condition. The court may appoint a master to preside at the
28 hearing. The patient or the patient's guardian, and his or her
29 representative, shall be provided with a copy of the petition
30 and the date, time, and location of the hearing. The patient
31 has the right to have an attorney represent him or her at the

1 hearing, and, if the patient is indigent, the court shall
2 appoint the office of the public defender to represent the
3 patient at the hearing. The patient may testify or not, as he
4 or she chooses, and has the right to cross-examine witnesses
5 testifying on behalf of the facility and may present his or
6 her own witnesses.

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

21 (4) QUALITY OF TREATMENT.--Each patient committed
22 pursuant to this chapter shall receive treatment suited to his
23 or her needs, which shall be administered skillfully, safely,
24 and humanely with full respect for the patient's dignity and
25 personal integrity. Each patient shall receive such medical,
26 vocational, social, educational, and rehabilitative services
27 as the patient's condition requires to bring about an early
28 return to his or her community. In order to achieve this
29 goal, the department is directed to coordinate its forensic
30 mental health and mental retardation programs with all other

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1 programs of the department and other appropriate state
2 agencies.

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

4 (a) Each patient committed pursuant to the provisions
5 of this chapter has the right to communicate freely and
6 privately with persons outside the facility unless it is
7 determined that such communication is likely to be harmful to
8 the patient or others.

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

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

30 (d) Each forensic facility shall establish reasonable
31 rules governing visitors, visiting hours, and the use of

1 telephones by patients in the least restrictive possible
2 manner.

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

10 (f) The department shall adopt rules providing a
11 procedure for reporting abuse. Facility staff shall be
12 required, as a condition of employment, to become familiar
13 with the procedures for the reporting of abuse.

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

26 (7) VOTING IN PUBLIC ELECTIONS.--A patient committed
27 pursuant to this chapter who is eligible to vote according to
28 the laws of the state has the right to vote in the primary and
29 general elections. The department shall establish rules to
30 enable patients to obtain voter registration forms,
31 applications for absentee ballots, and absentee ballots.

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

13 (a) Such clinical record may be released:

14 1. To such persons and agencies as are designated by
15 the patient or the patient's legal guardian.

16 2. To persons authorized by order of court.

17 3. To a qualified researcher, as defined by rule; a
18 staff member of the facility; or an employee of the department
19 when the administrator of the facility or secretary of the
20 department deems it necessary for treatment of the patient,
21 maintenance of adequate records, compilation of treatment
22 data, or evaluation of programs.

23 4. For statistical and research purposes if the
24 information is abstracted in such a way as to protect the
25 identity of individuals.

26 5. If a patient receiving services pursuant to this
27 chapter has declared an intention to harm other persons;
28 however, only the declaration may be disclosed.

29 6. To the parent of a mentally ill or mentally
30 retarded person who is committed to, or is being treated by, a
31 forensic mental health facility or program when such

1 information is limited to that person's treatment plan and
2 current physical and mental condition. Release of such
3 information shall be in accordance with the code of ethics of
4 the profession involved.

5 (b) Notwithstanding other provisions of this
6 subsection, the department may request or receive from or
7 provide to any of the following entities client information to
8 facilitate treatment, rehabilitation, and continuity of care
9 of any forensic client:

10 1. The Social Security Administration and the United
11 States Department of Veterans Affairs;

12 2. Law enforcement agencies, state attorneys, public
13 defenders or other attorneys defending the patient, and judges
14 in regard to the patient's status;

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

17 4. Community agencies and others expected to provide
18 followup care to the patient upon his or her return to the
19 community.

20 (c) The department shall ~~may~~ provide notice to any
21 patient's next of kin or first representative regarding any
22 serious medical illness or the death of the patient.

23 (d)1. Any law enforcement agency, treatment facility,
24 or other governmental agency that receives information
25 pursuant to this subsection shall maintain the confidentiality
26 of such information except as otherwise provided herein.

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

30 (9) HABEAS CORPUS.--

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1 (a) At any time, and without notice, a person detained
2 by a facility, or a relative, friend, guardian,
3 representative, or attorney on behalf of such person, may
4 petition for a writ of habeas corpus to question the cause and
5 legality of such detention and request that the circuit court
6 issue a writ for release. Each patient committed pursuant to
7 this chapter shall receive a written notice of the right to
8 petition for a writ of habeas corpus.

9 (b) A patient or the patient's guardian or
10 representatives may file a petition in the circuit court in
11 the county where the patient is committed alleging that the
12 patient is being unjustly denied a right or privilege granted
13 herein or that a procedure authorized herein is being abused.
14 Upon the filing of such a petition, the circuit court shall
15 have the authority to conduct a judicial inquiry and to issue
16 any appropriate order to correct an abuse of the provisions of
17 this chapter.

18 (10) TRANSPORTATION.--

19 (a) The sheriff shall consult with the governing board
20 of the county as to the most appropriate and cost-effective
21 means of transportation for forensic clients committed for
22 treatment. Such consultation shall include, but is not
23 limited to, consideration of the cost to the county of
24 transportation performed by sheriff's department personnel as
25 opposed to transportation performed by other means and, if
26 sheriff's department personnel are to be used for
27 transportation, the effect such use will have, if any, on
28 service delivery levels of the sheriff's road patrol. After
29 such consultation with the governing board of the county, the
30 sheriff shall determine the most appropriate and
31

1 cost-effective means of transportation for forensic clients
2 committed for treatment.

3 (b) The governing board of each county may ~~is~~
4 ~~authorized to~~ contract with private transport companies for
5 the transportation of such patients to and from a forensic
6 facility.

7 (c) Any company that transports a patient pursuant to
8 this section is considered an independent contractor and is
9 solely liable for the safe and dignified transportation of the
10 patient. Any transport company that contracts with the
11 governing board of a county for the transport of patients as
12 provided for in this section shall be insured and provide no
13 less than \$100,000 in liability insurance with respect to the
14 transportation of the patients.

15 (d) Any company that contracts with a governing board
16 of a county to transport patients shall comply with the
17 applicable rules of the department to ensure the safety and
18 dignity of the patients.

19 (11) LIABILITY FOR VIOLATIONS.--Any person who
20 violates or abuses any rights or privileges of a patient
21 provided by this chapter ~~act~~ is liable for damages as
22 determined by law. Any person who acts in good faith in
23 complying with the provisions of this chapter ~~act~~ is immune
24 from civil or criminal liability for his or her actions in
25 connection with the admission, diagnosis, treatment, or
26 discharge of a patient to or from a facility. However, this
27 subsection does not relieve any person from liability if the
28 person is negligent.

29 Section 5. Section 916.108, Florida Statutes, is
30 amended to read:

31

1 916.108 Training of mental health experts.--The
2 evaluation of defendants for competency to proceed ~~stand trial~~
3 or sanity at the time of the commission of the offense shall
4 be conducted in such a way as to ensure uniform application of
5 all applicable ~~the~~ criteria ~~enumerated in Rules 3.210 and~~
6 ~~3.216, Florida Rules of Criminal Procedure.~~ The department
7 shall develop, and may contract with accredited institutions:

8 (1) To provide:

9 (a) A plan for training community mental health
10 professionals to perform forensic evaluations and to
11 standardize the applicable criteria and procedures to be used
12 in these evaluations as provided in ss. 916.118-916.42.~~+~~

13 (b) Clinical protocols and procedures based upon the
14 applicable ~~criteria of Rules 3.210 and 3.216, Florida Rules~~
15 ~~of Criminal Procedure; and~~

16 (c) Training for community mental health professionals
17 in the application of these protocols and procedures in
18 performing forensic evaluations and providing reports to the
19 courts.~~+~~ ~~and~~

20 (2) To compile and maintain the necessary information
21 for evaluating the success of the forensic training ~~this~~
22 program, including the number of persons trained, the cost of
23 operating the program, and the effect on the quality of
24 forensic evaluations as measured by appropriateness of
25 admissions to state forensic facilities and to community-based
26 care programs.

