

By the Committees on Family Law & Children, 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 conforming terminology; providing for mandatory  
16 departmental retention and treatment of  
17 defendant; reenacting s. 394.467(7)(a), F.S.,  
18 relating to procedure for continued involuntary  
19 placement, to incorporate said amendment in a  
20 reference; amending s. 916.16, F.S.; providing  
21 for retention of jurisdiction by committing  
22 court over a defendant hospitalized as  
23 incompetent to proceed or because of a finding  
24 of not guilty by reason of insanity or over a  
25 defendant placed on conditional release;  
26 prohibiting release except by court order in  
27 specified circumstances; amending s. 916.17,  
28 F.S.; revising procedures and guidelines  
29 relating to conditional release and  
30 modification of release conditions, including  
31 filing requirements for plans for outpatient

1 treatment; creating pt. III of ch. 916, F.S.,  
2 relating to forensic services for persons who  
3 are mentally retarded or autistic; creating s.  
4 916.301, F.S.; providing for appointment of  
5 experts who are mental retardation or autism  
6 professionals, under specified circumstances;  
7 providing for examination of the defendant by  
8 the experts; providing for certain witness fees  
9 and evaluator fees as court costs; providing  
10 for reimbursement of certain travel and per  
11 diem expenses of state employees; creating s.  
12 916.3012, F.S.; providing for determination of  
13 incompetence to proceed when the defendant's  
14 suspected mental condition is mental  
15 retardation or autism; creating s. 916.302,  
16 F.S.; providing for involuntary commitment of  
17 defendant determined to be incompetent to  
18 proceed due to mental retardation or autism;  
19 requiring the department to notify the court of  
20 transfer of a defendant; creating s. 916.3025,  
21 F.S.; providing for retention of jurisdiction  
22 over certain defendants found incompetent to  
23 proceed and ordered into a secure facility for  
24 mentally retarded or autistic defendants;  
25 prohibiting release except by court order;  
26 creating s. 916.303, F.S.; providing for  
27 dismissal of charges without prejudice or  
28 involuntary admission to residential services  
29 or a training program under specified  
30 circumstances when the defendant is found  
31 incompetent to proceed due to mental

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

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23           Section 1. Subsection (1) of section 40.29, Florida  
24 Statutes, is amended to read:

25           40.29 Clerks to estimate amount for pay of jurors and  
26 witnesses and make requisition.--

27           (1) The clerk of the court in and for any county shall  
28 make an estimate of the amount necessary during any quarterly  
29 fiscal period beginning July 1 and during each succeeding  
30 quarterly fiscal period for the payment by the state of:

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

- 1 (b) Witnesses before the grand jury;  
2 (c) Witnesses summoned to appear for an investigation,  
3 preliminary hearing, or trial in a criminal case when the  
4 witnesses are summoned by a state attorney or on behalf of an  
5 indigent defendant;  
6 (d) Mental health professionals who are appointed  
7 pursuant to s. 394.473 and required in a court hearing  
8 involving an indigent; and  
9 (e) Expert witnesses who are appointed pursuant to s.  
10 916.115(2)~~916.11(3)~~and required in a court hearing involving  
11 an indigent;

12  
13 and shall forward each such estimate to the State Courts  
14 Administrator no later than the date scheduled by the State  
15 Courts Administrator. At the time of any forwarding of such  
16 estimate, the clerk of such court shall make a requisition  
17 upon the State Courts Administrator for the amount of such  
18 estimate; and the State Courts Administrator may reduce the  
19 amount if in his or her judgment the requisition is excessive.

20 Section 2. Subsections (2), (3), (8), and (11) of  
21 section 393.11, Florida Statutes, are amended to read:

22 393.11 Involuntary admission to residential  
23 services.--

24 (2) PETITION.--

25 (a) A petition for involuntary admission to  
26 residential services may be executed by a petitioning  
27 commission. For proposed involuntary admission to residential  
28 services arising out of chapter 916, the petition may be filed  
29 by a petitioning commission, the department, the state  
30 attorney of the circuit from which the defendant was  
31 committed, or the defendant's attorney.

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

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

5 1. State the name, age, and present address of the  
6 commissioners and their relationship to the person with mental  
7 retardation or autism;

8 2. State the name, age, county of residence, and  
9 present address of the person with mental retardation or  
10 autism;

11 3. Allege that the commission believes that the person  
12 needs involuntary residential services and specify the factual  
13 information on which such belief is based;

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

20 5. State which residential setting is the least  
21 restrictive and most appropriate alternative and specify the  
22 factual information on which such belief is based.

23 (d) The petition shall be filed in the circuit court  
24 of the county in which the person with mental retardation or  
25 autism resides.

26 (3) NOTICE.--

27 (a) Notice of the filing of the petition shall be  
28 given to the individual and his or her legal guardian parent  
29 ~~or parents~~. The notice shall be given both verbally and in  
30 writing in the language of the client, or in other modes of  
31 communication of the client, and in English. Notice shall also

1 be given to such other persons as the court may direct. The  
2 petition for involuntary admission to residential services  
3 shall be served with the notice.

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

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

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

21 (8) ORDER.--

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

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

- 28 1. The person is mentally retarded or autistic;  
29 2. Placement in a residential setting is the least  
30 restrictive and most appropriate alternative to meet the  
31 person's needs; and



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

1 the person has been placed in the most appropriate, least  
2 restrictive and cost-beneficial residential facility. A copy  
3 of the family or individual support plan and other  
4 examinations and evaluations shall be served upon the person  
5 and the person's counsel at the same time the documents are  
6 filed with the court.

