

By Representative Stabins

1 A bill to be entitled
2 An act relating to criminal defendants with
3 mental conditions or alleged mental conditions;
4 creating the "Insanity Defense Reform Act";
5 creating s. 916.201, F.S.; providing a short
6 title; amending and renumbering s. 916.106,
7 F.S., relating to definitions with respect to
8 the Forensic Client Services Act; providing or
9 revising definitions; creating s. 916.203,
10 F.S.; barring mental condition from being
11 raised as a defense to any criminal offense
12 charged; requiring that a person suffering from
13 a mental condition requiring treatment be
14 committed to the Department of Corrections or
15 as otherwise provided by law for placement in
16 an appropriate facility for treatment;
17 providing for incarceration or less restrictive
18 confinement if a sentence of incarceration has
19 been imposed on the person; providing for time
20 incarcerated for treatment to be credited
21 against the remainder of the time sentenced to
22 incarceration; providing for construction;
23 creating s. 916.204, F.S.; prohibiting trial,
24 conviction, sentencing, or punishment of a
25 person during the period the person lacks
26 capacity to understand the proceedings or
27 assist in the defense as a result of mental
28 illness; creating s. 916.205, F.S.; providing
29 for examination of a defendant by a
30 psychiatrist or psychologist appointed by the
31 court, or designated by the Secretary of

1 Children and Family Services upon the court's
2 request, under specified circumstances when
3 there is reason to doubt the defendant's
4 fitness to proceed; providing for appointment
5 of additional experts; providing for court
6 orders to confine the defendant up to 30 days
7 for examination purposes; providing for release
8 of records; providing for a report; providing
9 for voluntary examination; providing for
10 defendant's release within a specified period
11 after being confined solely for the purpose of
12 examination; creating s. 916.206, F.S.;
13 providing for court determination of the
14 defendant's fitness to proceed; requiring a
15 hearing under specified circumstances when the
16 report is contested; providing certain rights
17 of the contesting party; providing for
18 suspension of the criminal proceeding, under
19 certain circumstances; providing for commitment
20 of the defendant for up to 90 days to the
21 Department of Children and Family Services for
22 care and treatment at an appropriate facility,
23 or commitment to the Department of Corrections
24 if the defendant is found "dangerously mentally
25 ill," as defined; providing exceptions;
26 providing for initial commitment orders and
27 orders for continued commitment up to an
28 additional 180 days; providing for admission
29 evaluations; prescribing contents and
30 guidelines for progress reports; requiring any
31 determination by the director of the facility

1 that the defendant is fit to proceed to be
2 reported to the court; providing for
3 involuntary commitment proceedings to be
4 instituted under specified circumstances;
5 requiring the Department of Children and Family
6 Services to determine whether the defendant is
7 fit to proceed in its review of commitments;
8 providing for notice to the court and
9 resumption of the criminal proceedings or
10 dismissal of the charge, under specified
11 circumstances; creating s. 916.207, F.S.;
12 providing for inadmissibility for certain
13 purposes of certain statements by the person
14 subject to the psychiatric or psychological
15 examination or treatment; providing exceptions;
16 creating s. 916.208, F.S.; providing for forms
17 of general verdict; creating s. 916.209, F.S.;
18 providing for psychiatric or psychological
19 examination of a defendant when there is reason
20 to believe that the mental condition of the
21 defendant will be a significant factor in
22 sentencing and when good cause is shown;
23 providing for payment of the examination by the
24 defendant if financially able; providing for
25 the order appointing or requesting designation
26 of a psychiatrist or licensed psychologist to
27 specify the issues to be resolved; providing
28 for alternative examination methods;
29 prescribing guidelines and contents of
30 examination reports; providing for
31 construction; creating s. 916.211, F.S.;

1 prescribing criteria with respect to the
2 defendant's mental condition for the court to
3 consider in sentencing the defendant, under
4 specified circumstances when the mental
5 condition is a significant factor; requiring
6 court authorization of treatment during the
7 period of confinement or probation or other
8 supervision specified in the sentence under
9 specified circumstances when the court makes
10 certain findings by clear and convincing
11 evidence; requiring pronouncement of sentence;
12 creating s. 916.212, F.S.; requiring the
13 Department of Corrections and Department of
14 Children and Family Services to adopt rules
15 providing for certain procedures with respect
16 to treatment and treatment plans for criminal
17 defendants for whom the sentencing court has
18 authorized treatment; creating s. 916.213,
19 F.S.; providing for adoption of rules by the
20 Department of Children and Family Services and
21 Department of Corrections with respect to
22 transfer to facilities of the Department of
23 Children and Family Services of persons
24 committed to the Department of Corrections;
25 amending s. 40.29, F.S., relating to estimated
26 pay for jurors and witnesses, to conform to
27 changes made by the act; amending s. 394.467,
28 F.S., relating to involuntary placement;
29 removing reference to insanity defense and
30 removing cross reference to conform to changes
31 made by the act; amending s. 394.4672, F.S.,

1 relating to procedure for placement of veteran
2 with federal agency; removing reference to
3 insanity defense to conform to changes made by
4 the act; amending ss. 916.105, 916.107,
5 916.108, and 916.11, F.S., relating to
6 legislative intent, rights of forensic clients,
7 training of mental health experts, and
8 appointment of experts, respectively;
9 conforming provisions relating to forensic
10 client services to changes made by the act;
11 repealing s. 916.10, F.S., relating to the
12 short title of the Forensic Client Services
13 Act, s. 916.13, F.S., relating to involuntary
14 commitment of defendant adjudicated incompetent
15 to stand trial or incompetent for sentencing,
16 s. 916.145, F.S., relating to adjudication of
17 incompetency due to mental retardation and
18 dismissal of charges, s. 916.15, F.S., relating
19 to involuntary commitment of defendant
20 adjudicated not guilty by reason of insanity,
21 s. 916.16, F.S., relating to jurisdiction of
22 committing court, and s. 916.17, F.S., relating
23 to conditional release; amending s. 916.178,
24 F.S., relating to unlawful introduction or
25 removal of certain articles; conforming a cross
26 reference; repealing Rules 3.210, 3.211, 3.212,
27 3.213, 3.214, 3.215, 3.216, 3.217, 3.218, and
28 3.219, Florida Rules of Criminal Procedure,
29 relating to incompetence to proceed and
30 procedures for raising the issue, competence to
31 proceed and scope of examination and report,

