

1 | escape from a civil or forensic facility
2 | constitutes a second-degree felony; amending s.
3 | 916.1085, F.S.; providing for certain
4 | prohibitions concerning contraband articles to
5 | apply to facilities under the supervision or
6 | control of the Agency for Persons with
7 | Disabilities; conforming a cross-reference;
8 | amending s. 916.1091, F.S.; authorizing the use
9 | of chemical weapons by agency personnel;
10 | amending s. 916.1093, F.S.; authorizing the
11 | agency to enter into contracts and adopt rules;
12 | amending s. 916.111, F.S.; revising provisions
13 | governing the training of mental health
14 | experts; amending s. 916.115, F.S.; requiring
15 | that the court appoint experts to determine the
16 | mental condition of a criminal defendant;
17 | requiring that the Department of Children and
18 | Family Services provide the courts with a list
19 | of mental health professionals; amending s.
20 | 916.12, F.S.; revising provisions governing the
21 | evaluation of a defendant's competence to
22 | proceed; amending s. 916.13, F.S.; revising
23 | conditions under which a defendant may be
24 | involuntarily committed for treatment; amending
25 | s. 916.145, F.S., relating to charges against a
26 | defendant adjudicated incompetent; conforming
27 | provisions to changes made by the act; amending
28 | s. 916.15, F.S.; clarifying that the
29 | determination of not guilty by reason of
30 | insanity is made under the Florida Rules of
31 | Criminal Procedure; amending s. 916.16, F.S.;

1 providing for the continuing jurisdiction of
2 the court over a defendant involuntarily
3 committed due to mental illness; amending s.
4 916.17, F.S.; clarifying circumstances under
5 which the court may order the conditional
6 release of a defendant; amending s. 916.301,
7 F.S.; requiring that certain evaluations be
8 conducted by qualified experts; requiring that
9 the Agency for Persons with Disabilities
10 provide the court with a list of available
11 retardation and autism professionals;
12 conforming provisions to the transfer of duties
13 from the Developmental Disabilities Program
14 Office within the Department of Children and
15 Family Services to the agency; amending s.
16 916.3012, F.S.; clarifying provisions governing
17 the determination of a defendant's mental
18 competence to proceed; amending s. 916.302,
19 F.S., relating to the involuntary commitment of
20 a defendant; conforming provisions to the
21 transfer of duties from the Developmental
22 Disabilities Program Office within the
23 Department of Children and Family Services to
24 the agency; requiring that the department and
25 agency submit an evaluation to the court before
26 the transfer of a defendant from one civil or
27 forensic facility to another; amending s.
28 916.3025, F.S.; clarifying that the committing
29 court retains jurisdiction over a defendant
30 placed on conditional release; providing for
31 the transfer of continuing jurisdiction to

1 another court where the defendant resides;
2 amending s. 916.303, F.S.; clarifying
3 provisions governing the dismissal of charges
4 against a defendant found to be incompetent to
5 proceed due to retardation or autism; amending
6 s. 916.304, F.S.; providing for the conditional
7 release of a defendant to a civil facility;
8 amending ss. 921.137 and 985.223, F.S.,
9 relating to provisions governing the imposition
10 of the death sentence upon a mentally retarded
11 defendant and the determination of incompetency
12 in cases involving juvenile delinquency;
13 conforming provisions to the transfer of duties
14 from the Developmental Disabilities Program
15 Office within the Department of Children and
16 Family Services to the Agency for Persons with
17 Disabilities; amending ss. 287.057, 408.036,
18 943.0585, and 943.059, F.S.; conforming
19 cross-references; providing an effective date.
20

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

22
23 Section 1. Section 916.105, Florida Statutes, is
24 amended to read:

25 916.105 Legislative intent.--

26 (1) It is the intent of the Legislature that the
27 Department of Children and Family Services and the Agency for
28 Persons with Disabilities, as appropriate, establish, locate,
29 and maintain separate and secure forensic facilities and
30 programs for the treatment or training of defendants who have
31 been ~~are~~ charged with a felony and who have been found to be

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

17 (2) It is further the intent of the Legislature that
18 treatment or training programs for defendants who are found to
19 be mentally ill, retarded, or autistic and are involuntarily
20 committed to the department or agency, and who are still under
21 the jurisdiction of the committing court, be provided in ~~such~~
22 a manner, subject to security requirements and other mandates
23 of this chapter, as to ensure the rights of the defendants as
24 provided in this chapter.

25 (3) It is also the intent of the Legislature that
26 evaluation and services to defendants who are mentally ill,
27 retarded, or autistic be provided in community settings, in
28 community residential facilities, or in civil, ~~nonforensic~~
29 facilities, whenever this is a feasible alternative to
30 treatment or training in a state forensic facility.

31

1 Section 2. Section 916.106, Florida Statutes, is
2 amended to read:

3 916.106 Definitions.--For the purposes of this
4 chapter:

5 (1) "Agency" means the Agency for Persons with
6 Disabilities. The agency is responsible for training forensic
7 clients who are developmentally disabled due to mental
8 retardation or autism and have been determined incompetent to
9 proceed.

10 ~~(2)(1) "Autism" has the same meaning as in s. 393.063.~~
11 ~~means a pervasive, neurologically based developmental~~
12 ~~disability of extended duration which causes severe learning,~~
13 ~~communication, and behavior disorders, with the age of onset~~
14 ~~of autism occurring during infancy or childhood. Individuals~~
15 ~~with autism exhibit impairment in reciprocal social~~
16 ~~interaction, impairment in verbal and nonverbal communication~~
17 ~~and imaginative ability, and a markedly restricted repertoire~~
18 ~~of activities and interests.~~

19 ~~(3)(2)~~ "Chemical weapon" means any shell, cartridge,
20 bomb, gun, or other device capable of emitting
21 chloroacetophenone (CN), chlorobenzalmalonitrile (CS) or any
22 derivatives thereof in any form, or any other agent with
23 lacrimatory properties, and shall include products such as
24 that commonly known as "mace."

25 ~~(4)(3)~~ "Civil facility" means:

26 (a) A mental health facility established within the
27 department or by contract with the department to serve
28 individuals committed pursuant to chapter 394 and those
29 defendants committed pursuant to this chapter who do not
30 require the security provided in a forensic facility; or-

31

1 **(b) An intermediate care facility for the**
2 **developmentally disabled, a foster care facility, a group home**
3 **facility, or a supported living setting, as defined in s.**
4 **393.063, designated by the agency to serve those defendants**
5 **who do not require the security provided in a forensic**
6 **facility.**

7 ~~(5)(4)~~ "Court" means the circuit court.

8 **(6) "Defendant" means an adult, or a juvenile who is**
9 **prosecuted as an adult, who has been arraigned and charged**
10 **with a felony offense under the laws of this state.**

11 ~~(7)(5)~~ "Department" means the Department of Children
12 and Family Services. **The department is responsible for the**
13 **treatment of forensic clients who have been determined**
14 **incompetent to proceed due to mental illness or who have been**
15 **acquitted of a felony by reason of insanity.**

16 ~~(8)(6)~~ "Express and informed consent" or "consent"
17 means consent given voluntarily in writing after a
18 conscientious and sufficient explanation and disclosure of the
19 purpose of the proposed treatment, the common side effects of
20 the treatment, if any, the expected duration of the treatment,
21 and any alternative treatment available.

