

By the Committees on Criminal Justice, Children, Families and Seniors and Senators Campbell and Forman

307-1757-98

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 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 retardation or
13 autism; creating s. 916.302, F.S.; providing
14 for involuntary commitment of defendant
15 determined to be incompetent to proceed due to
16 retardation or autism; requiring the department
17 to notify the court of transfer of a defendant;
18 creating s. 916.3025, F.S.; providing for
19 retention of jurisdiction over certain
20 defendants found incompetent to proceed and
21 ordered into a secure facility for retarded or
22 autistic defendants; prohibiting release except
23 by court order; creating s. 916.303, F.S.;
24 providing for dismissal of charges without
25 prejudice or involuntary admission to
26 residential services or a training program
27 under specified circumstances when the
28 defendant is found incompetent to proceed due
29 to retardation or autism; providing for
30 petitions to continue defendant's placement in
31 a secure facility or program under specified

1 circumstances; creating s. 916.304, F.S.;

2 providing for conditional release based on an

3 approved plan for providing continuing

4 community-based training of defendant;

5 providing for modification of release

6 conditions or termination of jurisdiction under

7 specified circumstances; providing an effective

8 date.

9

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

11

12 Section 1. Subsection (1) of section 40.29, Florida

13 Statutes, is amended to read:

14 40.29 Clerks to estimate amount for pay of jurors and

15 witnesses and make requisition.--

16 (1) The clerk of the court in and for any county shall

17 make an estimate of the amount necessary during any quarterly

18 fiscal period beginning July 1 and during each succeeding

19 quarterly fiscal period for the payment by the state of:

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

21 (b) Witnesses before the grand jury;

22 (c) Witnesses summoned to appear for an investigation,

23 preliminary hearing, or trial in a criminal case when the

24 witnesses are summoned by a state attorney or on behalf of an

25 indigent defendant;

26 (d) Mental health professionals who are appointed

27 pursuant to s. 394.473 and required in a court hearing

28 involving an indigent; and

29 (e) Expert witnesses who are appointed pursuant to s.

30 916.115(2)~~916.11(3)~~ and required in a court hearing involving

31 an indigent;

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

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

11 393.11 Involuntary admission to residential
12 services.--

13 (2) PETITION.--

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

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

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

25 1. State the name, age, and present address of the
26 commissioners and their relationship to the person with mental
27 retardation or autism;

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

31

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

4 4. Allege that the person lacks sufficient capacity to
5 give express and informed consent to a voluntary application
6 for services and lacks the basic survival and self-care skills
7 to provide for the person's well-being or is likely to
8 physically injure others if allowed to remain at liberty; and

9 5. State which residential setting is the least
10 restrictive and most appropriate alternative and specify the
11 factual information on which such belief is based.

12 (d) The petition shall be filed in the circuit court
13 of the county in which the person with mental retardation or
14 autism resides.

15 (3) NOTICE.--

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

24 (b) Whenever a motion or petition has been filed
25 pursuant to s. 916.303 to dismiss criminal charges against a
26 defendant with retardation or autism, and a petition is filed
27 to involuntarily admit the defendant to residential services,
28 the notice of the filing of the petition shall also be given
29 to the defendant's attorney and to the state attorney of the
30 circuit from which the defendant was committed.

31

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

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

10 (8) ORDER.--

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

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

17 1. The person is mentally retarded or autistic;

18 2. Placement in a residential setting is the least
19 restrictive and most appropriate alternative to meet the
20 person's needs; and

21 3. Because of the person's degree of mental
22 retardation or autism, the person:

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

30 b. Is likely to physically injure others if allowed to
31 remain at liberty.

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

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

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

26 (11) CONTINUING JURISDICTION.--The court which issues
27 the initial order for involuntary admission to residential
28 services under this section shall have continuing jurisdiction
29 to enter further orders to ensure that the person is receiving
30 adequate care, treatment, habilitation, and rehabilitation,
31 including psychotropic medication and behavioral programming.

1 Upon request, the court may transfer the continuing
2 jurisdiction to the court where a client resides if it is
3 different from where the original involuntary admission order
4 was issued. No person may be released from an order for
5 involuntary admission to residential services except by the
6 order of the court.