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

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

23 394.467 Involuntary placement.--

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

25 (a) Hearings on petitions for continued involuntary  
26 placement shall be administrative hearings and shall be  
27 conducted in accordance with the provisions of s. 120.57(1),  
28 except that any order entered by the hearing officer shall be  
29 final and subject to judicial review in accordance with s.  
30 120.68. Orders concerning patients committed after  
31

1 successfully pleading not guilty by reason of insanity shall  
2 be governed by the provisions of s. 916.15.

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

7 Section 5. 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 Children and Family ~~Health and Rehabilitative~~  
12 Services establish, locate, and maintain separate and secure  
13 facilities and programs for the treatment or training of  
14 defendants forensic clients who are charged with a felony and  
15 who have been found to be incompetent to proceed due to their  
16 mental illness, mental retardation, or autism ~~mentally~~  
17 ~~retarded or mentally ill defendants~~, or who have been  
18 acquitted of felonies ~~crimes~~ by reason of insanity, and who,  
19 while still under the jurisdiction of the committing court,  
20 are committed to the department ~~for mental retardation or~~  
21 ~~mental health services~~ under the provisions of this chapter.  
22 The separate, secure facilities shall be sufficient to  
23 accommodate the number of defendants clients committed under  
24 the conditions noted above, except those defendants clients  
25 found by the department to be appropriate for treatment or  
26 training in a civil ~~mental health~~ treatment facility or  
27 program. Such secure facilities shall be designed and  
28 administered so that ingress and egress, together with other  
29 requirements of this chapter, may be strictly controlled by  
30 staff responsible for security in order to protect the  
31

1 defendant client, facility hospital personnel, other clients,  
2 and citizens in adjacent communities.

3 (2) It is further the intent of the Legislature that  
4 treatment or training programs for defendants clients who are  
5 found to be ~~mentally retarded~~ or mentally ill, mentally  
6 retarded, or autistic defendants and are involuntarily  
7 committed to the department ~~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 defendants ~~said~~  
12 ~~clients~~ as provided in this chapter.

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

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

22 916.106 Definitions.--For the purposes of this  
23 chapter:

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

26 (2)~~(1)~~ "Chemical weapon" means any shell, cartridge,  
27 bomb, gun, or other device capable of emitting  
28 chloroacetophenone (CN), chlorobenzalmalonitrile (CS) or any  
29 derivatives thereof in any form, or any other agent with  
30 lacrimatory properties, and shall include products such as  
31 that commonly known as "mace."

- 1       (3) "Civil facility" means a mental health facility  
2 established within the department to serve individuals  
3 committed pursuant to chapter 394 and those defendants  
4 committed pursuant to this chapter who do not require the  
5 security provided in a forensic facility.
- 6       ~~(4)(2)~~ "Court" means the circuit court.
- 7       ~~(5)(3)~~ "Department" means the Department of Children  
8 and Family Health and Rehabilitative Services.
- 9       (6) "Express and informed consent" or "consent" means  
10 consent given voluntarily in writing after a conscientious and  
11 sufficient explanation and disclosure of the purpose of the  
12 proposed treatment, the common side effects of the treatment,  
13 if any, the expected duration of the treatment, and any  
14 alternative treatment available.
- 15       ~~(7)(4)~~ "Forensic client" or "client" ~~"patient"~~ means  
16 any defendant who is mentally ill, mentally retarded, or  
17 autistic and mentally ill person who is committed to the  
18 department pursuant to this chapter and:
- 19       (a) Who has been determined to need treatment for a  
20 mental illness or training for mental retardation or autism;
- 21       (b) Who has been found incompetent to proceed on a  
22 felony offense stand trial or incompetent for sentencing, has  
23 been acquitted of a felony criminal offense by reason of  
24 insanity; ~~has criminal charges pending, or has been found~~  
25 ~~guilty of a criminal offense but is not an inmate of the~~  
26 ~~Department of Corrections or any other correctional facility;~~  
27 ~~and~~
- 28       (c) Who has been determined by the department to:
- 29       1. Be dangerous to himself or herself or others; or
- 30       2. Present a clear and present potential to escape;
- 31 and

1           (d) Who is an adult or juvenile prosecuted as an  
2 adult.  
3           ~~(8)(5)~~ "Forensic facility" means a separate and secure  
4 facility established within the department to serve for the  
5 ~~treatment of~~ forensic clients. Such separate and secure  
6 facilities shall be security-grade buildings located on  
7 grounds distinct in location from other ~~treatment~~ facilities  
8 for persons who are mentally ill. The Florida State Hospital  
9 shall not be required to maintain separate ~~treatment~~  
10 facilities for mentally ill, or mentally retarded, or autistic  
11 defendants who are persons found incompetent to proceed for  
12 trial or who are acquitted of a criminal offense by reason of  
13 insanity.  
14           (9) "Incompetent to proceed" means unable to proceed  
15 at any material stage of a criminal proceeding, which shall  
16 include trial of the case, pretrial hearings involving  
17 questions of fact on which the defendant might be expected to  
18 testify, entry of a plea, proceedings for violation of  
19 probation or violation of community control, sentencing, and  
20 hearings on issues regarding a defendant's failure to comply  
21 with court orders or conditions or other matters in which the  
22 mental competence of the defendant is necessary for a just  
23 resolution of the issues being considered.  
24           ~~(10)(6)~~ "Institutional security personnel" means staff  
25 members who meet or exceed the requirements of s. 943.13 and  
26 who are responsible for providing security, for protection of  
27 clients and personnel, for the enforcement of rules, for  
28 prevention and investigation of unauthorized activities, and  
29 for safeguarding the interests of citizens in the surrounding  
30 communities.  
31