22 ~~(9)(7)~~ "Forensic client" or "client" means any
23 defendant who **has been is mentally ill, retarded, or autistic**
24 ~~and who is~~ committed to the department **or agency** pursuant to
25 **s. 916.13, s. 916.15, or s. 916.302. this chapter and:**

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

28 ~~(b) Who has been found incompetent to proceed on a~~
29 ~~felony offense or has been acquitted of a felony offense by~~
30 ~~reason of insanity;~~

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

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

4 ~~(d) Who is an adult or a juvenile prosecuted as an~~
5 ~~adult.~~

6 ~~(10)(8)~~ "Forensic facility" means a separate and
7 secure facility established within the department or agency to
8 serve forensic clients. ~~A Such~~ separate and secure facility
9 means a facilities shall be security-grade building for the
10 purpose of separately housing persons who are mentally ill
11 from persons who are retarded or autistic and separately
12 housing persons who have been involuntarily committed pursuant
13 to this chapter from nonforensic residents buildings located
14 on grounds distinct in location from other facilities for
15 persons who are mentally ill. The Florida State Hospital shall
16 not be required to maintain separate facilities for mentally
17 ill, retarded, or autistic defendants who are found
18 incompetent to proceed or who are acquitted of a criminal
19 offense by reason of insanity.

20 ~~(11)(9)~~ "Incompetent to proceed" means unable to
21 proceed at any material stage of a criminal proceeding, which
22 shall include trial of the case, pretrial hearings involving
23 questions of fact on which the defendant might be expected to
24 testify, entry of a plea, proceedings for violation of
25 probation or violation of community control, sentencing, and
26 hearings on issues regarding a defendant's failure to comply
27 with court orders or conditions or other matters in which the
28 mental competence of the defendant is necessary for a just
29 resolution of the issues being considered.

30 ~~(12)(10)~~ "Institutional security personnel" means
31 employees of forensic facilities ~~staff members~~ who meet or

1 exceed the requirements of s. 943.13 and who are responsible
2 for providing security, protecting ~~for protection~~ of clients
3 and personnel, enforcing ~~for the enforcement~~ of rules,
4 preventing and investigating ~~for prevention and investigation~~
5 ~~of~~ unauthorized activities, and ~~for~~ safeguarding the interests
6 of citizens in the surrounding communities.

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

16 ~~(14)(12)~~ "Retardation" has the same meaning as in s.
17 393.063. ~~means significantly subaverage general intellectual~~
18 ~~functioning existing concurrently with deficits in adaptive~~
19 ~~behavior and manifested during the period from conception to~~
20 ~~age 18. "Significantly subaverage general intellectual~~
21 ~~functioning," for the purpose of this definition, means~~
22 ~~performance which is two or more standard deviations from the~~
23 ~~mean score on a standardized intelligence test specified in~~
24 ~~the rules of the department. "Adaptive behavior," for the~~
25 ~~purpose of this definition, means the effectiveness or degree~~
26 ~~with which an individual meets the standards of personal~~
27 ~~independence and social responsibility expected of the~~
28 ~~individual's age, cultural group, and community.~~

29 ~~(15)(13)~~ "Social service professional," ~~for the~~
30 ~~purposes of part III,~~ means a person whose minimum
31 qualifications include a bachelor's degree and at least 2

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

5 | Section 3. Section 916.107, Florida Statutes, is
6 | amended to read:

7 | 916.107 Rights of forensic clients.--

8 | (1) RIGHT TO INDIVIDUAL DIGNITY.--

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

1 program until the client is transferred to a civil or forensic
2 facility ~~the custody of the department.~~

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

11 (2) RIGHT TO TREATMENT.--

12 (a) The policy of the state is that neither the
13 department nor the agency shall ~~not~~ deny treatment or training
14 to any client and that no services shall be delayed ~~at a~~
15 ~~facility~~ because the forensic client is indigent pursuant to
16 s. 27.52 and presently unable to pay. However, every
17 reasonable effort to collect appropriate reimbursement for the
18 cost of providing services to clients able to pay for the
19 services, including reimbursement from insurance or other
20 third-party payments, shall be made by facilities providing
21 services pursuant to this chapter and in accordance with the
22 provisions of s. 402.33.

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

28 (c) Every client ~~committed pursuant to this act~~ shall
29 be afforded the opportunity to participate in activities
30 designed to enhance self-image and the beneficial effects of
31 other treatments or training, as determined by the facility.

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

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

6 (a) A forensic client ~~committed to the department~~
7 ~~pursuant to this act~~ shall be asked to give express and
8 informed written consent for treatment. If a client ~~in a~~
9 ~~forensic facility~~ refuses such treatment as is deemed
10 necessary and essential by the client's multidisciplinary
11 treatment team ~~at the forensic facility~~ for the appropriate
12 care of the client ~~and the safety of the client or others~~,
13 such treatment may be provided under the following
14 circumstances:

15 1. In an emergency situation in which there is
16 immediate danger to the safety of the client or others, such
17 treatment may be provided upon the written order of a
18 physician for a period not to exceed 48 hours, excluding
19 weekends and legal holidays. If, after the 48-hour period,
20 the client has not given express and informed consent to the
21 treatment initially refused, the administrator or designee of
22 the civil or 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. In the interim, the need
28 for treatment shall be reviewed every 48 hours and may be
29 continued without the consent of the client upon the continued
30 written order of a physician who has determined that the
31

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

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

- 29 a. The client's expressed preference regarding
30 treatment;
- 31 b. The probability of adverse side effects;

- 1 c. The prognosis without treatment; and
2 d. The prognosis with treatment.

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

18 (b) In addition to the provisions of paragraph (a), in
19 the case of surgical procedures requiring the use of a general
20 anesthetic or electroconvulsive treatment or nonpsychiatric
21 medical procedures, and prior to performing the procedure,
22 written permission shall be obtained from the client, if the
23 client is legally competent, from the parent or guardian of a
24 minor client, or from the guardian of an incompetent client.
25 The administrator or designee of the forensic facility or a
26 designated representative may, with the concurrence of the
27 client's attending physician, authorize emergency surgical or
28 nonpsychiatric medical treatment if such treatment is deemed
29 lifesaving or for a situation threatening serious bodily harm
30 to the client and permission of the client or the client's
31

1 guardian could not ~~cannot~~ be obtained before provision of the
2 needed treatment.

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

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

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

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

1 harmful to the client or others, in which case the
2 administrator or designee may direct reasonable examination of
3 such mail and may regulate the disposition of such items or
4 substances. "Correspondence" shall not include parcels or
5 packages. Forensic facilities are authorized to promulgate
6 reasonable institutional policies to provide for the
7 inspection of parcels or packages and for the removal of
8 contraband items for health or security reasons prior to the
9 contents being given to a client.

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

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

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

30 ~~(e)(f)~~ The department's or agency's forensic
31 facilities shall develop policies providing a procedure for

1 reporting abuse. Facility staff shall be required, as a
2 condition of employment, to become familiar with the
3 procedures for the reporting of abuse.

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

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

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

1 line of intestate succession or except as otherwise provided
2 in this subsection, the clinical record is confidential and
3 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
4 I of the State Constitution.

5 (a) Such clinical record may be released:

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

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

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

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

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

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

1 accordance with the code of ethics of the profession involved
2 and must comply with all state and federal laws and
3 regulations pertaining to the release of personal health
4 information.

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

10 1. The Social Security Administration and the United
11 States Department of Veterans Affairs;

12 2. Law enforcement agencies, state attorneys, defense
13 attorneys, and judges in regard to the client's status;

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

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

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

22 (d)1. Any law enforcement agency, facility, or other
23 governmental agency that receives information pursuant to this
24 subsection shall maintain the confidentiality of such
25 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 forensic client
31 detained by a facility, or a relative, friend, guardian,

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

7 (b) A client or his or her legal guardian or
8 representatives or attorney may file a petition in the circuit
9 court in the county where the client is committed alleging
10 that the client is being unjustly denied a right or privilege
11 granted herein or that a procedure authorized herein is being
12 abused. Upon the filing of such a petition, the circuit court
13 shall have the authority to conduct a judicial inquiry and to
14 issue any appropriate order to correct an abuse of the
15 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 in the custody of
20 the department or agency who have been committed for treatment
21 or training. Such consultation shall include, but is not
22 limited to, consideration of the cost to the county of
23 transportation performed by sheriff's ~~department~~ personnel as
24 opposed to transportation performed by other means and, if
25 sheriff's ~~department~~ personnel are to be used for
26 transportation, the effect such use will have, if any, on
27 service delivery levels of the sheriff's road patrol. After
28 such consultation with the governing board of the county, the
29 sheriff shall determine the most appropriate and
30 cost-effective means of transportation for forensic clients
31 committed for treatment or training.