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

11 394.467 Involuntary placement.--

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

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

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

25 Section 5. Section 916.105, Florida Statutes, is
26 amended to read:

27 916.105 Legislative intent.--

28 (1) It is the intent of the Legislature that the
29 Department of Children and Family ~~Health and Rehabilitative~~
30 Services establish, locate, and maintain separate and secure
31 facilities and programs for the treatment or training of

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

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

30 (3) It is the intent of the Legislature that
31 evaluation and services to defendants who are ~~treatment of~~

1 ~~mentally ill, and mentally retarded, or autistic defendants~~ be
2 provided in community ~~inpatient or outpatient~~ settings, in
3 community residential facilities, or in civil, nonforensic
4 facilities, whenever this is a feasible alternative to
5 treatment or training in a state forensic facility.

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

8 916.106 Definitions.--For the purposes of this
9 chapter:

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

18 (2)~~(1)~~ "Chemical weapon" means any shell, cartridge,
19 bomb, gun, or other device capable of emitting
20 chloroacetophenone (CN), chlorobenzalmalononitrile (CS) or any
21 derivatives thereof in any form, or any other agent with
22 lacrimatory properties, and shall include products such as
23 that commonly known as "mace."

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

29 (4)~~(2)~~ "Court" means the circuit court.

30 (5)~~(3)~~ "Department" means the Department of Children
31 and Family Health and Rehabilitative Services.

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

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

11 (a) Who has been determined to need treatment for a
12 mental illness or training for ~~mental~~ retardation or autism;

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

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

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

23 and

24 (d) Who is an adult or juvenile prosecuted as an
25 adult.

26 ~~(8)(5)~~ "Forensic facility" means a separate and secure
27 facility established within the department to serve for the
28 ~~treatment of~~ forensic clients. Such separate and secure
29 facilities shall be security-grade buildings located on
30 grounds distinct in location from other ~~treatment~~ facilities
31 for persons who are mentally ill. The Florida State Hospital

1 shall not be required to maintain separate ~~treatment~~
2 facilities for mentally ill, ~~or mentally~~ retarded, or autistic
3 defendants who are persons found incompetent to proceed for
4 ~~trial~~ or who are acquitted of a criminal offense by reason of
5 insanity.

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

16 (10)~~(6)~~ "Institutional security personnel" means staff
17 members who meet or exceed the requirements of s. 943.13 and
18 who are responsible for providing security, for protection of
19 clients and personnel, for the enforcement of rules, for
20 prevention and investigation of unauthorized activities, and
21 for safeguarding the interests of citizens in the surrounding
22 communities.

23 (11)~~(7)~~ "Mental illness" ~~"Mentally ill"~~ means having
24 an impairment of the emotional processes that, of the ability
25 to exercise conscious control of one's actions, or of the
26 ability to perceive or understand reality or to understand,
27 which impairment substantially interferes with a defendant's
28 person's ability to meet the ordinary demands of living,
29 ~~regardless of etiology; except that,~~ For the purposes of this
30 chapter, the term does not apply to defendants include simple
31 intoxication, persons who are solely mentally retarded or

1 autistic, and does not include intoxication or conditions
2 manifested only by antisocial behavior or substance abuse
3 impairment drug addiction.

4 (12)(8) "Mental Retardation" means significantly
5 subaverage general intellectual functioning existing
6 concurrently with deficits in adaptive behavior and manifested
7 during the period from conception to age 18. "Significantly
8 subaverage general intellectual functioning," for the purpose
9 of this definition, means performance which is two or more
10 standard deviations from the mean score on a standardized
11 intelligence test specified in the rules of the department.
12 "Adaptive behavior," for the purpose of this definition, means
13 the effectiveness or degree with which an individual meets the
14 standards of personal independence and social responsibility
15 expected of the individual's age, cultural group, and
16 community.

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

23 Section 7. Section 916.107, Florida Statutes, is
24 amended to read:

25 916.107 Rights of forensic clients.--

26 (1) RIGHT TO INDIVIDUAL DIGNITY.--

27 (a) The policy of the state is that the individual
28 dignity of the client ~~patient~~ shall be respected at all times
29 and upon all occasions, including any occasion when the
30 forensic client ~~patient~~ is detained, transported, or treated.
31 Defendants ~~Persons~~ who are mentally ill, or ~~mentally~~ retarded,

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

23 (b) Mentally ill, or mentally retarded, or autistic
24 defendants persons who are committed to the department
25 pursuant to this chapter and who are initially placed in, or
26 subsequently transferred to, a civil ~~mental health treatment~~
27 facility as described in part I of chapter 394 or to a
28 residential facility as described in chapter 393 shall have
29 the same rights as other persons committed to these civil
30 facilities ~~for as described in part I of chapter 394,~~ as long
31 as they remain there ~~in a civil facility~~.

