

By Senator Campbell

33-570-98

See HB

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 requirements relating to notice of
12 filing of petition or service of copy of order;
13 prohibiting release from order for involuntary
14 admission except by court order; amending and
15 reorganizing ch. 916, F.S., the Forensic Client
16 Services Act; creating pt. I of ch. 916, F.S.;
17 providing general provisions of the chapter;
18 amending s. 916.105, F.S.; revising legislative
19 intent; amending s. 916.106, F.S.; providing or
20 revising definitions with respect to ch. 916,
21 F.S.; redefining "department" to refer to the
22 Department of Children and Family Services in
23 lieu of the Department of Health and
24 Rehabilitative Services; amending s. 916.107,
25 F.S.; revising state policy with respect to the
26 rights of forensic clients, and conforming
27 terminology; amending and renumbering s.
28 916.175, F.S., relating to criminal escape by a
29 client; prohibiting escape or attempted escape
30 from a facility or program by a client under
31 specified circumstances, and providing

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

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

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

1 facility or program under specified
2 circumstances; creating s. 916.304, F.S.;
3 providing for conditional release based on an
4 approved plan for providing continuing
5 community-based training of defendant;
6 providing for modification of release
7 conditions or termination of jurisdiction under
8 specified circumstances; providing an effective
9 date.

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

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

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

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

- (a) Jurors in the circuit court and the county court;
- (b) Witnesses before the grand jury;
- (c) Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned by a state attorney or on behalf of an indigent defendant;
- (d) Mental health professionals who are appointed pursuant to s. 394.473 and required in a court hearing involving an indigent; and

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

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

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

14 393.11 Involuntary admission to residential
15 services.--

16 (2) PETITION.--

17 (a) A petition for involuntary admission to
18 residential services may be executed by a petitioning
19 commission. For proposed involuntary admission to residential
20 services arising out of chapter 916, the petition may be filed
21 by a petitioning commission, the department, the state
22 attorney of the circuit from which the defendant was
23 committed, or the defendant's attorney.

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

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

28 1. State the name, age, and present address of the
29 commissioners and their relationship to the person with mental
30 retardation or autism;

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

4 3. Allege that the commission believes that the person
5 needs involuntary residential services and specify the factual
6 information on which such belief is based;

7 4. Allege that the person lacks sufficient capacity to
8 give express and informed consent to a voluntary application
9 for services and lacks the basic survival and self-care skills
10 to provide for the person's well-being or is likely to

11 physically injure others if allowed to remain at liberty; and

12 5. State which residential setting is the least
13 restrictive and most appropriate alternative and specify the
14 factual information on which such belief is based.

15 (d) The petition shall be filed in the circuit court
16 of the county in which the person with mental retardation or
17 autism resides.

18 (3) NOTICE.--

19 (a) Notice of the filing of the petition shall be
20 given to the individual and his or her legal guardian ~~parent~~
21 ~~or parents~~. The notice shall be given both verbally and in
22 writing in the language of the client, or in other modes of
23 communication of the client, and in English. Notice shall also
24 be given to such other persons as the court may direct. The
25 petition for involuntary admission to residential services
26 shall be served with the notice.

27 (b) Whenever a motion or petition has been filed
28 pursuant to s. 916.303 to dismiss criminal charges against a
29 defendant with retardation or autism, and a petition is filed
30 to involuntarily admit the defendant to residential services,
31 the notice of the filing of the petition shall also be given

1 to the defendant's attorney and to the state attorney of the
2 circuit from which the defendant was committed.

3 ~~(c)(b)~~ The notice shall state that a hearing shall be
4 set to inquire into the need of the person with mental
5 retardation or autism for involuntary residential services.
6 The notice shall also state the date of the hearing on the
7 petition.

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

12 (8) ORDER.--

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

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

19 1. The person is mentally retarded or autistic;
20 2. Placement in a residential setting is the least
21 restrictive and most appropriate alternative to meet the
22 person's needs; and

23 3. Because of the person's degree of mental
24 retardation or autism, the person:

25 a. Lacks sufficient capacity to give express and
26 informed consent to a voluntary application for services
27 pursuant to s. 393.065 and lacks basic survival and self-care
28 skills to such a degree that close supervision and
29 habilitation in a residential setting is necessary and, if not
30 provided, would result in a real and present threat of
31 substantial harm to the person's well-being; or

1 b. Is likely to physically injure others if allowed to
2 remain at liberty.