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

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

12 (d) Any company that contracts with a governing board
13 of a county to transport clients shall comply with the
14 applicable rules of the department or agency to ensure the
15 safety and dignity of the clients.

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

27 Section 4. Subsections (1), (2), (3), (4), and (5) of
28 section 916.1075, Florida Statutes, are amended to read:

29 916.1075 Sexual misconduct prohibited; reporting
30 required; penalties.--

31 (1) As used in this section, the term:

1 (a) "Employee" includes any paid staff member,
2 volunteer, or intern of the department or agency; any person
3 under contract with the department or agency; and any person
4 providing care or support to a forensic client on behalf of
5 the department, the agency, or their ~~its~~ providers.

6 (b) "Sexual activity" means:

7 1. Fondling the genital area, groin, inner thighs,
8 buttocks, or breasts of a person.

9 2. The oral, anal, or vaginal penetration by or union
10 with the sexual organ of another or the anal or vaginal
11 penetration of another by any other object.

12 3. Intentionally touching in a lewd or lascivious
13 manner the breasts, genitals, the genital area, or buttocks,
14 or the clothing covering them, of a person, or forcing or
15 enticing a person to touch the perpetrator.

16 4. Intentionally masturbating in the presence of
17 another person.

18 5. Intentionally exposing the genitals in a lewd or
19 lascivious manner in the presence of another person.

20 6. Intentionally committing any other sexual act that
21 does not involve actual physical or sexual contact with the
22 victim, including, but not limited to, sadomasochistic abuse,
23 sexual bestiality, or the simulation of any act involving
24 sexual activity in the presence of a victim.

25 (c) "Sexual misconduct" means any sexual activity
26 between an employee and a forensic client in the custody of
27 the department or agency, regardless of the consent of the
28 client. The term does not include an act done for a bona fide
29 medical purpose or an internal search conducted in the lawful
30 performance of duty by an employee.

31

1 (2) An employee who engages in sexual misconduct with
2 a forensic client who resides in a civil or forensic facility
3 commits a felony of the second degree, punishable as provided
4 in s. 775.082, s. 775.083, or s. 775.084. An employee may be
5 found guilty of violating this subsection without having
6 committed the crime of sexual battery.

7 (3) The consent of a forensic ~~the~~ client to sexual
8 activity is not a defense to prosecution under this section.

9 (4) This section does not apply to an employee who+

10 ~~(a) is legally married to the client; or~~

11 ~~(b) Has no reason to believe that the person with whom~~
12 ~~the employee engaged in sexual misconduct is a client~~
13 ~~receiving services as described in subsection (2).~~

14 (5) An employee who witnesses sexual misconduct, or
15 who otherwise knows or has reasonable cause to suspect that a
16 person has engaged in sexual misconduct, shall immediately
17 report the incident to the department's central abuse hotline
18 and to the appropriate local law enforcement agency. Such
19 employee shall also prepare, date, and sign an independent
20 report that specifically describes the nature of the sexual
21 misconduct, the location and time of the incident, and the
22 persons involved. For an allegation pertaining to a forensic
23 client committed to the agency, the employee shall deliver the
24 report to the supervisor or program director, who shall
25 provide copies to the agency's ~~is responsible for providing~~
26 ~~copies to the department's~~ inspector general. For an
27 allegation pertaining to a forensic client committed to the
28 department, the employee shall deliver the report to the
29 supervisor or program director, who shall provide copies to
30 the department's inspector general. ~~The inspector general~~
31 ~~shall immediately conduct an appropriate administrative~~

1 ~~investigation, and, if there is probable cause to believe that~~
2 ~~sexual misconduct has occurred, the inspector general shall~~
3 ~~notify the state attorney in the circuit in which the incident~~
4 ~~occurred.~~

5 Section 5. Section 916.1081, Florida Statutes, is
6 amended to read:

7 916.1081 Escape from program; penalty.--

8 (1) A forensic client who is ~~A defendant~~ involuntarily
9 committed to the department or agency, who is in the custody
10 of the department or agency, and under the provisions of this
11 ~~chapter~~ who escapes or attempts to escape from a civil or
12 forensic facility or program commits a felony of the second
13 degree, punishable as provided in s. 775.082, s. 775.083, or
14 s. 775.084.

15 (2) A person who is involuntarily committed to the
16 department or the agency, who is in the custody of the
17 Department of Corrections, and who escapes or attempts to
18 escape from a facility or program commits a felony of the
19 second degree, punishable as provided in s. 944.40.

20 Section 6. Subsection (1) and paragraph (b) of
21 subsection (2) of section 916.1085, Florida Statutes, are
22 amended to read:

23 916.1085 Introduction or removal of certain articles
24 unlawful; penalty.--

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

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

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

18 (2)

19 (b) These provisions shall be enforced by
20 institutional security personnel as defined in s. 916.106(12)
21 ~~s. 916.106(10)~~ or by a law enforcement officer as defined in
22 s. 943.10.

23 Section 7. Section 916.1091, Florida Statutes, is
24 amended to read:

25 916.1091 Duties, functions, and powers of
26 institutional security personnel.--In case of emergency, and
27 when necessary to provide protection and security to any
28 client, to the personnel, equipment, buildings, or grounds of
29 a department or agency facility, or to citizens in the
30 surrounding community, institutional security personnel may,
31 when authorized by the administrator of the facility or her or

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

10 | Section 8. Section 916.1093, Florida Statutes, is
11 | amended to read:

12 | 916.1093 Operation and administration; rules.--

13 | (1) The department or agency may ~~is authorized to~~
14 | enter into contracts and do such things as may be necessary
15 | and incidental to assure compliance with and to carry out the
16 | provisions of this chapter in accordance with the stated
17 | legislative intent.

18 | (2) The department or agency may ~~has authority to~~
19 | adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
20 | the provisions of this chapter.

21 | Section 9. Section 916.111, Florida Statutes, is
22 | amended to read:

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

31 | (1) To provide:

1 (a) A plan for training ~~community~~ mental health
2 professionals to perform forensic evaluations and to
3 standardize the criteria and procedures to be used in these
4 evaluations;

5 (b) Clinical protocols and procedures consistent with
6 the applicable rules of the ~~based upon the criteria of Rules~~
7 ~~3.210 and 3.216,~~ Florida Rules of Criminal Procedure; and

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

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

18 Section 10. Section 916.115, Florida Statutes, is
19 amended to read:

20 916.115 Appointment of experts.--

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

24 (b) The court shall ~~may~~ appoint no more than three
25 experts to determine ~~issues~~ of the mental condition of a
26 defendant in a criminal case, including ~~the issues~~ of
27 competency to proceed, insanity, ~~and~~ involuntary
28 ~~hospitalization or placement, and treatment. The panel of~~
29 experts ~~An expert~~ may evaluate the defendant in jail or in
30 another appropriate local facility or in a facility of the
31 Department of Corrections.

1 ~~(a)(c)~~ To the extent possible, the an appointed
2 experts expert shall have completed forensic evaluator
3 training approved by the department and shall be ~~either~~ a
4 psychiatrist, licensed psychologist, or physician.

5 (b) The department shall maintain and provide the
6 courts with a list of available mental health professionals
7 who have completed the approved training as experts.

