

By the Committee on Children and Families; and Senator Baker

586-2032-06

1                                   A bill to be entitled  
2           An act relating to forensic treatment and  
3           training; amending s. 916.105, F.S.; revising  
4           legislative intent with respect to the  
5           treatment or training of defendants who are  
6           mentally ill, retarded, or autistic and are  
7           committed to the Agency for Persons with  
8           Disabilities; providing that it is the policy  
9           of the state to use restraint and seclusion  
10          only as an emergency safety measure in response  
11          to imminent danger; amending s. 916.106, F.S.;  
12          providing and revising definitions; amending s.  
13          916.107, F.S., relating to the rights of  
14          forensic clients; conforming provisions to the  
15          transfer of duties from the Developmental  
16          Disabilities Program Office within the  
17          Department of Children and Family Services to  
18          the Agency for Persons with Disabilities;  
19          revising provisions governing the involuntary  
20          treatment of clients; requiring the  
21          coordination of services between the  
22          department, the agency, and the Department of  
23          Corrections; amending s. 916.1075, F.S.;  
24          revising definitions; revising certain  
25          prohibitions on sexual misconduct involving  
26          employees, volunteers, or interns of the  
27          Department of Children and Family Services or  
28          the Agency for Persons with Disabilities;  
29          deleting an exemption; requiring that notice of  
30          sexual misconduct be provided to the inspector  
31          general of the agency or department; amending

1 s. 916.1081, F.S.; providing that an escape or  
2 an attempt to escape from a civil or forensic  
3 facility constitutes a second-degree felony;  
4 amending s. 916.1085, F.S.; providing for  
5 certain prohibitions concerning contraband  
6 articles to apply to facilities under the  
7 supervision or control of the Agency for  
8 Persons with Disabilities; conforming a  
9 cross-reference; amending s. 916.1091, F.S.;  
10 authorizing the use of chemical weapons by  
11 agency personnel; amending s. 916.1093, F.S.;  
12 authorizing the agency to enter into contracts  
13 and adopt rules; requiring that the department  
14 and agency adopt rules pertaining to the use of  
15 restraint and seclusion; amending s. 916.111,  
16 F.S.; revising provisions governing the  
17 training of mental health experts; amending s.  
18 916.115, F.S.; requiring that the court appoint  
19 experts to determine the mental condition of a  
20 criminal defendant; requiring that the  
21 Department of Children and Family Services  
22 annually provide the courts with a list of  
23 mental health professionals; amending s.  
24 916.12, F.S.; revising provisions governing the  
25 evaluation of a defendant's competence to  
26 proceed; amending s. 916.13, F.S.; revising  
27 conditions under which a defendant may be  
28 involuntarily committed for treatment; amending  
29 s. 916.145, F.S., relating to charges against a  
30 defendant adjudicated incompetent; conforming  
31 provisions to changes made by the act; amending

1 s. 916.15, F.S.; clarifying that the  
2 determination of not guilty by reason of  
3 insanity is made under the Florida Rules of  
4 Criminal Procedure; amending s. 916.16, F.S.;  
5 providing for the continuing jurisdiction of  
6 the court over a defendant involuntarily  
7 committed due to mental illness; amending s.  
8 916.17, F.S.; clarifying circumstances under  
9 which the court may order the conditional  
10 release of a defendant; amending s. 916.301,  
11 F.S.; requiring that certain evaluations be  
12 conducted by qualified experts; requiring that  
13 the Agency for Persons with Disabilities  
14 provide the court with a list of available  
15 retardation and autism professionals;  
16 conforming provisions to the transfer of duties  
17 from the Developmental Disabilities Program  
18 Office within the Department of Children and  
19 Family Services to the agency; amending s.  
20 916.3012, F.S.; clarifying provisions governing  
21 the determination of a defendant's mental  
22 competence to proceed; amending s. 916.302,  
23 F.S., relating to the involuntary commitment of  
24 a defendant; conforming provisions to the  
25 transfer of duties from the Developmental  
26 Disabilities Program Office within the  
27 Department of Children and Family Services to  
28 the agency; requiring that the department and  
29 agency submit an evaluation to the court before  
30 the transfer of a defendant from one civil or  
31 forensic facility to another; amending s.

1           916.3025, F.S.; clarifying that the committing  
2           court retains jurisdiction over a defendant  
3           placed on conditional release; providing for  
4           the transfer of continuing jurisdiction to  
5           another court where the defendant resides;  
6           amending s. 916.303, F.S.; clarifying  
7           provisions governing the dismissal of charges  
8           against a defendant found to be incompetent to  
9           proceed due to retardation or autism; amending  
10          s. 916.304, F.S.; providing for the conditional  
11          release of a defendant to a civil facility;  
12          amending ss. 921.137 and 985.223, F.S.,  
13          relating to provisions governing the imposition  
14          of the death sentence upon a mentally retarded  
15          defendant and the determination of incompetency  
16          in cases involving juvenile delinquency;  
17          conforming provisions to the transfer of duties  
18          from the Developmental Disabilities Program  
19          Office within the Department of Children and  
20          Family Services to the Agency for Persons with  
21          Disabilities; amending ss. 287.057, 408.036,  
22          943.0585, and 943.059, F.S.; conforming  
23          cross-references; providing an effective date.  
24

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

26  
27           Section 1. Section 916.105, Florida Statutes, is  
28 amended to read:

29           916.105 Legislative intent.--

30           (1) It is the intent of the Legislature that the  
31 Department of Children and Family Services and the Agency for

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

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

29 (3) It is also the intent of the Legislature that  
30 evaluation and services to defendants who are mentally ill,  
31 retarded, or autistic be provided in community settings, in

1 community residential facilities, or in civil, ~~nonforensic~~  
2 facilities, whenever this is a feasible alternative to  
3 treatment or training in a state forensic facility.

4 (4) It is the policy of this state that the use of  
5 restraint and seclusion on clients is justified only as an  
6 emergency safety measure to be used in response to imminent  
7 danger to the client or others. It is, therefore, the intent  
8 of the Legislature to achieve an ongoing reduction in the use  
9 of restraint and seclusion on persons who are committed to a  
10 civil or forensic facility under this chapter.

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

13 916.106 Definitions.--For the purposes of this  
14 chapter:

15 (1) "Agency" means the Agency for Persons with  
16 Disabilities. The agency is responsible for training forensic  
17 clients who are developmentally disabled due to mental  
18 retardation or autism and have been determined incompetent to  
19 proceed.

20 ~~(2)(1) "Autism" has the same meaning as in s. 393.063.~~  
21 ~~means a pervasive, neurologically based developmental~~  
22 ~~disability of extended duration which causes severe learning,~~  
23 ~~communication, and behavior disorders, with the age of onset~~  
24 ~~of autism occurring during infancy or childhood. Individuals~~  
25 ~~with autism exhibit impairment in reciprocal social~~  
26 ~~interaction, impairment in verbal and nonverbal communication~~  
27 ~~and imaginative ability, and a markedly restricted repertoire~~  
28 ~~of activities and interests.~~

29 ~~(3)(2) "Chemical weapon" means any shell, cartridge,~~  
30 ~~bomb, gun, or other device capable of emitting~~  
31 ~~chloroacetophenone (CN), chlorobenzalmalonitrile (CS) or any~~

1 derivatives thereof in any form, or any other agent with  
2 lacrimatory properties, and shall include products such as  
3 that commonly known as "mace."

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

5 (a) A mental health facility established within the  
6 department or by contract with the department to serve  
7 individuals committed pursuant to chapter 394 and those  
8 defendants committed pursuant to this chapter who do not  
9 require the security provided in a forensic facility; ~~or-~~

10 (b) An intermediate care facility for the  
11 developmentally disabled, a foster care facility, a group home  
12 facility, or a supported living setting, as defined in s.  
13 393.063, designated by the agency to serve those defendants  
14 who do not require the security provided in a forensic  
15 facility.

16 ~~(5)(4)~~ "Court" means the circuit court.

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

20 ~~(7)(5)~~ "Department" means the Department of Children  
21 and Family Services. The department is responsible for the  
22 treatment of forensic clients who have been determined  
23 incompetent to proceed due to mental illness or who have been  
24 acquitted of a felony by reason of insanity.

25 ~~(8)(6)~~ "Express and informed consent" or "consent"  
26 means consent given voluntarily in writing after a  
27 conscientious and sufficient explanation and disclosure of the  
28 purpose of the proposed treatment, the common side effects of  
29 the treatment, if any, the expected duration of the treatment,  
30 and any alternative treatment available.