1 hearing and disposition, continuing
2 incompetency to proceed, incompetency to
3 proceed to sentencing, effect of adjudication
4 of incompetency to proceed, insanity at time of
5 offense or probation or community control
6 violation, judgment of not guilty by reason of
7 insanity, commitment of a defendant found not
8 guilty by reason of insanity, and conditional
9 release, respectively, to the extent of
10 inconsistency with the act; providing for
11 severability; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. This act may be cited as the "Insanity
16 Defense Reform Act."

17 Section 2. Section 916.106, Florida Statutes, is
18 renumbered as section 916.202, Florida Statutes, and amended
19 to read:

20 916.202 ~~916.106~~ Definitions.--For the purposes of this
21 chapter:

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

28 (2) "Court" means the circuit court.

29 (3) "Dangerous mental illness" means a mental
30 condition which causes the person to need supervision,
31 evaluation, treatment, and care and to present a substantial

1 risk of physical harm to other persons as manifested by
2 evidence of violent behavior by the person.

3 ~~(4)(3)~~ "Department" means the Department of Children
4 Health and Family Rehabilitative Services.

5 ~~(5)(4)~~ "Forensic client" or "patient" means any
6 ~~mentally retarded or mentally ill person or dangerously~~
7 mentally ill person who is committed to the department or
8 Department of Corrections and:

9 (a) Who has been determined to need treatment for a
10 mental illness or dangerous mental illness ~~mental retardation;~~
11 and

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

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

21 ~~(6)(5)~~ "Forensic facility" means:

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

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1 (b) A state hospital, state correctional or other
2 state institution, or mental health center equipped to
3 evaluate or rehabilitate dangerously mentally ill defendants.

4 ~~(7)(6)~~ "Institutional security personnel" means staff
5 members who meet or exceed the requirements of s. 943.13 and
6 who are responsible for providing security, for protection of
7 clients and personnel, for the enforcement of rules, for
8 prevention and investigation of unauthorized activities, and
9 for safeguarding the interests of citizens in the surrounding
10 communities.

11 ~~(8)(7)~~ "Mental illness ~~Mentally ill~~" includes, but is
12 not limited to, a mental disease or defect and means having an
13 impairment of the emotional processes, of the ability to
14 exercise conscious control of one's actions, or of the ability
15 to perceive reality or to understand, which impairment
16 substantially interferes with a person's ability to meet the
17 ordinary demands of living, regardless of etiology; except
18 that, for the purposes of this chapter, the term does not
19 include simple intoxication, persons who are solely mentally
20 retarded, or conditions manifested only by antisocial behavior
21 or drug addiction.

22 ~~(9)(8)~~ "Mental retardation" means significantly
23 subaverage general intellectual functioning existing
24 concurrently with deficits in adaptive behavior and manifested
25 during the period from conception to age 18. "Significantly
26 subaverage general intellectual functioning," for the purpose
27 of this definition, means performance which is two or more
28 standard deviations from the mean score on a standardized
29 intelligence test specified in the rules of the department.
30 "Adaptive behavior," for the purpose of this definition, means
31 the effectiveness or degree with which an individual meets the

1 standards of personal independence and social responsibility
2 expected of the individual's age, cultural group, and
3 community.

4 Section 3. Sections 916.201, 916.203, 916.204,
5 916.205, 916.206, 916.207, 916.208, 916.209, 916.211, 916.212,
6 and 916.213, Florida Statutes, are created to read:

7 916.201 Short title.--Sections 916.201-916.213,
8 Florida Statutes, may be cited as the "Mental Condition of
9 Criminal Defendants Act."

10 916.203 Mental condition not a defense; treatment
11 during incarceration.--

12 (1) Mental condition shall not be a defense to any
13 charge of criminal conduct.

14 (2) If the court finds that a person convicted of a
15 crime suffers from any mental condition requiring treatment,
16 such person shall be committed to the Department of
17 Corrections or as otherwise provided by law for placement in
18 an appropriate facility for treatment, with due regard for
19 such conditions of security as the case may require. In the
20 event a sentence of incarceration has been imposed, the
21 defendant shall receive treatment in a facility that provides
22 for incarceration or less restrictive confinement. In the
23 event that a course of treatment thus commenced shall be
24 concluded prior to the expiration of the sentence imposed, the
25 offender shall remain liable for the remainder of such
26 sentence, but shall have credit for time incarcerated for
27 treatment.

28 (3) Nothing in ss. 916.201-916.213 is intended to
29 prevent the admission of expert evidence concerning any state
30 of mind which is an element of the offense, subject to the
31 rules of evidence.

1 916.204 Lack of capacity to understand

2 proceedings.--No person who, as a result of mental illness,
3 lacks capacity to understand the proceedings against him or
4 her or to assist in his or her own defense shall be tried,
5 convicted, sentenced, or punished for the commission of an
6 offense so long as such incapacity endures.

7 916.205 Examination of defendant.--

8 (1) Whenever there is reason to doubt the defendant's
9 fitness to proceed as set forth in s. 916.203, the court shall
10 appoint experts to examine the defendant as provided in s.
11 916.11. In addition, at least one qualified psychiatrist or
12 licensed psychologist shall request the Secretary of Children
13 and Family Services to designate at least one qualified
14 psychiatrist or licensed psychologist to examine the report
15 upon the mental condition of the defendant as to the
16 defendant's capacity to assist counsel with defense or to
17 understand the proceedings. The cost of examination shall be
18 paid by the defendant if he or she is financially able. The
19 determination of ability to pay shall be made in accordance
20 with part III of chapter 27 and any other laws of this state
21 governing provisions of counsel to indigent defendants.

