

By the Committees on Criminal Justice; Children and Families;  
and Senator Baker

591-2181-06

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 intent  
9           of the Legislature to reduce the use of  
10          restraint and seclusion on persons who are  
11          committed to civil or forensic facilities;  
12          amending s. 916.106, F.S.; providing and  
13          revising definitions; amending s. 916.107,  
14          F.S., relating to the rights of forensic  
15          clients; conforming provisions to the transfer  
16          of duties from the Developmental Disabilities  
17          Program Office within the Department of  
18          Children and Family Services to the Agency for  
19          Persons with Disabilities; revising provisions  
20          governing the involuntary treatment of clients;  
21          requiring the coordination of services between  
22          the department, the agency, and the Department  
23          of 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; deleting a

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

1 s. 916.145, F.S., relating to charges against a  
2 defendant adjudicated incompetent; conforming  
3 provisions to changes made by the act; amending  
4 s. 916.15, F.S.; clarifying that the  
5 determination of not guilty by reason of  
6 insanity is made under the Florida Rules of  
7 Criminal Procedure; amending s. 916.16, F.S.;  
8 providing for the continuing jurisdiction of  
9 the court over a defendant involuntarily  
10 committed due to mental illness; amending s.  
11 916.17, F.S.; clarifying circumstances under  
12 which the court may order the conditional  
13 release of a defendant; amending s. 916.301,  
14 F.S.; requiring that certain evaluations be  
15 conducted by qualified experts; requiring that  
16 the Agency for Persons with Disabilities  
17 provide the court with a list of available  
18 retardation and autism professionals;  
19 conforming provisions to the transfer of duties  
20 from the Developmental Disabilities Program  
21 Office within the Department of Children and  
22 Family Services to the agency; amending s.  
23 916.3012, F.S.; clarifying provisions governing  
24 the determination of a defendant's mental  
25 competence to proceed; amending s. 916.302,  
26 F.S., relating to the involuntary commitment of  
27 a defendant; conforming provisions to the  
28 transfer of duties from the Developmental  
29 Disabilities Program Office within the  
30 Department of Children and Family Services to  
31 the agency; requiring that the department and

1 agency submit an evaluation to the court before  
2 the transfer of a defendant from one civil or  
3 forensic facility to another; amending s.  
4 916.3025, F.S.; clarifying that the committing  
5 court retains jurisdiction over a defendant  
6 placed on conditional release; providing for  
7 the transfer of continuing jurisdiction to  
8 another court where the defendant resides;  
9 amending s. 916.303, F.S.; clarifying  
10 provisions governing the dismissal of charges  
11 against a defendant found to be incompetent to  
12 proceed due to retardation or autism; amending  
13 s. 916.304, F.S.; providing for the conditional  
14 release of a defendant to a civil facility;  
15 amending ss. 921.137 and 985.223, F.S.,  
16 relating to provisions governing the imposition  
17 of the death sentence upon a mentally retarded  
18 defendant and the determination of incompetency  
19 in cases involving juvenile delinquency;  
20 conforming provisions to the transfer of duties  
21 from the Developmental Disabilities Program  
22 Office within the Department of Children and  
23 Family Services to the Agency for Persons with  
24 Disabilities; amending ss. 287.057, 408.036,  
25 943.0585, and 943.059, F.S.; conforming  
26 cross-references; providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30 Section 1. Section 916.105, Florida Statutes, is  
31 amended to read:

1           916.105 Legislative intent.--

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

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

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

7           (4) It is the intent of the Legislature to minimize  
8 and achieve an ongoing reduction in the use of restraint and  
9 seclusion on persons who are committed to civil or forensic  
10 facilities 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)~~ "Restraint" means a physical device, method, or  
28 drug used to control dangerous behavior.

29 ~~(a)~~ A physical restraint is any manual method or  
30 physical or mechanical device, material, or equipment attached  
31 or adjacent to a person's body so that he or she cannot easily

1 remove the restraint and which restricts freedom of movement  
2 or normal access to one's body.