27 Section 6. Section 916.11, Florida Statutes, is
28 amended to read:

29 916.11 Appointment of experts.--
30
31

1 (1)(a) Semiannually, the department shall provide the
2 courts with a list of mental health professionals who have
3 completed approved training as experts.

4 (b) The court may appoint not ~~no~~ more than three or
5 ~~nor~~ fewer than two experts to determine issues of the mental
6 condition of a defendant in a criminal case, including the
7 issues of competency to proceed ~~stand trial~~, insanity, and
8 involuntary hospitalization or placement. The panel of
9 experts may evaluate the defendant in jail or in another
10 appropriate local facility.

11 (c) To the extent possible, at least one of the
12 appointed experts shall be either a state-employed
13 psychiatrist, psychologist, or physician if in the local
14 vicinity; a psychiatrist, psychologist, or physician
15 designated by the district alcohol, drug abuse, and mental
16 health program office; or a community mental health center
17 psychiatrist, psychologist, or physician.

18 (d) If a defendant's suspected mental condition is
19 mental retardation, the court shall appoint the developmental
20 services program of the department ~~of Health and~~
21 ~~Rehabilitative Services~~ to examine the defendant and determine
22 whether she or he meets the definition of "retardation" in s.
23 393.063 and, if so, whether she or he is competent to stand
24 trial.

25 (2) Expert witnesses appointed by the court to
26 determine the mental condition of a defendant in a criminal
27 case shall be allowed reasonable fees for services rendered as
28 witnesses, which shall be paid by the county in which the
29 indictment was found or the information or affidavit was
30 filed. State employees shall be paid expenses pursuant to s.
31 112.061. The fees shall be taxed as costs in the case.

1 Section 7. Section 916.16, Florida Statutes, is
2 transferred, renumbered as section 916.111, Florida Statutes,
3 and amended to read:

4 916.111 ~~916.16~~ Jurisdiction of committing court.--The
5 committing court shall retain jurisdiction in the case of any
6 patient hospitalized or, if retarded, admitted to retardation
7 residential services under ~~pursuant to~~ this chapter. ~~No~~ Such
8 person may not be released except by order of the committing
9 court. The administrative hearing examiner does not ~~shall~~ have
10 ~~no~~ jurisdiction to determine issues of continuing
11 hospitalization or release of any person admitted under
12 ~~pursuant to~~ this chapter.

13 Section 8. Section 916.175, Florida Statutes, is
14 transferred, renumbered as section 916.112, Florida Statutes,
15 and amended to read:

16 916.112 ~~916.175~~ Escape from treatment program;
17 penalty.--A client involuntarily committed ~~to the department~~
18 ~~under the provisions of~~ this chapter who escapes or attempts
19 to escape from such involuntary commitment 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 transferred, renumbered as section 916.113, Florida Statutes,
25 and amended to read:

26 916.113 ~~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 that ~~which~~
5 causes 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 patient of any facility any article or thing
16 declared by this section to be contraband, at any place which
17 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 are ~~shall be~~ subject to reasonable
23 search and seizure of any contraband materials introduced
24 thereon, for purpose of enforcement of this chapter.

25 (b) These provisions shall be enforced by
26 institutional security personnel as defined in s. 916.106(5)
27 ~~s. 916.106(6)~~.

28 (c) Whoever violates any provision of subparagraph
29 (1)(a)2. or subparagraph (1)(a)3. commits ~~is guilty of~~ a
30 felony of the third degree, punishable as provided in s.
31 775.082, s. 775.083, or s. 775.084.

1 Section 10. Section 916.19, Florida Statutes, is
2 transferred and renumbered as section 916.114, Florida
3 Statutes.

4 Section 11. Section 916.20, Florida Statutes, is
5 transferred and renumbered as section 916.115, Florida
6 Statutes.

7 Section 12. Section 916.118, Florida Statutes, is
8 created to read:

9 916.118 Definitions.--As used in ss. 916.118-916.17,
10 the term:

11 (1) "Mentally ill defendant" or "mentally retarded
12 defendant" means a person who is mentally ill, as defined in
13 subsection (2), or mentally retarded, as defined in subsection
14 (3), who is committed to the department, and who:

15 (a) Has been determined to need treatment for mental
16 illness or mental retardation;

17 (b) Has been found incompetent to proceed, has
18 criminal charges pending, or has pleaded nolo contendere to,
19 or been found guilty of, a criminal offense regardless of
20 adjudication, but is not an inmate of the Department of
21 Corrections or any other correctional facility; and

22 (c) Has been determined by the department to:

23 1. Be dangerous to himself or herself, or to others;

24 or

25 2. Present a clear and present potential to escape.

26 (2) "Mentally ill" means having an impairment of the
27 emotional processes, of the ability to exercise conscious
28 control of one's actions, or of the ability to perceive
29 reality or to understand, which impairment substantially
30 interferes with a person's ability to meet the ordinary
31 demands of living, regardless of etiology. For the purposes of

1 ss. 916.118-916.17, the term does not include simple
2 intoxication, a person who is solely mentally retarded, or a
3 condition that is manifested only by antisocial behavior or
4 drug addiction.

5 (3) "Mentally retarded" means significantly subaverage
6 general intellectual functioning, with concurrent deficits in
7 adaptive behavior, which is manifested from birth until age
8 18. For the purpose of this subsection, the phrase
9 "significantly subaverage general intellectual functioning"
10 means performance at a level that is two or more standard
11 deviations below the mean score on a standardized intelligence
12 test specified by rule of the department. For this purpose of
13 this subsection, the phrase "adaptive behavior" means the
14 effectiveness or degree with which an individual meets the
15 standards of personal independence and social responsibility
16 expected of an individual of his or her age, cultural group,
17 and community.

18 Section 13. Section 916.119, Florida Statutes, is
19 created to read:

20 916.119 Applicability of ss. 916.118-916.17.--Sections
21 916.118-916.17 apply to any mentally ill or mentally retarded
22 defendant defined in s. 916.118.

23 Section 14. Section 916.12, Florida Statutes, is
24 amended to read:

25 916.12 Mental competence to proceed ~~stand trial~~.--

26 (1) A person is incompetent to proceed ~~stand trial~~
27 within the meaning of ss. 916.118-916.17 ~~this chapter~~ if the
28 person does not have sufficient present ability to consult
29 with her or his lawyer with a reasonable degree of rational
30 understanding or if the person does not have a ~~has no~~ rational

31

1 ~~and, as well as~~ factual understanding of the proceedings
2 against her or him.