1           ~~(11)(7)~~ "Mental illness" ~~"Mentally ill"~~ means having  
2 an impairment of the emotional processes ~~that, of the ability~~  
3 ~~to~~ exercise conscious control of one's actions, or of the  
4 ability to perceive or understand reality ~~or to understand,~~  
5 which impairment substantially interferes with a defendant's  
6 ~~person's~~ ability to meet the ordinary demands of living, ~~7~~  
7 ~~regardless of etiology; except that,~~ For the purposes of this  
8 chapter, the term does not apply to defendants ~~include simple~~  
9 intoxication, persons who are solely mentally retarded or  
10 autistic, and does not include intoxication or conditions  
11 manifested only by antisocial behavior or substance abuse  
12 impairment ~~drug addiction.~~

13           ~~(12)(8)~~ "Mental retardation" means "retardation" as  
14 defined in s. 393.063(43). ~~significantly subaverage general~~  
15 ~~intellectual functioning existing concurrently with deficits~~  
16 ~~in adaptive behavior and manifested during the period from~~  
17 ~~conception to age 18. "Significantly subaverage general~~  
18 ~~intellectual functioning," for the purpose of this definition,~~  
19 ~~means performance which is two or more standard deviations~~  
20 ~~from the mean score on a standardized intelligence test~~  
21 ~~specified in the rules of the department. "Adaptive~~  
22 ~~behavior," for the purpose of this definition, means the~~  
23 ~~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           (13) "Social service professional," for the purposes  
28 of part III, means a person whose minimum qualifications  
29 include a bachelor's degree and at least 2 years of social  
30 work, clinical practice, or equivalent experience working  
31 directly with persons with mental retardation, autism or other

1 developmental disabilities, special education, or habilitation  
2 programs.  
3 Section 7. Section 916.107, Florida Statutes, is  
4 amended to read:  
5 916.107 Rights of forensic clients.--  
6 (1) RIGHT TO INDIVIDUAL DIGNITY.--  
7 (a) The policy of the state is that the individual  
8 dignity of the client ~~patient~~ shall be respected at all times  
9 and upon all occasions, including any occasion when the  
10 forensic client ~~patient~~ is detained, transported, or treated.  
11 Defendants ~~Persons~~ who are mentally ill, or mentally retarded,  
12 or autistic and who are charged with, ~~or who have been~~  
13 ~~convicted of, committing felonies~~ criminal acts shall receive  
14 appropriate treatment or training. In a criminal case  
15 involving a defendant ~~person~~ who has been adjudicated  
16 incompetent to proceed ~~stand trial~~ or not guilty by reason of  
17 insanity, ~~or who has otherwise been found by the court to meet~~  
18 ~~the criteria for involuntary commitment,~~ a jail may be used as  
19 an emergency facility for up to 15 days from the date the  
20 department receives a completed copy of the commitment order  
21 containing the documentation required by Rules 3.212 and  
22 3.217, Florida Rules of Criminal Procedure. ~~For in every case~~  
23 ~~in which a~~ defendant who is mentally ill, or mentally  
24 retarded, or autistic, who ~~person~~ is held in a jail, and who  
25 has been adjudicated incompetent to proceed or not guilty by  
26 reason of insanity, evaluation and treatment or training shall  
27 be provided in the jail by the local public receiving facility  
28 for mental health services or by the developmental services  
29 program for persons with mental retardation or autism, the  
30 client's ~~patient's~~ physician or ~~clinical~~ psychologist, or any  
31 other appropriate ~~mental health~~ program ~~available to provide~~



1 ~~such treatment~~ until the client ~~person~~ is transferred to the  
2 custody of the department.

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

12 (2) RIGHT TO TREATMENT.--

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

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

30 (c) Every client ~~patient~~ committed pursuant to this  
31 act shall be afforded the opportunity to participate in

1 activities designed to enhance self-image and the beneficial  
2 effects of other treatments or training, as determined by the  
3 facility.

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

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

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

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

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

10           2. In a situation other than an emergency situation,  
11 the administrator or designee of the forensic facility shall  
12 petition the court for an order authorizing the treatment to  
13 ~~of the~~ client ~~patient~~. The order shall allow such treatment  
14 for a period not to exceed 90 days from the date of the entry  
15 of the order. Unless the court is notified in writing that the  
16 client ~~patient~~ has provided express and informed consent in  
17 writing or that the client ~~patient~~ has been discharged by the  
18 committing court, the administrator or designee shall, prior  
19 to the expiration of the initial 90-day order, petition the  
20 court for an order authorizing the continuation of treatment  
21 for another 90-day period. This procedure shall be repeated  
22 until the client ~~patient~~ provides consent or is discharged by  
23 the committing court.

24           3. At the hearing on the issue of whether the court  
25 should enter an order authorizing treatment for which a client  
26 ~~patient~~ has refused to give express and informed consent, the  
27 court shall determine by clear and convincing evidence that  
28 the client ~~patient~~ is mentally ill, or ~~or~~ mentally retarded, or  
29 autistic as defined in this chapter, that the treatment not  
30 consented to is essential to the care of the client ~~patient~~,  
31 and that the treatment not consented to is not experimental

1 and does not present an unreasonable risk of serious,  
2 hazardous, or irreversible side effects. In arriving at the  
3 substitute judgment decision, the court must consider at least  
4 the following factors:

- 5 a. The client's ~~patient's~~ expressed preference  
6 regarding treatment;  
7 b. The probability of adverse side effects;  
8 c. The prognosis without treatment; and  
9 d. The prognosis with treatment.