1 (2) RIGHT TO TREATMENT.--

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

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

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

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

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

29 (a) A client ~~person~~ committed to the department
30 pursuant to this act shall be asked to give express and
31 informed written consent for treatment. ~~"Express and informed~~

1 ~~consent" or "consent" means consent given voluntarily in~~
2 ~~writing after a conscientious and sufficient explanation and~~
3 ~~disclosure of the purpose of the proposed treatment, the~~
4 ~~common side effects of the treatment, if any, the expected~~
5 ~~duration of the treatment, and any alternative treatment~~
6 ~~available.~~ If a client ~~patient~~ in a forensic facility refuses
7 such treatment as is deemed necessary by the client's
8 ~~patient's~~ multidisciplinary treatment team at the forensic
9 facility for the appropriate care of the client ~~patient~~ and
10 the safety of the client ~~patient~~ or others, such treatment may
11 be provided under the following circumstances:

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

30 2. In a situation other than an emergency situation,
31 the administrator or designee of the forensic facility shall

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

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

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

30
31

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

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

31

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

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

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

24 (b) Each client ~~patient~~ committed under the provisions
25 of this chapter shall be allowed to receive, send, and mail
26 sealed, unopened correspondence; and no client's ~~patient's~~
27 incoming or outgoing correspondence shall be opened, delayed,
28 held, or censored by the facility unless there is reason to
29 believe that it contains items or substances which may be
30 harmful to the client ~~patient~~ or others, in which case the
31 administrator or designee may direct reasonable examination of

1 such mail and may regulate the disposition of such items or
2 substances. "Correspondence" shall not include parcels or
3 packages. Forensic facilities are authorized to promulgate
4 reasonable institutional policies ~~rules~~ to provide for the
5 inspection of parcels or packages and for the removal of
6 contraband items for health or security reasons prior to the
7 contents being given to a client ~~resident~~.

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

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

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

29 (f) The department's forensic facilities ~~department~~
30 shall develop policies ~~adopt rules~~ providing a procedure for
31 reporting abuse. Facility staff shall be required, as a

1 condition of employment, to become familiar with the
2 procedures for the reporting of abuse.

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

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

23 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical
24 record for each client ~~patient~~ shall be maintained. The record
25 shall include data pertaining to admission and such other
26 information as may be required under rules of the department.
27 Unless waived by express and informed consent of by the client
28 ~~patient~~ or the client's ~~patient's~~ legal guardian or, if the
29 client ~~patient~~ is deceased, by the client's ~~patient's~~ personal
30 representative or by that family member who stands next in
31 line of intestate succession or except as otherwise provided

1 in this subsection, the clinical record is confidential and
2 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
3 I of the State Constitution.

4 (a) Such clinical record may be released:

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

7 2. To persons authorized by order of court and to the
8 client's counsel when the records are needed by the counsel
9 for adequate representation.

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

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

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

27 6. To the parent or next of kin of a mentally ill, or
28 mentally retarded, or autistic person who is committed to, or
29 is being served ~~treated~~ by, a ~~forensic mental health~~ facility
30 or program when such information is limited to that person's
31 service ~~treatment~~ plan and current physical and mental

1 condition. Release of such information shall be in accordance
2 with the code of ethics of the profession involved.

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

8 1. The Social Security Administration and the United
9 States Department of Veterans Affairs;

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

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

16 4. Community agencies and others expected to provide
17 followup care to the client ~~patient~~ upon the client's ~~his or~~
18 ~~her~~ return to the community.

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

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

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

29 (9) HABEAS CORPUS.--

30 (a) At any time, and without notice, a client ~~person~~
31 detained by a facility, or a relative, friend, guardian,

1 representative, or attorney on behalf of such client ~~person~~,
2 may petition for a writ of habeas corpus to question the cause
3 and legality of such detention and request that the committing
4 ~~circuit~~ court issue a writ for release. Each client ~~patient~~
5 committed pursuant to this chapter shall receive a written
6 notice of the right to petition for a writ of habeas corpus.