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

14 Section 15. Section 916.13, Florida Statutes, is
15 amended to read:

16 916.13 Involuntary commitment of defendant adjudicated
17 incompetent to proceed ~~stand trial or incompetent for~~
18 ~~sentencing~~.--

19 (1) CRITERIA.--Every defendant ~~person~~ adjudicated
20 incompetent to proceed ~~stand trial or incompetent for~~
21 ~~sentencing~~, pursuant to the applicable Florida Rules of
22 Criminal Procedure, may be involuntarily committed for
23 treatment upon a finding by the court of clear and convincing
24 evidence that:

25 (a) The person is mentally ill and because of her or
26 his mental illness, or that the person is mentally retarded
27 and because of her or his mental retardation:

28 1. The person is manifestly incapable of surviving
29 alone or with the help of willing and responsible family or
30 friends, including available alternative services, and,
31 without treatment, the person is likely to suffer from neglect

1 or refuse to care for herself or himself and such neglect or
2 refusal poses a real and present threat of substantial harm to
3 her or his well-being; or

4 2. There is a substantial likelihood that in the near
5 future the person will inflict serious bodily harm on herself
6 or himself or another person, as evidenced by recent behavior
7 causing, attempting, or threatening such harm; and

8 (b) All available, less restrictive treatment
9 alternatives, including treatment in community residential
10 facilities or community inpatient or outpatient settings,
11 which would offer an opportunity for improvement of the
12 person's condition have been judged to be inappropriate.

13 (2) ADMISSION FOR TREATMENT TO A FORENSIC FACILITY.--

14 (a) Every defendant ~~person~~ who has been adjudicated
15 incompetent to proceed ~~stand trial or incompetent for~~
16 ~~sentencing~~, and who meets the criteria for commitment to the
17 department under ss. 916.118-916.17 ~~the provisions of this~~
18 ~~chapter~~, shall be committed to the department, and the
19 department may retain and treat the defendant. No later than
20 6 months after the date of commitment or at the end of any
21 period of extended commitment, or at any time the
22 administrator shall have determined that the defendant has
23 regained competency to proceed ~~stand trial~~ or no longer meets
24 the criteria for continued commitment, the administrator shall
25 file a report with the court pursuant to the applicable
26 Florida Rules of Criminal Procedure.

27 (b) A defendant adjudicated incompetent to proceed
28 ~~stand trial~~ due to her or his mental retardation may be
29 ordered into a secure facility designated by the department
30 for retarded defendants. The department may not transfer a
31 client from the secure facility to another residential setting

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

19 Section 16. Section 916.14, Florida Statutes, is
20 amended to read:

21 916.14 Statute of limitations; former jeopardy.--The
22 statute of limitations is ~~shall~~ not be applicable to criminal
23 charges dismissed because of the incompetency of the defendant
24 to proceed ~~stand trial~~. If a defendant is declared
25 incompetent to proceed ~~stand trial~~ during trial and afterwards
26 is declared competent to proceed ~~stand trial~~, the defendant's
27 other, uncompleted trial does ~~shall~~ not constitute former
28 jeopardy.

29 Section 17. Section 916.145, Florida Statutes, is
30 amended to read:

31

1 916.145 Adjudication of incompetency due to mental
2 retardation; dismissal of charges.--The charges against any
3 defendant adjudicated incompetent to proceed ~~stand trial~~ due
4 to his or her mental retardation shall be dismissed if the
5 defendant remains incompetent to proceed ~~stand trial~~ 2 years
6 after such adjudication, unless the court in its order
7 specifies its reasons for believing that the defendant will
8 become competent to proceed ~~stand trial~~ and the time within
9 which the defendant is expected to become competent to proceed
10 ~~stand trial~~.

11 Section 18. Section 916.15, Florida Statutes, is
12 repealed.

13 Section 19. Section 916.17, Florida Statutes, is
14 amended to read:

15 916.17 Conditional release.--

16 (1) The committing court may order a conditional
17 release of any defendant who has been committed under ss.
18 916.118-916.17 ~~according to a finding of incompetency to stand~~
19 ~~trial or an adjudication of not guilty by reason of insanity,~~
20 based on an approved plan for providing appropriate outpatient
21 care and treatment. ~~If~~ At such time as the administrator
22 determines that ~~shall determine~~ outpatient treatment of the
23 defendant is to be appropriate, she or he may file with the
24 court, with copies to all parties, a written plan for
25 outpatient treatment, including recommendations from qualified
26 professionals. Such a plan may be submitted by the defendant.
27 The plan must ~~shall~~ include:

28 (a) Special provisions for residential care or
29 adequate supervision of the defendant.

30 (b) Provisions for outpatient mental health services.

31

1 (c) If appropriate, recommendations for auxiliary
2 services such as vocational training, educational services, or
3 special medical care.

4
5 In its order of conditional release, the court shall specify
6 the conditions of release based upon the release plan and
7 shall direct the appropriate agencies or persons to submit
8 periodic reports to the court regarding the defendant's
9 compliance with the conditions of the release and progress in
10 treatment, with copies to all parties.

11 (2) If at any time it appears that the defendant has
12 failed to comply with the conditions of release, that the
13 defendant's condition has deteriorated to the point that
14 inpatient care is required, or that the release conditions
15 should be modified, the court shall hold a hearing within 7
16 days and may modify the release conditions or order that the
17 defendant be returned to the department for further treatment.

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

22 Section 20. Section 916.21, Florida Statutes, is
23 created to read:

24 916.21 Guilty but insane; evidence.--

25 (1) A defendant is guilty but insane if, because of a
26 mental disease or defect, the defendant:

27 (a) Did not know what he or she was doing or did not
28 know the consequences of what he or she did; or

29 (b) Knew what he or she was doing and knew the
30 consequences of what he or she did, but did not know it was
31 wrong.

1 (2) As used in ss. 916.21-916.42, the term "mental
2 disease or defect" does not include an abnormality manifested
3 only by repeated criminal or otherwise antisocial conduct or
4 any abnormality constituting solely a personality disorder.

5 (3) A mental disease or defect that constitutes
6 insanity is an affirmative defense through which the defendant
7 must assert and prove by clear and convincing evidence that,
8 at the time the act constituting the criminal offense was
9 committed, the defendant, as a result of a mental disease or
10 defect, was unable to appreciate the nature and effect of the
11 wrongfulness of the act.

12 Section 21. Section 916.22, Florida Statutes, is
13 created to read:

14 916.22 Notice prerequisite to defense; content.--

15 (1) A defendant may not introduce evidence on the
16 issue of insanity unless he or she gives notice of intent to
17 do so in the manner provided in subsection (2).

18 (2) The defendant shall make a plea of not guilty and
19 shall file a written notice of intent to assert an insanity
20 defense under ss. 916.21-916.42. If the court finds just cause
21 for failure to file the notice at the time of making the plea,
22 notice may be filed at any time after the plea, but before
23 trial. If the defendant fails to file such notice, the
24 defendant may not introduce evidence for the establishment of
25 an insanity defense under ss. 916.21-916.42 unless the court,
26 in its discretion, permits such evidence to be introduced on
27 the basis that the defendant demonstrates just cause for
28 failure to file the notice.

29 Section 22. Section 916.23, Florida Statutes, is
30 created to read:

31

1 916.23 Mental examination of defendant; notice
2 required.--Upon the filing of the notice of intent to assert
3 an insanity defense under ss. 916.21-916.42, the state may
4 have at least one psychiatrist or licensed psychologist of its
5 selection examine the defendant. The state must file notice
6 with the court of its intention to have the defendant
7 examined.