3 (b) A drug used as a restraint is a medication that is  
4 used to control the person's behavior or to restrict his or  
5 her freedom of movement and is not part of the standard  
6 treatment regimen of an individual with a diagnosed mental  
7 illness who is a client of the department. Physically holding  
8 a person during a procedure to forcibly administer such  
9 medication is a physical restraint.

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

18 ~~(15)(12)~~ "Retardation" has the same meaning as in s.  
19 ~~393.063. means significantly subaverage general intellectual~~  
20 ~~functioning existing concurrently with deficits in adaptive~~  
21 ~~behavior and manifested during the period from conception to~~  
22 ~~age 18. "Significantly subaverage general intellectual~~  
23 ~~functioning," for the purpose of this definition, means~~  
24 ~~performance which is two or more standard deviations from the~~  
25 ~~mean score on a standardized intelligence test specified in~~  
26 ~~the rules of the department. "Adaptive behavior," for the~~  
27 ~~purpose of this definition, means the effectiveness or degree~~  
28 ~~with which an individual meets the standards of personal~~  
29 ~~independence and social responsibility expected of the~~  
30 ~~individual's age, cultural group, and community.~~

31

1           (16) "Seclusion" means the physical segregation of a  
2 person in any fashion or the involuntary isolation of a person  
3 in a room or area from which the person is prevented from  
4 leaving. The prevention may be by physical barrier or by a  
5 staff member who is acting in a manner, or who is physically  
6 situated, so as to prevent the person from leaving the room or  
7 area. For purposes of this chapter, the term does not mean  
8 isolation due to a person's medical condition or symptoms, the  
9 confinement in a forensic facility to a bedroom or area during  
10 normal hours of sleep when there is not an active order for  
11 seclusion, or confinement during an emergency such as a riot  
12 or hostage situation when clients may be temporarily placed in  
13 their rooms for their own safety.

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

21           Section 3. Section 916.107, Florida Statutes, is  
22 amended to read:

23           916.107 Rights of forensic clients.--

24           (1) RIGHT TO INDIVIDUAL DIGNITY.--

25           (a) The policy of the state is that the individual  
26 dignity of the client shall be respected at all times and upon  
27 all occasions, including any occasion when the forensic client  
28 is detained, transported, or treated. Clients with mental  
29 illness, retardation, or autism ~~Defendants who are mentally~~  
30 ~~ill, retarded, or autistic and~~ who are charged with committing  
31 felonies shall receive appropriate treatment or training. In

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

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

27 (2) RIGHT TO TREATMENT.--

28 (a) The policy of the state is that neither the  
29 department nor the agency shall ~~not~~ deny treatment or training  
30 to any client and that no services shall be delayed ~~at a~~  
31 ~~facility~~ because the forensic client is indigent pursuant to

1 s. 27.52 and presently unable to pay. However, every  
2 reasonable effort to collect appropriate reimbursement for the  
3 cost of providing services to clients able to pay for the  
4 services, including reimbursement from insurance or other  
5 third-party payments, shall be made by facilities providing  
6 services pursuant to this chapter and in accordance with the  
7 provisions of s. 402.33.

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

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

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

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

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

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

19           2. In a situation other than an emergency situation,  
20 the administrator or designee of the ~~forensic~~ facility shall  
21 petition the court for an order authorizing necessary and  
22 essential ~~the~~ treatment for ~~to~~ the client. The order shall  
23 allow such treatment for a period not to exceed 90 days  
24 following from the date of the entry of the order. Unless the  
25 court is notified in writing that the client has provided  
26 express and informed consent in writing or that the client has  
27 been discharged by the committing court, the administrator or  
28 designee shall, prior to the expiration of the initial 90-day  
29 order, petition the court for an order authorizing the  
30 continuation of treatment for another 90-day period. This  
31

1 procedure shall be repeated until the client provides consent  
2 or is discharged by the committing court.