22 (2) Within 3 days, excluding Saturdays, Sundays, and
23 legal holidays, of the appointment or designation, the
24 examiner shall determine the best location for the
25 examination. If practical, the examination shall be conducted
26 locally on an outpatient basis.

27 (3) If the examiner determines that confinement is
28 necessary for purposes of the examination, the court may order
29 the defendant to be confined to a jail, hospital, or other
30 suitable facility for that purpose for a period not exceeding
31 30 days. The order of confinement shall require the county

1 sheriff to transport the defendant to and from the facility
2 and shall notify the facility of any known medical,
3 behavioral, or security requirements of the defendant. The
4 court, upon request, may make available to the examiner any
5 court records relating to the defendant.

6 (4) In such examination any method may be employed
7 which is accepted by the examiner's profession for the
8 examination of those alleged not to be competent to assist
9 counsel in their defense.

10 (5) Upon completion of the examination, a report shall
11 be submitted to the court and shall include the following:

12 (a) A description of the nature of the examination;

13 (b) A diagnosis or evaluation of the mental condition
14 of the defendant;

15 (c) An opinion as to the defendant's capacity to
16 understand the proceedings against him or her and to assist in
17 his or her own defense;

18 (d) When directed by the court, an opinion as to the
19 capacity of the defendant to form a particular state of mind
20 which is an element of the offense charged.

21 (6) If the examination cannot be conducted by reason
22 of the unwillingness of the defendant to participate in the
23 examination, the report shall so state and shall include, if
24 possible, an opinion as to whether such unwillingness of
25 defendant was the result of mental illness.

26 (7) The report of the examination shall be filed with
27 the clerk of the court, who shall deliver copies to the
28 prosecuting attorney and to counsel for the defendant.

29 (8) When the defendant wishes to be examined by an
30 expert of the defendant's own choice, such examiner shall be
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1 permitted to have reasonable access to the defendant for the
2 purpose of examination.

3 (9) In addition to the psychiatrist or licensed
4 psychologist, the court may appoint additional experts to
5 examine the defendant besides those required by s. 916.11.

6 (10) If the defendant lacks capacity to make informed
7 decisions about treatment, the court may authorize consent to
8 be given pursuant to part I of chapter 394 and any other civil
9 commitment laws of this state. A defendant lacks capacity to
10 make informed decisions about treatment if, by reason of
11 mental illness, after conscientious efforts at explanation,
12 the defendant is unable to achieve a rudimentary understanding
13 of the purpose, nature, and possible significant risks and
14 benefits of treatment.

15 (11) If the defendant was confined solely for the
16 purpose of examination, he or she shall be released from the
17 facility within 3 days, excluding Saturdays, Sundays, and
18 legal holidays, following notification of completion of the
19 examination.

20 916.206 Determination of fitness of defendant to
21 proceed.--

22 (1) When the defendant's fitness to proceed is drawn
23 in question, the issue shall be determined by the court. If
24 neither the prosecuting attorney nor counsel for the defendant
25 contests the findings of the report filed pursuant to s.
26 916.205, the court may make the determination on the basis of
27 such report. If the finding is contested, the court shall hold
28 a hearing on the issue. If the report is received in evidence
29 upon such hearing, the party who contests the finding thereof
30 shall have the right to summon as a witness and to examine the
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1 psychiatrist or licensed psychologist who submitted the report
2 and to offer evidence upon the issue.

3 (2) If the court determines that the defendant lacks
4 fitness to proceed, the criminal proceeding against the
5 defendant shall be suspended, except as otherwise provided in
6 this section, and the court shall commit the defendant to the
7 custody of the department for care and treatment at an
8 appropriate facility of the department or, if the defendant is
9 found to be dangerously mentally ill, to the Department of
10 Corrections for a period not exceeding 90 days.

11 (a) The order of commitment shall require the county
12 sheriff to transport the defendant to and from the facility
13 and require an evaluation of the defendant's mental condition
14 at the time of admission to the facility, and a progress
15 report on the defendant's mental condition.

16 (b) The progress report shall include an opinion as to
17 whether the defendant is fit to proceed or, if not, whether
18 there is a substantial probability the defendant will be fit
19 to proceed within the foreseeable future. If the report
20 concludes that there is a substantial probability that the
21 defendant will be fit to proceed in the foreseeable future,
22 the court may order the continued commitment of the defendant
23 for an additional 180 days. If at any time the director of the
24 facility to which the defendant is committed determines that
25 the defendant is fit to proceed, such determination shall be
26 reported to the court.

27 (3) Each report shall be filed with the clerk of the
28 court, who shall deliver copies to the prosecuting attorney
29 and to counsel for the defendant. Upon receipt of a report,
30 the court shall determine, after a hearing if a hearing is
31 requested, whether the defendant is fit to proceed. If the

1 court determines that the defendant is fit to proceed, the
2 proceeding shall be resumed. If, at the end of the initial 90
3 days, the court determines that the defendant is unfit and
4 there is not a substantial probability the defendant will be
5 fit to proceed within the foreseeable future, or if the
6 defendant is not fit to proceed after the expiration of the
7 additional 180 days, involuntary commitment proceedings shall
8 be instituted pursuant to the laws of this state in the court
9 in which the criminal charge is pending.

10 (4) The department shall review at least monthly its
11 commitment under this section. In its review of commitments,
12 the department shall determine whether the defendant is fit to
13 proceed with trial. If the defendant is fit to proceed, the
14 court in which the criminal charge is pending shall be
15 notified and the criminal proceedings may resume. However, if
16 the court is of the view that so much time has elapsed,
17 excluding any time spent free from custody by reason of the
18 escape of the defendant, since the commitment of the defendant
19 that it would be unjust to resume the criminal proceeding, the
20 court may dismiss the charge.