31

1           ~~(9)(7)~~ "Forensic client" or "client" means any  
2 defendant who has been ~~is mentally ill, retarded, or autistic~~  
3 ~~and who is~~ committed to the department or agency pursuant to  
4 s. 916.13, s. 916.15, or s. 916.302. ~~this chapter and:~~

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

7           ~~(b) Who has been found incompetent to proceed on a~~  
8 ~~felony offense or has been acquitted of a felony offense by~~  
9 ~~reason of insanity;~~

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

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

13 ~~and~~

14           ~~(d) Who is an adult or a juvenile prosecuted as an~~  
15 ~~adult.~~

16           ~~(10)(8)~~ "Forensic facility" means a separate and  
17 secure facility established within the department or agency to  
18 serve forensic clients. A Such separate and secure facility  
19 means a facilities shall be security-grade building for the  
20 purpose of separately housing persons with mental illness from  
21 persons with retardation or autism and separately housing  
22 persons who have been involuntarily committed pursuant to this  
23 chapter from nonforensic residents buildings located on  
24 grounds distinct in location from other facilities for persons  
25 who are mentally ill. The Florida State Hospital shall not be  
26 required to maintain separate facilities for mentally ill,  
27 retarded, or autistic defendants who are found incompetent to  
28 proceed or who are acquitted of a criminal offense by reason  
29 of insanity.

30           ~~(11)(9)~~ "Incompetent to proceed" means unable to  
31 proceed at any material stage of a criminal proceeding, which



1 shall include trial of the case, pretrial hearings involving  
2 questions of fact on which the defendant might be expected to  
3 testify, entry of a plea, proceedings for violation of  
4 probation or violation of community control, sentencing, and  
5 hearings on issues regarding a defendant's failure to comply  
6 with court orders or conditions or other matters in which the  
7 mental competence of the defendant is necessary for a just  
8 resolution of the issues being considered.

9       ~~(12)~~~~(10)~~ "Institutional security personnel" means the  
10 staff of forensic facilities ~~staff members~~ who meet or exceed  
11 the requirements of s. 943.13 and who are responsible for  
12 providing security, protecting ~~for protection of~~ clients and  
13 personnel, enforcing ~~for the enforcement of~~ rules, preventing  
14 and investigating ~~for prevention and investigation of~~  
15 unauthorized activities, and ~~for~~ safeguarding the interests of  
16 citizens in the surrounding communities.

17       ~~(13)~~~~(11)~~ "Mental illness" means an impairment of the  
18 emotional processes that exercise conscious control of one's  
19 actions, or of the ability to perceive or understand reality,  
20 which impairment substantially interferes with a defendant's  
21 ability to meet the ordinary demands of living. For the  
22 purposes of this chapter, the term does not apply to  
23 defendants with mental retardation or autism ~~who are solely~~  
24 ~~retarded or autistic~~, and does not include intoxication or  
25 conditions manifested only by antisocial behavior or substance  
26 abuse impairment.

27       ~~(14)~~(a) "Restraint" means a physical device, method,  
28 or drug used to control behavior. A physical restraint is any  
29 manual method or physical or mechanical device, material, or  
30 equipment attached or adjacent to the individual's body so  
31

1 that he or she cannot easily remove the restraint and which  
2 restricts freedom of movement or normal access to one's body.

3 (b) A drug used as a restraint is a medication used to  
4 control the person's behavior or to restrict his or her  
5 freedom of movement. Physically holding a person during a  
6 procedure to forcibly administer such medication is a physical  
7 restraint.

8 (c) Restraint does not include physical devices, such  
9 as orthopedically prescribed appliances, surgical dressings  
10 and bandages, supportive body bands, or other physical holding  
11 when necessary for routine physical examinations and tests;  
12 for purposes of orthopedic, surgical, or other similar medical  
13 treatment; when used to provide support for the achievement of  
14 functional body position or proper balance; or when used to  
15 protect a person from falling out of bed.

16 (15)(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 (16) "Seclusion" means the physical segregation of a  
30 person in any fashion or the involuntary isolation of a person  
31 in a room or area from which the person is prevented from

1 leaving. The prevention may be by physical barrier or by a  
2 staff member who is acting in a manner, or who is physically  
3 situated, so as to prevent the person from leaving the room or  
4 area. For purposes of this chapter, the term does not mean  
5 isolation due to a person's medical condition or symptoms, the  
6 confinement in state mental health treatment facilities to a  
7 bedroom or area during normal hours of sleep when there is not  
8 an active order for seclusion, or confinement during an  
9 emergency such as a riot or hostage situation when clients may  
10 be temporarily placed in their rooms for their own safety.

11 ~~(17)(13)~~ "Social service professional," ~~for the~~  
12 ~~purposes of part III,~~ means a person whose minimum  
13 qualifications include a bachelor's degree and at least 2  
14 years of social work, clinical practice, special education,  
15 habilitation, or equivalent experience working directly with  
16 persons with retardation, autism, or other developmental  
17 disabilities.

18 Section 3. Section 916.107, Florida Statutes, is  
19 amended to read:

20 916.107 Rights of forensic clients.--

21 (1) RIGHT TO INDIVIDUAL DIGNITY.--

22 (a) The policy of the state is that the individual  
23 dignity of the client shall be respected at all times and upon  
24 all occasions, including any occasion when the forensic client  
25 is detained, transported, or treated. Clients with mental  
26 illness, retardation, or autism ~~Defendants who are mentally~~  
27 ~~ill, retarded, or autistic and~~ who are charged with committing  
28 felonies shall receive appropriate treatment or training. In  
29 a criminal case involving a client ~~defendant~~ who has been  
30 adjudicated incompetent to proceed or not guilty by reason of  
31 insanity, a jail may be used as an emergency facility for up

1 to 15 days following ~~from~~ the date the department or agency  
2 receives a completed copy of the court commitment order  
3 containing all ~~the~~ documentation required by Rules 3.212 and  
4 3.217, Florida Rules of Criminal Procedure. For a forensic  
5 client ~~defendant who is mentally ill, retarded, or autistic,~~  
6 who is held in a jail awaiting admission to a facility of the  
7 department or agency, ~~and who has been adjudicated incompetent~~  
8 ~~to proceed or not guilty by reason of insanity,~~ evaluation and  
9 treatment or training may ~~shall~~ be provided in the jail by the  
10 local community mental health provider ~~public receiving~~  
11 ~~facility~~ for mental health services, ~~or~~ by the developmental  
12 disabilities ~~services~~ program for persons with retardation or  
13 autism, the client's physician or psychologist, or any other  
14 appropriate program until the client is transferred to a civil  
15 or forensic facility ~~the custody of the department.~~

16 (b) Forensic clients ~~Mentally ill, retarded, or~~  
17 ~~autistic defendants who are committed to the department~~  
18 ~~pursuant to this chapter and~~ who are initially placed in, or  
19 subsequently transferred to, a civil facility as described in  
20 part I of chapter 394 or to a residential facility as  
21 described in chapter 393 shall have the same rights as other  
22 persons committed to these facilities for as long as they  
23 remain there.

24 (2) RIGHT TO TREATMENT.--

25 (a) The policy of the state is that neither the  
26 department nor the agency shall ~~not~~ deny treatment or training  
27 to any client and that no services shall be delayed ~~at a~~  
28 ~~facility~~ because the forensic client is indigent pursuant to  
29 s. 27.52 and presently unable to pay. However, every  
30 reasonable effort to collect appropriate reimbursement for the  
31 cost of providing services to clients able to pay for the

1 services, including reimbursement from insurance or other  
2 third-party payments, shall be made by facilities providing  
3 services pursuant to this chapter and in accordance with the  
4 provisions of s. 402.33.

5 (b) Each forensic client shall be given, at the time  
6 of admission and at regular intervals thereafter, a physical  
7 examination, which shall include screening for communicable  
8 disease by a health practitioner authorized by law to give  
9 such screenings and examinations.

10 (c) Every forensic client ~~committed pursuant to this~~  
11 ~~act~~ shall be afforded the opportunity to participate in  
12 activities designed to enhance self-image and the beneficial  
13 effects of other treatments or training, as determined by the  
14 facility.

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

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

20 (a) A forensic client ~~committed to the department~~  
21 ~~pursuant to this act~~ shall be asked to give express and  
22 informed written consent for treatment. If a client ~~in a~~  
23 ~~forensic facility~~ refuses such treatment as is deemed  
24 necessary and essential by the client's multidisciplinary  
25 treatment team ~~at the forensic facility~~ for the appropriate  
26 care of the client ~~and the safety of the client or others,~~  
27 such treatment may be provided under the following  
28 circumstances:

29 1. In an emergency situation in which there is  
30 immediate danger to the safety of the client or others, such  
31 treatment may be provided upon the written order of a

1 physician for a period not to exceed 48 hours, excluding  
2 weekends and legal holidays. If, after the 48-hour period,  
3 the client has not given express and informed consent to the  
4 treatment initially refused, the administrator or designee of  
5 the civil or forensic facility shall, within 48 hours,  
6 excluding weekends and legal holidays, petition the committing  
7 court or the circuit court serving the county in which the  
8 facility is located, at the option of the facility  
9 administrator or designee, for an order authorizing the  
10 continued treatment of the client. In the interim, the need  
11 for treatment shall be reviewed every 48 hours and may be  
12 continued without the consent of the client upon the continued  
13 written order of a physician who has determined that the  
14 emergency situation continues to present a danger to the  
15 safety of the client or others.