8 Section 23. Section 916.24, Florida Statutes, is
9 created to read:

10 916.24 Form of verdict of guilty but insane.--When the
11 defendant is found guilty but insane under ss. 916.21-916.42,
12 the verdict and judgment must so state.

13 Section 24. Section 916.25, Florida Statutes, is
14 created to read:

15 916.25 Entry of order; victim notification.--

16 (1)(a) After entry of a judgment of guilty but insane,
17 the court shall, on the basis of the evidence given at the
18 trial, or at a separate hearing if requested by either party,
19 make an order of commitment to the department for custody,
20 care, and treatment; an order of conditional release, pending
21 a determination as to care and treatment upon an initial
22 hearing by the Forensic Security Review Board; or an order of
23 discharge, whichever is appropriate under ss. 916.21-916.42.

24 (b) With respect to an order of commitment to the
25 department for custody, care, and treatment or an order of
26 conditional release pending determination by the board as to
27 care and treatment, the Forensic Security Review Board shall
28 determine the care and treatment of the defendant and has
29 jurisdiction for such purpose under ss. 916.21-916.42.

1 (c) The committing court retains continuing
2 jurisdiction over a defendant found guilty but insane until
3 the court issues a final order of discharge.

4 (2) If the court makes an order of commitment to the
5 department for custody, care, and treatment or an order of
6 conditional release pending determination as to care and
7 treatment upon an initial hearing by the Forensic Security
8 Review Board, the court shall also:

9 (a) State on the record the offense for which the
10 defendant was charged.

11 (b) Make specific findings in its order as to whether
12 there is a victim of the offense for which the defendant has
13 been found guilty but insane and, if so, whether the victim
14 wishes to be notified of any hearings by the Forensic Security
15 Review Board which concern the defendant or of any conditional
16 release of the defendant, discharge of the defendant, or
17 escape of the defendant from custody.

18 Section 25. Section 916.26, Florida Statutes, is
19 created to read:

20 916.26 Order giving jurisdiction to the Forensic
21 Security Review Board; order of commitment or conditional
22 release; notice; appeal.--

23 (1) Following the entry of a judgment under s. 916.24
24 and the dispositional determination under s. 916.25, the court
25 shall order that the defendant be placed under the
26 jurisdiction of the Forensic Security Review Board if the
27 court finds that:

28 (a) The defendant was charged with a felony or was
29 charged with a misdemeanor committed during the course of a
30 criminal episode in which the defendant caused physical injury
31 or risk of physical injury to another;

1 (b) By a preponderance of the evidence, the defendant
2 is affected by a mental disease or defect and, because of such
3 condition, is manifestly dangerous to others; and

4 (c) The defendant requires commitment to the
5 department for custody, care, and treatment or conditional
6 release pending determination as to care and treatment upon an
7 initial hearing by the board under ss. 916.21-916.42.

8 (2) The determination as to whether the defendant
9 should be committed to the department for custody, care, and
10 treatment or conditionally released pending determination as
11 to care and treatment upon an initial hearing by the board
12 under ss. 916.21-916.42 shall be made as follows:

13 (a) If the court finds that the defendant is affected
14 by a mental disease or defect and, because of such condition,
15 is manifestly dangerous to others and is not a proper subject
16 for conditional release, the court shall order the person
17 committed to the department for custody, care, and treatment,
18 pending determination as to care and treatment upon an initial
19 hearing by the board in accordance with ss. 916.21-916.42.

20 (b)1. If the court finds that the defendant is
21 affected by a mental disease or defect and, because of such
22 condition, is manifestly dangerous to others, but the
23 defendant can be adequately controlled with supervision and
24 treatment if conditionally released and that necessary
25 supervision and treatment are available, the court may order
26 the defendant conditionally released pending determination as
27 to care and treatment upon an initial hearing by the board,
28 subject to any supervisory orders of the court in the best
29 interests of justice, the protection of society, and the
30 welfare of the person.

31

1 2. The court shall designate an appropriate person or
2 state, county, or local agency to supervise the defendant upon
3 release, subject to such conditions as the court directs in
4 the order for conditional release. The court shall notify the
5 supervisor of the designated agency and shall provide the
6 supervisor an opportunity to be heard before the defendant is
7 released to supervision.

8 3. After receiving an order entered under this
9 paragraph, the court-designated supervisor shall assume
10 immediate supervision of the defendant pending the initial
11 board hearing. If, at the initial board hearing, the board
12 approves the court-designated supervisor and conditionally
13 releases the defendant as provided in s. 916.29, the
14 court-designated supervisor shall continue to supervise the
15 defendant pursuant to the direction of the board, and must
16 report in writing at least once each month to the board
17 concerning the defendant's compliance with the court's
18 conditions of release.

19 (3) For purposes of ss. 916.21-916.42, a defendant who
20 is affected by a mental disease or defect that is in a state
21 of remission is considered to have a mental disease or defect
22 that requires supervision if the disease may, with reasonable
23 probability, occasionally become active and, when active,
24 render the defendant manifestly dangerous to others.

25 (4) Before determining whether a person should be
26 conditionally released pending determination as to care and
27 treatment upon an initial hearing by the board, the court may
28 order evaluations, examinations, and compliance as provided in
29 ss. 916.21-916.42.

30 (5) In making its determination as to whether a
31 defendant should be committed to the department for custody,

1 care, and treatment or conditionally released pending
2 determination as to care and treatment upon an initial hearing
3 by the board, the court's primary concern shall be the
4 protection of the public.

5 (6) If the court conditionally releases the defendant
6 pending determination as to care and treatment upon an initial
7 hearing by the board, the court shall notify the board in
8 writing of the court's order of conditional release, the
9 supervisor designated, and all other conditions of release.
10 The defendant shall remain on conditional release pending an
11 initial hearing by the board in accordance with ss.
12 916.21-916.42. Upon compliance with this section and subject
13 to final discharge by the committing court, the board shall
14 assume jurisdiction over the defendant.

15 (7) An order of the court under this section is a
16 final order and may be appealed by the defendant found guilty
17 but insane. The defendant is entitled, on appeal, to suitable
18 counsel. If the defendant is indigent, an attorney shall be
19 appointed to represent him or her.

20 (8) Upon placing a defendant under the jurisdiction of
21 the board, the court shall notify the defendant of the right
22 to appeal and the right to a hearing before the board in
23 accordance with ss. 916.29(6) and 916.31(4).

24 Section 26. Section 916.27, Florida Statutes, is
25 created to read:

26 916.27 Commitment to the department or conditional
27 release to the board; standard of proof.--

28 (1) Following the entry of a judgment under s. 916.24
29 and the dispositional determination under s. 916.25, if the
30 court finds by a preponderance of the evidence that the
31 defendant is affected by a mental disease or defect and,

1 because of such condition, is manifestly dangerous to others
2 and requires commitment to the department for custody, care,
3 and treatment or conditional release to the board, the court
4 shall make such disposition of the person under s. 916.26.

5 (2) Unless stated otherwise, the standard of proof in
6 all dispositional proceedings under ss. 916.21-916.42 is a
7 preponderance of the evidence.

8 Section 27. Section 916.28, Florida Statutes, is
9 created to read:

10 916.28 Order of discharge.--Following the entry of a
11 judgment under s. 916.24 and the dispositional determination
12 under s. 916.25, if the court finds that the defendant is no
13 longer affected by a mental disease or defect or, if so
14 affected, is no longer manifestly dangerous to others and is
15 not in need of care, supervision, or treatment, the court
16 shall order the defendant discharged from custody.