21 916.207 Admissibility of statements by examined
22 person.--A statement made by a person subjected to psychiatric
23 or psychological examination or treatment pursuant to s.
24 916.204, s. 916.205, or s. 916.206, for the purposes of such
25 examination or treatment, shall not be admissible in evidence
26 in any criminal proceeding against the defendant on any issue
27 other than the defendant's ability to assist counsel at trial
28 or to form any specific intent which is an element of the
29 crime charged, except that such statements of a defendant to a
30 psychiatrist or psychologist as are relevant for impeachment
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1 purposes may be received subject to the usual rules of
2 evidence governing matters of impeachment.

3 916.208 Forms of general verdict.--For purposes of
4 this chapter, general verdict upon a plea of not guilty is
5 either "guilty" or "not guilty," which imports a conviction or
6 an acquittal of the offense charged.

7 916.209 Examination of defendant for evidence of
8 mental condition; appointment of psychiatrists or licensed
9 psychologists; hospitalization reports.--

10 (1) If there is reason to believe the mental condition
11 of the defendant will be a significant factor at sentencing
12 and for good cause shown, the court shall appoint at least one
13 psychiatrist or licensed psychologist to examine and report
14 upon the mental condition of the defendant. The cost of
15 examination shall be paid by the defendant if he or she is
16 financially able. The determination of ability to pay shall be
17 made in accordance with part III of chapter 27 and any other
18 laws of this state governing provision of counsel to indigent
19 defendants. The order appointing or requesting the designation
20 of a psychiatrist or licensed psychologist shall specify the
21 issues to be resolved for which the examiner is appointed or
22 designated.

23 (2) In making such examinations, any method may be
24 employed which is accepted by the examiner's profession for
25 the examination of those alleged to be suffering from a mental
26 illness.

27 (3) The report of the examination shall include the
28 following:

29 (a) A description of the nature of the examination;

30 (b) A diagnosis, evaluation, or prognosis of the
31 mental condition of the defendant;

1 (c) An analysis of the degree of the defendant's
2 mental illness and level of functional impairment;

3 (d) An assessment of whether treatment is available
4 for the defendant's mental condition;

5 (e) An analysis of the relative risks and benefits of
6 treatment or nontreatment; and

7 (f) An assessment of the risk of danger that the
8 defendant may create to the public if at large.

9 (4) The report of the examination shall be filed with
10 the clerk of the court, who shall deliver copies to the
11 prosecuting attorney and to counsel for the defendant.

12 (5) When the defendant wishes to be examined by an
13 expert of the defendant's own choice, such examiner shall be
14 permitted to have reasonable access to the defendant for the
15 purpose of examination.

16 (6) Nothing in this section is intended to limit the
17 consideration of other evidence relevant to the imposition of
18 sentence.

19 916.211 Consideration of mental illness in
20 sentencing.--

21 (1) Evidence of mental condition shall be received, if
22 offered, at the time of sentencing of any person convicted of
23 a crime. In determining the sentence to be imposed, in
24 addition to other criteria provided by law, if the defendant's
25 mental condition is a significant factor, the court shall
26 consider such factors as:

27 (a) The extent and degree to which the defendant is
28 mentally ill;

29 (b) The level of functional impairment;

30 (c) The prognosis for improvement or rehabilitation;

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1 (d) The availability of treatment and level of care
2 required;

3 (e) Any risk or danger that the defendant may create
4 for the public, if at large, or the absence of such risk;

5 (f) The capacity of the defendant to appreciate the
6 wrongfulness of his or her conduct or to conform his or her
7 conduct to the requirements of law to the time of the offense
8 charged.

9 (2) The court shall authorize treatment during the
10 period of confinement or probation or other form of
11 postrelease supervision specified in the sentence if, after
12 the sentencing hearing, it concludes by clear and convincing
13 evidence that:

14 (a) The defendant suffers from a severe and reliably
15 diagnosable mental illness resulting in the defendant's
16 inability to appreciate the wrongfulness of his or her conduct
17 or to conform his or her conduct to the requirements of law;

18 (b) Without treatment, the immediate prognosis is for
19 major distress resulting in serious mental or physical
20 deterioration of the defendant;

21 (c) Treatment is available for such mental illness;
22 and

23 (d) The relative risks and benefits of treatment or
24 nontreatment are such that a reasonable person would consent
25 to treatment.

26 (3) In addition to making the authorization of
27 treatment, if any, the court shall pronounce sentence as
28 provided by law.

29 916.212 Review of involuntary treatment.--The
30 Department of Corrections and Department of Children and
31

1 Family Services shall adopt rules for procedures ensuring
2 that:

3 (1) Treatment plans are developed for patients at the
4 facility for whom the sentencing court has authorized
5 treatment;

6 (2) The relative risks and benefits or specific modes
7 of treatment contained in such plans are explained, to the
8 extent possible, to each patient;

9 (3) When treatment is given over the objection of a
10 patient, there is a review of the decision to provide
11 treatment independent of the treating professional; and

12 (4) A statement explaining the reasons for giving
13 treatment over objection of the patient is entered in the
14 patient's treatment record over the signature of the facility
15 administrator.

16 916.213 Transfer to noncorrectional
17 facilities.--Prisoners with a mental illness committed to the
18 Department of Corrections may be transferred to facilities of
19 the Department of Children and Family Services in accordance
20 with rules adopted jointly by the two departments.

21 Section 4. Subsection (1) of section 40.29, Florida
22 Statutes, is amended to read:

23 40.29 Clerks to estimate amount for pay of jurors and
24 witnesses and make requisition.--

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

- 29 (a) Jurors in the circuit court and the county court;
30 (b) Witnesses before the grand jury;

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

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

8 (e) Expert witnesses who are appointed ~~pursuant to s.~~
9 ~~916.11(3)~~ and required in a court hearing involving an
10 indigent;

11
12 and shall forward each such estimate to the State Courts
13 Administrator no later than the date scheduled by the State
14 Courts Administrator. At the time of any forwarding of such
15 estimate, the clerk of such court shall make a requisition
16 upon the State Courts Administrator for the amount of such
17 estimate; and the State Courts Administrator may reduce the
18 amount if in his or her judgment the requisition is excessive.