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

16 (10) TRANSPORTATION.--

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

31

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

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

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

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

28 Section 8. Section 916.175, Florida Statutes, is
29 renumbered as section 916.1081, Florida Statutes, and amended
30 to read:

31

1 916.1081 ~~916.175~~ Escape from ~~treatment~~ program;
2 penalty.--A defendant ~~client~~ involuntarily committed to the
3 department under the provisions of this chapter who escapes or
4 attempts to escape from a facility or program commits the
5 ~~department is guilty of~~ a felony of the second degree,
6 punishable as provided in s. 775.082, s. 775.083, or s.
7 775.084.

8 Section 9. Section 916.178, Florida Statutes, is
9 renumbered as section 916.1085, Florida Statutes, and amended
10 to read:

11 916.1085 ~~916.178~~ Introduction or removal of certain
12 articles unlawful; penalty.--

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

- 20 1. Any intoxicating beverage or beverage which causes
21 or may cause an intoxicating effect;
- 22 2. Any controlled substance as defined in chapter 893;
- 23 3. Any firearm or deadly weapon; or
- 24 4. Any other item ~~items~~ as determined by the
25 department, and as designated by departmental rule or by the
26 administrator of any facility, and designated by written
27 institutional policies, to be hazardous to the welfare of
28 patients or the operation of the facility.

29 (b) It is unlawful to transmit to, attempt to transmit
30 to, or cause or attempt to cause to be transmitted to or
31 received by any client ~~patient~~ of any facility any article or

1 thing declared by this section to be contraband, at any place
2 which is outside of the grounds of such facility, except as
3 authorized by law or as specifically authorized by the person
4 in charge of such facility.

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

10 (b) These provisions shall be enforced by
11 institutional security personnel as defined in s.
12 ~~916.106(10)(6)~~or by a law enforcement officer as defined in
13 s. 943.10.

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

18 Section 10. Section 916.19, Florida Statutes, is
19 renumbered as section 916.1091, Florida Statutes, and amended
20 to read:

21 916.1091 ~~916.19~~ Duties, functions, and powers of
22 institutional security personnel.--In case of emergency, and
23 when necessary to provide protection and security to any
24 client patient, to the personnel, equipment, buildings, or
25 grounds of a department facility, or to citizens in the
26 surrounding community, institutional security personnel may,
27 when authorized by the administrator of the facility or her or
28 his designee when the administrator is not present, use a
29 chemical weapon against a patient housed in a forensic
30 facility. However, such weapon shall be used only to the
31 extent necessary to provide such protection and security.

1 Under no circumstances shall any such officer carry a chemical
2 weapon on her or his person except during the period of the
3 emergency for which its use was authorized. All chemical
4 weapons shall be placed in secure storage when their use is
5 not authorized as provided in this section.

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

8 Section 12. Part II of chapter 916, Florida Statutes,
9 consisting of sections 916.111, 916.115, 916.12, 916.13,
10 916.14, 916.145, 916.15, 916.16, and 916.17, is created and
11 entitled "Forensic Services for Persons Who are Mentally Ill."

12 Section 13. Section 916.108, Florida Statutes, is
13 renumbered as section 916.111, Florida Statutes, and amended
14 to read:

15 916.111 ~~916.108~~ Training of mental health
16 experts.--The evaluation of defendants for competency to
17 proceed ~~stand trial~~ or for sanity at the time of the
18 commission of the offense shall be conducted in such a way as
19 to ensure uniform application of the criteria enumerated in
20 Rules 3.210 and 3.216, Florida Rules of Criminal Procedure.
21 The department shall develop, and may contract with accredited
22 institutions:

23 (1) To provide:

24 (a) A plan for training community mental health
25 professionals to perform forensic evaluations and to
26 standardize the criteria and procedures to be used in these
27 evaluations;

28 (b) Clinical protocols and procedures based upon the
29 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
30 Procedure; and
31

1 (c) Training for community mental health professionals
2 in the application of these protocols and procedures in
3 performing forensic evaluations and providing reports to the
4 courts; and

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

11 Section 14. Section 916.11, Florida Statutes, is
12 renumbered as section 916.115, Florida Statutes, and amended
13 to read:

