

By the Committee on Elder Affairs & Long Term Care and
Representative Argenziano

1 A bill to be entitled
2 An act relating to forensic client services;
3 amending s. 40.29, F.S., relating to estimated
4 amount of pay for expert witnesses, to conform
5 a reference; amending s. 393.11, F.S.;
6 specifying persons or entities that may file
7 petition for proposed involuntary admission to
8 residential services arising out of ch. 916,
9 F.S., relating to forensic services; providing
10 for petitions for defendants with autism;
11 revising required contents of the petition;
12 revising requirements relating to notice of
13 filing of petition or service of copy of order;
14 prohibiting release from order for involuntary
15 admission except by court order; amending and
16 reorganizing ch. 916, F.S., the Forensic Client
17 Services Act; creating pt. I of ch. 916, F.S.;
18 providing general provisions of the chapter;
19 amending s. 916.105, F.S.; revising legislative
20 intent; amending s. 916.106, F.S.; providing or
21 revising definitions with respect to ch. 916,
22 F.S.; redefining "department" to refer to the
23 Department of Children and Family Services in
24 lieu of the Department of Health and
25 Rehabilitative Services; amending s. 916.107,
26 F.S.; revising state policy with respect to the
27 rights of forensic clients, and conforming
28 terminology; amending and renumbering s.
29 916.175, F.S., relating to criminal escape by a
30 client; prohibiting escape or attempted escape
31 from a facility or program by a client under

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

1 and guidelines relating to commitment and
2 placement of defendant and filing of reports;
3 amending s. 916.14, F.S.; providing for
4 inapplicability of statute of limitations and
5 of bar against former jeopardy under specified
6 circumstances when defendant is incompetent to
7 proceed; amending s. 916.145, F.S.; revising
8 time limits and guidelines with respect to
9 dismissal of charges against a defendant
10 adjudicated incompetent to proceed; providing
11 for dismissal without prejudice under specified
12 circumstances; amending s. 916.15, F.S.,
13 relating to involuntary commitment of defendant
14 adjudicated not guilty by reason of insanity;
15 requiring clear and convincing evidence as the
16 burden of proof for the finding pursuant to
17 which a defendant who has been acquitted by
18 reason of insanity may be involuntarily
19 committed; conforming terminology; providing
20 for mandatory departmental retention and
21 treatment of defendant; reenacting s.
22 394.467(7)(a), F.S., relating to procedure for
23 continued involuntary placement, to incorporate
24 said amendment in a reference; amending s.
25 916.16, F.S.; providing for retention of
26 jurisdiction by committing court over a
27 defendant hospitalized as incompetent to
28 proceed or because of a finding of not guilty
29 by reason of insanity or over a defendant
30 placed on conditional release; prohibiting
31 release except by court order in specified

1 circumstances; amending s. 916.17, F.S.;

2 revising procedures and guidelines relating to

3 conditional release and modification of release

4 conditions, including filing requirements for

5 plans for outpatient treatment; creating pt.

6 III of ch. 916, F.S., relating to forensic

7 services for persons who are mentally retarded

8 or autistic; creating s. 916.301, F.S.;

9 providing for appointment of experts who are

10 mental retardation or autism professionals,

11 under specified circumstances; providing for

12 certain witness fees and evaluator fees as

13 court costs; providing for reimbursement of

14 certain travel and per diem expenses of state

15 employees; creating s. 916.3012, F.S.;

16 providing for determination of incompetence to

17 proceed when the defendant's suspected mental

18 condition is mental retardation or autism;

19 creating s. 916.302, F.S.; providing for

20 involuntary commitment of defendant determined

21 to be incompetent to proceed due to mental

22 retardation or autism; requiring the department

23 to notify the court of transfer of a defendant;

24 creating s. 916.3025, F.S.; providing for

25 retention of jurisdiction over certain

26 defendants found incompetent to proceed and

27 ordered into a secure facility for mentally

28 retarded or autistic defendants; prohibiting

29 release except by court order; creating s.

30 916.303, F.S.; providing for dismissal of

31 charges without prejudice or involuntary

1 admission to residential services or a training
2 program under specified circumstances when the
3 defendant is found incompetent to proceed due
4 to mental retardation or autism; providing for
5 petitions to continue defendant's placement in
6 a secure facility or program under specified
7 circumstances; requiring a review and hearing
8 to be held at least annually of the
9 involuntarily admitted defendant's status,
10 under specified circumstances; requiring the
11 court to make certain determinations; providing
12 for notice of the review and hearing; providing
13 that the defendant's placement in a secure
14 facility or program may not exceed in length
15 the maximum sentence for the crime charged;
16 creating s. 916.304, F.S.; providing for
17 conditional release based on an approved plan
18 for providing continuing community-based
19 training of defendant; providing for
20 modification of release conditions or
21 termination of jurisdiction under specified
22 circumstances; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (1) of section 40.29, Florida
27 Statutes, is amended to read:

28 40.29 Clerks to estimate amount for pay of jurors and
29 witnesses and make requisition.--

30 (1) The clerk of the court in and for any county shall
31 make an estimate of the amount necessary during any quarterly

1 fiscal period beginning July 1 and during each succeeding
2 quarterly fiscal period for the payment by the state of:
3 (a) Jurors in the circuit court and the county court;
4 (b) Witnesses before the grand jury;
5 (c) Witnesses summoned to appear for an investigation,
6 preliminary hearing, or trial in a criminal case when the
7 witnesses are summoned by a state attorney or on behalf of an
8 indigent defendant;
9 (d) Mental health professionals who are appointed
10 pursuant to s. 394.473 and required in a court hearing
11 involving an indigent; and
12 (e) Expert witnesses who are appointed pursuant to s.
13 916.115(2)~~916.11(3)~~ and required in a court hearing involving
14 an indigent;
15
16 and shall forward each such estimate to the State Courts
17 Administrator no later than the date scheduled by the State
18 Courts Administrator. At the time of any forwarding of such
19 estimate, the clerk of such court shall make a requisition
20 upon the State Courts Administrator for the amount of such
21 estimate; and the State Courts Administrator may reduce the
22 amount if in his or her judgment the requisition is excessive.
23 Section 2. Subsections (2), (3), (8), and (11) of
24 section 393.11, Florida Statutes, are amended to read:
25 393.11 Involuntary admission to residential
26 services.--
27 (2) PETITION.--
28 (a) A petition for involuntary admission to
29 residential services may be executed by a petitioning
30 commission. For proposed involuntary admission to residential
31 services arising out of chapter 916, the petition may be filed

1 by a petitioning commission, the department, the state
2 attorney of the circuit from which the defendant was
3 committed, or the defendant's attorney.