3 (c) If the evidence presented to the court is not
4 sufficient to warrant involuntary admission to residential
5 services, but the court feels that residential services would
6 be beneficial, the court may recommend that the person seek
7 voluntary admission.

8 (d) If an order of involuntary admission to
9 residential services provided by the developmental services
10 program of the department is entered by the court, a copy of
11 the written order shall be served upon the person, the
12 person's counsel, ~~and the department,~~ and the state attorney
13 and the person's defense counsel, if applicable. The order of
14 involuntary admission sent to the department shall also be
15 accompanied by a copy of the examining committee's report and
16 other reports contained in the court file.

17 (e) Upon receiving the order, the department shall,
18 within 45 days, provide the court with a copy of the person's
19 family or individual support plan and copies of all
20 examinations and evaluations, outlining the treatment and
21 rehabilitative programs. The department shall document that
22 the person has been placed in the most appropriate, least
23 restrictive and cost-beneficial residential facility. A copy
24 of the family or individual support plan and other
25 examinations and evaluations shall be served upon the person
26 and the person's counsel at the same time the documents are
27 filed with the court.

28 (11) CONTINUING JURISDICTION.--The court which issues
29 the initial order for involuntary admission to residential
30 services under this section shall have continuing jurisdiction
31 to enter further orders to ensure that the person is receiving

1 adequate care, treatment, habilitation, and rehabilitation,
2 including psychotropic medication and behavioral programming.
3 Upon request, the court may transfer the continuing
4 jurisdiction to the court where a client resides if it is
5 different from where the original involuntary admission order
6 was issued. No person may be released from an order for
7 involuntary admission to residential services except by the
8 order of the court.

9 Section 3. For the purpose of incorporating the
10 amendment to section 916.15, Florida Statutes, in a reference
11 thereto, paragraph (a) of subsection (7) of section 394.467,
12 Florida Statutes, is reenacted to read:

13 394.467 Involuntary placement.--

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

15 (a) Hearings on petitions for continued involuntary
16 placement shall be administrative hearings and shall be
17 conducted in accordance with the provisions of s. 120.57(1),
18 except that any order entered by the hearing officer shall be
19 final and subject to judicial review in accordance with s.
20 120.68. Orders concerning patients committed after
21 successfully pleading not guilty by reason of insanity shall
22 be governed by the provisions of s. 916.15.

23 Section 4. Part I of chapter 916, Florida Statutes,
24 consisting of sections 916.10, 916.105, 916.106, 916.107,
25 916.1081, 916.1085, 916.1091, and 916.1093, is created and
26 entitled "General Provisions."

27 Section 5. Section 916.105, Florida Statutes, is
28 amended to read:

29 916.105 Legislative intent.--

30 (1) It is the intent of the Legislature that the
31 Department of Children and Family ~~Health and Rehabilitative~~

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

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

1 (3) It is the intent of the Legislature that
2 evaluation and services to defendants who are ~~treatment of~~
3 mentally ill, and mentally retarded, or autistic defendants be
4 provided in community ~~inpatient or outpatient~~ settings, in
5 community residential facilities, or in civil, nonforensic
6 facilities, whenever this is a feasible alternative to
7 treatment or training in a state forensic facility.

8 Section 6. Section 916.106, Florida Statutes, is
9 amended to read:

10 916.106 Definitions.--For the purposes of this
11 chapter:

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

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

26 (3) "Civil facility" means a mental health facility
27 established within the department to serve individuals
28 committed pursuant to chapter 394 and those defendants
29 committed pursuant to this chapter who do not require the
30 security provided in a forensic facility.

31 (4)(2) "Court" means the circuit court.

1 ~~(5)(3)~~ "Department" means the Department of Children
2 and Family Health and Rehabilitative Services.

3 ~~(6)~~ "Express and informed consent" or "consent" means
4 consent given voluntarily in writing after a conscientious and
5 sufficient explanation and disclosure of the purpose of the
6 proposed treatment, the common side effects of the treatment,
7 if any, the expected duration of the treatment, and any
8 alternative treatment available.

9 ~~(7)(4)~~ "Forensic client" or "client" ~~"patient"~~ means
10 any defendant who is mentally ill, mentally retarded, or
11 autistic and mentally ill person who is committed to the
12 department pursuant to this chapter and:

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

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

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

- 23 1. Be dangerous to himself or herself or others; or
24 2. Present a clear and present potential to escape;

25 and

26 ~~(d)~~ Who is an adult or juvenile prosecuted as an
27 adult.