8 ~~(2) Expert witnesses appointed by the court to~~
9 ~~evaluate the mental condition of a defendant in a criminal~~
10 ~~case shall be allowed reasonable fees for services rendered as~~
11 ~~evaluators of competence or sanity and as witnesses.~~

12 ~~(a)1.~~ The court shall pay for any expert that it
13 appoints by court order, upon motion of counsel for the
14 defendant or the state or upon its own motion. If the defense
15 or the state retains an expert and waives the confidentiality
16 of the expert's report, the court may pay for no more than two
17 additional experts appointed by court order. If an expert
18 appointed by the court upon motion of counsel for the
19 defendant specifically to evaluate the competence of the
20 defendant to proceed also addresses ~~in his or her evaluation~~
21 issues related to sanity as an affirmative defense, the court
22 shall pay only for that portion of the expert's fees relating
23 to the evaluation on competency to proceed, and the balance of
24 the fees shall be chargeable to the defense.

25 ~~(a)2.~~ Pursuant to s. 29.006, the office of the public
26 defender shall pay for any expert retained by the office.

27 ~~(b)3.~~ Pursuant to s. 29.005, the office of the state
28 attorney shall pay for any expert retained by the office and-
29 ~~Notwithstanding subparagraph 1., the office of the state~~
30 ~~attorney shall pay~~ for any expert whom the office retains and
31

1 | whom the office moves the court to appoint in order to ensure
2 | that the expert has access to the defendant.

3 | ~~(c)4-~~ An expert retained by the defendant who is
4 | represented by private counsel appointed under s. 27.5303
5 | shall be paid by the Justice Administrative Commission.

6 | ~~(d)5-~~ An expert retained by a defendant who is
7 | indigent for costs as determined by the court and who is
8 | represented by private counsel, other than private counsel
9 | appointed under s. 27.5303, on a fee or pro bono basis, or who
10 | is representing himself or herself, shall be paid by the
11 | Justice Administrative Commission from funds specifically
12 | appropriated for these expenses.

13 | ~~(e)6-~~ State employees shall be paid expenses pursuant
14 | to s. 112.061.

15 | ~~(f)7-~~ The fees shall be taxed as costs in the case.

16 | ~~(g)8-~~ In order for an expert to be paid for the
17 | services rendered, the expert's report and testimony must
18 | explicitly address each of the factors and follow the
19 | procedures set out in this chapter and in the Florida Rules of
20 | Criminal Procedure.

21 | Section 11. Subsections (1) and (2) of section 916.12,
22 | Florida Statutes, are amended to read:

23 | 916.12 Mental competence to proceed.--

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

30 | (2) Mental health experts appointed pursuant to s.
31 | 916.115 ~~An expert~~ shall first determine whether the defendant

1 ~~person~~ is mentally ill and, if so, consider the factors
2 related to the issue of whether the defendant meets the
3 criteria for competence to proceed as described in subsection
4 ~~(1); that is, whether the defendant has sufficient present~~
5 ~~ability to consult with counsel with a reasonable degree of~~
6 ~~rational understanding and whether the defendant has a~~
7 ~~rational, as well as factual, understanding of the pending~~
8 ~~proceedings.~~ A defendant must be evaluated by no fewer than
9 two experts before the court commits the defendant or takes
10 other action authorized by this chapter or the Florida Rules
11 of Criminal Procedure, except if one expert finds that the
12 defendant is incompetent to proceed and the parties stipulate
13 to that finding, the court may commit the defendant or take
14 other action authorized by this chapter or the rules without
15 further evaluation or hearing, or the court may appoint no
16 more than two additional experts to evaluate the defendant.
17 Notwithstanding any stipulation by the state and the
18 defendant, the court may require a hearing with testimony from
19 the expert or experts before ordering the commitment of a
20 defendant.

21 Section 12. Section 916.13, Florida Statutes, is
22 amended to read:

23 916.13 Involuntary commitment of defendant adjudicated
24 incompetent.--

25 (1) Every defendant who is charged with a felony and
26 who is adjudicated incompetent to proceed, ~~pursuant to the~~
27 ~~applicable Florida Rules of Criminal Procedure,~~ may be
28 involuntarily committed for treatment upon a finding by the
29 court of clear and convincing evidence that:

30 (a) The defendant is mentally ill and because of the
31 mental illness:

1 1. The defendant is manifestly incapable of surviving
2 alone or with the help of willing and responsible family or
3 friends, including available alternative services, and,
4 without treatment, the defendant is likely to suffer from
5 neglect or refuse to care for herself or himself and such
6 neglect or refusal poses a real and present threat of
7 substantial harm to the defendant's well-being; or ~~and~~

8 2. There is a substantial likelihood that in the near
9 future the defendant will inflict serious bodily harm on
10 herself or himself or another person, as evidenced by recent
11 behavior causing, attempting, or threatening such harm;

12 (b) All available, less restrictive treatment
13 alternatives, including treatment in community residential
14 facilities or community inpatient or outpatient settings,
15 which would offer an opportunity for improvement of the
16 defendant's condition have been judged to be inappropriate;
17 and

18 (c) There is a substantial probability that the mental
19 illness causing the defendant's incompetence will respond to
20 treatment and the defendant will regain competency to proceed
21 in the reasonably foreseeable future.

22 (2) A defendant who has been charged with a felony and
23 who has been adjudicated incompetent to proceed due to mental
24 illness, and who meets the criteria for involuntary commitment
25 to the department under the provisions of this chapter, may be
26 committed to the department, and the department shall retain
27 and treat the defendant. No later than 6 months after the
28 date of admission and ~~or~~ at the end of any period of extended
29 commitment, or at any time the administrator or designee shall
30 have determined that the defendant has regained competency to
31 proceed or no longer meets the criteria for continued

1 | commitment, the administrator or designee shall file a report
2 | with the court pursuant to the applicable Florida Rules of
3 | Criminal Procedure.

4 | Section 13. Section 916.145, Florida Statutes, is
5 | amended to read:

6 | 916.145 ~~Adjudication of incompetency due to mental~~
7 | ~~illness~~; Dismissal of charges.--The charges against any
8 | defendant adjudicated incompetent to proceed due to the
9 | defendant's mental illness shall be dismissed without
10 | prejudice to the state if the defendant remains incompetent to
11 | proceed 5 years after such determination, unless the court in
12 | its order specifies its reasons for believing that the
13 | defendant will become competent to proceed within the
14 | foreseeable future and specifies the time within which the
15 | defendant is expected to become competent to proceed. The
16 | charges against the defendant are dismissed without prejudice
17 | to the state to refile the charges should the defendant be
18 | declared competent to proceed in the future.

19 | Section 14. Section 916.15, Florida Statutes, is
20 | amended to read:

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

23 | (1) The determination of whether a defendant is not
24 | guilty by reason of insanity shall be determined in accordance
25 | with the Florida Rules of Criminal Procedures.

26 | (2)~~(1)~~ A defendant who is acquitted of criminal
27 | charges because of a finding of not guilty by reason of
28 | insanity may be involuntarily committed pursuant to such
29 | finding if the defendant is mentally ill and, because of the
30 | illness, is manifestly dangerous to himself or herself or
31 | others.

1 ~~(3)(2)~~ Every defendant acquitted of criminal charges
2 by reason of insanity and found to meet the criteria for
3 involuntary commitment may be committed and treated in
4 accordance with the provisions of this section and the
5 applicable Florida Rules of Criminal Procedure. The
6 department shall admit a defendant so adjudicated to an
7 appropriate facility or program for treatment and shall retain
8 and treat such defendant. No later than 6 months after the
9 date of admission, prior to the end of any period of extended
10 commitment, or at any time the administrator or designee shall
11 have determined that the defendant no longer meets the
12 criteria for continued commitment placement, the administrator
13 or designee shall file a report with the court pursuant to the
14 applicable Florida Rules of Criminal Procedure.