4 (b) The petitioning commission shall consist of three
5 persons. One of these persons shall be a physician licensed
6 and practicing under chapter 458 or chapter 459.

7 (c) The petition shall be verified and shall:

8 1. State the name, age, and present address of the
9 commissioners and their relationship to the person with mental
10 retardation or autism;

11 2. State the name, age, county of residence, and
12 present address of the person with mental retardation or
13 autism;

14 3. Allege that the commission believes that the person
15 needs involuntary residential services and specify the factual
16 information on which such belief is based;

17 4. Allege that the person lacks sufficient capacity to
18 give express and informed consent to a voluntary application
19 for services and lacks the basic survival and self-care skills
20 to provide for the person's well-being or is likely to
21 physically injure others if allowed to remain at liberty, and
22 specify the factual basis for such allegation; and

23 5. State which residential setting is the least
24 restrictive and most appropriate alternative and specify the
25 factual information on which such belief is based.

26 (d) The petition shall be filed in the circuit court
27 of the county in which the person with mental retardation or
28 autism resides.

29 (3) NOTICE.--

30 (a) Notice of the filing of the petition shall be
31 given to the individual and his or her legal guardian ~~parent~~

1 ~~or parents~~. The notice shall be given both verbally and in
2 writing in the language of the client, or in other modes of
3 communication of the client, and in English. Notice shall also
4 be given to such other persons as the court may direct. The
5 petition for involuntary admission to residential services
6 shall be served with the notice.

7 (b) Whenever a motion or petition has been filed
8 pursuant to s. 916.303 to dismiss criminal charges against a
9 defendant with retardation or autism, and a petition is filed
10 to involuntarily admit the defendant to residential services,
11 the notice of the filing of the petition shall also be given
12 to the defendant's attorney, to the defendant's legal
13 guardian, and to the state attorney of the circuit from which
14 the defendant was committed.

15 ~~(c)(b)~~ The notice shall state that a hearing shall be
16 set to determine whether ~~inquire into the need of~~ the person
17 with mental retardation or autism meets the criteria for
18 involuntary residential services. The notice shall also state
19 the date of the hearing on the petition.

20 ~~(d)(c)~~ The notice shall state that the individual with
21 mental retardation or autism has the right to be represented
22 by counsel of his or her own choice and that, if the person
23 cannot afford an attorney, the court shall appoint one.

24 (8) ORDER.--

25 (a) In all cases, the court shall issue written
26 findings of fact and conclusions of law to support its
27 decision. The order shall state the basis for such findings
28 of fact.

29 (b) An order of involuntary admission to residential
30 services shall not be entered unless the court finds that:

31 1. The person is mentally retarded or autistic;

1 2. Placement in a residential setting is the least
2 restrictive and most appropriate alternative to meet the
3 person's needs; and
4 3. Because of the person's degree of mental
5 retardation or autism, the person:
6 a. Lacks sufficient capacity to give express and
7 informed consent to a voluntary application for services
8 pursuant to s. 393.065 and lacks basic survival and self-care
9 skills to such a degree that close supervision and
10 habilitation in a residential setting is necessary and, if not
11 provided, would result in a real and present threat of
12 substantial harm to the person's well-being; or
13 b. Is likely to physically injure others if allowed to
14 remain at liberty.
15 (c) If the evidence presented to the court is not
16 sufficient to warrant involuntary admission to residential
17 services, but the court feels that residential services would
18 be beneficial, the court may recommend that the person seek
19 voluntary admission.
20 (d) If an order of involuntary admission to
21 residential services provided by the developmental services
22 program of the department is entered by the court, a copy of
23 the written order shall be served upon the person, the
24 person's counsel, and the department, and, if a forensic
25 matter pursuant to chapter 916, the state attorney and the
26 person's defense counsel, if applicable. The order of
27 involuntary admission sent to the department shall also be
28 accompanied by a copy of the examining committee's report and
29 other reports contained in the court file.
30 (e) Upon receiving the order, the department shall,
31 within 45 days, provide the court with a copy of the person's

1 family or individual support plan and copies of all
2 examinations and evaluations, outlining the treatment and
3 rehabilitative programs. The department shall document that
4 the person has been placed in the most appropriate, least
5 restrictive and cost-beneficial residential facility. A copy
6 of the family or individual support plan and other
7 examinations and evaluations shall be served upon the person
8 and the person's counsel at the same time the documents are
9 filed with the court.

10 (11) CONTINUING JURISDICTION.--The court which issues
11 the initial order for involuntary admission to residential
12 services under this section shall have continuing jurisdiction
13 to enter further orders to ensure that the person is receiving
14 adequate care, treatment, habilitation, and rehabilitation,
15 including psychotropic medication and behavioral programming.
16 Upon request, the court may transfer the continuing
17 jurisdiction to the court where a client resides if it is
18 different from where the original involuntary admission order
19 was issued. No person may be released from an order for
20 involuntary admission to residential services except by the
21 order of the court.

22 Section 3. For the purpose of incorporating the
23 amendment to section 916.15, Florida Statutes, in a reference
24 thereto, paragraph (a) of subsection (7) of section 394.467,
25 Florida Statutes, is reenacted to read:

26 394.467 Involuntary placement.--

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

28 (a) Hearings on petitions for continued involuntary
29 placement shall be administrative hearings and shall be
30 conducted in accordance with the provisions of s. 120.57(1),
31 except that any order entered by the hearing officer shall be

1 final and subject to judicial review in accordance with s.
2 120.68. Orders concerning patients committed after
3 successfully pleading not guilty by reason of insanity shall
4 be governed by the provisions of s. 916.15.