28 ~~(8)(5)~~ "Forensic facility" means a separate and secure
29 facility established within the department to serve for the
30 ~~treatment of~~ forensic clients. Such separate and secure
31 facilities shall be security-grade buildings located on

1 grounds distinct in location from other ~~treatment~~ facilities
2 for persons who are mentally ill. The Florida State Hospital
3 shall not be required to maintain separate ~~treatment~~
4 facilities for mentally ill, ~~or~~ mentally retarded, or autistic
5 defendants who are persons found incompetent to proceed for
6 trial or who are acquitted of a criminal offense by reason of
7 insanity.

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

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

25 (11)(7) "Mental illness" ~~"Mentally ill"~~ means having
26 an impairment of the emotional processes that, of the ability
27 to exercise conscious control of one's actions, or of the
28 ability to perceive or understand reality or to understand,
29 which impairment substantially interferes with a defendant's
30 person's ability to meet the ordinary demands of living,
31 regardless of etiology; except that, For the purposes of this

1 chapter, the term does not apply to defendants ~~include simple~~
2 ~~intoxication,~~ persons who are solely mentally retarded or
3 autistic, and does not include intoxication or conditions
4 manifested only by antisocial behavior or substance abuse
5 impairment ~~drug addiction~~.

6 (12)~~(8)~~ "Mental retardation" means significantly
7 subaverage general intellectual functioning existing
8 concurrently with deficits in adaptive behavior and manifested
9 during the period from conception to age 18. "Significantly
10 subaverage general intellectual functioning," for the purpose
11 of this definition, means performance which is two or more
12 standard deviations from the mean score on a standardized
13 intelligence test specified in the rules of the department.

14 "Adaptive behavior," for the purpose of this definition, means
15 the effectiveness or degree with which an individual meets the
16 standards of personal independence and social responsibility
17 expected of the individual's age, cultural group, and
18 community.

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

26 Section 7. Section 916.107, Florida Statutes, is
27 amended to read:

28 916.107 Rights of forensic clients.--

29 (1) RIGHT TO INDIVIDUAL DIGNITY.--

30 (a) The policy of the state is that the individual
31 dignity of the client ~~patient~~ shall be respected at all times

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

26 (b) Mentally ill, or mentally retarded, or autistic
27 defendants ~~persons~~ who are committed to the department
28 pursuant to this chapter and who are initially placed in, or
29 subsequently transferred to, a civil ~~mental health treatment~~
30 facility shall have the same rights as other persons committed
31

1 to civil facilities as described in chapter 393 or part I of
2 chapter 394, as long as they remain in a civil facility.

3 (2) RIGHT TO TREATMENT.--

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

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

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

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

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

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

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

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1 present a danger to the safety of the client ~~patient~~ or
2 others.

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

19 3. At the hearing on the issue of whether the court
20 should enter an order authorizing treatment for which a client
21 ~~patient~~ has refused to give express and informed consent, the
22 court shall determine by clear and convincing evidence that
23 the client ~~patient~~ is mentally ill, or mentally retarded, or
24 autistic as defined in this chapter, that the treatment not
25 consented to is essential to the care of the client ~~patient~~,
26 and that the treatment not consented to is not experimental
27 and does not present an unreasonable risk of serious,
28 hazardous, or irreversible side effects. In arriving at the
29 substitute judgment decision, the court must consider at least
30 the following factors:
31

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

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

22 (b) In addition to the provisions of paragraph (a), in
23 the case of surgical procedures requiring the use of a general
24 anesthetic or electroconvulsive treatment or nonpsychiatric
25 medical procedures, and prior to performing the procedure,
26 written permission shall be obtained from the client ~~patient~~,
27 if the client ~~he or she~~ is legally competent, from the parent
28 or guardian of a minor client ~~patient~~, or from the guardian of
29 an incompetent client ~~patient~~. The administrator or designee
30 of the forensic facility or a ~~his or her~~ designated
31 representative may, with the concurrence of the client's

1 ~~patient's~~ attending physician, authorize emergency surgical or
2 nonpsychiatric medical treatment if such treatment is deemed
3 lifesaving or for a situation threatening serious bodily harm
4 to the client ~~patient~~ and permission of the client ~~patient~~ or
5 the client's ~~patient's~~ guardian cannot be obtained.

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

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

22 (a) Each client ~~patient~~ committed pursuant to the
23 provisions of this chapter has the right to communicate freely
24 and privately with persons outside the facility unless it is
25 determined that such communication is likely to be harmful to
26 the client ~~patient~~ or others. Clients shall have the right to
27 contact and to receive communication from their attorneys at
28 any reasonable time.