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

30 3. At the hearing on the issue of whether the court  
31 should enter an order authorizing treatment for which a client

1 was unable or ~~has~~ refused to give express and informed  
2 consent, the court shall determine by clear and convincing  
3 evidence that the client has mental illness, retardation, or  
4 autism ~~is mentally ill, retarded, or autistic as defined in~~  
5 ~~this chapter~~, that the treatment not consented to is essential  
6 to the care of the client, and that the treatment not  
7 consented to is not experimental and does not present an  
8 unreasonable risk of serious, hazardous, or irreversible side  
9 effects. In arriving at the substitute judgment decision, the  
10 court must consider at least the following factors:  
11       a. The client's expressed preference regarding  
12 treatment;  
13       b. The probability of adverse side effects;  
14       c. The prognosis without treatment; and  
15       d. The prognosis with treatment.

16  
17 The hearing shall be as convenient to the client as may be  
18 consistent with orderly procedure and shall be conducted in  
19 physical settings not likely to be injurious to the client's  
20 condition. The court may appoint a general or special  
21 magistrate to preside at the hearing. The client or the  
22 client's guardian, and the representative, shall be provided  
23 with a copy of the petition and the date, time, and location  
24 of the hearing. The client has the right to have an attorney  
25 represent him or her at the hearing, and, if the client is  
26 indigent, the court shall appoint the office of the public  
27 defender to represent the client at the hearing. The client  
28 may testify or not, as he or she chooses, and has the right to  
29 cross-examine witnesses and may present his or her own  
30 witnesses.

31

1           (b) In addition to the provisions of paragraph (a), in  
2 the case of surgical procedures requiring the use of a general  
3 anesthetic or electroconvulsive treatment or nonpsychiatric  
4 medical procedures, and prior to performing the procedure,  
5 written permission shall be obtained from the client, if the  
6 client is legally competent, from the parent or guardian of a  
7 minor client, or from the guardian of an incompetent client.  
8 The administrator or designee of the forensic facility or a  
9 designated representative may, with the concurrence of the  
10 client's attending physician, authorize emergency surgical or  
11 nonpsychiatric medical treatment if such treatment is deemed  
12 lifesaving or for a situation threatening serious bodily harm  
13 to the client and permission of the client or the client's  
14 guardian could not ~~cannot~~ be obtained before provision of the  
15 needed treatment.

16           (4) QUALITY OF TREATMENT.--

17           (a) Each forensic client ~~committed pursuant to this~~  
18 ~~chapter~~ shall receive treatment or training suited to the  
19 client's needs, which shall be administered skillfully,  
20 safely, and humanely with full respect for the client's  
21 dignity and personal integrity. Each client shall receive  
22 such medical, vocational, social, educational, and  
23 rehabilitative services as the client's condition requires to  
24 bring about a return to court for disposition of charges or a  
25 return to the community. In order to achieve this goal, the  
26 department and the agency shall coordinate their services with  
27 each other, the Department of Corrections, is directed to  
28 ~~coordinate the services of the Mental Health Program Office~~  
29 ~~and the Developmental Disabilities Program Office with all~~  
30 ~~other programs of the department~~ and other appropriate state  
31 agencies.



1           (b) Clients shall be free from the unnecessary use of  
2 restraint and seclusion. Restraints shall be employed only in  
3 emergencies or to protect the client or others from imminent  
4 injury. Restraint or seclusion may not be employed as  
5 punishment or for the convenience of staff. Any instance of  
6 the use of restraint or seclusion must be documented in the  
7 facility record of the client.

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

9           ~~(a)~~ Each forensic client ~~committed pursuant to the~~  
10 ~~provisions of this chapter~~ has the right to communicate freely  
11 and privately with persons outside the facility unless it is  
12 determined that such communication is likely to be harmful to  
13 the client or others. Clients shall have the right to contact  
14 and to receive communication from their attorneys at any  
15 reasonable time.

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

31

1           ~~(b)(e)~~ If a client's right to communicate is  
2 restricted by the administrator, written notice of such  
3 restriction and the duration of the restriction shall be  
4 served on the client or his or her legal guardian or  
5 representatives, and such restriction shall be recorded on the  
6 client's clinical record with the reasons therefor. The  
7 restriction of a client's right to communicate shall be  
8 reviewed at least every 7 days.

9           ~~(c)(d)~~ Each forensic facility shall establish  
10 reasonable institutional policies governing visitors, visiting  
11 hours, and the use of telephones by clients in the least  
12 restrictive manner possible.

13           ~~(d)(e)~~ Each forensic client ~~committed pursuant to this~~  
14 ~~chapter~~ shall have ready access to a telephone in order to  
15 report an alleged abuse. The facility or program staff shall  
16 orally and in writing inform each client of the procedure for  
17 reporting abuse and shall present the information in a  
18 language the client understands. A written copy of that  
19 procedure, including the telephone number of the central abuse  
20 hotline and reporting forms, shall be posted in plain view.

21           ~~(e)(f)~~ The department's or agency's forensic  
22 facilities shall develop policies providing a procedure for  
23 reporting abuse. Facility staff shall be required, as a  
24 condition of employment, to become familiar with the  
25 procedures for the reporting of abuse.

26           (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF  
27 CLIENTS.--A forensic client's right to possession of clothing  
28 and personal effects shall be respected. The department or  
29 agency by rule, or the administrator of any forensic facility  
30 by written institutional policy, may declare certain items to  
31 be hazardous to the health or welfare of clients or others or

1 | to the operation of the facility. Such items may be  
2 | restricted from introduction into the facility or may be  
3 | restricted from being in a client's possession. The  
4 | administrator or designee may take temporary custody of such  
5 | effects when required for medical and safety reasons. Custody  
6 | of such personal effects shall be recorded in the client's  
7 | clinical record.

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

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

27 |         (a) Such clinical record may be released:

28 |             1. To such persons and agencies as are designated by  
29 | the client or the client's legal guardian.

30 |  
31 |

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

4           3. To a qualified researcher, as defined by rule; a  
5 staff member of the facility; or an employee of the department  
6 or agency when the administrator of the facility, or secretary  
7 or director of the department or agency, deems it necessary  
8 for treatment of the client, maintenance of adequate records,  
9 compilation of treatment data, or evaluation of programs.

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

13          5. If a client receiving services ~~pursuant to this~~  
14 ~~chapter~~ has declared an intention to harm other persons. ~~When~~  
15 ~~such a declaration has been made~~, the administrator shall  
16 authorize the release of sufficient information to provide  
17 adequate warning to the person threatened with harm by the  
18 client, and to the committing court, the state attorney, and  
19 the attorney representing the client.

20          6. To the parent or next of kin of a client ~~mentally~~  
21 ~~ill, retarded, or autistic person~~ who is committed to, or is  
22 being served by, a facility or program when such information  
23 is limited to that person's service plan and current physical  
24 and mental condition. Release of such information shall be in  
25 accordance with the code of ethics of the profession involved  
26 and must comply with all state and federal laws and  
27 regulations pertaining to the release of personal health  
28 information.

29           (b) Notwithstanding other provisions of this  
30 subsection, the department or agency may request or receive  
31 from or provide to any of the following entities client

1 information to facilitate treatment, habilitation,  
2 rehabilitation, and continuity of care of any forensic client:

3 1. The Social Security Administration and the United  
4 States Department of Veterans Affairs;

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

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

9 4. Community agencies and others expected to provide  
10 followup care to the client upon the client's return to the  
11 community.

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

15 (d)1. Any law enforcement agency, facility, or other  
16 governmental agency that receives information pursuant to this  
17 subsection shall maintain the confidentiality of such  
18 information except as otherwise provided herein.

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

22 (9) HABEAS CORPUS.--

23 (a) At any time, and without notice, a forensic client  
24 detained by a facility, or a relative, friend, guardian,  
25 representative, or attorney on behalf of such client, may  
26 petition for a writ of habeas corpus to question the cause and  
27 legality of such detention and request that the committing  
28 court issue a writ for release. Each client ~~committed~~  
29 ~~pursuant to this chapter~~ shall receive a written notice of the  
30 right to petition for a writ of habeas corpus.  
31

1 (b) A client or his or her legal guardian or  
2 representatives or attorney may file a petition in the circuit  
3 court in the county where the client is committed alleging  
4 that the client is being unjustly denied a right or privilege  
5 granted herein or that a procedure authorized herein is being  
6 abused. Upon the filing of such a petition, the circuit court  
7 shall have the authority to conduct a judicial inquiry and to  
8 issue any appropriate order to correct an abuse of the  
9 provisions of this chapter.

10 (10) TRANSPORTATION.--

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

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

28 (c) Any company that transports a client pursuant to  
29 this section is considered an independent contractor and is  
30 solely liable for the safe and dignified transportation of the  
31 client. Any transport company that contracts with the

1 governing board of a county for the transport of clients as  
2 provided for in this section shall be insured and provide no  
3 less than \$100,000 in liability insurance with respect to the  
4 transportation of the clients.

5 (d) Any company that contracts with a governing board  
6 of a county to transport clients shall comply with the  
7 applicable rules of the department or agency to ensure the  
8 safety and dignity of the clients.