5 Section 4. Part I of chapter 916, Florida Statutes,
6 consisting of sections 916.10, 916.105, 916.106, 916.107,
7 916.1081, 916.1085, 916.1091, and 916.1093, is created and
8 entitled "General Provisions."

9 Section 5. Section 916.105, Florida Statutes, is
10 amended to read:

11 916.105 Legislative intent.--

12 (1) It is the intent of the Legislature that the
13 Department of Children and Family ~~Health and Rehabilitative~~
14 Services establish, locate, and maintain separate and secure
15 facilities and programs for the treatment or training of
16 defendants forensic clients who are charged with a felony and
17 who have been found to be incompetent to proceed due to their
18 mental illness, mental retardation, or autism ~~mentally~~
19 ~~retarded or mentally ill defendants~~, or who have been
20 acquitted of felonies ~~crimes~~ by reason of insanity, and who,
21 while still under the jurisdiction of the committing court,
22 are committed to the department ~~for mental retardation or~~
23 ~~mental health services~~ under the provisions of this chapter.
24 The separate, secure facilities shall be sufficient to
25 accommodate the number of defendants ~~clients~~ committed under
26 the conditions noted above, except those defendants ~~clients~~
27 found by the department to be appropriate for treatment or
28 training in a civil ~~mental health~~ treatment facility or
29 program. Such secure facilities shall be designed and
30 administered so that ingress and egress, together with other
31 requirements of this chapter, may be strictly controlled by

1 staff responsible for security in order to protect the
2 defendant client, facility hospital personnel, other clients,
3 and citizens in adjacent communities.

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

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

21 Section 6. Section 916.106, Florida Statutes, is
22 amended to read:

23 916.106 Definitions.--For the purposes of this
24 chapter:

25 (1) "Autism" means "autism" as defined in s.
26 393.063(2).

27 (2) ~~(1)~~ "Chemical weapon" means any shell, cartridge,
28 bomb, gun, or other device capable of emitting
29 chloroacetophenone (CN), chlorobenzalmalononitrile (CS) or any
30 derivatives thereof in any form, or any other agent with
31

1 lacrimatory properties, and shall include products such as
2 that commonly known as "mace."

3 (3) "Civil facility" means a mental health facility
4 established within the department to serve individuals
5 committed pursuant to chapter 394 and those defendants
6 committed pursuant to this chapter who do not require the
7 security provided in a forensic facility.

8 (4)(2) "Court" means the circuit court.

9 (5)(3) "Department" means the Department of Children
10 and Family Health and Rehabilitative Services.

11 (6) "Express and informed consent" or "consent" means
12 consent given voluntarily in writing after a conscientious and
13 sufficient explanation and disclosure of the purpose of the
14 proposed treatment, the common side effects of the treatment,
15 if any, the expected duration of the treatment, and any
16 alternative treatment available.

17 (7)(4) "Forensic client" or "client" "patient" means
18 any defendant who is mentally ill, mentally retarded, or
19 autistic and mentally ill person who is committed to the
20 department pursuant to this chapter and:

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

23 (b) Who has been found incompetent to proceed on a
24 felony offense stand trial or incompetent for sentencing, has
25 been acquitted of a felony criminal offense by reason of
26 insanity; has criminal charges pending, or has been found
27 guilty of a criminal offense but is not an inmate of the
28 Department of Corrections or any other correctional facility;
29 and

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

31 1. Be dangerous to himself or herself or others; or

1 2. Present a clear and present potential to escape;
2 and

3 (d) Who is an adult or juvenile prosecuted as an
4 adult.

5 (8)(5) "Forensic facility" means a separate and secure
6 facility established within the department to serve for the
7 ~~treatment of~~ forensic clients. Such separate and secure
8 facilities shall be security-grade buildings located on
9 grounds distinct in location from other ~~treatment~~ facilities
10 for persons who are mentally ill. The Florida State Hospital
11 shall not be required to maintain separate ~~treatment~~
12 facilities for mentally ill, or mentally retarded, or autistic
13 defendants who are persons found incompetent to proceed for
14 ~~trial~~ or who are acquitted of a criminal offense by reason of
15 insanity.

16 (9) "Incompetent to proceed" means unable to proceed
17 at any material stage of a criminal proceeding, which shall
18 include trial of the case, pretrial hearings involving
19 questions of fact on which the defendant might be expected to
20 testify, entry of a plea, proceedings for violation of
21 probation or violation of community control, sentencing, and
22 hearings on issues regarding a defendant's failure to comply
23 with court orders or conditions or other matters in which the
24 mental competence of the defendant is necessary for a just
25 resolution of the issues being considered.

26 (10)(6) "Institutional security personnel" means staff
27 members who meet or exceed the requirements of s. 943.13 and
28 who are responsible for providing security, for protection of
29 clients and personnel, for the enforcement of rules, for
30 prevention and investigation of unauthorized activities, and
31

1 for safeguarding the interests of citizens in the surrounding
2 communities.