29 (b) Each client ~~patient~~ committed under the provisions
30 of this chapter shall be allowed to receive, send, and mail
31 sealed, unopened correspondence; and no client's ~~patient's~~

1 incoming or outgoing correspondence shall be opened, delayed,
2 held, or censored by the facility unless there is reason to
3 believe that it contains items or substances which may be
4 harmful to the client ~~patient~~ or others, in which case the
5 administrator or designee may direct reasonable examination of
6 such mail and may regulate the disposition of such items or
7 substances. "Correspondence" shall not include parcels or
8 packages. Forensic facilities are authorized to promulgate
9 reasonable institutional policies ~~rules~~ to provide for the
10 inspection of parcels or packages and for the removal of
11 contraband items for health or security reasons prior to the
12 contents being given to a client ~~resident~~.

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

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

25 (e) Each client ~~patient~~ committed pursuant to this
26 chapter shall have ready access to a telephone in order to
27 report an alleged abuse. The facility or program staff shall
28 orally ~~verbally~~ and in writing inform each client ~~patient~~ of
29 the procedure for reporting abuse and shall present the
30 information in a language the client understands. A written
31 copy of that procedure, including the telephone number of the

1 abuse registry and reporting forms, shall be posted in plain
2 view.

3 (f) The department's forensic facilities ~~department~~
4 shall develop policies ~~adopt rules~~ providing a procedure for
5 reporting abuse. Facility staff shall be required, as a
6 condition of employment, to become familiar with the
7 procedures for the reporting of abuse.

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

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

28 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical
29 record for each client ~~patient~~ shall be maintained. The record
30 shall include data pertaining to admission and such other
31 information as may be required under rules of the department.

1 Unless waived by express and informed consent of ~~by~~ the client
2 ~~patient~~ or the client's ~~patient's~~ legal guardian or, if the
3 client ~~patient~~ is deceased, by the client's ~~patient's~~ personal
4 representative or by that family member who stands next in
5 line of intestate succession or except as otherwise provided
6 in this subsection, the clinical record is confidential and
7 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
8 I of the State Constitution.

9 (a) Such clinical record may be released:

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

12 2. To persons authorized by order of court and to the
13 client's counsel when the records are needed by the counsel
14 for adequate representation.

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

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

24 5. If a client ~~patient~~ receiving services pursuant to
25 this chapter has declared an intention to harm other persons.
26 When such a declaration has been made, the administrator shall
27 authorize the release of sufficient information to provide
28 adequate warning to the person threatened with harm by the
29 client, and to the committing court, the state attorney, and
30 the attorney representing the client; ~~however, only the~~
31 ~~declaration may be disclosed.~~

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

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

13 1. The Social Security Administration and the United
14 States Department of Veterans Affairs;

15 2. Law enforcement agencies, state attorneys, defense
16 attorneys ~~public defenders or other attorneys defending the~~
17 patient, and judges in regard to the client's ~~patient's~~
18 status;

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

21 4. Community agencies and others expected to provide
22 followup care to the client ~~patient~~ upon the client's ~~his or~~
23 ~~her~~ return to the community.

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

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

31

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

4 (9) HABEAS CORPUS.--

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

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

22 (10) TRANSPORTATION.--

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

1 service delivery levels of the sheriff's road patrol. After
2 such consultation with the governing board of the county, the
3 sheriff shall determine the most appropriate and
4 cost-effective means of transportation for forensic clients
5 committed for treatment or training.

6 (b) The governing board of each county is authorized
7 to contract with private transport companies for the
8 transportation of such clients ~~patients~~ to and from a ~~forensic~~
9 facility.

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

19 (d) Any company that contracts with a governing board
20 of a county to transport clients ~~patients~~ shall comply with
21 the applicable rules of the department to ensure the safety
22 and dignity of the clients ~~patients~~.

23 (11) LIABILITY FOR VIOLATIONS.--Any person who
24 violates or abuses any rights or privileges of a client
25 ~~patient~~ provided by this act is liable for damages as
26 determined by law. Any person who acts in good faith in
27 complying with the provisions of this act is immune from civil
28 or criminal liability for his or her actions in connection
29 with the admission, diagnosis, treatment, training, or
30 discharge of a client ~~patient~~ to or from a facility. However,

31

1 this subsection does not relieve any person from liability if
2 he or she ~~the person~~ is negligent.