10

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

26 (b) In addition to the provisions of paragraph (a), in  
27 the case of surgical procedures requiring the use of a general  
28 anesthetic or electroconvulsive treatment or nonpsychiatric  
29 medical procedures, and prior to performing the procedure,  
30 written permission shall be obtained from the client ~~patient~~,  
31 if the client ~~he or she~~ is legally competent, from the parent

1 or guardian of a minor client patient, or from the guardian of  
2 an incompetent client patient. The administrator or designee  
3 of the forensic facility or a ~~his or her~~ designated  
4 representative may, with the concurrence of the client's  
5 ~~patient's~~ attending physician, authorize emergency surgical or  
6 nonpsychiatric medical treatment if such treatment is deemed  
7 lifesaving or for a situation threatening serious bodily harm  
8 to the client patient and permission of the client patient or  
9 the client's patient's guardian cannot be obtained.

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

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

26 (a) Each client patient committed pursuant to the  
27 provisions of this chapter has the right to communicate freely  
28 and privately with persons outside the facility unless it is  
29 determined that such communication is likely to be harmful to  
30 the client patient or others. Clients shall have the right to  
31

1 contact and to receive communication from their attorneys at  
2 any reasonable time.

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

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

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

30 (e) Each client ~~patient~~ committed pursuant to this  
31 chapter shall have ready access to a telephone in order to

1 report an alleged abuse. The facility or program staff shall  
2 orally ~~verbally~~ and in writing inform each client ~~patient~~ of  
3 the procedure for reporting abuse and shall present the  
4 information in a language the client understands. A written  
5 copy of that procedure, including the telephone number of the  
6 abuse registry and reporting forms, shall be posted in plain  
7 view.

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

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

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

1 registration forms, applications for absentee ballots, and  
2 absentee ballots.

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

15 (a) Such clinical record may be released:

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

18 2. To persons authorized by order of court and to the  
19 defendant's counsel when the records are needed by the counsel  
20 for adequate representation.

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

27 4. For statistical and research purposes if the  
28 information is abstracted in such a way as to protect the  
29 identity of individuals.

30 5. If a client ~~patient~~ receiving services pursuant to  
31 this chapter has declared an intention to harm other persons.



1 When such a declaration has been made, the administrator shall  
2 authorize the release of sufficient information to provide  
3 adequate warning to the person threatened with harm by the  
4 client, and to the committing court, the state attorney, and  
5 the attorney representing the client; ~~however, only the~~  
6 ~~declaration may be disclosed.~~

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

14           (b) Notwithstanding other provisions of this  
15 subsection, the department may request or receive from or  
16 provide to any of the following entities client information to  
17 facilitate treatment, habilitation, rehabilitation, and  
18 continuity of care of any forensic client:

19           1. The Social Security Administration and the United  
20 States Department of Veterans Affairs;

21           2. Law enforcement agencies, state attorneys, defense  
22 attorneys ~~public defenders or other attorneys defending the~~  
23 ~~patient,~~ and judges in regard to the client's ~~patient's~~  
24 status;

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

27           4. Community agencies and others expected to provide  
28 followup care to the client ~~patient~~ upon the client's ~~his or~~  
29 ~~her~~ return to the community.

30  
31

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

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

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

11           (9) HABEAS CORPUS.--

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

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

29           (10) TRANSPORTATION.--

30           (a) The sheriff shall consult with the governing board  
31 of the county as to the most appropriate and cost-effective

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

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

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

26 (d) Any company that contracts with a governing board  
27 of a county to transport clients ~~patients~~ shall comply with  
28 the applicable rules of the department to ensure the safety  
29 and dignity of the clients ~~patients~~.

30 (11) LIABILITY FOR VIOLATIONS.--Any person who  
31 violates or abuses any rights or privileges of a client

1 ~~patient~~ provided by this act is liable for damages as  
2 determined by law. Any person who acts in good faith in  
3 complying with the provisions of this act is immune from civil  
4 or criminal liability for his or her actions in connection  
5 with the admission, diagnosis, treatment, training, or  
6 discharge of a client ~~patient~~ to or from a facility. However,  
7 this subsection does not relieve any person from liability if  
8 he or she ~~the person~~ is negligent.

9 Section 8. Section 916.175, Florida Statutes, is  
10 renumbered as section 916.1081, Florida Statutes, and amended  
11 to read:

12 916.1081 ~~916.175~~ Escape from ~~treatment~~ program;  
13 penalty.--A defendant ~~client~~ involuntarily committed to the  
14 department under the provisions of this chapter who escapes or  
15 attempts to escape from a facility or program ~~commits the~~  
16 ~~department is guilty of~~ a felony of the second degree,  
17 punishable as provided in s. 775.082, s. 775.083, or s.  
18 775.084.