3 (11)(7) "Mental illness"~~"Mentally ill"~~ means having
4 an impairment of the emotional processes that,~~of the ability~~
5 ~~to~~ exercise conscious control of one's actions, or of the
6 ability to perceive or understand reality ~~or to understand,~~
7 which impairment substantially interferes with a defendant's
8 ~~person's~~ ability to meet the ordinary demands of living,
9 ~~regardless of etiology; except that,~~For the purposes of this
10 chapter, the term does not apply to defendants ~~include simple~~
11 ~~intoxication,~~ persons who are solely mentally retarded or
12 autistic, and does not include intoxication or conditions
13 manifested only by antisocial behavior or substance abuse
14 impairment ~~drug addiction.~~

15 (12)(8) "Mental retardation" means "retardation" as
16 defined in s. 393.063(43).~~significantly subaverage general~~
17 ~~intellectual functioning existing concurrently with deficits~~
18 ~~in adaptive behavior and manifested during the period from~~
19 ~~conception to age 18. "Significantly subaverage general~~
20 ~~intellectual functioning," for the purpose of this definition,~~
21 ~~means performance which is two or more standard deviations~~
22 ~~from the mean score on a standardized intelligence test~~
23 ~~specified in the rules of the department. "Adaptive~~
24 ~~behavior," for the purpose of this definition, means the~~
25 ~~effectiveness or degree with which an individual meets the~~
26 ~~standards of personal independence and social responsibility~~
27 ~~expected of the individual's age, cultural group, and~~
28 ~~community.~~

29 (13) "Social service professional," for the purposes
30 of part III, means a person whose minimum qualifications
31 include a bachelor's degree and at least 2 years of social

1 work, clinical practice, or equivalent experience working
2 directly with persons with mental retardation, autism or other
3 developmental disabilities, special education, or habilitation
4 programs.

5 Section 7. Section 916.107, Florida Statutes, is
6 amended to read:

7 916.107 Rights of forensic clients.--

8 (1) RIGHT TO INDIVIDUAL DIGNITY.--

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

1 ~~client's~~ patient's physician or ~~clinical~~ psychologist, or any
2 other appropriate mental health program ~~available to provide~~
3 ~~such treatment~~ until the client ~~person~~ is transferred to the
4 custody of the department.

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

14 (2) RIGHT TO TREATMENT.--

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

26 (b) Each client ~~who is a patient at a forensic~~
27 ~~facility~~ shall be given, at the time of admission and at
28 regular intervals thereafter, a physical examination, which
29 shall include screening for communicable disease by a health
30 practitioner authorized by law to give such screenings and
31 examinations.

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

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

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

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

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

1 designee of the forensic facility shall, within 48 hours,
2 excluding weekends and legal holidays, petition the committing
3 court or the circuit court serving the county in which the
4 facility is located, at the option of the facility
5 administrator or designee, for an order authorizing the
6 continued treatment of the client ~~patient~~. In the interim,
7 treatment may be continued without the consent of the client
8 ~~patient~~ upon the continued written order of a physician who
9 has determined that the emergency situation continues to
10 present a danger to the safety of the client ~~patient~~ or
11 others.

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

28 3. At the hearing on the issue of whether the court
29 should enter an order authorizing treatment for which a client
30 ~~patient~~ has refused to give express and informed consent, the
31 court shall determine by clear and convincing evidence that

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

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

14
15 The hearing shall be as convenient to the client ~~patient~~ as
16 may be consistent with orderly procedure and shall be
17 conducted in physical settings not likely to be injurious to
18 the client's ~~patient's~~ condition. The court may appoint a
19 master to preside at the hearing. The client ~~patient~~ or the
20 client's ~~patient's~~ guardian, and the ~~his or her~~
21 representative, shall be provided with a copy of the petition
22 and the date, time, and location of the hearing. The client
23 ~~patient~~ has the right to have an attorney represent him or her
24 at the hearing, and, if the client ~~patient~~ is indigent, the
25 court shall appoint the office of the public defender to
26 represent the client ~~patient~~ at the hearing. The client
27 ~~patient~~ may testify or not, as he or she chooses, and has the
28 right to cross-examine witnesses ~~testifying on behalf of the~~
29 ~~facility~~ and may present his or her own witnesses.

30 (b) In addition to the provisions of paragraph (a), in
31 the case of surgical procedures requiring the use of a general

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

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

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

30 (a) Each client patient committed pursuant to the
31 provisions of this chapter has the right to communicate freely

1 and privately with persons outside the facility unless it is
2 determined that such communication is likely to be harmful to
3 the client ~~patient~~ or others. Clients shall have the right to
4 contact and to receive communication from their attorneys at
5 any reasonable time.

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

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

29 (d) Each ~~forensic~~ facility shall establish reasonable
30 institutional policies ~~rules~~ governing visitors, visiting
31

1 hours, and the use of telephones by clients ~~patients~~ in the
2 least restrictive ~~possible~~ manner possible.

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

12 (f) The department's forensic facilities ~~department~~
13 shall develop policies ~~adopt rules~~ providing a procedure for
14 reporting abuse. Facility staff shall be required, as a
15 condition of employment, to become familiar with the
16 procedures for the reporting of abuse.

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

30 (7) VOTING IN PUBLIC ELECTIONS.--A client ~~patient~~
31 committed pursuant to this chapter who is eligible to vote

1 according to the laws of the state has the right to vote in
2 the primary and general elections. The department shall
3 establish rules to enable clients ~~patients~~ to obtain voter
4 registration forms, applications for absentee ballots, and
5 absentee ballots.

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

18 (a) Such clinical record may be released:

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

21 2. To persons authorized by order of court and to the
22 defendant's counsel when the records are needed by the counsel
23 for adequate representation.

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

30
31

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

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

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

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

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

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

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

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

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

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

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

14 (9) HABEAS CORPUS.--

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

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

1 (10) TRANSPORTATION.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2)(a) All individuals or vehicles entering upon the
21 grounds of any ~~forensic~~ facility under the supervision or
22 control of the department may ~~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.
27 916.106(10)(6) ~~or by a law enforcement officer as defined in~~
28 s. 943.10.

29 (c) A person who ~~Whoever~~ violates any provision of
30 subparagraph (1)(a)2. or subparagraph (1)(a)3. commits is
31

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

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

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

22 Section 11. Section 916.20, Florida Statutes, is
23 renumbered as section 916.1093, Florida Statutes.

24 Section 12. Part II of chapter 916, Florida Statutes,
25 consisting of sections 916.111, 916.115, 916.12, 916.13,
26 916.14, 916.145, 916.15, 916.16, and 916.17, is created and
27 entitled "Forensic Services for Persons Who are Mentally Ill."