3 Section 8. Section 916.175, Florida Statutes, is
4 renumbered as section 916.1081, Florida Statutes, and amended
5 to read:

6 916.1081 ~~916.175~~ Escape from ~~treatment~~ program;
7 penalty.--A defendant ~~client~~ involuntarily committed to the
8 department under the provisions of this chapter who escapes or
9 attempts to escape from a facility or program ~~commits the~~
10 ~~department is guilty of~~ a felony of the second degree,
11 punishable as provided in s. 775.082, s. 775.083, or s.
12 775.084.

13 Section 9. Section 916.178, Florida Statutes, is
14 renumbered as section 916.1085, Florida Statutes, and amended
15 to read:

16 916.1085 ~~916.178~~ Introduction or removal of certain
17 articles unlawful; penalty.--

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

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

1 institutional policies, to be hazardous to the welfare of
2 patients or the operation of the facility.

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

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

15 (b) These provisions shall be enforced by
16 institutional security personnel as defined in s.
17 916.106(10)(6) ~~or by a law enforcement officer as defined in~~
18 s. 943.10.

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

23 Section 10. Section 916.19, Florida Statutes, is
24 renumbered as section 916.1091, Florida Statutes, and amended
25 to read:

26 916.1091 ~~916.19~~ Duties, functions, and powers of
27 institutional security personnel.--In case of emergency, and
28 when necessary to provide protection and security to any
29 client ~~patient~~, to the personnel, equipment, buildings, or
30 grounds of a department facility, or to citizens in the
31 surrounding community, institutional security personnel may,

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

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

13 Section 12. Part II of chapter 916, Florida Statutes,
14 consisting of sections 916.111, 916.115, 916.12, 916.13,
15 916.14, 916.145, 916.15, 916.16, and 916.17, is created and
16 entitled "Forensic Services for Persons Who are Mentally Ill."

17 Section 13. Section 916.108, Florida Statutes, is
18 renumbered as section 916.111, Florida Statutes, and amended
19 to read:

20 916.111 ~~916.108~~ Training of mental health
21 experts.--The evaluation of defendants for competency to
22 proceed stand trial or for sanity at the time of the
23 commission of the offense shall be conducted in such a way as
24 to ensure uniform application of the criteria enumerated in
25 Rules 3.210 and 3.216, Florida Rules of Criminal Procedure.
26 The department shall develop, and may contract with accredited
27 institutions:

28 (1) To provide:

29 (a) A plan for training community mental health
30 professionals to perform forensic evaluations and to

31

1 standardize the criteria and procedures to be used in these
2 evaluations;

3 (b) Clinical protocols and procedures based upon the
4 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
5 Procedure; and

6 (c) Training for community mental health professionals
7 in the application of these protocols and procedures in
8 performing forensic evaluations and providing reports to the
9 courts; and

10 (2) To compile and maintain the necessary information
11 for evaluating the success of this program, including the
12 number of persons trained, the cost of operating the program,
13 and the effect on the quality of forensic evaluations as
14 measured by appropriateness of admissions to state forensic
15 facilities and to community-based care programs.

16 Section 14. Section 916.11, Florida Statutes, is
17 renumbered as section 916.115, Florida Statutes, and amended
18 to read:

19 916.115 ~~916.11~~ Appointment of experts.--

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

23 (b) The court may appoint no ~~more than three nor~~ fewer
24 than two experts to determine issues of the mental condition
25 of a defendant in a criminal case, including the issues of
26 competency to proceed ~~stand trial~~, insanity, and involuntary
27 hospitalization or placement. The panel of experts may
28 evaluate the defendant in jail or in another appropriate local
29 facility.

30 (c) To the extent possible, ~~at least one of the~~
31 appointed experts shall have completed forensic evaluator

1 training approved by the department and be either a
2 ~~state-employed~~ psychiatrist, psychologist, or physician ~~if in~~
3 ~~the local vicinity; a psychiatrist, psychologist, or physician~~
4 ~~designated by the district alcohol, drug abuse, and mental~~
5 ~~health program office; or a community mental health center~~
6 ~~psychiatrist, psychologist, or physician.~~

7 ~~(d) If a defendant's suspected mental condition is~~
8 ~~mental retardation, the court shall appoint the developmental~~
9 ~~services program of the Department of Health and~~
10 ~~Rehabilitative Services to examine the defendant and determine~~
11 ~~whether she or he meets the definition of "retardation" in s.~~
12 ~~393.063 and, if so, whether she or he is competent to stand~~
13 ~~trial.~~

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

26 Section 15. Section 916.12, Florida Statutes, is
27 amended to read:

28 916.12 Mental competence to proceed ~~stand trial~~.--

29 (1) A defendant ~~person~~ is incompetent to proceed ~~stand~~
30 ~~trial~~ within the meaning of this chapter if the defendant
31 ~~person~~ does not have sufficient present ability to consult

1 with her or his lawyer with a reasonable degree of rational
2 understanding or if the ~~defendant person~~ has no rational, as
3 well as factual, understanding of the proceedings against her
4 or him.