19 Section 5. Paragraph (a) of subsection (7) of section
20 394.467, Florida Statutes, is amended to read:

21 394.467 Involuntary placement.--

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

23 (a) Hearings on petitions for continued involuntary
24 placement shall be administrative hearings and shall be
25 conducted in accordance with the provisions of s. 120.57(1),
26 except that any order entered by the hearing officer shall be
27 final and subject to judicial review in accordance with s.
28 120.68. ~~Orders concerning patients committed after~~
29 ~~successfully pleading not guilty by reason of insanity shall~~
30 ~~be governed by the provisions of s. 916.15.~~

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1 Section 6. Subsection (3) of section 394.4672, Florida
2 Statutes, is amended to read:

3 394.4672 Procedure for placement of veteran with
4 federal agency.--

5 (3) Upon receipt of a certificate of the United States
6 Department of Veterans Affairs or such other federal agency
7 that facilities are available for the care or treatment of
8 mentally ill persons and that the person is eligible for care
9 or treatment, the administrator of the receiving or treatment
10 facility may cause the transfer of that person to the United
11 States Department of Veterans Affairs or other federal agency.
12 Upon effecting such transfer, the committing court shall be
13 notified by the transferring agency. No person shall be
14 transferred to the United States Department of Veterans
15 Affairs or other federal agency if he or she is confined
16 pursuant to the conviction of any felony or misdemeanor ~~or if~~
17 ~~he or she has been acquitted of the charge solely on the~~
18 ~~ground of insanity~~, unless prior to transfer the court placing
19 such person enters an order for the transfer after appropriate
20 motion and hearing and without objection by the United States
21 Department of Veterans Affairs.

22 Section 7. Section 916.10, Florida Statutes, is hereby
23 repealed:

24 ~~916.10 Short title.--This chapter may be cited as the~~
25 ~~"Forensic Client Services Act."~~

26 Section 8. Section 916.105, Florida Statutes, is
27 amended to read:

28 916.105 Legislative intent.--

29 (1) It is the intent of the Legislature that the
30 Department of Children Health and Family Rehabilitative
31 Services establish, locate, and maintain separate and secure

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

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

26 (3) It is the intent of the Legislature that
27 evaluation and treatment of mentally ill ~~and mentally retarded~~
28 defendants be provided in community inpatient or outpatient
29 settings, in community residential facilities, or in civil,
30 nonforensic facilities, whenever this is a feasible

31

1 alternative otherwise permitted by law to treatment in a state
2 forensic facility.

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

29 (b) Mentally ill ~~or mentally retarded~~ persons who are
30 committed to the department pursuant to this chapter and who
31 are initially placed in, or subsequently transferred to, a

1 civil mental health treatment facility shall have the same
2 rights as other persons committed to civil facilities as
3 described in part I of chapter 394, as long as they remain in
4 a civil facility.

5 (2) RIGHT TO TREATMENT.--

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

18 (b) Each client who is a patient at a forensic
19 facility shall be given, at the time of admission and at
20 regular intervals thereafter, a physical examination, which
21 shall include screening for communicable disease by a health
22 practitioner authorized by law to give such screenings and
23 examinations.

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

28 (d) Not more than 30 days after admission, each
29 patient shall have and receive, in writing, an individualized
30 treatment plan which the patient has had an opportunity to
31 assist in preparing.

1 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--
2 (a) A person committed to the department pursuant to
3 this chapter ~~act~~ shall be asked to give express and informed
4 written consent for treatment. "Express and informed consent"
5 or "consent" means consent given voluntarily in writing after
6 a conscientious and sufficient explanation and disclosure of
7 the purpose of the proposed treatment, the common side effects
8 of the treatment, if any, the expected duration of the
9 treatment, and any alternative treatment available. If a
10 patient in a forensic facility refuses such treatment as is
11 deemed necessary by the patient's multidisciplinary treatment
12 team at the forensic facility for the appropriate care of the
13 patient and the safety of the patient or others, such
14 treatment may be provided under the following circumstances:
15 1. In an emergency situation in which there is
16 immediate danger to the safety of the patient or others, such
17 treatment may be provided upon the written order of a
18 physician for a period not to exceed 48 hours, excluding
19 weekends and legal holidays. If, after the 48-hour period,
20 the patient has not given express and informed consent to the
21 treatment initially refused, the administrator of the forensic
22 facility shall, within 48 hours, excluding weekends and legal
23 holidays, petition the committing court or the circuit court
24 serving the county in which the facility is located, at the
25 option of the facility administrator, for an order authorizing
26 the continued treatment of the patient. In the interim,
27 treatment may be continued without the consent of the patient
28 upon the continued written order of a physician who has
29 determined that the emergency situation continues to present a
30 danger to the safety of the patient or others.
31

1 2. In a situation other than an emergency situation,
2 the administrator of the forensic facility shall petition the
3 court for an order authorizing the treatment of the patient.
4 The order shall allow such treatment for a period not to
5 exceed 90 days from the date of the entry of the order. Unless
6 the court is notified in writing that the patient has provided
7 express and informed consent in writing or that the patient
8 has been discharged by the committing court, the administrator
9 shall, prior to the expiration of the initial 90-day order,
10 petition the court for an order authorizing the continuation
11 of treatment for another 90-day period. This procedure shall
12 be repeated until the patient provides consent or is
13 discharged by the committing court.

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

- 26 a. The patient's expressed preference regarding
27 treatment;
- 28 b. The probability of adverse side effects;
- 29 c. The prognosis without treatment; and
- 30 d. The prognosis with treatment.