19 Section 9. Section 916.178, Florida Statutes, is  
20 renumbered as section 916.1085, Florida Statutes, and amended  
21 to read:

22 916.1085 ~~916.178~~ Introduction or removal of certain  
23 articles unlawful; penalty.--

24 (1)(a) Except as authorized by law or as specifically  
25 authorized by the person in charge of a ~~forensic~~ facility, it  
26 is unlawful to introduce into or upon the grounds of any  
27 ~~forensic~~ facility under the supervision or control of the  
28 department, or to take or attempt to take or send therefrom,  
29 any of the following articles, which are hereby declared to be  
30 contraband for the purposes of this section:  
31

1           1. Any intoxicating beverage or beverage which causes  
2 or may cause an intoxicating effect;

3           2. Any controlled substance as defined in chapter 893;

4           3. Any firearm or deadly weapon; or

5           4. Any other item ~~items~~ as determined by the  
6 department, and as designated by departmental rule or by the  
7 administrator of any facility, and designated by written  
8 institutional policies, to be hazardous to the welfare of  
9 patients or the operation of the facility.

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

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

22           (b) These provisions shall be enforced by  
23 institutional security personnel as defined in s.  
24 916.106(10)(6) or by a law enforcement officer as defined in  
25 s. 943.10.

26           (c) A person who ~~whoever~~ violates any provision of  
27 subparagraph (1)(a)2. or subparagraph (1)(a)3. commits is  
28 ~~guilty of~~ a felony of the third degree, punishable as provided  
29 in s. 775.082, s. 775.083, or s. 775.084.

30  
31

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

4           916.1091 ~~916.19~~ Duties, functions, and powers of  
5 institutional security personnel.--In case of emergency, and  
6 when necessary to provide protection and security to any  
7 client ~~patient~~, to the personnel, equipment, buildings, or  
8 grounds of a department facility, or to citizens in the  
9 surrounding community, institutional security personnel may,  
10 when authorized by the administrator of the facility or her or  
11 his designee when the administrator is not present, use a  
12 chemical weapon against a patient housed in a forensic  
13 facility. However, such weapon shall be used only to the  
14 extent necessary to provide such protection and security.  
15 Under no circumstances shall any such officer carry a chemical  
16 weapon on her or his person except during the period of the  
17 emergency for which its use was authorized. All chemical  
18 weapons shall be placed in secure storage when their use is  
19 not authorized as provided in this section.

20           Section 11. Section 916.20, Florida Statutes, is  
21 renumbered as section 916.1093, Florida Statutes.

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

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

29           916.111 ~~916.108~~ Training of mental health  
30 experts.--The evaluation of defendants for competency to  
31 proceed ~~stand trial~~ or for ~~sanity~~ at the time of the

1 commission of the offense shall be conducted in such a way as  
2 to ensure uniform application of the criteria enumerated in  
3 Rules 3.210 and 3.216, Florida Rules of Criminal Procedure.  
4 The department shall develop, and may contract with accredited  
5 institutions:

6 (1) To provide:

7 (a) A plan for training community mental health  
8 professionals to perform forensic evaluations and to  
9 standardize the criteria and procedures to be used in these  
10 evaluations;

11 (b) Clinical protocols and procedures based upon the  
12 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
13 Procedure; and

14 (c) Training for community mental health professionals  
15 in the application of these protocols and procedures in  
16 performing forensic evaluations and providing reports to the  
17 courts; and

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

24 Section 14. Section 916.11, Florida Statutes, is  
25 renumbered as section 916.115, Florida Statutes, and amended  
26 to read:

27 916.115 ~~916.11~~ Appointment of experts.--

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

31

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

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

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

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



1 the reports and testimony must explicitly address each of the  
2 factors and follow the procedures set out in this chapter and  
3 in the Florida Rules of Criminal Procedure.

4 Section 15. Section 916.12, Florida Statutes, is  
5 amended to read:

6 916.12 Mental competence to proceed ~~stand trial~~.--

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

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

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

25 (a) Appreciate the charges or allegations against the  
26 defendant;

27 (b) Appreciate the range and nature of possible  
28 penalties, if applicable, that may be imposed in the  
29 proceedings against the defendant;

30 (c) Understand the adversarial nature of the legal  
31 process;

1           (d) Disclose to counsel facts pertinent to the  
2 proceedings at issue;

3           (e) Manifest appropriate courtroom behavior; and

4           (f) Testify relevantly;

5  
6 and include in their report any other factor deemed relevant  
7 by the experts.

8           (4) If the experts should find that the defendant is  
9 incompetent to proceed, the experts shall report on any  
10 recommended treatment for the defendant to attain competence  
11 to proceed. In considering the issues relating to treatment,  
12 the examining experts shall specifically report on:

13           (a) The mental illness causing the incompetence;

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

17           (c) The availability of acceptable treatment and, if  
18 treatment is available in the community, the expert shall so  
19 state in the report; and

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

25           (5)(2) A defendant who, because of psychotropic  
26 medication, is able to understand the nature of proceedings  
27 and assist in the defendant's own ~~her or his~~ defense shall not  
28 automatically be deemed incompetent to proceed ~~stand trial~~  
29 simply because the defendant's satisfactory mental functioning  
30 is dependent upon such medication. As used in this subsection,  
31 "psychotropic medication" means any drug or compound used to

1 treat mental or emotional disorders affecting the mind,  
2 behavior, intellectual functions, perception, moods, or  
3 emotions and includes antipsychotic, antidepressant,  
4 antimanic, and antianxiety drugs.

5 Section 16. Section 916.13, Florida Statutes, is  
6 amended to read:

7 916.13 Involuntary commitment of defendant adjudicated  
8 incompetent to stand trial or incompetent for sentencing.--

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

15 (a) The defendant ~~person~~ is mentally ill and because  
16 of the ~~her or his~~ mental illness, ~~or that the person is~~  
17 ~~mentally retarded and because of her or his mental~~  
18 ~~retardation~~:

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

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

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

7 (c) There is a substantial probability that the mental  
8 illness causing the defendant's incompetence will respond to  
9 treatment and the defendant will regain competency to proceed  
10 in the reasonably foreseeable future.