5 (2) The experts shall first determine whether the
6 person is mentally ill and, if so, consider the factors
7 related to the issue of whether the defendant meets the
8 criteria for competence to proceed; that is, whether the
9 defendant has sufficient present ability to consult with
10 counsel with a reasonable degree of rational understanding and
11 whether the defendant has a rational, as well as factual,
12 understanding of the pending proceedings.

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

16 (a) Appreciate the charges or allegations against the
17 defendant;

18 (b) Appreciate the range and nature of possible
19 penalties, if applicable, that may be imposed in the
20 proceedings against the defendant;

21 (c) Understand the adversarial nature of the legal
22 process;

23 (d) Disclose to counsel facts pertinent to the
24 proceedings at issue;

25 (e) Manifest appropriate courtroom behavior; and

26 (f) Testify relevantly;

27
28 and include in their report any other factor deemed relevant
29 by the experts.

30 (4) If the experts should find that the defendant is
31 incompetent to proceed, the experts shall report on any

1 recommended treatment for the defendant to attain competence
2 to proceed. In considering the issues relating to treatment,
3 the examining experts shall specifically report on:

4 (a) The mental illness causing the incompetence;

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

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

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

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

27 Section 16. Section 916.13, Florida Statutes, is
28 amended to read:

29 916.13 Involuntary commitment of defendant adjudicated
30 incompetent to ~~stand trial or incompetent for sentencing.~~--
31

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

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

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

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

24 (b) All available, less restrictive treatment
25 alternatives, including treatment in community residential
26 facilities or community inpatient or outpatient settings,
27 which would offer an opportunity for improvement of the
28 defendant's ~~person's~~ condition have been judged to be
29 inappropriate; and.

30 (c) There is a substantial probability that the mental
31 illness causing the defendant's incompetence will respond to

1 treatment and the defendant will regain competency to proceed
2 in the reasonably foreseeable future.

3 (2) ~~ADMISSION TO A FORENSIC FACILITY.~~

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

18 (b) ~~A defendant adjudicated incompetent to stand trial~~
19 ~~due to her or his mental retardation may be ordered into a~~
20 ~~secure facility designated by the department for retarded~~
21 ~~defendants. The department may not transfer a client from the~~
22 ~~secure facility to another residential setting without first~~
23 ~~notifying the court; the department may transfer such~~
24 ~~defendant unless the department receives written objection to~~
25 ~~the transfer from the court within 30 days after receipt of~~
26 ~~the notice by the court. No retarded client may be placed in~~
27 ~~the designated secure facility except by criminal court order.~~
28 ~~However, if criminal charges are subsequently dropped and the~~
29 ~~client is involuntarily admitted to retardation residential~~
30 ~~services, the placement at the secure facility may be~~
31 ~~continued if so ordered by the committing court following a~~

1 ~~hearing with the same due process requirements as set out in~~
2 ~~s. 393.11 for an initial involuntary admission. Such court~~
3 ~~hearings shall be held at least annually, with notice to the~~
4 ~~state attorney, and each order of continuing placement shall~~
5 ~~be based on a finding that the client is likely to physically~~
6 ~~injure others as specified in s. 393.11(1)(c)2. In no case may~~
7 ~~a client's placement in a secure facility exceed the maximum~~
8 ~~sentence for the crime for which she or he was charged.~~

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

11 916.14 Statute of limitations; former jeopardy.--The
12 statute of limitations shall not be applicable to criminal
13 charges dismissed because of the incompetency of the defendant
14 to proceed ~~stand trial~~. If a defendant is declared
15 incompetent to proceed ~~stand trial~~ during trial and afterwards
16 is declared competent to proceed ~~stand trial~~, the defendant's
17 other, uncompleted trial shall not constitute former jeopardy.

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

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

1 ~~stand trial.~~ The charges against the defendant are dismissed
2 without prejudice to the state to refile the charges should
3 the defendant be declared competent to proceed in the future.