31

1 The hearing shall be as convenient to the patient as may be
2 consistent with orderly procedure and shall be conducted in
3 physical settings not likely to be injurious to the patient's
4 condition. The court may appoint a master to preside at the
5 hearing. The patient or the patient's guardian, and his or her
6 representative, shall be provided with a copy of the petition
7 and the date, time, and location of the hearing. The patient
8 has the right to have an attorney represent him or her at the
9 hearing, and, if the patient is indigent, the court shall
10 appoint the office of the public defender to represent the
11 patient at the hearing. The patient may testify or not, as he
12 or she chooses, and has the right to cross-examine witnesses
13 testifying on behalf of the facility and may present his or
14 her own witnesses.

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

29 (4) QUALITY OF TREATMENT.--Each patient committed
30 pursuant to this chapter shall receive treatment suited to his
31 or her needs, which shall be administered skillfully, safely,

1 and humanely with full respect for the patient's dignity and
2 personal integrity. Each patient shall receive such medical,
3 vocational, social, educational, and rehabilitative services
4 as the patient's condition requires to bring about an early
5 return to his or her community, if otherwise permitted by law.
6 In order to achieve this goal, the department is directed to
7 coordinate its forensic mental health program ~~and mental~~
8 ~~retardation programs~~ with all other programs of the
9 department, the Department of Corrections, and other
10 appropriate state agencies.

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

12 (a) Each patient committed pursuant to the provisions
13 of this chapter has the right to communicate freely and
14 privately with persons outside the facility unless otherwise
15 prohibited by law or unless it is determined that such
16 communication is likely to be harmful to the patient or
17 others.

18 (b) Each patient committed under the provisions of
19 this chapter shall be allowed to receive, send, and mail
20 sealed, unopened correspondence; and no patient's incoming or
21 outgoing correspondence shall be opened, delayed, held, or
22 censored by the facility unless otherwise provided by law or
23 unless there is reason to believe that it contains items or
24 substances which may be harmful to the patient or others, in
25 which case the administrator may direct reasonable examination
26 of such mail and may regulate the disposition of such items or
27 substances. "Correspondence" shall not include parcels or
28 packages. Forensic facilities are authorized to promulgate
29 reasonable rules to provide for the inspection of parcels or
30 packages and for the removal of contraband items for health or
31

1 security reasons prior to the contents being given to a
2 resident.

3 (c) If a patient's right to communicate is restricted
4 by the administrator, written notice of such restriction shall
5 be served on the patient or the patient's guardian or
6 representatives, and such restriction shall be recorded on the
7 patient's clinical record with the reasons therefor. The
8 restriction of a patient's right to communicate shall be
9 reviewed at least every 90 days.

10 (d) Each forensic facility shall establish reasonable
11 rules governing visitors, visiting hours, and the use of
12 telephones by patients in the least restrictive possible
13 manner.

14 (e) Each patient committed to the department pursuant
15 to this chapter shall have ready access to a telephone in
16 order to report an alleged abuse. The facility or program
17 staff shall verbally and in writing inform each patient of the
18 procedure for reporting abuse. A written copy of that
19 procedure, including the telephone number of the abuse
20 registry and reporting forms, shall be posted in plain view.

21 (f) The department shall adopt rules providing a
22 procedure for reporting abuse. Facility staff shall be
23 required, as a condition of employment, to become familiar
24 with the procedures for the reporting of abuse.

25 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF
26 PATIENTS.--A patient's right to his or her clothing and
27 personal effects shall be respected. The department by rule,
28 or the administrator of any facility by written institutional
29 policy, may declare certain items to be hazardous to the
30 welfare of patients or others or to the operation of the
31 facility. Such items may be restricted from introduction into

1 the facility or may be restricted from being in a patient's
2 possession. The administrator may take temporary custody of
3 such effects when required for medical and safety reasons.
4 Custody of such personal effects shall be recorded in the
5 patient's clinical record.

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

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

24 (a) Such clinical record may be released:

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

27 2. To persons authorized by order of court.

28 3. To a qualified researcher, as defined by rule; a
29 staff member of the facility; or an employee of the department
30 when the administrator of the facility or secretary of the
31 department deems it necessary for treatment of the patient,

1 maintenance of adequate records, compilation of treatment
2 data, or evaluation of programs.

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

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

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

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

21 1. The Social Security Administration and the United
22 States Department of Veterans Affairs;

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

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

28 4. Community agencies and others expected to provide
29 followup care to the patient upon his or her return to the
30 community.

31

1 (c) The department may provide notice to any patient's
2 next of kin or first representative regarding any serious
3 medical illness or the death of the 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 person detained
13 by a facility, or a relative, friend, guardian,
14 representative, or attorney on behalf of such person, may
15 petition for a writ of habeas corpus to question the cause and
16 legality of such detention and request that the circuit court
17 issue a writ for release. Each patient committed pursuant to
18 this chapter shall receive a written notice of the right to
19 petition for a writ of habeas corpus.

20 (b) A patient or the patient's guardian or
21 representatives may file a petition in the circuit court in
22 the county where the patient is committed alleging that the
23 patient is being unjustly denied a right or privilege granted
24 herein or that a procedure authorized herein is being abused.
25 Upon the filing of such a petition, the circuit court shall
26 have the authority to conduct a judicial inquiry and to issue
27 any appropriate order to correct an abuse of the provisions of
28 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. Such consultation shall include, but is not
3 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.

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

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

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

29 (11) LIABILITY FOR VIOLATIONS.--Any person who
30 violates or abuses any rights or privileges of a patient
31 provided by this chapter ~~act~~ is liable for damages as

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

8 Section 10. Section 916.108, Florida Statutes, is
9 amended to read:

10 916.108 Training of mental health experts.--The
11 evaluation of defendants for competency to stand trial or
12 sanity at the time of the commission of the offense shall be
13 conducted in such a way as to ensure uniform application of
14 all applicable laws and rules ~~the criteria enumerated in Rules~~
15 ~~3.210 and 3.216, Florida Rules of Criminal Procedure.~~ The
16 department shall develop, and may contract with accredited
17 institutions:

18 (1) To provide:

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

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

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

30 (2) To compile and maintain the necessary information
31 for evaluating the success of this program, including the

1 number of persons trained, the cost of operating the program,
2 and the effect on the quality of forensic evaluations as
3 measured by appropriateness of admissions to state forensic
4 facilities and to community-based care programs.