14 916.115 ~~916.11~~ Appointment of experts.--

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

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

25 (c) To the extent possible, ~~at least one of the~~
26 appointed experts shall have completed forensic evaluator
27 training approved by the department and be either a
28 ~~state-employed~~ psychiatrist, psychologist, or physician ~~if in~~
29 ~~the local vicinity; a psychiatrist, psychologist, or physician~~
30 ~~designated by the district alcohol, drug abuse, and mental~~

31

1 ~~health program office; or a community mental health center~~
2 ~~psychiatrist, psychologist, or physician.~~

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

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

22 Section 15. Section 916.12, Florida Statutes, is
23 amended to read:

24 916.12 Mental competence to proceed ~~stand trial~~.--

25 (1) A defendant ~~person~~ is incompetent to proceed ~~stand~~
26 ~~trial~~ within the meaning of this chapter if the defendant
27 ~~person~~ does not have sufficient present ability to consult
28 with her or his lawyer with a reasonable degree of rational
29 understanding or if the defendant ~~person~~ has no rational, as
30 well as factual, understanding of the proceedings against her
31 or him.

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

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

12 (a) Appreciate the charges or allegations against the
13 defendant;

14 (b) Appreciate the range and nature of possible
15 penalties, if applicable, that may be imposed in the
16 proceedings against the defendant;

17 (c) Understand the adversarial nature of the legal
18 process;

19 (d) Disclose to counsel facts pertinent to the
20 proceedings at issue;

21 (e) Manifest appropriate courtroom behavior; and

22 (f) Testify relevantly;

23
24 and include in their report any other factor deemed relevant
25 by the experts.

26 (4) If the experts should find that the defendant is
27 incompetent to proceed, the experts shall report on any
28 recommended treatment for the defendant to attain competence
29 to proceed. In considering the issues relating to treatment,
30 the examining experts shall specifically report on:

31 (a) The mental illness causing the incompetence;

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

4 (c) The availability of acceptable treatment and, if
5 treatment is available in the community, the expert shall so
6 state in the report; and

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

12 (5)(2) A defendant who, because of psychotropic
13 medication, is able to understand the nature of proceedings
14 and assist in the defendant's own ~~her or his~~ defense shall not
15 automatically be deemed incompetent to proceed ~~stand trial~~
16 simply because the defendant's satisfactory mental functioning
17 is dependent upon such medication. As used in this subsection,
18 "psychotropic medication" means any drug or compound used to
19 treat mental or emotional disorders affecting the mind,
20 behavior, intellectual functions, perception, moods, or
21 emotions and includes antipsychotic, antidepressant,
22 antimanic, and antianxiety drugs.

23 Section 16. Section 916.13, Florida Statutes, is
24 amended to read:

25 916.13 Involuntary commitment of defendant adjudicated
26 incompetent ~~to stand trial or incompetent for sentencing.~~

27 (1) ~~CRITERIA.~~ ~~Every~~ defendant who is charged with a
28 felony and who is person adjudicated incompetent to proceed
29 ~~stand trial or incompetent for sentencing~~, pursuant to the
30 applicable Florida Rules of Criminal Procedure, may be
31

1 involuntarily committed for treatment upon a finding by the
2 court of clear and convincing evidence that:

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

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

15 2. There is a substantial likelihood that in the near
16 future the defendant person will inflict serious bodily harm
17 on herself or himself or another person, as evidenced by
18 recent behavior causing, attempting, or threatening such harm;
19 ~~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 defendant's ~~person's~~ condition have been judged to be
25 ~~inappropriate; and-~~

26 (c) There is a substantial probability that the mental
27 illness causing the defendant's incompetence will respond to
28 treatment and the defendant will regain competency to proceed
29 in the reasonably foreseeable future.

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

31

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

15 (b) ~~A defendant adjudicated incompetent to stand trial~~
16 ~~due to her or his mental retardation may be ordered into a~~
17 ~~secure facility designated by the department for retarded~~
18 ~~defendants. The department may not transfer a client from the~~
19 ~~secure facility to another residential setting without first~~
20 ~~notifying the court; the department may transfer such~~
21 ~~defendant unless the department receives written objection to~~
22 ~~the transfer from the court within 30 days after receipt of~~
23 ~~the notice by the court. No retarded client may be placed in~~
24 ~~the designated secure facility except by criminal court order.~~
25 ~~However, if criminal charges are subsequently dropped and the~~
26 ~~client is involuntarily admitted to retardation residential~~
27 ~~services, the placement at the secure facility may be~~
28 ~~continued if so ordered by the committing court following a~~
29 ~~hearing with the same due process requirements as set out in~~
30 ~~s. 393.11 for an initial involuntary admission. Such court~~
31 ~~hearings shall be held at least annually, with notice to the~~