17 Section 28. Section 916.29, Florida Statutes, is
18 created to read:

19 916.29 Conditional release by Forensic Security Review
20 Board; supervision; termination, modification, or discharge;
21 hearing.--

22 (1) The conditional release of a defendant by the
23 Forensic Security Review Board includes, but is not limited
24 to:

25 (a) The monitoring of mental health treatment under
26 the supervisory order of the board.

27 (b) The supervision of the board's conditions of
28 release under subsection (2).

29 (c) The supervision of the court's conditions of
30 release under s. 916.26(2)(b).

31

1 (2)(a) If the Forensic Security Review Board
2 determines:

3 1. Upon its initial hearing:

4 a. That a defendant who has been committed by the
5 court to the department under s. 916.26(2)(a) for custody,
6 care, and treatment; or

7 b. That a defendant who has been conditionally
8 released by the court pending board determination as to care
9 and treatment;

10 2. Upon any hearing, that a defendant who has been
11 committed by the board to the department for custody, care,
12 and treatment

13
14 is affected by a mental disease or defect and, because of such
15 condition, is manifestly dangerous to others but can be
16 adequately controlled with supervision and treatment if
17 conditionally released by the board, and that necessary
18 supervision and treatment are available, the board may order
19 such defendant conditionally released, subject to supervisory
20 orders of the board which are in the best interest of justice,
21 the protection of the public, and the welfare of the
22 defendant.

23 (b) The board may designate any person or any state,
24 county, or local agency the board considers capable of
25 supervising the defendant's care and treatment upon release,
26 subject to conditions that the board and the committing court
27 directs in the conditional release order. If the defendant has
28 been conditionally released by the court pending an initial
29 hearing by the board, the board shall authorize the
30 court-designated supervisor at the initial hearing to continue
31 supervision, unless the defendant or the court-designated

1 supervisor demonstrates at the initial hearing that a
2 different supervisor is necessary. The board shall notify the
3 defendant or agency to whom care and treatment supervision is
4 designated and shall provide such defendant or agency an
5 opportunity to be heard before the release of the defendant to
6 supervision.

7 (c) After receiving an order entered under this
8 section, the designated supervisor shall assume supervision of
9 the defendant pursuant to the direction of the board, and must
10 report in writing not less than once per month to the board
11 concerning the supervised defendant's compliance with the
12 board's conditions of release.

13 (d) Subject to its duties to safeguard the best
14 interests of justice, the protection of society, and the
15 welfare of the defendant, the board shall make every
16 reasonable effort to assure continuity of supervision.

17 (3) Conditions of release contained in orders entered
18 under this section and s. 916.26(2)(b) may be modified from
19 time to time, and a defendant's conditional release may be
20 terminated by order of the board.

21 (4) For purposes of ss. 916.21-916.42, a defendant who
22 is affected by a mental disease or defect that is in a state
23 of remission is considered to have a mental disease or defect
24 requiring supervision when the disease may, with reasonable
25 probability, occasionally become active and, when active,
26 render the defendant manifestly dangerous to others. In such
27 case, the defendant may be continued on conditional release by
28 the board as provided in this section.

29 (5)(a) As a condition of release, the board may
30 require the defendant to report to any state or local mental
31 health program for evaluation. Whenever medical, psychiatric,

1 or psychological treatment is recommended, the board may order
2 the defendant, as a condition of release, to cooperate with
3 and accept the treatment from the program.

4 (b) The program to which the defendant is referred for
5 evaluation shall perform the evaluation and submit a written
6 report of its findings to the board. If the program finds that
7 treatment of the defendant is appropriate, it shall include
8 its recommendations for treatment in the report to the board.

9 (c) Whenever treatment is provided by the program, it
10 shall furnish reports to the board on a regular basis
11 concerning the progress of the defendant.

12 (d) Copies of all reports submitted to the board under
13 this section shall be furnished to the department, the
14 defendant, and the defendant's counsel. The confidentiality of
15 these reports shall be determined under s. 916.107(8).

16 (e) The program shall comply with any other conditions
17 of release prescribed by order of the board under this section
18 or by order of the court under s. 916.26(2)(b).

19 (6)(a) If, at any time while a defendant is
20 conditionally released under the jurisdiction of the board, it
21 appears to the board or its chairperson that the defendant has
22 violated the terms of his or her conditional release or that
23 the mental health of the defendant has changed, the board or
24 its chairperson may order the defendant returned to the
25 custody of the department for evaluation or treatment. A
26 written order of the board, or its chairperson on behalf of
27 the board, is sufficient warrant for any officer, as defined
28 in s. 943.10(4), to take the defendant into custody and
29 transport him or her as soon as practicable to the custody of
30 the department. Within 20 days after the return of the
31 defendant to the custody of the department, the board shall

1 conduct a hearing. Notice of the time and place of the hearing
2 shall be given to the defendant and the defendant's attorney.

3 (b) The board may continue the defendant on
4 conditional release or, if it finds by a preponderance of the
5 evidence that the defendant is affected by a mental disease or
6 defect and, because of such condition, is manifestly dangerous
7 to others and cannot be adequately controlled if conditional
8 release is continued, the board may order the defendant
9 committed to the department for custody, care, and treatment.

10 (c) The state must prove by a preponderance of the
11 evidence the defendant's unfitness for conditional release.

12 (d) A defendant in custody as provided in this
13 subsection has the same rights as any defendant who appears
14 before the board under s. 916.32.

15 (7) A community mental health program director, a
16 director of a facility providing treatment to a defendant on
17 conditional release, any officer as defined in s. 943.10(14),
18 or any person responsible for supervising a defendant on
19 conditional release may take a defendant on conditional
20 release into custody or request that the defendant be taken
21 into custody if there is reasonable cause to believe that the
22 defendant is manifestly dangerous to others because of a
23 mental disease or defect and that the defendant is in need of
24 immediate custody, care, or treatment. Any defendant taken
25 into custody under this subsection shall be transported and
26 held for not more than 15 days in a jail or other facility
27 before being transported to the department for custody, care,
28 and treatment. A defendant taken into custody under this
29 subsection has the same rights as any defendant who appears
30 before the board under s. 916.32.

31

1 (8)(a) Any defendant conditionally released under the
2 jurisdiction of the board may apply to the board for discharge
3 from or modification of the order of conditional release on
4 the grounds that the defendant is no longer affected by a
5 mental disease or defect or, if still so affected, is no
6 longer manifestly dangerous to others and no longer requires
7 supervision, medication, care, or treatment.

8 1. If the application is for discharge from an order
9 of conditional release, and if the board approves such
10 application, it shall be submitted to the committing court for
11 approval and final order of discharge.

12 2. The applicant, at any hearing under this
13 subsection, must prove his or her fitness for discharge from
14 or modification of the order of conditional release by a
15 preponderance of the evidence.

16 3. An application for discharge from or modification
17 of conditional release brought by any one defendant under this
18 subsection may not be filed more often than once every 6
19 months.

20 (b) Upon application by any defendant, or by an agency
21 responsible for supervision or treatment pursuant to an order
22 of conditional release, the board shall conduct a hearing to
23 determine whether to continue, modify, or terminate the
24 defendant's conditions of release. The application must be
25 accompanied by a report that sets forth the supporting facts.