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

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

22 916.1075 Sexual misconduct prohibited; reporting  
23 required; penalties.--

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

25 (a) "Covered person" means an ~~"employee" includes any~~  
26 ~~paid staff member~~, volunteer, or intern of the department or  
27 agency; any person under contract with the department or  
28 agency; and any person providing care or support to a forensic  
29 client on behalf of the department, the agency, or their ~~its~~  
30 providers.

31 (b) "Sexual activity" means:

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

3           2. The oral, anal, or vaginal penetration by or union  
4 with the sexual organ of another or the anal or vaginal  
5 penetration of another by any other object.

6           3. Intentionally touching in a lewd or lascivious  
7 manner the breasts, genitals, the genital area, or buttocks,  
8 or the clothing covering them, of a person, or forcing or  
9 enticing a person to touch the perpetrator.

10          4. Intentionally masturbating in the presence of  
11 another person.

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

14          6. Intentionally committing any other sexual act that  
15 does not involve actual physical or sexual contact with the  
16 victim, including, but not limited to, sadomasochistic abuse,  
17 sexual bestiality, or the simulation of any act involving  
18 sexual activity in the presence of a victim.

19          (c) "Sexual misconduct" means any sexual activity  
20 between a covered person ~~an employee~~ and a forensic client in  
21 the custody of the department or agency, regardless of the  
22 consent of the client. The term does not include an act done  
23 for a bona fide medical purpose or an internal search  
24 conducted in the lawful performance of duty by a covered  
25 person ~~an employee~~.

26          (2) A covered person ~~An employee~~ who engages in sexual  
27 misconduct with a forensic client who resides in a civil or  
28 forensic facility commits a felony of the second degree,  
29 punishable as provided in s. 775.082, s. 775.083, or s.  
30 775.084. Such person ~~An employee~~ may be found guilty of  
31



1 | violating this subsection without having committed the crime  
2 | of sexual battery.

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

5 |         (4) This section does not apply to a covered person ~~an~~  
6 | ~~employee~~ who:

7 |             (a) Is legally married to the client; or

8 |             (b) Has no reason to believe that the person with whom  
9 | the covered person ~~employee~~ engaged in sexual misconduct is a  
10 | client receiving services as described in subsection (2).

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

1 | notify the state attorney in the circuit in which the incident  
2 | occurred.

3 |           Section 5. Section 916.1081, Florida Statutes, is  
4 | amended to read:

5 |           916.1081 Escape from program; penalty.--

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

13 |           (2) A person who is involuntarily committed to the  
14 | department or the agency because of an active previous  
15 | sentence, who remains in the custody of the Department of  
16 | Corrections, and who escapes or attempts to escape from a  
17 | facility or program of the Department of Corrections commits a  
18 | felony of the second degree, punishable as provided in s.  
19 | 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. Rules adopted under this  
21 | subsection must include provisions governing the use of  
22 | restraint and seclusion which are consistent with recognized  
23 | best practices and professional judgment; prohibit inherently  
24 | dangerous restraint or seclusion procedures; establish  
25 | limitations on the use and duration of restraint and  
26 | seclusion; establish measures to ensure the safety of program  
27 | participants and staff during an incident of restraint or  
28 | seclusion; establish procedures for staff to follow before,  
29 | during, and after incidents of restraint or seclusion;  
30 | establish professional qualifications of and training for  
31 | staff who may order or be engaged in the use of restraint or

1 seclusion; and establish mandatory reporting, data-collection,  
2 and data-dissemination procedures and requirements. Rules  
3 adopted under this subsection must require that each instance  
4 of the use of restraint or seclusion be documented in the  
5 facility's record of the client.

6 Section 9. Section 916.111, Florida Statutes, is  
7 amended to read:

8 916.111 Training of mental health experts.--The  
9 evaluation of defendants for competency to proceed or for  
10 sanity at the time of the commission of the offense shall be  
11 conducted in such a way as to ensure uniform application of  
12 the criteria enumerated in Rules 3.210 and 3.216, Florida  
13 Rules of Criminal Procedure. The department shall develop,  
14 and may contract with accredited institutions:

15 (1) To provide:

16 (a) A plan for training ~~community~~ mental health  
17 professionals to perform forensic evaluations and to  
18 standardize the criteria and procedures to be used in these  
19 evaluations;

20 (b) Clinical protocols and procedures based upon the  
21 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
22 Procedure; ~~and~~

23 (c) Training for ~~community~~ mental health professionals  
24 in the application of these protocols and procedures in  
25 performing forensic evaluations and providing reports to the  
26 courts; and

27 (2) To compile and maintain the necessary information  
28 for evaluating the success of this program, including the  
29 number of persons trained, the cost of operating the program,  
30 and the effect on the quality of forensic evaluations as  
31

1 measured by appropriateness of admissions to state forensic  
2 facilities and to community-based care programs.

3 Section 10. Section 916.115, Florida Statutes, is  
4 amended to read:

5 916.115 Appointment of experts.--

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

9 ~~(b)~~ The court shall ~~may~~ appoint no more than three  
10 experts to determine ~~issues~~ of the mental condition of a  
11 defendant in a criminal case, including ~~the issues~~ of  
12 competency to proceed, insanity, ~~and~~ involuntary  
13 ~~hospitalization or placement, and treatment. The panel of~~  
14 experts ~~An expert~~ may evaluate the defendant in jail or in  
15 another appropriate local facility or in a facility of the  
16 Department of Corrections.

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

21 (b) The department shall maintain and provide the  
22 courts annually with a list of available mental health  
23 professionals who have completed the approved training as  
24 experts.

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

29 ~~(a)1.~~ The court shall pay for any expert that it  
30 appoints by court order, upon motion of counsel for the  
31 defendant or the state or upon its own motion. If the defense

1 | or the state retains an expert and waives the confidentiality  
2 | of the expert's report, the court may pay for no more than two  
3 | additional experts appointed by court order. If an expert  
4 | appointed by the court upon motion of counsel for the  
5 | defendant specifically to evaluate the competence of the  
6 | defendant to proceed also addresses ~~in his or her evaluation~~  
7 | issues related to sanity as an affirmative defense, the court  
8 | shall pay only for that portion of the expert's fees relating  
9 | to the evaluation on competency to proceed, and the balance of  
10 | the fees shall be chargeable to the defense.

11 |       ~~(a)2-~~ Pursuant to s. 29.006, the office of the public  
12 | defender shall pay for any expert retained by the office.

13 |       ~~(b)3-~~ Pursuant to s. 29.005, the office of the state  
14 | attorney shall pay for any expert retained by the office and-  
15 | ~~Notwithstanding subparagraph 1., the office of the state~~  
16 | ~~attorney shall pay~~ for any expert whom the office retains and  
17 | whom the office moves the court to appoint in order to ensure  
18 | that the expert has access to the defendant.

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

22 |       ~~(d)5-~~ An expert retained by a defendant who is  
23 | indigent for costs as determined by the court and who is  
24 | represented by private counsel, other than private counsel  
25 | appointed under s. 27.5303, on a fee or pro bono basis, or who  
26 | is representing himself or herself, shall be paid by the  
27 | Justice Administrative Commission from funds specifically  
28 | appropriated for these expenses.

29 |       ~~(e)(b)~~ State employees shall be paid expenses pursuant  
30 | to s. 112.061.

31 |       ~~(f)(c)~~ The fees shall be taxed as costs in the case.

1           ~~(g)(d)~~ In order for an expert to be paid for the  
2 services rendered, the expert's report and testimony must  
3 explicitly address each of the factors and follow the  
4 procedures set out in this chapter and in the Florida Rules of  
5 Criminal Procedure.

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

8           916.12 Mental competence to proceed.--

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

15           (2) Mental health experts appointed pursuant to s.  
16 916.115 ~~An expert~~ shall first determine whether the defendant  
17 ~~person~~ is mentally ill and, if so, consider the factors  
18 related to the issue of whether the defendant meets the  
19 criteria for competence to proceed as described in subsection  
20 ~~(1); that is, whether the defendant has sufficient present~~  
21 ~~ability to consult with counsel with a reasonable degree of~~  
22 ~~rational understanding and whether the defendant has a~~  
23 ~~rational, as well as factual, understanding of the pending~~  
24 ~~proceedings~~. A defendant must be evaluated by no fewer than  
25 two experts before the court commits the defendant or takes  
26 other action authorized by this chapter or the Florida Rules  
27 of Criminal Procedure, except if one expert finds that the  
28 defendant is incompetent to proceed and the parties stipulate  
29 to that finding, the court may commit the defendant or take  
30 other action authorized by this chapter or the rules without  
31 further evaluation or hearing, or the court may appoint no



1 more than two additional experts to evaluate the defendant.  
2 Notwithstanding any stipulation by the state and the  
3 defendant, the court may require a hearing with testimony from  
4 the expert or experts before ordering the commitment of a  
5 defendant.