3           3. At the hearing on the issue of whether the court  
4 should enter an order authorizing treatment for which a client  
5 was unable or has refused to give express and informed  
6 consent, the court shall determine by clear and convincing  
7 evidence that the client has mental illness, retardation, or  
8 autism ~~is mentally ill, retarded, or autistic as defined in~~  
9 ~~this chapter~~, that the treatment not consented to is essential  
10 to the care of the client, and that the treatment not  
11 consented to is not experimental and does not present an  
12 unreasonable risk of serious, hazardous, or irreversible side  
13 effects. In arriving at the substitute judgment decision, the  
14 court must consider at least the following factors:

- 15           a. The client's expressed preference regarding  
16 treatment;
- 17           b. The probability of adverse side effects;
- 18           c. The prognosis without treatment; and
- 19           d. The prognosis with treatment.
- 20

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

1 may testify or not, as he or she chooses, and has the right to  
2 cross-examine witnesses and may present his or her own  
3 witnesses.

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

19 (4) QUALITY OF TREATMENT.--

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



1 ~~and the Developmental Disabilities Program Office with all~~  
2 ~~other programs of the department and other appropriate state~~  
3 agencies.

4 (b) Forensic clients shall be free from the  
5 unnecessary use of restraint or seclusion. Restraints shall be  
6 employed only in emergencies or to protect the client or  
7 others from imminent injury. Restraints may not be employed as  
8 punishment or for the convenience of staff.

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

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

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

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 | department or agency, the covered person ~~employee~~ shall  
22 | deliver the report directly to the department's or agency's  
23 | inspector general, as appropriate, or to the supervisor or  
24 | program director, who shall provide copies to the department's  
25 | or agency's ~~is responsible for providing copies to the~~  
26 | ~~department's~~ inspector general. ~~The inspector general shall~~  
27 | ~~immediately conduct an appropriate administrative~~  
28 | ~~investigation, and, if there is probable cause to believe that~~  
29 | ~~sexual misconduct has occurred, the inspector general shall~~  
30 | ~~notify the state attorney in the circuit in which the incident~~  
31 | ~~occurred.~~

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

3           916.1081 Escape from program; penalty.--

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

11           (2) A person who is involuntarily committed to the  
12 department or the agency because of an active previous  
13 sentence, who remains in the custody of the Department of  
14 Corrections, and who escapes or attempts to escape from a  
15 facility or program of the Department of Corrections commits a  
16 felony of the second degree, punishable as provided in s.  
17 944.40.

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

21           916.1085 Introduction or removal of certain articles  
22 unlawful; penalty.--

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

30           1. Any intoxicating beverage or beverage which causes  
31 or may cause an intoxicating effect;

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

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

16           (2)

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

21           Section 7. Section 916.1091, Florida Statutes, is  
22 amended to read:

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

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

8 Section 8. Section 916.1093, Florida Statutes, is  
9 amended to read:

10 916.1093 Operation and administration; rules.--

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

16 (2) The department and agency are authorized ~~has~~  
17 ~~authority~~ to adopt rules pursuant to ss. 120.536(1) and 120.54  
18 to implement the provisions of this chapter. Such rules must  
19 address the use of restraint and seclusion in forensic  
20 facilities and must be consistent with recognized best  
21 practices; prohibit inherently dangerous restraint or  
22 seclusion procedures; establish limitations on the use and  
23 duration of restraint and seclusion; establish measures to  
24 ensure the safety of clients and staff during an incident of  
25 restraint or seclusion; establish procedures for staff to  
26 follow before, during, and after incidents of restraint or  
27 seclusion; establish professional qualifications of and  
28 training for staff who may order or be engaged in the use of  
29 restraint or seclusion; provide data-reporting and  
30 data-collection procedures relating to the use of restraint  
31

1 and seclusion; and provide for the documentation of the use of  
2 restraint or seclusion in the client's facility record.

3 Section 9. Section 916.111, Florida Statutes, is  
4 amended to read:

5 916.111 Training of mental health experts.--The  
6 evaluation of defendants for competency to proceed or for  
7 sanity at the time of the commission of the offense shall be  
8 conducted in such a way as to ensure uniform application of  
9 the criteria enumerated in Rules 3.210 and 3.216, Florida  
10 Rules of Criminal Procedure. The department shall develop,  
11 and may contract with accredited institutions:

12 (1) To provide:

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

17 (b) Clinical protocols and procedures based upon the  
18 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
19 Procedure; ~~and~~

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

24 (2) To compile and maintain the necessary information  
25 for evaluating the success of this program, including the  
26 number of persons trained, the cost of operating the program,  
27 and the effect on the quality of forensic evaluations as  
28 measured by appropriateness of admissions to state forensic  
29 facilities and to community-based care programs.