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

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

26 (b) ~~A defendant adjudicated incompetent to stand trial~~  
27 ~~due to her or his mental retardation may be ordered into a~~  
28 ~~secure facility designated by the department for retarded~~  
29 ~~defendants. The department may not transfer a client from the~~  
30 ~~secure facility to another residential setting without first~~  
31 ~~notifying the court; the department may transfer such~~

1 ~~defendant unless the department receives written objection to~~  
2 ~~the transfer from the court within 30 days after receipt of~~  
3 ~~the notice by the court. No retarded client may be placed in~~  
4 ~~the designated secure facility except by criminal court order.~~  
5 ~~However, if criminal charges are subsequently dropped and the~~  
6 ~~client is involuntarily admitted to retardation residential~~  
7 ~~services, the placement at the secure facility may be~~  
8 ~~continued if so ordered by the committing court following a~~  
9 ~~hearing with the same due process requirements as set out in~~  
10 ~~s. 393.11 for an initial involuntary admission. Such court~~  
11 ~~hearings shall be held at least annually, with notice to the~~  
12 ~~state attorney, and each order of continuing placement shall~~  
13 ~~be based on a finding that the client is likely to physically~~  
14 ~~injure others as specified in s. 393.11(1)(c)2. In no case may~~  
15 ~~a client's placement in a secure facility exceed the maximum~~  
16 ~~sentence for the crime for which she or he was charged.~~

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

19 916.14 Statute of limitations; former jeopardy.--The  
20 statute of limitations shall not be applicable to criminal  
21 charges dismissed because of the incompetency of the defendant  
22 to proceed stand trial. If a defendant is declared  
23 incompetent to proceed stand trial during trial and afterwards  
24 is declared competent to proceed stand trial, the defendant's  
25 other, uncompleted trial shall not constitute former jeopardy.

26 Section 18. Section 916.145, Florida Statutes, is  
27 amended to read:

28 916.145 Adjudication of incompetency due to mental  
29 illness ~~retardation~~; dismissal of charges.--The charges  
30 against any defendant adjudicated incompetent to proceed stand  
31 trial due to the defendant's his or her mental illness

1 ~~retardation~~ shall be dismissed without prejudice to the state  
2 if the defendant remains incompetent to proceed within a  
3 reasonable time after such determination, not to exceed 5  
4 years ~~stand trial 2 years after such adjudication~~, unless the  
5 court in its order specifies its reasons for believing that  
6 the defendant will become competent to proceed within the  
7 foreseeable future ~~stand trial~~ and specifies the time within  
8 which the defendant is expected to become competent to proceed  
9 ~~stand trial~~. The charges against the defendant are dismissed  
10 without prejudice to the state to refile the charges should  
11 the defendant be declared competent to proceed in the future.

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

14 916.15 Involuntary commitment of defendant adjudicated  
15 not guilty by reason of insanity.--

16 (1) A defendant ~~person~~ who is acquitted of criminal  
17 charges because of a finding of not guilty by reason of  
18 insanity may be involuntarily committed pursuant to such  
19 finding if the defendant ~~person~~ is mentally ill and, because  
20 of the ~~person's~~ illness, is manifestly dangerous to himself or  
21 herself or others.

22 (2) Every defendant ~~person~~ acquitted of criminal  
23 charges by reason of insanity and found to meet the criteria  
24 for involuntary commitment may be committed and treated in  
25 accordance with the provisions of this section and the  
26 applicable Florida Rules of Criminal Procedure. The  
27 department shall admit a defendant so adjudicated to an  
28 appropriate facility or program for treatment and shall ~~may~~  
29 retain and treat such defendant. No later than 6 months after  
30 the date of admission, prior to the end of any period of  
31 extended commitment, or at any time the administrator or

1 designee shall have determined that the defendant no longer  
2 meets the criteria for continued commitment placement, the  
3 administrator or designee shall file a report with the court  
4 pursuant to the applicable Florida Rules of Criminal  
5 Procedure.

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

18 Section 20. Section 916.16, Florida Statutes, is  
19 amended to read:

20 916.16 Jurisdiction of committing court.--

21 (1) The committing court shall retain jurisdiction in  
22 the case of any defendant ~~patient~~ hospitalized as incompetent  
23 to proceed or because of a finding of not guilty by reason of  
24 insanity ~~or, if retarded, admitted to retardation residential~~  
25 ~~services~~ pursuant to this chapter. No such defendant ~~person~~  
26 may be released except by order of the committing court. The  
27 administrative hearing examiner shall have no jurisdiction to  
28 determine issues of continuing hospitalization or release of  
29 any defendant ~~person~~ admitted pursuant to this chapter.

30 (2) The committing court shall retain jurisdiction in  
31 the case of any defendant placed on conditional release. No

1 such defendant may be released from the conditions of release  
2 except by order of the committing court.