6 Section 12. Section 916.13, Florida Statutes, is  
7 amended to read:

8 916.13 Involuntary commitment of defendant adjudicated  
9 incompetent.--

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

15 (a) The defendant is mentally ill and because of the  
16 mental illness:

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

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

28 (b) All available, less restrictive treatment  
29 alternatives, including treatment in community residential  
30 facilities or community inpatient or outpatient settings,  
31 which would offer an opportunity for improvement of the

1 defendant's condition have been judged to be inappropriate;  
2 and

3 (c) There is a substantial probability that the mental  
4 illness causing the defendant's incompetence will respond to  
5 treatment and the defendant will regain competency to proceed  
6 in the reasonably foreseeable future.

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

20 Section 13. Section 916.145, Florida Statutes, is  
21 amended to read:

22 916.145 ~~Adjudication of incompetency due to mental~~  
23 ~~illness~~; Dismissal of charges.--The charges against any  
24 defendant adjudicated incompetent to proceed due to the  
25 defendant's mental illness shall be dismissed without  
26 prejudice to the state if the defendant remains incompetent to  
27 proceed 5 years after such determination, unless the court in  
28 its order specifies its reasons for believing that the  
29 defendant will become competent to proceed within the  
30 foreseeable future and specifies the time within which the  
31 defendant is expected to become competent to proceed. The

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

4 |         Section 14. Section 916.15, Florida Statutes, is  
5 | amended to read:

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

8 |             (1) The determination of whether a defendant is not  
9 | guilty by reason of insanity shall be determined in accordance  
10 | with Rule 3.217, Florida Rules of Criminal Procedure.

11 |             ~~(2)(1)~~ A defendant who is acquitted of criminal  
12 | charges because of a finding of not guilty by reason of  
13 | insanity may be involuntarily committed pursuant to such  
14 | finding if the defendant is mentally ill and, because of the  
15 | illness, is manifestly dangerous to himself or herself or  
16 | others.

17 |             ~~(3)(2)~~ Every defendant acquitted of criminal charges  
18 | by reason of insanity and found to meet the criteria for  
19 | involuntary commitment may be committed and treated in  
20 | accordance with the provisions of this section and the  
21 | applicable Florida Rules of Criminal Procedure. The  
22 | department shall admit a defendant so adjudicated to an  
23 | appropriate facility or program for treatment and shall retain  
24 | and treat such defendant. No later than 6 months after the  
25 | date of admission, prior to the end of any period of extended  
26 | commitment, or at any time the administrator or designee shall  
27 | have determined that the defendant no longer meets the  
28 | criteria for continued commitment placement, the administrator  
29 | or designee shall file a report with the court pursuant to the  
30 | applicable Florida Rules of Criminal Procedure.

31 |

1           ~~(4)(3)~~ In all proceedings under this section  
2 ~~subsection~~, both the defendant and the state shall have the  
3 right to a hearing before the committing court. Evidence at  
4 such hearing may be presented by the hospital administrator or  
5 the administrator's designee as well as by the state and the  
6 defendant. The defendant shall have the right to counsel at  
7 any such hearing. In the event that a defendant is determined  
8 to be indigent pursuant to s. 27.52, the public defender shall  
9 represent the defendant. The parties shall have access to the  
10 defendant's records at the treating facilities and may  
11 interview or depose personnel who have had contact with the  
12 defendant at the treating facilities.

13           Section 15. Section 916.16, Florida Statutes, is  
14 amended to read:

15           916.16 Jurisdiction of committing court.--

16           (1) The committing court shall retain jurisdiction  
17 over in the case of any defendant involuntarily committed due  
18 to a determination of incompetency hospitalized as incompetent  
19 to proceed due to a mental illness or ~~because of~~ a finding of  
20 not guilty by reason of insanity pursuant to this chapter. The  
21 ~~No such~~ defendant may not be released except by order of the  
22 committing court. An ~~The~~ administrative hearing examiner does  
23 not shall have ~~no~~ jurisdiction to determine issues of  
24 continuing commitment hospitalization or release of any  
25 defendant involuntarily committed admitted pursuant to this  
26 chapter.

27           (2) The committing court shall retain jurisdiction in  
28 the case of any defendant placed on conditional release  
29 pursuant to s. 916.17. ~~No~~ Such defendant may not be released  
30 from the conditions of release except by order of the  
31 committing court.

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

3           916.17 Conditional release.--

4           (1) Except for an inmate also currently serving a  
5 prison sentence, ~~The committing court may order a conditional~~  
6 ~~release of any defendant who has been found to be incompetent~~  
7 ~~to proceed or not guilty by reason of insanity, based on an~~  
8 ~~approved plan for providing appropriate outpatient care and~~  
9 ~~treatment.~~ the committing court may order a conditional  
10 release of any defendant in lieu of an involuntary commitment  
11 to a facility pursuant to s. 916.13 or s. 916.15 based upon an  
12 approved plan for providing appropriate outpatient care and  
13 treatment. Upon a recommendation that outpatient treatment of  
14 the defendant is appropriate, a written plan for outpatient  
15 treatment, including recommendations from qualified  
16 professionals, must be filed with the court, with copies to  
17 all parties. Such a plan may also be submitted by the  
18 defendant and filed with the court with copies to all parties.  
19 The plan shall include:

20           (a) Special provisions for residential care or  
21 adequate supervision of the defendant.

22           (b) Provisions for outpatient mental health services.

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

26  
27 In its order of conditional release, the court shall specify  
28 the conditions of release based upon the release plan and  
29 shall direct the appropriate agencies or persons to submit  
30 periodic reports to the court regarding the defendant's  
31

1 compliance with the conditions of the release and progress in  
2 treatment, with copies to all parties.

3 (2) Upon the filing of an affidavit or statement under  
4 oath by any person that the defendant has failed to comply  
5 with the conditions of release, that the defendant's condition  
6 has deteriorated to the point that inpatient care is required,  
7 or that the release conditions should be modified, the court  
8 shall hold a hearing within 7 days after receipt of the  
9 affidavit or statement under oath. After the hearing, the  
10 court may modify the release conditions. The court may also  
11 order that the defendant be returned to the department if it  
12 is found, after the appointment and report of experts, that  
13 the person meets the criteria for involuntary commitment under  
14 s. 916.13 or s. 916.15 ~~treatment~~.

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

20 Section 17. Section 916.301, Florida Statutes, is  
21 amended to read:

22 916.301 Appointment of experts.--

23 (1) All evaluations ordered by the court under this  
24 part must be conducted by qualified experts who have expertise  
25 in evaluating persons with retardation or autism. The agency  
26 ~~department~~ shall maintain and provide the courts annually with  
27 a list of available retardation and autism professionals who  
28 are appropriately licensed and qualified to perform  
29 evaluations of defendants alleged to be incompetent to proceed  
30 due to retardation or autism. The courts may use professionals  
31 from this list when appointing experts and ordering

1 ~~evaluations under this part for defendants suspected of being~~  
2 ~~retarded or autistic.~~

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

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

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

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

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

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

1           ~~(3)(6)~~ The panel of experts may examine the defendant  
2 in jail, in another appropriate local facility, in a facility  
3 of the Department of Corrections, or on an outpatient basis.

4           ~~(4)(7)~~ Experts ~~Expert witnesses~~ appointed by the court  
5 to evaluate the mental condition of a defendant in a criminal  
6 case shall be allowed reasonable fees for services rendered as  
7 evaluators and as witnesses, which shall be paid by the court.  
8 State employees shall be paid expenses pursuant to s. 112.061.  
9 The fees shall be taxed as costs in the case. In order for the  
10 experts to be paid for the services rendered, the reports and  
11 testimony must explicitly address each of the factors and  
12 follow the procedures set out in this chapter and in the  
13 Florida Rules of Criminal Procedure.

14           Section 18. Subsections (1) and (2) of section  
15 916.3012, Florida Statutes, are amended to read:

16           916.3012 Mental competence to proceed.--

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

24           (2) ~~The~~ Experts in retardation or autism, appointed  
25 pursuant to s. 916.301, shall first consider whether the  
26 defendant meets the definition of retardation or autism and,  
27 if so, consider the factors related to the issue of whether  
28 the defendant meets the criteria for competence to proceed as  
29 described in subsection(1); that is, whether the defendant has  
30 ~~sufficient present ability to consult with counsel with a~~  
31 ~~reasonable degree of rational understanding and whether the~~



1 ~~defendant has a rational, as well as factual, understanding of~~  
2 ~~the pending proceedings.~~

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

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

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

13 (a) The defendant has retardation or autism ~~is~~  
14 ~~retarded or autistic;~~

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

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

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

28 (2) ADMISSION TO A FACILITY.--

29 (a) A defendant who has been charged with a felony and  
30 who is found to be incompetent to proceed due to retardation  
31 or autism, and who meets the criteria for involuntary

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

12 |         (b) A defendant determined to be incompetent to  
13 | proceed due to retardation or autism may be ordered by a  
14 | circuit court into a forensic ~~secure~~ facility designated by  
15 | the ~~agency department~~ for retarded or autistic defendants.