30 Section 10. Section 916.115, Florida Statutes, is  
31 amended to read:

1 916.115 Appointment of experts.--

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

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

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

17 (b) The department shall maintain and provide the  
18 courts annually with a list of available mental health  
19 professionals who have completed the approved training as  
20 experts.

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

25 ~~(a)1.~~ The court shall pay for any expert that it  
26 appoints by court order, upon motion of counsel for the  
27 defendant or the state or upon its own motion. If the defense  
28 or the state retains an expert and waives the confidentiality  
29 of the expert's report, the court may pay for no more than two  
30 additional experts appointed by court order. If an expert  
31 appointed by the court upon motion of counsel for the

1 defendant specifically to evaluate the competence of the  
2 defendant to proceed also addresses ~~in his or her evaluation~~  
3 issues related to sanity as an affirmative defense, the court  
4 shall pay only for that portion of the expert's fees relating  
5 to the evaluation on competency to proceed, and the balance of  
6 the fees shall be chargeable to the defense.

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

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

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

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

25 ~~(e)(b)~~ State employees shall be paid expenses pursuant  
26 to s. 112.061.

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

28 ~~(g)(d)~~ In order for an expert to be paid for the  
29 services rendered, the expert's report and testimony must  
30 explicitly address each of the factors and follow the  
31

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

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

5 |             916.12 Mental competence to proceed.--

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

12 |             (2) Mental health experts appointed pursuant to s.  
13 | 916.115 ~~An expert~~ shall first determine whether the defendant  
14 | ~~person~~ is mentally ill and, if so, consider the factors  
15 | related to the issue of whether the defendant meets the  
16 | criteria for competence to proceed as described in subsection  
17 | ~~(1); that is, whether the defendant has sufficient present~~  
18 | ~~ability to consult with counsel with a reasonable degree of~~  
19 | ~~rational understanding and whether the defendant has a~~  
20 | ~~rational, as well as factual, understanding of the pending~~  
21 | ~~proceedings~~. A defendant must be evaluated by no fewer than  
22 | two experts before the court commits the defendant or takes  
23 | other action authorized by this chapter or the Florida Rules  
24 | of Criminal Procedure, except if one expert finds that the  
25 | defendant is incompetent to proceed and the parties stipulate  
26 | to that finding, the court may commit the defendant or take  
27 | other action authorized by this chapter or the rules without  
28 | further evaluation or hearing, or the court may appoint no  
29 | more than two additional experts to evaluate the defendant.  
30 | Notwithstanding any stipulation by the state and the  
31 | defendant, the court may require a hearing with testimony from



1 the expert or experts before ordering the commitment of a  
2 defendant.

3 Section 12. Section 916.13, Florida Statutes, is  
4 amended to read:

5 916.13 Involuntary commitment of defendant adjudicated  
6 incompetent.--

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

12 (a) The defendant is mentally ill and because of the  
13 mental illness:

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

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

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

31

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

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

18 Section 13. Section 916.145, Florida Statutes, is  
19 amended to read:

20 916.145 ~~Adjudication of incompetency due to mental~~  
21 ~~illness~~; Dismissal of charges.--The charges against any  
22 defendant adjudicated incompetent to proceed due to the  
23 defendant's mental illness shall be dismissed without  
24 prejudice to the state if the defendant remains incompetent to  
25 proceed 5 years after such determination, unless the court in  
26 its order specifies its reasons for believing that the  
27 defendant will become competent to proceed within the  
28 foreseeable future and specifies the time within which the  
29 defendant is expected to become competent to proceed. The  
30 charges against the defendant are dismissed without prejudice  
31

1 to the state to refile the charges should the defendant be  
2 declared competent to proceed in the future.