3 Section 21. Section 916.17, Florida Statutes, is  
4 amended to read:

5 916.17 Conditional release.--

6 (1) The committing court may order a conditional  
7 release of any defendant who has been found to be incompetent  
8 to proceed ~~committed according to a finding of incompetency to~~  
9 ~~stand trial or an adjudication of not guilty by reason of~~  
10 insanity, based on an approved plan for providing appropriate  
11 outpatient care and treatment. The committing court may order  
12 a conditional release of any defendant in lieu of an  
13 involuntary commitment to a forensic facility pursuant to s.  
14 916.13 or s. 916.15. Upon a recommendation that ~~At such time~~  
15 ~~as the administrator shall determine~~ outpatient treatment of  
16 the defendant is to be appropriate, ~~she or he may file with~~  
17 ~~the court, with copies to all parties,~~ a written plan for  
18 outpatient treatment, including recommendations from qualified  
19 professionals, must be filed with the court, with copies to  
20 all parties. Such a plan may also be submitted by the  
21 defendant and filed with the court with copies to all parties.  
22 The plan shall include:

23 (a) Special provisions for residential care or  
24 adequate supervision of the defendant.

25 (b) Provisions for outpatient mental health services.

26 (c) If appropriate, recommendations for auxiliary  
27 services such as vocational training, educational services, or  
28 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 court regarding the defendant's  
3 compliance with the conditions of the release and progress in  
4 treatment, with copies to all parties.

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

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

21 Section 22. Part III of chapter 916, Florida Statutes,  
22 consisting of sections 916.301, 916.3012, 916.302, 916.3025,  
23 916.303, and 916.304, is created and entitled "Forensic  
24 Services for Persons Who Are Mentally Retarded or Autistic."

25 Section 23. Section 916.301, Florida Statutes, is  
26 created to read:

27 916.301 Appointment of experts.--

28 (1) The department shall provide the courts quarterly  
29 with a list of mental retardation and autism professionals who  
30 are qualified to perform evaluations of defendants alleged to  
31 be incompetent to proceed due to mental retardation or autism.

1 The courts may use professionals from this list when ordering  
2 evaluations for defendants suspected of being retarded or  
3 autistic.

4 (2) If a defendant's suspected mental condition is  
5 mental retardation or autism, the court shall appoint two  
6 experts, one of whom must be selected by the developmental  
7 services program of the department, each of whom will evaluate  
8 whether the defendant meets the definition of "mental  
9 retardation" or "autism" and, if so, whether the defendant is  
10 competent to proceed.

11 (3) At the request of any party, the court may appoint  
12 one additional expert to evaluate the defendant. The expert  
13 appointed by the court will evaluate whether the defendant  
14 meets the definition of "mental retardation" or "autism" and,  
15 if so, whether the defendant is competent to proceed.

16 (4) The developmental services program shall select a  
17 psychologist who is licensed or authorized by law to practice  
18 in this state, with experience in evaluating persons suspected  
19 of having mental retardation or autism, and a social service  
20 professional with experience in working with persons with  
21 mental retardation or autism to evaluate the defendant.

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

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

28 (5) All evaluations ordered by the court must be from  
29 qualified experts with experience in evaluating persons with  
30 mental retardation or autism and may include, but are not  
31 limited to, those of psychologists, physicians, or

1 psychiatrists licensed or authorized by law to practice in  
2 this state.

3 (6) The panel of experts may examine the defendant in  
4 jail, in another appropriate local facility, or on an out  
5 patient basis.

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

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

19 916.3012 Mental competence to proceed.--

20 (1) A defendant whose suspected mental condition is  
21 mental retardation or autism is incompetent to proceed within  
22 the meaning of this chapter if the defendant does not have  
23 sufficient present ability to consult with the defendant's  
24 lawyer with a reasonable degree of rational understanding or  
25 if the defendant has no rational, as well as factual,  
26 understanding of the proceedings against the defendant.

27 (2) The experts shall first consider whether the  
28 defendant meets the definition of mental retardation or autism  
29 and, if so, consider the factors related to the issue of  
30 whether the defendant meets the criteria for competence to  
31 proceed; that is, whether the defendant has sufficient present

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

1 each of the possible training alternatives in order of  
2 choices;  
3 (c) The availability of acceptable training and, if  
4 training is available in the community, the expert shall so  
5 state in the report; and  
6 (d) The likelihood of the defendant attaining  
7 competence under the training recommended, an assessment of  
8 the probable duration of the training required to restore  
9 competence, and the probability that the defendant will attain  
10 competence to proceed in the foreseeable future.  
11 Section 25. Section 916.302, Florida Statutes, is  
12 created to read:  
13 916.302 Involuntary commitment of defendant determined  
14 to be incompetent to proceed due to mental retardation or  
15 autism.--  
16 (1) CRITERIA.--Every defendant who is charged with a  
17 felony and who is found to be incompetent to proceed, pursuant  
18 to this chapter and the applicable Florida Rules of Criminal  
19 Procedure, may be involuntarily committed for training upon a  
20 finding by the court of clear and convincing evidence that:  
21 (a) The defendant is mentally retarded or autistic;  
22 (b) There is a substantial likelihood that in the near  
23 future the defendant will inflict serious bodily harm on  
24 himself or herself or another person, as evidenced by recent  
25 behavior causing, attempting, or threatening such harm;  
26 (c) All available, less restrictive alternatives,  
27 including services provided in community residential  
28 facilities or other community settings, which would offer an  
29 opportunity for improvement of the condition have been judged  
30 to be inappropriate; and  
31

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

5       (2) ADMISSION TO A FACILITY.--

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

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

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

26       (d) The department may not transfer a defendant from a  
27 designated secure facility to a nonsecure facility without  
28 first notifying the court, and all parties, 30 days before the  
29 proposed transfer. If the court objects to the proposed  
30 transfer to a nonsecure facility, it must send its written  
31 objection to the department. The department may transfer the

1 defendant unless it receives the written objection from the  
2 court within 30 days after the court's receipt of the notice  
3 of the proposed transfer.