5 Section 11. Section 916.11, Florida Statutes, is
6 amended to read:

7 916.11 Appointment of experts.--

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

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

18 (c) To the extent possible, at least one of the
19 appointed experts shall be either a state-employed
20 psychiatrist, psychologist, or physician if in the local
21 vicinity; a psychiatrist, psychologist, or physician
22 designated by the district alcohol, drug abuse, and mental
23 health program office; or a community mental health center
24 psychiatrist, psychologist, or physician.

25 (d) If a defendant's suspected mental condition
26 involves ~~is~~ mental retardation, the court shall appoint the
27 developmental services program of the Department of Children
28 Health and Family ~~Rehabilitative~~ Services to examine the
29 defendant and determine whether she or he meets the definition
30 of "retardation" in s. 393.063 and, if so, offer an opinion on
31 whether she or he is competent to stand trial.

1 (2) Expert witnesses appointed by the court to
2 determine the mental condition of a defendant in a criminal
3 case shall be allowed reasonable fees for services rendered as
4 witnesses, which shall be paid by the county in which the
5 indictment was found or the information or affidavit was
6 filed. State employees shall be paid expenses pursuant to s.
7 112.061. The fees shall be taxed as costs in the case.

8 Section 12. Section 916.12, Florida Statutes, reads:

9 916.12 Mental competence to stand trial.--

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

16 (2) A defendant who, because of psychotropic
17 medication, is able to understand the nature of proceedings
18 and assist in her or his defense shall not automatically be
19 deemed incompetent to stand trial simply because the
20 defendant's satisfactory mental functioning is dependent upon
21 such medication. As used in this subsection, "psychotropic
22 medication" means any drug or compound used to treat mental or
23 emotional disorders affecting the mind, behavior, intellectual
24 functions, perception, moods, or emotions and includes
25 antipsychotic, antidepressant, antimanic, and antianxiety
26 drugs.

27 Section 13. Section 916.13, Florida Statutes, is
28 hereby repealed:

29 ~~916.13 Involuntary commitment of defendant adjudicated~~
30 ~~incompetent to stand trial or incompetent for sentencing.--~~

31

1 ~~(1) CRITERIA.--Every person adjudicated incompetent to~~
2 ~~stand trial or incompetent for sentencing, pursuant to the~~
3 ~~applicable Florida Rules of Criminal Procedure, may be~~
4 ~~involuntarily committed for treatment upon a finding by the~~
5 ~~court of clear and convincing evidence that:~~

6 ~~(a) The person is mentally ill and because of her or~~
7 ~~his mental illness, or that the person is mentally retarded~~
8 ~~and because of her or his mental retardation:~~

9 ~~1. The person is manifestly incapable of surviving~~
10 ~~alone or with the help of willing and responsible family or~~
11 ~~friends, including available alternative services, and,~~
12 ~~without treatment, the person is likely to suffer from neglect~~
13 ~~or refuse to care for herself or himself and such neglect or~~
14 ~~refusal poses a real and present threat of substantial harm to~~
15 ~~her or his well-being; or~~

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

20 ~~(b) All available, less restrictive treatment~~
21 ~~alternatives, including treatment in community residential~~
22 ~~facilities or community inpatient or outpatient settings,~~
23 ~~which would offer an opportunity for improvement of the~~
24 ~~person's condition have been judged to be inappropriate.~~

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

26 ~~(a) Every person who has been adjudicated incompetent~~
27 ~~to stand trial or incompetent for sentencing, and who meets~~
28 ~~the criteria for commitment to the department under the~~
29 ~~provisions of this chapter, shall be committed to the~~
30 ~~department, and the department may retain and treat the~~
31 ~~defendant. No later than 6 months after the date of~~

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

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

29 Section 14. Section 916.14, Florida Statutes, reads:
30 916.14 Statute of limitations; former jeopardy.--The
31 statute of limitations shall not be applicable to criminal

1 charges dismissed because of the incompetency of the defendant
2 to stand trial. If a defendant is declared incompetent to
3 stand trial during trial and afterwards is declared competent
4 to stand trial, the defendant's other, uncompleted trial shall
5 not constitute former jeopardy.

6 Section 15. Section 916.145, Florida Statutes, is
7 hereby repealed:

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

17 Section 16. Section 916.15, Florida Statutes, is
18 hereby repealed:

19 ~~916.15 Involuntary commitment of defendant adjudicated~~
20 ~~not guilty by reason of insanity.--~~

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

26 ~~(2) Every person acquitted of criminal charges by~~
27 ~~reason of insanity and found to meet the criteria for~~
28 ~~involuntary commitment may be committed and treated in~~
29 ~~accordance with the provisions of this section and the~~
30 ~~applicable Florida Rules of Criminal Procedure. The~~
31 ~~department shall admit a defendant so adjudicated to an~~

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

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

21 Section 17. Section 916.16, Florida Statutes, is
22 hereby repealed:

23 ~~916.16 Jurisdiction of committing court.--The~~
24 ~~committing court shall retain jurisdiction in the case of any~~
25 ~~patient hospitalized or, if retarded, admitted to retardation~~
26 ~~residential services pursuant to this chapter. No such person~~
27 ~~may be released except by order of the committing court. The~~
28 ~~administrative hearing examiner shall have no jurisdiction to~~
29 ~~determine issues of continuing hospitalization or release of~~
30 ~~any person admitted pursuant to this chapter.~~

31

1 Section 18. Section 916.17, Florida Statutes, is
2 hereby repealed:

3 ~~916.17 Conditional release.~~

4 ~~(1) The committing court may order a conditional~~
5 ~~release of any defendant who has been committed according to a~~
6 ~~finding of incompetency to stand trial or an adjudication of~~
7 ~~not guilty by reason of insanity, based on an approved plan~~
8 ~~for providing appropriate outpatient care and treatment. At~~
9 ~~such time as the administrator shall determine outpatient~~
10 ~~treatment of the defendant to be appropriate, she or he may~~
11 ~~file with the court, with copies to all parties, a written~~
12 ~~plan for outpatient treatment, including recommendations from~~
13 ~~qualified professionals. Such a plan may be submitted by the~~
14 ~~defendant. The plan shall include:~~