15 ~~(4)(3)~~ In all proceedings under this section
16 ~~subsection~~, both the defendant and the state shall have the
17 right to a hearing before the committing court. Evidence at
18 such hearing may be presented by the hospital administrator or
19 the administrator's designee as well as by the state and the
20 defendant. The defendant shall have the right to counsel at
21 any such hearing. In the event that a defendant is determined
22 to be indigent pursuant to s. 27.52, the public defender shall
23 represent the defendant. The parties shall have access to the
24 defendant's records at the treating facilities and may
25 interview or depose personnel who have had contact with the
26 defendant at the treating facilities.

27 Section 15. Section 916.16, Florida Statutes, is
28 amended to read:

29 916.16 Jurisdiction of committing court.--

30 (1) The committing court shall retain jurisdiction
31 over in the case of any defendant involuntarily committed due

1 ~~to a determination of incompetency hospitalized as incompetent~~
2 to proceed or because of mental illness or a finding of not
3 guilty by reason of insanity pursuant to this chapter. ~~The No~~
4 ~~such~~ defendant may not be released except by order of the
5 committing court. ~~An The~~ administrative hearing examiner does
6 not shall have ~~no~~ jurisdiction to determine issues of
7 continuing commitment hospitalization or release of any
8 defendant involuntarily committed ~~admitted~~ pursuant to this
9 chapter.

10 (2) The committing court shall retain jurisdiction in
11 the case of any defendant placed on conditional release
12 pursuant to s. 916.17. ~~No~~ Such defendant may not be released
13 from the conditions of release except by order of the
14 committing court.

15 Section 16. Section 916.17, Florida Statutes, is
16 amended to read:

17 916.17 Conditional release.--

18 (1) Except for an inmate currently serving a prison
19 sentence, ~~The committing court may order a conditional release~~
20 ~~of any defendant who has been found to be incompetent to~~
21 ~~proceed or not guilty by reason of insanity, based on an~~
22 ~~approved plan for providing appropriate outpatient care and~~
23 ~~treatment.~~ the committing court may order a conditional
24 release of any defendant in lieu of an involuntary commitment
25 to a facility pursuant to s. 916.13 or s. 916.15 based upon an
26 approved plan for providing appropriate outpatient care and
27 treatment. Upon a recommendation that outpatient treatment of
28 the defendant is appropriate, a written plan for outpatient
29 treatment, including recommendations from qualified
30 professionals, must be filed with the court, with copies to
31 all parties. Such a plan may also be submitted by the

1 defendant and filed with the court with copies to all parties.

2 The plan shall include:

3 (a) Special provisions for residential care or
4 adequate supervision of the defendant.

5 (b) Provisions for outpatient mental health services.

6 (c) If appropriate, recommendations for auxiliary
7 services such as vocational training, educational services, or
8 special medical care.

9

10 In its order of conditional release, the court shall specify
11 the conditions of release based upon the release plan and
12 shall direct the appropriate agencies or persons to submit
13 periodic reports to the court regarding the defendant's
14 compliance with the conditions of the release and progress in
15 treatment, with copies to all parties.

16 (2) Upon the filing of an affidavit or statement under
17 oath by any person that the defendant has failed to comply
18 with the conditions of release, that the defendant's condition
19 has deteriorated to the point that inpatient care is required,
20 or that the release conditions should be modified, the court
21 shall hold a hearing within 7 days after receipt of the
22 affidavit or statement under oath. After the hearing, the
23 court may modify the release conditions. The court may also
24 order that the defendant be returned to the department if it
25 is found, after the appointment and report of experts, that
26 the person meets the criteria for involuntary commitment under
27 s. 916.13 or s. 916.15 ~~treatment~~.

28 (3) If at any time it is determined after a hearing
29 that the defendant who has been conditionally released under
30 subsection (1) no longer requires court-supervised followup

31

1 care, the court shall terminate its jurisdiction in the cause
2 and discharge the defendant.

3 Section 17. Section 916.301, Florida Statutes, is
4 amended to read:

5 916.301 Appointment of experts.--

6 (1) All evaluations ordered by the court under this
7 part must be conducted by qualified experts who have expertise
8 in evaluating persons with retardation or autism. The agency
9 ~~department~~ shall maintain and provide the courts ~~annually~~ with
10 a list of available retardation and autism professionals who
11 are appropriately licensed and qualified to perform
12 evaluations of defendants alleged to be incompetent to proceed
13 due to retardation or autism. The courts may use professionals
14 from this list when appointing experts and ordering
15 evaluations under this part ~~for defendants suspected of being~~
16 ~~retarded or autistic.~~

17 (2) If a defendant's suspected mental condition is
18 retardation or autism, the court shall appoint a panel of
19 experts consisting of: two experts, one of whom must be the
20 ~~developmental services program of the department, each of whom~~
21 ~~will evaluate whether the defendant meets the definition of~~
22 ~~retardation or autism and, if so, whether the defendant is~~
23 ~~competent to proceed.~~

24 ~~(a)(3)~~ At least one, or at the request of any party,
25 two experts ~~the court may appoint one additional expert to~~
26 ~~evaluate the defendant. The expert appointed by the court will~~
27 ~~evaluate~~ whether the defendant meets the definition of
28 retardation or autism and, if so, whether the defendant is
29 competent to proceed.

30 ~~(b)(4)~~ ~~The developmental services program shall select~~
31 A psychologist selected by the agency who is licensed or

1 authorized by law to practice in this state, with experience
2 in evaluating persons suspected of having retardation or
3 autism, and a social service professional, with experience in
4 working with persons with retardation or autism ~~to evaluate~~
5 ~~the defendant.~~

6 1.(a) The psychologist shall evaluate whether the
7 defendant meets the definition of retardation or autism and,
8 if so, whether the defendant is incompetent to proceed due to
9 retardation or autism.

10 2.(b) The social service professional shall provide a
11 social and developmental history of the defendant.

12 ~~(5) All evaluations ordered by the court must be from~~
13 ~~qualified experts with experience in evaluating persons with~~
14 ~~retardation or autism.~~

15 (3)(6) The panel of experts may examine the defendant
16 in jail, in another appropriate local facility, in a facility
17 of the Department of Corrections, or on an outpatient basis.

18 (4)(7) Experts ~~Expert witnesses~~ appointed by the court
19 to evaluate the mental condition of a defendant in a criminal
20 case shall be allowed reasonable fees for services rendered as
21 evaluators and as witnesses, which shall be paid by the court.
22 State employees shall be paid expenses pursuant to s. 112.061.
23 The fees shall be taxed as costs in the case. In order for the
24 experts to be paid for the services rendered, the reports and
25 testimony must explicitly address each of the factors and
26 follow the procedures set out in this chapter and in the
27 Florida Rules of Criminal Procedure.

28 Section 18. Subsections (1) and (2) of section
29 916.3012, Florida Statutes, are amended to read:

30 916.3012 Mental competence to proceed.--
31

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

8 (2) ~~The Experts~~ in retardation or autism, appointed
9 pursuant to s. 916.301, shall first consider whether the
10 defendant meets the definition of retardation or autism and,
11 if so, consider the factors related to the issue of whether
12 the defendant meets the criteria for competence to proceed as
13 described in subsection(1); that is, whether the defendant has
14 ~~sufficient present ability to consult with counsel with a~~
15 ~~reasonable degree of rational understanding and whether the~~
16 ~~defendant has a rational, as well as factual, understanding of~~
17 ~~the pending proceedings.~~

18 Section 19. Section 916.302, Florida Statutes, is
19 amended to read:

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

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

28 (a) The defendant is retarded or autistic;

29 (b) There is a substantial likelihood that in the near
30 future the defendant will inflict serious bodily harm on
31

1 himself or herself or another person, as evidenced by recent
2 behavior causing, attempting, or threatening such harm;

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

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

12 (2) ADMISSION TO A FACILITY.--

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

27 (b) A defendant determined to be incompetent to
28 proceed due to retardation or autism may be ordered by a
29 circuit court into a forensic ~~secure~~ facility designated by
30 the agency department for retarded or autistic defendants.