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

6 916.15 Involuntary commitment of defendant adjudicated
7 not guilty by reason of insanity.--

8 (1) A defendant person who is acquitted of criminal
9 charges because of a finding of not guilty by reason of
10 insanity may be involuntarily committed pursuant to such
11 finding if the defendant person is mentally ill and, because
12 of the ~~person's~~ illness, is manifestly dangerous to himself or
13 herself or others.

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

29 (3) In all proceedings under this subsection, both the
30 defendant patient and the state shall have the right to a
31 hearing before the committing court. Evidence at such hearing

1 may be presented by the hospital administrator or the
2 administrator's ~~his or her~~ designee as well as by the state
3 and the defendant. The defendant shall have the right to
4 counsel at any such hearing. In the event that a defendant
5 cannot afford counsel, the court shall appoint the public
6 defender to represent the defendant. The parties shall have
7 access to the defendant's records at the treating facilities
8 and may interview or depose personnel who have had contact
9 with the defendant at the treating facilities.

10 Section 20. Section 916.16, Florida Statutes, is
11 amended to read:

12 916.16 Jurisdiction of committing court.--

13 (1) The committing criminal court shall retain
14 jurisdiction in the case of any defendant ~~patient~~ hospitalized
15 as incompetent to proceed or because of a finding of not
16 guilty by reason of insanity or, if retarded, admitted to
17 ~~retardation residential services~~ pursuant to this chapter. No
18 such defendant ~~person~~ may be released except by order of the
19 committing court. The administrative hearing examiner shall
20 have no jurisdiction to determine issues of continuing
21 hospitalization or release of any defendant ~~person~~ admitted
22 pursuant to this chapter.

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

28 Section 21. Section 916.17, Florida Statutes, is
29 amended to read:

30 916.17 Conditional release.--

31

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

18 (a) Special provisions for residential care or
19 adequate supervision of the defendant.

20 (b) Provisions for outpatient mental health services.

21 (c) If appropriate, recommendations for auxiliary
22 services such as vocational training, educational services, or
23 special medical care.

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

31

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

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

17 Section 22. Part III of chapter 916, Florida Statutes,
18 consisting of sections 916.301, 916.3012, 916.302, 916.3025,
19 916.303, and 916.304, is created and entitled "Forensic
20 Services for Persons Who Are Mentally Retarded or Autistic."

21 Section 23. Section 916.301, Florida Statutes, is
22 created to read:

23 916.301 Appointment of experts.--

24 (1) The department shall provide the courts annually
25 with a list of mental retardation and autism professionals who
26 are qualified to perform evaluations of defendants alleged to
27 be incompetent to proceed due to mental retardation or autism.
28 The courts may use professionals from this list when ordering
29 evaluations for defendants suspected of being retarded or
30 autistic.

31

1 (2) If a defendant's suspected mental condition is
2 mental retardation or autism, the court shall appoint the
3 developmental services program of the department who will
4 select two experts to evaluate whether the defendant meets the
5 definition of retardation or autism and, if so, whether the
6 defendant is competent to proceed. One of the experts selected
7 by the developmental services program must be a psychologist
8 and the other must be a social service professional.

9 (3) The developmental services program shall obtain
10 evaluations from a psychologist licensed or authorized by law
11 to practice psychology in this state, with experience in
12 evaluating persons suspected of having mental retardation or
13 autism, and a social service professional with experience in
14 working with persons with mental retardation or autism.

15 (a) The psychologist shall evaluate whether the
16 defendant meets the definition of mental retardation or autism
17 and, if so, whether the defendant is incompetent to proceed
18 due to mental retardation or autism.

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

21 (4) At the request of any party, the court must
22 appoint at least one, but not more than two, additional
23 experts to evaluate the defendant. The expert or experts
24 appointed by the court will evaluate whether the defendant
25 meets the definition of mental retardation or autism and, if
26 so, whether the defendant is competent to proceed. All
27 evaluations ordered by the court must be from qualified
28 experts licensed in this state with experience in evaluating
29 persons with mental retardation or autism.

30 (5) Expert witnesses selected by the developmental
31 services program or appointed by the court to evaluate the

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

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

13 916.3012 Mental competence to proceed.--

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

21 (2) The experts shall first consider whether the
22 defendant meets the definition of mental retardation and, if
23 so, consider the factors related to the issue of whether the
24 defendant meets the criteria for competence to proceed; that
25 is, whether the defendant has sufficient present ability to
26 consult with counsel with a reasonable degree of rational
27 understanding and whether the defendant has a rational, as
28 well as factual, understanding of the pending proceedings.