28 Section 13. Section 916.108, Florida Statutes, is
29 renumbered as section 916.111, Florida Statutes, and amended
30 to read:

31

1 916.111 ~~916.108~~ Training of mental health
2 experts.--The evaluation of defendants for competency to
3 proceed ~~stand trial~~ or for sanity at the time of the
4 commission of the offense shall be conducted in such a way as
5 to ensure uniform application of the criteria enumerated in
6 Rules 3.210 and 3.216, Florida Rules of Criminal Procedure.
7 The department shall develop, and may contract with accredited
8 institutions:
9 (1) To provide:
10 (a) A plan for training community mental health
11 professionals to perform forensic evaluations and to
12 standardize the criteria and procedures to be used in these
13 evaluations;
14 (b) Clinical protocols and procedures based upon the
15 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
16 Procedure; and
17 (c) Training for community mental health professionals
18 in the application of these protocols and procedures in
19 performing forensic evaluations and providing reports to the
20 courts; and
21 (2) To compile and maintain the necessary information
22 for evaluating the success of this program, including the
23 number of persons trained, the cost of operating the program,
24 and the effect on the quality of forensic evaluations as
25 measured by appropriateness of admissions to state forensic
26 facilities and to community-based care programs.
27 Section 14. Section 916.11, Florida Statutes, is
28 renumbered as section 916.115, Florida Statutes, and amended
29 to read:
30 916.115 ~~916.11~~ Appointment of experts.--
31

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

4 (b) The court may appoint no ~~more than three nor~~ fewer
5 than two experts to determine issues of the mental condition
6 of a defendant in a criminal case, including the issues of
7 competency to proceed stand trial, insanity, and involuntary
8 hospitalization or placement. The panel of experts may
9 evaluate the defendant in jail or in another appropriate local
10 facility.

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

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

26 (2) Expert witnesses appointed by the court to
27 evaluate ~~determine~~ the mental condition of a defendant in a
28 criminal case shall be allowed reasonable fees for services
29 rendered as evaluators of competence or sanity and as
30 witnesses, which shall be paid by the county in which the
31 indictment was found or the information or affidavit was

1 filed. State employees shall be paid expenses pursuant to s.
2 112.061. The fees shall be taxed as costs in the case. In
3 order for the experts to be paid for the services rendered,
4 the reports and testimony must explicitly address each of the
5 factors and follow the procedures set out in this chapter and
6 in the Florida Rules of Criminal Procedure.

7 Section 15. Section 916.12, Florida Statutes, is
8 amended to read:

9 916.12 Mental competence to proceed ~~stand trial~~.--

10 (1) A defendant person is incompetent to proceed ~~stand~~
11 ~~trial~~ within the meaning of this chapter if the defendant
12 ~~person~~ does not have sufficient present ability to consult
13 with her or his lawyer with a reasonable degree of rational
14 understanding or if the defendant person has no rational, as
15 well as factual, understanding of the proceedings against her
16 or him.

17 (2) The experts shall first determine whether the
18 person is mentally ill and, if so, consider the factors
19 related to the issue of whether the defendant meets the
20 criteria for competence to proceed; that is, whether the
21 defendant has sufficient present ability to consult with
22 counsel with a reasonable degree of rational understanding and
23 whether the defendant has a rational, as well as factual,
24 understanding of the pending proceedings.

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

28 (a) Appreciate the charges or allegations against the
29 defendant;

30
31

1 (b) Appreciate the range and nature of possible
2 penalties, if applicable, that may be imposed in the
3 proceedings against the defendant;

4 (c) Understand the adversarial nature of the legal
5 process;

6 (d) Disclose to counsel facts pertinent to the
7 proceedings at issue;

8 (e) Manifest appropriate courtroom behavior; and

9 (f) Testify relevantly;

10
11 and include in their report any other factor deemed relevant
12 by the experts.

13 (4) If the experts should find that the defendant is
14 incompetent to proceed, the experts shall report on any
15 recommended treatment for the defendant to attain competence
16 to proceed. In considering the issues relating to treatment,
17 the examining experts shall specifically report on:

18 (a) The mental illness causing the incompetence;

19 (b) The treatment or treatments appropriate for the
20 mental illness of the defendant and an explanation of each of
21 the possible treatment alternatives in order of choices;

22 (c) The availability of acceptable treatment and, if
23 treatment is available in the community, the expert shall so
24 state in the report; and

25 (d) The likelihood of the defendant attaining
26 competence under the treatment recommended, an assessment of
27 the probable duration of the treatment required to restore
28 competence, and the probability that the defendant will attain
29 competence to proceed in the foreseeable future.

30 (5)(2) A defendant who, because of psychotropic
31 medication, is able to understand the nature of proceedings

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

10 Section 16. Section 916.13, Florida Statutes, is
11 amended to read:

12 916.13 Involuntary commitment of defendant adjudicated
13 incompetent to ~~stand trial or incompetent for sentencing.~~--

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

20 (a) The defendant ~~person~~ is mentally ill and because
21 of the ~~her or his~~ mental illness, ~~or that the person is~~
22 ~~mentally retarded and because of her or his mental~~
23 ~~retardation:~~

24 1. The defendant ~~person~~ is manifestly incapable of
25 surviving alone or with the help of willing and responsible
26 family or friends, including available alternative services,
27 and, without treatment, the defendant ~~person~~ is likely to
28 suffer from neglect or refuse to care for herself or himself
29 and such neglect or refusal poses a real and present threat of
30 substantial harm to the defendant's ~~her or his~~ well-being; and
31 ~~or~~

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

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

12 (c) There is a substantial probability that the mental
13 illness causing the defendant's incompetence will respond to
14 treatment and the defendant will regain competency to proceed
15 in the reasonably foreseeable future.