1 ~~state attorney, and each order of continuing placement shall~~
2 ~~be based on a finding that the client is likely to physically~~
3 ~~injure others as specified in s. 393.11(1)(c)2. In no case may~~
4 ~~a client's placement in a secure facility exceed the maximum~~
5 ~~sentence for the crime for which she or he was charged.~~

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

8 916.14 Statute of limitations; former jeopardy.--The
9 statute of limitations shall not be applicable to criminal
10 charges dismissed because of the incompetency of the defendant
11 to proceed ~~stand trial~~. If a defendant is declared
12 incompetent to proceed ~~stand trial~~ during trial and afterwards
13 is declared competent to proceed ~~stand trial~~, the defendant's
14 other, uncompleted trial shall not constitute former jeopardy.

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

17 916.145 Adjudication of incompetency due to mental
18 illness ~~retardation~~; dismissal of charges.--The charges
19 against any defendant adjudicated incompetent to proceed ~~stand~~
20 ~~trial~~ due to the defendant's his or her mental illness
21 ~~retardation~~ shall be dismissed without prejudice to the state
22 if the defendant remains incompetent to proceed within a
23 reasonable time after such determination, not to exceed 5
24 years ~~stand trial 2 years after such adjudication~~, unless the
25 court in its order specifies its reasons for believing that
26 the defendant will become competent to proceed within the
27 foreseeable future ~~stand trial~~ and specifies the time within
28 which the defendant is expected to become competent to proceed
29 ~~stand trial~~. The charges against the defendant are dismissed
30 without prejudice to the state to refile the charges should
31 the defendant be declared competent to proceed in the future.

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

3 916.15 Involuntary commitment of defendant adjudicated
4 not guilty by reason of insanity.--

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

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

26 (3) In all proceedings under this subsection, both the
27 defendant ~~patient~~ and the state shall have the right to a
28 hearing before the committing court. Evidence at such hearing
29 may be presented by the hospital administrator or the
30 administrator's ~~his or her~~ designee as well as by the state
31 and the defendant. The defendant shall have the right to

1 counsel at any such hearing. In the event that a defendant
2 cannot afford counsel, the court shall appoint the public
3 defender to represent the defendant. The parties shall have
4 access to the defendant's records at the treating facilities
5 and may interview or depose personnel who have had contact
6 with the defendant at the treating facilities.

7 Section 20. Section 916.16, Florida Statutes, is
8 amended to read:

9 916.16 Jurisdiction of committing court.--

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

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

23 Section 21. Section 916.17, Florida Statutes, is
24 amended to read:

25 916.17 Conditional release.--

26 (1) The committing court may order a conditional
27 release of any defendant who has been found to be incompetent
28 to proceed ~~committed according to a finding of incompetency to~~
29 ~~stand trial or an adjudication of not guilty by reason of~~
30 insanity, based on an approved plan for providing appropriate
31 outpatient care and treatment. The committing court may order

1 a conditional release of any defendant in lieu of an
2 involuntary commitment to a facility pursuant to s. 916.13 or
3 s. 916.15. Upon a recommendation that ~~At such time as the~~
4 ~~administrator shall determine~~ outpatient treatment of the
5 defendant is to be appropriate, ~~she or he may file with the~~
6 ~~court, with copies to all parties,~~ a written plan for
7 outpatient treatment, including recommendations from qualified
8 professionals, must be filed with the court, with copies to
9 all parties. Such a plan may also be submitted by the
10 defendant and filed with the court with copies to all parties.

11 The plan shall include:

- 12 (a) Special provisions for residential care or
13 adequate supervision of the defendant.
14 (b) Provisions for outpatient mental health services.
15 (c) If appropriate, recommendations for auxiliary
16 services such as vocational training, educational services, or
17 special medical care.

18
19 In its order of conditional release, the court shall specify
20 the conditions of release based upon the release plan and
21 shall direct the appropriate agencies or persons to submit
22 periodic reports to the court regarding the defendant's
23 compliance with the conditions of the release and progress in
24 treatment, with copies to all parties.