15 ~~(a) Special provisions for residential care or~~
16 ~~adequate supervision of the defendant.~~

17 ~~(b) Provisions for outpatient mental health services.~~

18 ~~(c) If appropriate, recommendations for auxiliary~~
19 ~~services such as vocational training, educational services, or~~
20 ~~special medical care.~~

21
22 ~~In its order of conditional release, the court shall specify~~
23 ~~the conditions of release based upon the release plan and~~
24 ~~shall direct the appropriate agencies or persons to submit~~
25 ~~periodic reports to the court regarding the defendant's~~
26 ~~compliance with the conditions of the release and progress in~~
27 ~~treatment, with copies to all parties.~~

28 ~~(2) If at any time it appears that the defendant has~~
29 ~~failed to comply with the conditions of release, that the~~
30 ~~defendant's condition has deteriorated to the point that~~
31 ~~inpatient care is required, or that the release conditions~~

1 ~~should be modified, the court shall hold a hearing within 7~~
2 ~~days and may modify the release conditions or order that the~~
3 ~~defendant be returned to the department for further treatment.~~

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

8 Section 19. Section 916.175, Florida Statutes, reads:

9 916.175 Escape from treatment program; penalty.--A
10 client involuntarily committed to the department under the
11 provisions of this chapter who escapes or attempts to escape
12 from the department is guilty of a felony of the second
13 degree, punishable as provided in s. 775.082, s. 775.083, or
14 s. 775.084.

15 Section 20. Section 916.178, Florida Statutes, is
16 amended to read:

17 916.178 Introduction or removal of certain articles
18 unlawful; penalty.--

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

- 26 1. Any intoxicating beverage or beverage which causes
27 or may cause an intoxicating effect;
28 2. Any controlled substance as defined in chapter 893;
29 3. Any firearm or deadly weapon; or
30 4. Other items as determined by the department, and as
31 designated by departmental rule or by the administrator of any

1 facility, and designated by written institutional policies, to
2 be hazardous to the welfare of patients or the operation of
3 the facility.

4 (b) It is unlawful to transmit to, attempt to transmit
5 to, or cause or attempt to cause to be transmitted to or
6 received by any patient of any facility any article or thing
7 declared by this section to be contraband, at any place which
8 is outside of the grounds of such facility, except as
9 authorized by law or as specifically authorized by the person
10 in charge of such facility.

11 (2)(a) All individuals or vehicles entering upon the
12 grounds of any forensic facility under the supervision or
13 control of the department shall be subject to reasonable
14 search and seizure of any contraband materials introduced
15 thereon, for purpose of enforcement of this chapter.

16 (b) These provisions shall be enforced by
17 institutional security personnel as defined in s.
18 916.106(7)~~(6)~~.

19 (c) Whoever violates any provision of subparagraph
20 (1)(a)2. or subparagraph (1)(a)3. is guilty of a felony of the
21 third degree, punishable as provided in s. 775.082, s.
22 775.083, or s. 775.084.

23 Section 21. Section 916.19, Florida Statutes, reads:
24 916.19 Duties, functions, and powers of institutional
25 security personnel.--In case of emergency, and when necessary
26 to provide protection and security to any patient, to the
27 personnel, equipment, buildings, or grounds of a department
28 facility, or to citizens in the surrounding community,
29 institutional security personnel may, when authorized by the
30 administrator of the facility or her or his designee when the
31 administrator is not present, use a chemical weapon against a

1 patient housed in a forensic facility. However, such weapon
2 shall be used only to the extent necessary to provide such
3 protection and security. Under no circumstances shall any
4 such officer carry a chemical weapon on her or his person
5 except during the period of the emergency for which its use
6 was authorized. All chemical weapons shall be placed in
7 secure storage when their use is not authorized as provided in
8 this section.

9 Section 22. Section 916.20, Florida Statutes, reads:
10 916.20 Operation and administration; rules.--

11 (1) The department is authorized to promulgate rules,
12 enter into contracts, and do such things as may be necessary
13 and incidental to assure compliance with and to carry out the
14 provisions of this chapter in accordance with the stated
15 legislative intent.

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

19 Section 23. Rules 3.210, 3.211, 3.212, 3.213, 3.214,
20 3.215, 3.216, 3.217, 3.218, and 3.219, Florida Rules of
21 Criminal Procedure, are hereby repealed to the extent that
22 they are inconsistent with the provisions of this act.

23 Section 24. If any provisions of this act or the
24 application thereof to any person or circumstance is held
25 invalid, the invalidity shall not affect other provisions or
26 applications of the act which can be given effect without the
27 invalid provision or application, and to this end the
28 provisions of this act are declared severable.

29 Section 25. This act shall take effect October 1 of
30 the year in which enacted, except that section 23 shall take
31

1 effect only if this act is passed by the affirmative vote of
2 two-thirds of the membership of each house of the Legislature.

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4 *****

5 HOUSE SUMMARY

6 Creates the "Insanity Defense Reform Act." Provides for
7 determination whether a defendant is mentally ill,
8 dangerously mentally ill, or fit to stand trial. Provides
9 for placement of defendants determined to be mentally ill
10 in the custody of the Department of Children and Family
11 Services until they are fit to stand trial. Provides for
12 placement of defendants determined to be dangerously
13 mentally ill with the Department of Corrections until
14 such time as they may be fit to stand trial.

15 Permits dismissal of charges under specified
16 circumstances when a defendant is still not fit to stand
17 trial after a significant period of time. Provides that
18 the defendant's mental state during the commission of a
19 crime may not be considered for certain prosecution
20 purposes, but may be considered in deciding whether to
21 incorporate treatment as part of the sentence. See bill
22 for details.
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