16 |         (c) The ~~agency department~~ may transfer a defendant  
17 | from a designated forensic ~~secure~~ facility to another  
18 | designated forensic ~~secure~~ facility and must notify the court  
19 | of the transfer within 30 days after the transfer is  
20 | completed.

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

31 |         (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

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

8 (b) Transfer from one civil or forensic facility ~~or~~  
9 ~~program~~ to another civil or forensic facility ~~or program~~ may  
10 occur when, in the department's and agency's judgment, it is  
11 in the defendant's best treatment or training interests. The  
12 department and agency shall submit an evaluation and  
13 justification for the transfer to the court. The court may  
14 consult with an outside expert if necessary. Transfer will  
15 require an amended order from the committing court.

16 Section 20. Section 916.3025, Florida Statutes, is  
17 amended to read:

18 916.3025 Jurisdiction of committing court.--

19 (1) The committing court shall retain jurisdiction in  
20 the case of any defendant found to be incompetent to proceed  
21 due to retardation or autism and ordered into a forensic  
22 ~~secure~~ facility designated by the agency ~~department~~ for  
23 retarded or autistic defendants. ~~A~~ ~~No~~ defendant may not be  
24 released except by the order of the committing court. An  
25 administrative hearing examiner does not have jurisdiction to  
26 determine issues of continuing commitment or release of any  
27 defendant involuntarily committed pursuant to this chapter.

28 (2) The committing court shall retain jurisdiction in  
29 the case of any defendant placed on conditional release  
30 pursuant to s. 916.304. ~~No~~ Such defendant may not be released  
31

1 from the conditions of release except by order of the  
2 committing court.

3 (3) The committing court shall consider a ~~the~~ petition  
4 to involuntarily admit a defendant whose charges have been  
5 dismissed to residential services provided by the agency  
6 ~~department's developmental services program a person whose~~  
7 ~~charges have been dismissed,~~ and, when applicable, to continue  
8 secure placement of such person as provided in s. 916.303. The  
9 committing court shall retain jurisdiction over such person so  
10 long as he or she remains in secure placement or is on  
11 conditional release as provided in s. 916.304. However, upon  
12 request the court may transfer continuing jurisdiction to the  
13 court in the circuit where the defendant resides. The  
14 defendant may not be released from an order for secure  
15 placement except by order of the court.

16 Section 21. Section 916.303, Florida Statutes, is  
17 amended to read:

18 916.303 Determination of incompetency due to  
19 retardation or autism; dismissal of charges.--

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

1 ~~charges should~~ the defendant is ~~be~~ declared competent to  
2 proceed in the future.

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

13 (3)~~(b)~~ If the defendant is considered to need  
14 involuntary residential services for reasons described in  
15 subsection (2) ~~under s. 393.11~~ and, further, there is a  
16 substantial likelihood that the defendant will injure another  
17 person or continues to present a danger of escape, and all  
18 available less restrictive alternatives, including services in  
19 community residential facilities or other community settings,  
20 which would offer an opportunity for improvement of the  
21 condition have been judged to be inappropriate, ~~then~~ the  
22 agency person or entity filing the petition under s. 393.11,  
23 the state attorney, or the defendant's counsel may request,  
24 ~~the petitioning commission, or the department may also~~  
25 ~~petition~~ the committing court to continue the defendant's  
26 placement in a secure facility ~~or program~~ pursuant to this  
27 part section. Any placement so continued under this subsection  
28 must be defendant involuntarily admitted under this paragraph  
29 ~~shall have his or her status~~ reviewed by the court at least  
30 annually at a hearing. The annual review and hearing shall  
31 determine whether the defendant continues to meet the criteria

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

13 Section 22. Section 916.304, Florida Statutes, is  
14 amended to read:

15 916.304 Conditional release.--

16 (1) Except for an inmate also currently serving a  
17 prison sentence, the committing court may order a conditional  
18 release of any defendant who has been found to be incompetent  
19 to proceed due to retardation or autism, based on an approved  
20 plan for providing ~~continuing~~ community-based training. The  
21 committing criminal court may order a conditional release of  
22 any defendant to a civil facility in lieu of an involuntary  
23 commitment to a forensic facility pursuant to s. 916.302. Upon  
24 a recommendation that community-based training for the  
25 defendant is appropriate, a written plan for community-based  
26 training, including recommendations from qualified  
27 professionals, may be filed with the court, with copies to all  
28 parties. Such a plan may also be submitted by the defendant  
29 and filed with the court, with copies to all parties. The plan  
30 must ~~shall~~ include:  
31

1 (a) Special provisions for residential care and  
2 adequate supervision of the defendant, including recommended  
3 location of placement.

4 (b) Recommendations for auxiliary services such as  
5 vocational training, psychological training, educational  
6 services, leisure services, and special medical care.

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

14 (2) Upon the filing of an affidavit or statement under  
15 oath by any person that the defendant has failed to comply  
16 with the conditions of release, that the defendant's condition  
17 has deteriorated, or that the release conditions should be  
18 modified, the court shall hold a hearing within 7 days after  
19 receipt of the affidavit or statement under oath. With notice  
20 to the court, the agency may detain a defendant in a forensic  
21 facility until the hearing occurs. After the hearing, the  
22 court may modify the release conditions. The court may also  
23 order that the defendant be placed into more appropriate  
24 programs for further training or may order the defendant to be  
25 committed ~~returned to a forensic facility involuntary~~  
26 ~~residential services of the department~~ if it is found, after  
27 the appointment and report of experts, that the defendant  
28 meets the criteria for placement in a forensic facility  
29 ~~involuntary residential services.~~

30 (3) If at any time it is determined after a hearing  
31 that the defendant conditionally released under subsection (1)

1 no longer requires court-supervised followup care, the court  
2 shall terminate its jurisdiction in the cause and discharge  
3 the defendant.

4 Section 23. Section 921.137, Florida Statutes, is  
5 amended to read:

6 921.137 Imposition of the death sentence upon a  
7 ~~mentally retarded~~ defendant with retardation prohibited.--

8 (1) As used in this section, the term "mental  
9 retardation" means significantly subaverage general  
10 intellectual functioning existing concurrently with deficits  
11 in adaptive behavior and manifested during the period from  
12 conception to age 18. The term "significantly subaverage  
13 general intellectual functioning," for the purpose of this  
14 section, means performance that is two or more standard  
15 deviations from the mean score on a standardized intelligence  
16 test specified in the rules of the Agency for Persons with  
17 Disabilities ~~Department of Children and Family Services~~. The  
18 term "adaptive behavior," for the purpose of this definition,  
19 means the effectiveness or degree with which an individual  
20 meets the standards of personal independence and social  
21 responsibility expected of his or her age, cultural group, and  
22 community. The Agency for Persons with Disabilities ~~Department~~  
23 ~~of Children and Family Services~~ shall adopt rules to specify  
24 the standardized intelligence tests as provided in this  
25 subsection.

26 (2) A sentence of death may not be imposed upon a  
27 defendant convicted of a capital felony if it is determined in  
28 accordance with this section that the defendant has mental  
29 retardation.

30 (3) A defendant charged with a capital felony who  
31 intends to raise mental retardation as a bar to the death



1 sentence must give notice of such intention in accordance with  
2 the rules of court governing notices of intent to offer expert  
3 testimony regarding mental health mitigation during the  
4 penalty phase of a capital trial.

5 (4) After a defendant who has given notice of his or  
6 her intention to raise mental retardation as a bar to the  
7 death sentence is convicted of a capital felony and an  
8 advisory jury has returned a recommended sentence of death,  
9 the defendant may file a motion to determine whether the  
10 defendant has mental retardation. Upon receipt of the motion,  
11 the court shall appoint two experts in the field of mental  
12 retardation who shall evaluate the defendant and report their  
13 findings to the court and all interested parties prior to the  
14 final sentencing hearing. Notwithstanding s. 921.141 or s.  
15 921.142, the final sentencing hearing shall be held without a  
16 jury. At the final sentencing hearing, the court shall  
17 consider the findings of the court-appointed experts and  
18 consider the findings of any other expert which is offered by  
19 the state or the defense on the issue of whether the defendant  
20 has mental retardation. If the court finds, by clear and  
21 convincing evidence, that the defendant has mental retardation  
22 as defined in subsection (1), the court may not impose a  
23 sentence of death and shall enter a written order that sets  
24 forth with specificity the findings in support of the  
25 determination.

26 (5) If a defendant waives his or her right to a  
27 recommended sentence by an advisory jury following a plea of  
28 guilt or nolo contendere to a capital felony and adjudication  
29 of guilt by the court, or following a jury finding of guilt of  
30 a capital felony, upon acceptance of the waiver by the court,  
31 a defendant who has given notice as required in subsection (3)

1 | may file a motion for a determination of mental retardation.  
2 | Upon granting the motion, the court shall proceed as provided  
3 | in subsection (4).

4 |         (6) If, following a recommendation by an advisory jury  
5 | that the defendant be sentenced to life imprisonment, the  
6 | state intends to request the court to order that the defendant  
7 | be sentenced to death, the state must inform the defendant of  
8 | such request if the defendant has notified the court of his or  
9 | her intent to raise mental retardation as a bar to the death  
10 | sentence. After receipt of the notice from the state, the  
11 | defendant may file a motion requesting a determination by the  
12 | court of whether the defendant has mental retardation. Upon  
13 | granting the motion, the court shall proceed as provided in  
14 | subsection (4).