31

1 (c) The ~~agency department~~ may transfer a defendant
2 from a designated forensic secure facility to another
3 designated forensic secure facility and must notify the court
4 of the transfer within 30 days after the transfer is
5 completed.

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

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

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

24 (b) Transfer from one civil or forensic facility ~~or~~
25 ~~program~~ to another civil or forensic facility ~~or program~~ may
26 occur when, in the department's and agency's judgment, it is
27 in the defendant's best treatment or training interests. The
28 department and agency shall submit an evaluation and
29 justification for the transfer to the court. The court may
30 consult with an outside expert if necessary. Transfer will
31 require an amended order from the committing court.

1 Section 20. Section 916.3025, Florida Statutes, is
2 amended to read:

3 916.3025 Jurisdiction of committing court.--

4 (1) The committing court shall retain jurisdiction in
5 the case of any defendant found to be incompetent to proceed
6 due to retardation or autism and ordered into a forensic
7 ~~secure~~ facility designated by the agency ~~department~~ for
8 retarded or autistic defendants. ~~A~~ ~~No~~ defendant may not be
9 released except by the order of the committing court. An
10 administrative hearing examiner does not have jurisdiction to
11 determine issues of continuing commitment or release of any
12 defendant involuntarily committed pursuant to this chapter.

13 (2) The committing court shall retain jurisdiction in
14 the case of any defendant placed on conditional release
15 pursuant to s. 916.304. ~~No~~ Such defendant may not be released
16 from the conditions of release except by order of the
17 committing court.

18 (3) The committing court shall consider a ~~the~~ petition
19 to involuntarily admit a defendant whose charges have been
20 dismissed to residential services provided by the agency
21 ~~department's developmental services program a person whose~~
22 ~~charges have been dismissed,~~ and, when applicable, to continue
23 secure placement of such person as provided in s. 916.303. The
24 committing court shall retain jurisdiction over such person so
25 long as he or she remains in secure placement or is on
26 conditional release as provided in s. 916.304. However, upon
27 request the court may transfer continuing jurisdiction to the
28 court in the circuit where the defendant resides. The
29 defendant may not be released from an order for secure
30 placement except by order of the court.

1 Section 21. Section 916.303, Florida Statutes, is
2 amended to read:

3 916.303 Determination of incompetency due to
4 retardation or autism; dismissal of charges.--

5 (1) Except for an inmate currently serving a prison
6 sentence, the charges against any defendant found to be
7 incompetent to proceed due to retardation or autism shall be
8 dismissed without prejudice to the state if the defendant
9 remains incompetent to proceed within a reasonable time after
10 such determination, not to exceed 2 years, unless the court in
11 its order specifies its reasons for believing that the
12 defendant will become competent to proceed within the
13 foreseeable future and specifies the time within which the
14 defendant is expected to become competent to proceed. The
15 charges may be refiled by the state if ~~against the defendant~~
16 ~~are dismissed without prejudice to the state to refile the~~
17 ~~charges should~~ the defendant is ~~be~~ declared competent to
18 proceed in the future.

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

29 (3)~~(b)~~ If the defendant is considered to need
30 involuntary residential services for reasons described in
31 subsection (2) ~~under s. 393.11~~ and, further, there is a

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

29 Section 22. Section 916.304, Florida Statutes, is
30 amended to read:

31 916.304 Conditional release.--

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

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

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

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

29 (2) Upon the filing of an affidavit or statement under
30 oath by any person that the defendant has failed to comply
31 with the conditions of release, that the defendant's condition

1 | has deteriorated, or that the release conditions should be
2 | modified, the court shall hold a hearing within 7 days after
3 | receipt of the affidavit or statement under oath. With notice
4 | to the court, the agency may detain a defendant in a forensic
5 | facility until the hearing occurs. After the hearing, the
6 | court may modify the release conditions. The court may also
7 | order that the defendant be placed into more appropriate
8 | programs for further training or may order the defendant to be
9 | committed ~~returned to a forensic facility involuntary~~
10 | ~~residential services of the department~~ if it is found, after
11 | the appointment and report of experts, that the defendant
12 | meets the criteria for placement in a forensic facility
13 | ~~involuntary residential services.~~

14 | (3) If at any time it is determined after a hearing
15 | that the defendant conditionally released under subsection (1)
16 | no longer requires court-supervised followup care, the court
17 | shall terminate its jurisdiction in the cause and discharge
18 | the defendant.

19 | Section 23. Subsection (1) of section 921.137, Florida
20 | Statutes, is amended to read:

21 | 921.137 Imposition of the death sentence upon a
22 | mentally retarded defendant prohibited.--

23 | (1) As used in this section, the term "mental
24 | retardation" means significantly subaverage general
25 | intellectual functioning existing concurrently with deficits
26 | in adaptive behavior and manifested during the period from
27 | conception to age 18. The term "significantly subaverage
28 | general intellectual functioning," for the purpose of this
29 | section, means performance that is two or more standard
30 | deviations from the mean score on a standardized intelligence
31 | test specified in the rules of the Agency for Persons with

1 ~~Disabilities Department of Children and Family Services~~. The
2 term "adaptive behavior," for the purpose of this definition,
3 means the effectiveness or degree with which an individual
4 meets the standards of personal independence and social
5 responsibility expected of his or her age, cultural group, and
6 community. The Agency for Persons with Disabilities ~~Department~~
7 ~~of Children and Family Services~~ shall adopt rules to specify
8 the standardized intelligence tests as provided in this
9 subsection.

10 Section 24. Paragraphs (d), (e), (g), and (h) of
11 subsection (1), subsections (2), (3), and (4), paragraph (b)
12 of subsection (5), and paragraph (a) of subsection (6) of
13 section 985.223, Florida Statutes, are amended to read:

14 985.223 Incompetency in juvenile delinquency cases.--

15 (1) If, at any time prior to or during a delinquency
16 case, the court has reason to believe that the child named in
17 the petition may be incompetent to proceed with the hearing,
18 the court on its own motion may, or on the motion of the
19 child's attorney or state attorney must, stay all proceedings
20 and order an evaluation of the child's mental condition.

21 (d) For incompetency evaluations related to mental
22 illness, the Department of Children and Family Services shall
23 maintain and annually provide the courts with a list of
24 available mental health professionals who have completed a
25 training program approved by the Department of Children and
26 Family Services to perform the evaluations.

27 (e) For incompetency evaluations related to mental
28 retardation or autism, the court shall order the Agency for
29 Persons with Disabilities ~~Developmental Disabilities Program~~
30 ~~Office within the Department of Children and Family Services~~
31 to examine the child to determine if the child meets the

1 definition of "retardation" or "autism" in s. 393.063 and, if
2 so, whether the child is competent to proceed with delinquency
3 proceedings.

4 (g) Immediately upon the filing of the court order
5 finding a child incompetent to proceed, the clerk of the court
6 shall notify the Department of Children and Family Services
7 and the Agency for Persons with Disabilities and fax or hand
8 deliver to the department and to the agency ~~of Children and~~
9 ~~Family Services~~ a referral packet that ~~which~~ includes, at a
10 minimum, the court order, the charging documents, the
11 petition, and the court-appointed evaluator's reports.