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

5 916.15 Involuntary commitment of defendant adjudicated  
6 not guilty by reason of insanity.--

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

10 ~~(2)(1)~~ A defendant who is acquitted of criminal  
11 charges because of a finding of not guilty by reason of  
12 insanity may be involuntarily committed pursuant to such  
13 finding if the defendant is mentally ill and, because of the  
14 illness, is manifestly dangerous to himself or herself or  
15 others.

16 ~~(3)(2)~~ Every defendant acquitted of criminal charges  
17 by reason of insanity and found to meet the criteria for  
18 involuntary commitment may be committed and treated in  
19 accordance with the provisions of this section and the  
20 applicable Florida Rules of Criminal Procedure. The  
21 department shall admit a defendant so adjudicated to an  
22 appropriate facility or program for treatment and shall retain  
23 and treat such defendant. No later than 6 months after the  
24 date of admission, prior to the end of any period of extended  
25 commitment, or at any time the administrator or designee shall  
26 have determined that the defendant no longer meets the  
27 criteria for continued commitment placement, the administrator  
28 or designee shall file a report with the court pursuant to the  
29 applicable Florida Rules of Criminal Procedure.

30 ~~(4)(3)~~ In all proceedings under this section  
31 ~~subsection~~, both the defendant and the state shall have the

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

11 Section 15. Section 916.16, Florida Statutes, is  
12 amended to read:

13 916.16 Jurisdiction of committing court.--

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

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

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

1           916.17 Conditional release.--  
2           (1) Except for an inmate also currently serving a  
3 prison sentence, ~~The committing court may order a conditional~~  
4 ~~release of any defendant who has been found to be incompetent~~  
5 ~~to proceed or not guilty by reason of insanity, based on an~~  
6 ~~approved plan for providing appropriate outpatient care and~~  
7 ~~treatment.~~ the committing court may order a conditional  
8 release of any defendant in lieu of an involuntary commitment  
9 to a facility pursuant to s. 916.13 or s. 916.15 based upon an  
10 approved plan for providing appropriate outpatient care and  
11 treatment. Upon a recommendation that outpatient treatment of  
12 the defendant is appropriate, a written plan for outpatient  
13 treatment, including recommendations from qualified  
14 professionals, must be filed with the court, with copies to  
15 all parties. Such a plan may also be submitted by the  
16 defendant and filed with the court with copies to all parties.  
17 The plan shall include:  
18           (a) Special provisions for residential care or  
19 adequate supervision of the defendant.  
20           (b) Provisions for outpatient mental health services.  
21           (c) If appropriate, recommendations for auxiliary  
22 services such as vocational training, educational services, or  
23 special medical care.  
24  
25 In its order of conditional release, the court shall specify  
26 the conditions of release based upon the release plan and  
27 shall direct the appropriate agencies or persons to submit  
28 periodic reports to the court regarding the defendant's  
29 compliance with the conditions of the release and progress in  
30 treatment, with copies to all parties.  
31

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

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

18           Section 17. Section 916.301, Florida Statutes, is  
19 amended to read:

20           916.301 Appointment of experts.--

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

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

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

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

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

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

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

29           ~~(3)(6)~~ The ~~panel of~~ experts may examine the defendant  
30 in jail, in another appropriate local facility, in a facility  
31 of the Department of Corrections, or on an outpatient basis.

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

11           Section 18. Subsections (1) and (2) of section  
12 916.3012, Florida Statutes, are amended to read:

13           916.3012 Mental competence to proceed.--

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

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

31



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

3 916.302 Involuntary commitment of defendant determined  
4 to be incompetent to proceed ~~due to retardation or autism.~~--

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

11 (a) The defendant has retardation or autism ~~is~~  
12 ~~retarded or autistic~~;

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

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

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

26 (2) ADMISSION TO A FACILITY.--

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

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

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

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

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

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

30 (a) If a defendant is both retarded or autistic and  
31 mentally ill, evaluations must address which condition is

1 primarily affecting the defendant's competency to proceed.  
2 Referral of the defendant should be made to a civil or  
3 forensic ~~the facility or program~~ most appropriate to address  
4 the symptoms which are the cause of the defendant's  
5 incompetence.