26 (9) The board shall maintain and keep current the
27 medical, social, and criminal history of all defendants under
28 its jurisdiction. The confidentiality of records maintained by
29 the board shall be determined under s. 916.107(8).

30 (10) In any determination as to whether a defendant
31 should be committed to the department, conditionally released,

1 or discharged, the primary concern shall be the protection of
2 the public.

3 Section 29. Section 916.31, Florida Statutes, is
4 created to read:

5 916.31 Order of commitment; application for discharge
6 or conditional release; release plan.--

7 (1) If the Forensic Security Review Board determines,
8 upon its initial hearing or at any later hearing held under
9 ss. 916.21-916.42, that a defendant over whom the court has
10 given the board jurisdiction under ss. 916.21-916.42 is
11 affected by a mental disease or defect and, because of such
12 condition, is manifestly dangerous to others and is not a
13 proper subject for conditional release, the board shall order
14 that the defendant be committed to the department for custody,
15 care, and treatment.

16 (2)(a) If, at any time after the court or the board
17 has committed a defendant to the department for custody, care,
18 and treatment, the department is of the opinion:

19 1. That the defendant is no longer affected by a
20 mental disease or defect or, if so affected, is no longer
21 manifestly dangerous to others, the department shall apply to
22 the board for an order of discharge, pending application to
23 and final order of the committing court.

24 2. That the defendant continues to be affected by a
25 mental disease or defect and continues to be manifestly
26 dangerous to others, but that the defendant can be controlled
27 with proper care, medication, supervision, and treatment if
28 conditionally released, the department shall apply to the
29 board for an order of conditional release.

30 (b) The application must be accompanied by a report
31 that sets forth the facts supporting the opinion of the

1 department. If the application is for conditional release, the
2 application must also be accompanied by a verified
3 conditional-release plan.

4 (c) The board shall hold a hearing on the application
5 within 60 days after its receipt. Upon the conclusion of the
6 hearing, the board shall notify the department and the
7 committing court of its determinations.

8 (3) The state attorney may choose a psychiatrist or
9 licensed psychologist to examine the defendant before the
10 initial hearing or before any later hearing on discharge or
11 conditional release. Written results of the examination must
12 be filed with the board and must include, but need not be
13 limited to, an opinion as to the mental condition of the
14 defendant; whether the defendant is affected by a mental
15 disease or defect and, because of such condition, is
16 manifestly dangerous to others; and whether the defendant can
17 be adequately controlled with treatment as a condition of
18 release.

19 (4) Any defendant who has been committed to the
20 department for custody, care, and treatment, or any person who
21 is acting on such defendant's behalf, may apply to the board
22 for an order of conditional release or for an order of
23 discharge, pending application to and final order of the
24 committing court, upon the grounds that:

25 (a) The defendant is no longer affected by a mental
26 disease or defect;

27 (b) If so affected, the defendant is no longer
28 manifestly dangerous to others; or

29 (c) The defendant continues to be affected by a mental
30 disease or defect and would continue to be manifestly
31 dangerous to others without treatment, but that the defendant

1 can be adequately controlled and given proper care and
2 treatment if placed on conditional release.

3 (5) When application is made under subsection (4), the
4 board shall require a report from the department. The report
5 must be prepared and transmitted as provided in subsection
6 (2). The defendant must prove his or her fitness for discharge
7 or conditional release under the standards of subsection (4)
8 by a preponderance of the evidence. However, if more than 2
9 years have passed since the state had the burden of proof on
10 that issue, the state must bear the burden of proving by a
11 preponderance of the evidence the defendant's lack of fitness
12 for discharge or conditional release. An application for the
13 discharge or conditional release of any defendant committed to
14 the department for custody, care, and treatment may not be
15 filed more than once every 6 months, commencing on the date of
16 the defendant's initial board hearing.

17 (6) The board is not required to hold a hearing on a
18 first application under subsection (4) any sooner than 90 days
19 after the initial hearing. However, any hearing that results
20 from a properly filed subsequent request must be held within
21 60 days after the date the application is filed.

22 (7)(a) A defendant committed by the court under s.
23 916.26 to the department may not be held for custody, care,
24 and treatment for more than 90 days after the date of the
25 court's commitment order without an initial hearing before the
26 board to determine whether the person should be conditionally
27 released by the board or discharged, pending application to
28 and final order of the committing court.

29 (b) A subsequent hearing to determine whether the
30 defendant should be conditionally released by the board or
31 discharged, pending application to and final order of the

1 committing court, must be held before the board prior to the
2 defendant being held under the jurisdiction of the board for
3 longer than 2 years.

4 Section 30. Section 916.32, Florida Statutes, is
5 created to read:

6 916.32 Hearings on discharge, conditional release,
7 commitment, or modification; psychiatric reports; notice.--

8 (1) The Forensic Security Review Board shall conduct a
9 hearing upon application for conditional release or for
10 modification or termination of conditional release filed under
11 s. 916.29; upon application for conditional release or
12 discharge from any commitment order filed under s. 916.31;
13 upon application for discharge from the jurisdiction of the
14 board, pending application to and final order of the
15 committing court, filed under s. 916.33; and upon application
16 filed as otherwise required by ss. 916.21-916.42, and shall
17 make findings and determinations on the issues before it.

18 (a) If the board finds that the defendant is no longer
19 affected by a mental disease or defect or, if so affected, is
20 no longer manifestly dangerous to others, the board shall
21 order that the defendant be discharged from the jurisdiction
22 of the board. An order of the board to release a defendant
23 from the jurisdiction of the board shall be made pending
24 application to and final order of the committing court.

25 (b) If the board finds that the defendant continues to
26 be affected by a mental disease or defect and is manifestly
27 dangerous to others, but can be adequately controlled if
28 conditionally released with treatment as a condition of
29 release, the board shall order the defendant conditionally
30 released as provided in s. 916.29, and the defendant shall
31 remain under conditional release until discharged by the

1 board, pending application to and final order of the
2 committing court.

3 (c) If the board finds that the defendant has not
4 recovered from a mental disease or defect and is manifestly
5 dangerous to others and cannot adequately be controlled if
6 conditionally released on supervision, the board shall order
7 that the defendant be committed to the department for custody,
8 care, and treatment.

9 (2) At any time the board may appoint a psychiatrist
10 or licensed psychologist to examine any defendant under the
11 jurisdiction of the board and to report to the board. A report
12 filed with the board pursuant to the examination must include,
13 but need not be limited to, an opinion as to the mental
14 condition of the defendant, whether the defendant is affected
15 by a mental disease or defect and because of such condition is
16 manifestly dangerous to others, and whether the defendant can
17 be adequately controlled with treatment as a condition of
18 release. To facilitate the examination of the defendant, the
19 board may order that the defendant be placed in the temporary
20 custody of any forensic facility or other suitable facility.

21 (3) The board may make the findings and determinations
22 required by subsection (1) based upon the written reports
23 submitted under subsection (2). An examining psychiatrist or
24 licensed psychologist who submitted a report may be summoned
25 by the board to give testimony if any member of the board
26 desires further information. The board shall consider all
27 evidence available to it which is material, relevant, and
28 reliable regarding the issues before the board. Such evidence
29 may include, but need not be limited to, the record of trial,
30 the information supplied by the state attorney or any other
31 interested party including the defendant, any information

1 concerning the person's mental condition, and the entire
2 psychiatric and criminal history of the defendant.