15 |         (7) The state may appeal, pursuant to s. 924.07, a  
16 | determination of mental retardation made under subsection (4).

17 |         (8) This section does not apply to a defendant who was  
18 | sentenced to death prior to the effective date of this act.

19 |         Section 24. Paragraphs (d), (e), (g), and (h) of  
20 | subsection (1), subsections (2), (3), and (4), paragraph (b)  
21 | of subsection (5), and paragraph (a) of subsection (6) of  
22 | section 985.223, Florida Statutes, are amended to read:

23 |         985.223 Incompetency in juvenile delinquency cases.--

24 |         (1) If, at any time prior to or during a delinquency  
25 | case, the court has reason to believe that the child named in  
26 | the petition may be incompetent to proceed with the hearing,  
27 | the court on its own motion may, or on the motion of the  
28 | child's attorney or state attorney must, stay all proceedings  
29 | and order an evaluation of the child's mental condition.

30 |         (d) For incompetency evaluations related to mental  
31 | illness, the Department of Children and Family Services shall

1 maintain and annually provide the courts with a list of  
2 available mental health professionals who have completed a  
3 training program approved by the Department of Children and  
4 Family Services to perform the evaluations.

5 (e) For incompetency evaluations related to mental  
6 retardation or autism, the court shall order the Agency for  
7 Persons with Disabilities ~~Developmental Disabilities Program~~  
8 ~~Office within the Department of Children and Family Services~~  
9 to examine the child to determine if the child meets the  
10 definition of "retardation" or "autism" in s. 393.063 and, if  
11 so, whether the child is competent to proceed with delinquency  
12 proceedings.

13 (g) Immediately upon the filing of the court order  
14 finding a child incompetent to proceed, the clerk of the court  
15 shall notify the Department of Children and Family Services  
16 and the Agency for Persons with Disabilities and fax or hand  
17 deliver to the department and to the agency ~~of Children and~~  
18 ~~Family Services~~ a referral packet that ~~which~~ includes, at a  
19 minimum, the court order, the charging documents, the  
20 petition, and the court-appointed evaluator's reports.

21 (h) After placement of the child in the appropriate  
22 setting, the Department of Children and Family Services in  
23 consultation with the Agency for Persons with Disabilities, as  
24 appropriate, must, within 30 days after placement of the  
25 ~~Department of Children and Family Services~~ places the child,  
26 prepare and submit to the court a treatment or training plan  
27 for the child's restoration of competency. A copy of the  
28 ~~treatment~~ plan must be served upon the child's attorney, the  
29 state attorney, and the attorneys representing the Department  
30 of Juvenile Justice.

31

1           (2) A child ~~who is mentally ill or retarded~~, who is  
2 adjudicated incompetent to proceed, and who has committed a  
3 delinquent act or violation of law, either of which would be a  
4 felony if committed by an adult, must be committed to the  
5 Department of Children and Family Services for treatment or  
6 training. A child who has been adjudicated incompetent to  
7 proceed because of age or immaturity, or for any reason other  
8 than for mental illness or retardation or autism, must not be  
9 committed to the department or to the Department of Children  
10 and Family Services for restoration-of-competency treatment or  
11 training services. For purposes of this section, a child who  
12 has committed a delinquent act or violation of law, either of  
13 which would be a misdemeanor if committed by an adult, may not  
14 be committed to the department or to the Department of  
15 Children and Family Services for restoration-of-competency  
16 treatment or training services.

17           (3) If the court finds that a child has mental  
18 illness, mental retardation, or autism ~~is mentally ill or~~  
19 ~~retarded~~ and adjudicates the child incompetent to proceed, the  
20 court must also determine whether the child meets the criteria  
21 for secure placement. A child may be placed in a secure  
22 facility or program if the court makes a finding by clear and  
23 convincing evidence that:

24           (a) The child has mental illness ~~is mentally ill~~ and  
25 because of the mental illness; or the child has mental  
26 retardation or autism ~~is mentally retarded~~ and because of the  
27 mental retardation or autism:

28           1. The child is manifestly incapable of surviving with  
29 the help of willing and responsible family or friends,  
30 including available alternative services, and without  
31 treatment or training the child is likely to either suffer

1 from neglect or refuse to care for self, and such neglect or  
2 refusal poses a real and present threat of substantial harm to  
3 the child's well-being; or

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

8           (b) All available less restrictive alternatives,  
9 including treatment or training in community residential  
10 facilities or community settings which would offer an  
11 opportunity for improvement of the child's condition, are  
12 inappropriate.

13           (4) A child who is determined to have mental illness,  
14 mental retardation, or autism ~~be mentally ill or retarded~~, who  
15 has been adjudicated incompetent to proceed, and who meets the  
16 criteria set forth in subsection (3)~~7~~ must be committed to the  
17 Department of Children and Family Services~~7~~ and receive  
18 treatment or training ~~the Department of Children and Family~~  
19 ~~Services must treat or train the child~~ in a secure facility or  
20 program that ~~which~~ is the least restrictive alternative  
21 consistent with public safety. Any placement of a child to a  
22 secure residential program must be separate from adult  
23 forensic programs. If the child attains competency, then  
24 custody, case management, and supervision of the child will be  
25 transferred to the department in order to continue delinquency  
26 proceedings; however, the court retains authority to order the  
27 Department of Children and Family Services to provide  
28 continued treatment or training to maintain competency.

29           (a) A child adjudicated incompetent due to mental  
30 retardation or autism may be ordered into a secure program or  
31 facility designated by the Department of Children and Family

1 Services for ~~retarded~~ children with mental retardation or  
2 autism.

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

7 (c) Whenever a child is placed in a secure residential  
8 facility, the department will provide transportation to the  
9 secure residential facility for admission and from the secure  
10 residential facility upon discharge.

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

13 (e) The service provider must file a written report  
14 with the court pursuant to the applicable Florida Rules of  
15 Juvenile Procedure not later than 6 months after the date of  
16 commitment, or at the end of any period of extended treatment  
17 or training, and at any time the Department of Children and  
18 Family Services, through its service provider determines the  
19 child has attained competency or no longer meets the criteria  
20 for secure placement, or at such shorter intervals as ordered  
21 by the court. A copy of a written report evaluating the  
22 child's competency must be filed by the provider with the  
23 court and with the state attorney, the child's attorney, the  
24 department, and the Department of Children and Family  
25 Services.

26 (5)

27 (b) Whenever the provider files a report with the  
28 court informing the court that the child will never become  
29 competent to proceed, the Department of Children and Family  
30 Services will develop a discharge plan for the child prior to  
31 any hearing determining whether the child will ever become

1 competent to proceed ~~and send the~~. ~~The Department of Children~~  
2 ~~and Family Services must send the proposed discharge~~ plan to  
3 the court, the state attorney, the child's attorney, and the  
4 attorneys representing the Department of Juvenile Justice. The  
5 provider will continue to provide services to the child until  
6 the court issues the order finding the child will never become  
7 competent to proceed.

8 (6)(a) If a child is determined to have mental  
9 illness, mental retardation, or autism ~~be mentally ill or~~  
10 ~~retarded~~ and is found to be incompetent to proceed but does  
11 not meet the criteria set forth in subsection (3), the court  
12 shall commit the child to the Department of Children and  
13 Family Services and shall order the Department of Children and  
14 Family Services to provide appropriate treatment and training  
15 in the community. The purpose of the treatment or training is  
16 the restoration of the child's competency to proceed.

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

19 287.057 Procurement of commodities or contractual  
20 services.--

21 (14)

22 (b) Notwithstanding paragraph (a), the Department of  
23 Children and Family Services may enter into agreements, not to  
24 exceed 20 years, with a private provider to finance, design,  
25 and construct a forensic treatment facility, as defined in s.  
26 916.106(10) ~~s. 916.106(8)~~, of at least 200 beds and to operate  
27 all aspects of daily operations within the forensic treatment  
28 facility. The selected contractor is authorized to sponsor the  
29 issuance of tax-exempt certificates of participation or other  
30 securities to finance the project, and the state is authorized

31

1 to enter into a lease-purchase agreement for the forensic  
2 treatment facility. This paragraph expires July 1, 2006.

3 Section 26. Paragraph (r) of subsection (3) of section  
4 408.036, Florida Statutes, is amended to read:

5 408.036 Projects subject to review; exemptions.--

6 (3) EXEMPTIONS.--Upon request, the following projects  
7 are subject to exemption from the provisions of subsection  
8 (1):

9 (r) For beds in state mental health treatment  
10 facilities operated under s. 394.455(30) and state mental  
11 health forensic facilities operated under chapter 916 ~~s.~~  
12 ~~916.106(8)~~.