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

5 (a) If a defendant is both retarded or autistic and  
6 mentally ill, evaluations must address which condition is  
7 primarily affecting the defendant's competency to proceed.  
8 Referral of the defendant should be made to the facility or  
9 program most appropriate to address the symptoms which are the  
10 cause of the defendant's incompetence.

11 (b) Transfer from one facility or program to another  
12 facility or program may occur when, in the department's  
13 judgment, it is in the defendant's best treatment or training  
14 interests. Transfer will require an amended order from the  
15 committing court.

16 Section 26. Section 916.3025, Florida Statutes, is  
17 created to read:

18 916.3025 Jurisdiction of committing court.--

19 (1) The committing court shall retain jurisdiction in  
20 the case of any defendant found to be incompetent to proceed  
21 and ordered into a secure facility designated by the  
22 department for mentally retarded or autistic defendants. No  
23 defendant may be released except by the order of the  
24 committing court.

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

29 (3) The committing court shall consider the petition  
30 to involuntarily admit to residential services provided by the  
31 department's developmental services program a person whose

1 charges have been dismissed, and, when applicable, to continue  
2 secure placement of such person as provided in s. 916.303. The  
3 committing court shall retain jurisdiction over such person so  
4 long as he or she remains in secure placement or is on  
5 conditional release.

6 Section 27. Section 916.303, Florida Statutes, is  
7 created to read:

8 916.303 Determination of incompetency due to mental  
9 retardation or autism; dismissal of charges.--

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

22 (2)(a) If the charges are dismissed and if the  
23 defendant is considered to lack sufficient capacity to give  
24 express and informed consent to a voluntary application for  
25 services and lacks the basic survival and self-care skills to  
26 provide for his or her well-being or is likely to physically  
27 injure himself or herself or others if allowed to remain at  
28 liberty, the department, the state attorney or the defendant's  
29 attorney may apply to the committing court to involuntarily  
30 admit the defendant to residential services pursuant to s.  
31 393.11.



1        (b) If the defendant is considered to need involuntary  
2 residential services under s. 393.11 and, further, there is a  
3 substantial likelihood that the defendant will injure another  
4 person or continues to present a danger of escape, and all  
5 available less restrictive alternatives, including services in  
6 community residential facilities or other community settings,  
7 which would offer an opportunity for improvement of the  
8 condition have been judged to be inappropriate, then the  
9 person or entity filing the petition under s. 393.11, the  
10 state attorney, the defendant's counsel, the petitioning  
11 commission, or the department may also petition the committing  
12 court to continue the defendant's placement in a secure  
13 facility or program pursuant to this section. Any defendant  
14 involuntarily admitted pursuant to this paragraph shall have  
15 his or her status reviewed by the court at least annually at a  
16 hearing. The annual review and hearing shall be held for the  
17 court to determine whether the defendant continues to meet the  
18 criteria for involuntary residential services and, if so,  
19 whether the defendant still requires placement in a secure  
20 facility or program because the court finds that the defendant  
21 is likely to physically injure others as specified in s.  
22 393.11 and whether the defendant is receiving adequate care,  
23 treatment, habilitation, and rehabilitation, including  
24 psychotropic medication and behavioral programming. Notice of  
25 the annual review and review hearing shall be given to the  
26 state attorney, to the defendant's attorney, and to the  
27 defendant's legal guardian. In no instance may a defendant's  
28 placement in a secure facility or program exceed in length the  
29 maximum sentence for the crime for which the defendant was  
30 charged.

31

1           Section 28. Section 916.304, Florida Statutes, is  
2 created to read:

3           916.304 Conditional release.--

4           (1) The committing court may order a conditional  
5 release of any defendant who has been found to be incompetent  
6 to proceed, based on an approved plan for providing continuing  
7 community-based training. The committing court may order a  
8 conditional release of any defendant in lieu of an involuntary  
9 commitment to a forensic facility pursuant to s. 916.302. Upon  
10 a recommendation that community-based training for the  
11 defendant is appropriate, a written plan for community-based  
12 training, including recommendations from qualified  
13 professionals, may be filed with the court, with copies to all  
14 parties. Such a plan may also be submitted by the defendant  
15 and filed with the court, with copies to all parties. The plan  
16 shall include:

17           (a) Special provisions for residential care and  
18 adequate supervision of the defendant, including recommended  
19 location of placement.

20           (b) Recommendations for auxiliary services such as  
21 vocational training, psychological training, educational  
22 services, leisure services, and special medical care.

23  
24 In its order of conditional release, the court shall specify  
25 the conditions of release based upon the release plan and  
26 shall direct the appropriate agencies or persons to submit  
27 periodic reports to the courts regarding the defendant's  
28 compliance with the conditions of the release and progress in  
29 training, with copies to all parties.

30           (2) Upon the filing of an affidavit or statement under  
31 oath by any person that the defendant has failed to comply

1 with the conditions of release, that the defendant's condition  
2 has deteriorated, or that the release conditions should be  
3 modified, the court shall hold a hearing within 7 days after  
4 receipt of the affidavit or statement under oath. After the  
5 hearing, the court may modify the release conditions. The  
6 court may also order that the defendant be placed into more  
7 appropriate programs for further training or may order the  
8 defendant to be returned to involuntary residential services  
9 of the department if it is found, after the appointment and  
10 report of experts, that the defendant meets the criteria for  
11 involuntary residential services.

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

16 Section 29. This act shall take effect October 1 of  
17 the year in which enacted.

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