3 (4) The board shall furnish to the defendant, the
4 defendant's attorney, the state attorney, and the committing
5 court written notice of any hearing conducted under subsection
6 (1) within a reasonable time before the hearing. The notice
7 must include:

8 (a) The time, place, and location of the hearing.

9 (b) The nature of the hearing and the specific action
10 for which a hearing has been requested, the issues to be
11 considered at the hearing, and a reference to the particular
12 laws and rules involved.

13 (c) A statement of the authority and jurisdiction
14 under which the hearing is to be held.

15 (d) A statement of all rights under subsection (5).

16 (5) At the hearing, the defendant has the right to:

17 (a) Appear at all proceedings held under this section,
18 except deliberations by the board.

19 (b) Cross-examine all witnesses who testify at the
20 hearing.

21 (c) Subpoena witnesses and documents as provided in s.
22 916.38.

23 (d) Be represented by an attorney, to consult with the
24 attorney before the hearing, and, if indigent, to have an
25 attorney appointed to represent him or her.

26 (e) Examine all information, documents, and reports
27 that the board considers. All information, documents, and
28 reports shall be disclosed to the defendant for examination as
29 soon as such information, documents, and reports are available
30 to the board.

31

1 (6) A record must be kept of all hearings before the
2 board, except board deliberations.

3 (7) Upon the request of any party before the board, or
4 on its own motion, the board may continue a hearing for a
5 reasonable period, which may not exceed 60 days, to obtain
6 additional information or testimony or for other good cause.

7 (8) Within 15 days after a hearing conducted under
8 subsection (1), the board shall provide to the defendant, the
9 defendant's attorney, the state attorney, and the committing
10 court written notice of the board's decision.

11 (9) The standard of proof on all issues at hearings of
12 the board is a preponderance of the evidence.

13 (10) If the board determines that the defendant is
14 indigent, the board shall appoint an attorney to represent him
15 or her.

16 (11) The state attorney of the circuit from which the
17 defendant was committed shall represent the state at any
18 hearing before the board.

19 Section 31. Section 916.33, Florida Statutes, is
20 created to read:

21 916.33 Discharge of defendant under jurisdiction of
22 Forensic Security Review Board; periodic status review.--

23 (1) Any defendant who is under the jurisdiction of the
24 Forensic Security Review Board pursuant to ss. 916.21-916.42
25 shall be discharged, pending application to and final order of
26 the committing court, at such time as the board, upon a
27 hearing, finds by a preponderance of the evidence that the
28 defendant is no longer affected by a mental disease or defect
29 or, if so affected, is no longer manifestly dangerous to
30 others so as to require regular medical care, medication,
31 supervision, or treatment.

1 (2) For purposes of subsection (1), a defendant
2 affected by a mental disease or defect in a state of remission
3 is considered to have a mental disease or defect. A defendant
4 whose mental disease or defect may, with reasonable
5 probability, occasionally become active and, when active,
6 render the defendant manifestly dangerous to others may not be
7 discharged. The defendant shall continue under such
8 supervision and treatment as the board deems necessary for the
9 protection of the public and the defendant.

10 (3) Any defendant who is under the jurisdiction of the
11 board and who has spent 5 years on conditional release shall
12 be brought before the board for a hearing within 30 days
13 before the expiration of the 5-year period. The board shall
14 review the defendant's status and determine whether the
15 defendant should be discharged from the jurisdiction of the
16 board, pending application to and final order of the
17 committing court.

18 Section 32. Section 916.34, Florida Statutes, is
19 created to read:

20 916.34 Commission of a crime by a defendant under the
21 jurisdiction of the Forensic Security Review Board; notice to
22 victim.--

23 (1) When a defendant who is under the jurisdiction of
24 the Forensic Security Review Board commits another crime, the
25 court shall make the findings described in s. 916.25(2) with
26 respect to the additional crime.

27 (2) If the court determines that a victim, including a
28 victim of the new crime, desires notification as described in
29 s. 916.25(2), the board shall make a reasonable effort to
30 provide such notification.

31

1 Section 33. Section 916.35, Florida Statutes, is
2 created to read:

3 916.35 Forensic Security Review Board; judicial review
4 or order; rulemaking authority.--

5 (1) There is established the Forensic Security Review
6 Board, which shall be an autonomous body that is located
7 within the Department of Health for administrative purposes
8 only. The board shall be composed of nine members appointed by
9 the Governor.

10 (2) The board shall be composed of the following
11 members:

12 (a) One psychiatrist who is experienced in the
13 criminal justice system and who is not otherwise employed
14 full-time by the department or a community mental health
15 program.

16 (b) One licensed psychologist who is experienced in
17 the criminal justice system and who is not otherwise employed
18 full-time by the department or a community mental health
19 program.

20 (c) A member who has substantial experience in the
21 processes of parole and probation.

22 (d) Two members of the general public.

23 (e) An attorney who has substantial experience in
24 criminal trial practice who is not a state attorney, assistant
25 state attorney, public defender, or assistant public defender.

26 (f) A member who has substantial experience in
27 victims' issues.

28 (g) One licensed mental health professional who is
29 experienced in the criminal justice system and not otherwise
30 employed full-time by the department or a community mental
31 health program.

1 (h) One developmental services professional who has
2 expertise in mental retardation.

3 (3) On the initial appointees, three members shall be
4 appointed to terms of 2 years, three members shall be
5 appointed to terms of 3 years, and three members shall be
6 appointed to terms of 4 years. Thereafter, members of the
7 board shall be appointed to terms of 4 years. Before the
8 expiration of the term of a member, the Governor shall appoint
9 a successor whose term shall begin on the following July 1. A
10 member is eligible for reappointment. If a vacancy occurs on
11 the board, the Governor shall appoint a member to the board
12 for the unexpired portion of the term.

13 (4) Members of the board may not be compensated for
14 servicing on the board but are entitled to reimbursement for
15 travel and per diem expenses under s. 112.061.

16 (5) Subject to any applicable laws, the board may hire
17 employees to aid it in performing its duties.

18 (6)(a) The board shall elect one of its members as
19 chairperson for a 1-year term and shall determine the duties
20 and powers of the chairperson.

21 (b) Three members of the board constitute a quorum for
22 purposes of transacting business.

23 (7) The board shall meet at least twice each month
24 unless the chairperson determines that there is not sufficient
25 business before the board to warrant a meeting at the
26 scheduled time. The board shall hold meetings at each of the
27 state's forensic hospitals, depending on the caseload and
28 presence of defendants in the area of each hospital who
29 require a hearing under this chapter. The board shall also
30 meet at other times and places at the call of the chairperson
31 or a majority of the members of the board.

1 (8)(a) When a defendant is adversely affected or
2 aggrieved by a final order of the board, the defendant is
3 entitled to judicial review of the final order. The defendant
4 is entitled to be represented by counsel and, if the defendant
5 is indigent, an attorney shall be appointed to represent him
6 or her.

7 (b) The order and the proceedings are subject to
8 review by the circuit court upon a petition filed within 60
9 days after issuance of the order for which review is sought.
10 The board shall submit to the court the record of the
11 proceeding or, if the defendant agrees, a shortened record.
12 The record must include a certified true copy of a tape
13 recording of the proceedings at any hearing held in accordance
14 with s. 916.32. A copy of the record transmitted to the court
15 shall be delivered to the defendant by the board.