25 (2) Upon the filing of an affidavit or statement under
26 oath by any person ~~if at any time it appears~~ that the
27 defendant has failed to comply with the conditions of release,
28 that the defendant's condition has deteriorated to the point
29 that inpatient care is required, or that the release
30 conditions should be modified, the court shall hold a hearing
31 within 7 days after receipt of the affidavit or statement

1 under oath. After the hearing, the court ~~and~~ may modify the
2 release conditions. The court may also ~~or~~ order that the
3 defendant be returned to the department if it is found, after
4 the appointment and report of experts, that the person meets
5 the criteria for involuntary ~~further~~ treatment.

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

10 Section 22. Part III of chapter 916, Florida Statutes,
11 consisting of sections 916.301, 916.3012, 916.302, 916.3025,
12 916.303, and 916.304, is created and entitled "Forensic
13 Services for Persons Who Are Retarded or Autistic."

14 Section 23. Section 916.301, Florida Statutes, is
15 created to read:

16 916.301 Appointment of experts.--

17 (1) The department shall provide the courts annually
18 with a list of retardation and autism professionals who are
19 qualified to perform evaluations of defendants alleged to be
20 incompetent to proceed due to retardation or autism. The
21 courts may use professionals from this list when ordering
22 evaluations for defendants suspected of being retarded or
23 autistic.

24 (2) If a defendant's suspected mental condition is
25 retardation or autism, the court shall appoint two experts,
26 one of whom must be the developmental services program of the
27 department, each of whom will evaluate whether the defendant
28 meets the definition of retardation or autism and, if so,
29 whether the defendant is competent to proceed.

30 (3) At the request of any party, the court may appoint
31 one additional expert to evaluate the defendant. The expert

1 appointed by the court will evaluate whether the defendant
2 meets the definition of retardation or autism and, if so,
3 whether the defendant is competent to proceed.

4 (4) The developmental services program shall select a
5 psychologist who is licensed or authorized by law to practice
6 in this state, with experience in evaluating persons suspected
7 of having retardation or autism, and a social service
8 professional with experience in working with persons with
9 retardation or autism to evaluate the defendant.

10 (a) The psychologist shall evaluate whether the
11 defendant meets the definition of retardation or autism and,
12 if so, whether the defendant is incompetent to proceed due to
13 retardation or autism.

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

16 (5) All evaluations ordered by the court must be from
17 qualified experts with experience in evaluating persons with
18 retardation or autism.

19 (6) The panel of experts may examine the defendant in
20 jail, in another appropriate local facility, or on an
21 out-patient basis.

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

31

1 each of the factors and follow the procedures set out in this
2 chapter and in the Florida Rules of Criminal Procedure.

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

5 916.3012 Mental competence to proceed.--

6 (1) A defendant whose suspected mental condition is
7 retardation or autism is incompetent to proceed within the
8 meaning of this chapter if the defendant does not have
9 sufficient present ability to consult with the defendant's
10 lawyer with a reasonable degree of rational understanding or
11 if the defendant has no rational, as well as factual,
12 understanding of the proceedings against the defendant.

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

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

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

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

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

31

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

3 (e) Manifest appropriate courtroom behavior; and

4 (f) Testify relevantly;

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

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

13 (a) The retardation or autism causing the
14 incompetence;

15 (b) The training appropriate for the retardation or
16 autism of the defendant and an explanation of each of the
17 possible training alternatives in order of choices;

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

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

26 Section 25. Section 916.302, Florida Statutes, is
27 created to read:

28 916.302 Involuntary commitment of defendant determined
29 to be incompetent to proceed due to retardation or autism.--

30 (1) CRITERIA.--Every defendant who is charged with a
31 felony and who is found to be incompetent to proceed, pursuant

1 to this chapter and the applicable Florida Rules of Criminal
2 Procedure, may be involuntarily committed for training upon a
3 finding by the court of clear and convincing evidence that:

4 (a) The defendant is retarded or autistic;

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

9 (c) All available, less restrictive alternatives,
10 including services provided in community residential
11 facilities or other community settings, which would offer an
12 opportunity for improvement of the condition have been judged
13 to be inappropriate; and

14 (d) There is a substantial probability that the
15 retardation or autism causing the defendant's incompetence
16 will respond to training and the defendant will regain
17 competency to proceed in the reasonably foreseeable future.