16 (2) ~~ADMISSION TO A FORENSIC FACILITY.--~~

17 ~~(a)~~ A defendant ~~Every person~~ who has been charged with
18 a felony and who has been adjudicated incompetent to proceed
19 ~~stand trial or incompetent for sentencing~~, and who meets the
20 criteria for commitment to the department under the provisions
21 of this chapter, may ~~shall~~ be committed to the department, and
22 the department shall ~~may~~ retain and treat the defendant. No
23 later than 6 months after the date of admission ~~commitment~~ or
24 at the end of any period of extended commitment, or at any
25 time the administrator or designee shall have determined that
26 the defendant has regained competency to proceed ~~stand trial~~
27 or no longer meets the criteria for continued commitment, the
28 administrator or designee shall file a report with the court
29 pursuant to the applicable Florida Rules of Criminal
30 Procedure.
31

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

23 Section 17. Section 916.14, Florida Statutes, is
24 amended to read:

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

1 Section 18. Section 916.145, Florida Statutes, is
2 amended to read:

3 916.145 Adjudication of incompetency due to mental
4 illness ~~retardation~~; dismissal of charges.--The charges
5 against any defendant adjudicated incompetent to proceed stand
6 ~~trial~~ due to the defendant's his or her mental illness
7 ~~retardation~~ shall be dismissed without prejudice to the state
8 if the defendant remains incompetent to proceed within a
9 reasonable time after such determination, not to exceed 5
10 years stand trial 2 years after such adjudication, unless the
11 court in its order specifies its reasons for believing that
12 the defendant will become competent to proceed within the
13 foreseeable future stand trial and specifies the time within
14 which the defendant is expected to become competent to proceed
15 stand trial. The charges against the defendant are dismissed
16 without prejudice to the state to refile the charges should
17 the defendant be declared competent to proceed in the future.

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

20 916.15 Involuntary commitment of defendant adjudicated
21 not guilty by reason of insanity.--

22 (1) A defendant person who is acquitted of criminal
23 charges because of a finding of not guilty by reason of
24 insanity may be involuntarily committed pursuant to such
25 finding by clear and convincing evidence if the defendant
26 person is mentally ill and, because of the person's illness,
27 is manifestly dangerous to himself or herself or others.

28 (2) Every defendant person acquitted of criminal
29 charges by reason of insanity and found to meet the criteria
30 for involuntary commitment may be committed and treated in
31 accordance with the provisions of this section and the

1 applicable Florida Rules of Criminal Procedure. The
2 department shall admit a defendant so adjudicated to an
3 appropriate facility or program for treatment and shall ~~may~~
4 retain and treat such defendant. No later than 6 months after
5 the date of admission, prior to the end of any period of
6 extended commitment, or at any time the administrator or
7 designee shall have determined that the defendant no longer
8 meets the criteria for continued commitment placement, the
9 administrator or designee shall file a report with the court
10 pursuant to the applicable Florida Rules of Criminal
11 Procedure.

12 (3) In all proceedings under this subsection, both the
13 defendant ~~patient~~ and the state shall have the right to a
14 hearing before the committing court. Evidence at such hearing
15 may be presented by the hospital administrator or the
16 administrator's ~~his or her~~ designee as well as by the state
17 and the defendant. The defendant shall have the right to
18 counsel at any such hearing. In the event that a defendant
19 cannot afford counsel, the court shall appoint the public
20 defender to represent the defendant. The parties shall have
21 access to the defendant's records at the treating facilities
22 and may interview or depose personnel who have had contact
23 with the defendant at the treating facilities.

24 Section 20. Section 916.16, Florida Statutes, is
25 amended to read:

26 916.16 Jurisdiction of committing court.--

27 (1) The committing court shall retain jurisdiction in
28 the case of any defendant ~~patient~~ hospitalized as incompetent
29 to proceed or because of a finding of not guilty by reason of
30 insanity ~~or, if retarded, admitted to retardation residential~~
31 ~~services~~ pursuant to this chapter. No such defendant ~~person~~

1 may be released except by order of the committing court. The
2 administrative hearing examiner shall have no jurisdiction to
3 determine issues of continuing hospitalization or release of
4 any defendant ~~person~~ admitted pursuant to this chapter.

5 (2) The committing court shall retain jurisdiction in
6 the case of any defendant placed on conditional release. No
7 such defendant may be released from the conditions of release
8 except by order of the committing court.

9 Section 21. Section 916.17, Florida Statutes, is
10 amended to read:

11 916.17 Conditional release.--

12 (1) The committing court may order a conditional
13 release of any defendant who has been found to be incompetent
14 ~~to proceed committed according to a finding of incompetency to~~
15 ~~stand trial or an adjudication of not guilty by reason of~~
16 insanity, based on an approved plan for providing appropriate
17 outpatient care and treatment. The committing court may order
18 a conditional release of any defendant in lieu of an
19 involuntary commitment to a forensic facility pursuant to s.
20 916.13. Upon a recommendation that ~~At such time as the~~
21 ~~administrator shall determine~~ outpatient treatment of the
22 defendant is to be appropriate, ~~she or he may file with the~~
23 ~~court, with copies to all parties,~~ a written plan for
24 outpatient treatment, including recommendations from qualified
25 professionals, must be filed with the court, with copies to
26 all parties. Such a plan may also be submitted by the
27 defendant and filed with the court with copies to all parties.
28 The plan shall include:

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

31 (b) Provisions for outpatient mental health services.

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

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

27 Section 22. Part III of chapter 916, Florida Statutes,
28 consisting of sections 916.301, 916.3012, 916.302, 916.3025,
29 916.303, and 916.304, is created and entitled "Forensic
30 Services for Persons Who Are Mentally Retarded or Autistic."

31

1 Section 23. Section 916.301, Florida Statutes, is
2 created to read:

3 916.301 Appointment of experts.--

4 (1) The department shall provide the courts quarterly
5 with a list of mental retardation and autism professionals who
6 are qualified to perform evaluations of defendants alleged to
7 be incompetent to proceed due to mental retardation or autism.
8 The courts may use professionals from this list when ordering
9 evaluations for defendants suspected of being retarded or
10 autistic.