16 (c) The court may affirm, reverse, or remand the
17 order.

18 (d) The filing of the petition does not stay the
19 board's order, but the board or the circuit court may order a
20 stay upon application and conditioned upon terms that are
21 deemed proper by the board or the circuit court.

22 (9) The Forensic Security Review Board may adopt rules
23 to administer its policies, procedures, and other requirements
24 and to carry out its duties under this chapter.

25 Section 34. Section 916.37, Florida Statutes, is
26 created to read:

27 916.37 Assignment of defendants committed to the
28 custody, care, and treatment of the department; release
29 plan.--

30 (1) The department shall adopt rules for the
31 assignment of defendants who have been committed to the

1 department for custody, care, and treatment under ss.
2 916.21-916.42 and shall adopt standards for evaluating and
3 treating defendants.

4 (2) Whenever the Forensic Security Review Board
5 requires the preparation of a predischarge or preconditional
6 release plan before a hearing or as a condition of granting
7 discharge or conditional release, the department shall prepare
8 and submit the plan to the board and the committing court.

9 (3) In preparing a conditional release plan under
10 subsection (2), the department shall contract with a community
11 mental health program, another public agency, a private
12 corporation, or an individual to provide supervision and
13 treatment for the conditionally released defendant, pending
14 designation by the board at the hearing.

15 (4) To ensure that the conditionally released
16 defendant's treatment plan is implemented, the department
17 shall allocate the funds necessary to the appropriate
18 treatment services in the community.

19 Section 35. Section 916.38, Florida Statutes, is
20 created to read:

21 916.38 Subpoena power of the Forensic Security Review
22 Board.--

23 (1) Upon the request of any party to a hearing before
24 the Forensic Security Review Board, the board or its
25 designated representative shall issue subpoenas requiring the
26 attendance and testimony of witnesses.

27 (2) Upon the request of any party to a hearing before
28 the board and a proper showing of the general relevance and
29 reasonable scope of any documentary or physical evidence that
30 is sought, the board or its designated representative shall
31 issue subpoenas to produce such evidence.

1 (3) Any witness who appears under subpoena, other than
2 the parties to the hearing or a state officer or employee,
3 shall receive fees and mileage as prescribed by law for a
4 witness in a civil action. If the board or its designated
5 representative certifies that the testimony of a witness is
6 relevant and material, any person who has paid fees and
7 mileage to that witness is entitled to reimbursement by the
8 board.

9 (4) If any person fails to comply with a subpoena
10 issued under this section or if a party or witness refuses to
11 testify regarding any matter on which the party or witness may
12 be lawfully interrogated, the circuit court, on the
13 application of the board, its designated representative, or
14 the party requesting issuance of the subpoena, shall initiate
15 proceedings for contempt as in the case of disobedience of the
16 requirements of a subpoena issued by the court.

17 (5) If any person, agency, or facility fails to comply
18 with an order of the board issued under subsection (2), the
19 circuit court, on application of the board or its designated
20 representative, shall initiate proceedings for contempt as in
21 the case of disobedience of the requirements of an order
22 issued by the court.

23 Section 36. Section 916.39, Florida Statutes, is
24 created to read:

25 916.39 Leave of absence; application for board
26 consideration.--If, at any time after the confinement of a
27 defendant in a forensic facility or other treatment program
28 for custody, care, and treatment under s. 916.26(2)(a) or s.
29 916.31(1), the administrator of the facility or program is of
30 the opinion that a leave of absence from custody would be
31

1 therapeutic for the defendant, the administrator shall apply
2 to the board for an order authorizing leave for up to 30 days.

3 (1) The application must include the purpose of the
4 requested leave and facts showing that the defendant will not
5 be dangerous to others while on leave; the defendant's current
6 mental health status and diagnosis, escape history, frequency
7 of temporary leaves of absence, and associated problems, if
8 any; and the defendant's current medication orders.

9 (2) The board shall also consider departure and return
10 dates and times; the location of the defendant during the
11 leave period; persons with whom the defendant will associate
12 during the period; and persons who will be responsible for
13 supervising the defendant, including guardians, relatives, or
14 friends, and the defendant himself or herself.

15 (3) If the application is granted, the defendant may
16 be permitted to leave the facility or program subject to any
17 other condition that the administrator or board deems
18 appropriate. Such condition may include screening for alcohol
19 or drug use.

20 Section 37. Section 916.41, Florida Statutes, is
21 created to read:

22 916.41 Statistical records of assertions of mental
23 disease and defect as a defense.--Each state attorney shall
24 submit to the State Courts Administrator, in the manner
25 prescribed by the State Courts Administrator, statistical
26 records on cases in which the defense of guilty but insane is
27 asserted.

28 Section 38. Section 916.42, Florida Statutes, is
29 created to read:

30 916.42 Annual report.--Not less than 30 days before
31 the opening of each regular session of the Legislature, the

1 Forensic Security Review Board shall file a written report
2 with the Governor, the President of the Senate, the Speaker of
3 the House of Representatives, and the minority leaders of each
4 house which contains, but need not be limited to, a detailed
5 analysis of the treatment services being rendered, the number
6 of offenders in each program, the current status of each
7 offender in the program, the criminal recidivism and
8 revocation rates, and the costs involved in operating the
9 programs.

10 Section 39. Subsection (1) of section 40.29, Florida
11 Statutes, is amended to read:

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

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

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

19 (b) Witnesses before the grand jury;

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

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

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

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1 and shall forward each such estimate to the State Courts
2 Administrator no later than the date scheduled by the State
3 Courts Administrator. At the time of any forwarding of such
4 estimate, the clerk of such court shall make a requisition
5 upon the State Courts Administrator for the amount of such
6 estimate; and the State Courts Administrator may reduce the
7 amount if in his or her judgment the requisition is excessive.

8 Section 40. The Supreme Court is requested to amend
9 the Florida Rules of Criminal Procedure as necessary to
10 reflect the provisions of this act.

11 Section 41. (1) The sum of \$125,000 is appropriated
12 from the General Revenue Fund to the Forensic Security Review
13 Board for the operating expenses of the board and two staff
14 positions are authorized.

15 (2) The sum of \$250,000 is appropriated from the
16 General Revenue Fund to the Forensic Security Review Board for
17 per diem, travel, and other expenses that are incurred by the
18 members of the board.

19 Section 42. This act applies to all persons who are
20 under court supervision on October 1, 1998, pursuant to an
21 adjudication of not guilty by reason of insanity.

22 Section 43. This act shall take effect October 1,
23 1998.

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SENATE SUMMARY

Revises ch. 916, F.S., relating to mentally retarded or mentally ill defendants, to create the "Forensic Procedure Act." Establishes the Forensic Security Review Board to assume jurisdiction, upon court order, of a defendant who is found guilty but insane. Provides for the board to order that such defendant be committed to the Department of Health for custody, care, and treatment. Provides for an order of conditional release. Provides criteria, standards, and procedures for such proceedings. Provides standards of proof for hearings and for the rights of a defendant. Provides for conditional release plans. Provides for judicial review of an order of the Forensic Security Review Board. Authorizes the board to issue subpoenas. Requires that the state attorneys file certain statistical records with respect to cases in which the defendant asserts the defense of guilty but insane. Requests that the Supreme Court adopt rules to implement the act. Provides appropriations. (See bill for details.)