12 (h) After placement of the child in the appropriate
13 setting, the Department of Children and Family Services in
14 consultation with the Agency for Persons with Disabilities, as
15 appropriate, must, within 30 days after placement of the
16 ~~Department of Children and Family Services places~~ the child,
17 prepare and submit to the court a treatment or training plan
18 for the child's restoration of competency. A copy of the
19 ~~treatment~~ plan must be served upon the child's attorney, the
20 state attorney, and the attorneys representing the Department
21 of Juvenile Justice.

22 (2) A child ~~who is mentally ill or retarded,~~ who is
23 adjudicated incompetent to proceed, and who has committed a
24 delinquent act or violation of law, either of which would be a
25 felony if committed by an adult, must be committed to the
26 Department of Children and Family Services for treatment or
27 training. A child who has been adjudicated incompetent to
28 proceed because of age or immaturity, or for any reason other
29 than for mental illness or retardation or autism, must not be
30 committed to the department or to the Department of Children
31 and Family Services for restoration-of-competency treatment or

1 training services. For purposes of this section, a child who
2 has committed a delinquent act or violation of law, either of
3 which would be a misdemeanor if committed by an adult, may not
4 be committed to the department or to the Department of
5 Children and Family Services for restoration-of-competency
6 treatment or training services.

7 (3) If the court finds that a child is mentally ill or
8 retarded or autistic and adjudicates the child incompetent to
9 proceed, the court must also determine whether the child meets
10 the criteria for secure placement. A child may be placed in a
11 secure facility or program if the court makes a finding by
12 clear and convincing evidence that:

13 (a) The child is mentally ill and because of the
14 mental illness; or the child is mentally retarded or autistic
15 and because of the mental retardation or autism:

16 1. The child is manifestly incapable of surviving with
17 the help of willing and responsible family or friends,
18 including available alternative services, and without
19 treatment or training the child is likely to either suffer
20 from neglect or refuse to care for self, and such neglect or
21 refusal poses a real and present threat of substantial harm to
22 the child's well-being; or

23 2. There is a substantial likelihood that in the near
24 future the child will inflict serious bodily harm on self or
25 others, as evidenced by recent behavior causing, attempting,
26 or threatening such harm; and

27 (b) All available less restrictive alternatives,
28 including treatment or training in community residential
29 facilities or community settings which would offer an
30 opportunity for improvement of the child's condition, are
31 inappropriate.

1 (4) A child who is determined to be mentally ill, ~~or~~
2 retarded, or autistic, who has been adjudicated incompetent to
3 proceed, and who meets the criteria set forth in subsection
4 (3), must be committed to the Department of Children and
5 Family Services, and receive treatment or training ~~the~~
6 ~~Department of Children and Family Services must treat or train~~
7 ~~the child~~ in a secure facility or program that ~~which~~ is the
8 least restrictive alternative consistent with public safety.
9 Any placement of a child to a secure residential program must
10 be separate from adult forensic programs. If the child
11 attains competency, then custody, case management, and
12 supervision of the child will be transferred to the department
13 in order to continue delinquency proceedings; however, the
14 court retains authority to order the Department of Children
15 and Family Services to provide continued treatment or training
16 to maintain competency.

17 (a) A child adjudicated incompetent due to mental
18 retardation or autism may be ordered into a secure program or
19 facility designated by the Department of Children and Family
20 Services for retarded or autistic children.

21 (b) A child adjudicated incompetent due to mental
22 illness may be ordered into a secure program or facility
23 designated by the Department of Children and Family Services
24 for mentally ill children.

25 (c) Whenever a child is placed in a secure residential
26 facility, the department will provide transportation to the
27 secure residential facility for admission and from the secure
28 residential facility upon discharge.

29 (d) The purpose of the treatment or training is the
30 restoration of the child's competency to proceed.

31

1 (e) The service provider must file a written report
2 with the court pursuant to the applicable Florida Rules of
3 Juvenile Procedure not later than 6 months after the date of
4 commitment, or at the end of any period of extended treatment
5 or training, and at any time the Department of Children and
6 Family Services, through its service provider determines the
7 child has attained competency or no longer meets the criteria
8 for secure placement, or at such shorter intervals as ordered
9 by the court. A copy of a written report evaluating the
10 child's competency must be filed by the provider with the
11 court and with the state attorney, the child's attorney, the
12 department, and the Department of Children and Family
13 Services.

14 (5)

15 (b) Whenever the provider files a report with the
16 court informing the court that the child will never become
17 competent to proceed, the Department of Children and Family
18 Services will develop a discharge plan for the child prior to
19 any hearing determining whether the child will ever become
20 competent to proceed and send the. ~~The Department of Children~~
21 ~~and Family Services must send the proposed discharge~~ plan to
22 the court, the state attorney, the child's attorney, and the
23 attorneys representing the Department of Juvenile Justice. The
24 provider will continue to provide services to the child until
25 the court issues the order finding the child will never become
26 competent to proceed.

27 (6)(a) If a child is determined to be mentally ill or
28 retarded or autistic and is found to be incompetent to proceed
29 but does not meet the criteria set forth in subsection (3),
30 the court shall commit the child to the Department of Children
31 and Family Services and shall order the Department of Children

1 and Family Services to provide appropriate treatment and
2 training in the community. The purpose of the treatment or
3 training is the restoration of the child's competency to
4 proceed.

5 Section 25. Paragraph (b) of subsection (14) of
6 section 287.057, Florida Statutes, is amended to read:

7 287.057 Procurement of commodities or contractual
8 services.--

9 (14)

10 (b) Notwithstanding paragraph (a), the Department of
11 Children and Family Services may enter into agreements, not to
12 exceed 20 years, with a private provider to finance, design,
13 and construct a forensic treatment facility, as defined in s.
14 916.106(10) ~~s. 916.106(8)~~, of at least 200 beds and to operate
15 all aspects of daily operations within the forensic treatment
16 facility. The selected contractor is authorized to sponsor the
17 issuance of tax-exempt certificates of participation or other
18 securities to finance the project, and the state is authorized
19 to enter into a lease-purchase agreement for the forensic
20 treatment facility. This paragraph expires July 1, 2006.

21 Section 26. Paragraph (r) of subsection (3) of section
22 408.036, Florida Statutes, is amended to read:

23 408.036 Projects subject to review; exemptions.--

24 (3) EXEMPTIONS.--Upon request, the following projects
25 are subject to exemption from the provisions of subsection
26 (1):

27 (r) For beds in state mental health treatment
28 facilities operated under s. 394.455(30) and state mental
29 health forensic facilities operated under chapter 916 ~~s.~~
30 ~~916.106(8)~~.

31

1 Section 27. Paragraph (a) of subsection (4) of section
2 943.0585, Florida Statutes, is amended to read:

3 943.0585 Court-ordered expunction of criminal history
4 records.--The courts of this state have jurisdiction over
5 their own procedures, including the maintenance, expunction,
6 and correction of judicial records containing criminal history
7 information to the extent such procedures are not inconsistent
8 with the conditions, responsibilities, and duties established
9 by this section. Any court of competent jurisdiction may order
10 a criminal justice agency to expunge the criminal history
11 record of a minor or an adult who complies with the
12 requirements of this section. The court shall not order a
13 criminal justice agency to expunge a criminal history record
14 until the person seeking to expunge a criminal history record
15 has applied for and received a certificate of eligibility for
16 expunction pursuant to subsection (2). A criminal history
17 record that relates to a violation of s. 393.135, s. 394.4593,
18 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
19 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
20 s. 847.0145, s. 893.135, s. 916.1075, or a violation
21 enumerated in s. 907.041 may not be expunged, without regard
22 to whether adjudication was withheld, if the defendant was
23 found guilty of or pled guilty or nolo contendere to the
24 offense, or if the defendant, as a minor, was found to have
25 committed, or pled guilty or nolo contendere to committing,
26 the offense as a delinquent act. The court may only order
27 expunction of a criminal history record pertaining to one
28 arrest or one incident of alleged criminal activity, except as
29 provided in this section. The court may, at its sole
30 discretion, order the expunction of a criminal history record
31 pertaining to more than one arrest if the additional arrests

1 directly relate to the original arrest. If the court intends
2 to order the expunction of records pertaining to such
3 additional arrests, such intent must be specified in the
4 order. A criminal justice agency may not expunge any record
5 pertaining to such additional arrests if the order to expunge
6 does not articulate the intention of the court to expunge a
7 record pertaining to more than one arrest. This section does
8 not prevent the court from ordering the expunction of only a
9 portion of a criminal history record pertaining to one arrest
10 or one incident of alleged criminal activity. Notwithstanding
11 any law to the contrary, a criminal justice agency may comply
12 with laws, court orders, and official requests of other
13 jurisdictions relating to expunction, correction, or
14 confidential handling of criminal history records or
15 information derived therefrom. This section does not confer
16 any right to the expunction of any criminal history record,
17 and any request for expunction of a criminal history record
18 may be denied at the sole discretion of the court.