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

1 (a) Appreciate the charges or allegations against the
2 defendant;
3 (b) Appreciate the range and nature of possible
4 penalties, if applicable, that may be imposed in the
5 proceedings against the defendant;
6 (c) Understand the adversarial nature of the legal
7 process;
8 (d) Disclose to counsel facts pertinent to the
9 proceedings at issue;
10 (e) Manifest appropriate courtroom behavior; and
11 (f) Testify relevantly;
12
13 and include in their report any other factor deemed relevant
14 by the experts.
15 (4) If the experts should find that the defendant is
16 incompetent to proceed, the experts shall report on any
17 recommended training for the defendant to attain competence to
18 proceed. In considering the issues relating to training, the
19 examining experts shall specifically report on:
20 (a) The mental retardation or autism causing the
21 incompetence;
22 (b) The training appropriate for the mental
23 retardation or autism of the defendant and an explanation of
24 each of the possible training alternatives in order of
25 choices;
26 (c) The availability of acceptable training and, if
27 training is available in the community, the expert shall so
28 state in the report; and
29 (d) The likelihood of the defendant's attaining
30 competence under the training recommended, an assessment of
31 the probable duration of the training required to restore

1 competence, and the probability that the defendant will attain
2 competence to proceed in the foreseeable future.

3 Section 25. Section 916.302, Florida Statutes, is
4 created to read:

5 916.302 Involuntary commitment of defendant determined
6 to be incompetent to proceed due to mental retardation or
7 autism.--

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

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

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

18 (c) All available, less restrictive alternatives,
19 including services provided in community residential
20 facilities or other community settings, which would offer an
21 opportunity for improvement of the condition have been judged
22 to be inappropriate; and

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

27 (2) ADMISSION TO A FACILITY.--

28 (a) A defendant who has been charged with a felony and
29 who is found to be incompetent to proceed, and who meets the
30 criteria for commitment to the department under the provisions
31 of this chapter, shall be committed to the department, and the

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

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

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

17 (d) The department may not transfer a defendant from a
18 designated secure facility to a nonsecure facility without
19 first notifying the court, and all parties, 30 days before the
20 proposed transfer. If the court objects to the proposed
21 transfer to a nonsecure facility, it must send its written
22 objection to the department. The department may transfer the
23 defendant unless it receives the written objection from the
24 court within 30 days after the court's receipt of the notice
25 of the proposed transfer.

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

27 (a) If a defendant is both retarded or autistic and
28 mentally ill, evaluations must address which condition is
29 primarily affecting the defendant's competency to proceed.
30 Referral of the defendant should be made to the facility or
31

1 program most appropriate to address the symptoms which are the
2 cause of the defendant's incompetence.

3 (b) Transfer from one facility or program to another
4 facility or program may occur when, in the department's
5 judgment, it is in the defendant's best treatment or training
6 interests. Transfer will require an amended order from the
7 committing court.

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

10 916.3025 Jurisdiction of committing court.--

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

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

22 (3) The committing criminal court shall consider the
23 petition to involuntarily admit to residential services
24 provided by the department's developmental services program a
25 person whose charges have been dismissed, and, when
26 applicable, to continue secure placement of such person as
27 provided in s. 916.303. The committing criminal court shall
28 retain jurisdiction over such person so long as he or she
29 remains in secure placement or is on conditional release.

30 Section 27. Section 916.303, Florida Statutes, is
31 created to read:

1 916.303 Determination of incompetency due to mental
2 retardation or autism; dismissal of charges.--

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

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

25 (b) If the defendant is considered to need involuntary
26 residential services under s. 393.11 and, further, there is a
27 substantial likelihood that the defendant will injure another
28 person or continues to present a danger of escape, and all
29 available less restrictive alternatives, including services in
30 community residential facilities or other community settings,
31 which would offer an opportunity for improvement of the

1 condition have been judged to be inappropriate, then the
2 person or entity filing the petition under s. 393.11, the
3 state attorney, the defendant's counsel, the petitioning
4 commission, or the department may also petition the committing
5 criminal court to continue the defendant's placement in a
6 secure facility or program pursuant to this section.

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

9 916.304 Conditional release.--

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

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

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

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

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

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

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

22 Section 29. This act shall take effect October 1 of
23 the year in which enacted.
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LEGISLATIVE SUMMARY

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