18 (2) ADMISSION TO A FACILITY.--

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

31

1 (b) A defendant determined to be incompetent to
2 proceed due to retardation or autism may be ordered by a
3 circuit court into a secure facility designated by the
4 department for retarded or autistic defendants.

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

9 (d) The department may not transfer a defendant from a
10 designated secure facility to a nonsecure facility without
11 first notifying the court, and all parties, 30 days before the
12 proposed transfer. If the court objects to the proposed
13 transfer to a nonsecure facility, it must send its written
14 objection to the department. The department may transfer the
15 defendant unless it receives the written objection from the
16 court within 30 days after the court's receipt of the notice
17 of the proposed transfer.

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

19 (a) If a defendant is both retarded or autistic and
20 mentally ill, evaluations must address which condition is
21 primarily affecting the defendant's competency to proceed.
22 Referral of the defendant should be made to the facility or
23 program most appropriate to address the symptoms which are the
24 cause of the defendant's incompetence.

25 (b) Transfer from one facility or program to another
26 facility or program may occur when, in the department's
27 judgment, it is in the defendant's best treatment or training
28 interests. Transfer will require an amended order from the
29 committing court.

30 Section 26. Section 916.3025, Florida Statutes, is
31 created to read:

1 916.3025 Jurisdiction of committing court.--

2 (1) The committing court shall retain jurisdiction in
3 the case of any defendant found to be incompetent to proceed
4 and ordered into a secure facility designated by the
5 department for retarded or autistic defendants. No defendant
6 may be released except by the order of the committing court.

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

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

19 Section 27. Section 916.303, Florida Statutes, is
20 created to read:

21 916.303 Determination of incompetency due to
22 retardation or autism; dismissal of charges.--

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

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

4 (2)(a) If the charges are dismissed and if the
5 defendant is considered to lack sufficient capacity to give
6 express and informed consent to a voluntary application for
7 services and lacks the basic survival and self-care skills to
8 provide for his or her well-being or is likely to physically
9 injure himself or herself or others if allowed to remain at
10 liberty, the department, the state attorney or the defendant's
11 attorney may apply to the committing court to involuntarily
12 admit the defendant to residential services pursuant to s.
13 393.11.

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

1 requires placement in a secure facility or program because the
2 court finds that the defendant is likely to physically injure
3 others as specified in s. 393.11 and whether the defendant is
4 receiving adequate care, treatment, habilitation, and
5 rehabilitation, including psychotropic medication and
6 behaviorial programming. Notice of the annual review and
7 review hearing shall be given to the state attorney and to the
8 defendant's attorney. In no instance may a defendant's
9 placement in a secure facility or program exceed the maximum
10 sentence for the crime for which the defendant was charged.

11 Section 28. Section 916.304, Florida Statutes, is
12 created to read:

13 916.304 Conditional release.--

14 (1) The committing court may order a conditional
15 release of any defendant who has been found to be incompetent
16 to proceed, based on an approved plan for providing continuing
17 community-based training. The committing criminal court may
18 order a conditional release of any defendant in lieu of an
19 involuntary commitment to a forensic facility pursuant to s.
20 916.302. Upon a recommendation that community-based training
21 for the defendant is appropriate, a written plan for
22 community-based training, including recommendations from
23 qualified professionals, may be filed with the court, with
24 copies to all parties. Such a plan may also be submitted by
25 the defendant and filed with the court, with copies to all
26 parties. The plan shall include:

27 (a) Special provisions for residential care and
28 adequate supervision of the defendant, including recommended
29 location of placement.

30
31

1 (b) Recommendations for auxiliary services such as
2 vocational training, psychological training, educational
3 services, leisure services, and special medical care.

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

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

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

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

30
31

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

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS for SB 442

1. Deletes the provision requiring the evaluations to be overseen by a psychiatrist, licensed psychologist, or a medical doctor.
2. Provides that the court must appoint two experts, one from the developmental services program, to determine whether the defendant meets the definition of retardation on autism.
3. Provides that the court may appoint one additional expert to evaluate the defendant to see whether the definition of retardation or autism is met.
4. Provides that the panel of experts may examine the defendant in jail, in another appropriate local facility, or on an out-patient basis.
5. Restores current law that requires the court to appoint no more than three nor fewer than two experts to evaluate the competency to proceed of a mentally ill defendant.