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

14 Section 20. Section 916.3025, Florida Statutes, is  
15 amended to read:

16 916.3025 Jurisdiction of committing court.--

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

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

31

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

14           Section 21. Section 916.303, Florida Statutes, is  
15 amended to read:

16           916.303 Determination of incompetency due to  
17 retardation or autism; dismissal of charges.--

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

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

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

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

11 Section 22. Section 916.304, Florida Statutes, is  
12 amended to read:

13 916.304 Conditional release.--

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

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

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

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

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

27 (3) If at any time it is determined after a hearing  
28 that the defendant conditionally released under subsection (1)  
29 no longer requires court-supervised followup care, the court  
30 shall terminate its jurisdiction in the cause and discharge  
31 the defendant.

1           Section 23. Section 921.137, Florida Statutes, is  
2 amended to read:

3           921.137 Imposition of the death sentence upon a  
4 ~~mentally retarded~~ defendant with retardation prohibited.--

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

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

27           (3) A defendant charged with a capital felony who  
28 intends to raise mental retardation as a bar to the death  
29 sentence must give notice of such intention in accordance with  
30 the rules of court governing notices of intent to offer expert  
31



1 testimony regarding mental health mitigation during the  
2 penalty phase of a capital trial.

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

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

31

1 Upon granting the motion, the court shall proceed as provided  
2 in subsection (4).

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

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

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

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

22 985.223 Incompetency in juvenile delinquency cases.--

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

29 (d) For incompetency evaluations related to mental  
30 illness, the Department of Children and Family Services shall  
31 maintain and annually provide the courts with a list of

1 available mental health professionals who have completed a  
2 training program approved by the Department of Children and  
3 Family Services to perform the evaluations.

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

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

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

30 (2) A child ~~who is mentally ill or retarded,~~ who is  
31 adjudicated incompetent to proceed, and who has committed a

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

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

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

26 1. The child is manifestly incapable of surviving with  
27 the help of willing and responsible family or friends,  
28 including available alternative services, and without  
29 treatment or training the child is likely to either suffer  
30 from neglect or refuse to care for self, and such neglect or  
31

1 refusal poses a real and present threat of substantial harm to  
2 the child's well-being; or

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

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

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

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

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 as defined in s. 394.455 ~~operated under s.~~  
11 ~~394.455(30)~~ and state mental health forensic facilities  
12 operated under chapter 916 ~~s. 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 CS/SB 2010

- 9 - Clarifies that the intent of the Legislature is to  
10 minimize and achieve a reduction in the use of restraint  
11 and seclusion on civil and forensic commitment clients.  
12 Deletes language that it is the policy of the Legislature  
13 that such measures are only to be used in emergencies in  
14 response to imminent danger to the client or others  
15 (however this policy is set forth elsewhere in the bill,  
16 as applied to forensic clients).
- 17 - Clarifies that a drug used for restraint purposes is not  
18 part of the standard treatment regimen of an individual  
19 diagnosed with a mental illness.
- 20 - Amends reporting protocol as it relates to sexual  
21 misconduct in a forensic facility.
- 22 - Deletes existing law (which had been restored in the  
23 Committee Substitute by the Committee on Children and  
24 Families) requiring the inspector general to investigate  
25 allegations of sexual misconduct in forensic facilities  
26 immediately and notify the local state attorney if there  
27 is probable cause to believe such misconduct has  
28 occurred.
- 29 - Clarifies the requirements for rules adopted by the  
30 department and agency for the implementation of the  
31 provisions of Chapter 916. They must include rules  
governing the use of restraint and seclusion which are  
consistent with best practices and that provide for data  
collection and documentation of the use of seclusion or  
restraint in the client's facility record. Mandatory  
reporting and documentation is eliminated from the  
provisions of the original bill.
- Requires notification of all parties if the agency  
detains a defendant in a forensic facility awaiting a  
hearing on conditional release compliance.