13 Section 27. Paragraph (a) of subsection (4) of section  
14 943.0585, Florida Statutes, is amended to read:

15 943.0585 Court-ordered expunction of criminal history  
16 records.--The courts of this state have jurisdiction over  
17 their own procedures, including the maintenance, expunction,  
18 and correction of judicial records containing criminal history  
19 information to the extent such procedures are not inconsistent  
20 with the conditions, responsibilities, and duties established  
21 by this section. Any court of competent jurisdiction may order  
22 a criminal justice agency to expunge the criminal history  
23 record of a minor or an adult who complies with the  
24 requirements of this section. The court shall not order a  
25 criminal justice agency to expunge a criminal history record  
26 until the person seeking to expunge a criminal history record  
27 has applied for and received a certificate of eligibility for  
28 expunction pursuant to subsection (2). A criminal history  
29 record that relates to a violation of s. 393.135, s. 394.4593,  
30 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.  
31 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,



1 s. 847.0145, s. 893.135, s. 916.1075, or a violation  
2 enumerated in s. 907.041 may not be expunged, without regard  
3 to whether adjudication was withheld, if the defendant was  
4 found guilty of or pled guilty or nolo contendere to the  
5 offense, or if the defendant, as a minor, was found to have  
6 committed, or pled guilty or nolo contendere to committing,  
7 the offense as a delinquent act. The court may only order  
8 expunction of a criminal history record pertaining to one  
9 arrest or one incident of alleged criminal activity, except as  
10 provided in this section. The court may, at its sole  
11 discretion, order the expunction of a criminal history record  
12 pertaining to more than one arrest if the additional arrests  
13 directly relate to the original arrest. If the court intends  
14 to order the expunction of records pertaining to such  
15 additional arrests, such intent must be specified in the  
16 order. A criminal justice agency may not expunge any record  
17 pertaining to such additional arrests if the order to expunge  
18 does not articulate the intention of the court to expunge a  
19 record pertaining to more than one arrest. This section does  
20 not prevent the court from ordering the expunction of only a  
21 portion of a criminal history record pertaining to one arrest  
22 or one incident of alleged criminal activity. Notwithstanding  
23 any law to the contrary, a criminal justice agency may comply  
24 with laws, court orders, and official requests of other  
25 jurisdictions relating to expunction, correction, or  
26 confidential handling of criminal history records or  
27 information derived therefrom. This section does not confer  
28 any right to the expunction of any criminal history record,  
29 and any request for expunction of a criminal history record  
30 may be denied at the sole discretion of the court.

31

1           (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
2 criminal history record of a minor or an adult which is  
3 ordered expunged by a court of competent jurisdiction pursuant  
4 to this section must be physically destroyed or obliterated by  
5 any criminal justice agency having custody of such record;  
6 except that any criminal history record in the custody of the  
7 department must be retained in all cases. A criminal history  
8 record ordered expunged that is retained by the department is  
9 confidential and exempt from the provisions of s. 119.07(1)  
10 and s. 24(a), Art. I of the State Constitution and not  
11 available to any person or entity except upon order of a court  
12 of competent jurisdiction. A criminal justice agency may  
13 retain a notation indicating compliance with an order to  
14 expunge.

15           (a) The person who is the subject of a criminal  
16 history record that is expunged under this section or under  
17 other provisions of law, including former s. 893.14, former s.  
18 901.33, and former s. 943.058, may lawfully deny or fail to  
19 acknowledge the arrests covered by the expunged record, except  
20 when the subject of the record:

- 21           1. Is a candidate for employment with a criminal  
22 justice agency;
- 23           2. Is a defendant in a criminal prosecution;
- 24           3. Concurrently or subsequently petitions for relief  
25 under this section or s. 943.059;
- 26           4. Is a candidate for admission to The Florida Bar;
- 27           5. Is seeking to be employed or licensed by or to  
28 contract with the Department of Children and Family Services  
29 or the Department of Juvenile Justice or to be employed or  
30 used by such contractor or licensee in a sensitive position  
31 having direct contact with children, the developmentally

1 disabled, the aged, or the elderly as provided in s.  
2 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
3 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),  
4 chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter  
5 400; or

6 6. Is seeking to be employed or licensed by the  
7 Department of Education, any district school board, any  
8 university laboratory school, any charter school, any private  
9 or parochial school, or any local governmental entity that  
10 licenses child care facilities.

11 Section 28. Paragraph (a) of subsection (4) of section  
12 943.059, Florida Statutes, is amended to read:

13 943.059 Court-ordered sealing of criminal history  
14 records.--The courts of this state shall continue to have  
15 jurisdiction over their own procedures, including the  
16 maintenance, sealing, and correction of judicial records  
17 containing criminal history information to the extent such  
18 procedures are not inconsistent with the conditions,  
19 responsibilities, and duties established by this section. Any  
20 court of competent jurisdiction may order a criminal justice  
21 agency to seal the criminal history record of a minor or an  
22 adult who complies with the requirements of this section. The  
23 court shall not order a criminal justice agency to seal a  
24 criminal history record until the person seeking to seal a  
25 criminal history record has applied for and received a  
26 certificate of eligibility for sealing pursuant to subsection  
27 (2). A criminal history record that relates to a violation of  
28 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,  
29 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,  
30 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
31 916.1075, or a violation enumerated in s. 907.041 may not be

1 sealed, without regard to whether adjudication was withheld,  
2 if the defendant was found guilty of or pled guilty or nolo  
3 contendere to the offense, or if the defendant, as a minor,  
4 was found to have committed or pled guilty or nolo contendere  
5 to committing the offense as a delinquent act. The court may  
6 only order sealing of a criminal history record pertaining to  
7 one arrest or one incident of alleged criminal activity,  
8 except as provided in this section. The court may, at its sole  
9 discretion, order the sealing of a criminal history record  
10 pertaining to more than one arrest if the additional arrests  
11 directly relate to the original arrest. If the court intends  
12 to order the sealing of records pertaining to such additional  
13 arrests, such intent must be specified in the order. A  
14 criminal justice agency may not seal any record pertaining to  
15 such additional arrests if the order to seal does not  
16 articulate the intention of the court to seal records  
17 pertaining to more than one arrest. This section does not  
18 prevent the court from ordering the sealing of only a portion  
19 of a criminal history record pertaining to one arrest or one  
20 incident of alleged criminal activity. Notwithstanding any law  
21 to the contrary, a criminal justice agency may comply with  
22 laws, court orders, and official requests of other  
23 jurisdictions relating to sealing, correction, or confidential  
24 handling of criminal history records or information derived  
25 therefrom. This section does not confer any right to the  
26 sealing of any criminal history record, and any request for  
27 sealing a criminal history record may be denied at the sole  
28 discretion of the court.

29 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A  
30 criminal history record of a minor or an adult which is  
31 ordered sealed by a court of competent jurisdiction pursuant

1 to this section is confidential and exempt from the provisions  
2 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
3 and is available only to the person who is the subject of the  
4 record, to the subject's attorney, to criminal justice  
5 agencies for their respective criminal justice purposes, or to  
6 those entities set forth in subparagraphs (a)1., 4., 5., and  
7 6. for their respective licensing and employment purposes.

8 (a) The subject of a criminal history record sealed  
9 under this section or under other provisions of law, including  
10 former s. 893.14, former s. 901.33, and former s. 943.058, may  
11 lawfully deny or fail to acknowledge the arrests covered by  
12 the sealed record, except when the subject of the record:

13 1. Is a candidate for employment with a criminal  
14 justice agency;

15 2. Is a defendant in a criminal prosecution;

16 3. Concurrently or subsequently petitions for relief  
17 under this section or s. 943.0585;

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

19 5. Is seeking to be employed or licensed by or to  
20 contract with the Department of Children and Family Services  
21 or the Department of Juvenile Justice or to be employed or  
22 used by such contractor or licensee in a sensitive position  
23 having direct contact with children, the developmentally  
24 disabled, the aged, or the elderly as provided in s.  
25 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
26 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
27 415.103, chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or  
28 chapter 400; or

29 6. Is seeking to be employed or licensed by the  
30 Department of Education, any district school board, any  
31 university laboratory school, any charter school, any private

1 or parochial school, or any local governmental entity that  
2 licenses child care facilities.

3 Section 29. This act shall take effect upon becoming a  
4 law.

5  
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7 COMMITTEE SUBSTITUTE FOR  
8 Senate Bill 2010

9 Restores a requirement that restrictions on a client's right  
10 to communicate be reviewed every seven days.

11 Adds definitions for "restraint" and "seclusion," provides  
12 legislative intent regarding their use, and requires the  
13 Agency for Persons with Disabilities and the Department of  
14 Children and Family Services to adopt rules regarding their  
15 use in forensic facilities.

16 Restores references to specific Rules of Criminal Procedure  
17 regarding forensic commitments.

18 Restores a requirement that the Inspectors General of the  
19 Agency for Persons with Disabilities and the Department of  
20 Children and Family Services notify the state attorney of  
21 sexual misconduct by employees.

22 Reinstates current law which provides that sexual misconduct  
23 requires that the perpetrator must have knowledge that an  
24 individual is a forensic client.  
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