11 (2) If a defendant's suspected mental condition is
12 mental retardation or autism, the court shall appoint the
13 developmental services program of the department who will
14 select two experts to evaluate whether the defendant meets the
15 definition of retardation or autism and, if so, whether the
16 defendant is competent to proceed. One of the experts selected
17 by the developmental services program must be a psychologist
18 and the other must be a social service professional.

19 (3) The developmental services program shall obtain
20 evaluations from a psychologist licensed or authorized by law
21 to practice psychology in this state, with experience in
22 evaluating persons suspected of having mental retardation or
23 autism, and a social service professional with experience in
24 working with persons with mental retardation or autism.

25 (a) The psychologist shall evaluate whether the
26 defendant meets the definition of mental retardation or autism
27 and, if so, whether the defendant is incompetent to proceed
28 due to mental retardation or autism.

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

31

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

11 (5) Expert witnesses selected by the developmental
12 services program or appointed by the court to evaluate the
13 mental condition of a defendant in a criminal case shall be
14 allowed reasonable fees for services rendered as evaluators
15 and as witnesses, which shall be paid by the county in which
16 the indictment was found or the information or affidavit was
17 filed. State employees shall be paid expenses pursuant to s.
18 112.061. The fees shall be taxed as costs in the case. In
19 order for the experts to be paid for the services rendered,
20 the reports and testimony must explicitly address each of the
21 factors and follow the procedures set out in this chapter and
22 in the Florida Rules of Criminal Procedure.

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

25 916.3012 Mental competence to proceed.--

26 (1) A defendant whose suspected mental condition is
27 mental retardation or autism is incompetent to proceed within
28 the meaning of this chapter if the defendant does not have
29 sufficient present ability to consult with the defendant's
30 lawyer with a reasonable degree of rational understanding or

31

1 if the defendant has no rational, as well as factual,
2 understanding of the proceedings against the defendant.
3 (2) The experts shall first consider whether the
4 defendant meets the definition of mental retardation or autism
5 and, if so, consider the factors related to the issue of
6 whether the defendant meets the criteria for competence to
7 proceed; that is, whether the defendant has sufficient present
8 ability to consult with counsel with a reasonable degree of
9 rational understanding and whether the defendant has a
10 rational, as well as factual, understanding of the pending
11 proceedings.
12 (3) In considering the issue of competence to proceed,
13 the examining experts shall first consider and specifically
14 include in their report the defendant's capacity to:
15 (a) Appreciate the charges or allegations against the
16 defendant;
17 (b) Appreciate the range and nature of possible
18 penalties, if applicable, that may be imposed in the
19 proceedings against the defendant;
20 (c) Understand the adversarial nature of the legal
21 process;
22 (d) Disclose to counsel facts pertinent to the
23 proceedings at issue;
24 (e) Manifest appropriate courtroom behavior; and
25 (f) Testify relevantly;
26
27 and include in their report any other factor deemed relevant
28 by the experts.
29 (4) If the experts should find that the defendant is
30 incompetent to proceed, the experts shall report on any
31 recommended training for the defendant to attain competence to

1 proceed. In considering the issues relating to training, the
2 examining experts shall specifically report on:

3 (a) The mental retardation or autism causing the
4 incompetence;

5 (b) The training appropriate for the mental
6 retardation or autism of the defendant and an explanation of
7 each of the possible training alternatives in order of
8 choices;

9 (c) The availability of acceptable training and, if
10 training is available in the community, the expert shall so
11 state in the report; and

12 (d) The likelihood of the defendant attaining
13 competence under the training recommended, an assessment of
14 the probable duration of the training required to restore
15 competence, and the probability that the defendant will attain
16 competence to proceed in the foreseeable future.

17 Section 25. Section 916.302, Florida Statutes, is
18 created to read:

19 916.302 Involuntary commitment of defendant determined
20 to be incompetent to proceed due to mental retardation or
21 autism.--

22 (1) CRITERIA.--Every defendant who is charged with a
23 felony and who is found to be incompetent to proceed, pursuant
24 to this chapter and the applicable Florida Rules of Criminal
25 Procedure, may be involuntarily committed for training upon a
26 finding by the court of clear and convincing evidence that:

27 (a) The defendant is mentally retarded or autistic;

28 (b) There is a substantial likelihood that in the near
29 future the defendant will inflict serious bodily harm on
30 himself or herself or another person, as evidenced by recent
31 behavior causing, attempting, or threatening such harm;

1 (c) All available, less restrictive alternatives,
2 including services provided in community residential
3 facilities or other community settings, which would offer an
4 opportunity for improvement of the condition have been judged
5 to be inappropriate; and

6 (d) There is a substantial probability that the mental
7 retardation or autism causing the defendant's incompetence
8 will respond to training and the defendant will regain
9 competency to proceed in the reasonably foreseeable future.

10 (2) ADMISSION TO A FACILITY.--

11 (a) A defendant who has been charged with a felony and
12 who is found to be incompetent to proceed, and who meets the
13 criteria for commitment to the department under the provisions
14 of this part, shall be committed to the department, and the
15 department shall retain and serve the defendant. No later than
16 6 months after the date of admission or at the end of any
17 period of extended commitment or at any time the administrator
18 or designee shall have determined that the defendant has
19 regained competency to proceed or no longer meets the criteria
20 for continued commitment, the administrator or designee shall
21 file a report with the court pursuant to this chapter and the
22 applicable Florida Rules of Criminal Procedure.

23 (b) A defendant determined to be incompetent to
24 proceed due to mental retardation or autism may be ordered by
25 a circuit court into a secure facility designated by the
26 department for mentally retarded or autistic defendants.

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

31

1 (d) The department may not transfer a defendant from a
2 designated secure facility to a nonsecure facility without
3 first notifying the court, and all parties, 30 days before the
4 proposed transfer. If the court objects to the proposed
5 transfer to a nonsecure facility, it must send its written
6 objection to the department. The department may transfer the
7 defendant unless it receives the written objection from the
8 court within 30 days after the court's receipt of the notice
9 of the proposed transfer.