19 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
20 criminal history record of a minor or an adult which is
21 ordered expunged by a court of competent jurisdiction pursuant
22 to this section must be physically destroyed or obliterated by
23 any criminal justice agency having custody of such record;
24 except that any criminal history record in the custody of the
25 department must be retained in all cases. A criminal history
26 record ordered expunged that is retained by the department is
27 confidential and exempt from the provisions of s. 119.07(1)
28 and s. 24(a), Art. I of the State Constitution and not
29 available to any person or entity except upon order of a court
30 of competent jurisdiction. A criminal justice agency may
31

1 retain a notation indicating compliance with an order to
2 expunge.

3 (a) The person who is the subject of a criminal
4 history record that is expunged under this section or under
5 other provisions of law, including former s. 893.14, former s.
6 901.33, and former s. 943.058, may lawfully deny or fail to
7 acknowledge the arrests covered by the expunged record, except
8 when the subject of the record:

9 1. Is a candidate for employment with a criminal
10 justice agency;

11 2. Is a defendant in a criminal prosecution;

12 3. Concurrently or subsequently petitions for relief
13 under this section or s. 943.059;

14 4. Is a candidate for admission to The Florida Bar;

15 5. Is seeking to be employed or licensed by or to
16 contract with the Department of Children and Family Services
17 or the Department of Juvenile Justice or to be employed or
18 used by such contractor or licensee in a sensitive position
19 having direct contact with children, the developmentally
20 disabled, the aged, or the elderly as provided in s.

21 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.

22 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),

23 chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter
24 400; or

25 6. Is seeking to be employed or licensed by the
26 Department of Education, any district school board, any
27 university laboratory school, any charter school, any private
28 or parochial school, or any local governmental entity that
29 licenses child care facilities.

30 Section 28. Paragraph (a) of subsection (4) of section
31 943.059, Florida Statutes, is amended to read:

1 943.059 Court-ordered sealing of criminal history
2 records.--The courts of this state shall continue to have
3 jurisdiction over their own procedures, including the
4 maintenance, sealing, and correction of judicial records
5 containing criminal history information to the extent such
6 procedures are not inconsistent with the conditions,
7 responsibilities, and duties established by this section. Any
8 court of competent jurisdiction may order a criminal justice
9 agency to seal the criminal history record of a minor or an
10 adult who complies with the requirements of this section. The
11 court shall not order a criminal justice agency to seal a
12 criminal history record until the person seeking to seal a
13 criminal history record has applied for and received a
14 certificate of eligibility for sealing pursuant to subsection
15 (2). A criminal history record that relates to a violation of
16 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,
17 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,
18 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
19 916.1075, or a violation enumerated in s. 907.041 may not be
20 sealed, without regard to whether adjudication was withheld,
21 if the defendant was found guilty of or pled guilty or nolo
22 contendere to the offense, or if the defendant, as a minor,
23 was found to have committed or pled guilty or nolo contendere
24 to committing the offense as a delinquent act. The court may
25 only order sealing of a criminal history record pertaining to
26 one arrest or one incident of alleged criminal activity,
27 except as provided in this section. The court may, at its sole
28 discretion, order the sealing of a criminal history record
29 pertaining to more than one arrest if the additional arrests
30 directly relate to the original arrest. If the court intends
31 to order the sealing of records pertaining to such additional

1 | arrests, such intent must be specified in the order. A
2 | criminal justice agency may not seal any record pertaining to
3 | such additional arrests if the order to seal does not
4 | articulate the intention of the court to seal records
5 | pertaining to more than one arrest. This section does not
6 | prevent the court from ordering the sealing of only a portion
7 | of a criminal history record pertaining to one arrest or one
8 | incident of alleged criminal activity. Notwithstanding any law
9 | to the contrary, a criminal justice agency may comply with
10 | laws, court orders, and official requests of other
11 | jurisdictions relating to sealing, correction, or confidential
12 | handling of criminal history records or information derived
13 | therefrom. This section does not confer any right to the
14 | sealing of any criminal history record, and any request for
15 | sealing a criminal history record may be denied at the sole
16 | discretion of the court.

17 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
18 | criminal history record of a minor or an adult which is
19 | ordered sealed by a court of competent jurisdiction pursuant
20 | to this section is confidential and exempt from the provisions
21 | of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
22 | and is available only to the person who is the subject of the
23 | record, to the subject's attorney, to criminal justice
24 | agencies for their respective criminal justice purposes, or to
25 | those entities set forth in subparagraphs (a)1., 4., 5., and
26 | 6. for their respective licensing and employment purposes.

27 | (a) The subject of a criminal history record sealed
28 | under this section or under other provisions of law, including
29 | former s. 893.14, former s. 901.33, and former s. 943.058, may
30 | lawfully deny or fail to acknowledge the arrests covered by
31 | the sealed record, except when the subject of the record:

- 1 1. Is a candidate for employment with a criminal
2 justice agency;
- 3 2. Is a defendant in a criminal prosecution;
- 4 3. Concurrently or subsequently petitions for relief
5 under this section or s. 943.0585;
- 6 4. Is a candidate for admission to The Florida Bar;
- 7 5. Is seeking to be employed or licensed by or to
8 contract with the Department of Children and Family Services
9 or the Department of Juvenile Justice or to be employed or
10 used by such contractor or licensee in a sensitive position
11 having direct contact with children, the developmentally
12 disabled, the aged, or the elderly as provided in s.
13 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
14 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
15 415.103, chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or
16 chapter 400; or
- 17 6. Is seeking to be employed or licensed by the
18 Department of Education, any district school board, any
19 university laboratory school, any charter school, any private
20 or parochial school, or any local governmental entity that
21 licenses child care facilities.

22 Section 29. This act shall take effect upon becoming a
23 law.

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SENATE SUMMARY

1
2
3 Revises various provisions of ch. 916, F.S., relating to
4 the treatment and training of defendants who are mentally
5 ill, retarded, or autistic. Conforms provisions of law to
6 the transfer of duties from the Developmental
7 Disabilities Program Office within the Department of
8 Children and Family Services to the Agency for Persons
9 with Disabilities. Requires that the department, the
10 agency, and the Department of Corrections coordinate
11 services. Provides duties of the agency's inspector
12 general. Authorizes the use of chemical weapons by agency
13 personnel. Authorizes the agency to enter into contracts
14 and adopt rules. Requires that the agency provide the
15 court with a list of retardation and autism
16 professionals. Requires that the agency submit
17 evaluations to the court before a defendant is
18 transferred from one civil or forensic facility to
19 another. Revises procedures for the conditional release
20 of a defendant to a civil facility. (See bill for
21 details.)
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