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

11 (a) If a defendant is both retarded or autistic and
12 mentally ill, evaluations must address which condition is
13 primarily affecting the defendant's competency to proceed.
14 Referral of the defendant should be made to the facility or
15 program most appropriate to address the symptoms which are the
16 cause of the defendant's incompetence.

17 (b) Transfer from one facility or program to another
18 facility or program may occur when, in the department's
19 judgment, it is in the defendant's best treatment or training
20 interests. Transfer will require an amended order from the
21 committing court.

22 Section 26. Section 916.3025, Florida Statutes, is
23 created to read:

24 916.3025 Jurisdiction of committing court.--

25 (1) The committing court shall retain jurisdiction in
26 the case of any defendant found to be incompetent to proceed
27 and ordered into a secure facility designated by the
28 department for mentally retarded or autistic defendants. No
29 defendant may be released except by the order of the
30 committing court.

31

1 (2) The committing court shall retain jurisdiction in
2 the case of any defendant placed on conditional release. No
3 such defendant may be released from the conditions of release
4 except by order of the committing court.

5 (3) The committing court shall consider the petition
6 to involuntarily admit to residential services provided by the
7 department's developmental services program a person whose
8 charges have been dismissed, and, when applicable, to continue
9 secure placement of such person as provided in s. 916.303. The
10 committing court shall retain jurisdiction over such person so
11 long as he or she remains in secure placement or is on
12 conditional release.

13 Section 27. Section 916.303, Florida Statutes, is
14 created to read:

15 916.303 Determination of incompetency due to mental
16 retardation or autism; dismissal of charges.--

17 (1) The charges against any defendant found to be
18 incompetent to proceed due to mental retardation or autism
19 shall be dismissed without prejudice to the state if the
20 defendant remains incompetent to proceed within a reasonable
21 time after such determination, not to exceed 2 years, unless
22 the court in its order specifies its reasons for believing
23 that the defendant will become competent to proceed within the
24 foreseeable future and specifies the time within which the
25 defendant is expected to become competent to proceed. The
26 charges against the defendant are dismissed without prejudice
27 to the state to refile the charges should the defendant be
28 declared competent to proceed in the future.

29 (2)(a) If the charges are dismissed and if the
30 defendant is considered to lack sufficient capacity to give
31 express and informed consent to a voluntary application for

1 services and lacks the basic survival and self-care skills to
2 provide for his or her well-being or is likely to physically
3 injure himself or herself or others if allowed to remain at
4 liberty, the department, the state attorney or the defendant's
5 attorney may apply to the committing court to involuntarily
6 admit the defendant to residential services pursuant to s.
7 393.11.

8 (b) If the defendant is considered to need involuntary
9 residential services under s. 393.11 and, further, there is a
10 substantial likelihood that the defendant will injure another
11 person or continues to present a danger of escape, and all
12 available less restrictive alternatives, including services in
13 community residential facilities or other community settings,
14 which would offer an opportunity for improvement of the
15 condition have been judged to be inappropriate, then the
16 person or entity filing the petition under s. 393.11, the
17 state attorney, the defendant's counsel, the petitioning
18 commission, or the department may also petition the committing
19 court to continue the defendant's placement in a secure
20 facility or program pursuant to this section. Any defendant
21 involuntarily admitted pursuant to this paragraph shall have
22 his or her status reviewed by the court at least annually at a
23 hearing. The annual review and hearing shall be held for the
24 court to determine whether the defendant continues to meet the
25 criteria for involuntary residential services and, if so,
26 whether the defendant still requires placement in a secure
27 facility or program because the court finds that the defendant
28 is likely to physically injure others as specified in s.
29 393.11 and whether the defendant is receiving adequate care,
30 treatment, habilitation, and rehabilitation, including
31 psychotropic medication and behavioral programming. Notice of

1 the annual review and review hearing shall be given to the
2 state attorney, to the defendant's attorney, and to the
3 defendant's legal guardian. In no instance may a defendant's
4 placement in a secure facility or program exceed in length the
5 maximum sentence for the crime for which the defendant was
6 charged.

7 Section 28. Section 916.304, Florida Statutes, is
8 created to read:

9 916.304 Conditional release.--

10 (1) The committing court may order a conditional
11 release of any defendant who has been found to be incompetent
12 to proceed, based on an approved plan for providing continuing
13 community-based training. The committing court may order a
14 conditional release of any defendant in lieu of an involuntary
15 commitment to a forensic facility pursuant to s. 916.13. Upon
16 a recommendation that community-based training for the
17 defendant is appropriate, a written plan for community-based
18 training, including recommendations from qualified
19 professionals, may be filed with the court, with copies to all
20 parties. Such a plan may also be submitted by the defendant
21 and filed with the court, with copies to all parties. The plan
22 shall include:

23 (a) Special provisions for residential care and
24 adequate supervision of the defendant, including recommended
25 location of placement.

26 (b) Recommendations for auxiliary services such as
27 vocational training, psychological training, educational
28 services, leisure services, and special medical care.

29
30 In its order of conditional release, the court shall specify
31 the conditions of release based upon the release plan and

1 shall direct the appropriate agencies or persons to submit
2 periodic reports to the courts regarding the defendant's
3 compliance with the conditions of the release and progress in
4 training, with copies to all parties.

5 (2) Upon the filing of an affidavit or statement under
6 oath by any person that the defendant has failed to comply
7 with the conditions of release, that the defendant's condition
8 has deteriorated, or that the release conditions should be
9 modified, the court shall hold a hearing within 7 days after
10 receipt of the affidavit or statement under oath. After the
11 hearing, the court may modify the release conditions. The
12 court may also order that the defendant be placed into more
13 appropriate programs for further training or may order the
14 defendant to be returned to involuntary residential services
15 of the department if it is found, after the appointment and
16 report of experts, that the defendant meets the criteria for
17 involuntary residential services.

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 29. This act shall take effect October 1 of
23 the year in which enacted.
24
25
26
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE SUMMARY

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