

HB 7199

2006

1                   A bill to be entitled  
2           An act relating to forensic treatment and training;  
3           amending s. 916.105, F.S.; revising legislative intent  
4           with respect to the treatment or training of defendants  
5           who have mental illness, mental retardation, or autism and  
6           are committed to the Agency for Persons with Disabilities;  
7           providing intent with respect to the use of restraint and  
8           seclusion; amending s. 916.106, F.S.; providing and  
9           revising definitions; amending s. 916.107, F.S., relating  
10          to the rights of forensic clients; conforming provisions  
11          to the transfer of duties from the Developmental  
12          Disabilities Program Office within the Department of  
13          Children and Family Services to the Agency for Persons  
14          with Disabilities; revising provisions governing the  
15          involuntary treatment of clients; requiring the  
16          coordination of services between the department, the  
17          agency, and the Department of Corrections; amending s.  
18          916.1075, F.S.; revising certain prohibitions on sexual  
19          misconduct involving covered persons of the Department of  
20          Children and Family Services or the Agency for Persons  
21          with Disabilities; defining the term "covered person";  
22          requiring that notice of sexual misconduct be provided to  
23          the inspector general of the agency or department;  
24          amending s. 916.1081, F.S.; providing that an escape or an  
25          attempt to escape from a civil or forensic facility  
26          constitutes a second-degree felony; amending s. 916.1085,  
27          F.S.; providing for certain prohibitions concerning  
28          contraband articles to apply to facilities under the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 supervision or control of the Agency for Persons with  
30 Disabilities; deleting a cross-reference; amending s.  
31 916.1091, F.S.; authorizing the use of chemical weapons by  
32 agency personnel; amending s. 916.1093, F.S.; authorizing  
33 the agency to enter into contracts and adopt rules;  
34 requiring department and agency rules to address the use  
35 of restraint and seclusion; providing requirements for  
36 such rules; amending s. 916.111, F.S.; revising provisions  
37 governing the training of mental health experts; amending  
38 s. 916.115, F.S.; requiring that the court appoint experts  
39 to determine the mental condition of a criminal defendant;  
40 requiring that the Department of Children and Family  
41 Services annually provide the courts with a list of  
42 certain mental health professionals; amending s. 916.12,  
43 F.S.; revising provisions governing the evaluation of a  
44 defendant's competence to proceed; amending s. 916.13,  
45 F.S.; revising conditions under which a defendant may be  
46 involuntarily committed for treatment; amending s.  
47 916.145, F.S., relating to dismissal of charges against a  
48 defendant adjudicated incompetent; conforming provisions  
49 to changes made by the act; amending s. 916.15, F.S.;  
50 clarifying that the determination of not guilty by reason  
51 of insanity is made under a specified Florida Rule of  
52 Criminal Procedure; amending s. 916.16, F.S.; providing  
53 for the continuing jurisdiction of the court over a  
54 defendant involuntarily committed due to mental illness;  
55 amending s. 916.17, F.S.; clarifying circumstances under  
56 which the court may order the conditional release of a

57 | defendant; amending s. 916.301, F.S.; requiring that  
58 | certain evaluations be conducted by certain qualified  
59 | experts; requiring that the Agency for Persons with  
60 | Disabilities provide the court with a list of certain  
61 | available retardation and autism professionals; conforming  
62 | provisions to the transfer of duties from the  
63 | Developmental Disabilities Program Office within the  
64 | Department of Children and Family Services to the agency;  
65 | amending s. 916.3012, F.S.; clarifying provisions  
66 | governing the determination of a defendant's mental  
67 | competence to proceed; amending s. 916.302, F.S., relating  
68 | to the involuntary commitment of a defendant; conforming  
69 | provisions to the transfer of duties from the  
70 | Developmental Disabilities Program Office within the  
71 | Department of Children and Family Services to the agency;  
72 | requiring that the department and agency submit an  
73 | evaluation to the court before the transfer of a defendant  
74 | from one civil or forensic facility to another; amending  
75 | s. 916.3025, F.S.; clarifying that the committing court  
76 | retains jurisdiction over a defendant placed on  
77 | conditional release; providing for the transfer of  
78 | continuing jurisdiction to another court where the  
79 | defendant resides; amending s. 916.303, F.S.; clarifying  
80 | provisions governing the dismissal of charges against a  
81 | defendant found to be incompetent to proceed due to  
82 | retardation or autism; amending s. 916.304, F.S.;  
83 | providing for the conditional release of a defendant to a  
84 | civil facility; amending ss. 921.137 and 985.223, F.S.,

85 relating to provisions governing the imposition of the  
 86 death sentence upon a defendant with mental retardation  
 87 and the determination of incompetency in cases involving  
 88 juvenile delinquency; conforming provisions to the  
 89 transfer of duties from the Developmental Disabilities  
 90 Program Office within the Department of Children and  
 91 Family Services to the Agency for Persons with  
 92 Disabilities; amending ss. 287.057, 408.036, 943.0585, and  
 93 943.059, F.S.; conforming cross-references; providing an  
 94 effective date.

95

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

97

98 Section 1. Section 916.105, Florida Statutes, is amended  
 99 to read:

100 916.105 Legislative intent.--

101 (1) It is the intent of the Legislature that the  
 102 Department of Children and Family Services and the Agency for  
 103 Persons with Disabilities, as appropriate, establish, locate,  
 104 and maintain separate and secure forensic facilities and  
 105 programs for the treatment or training of defendants who have  
 106 been ~~are~~ charged with a felony and who have been found to be  
 107 incompetent to proceed due to their mental illness, mental  
 108 retardation, or autism, or who have been acquitted of a felony  
 109 ~~felonies~~ by reason of insanity, and who, while still under the  
 110 jurisdiction of the committing court, are committed to the  
 111 department or agency under the provisions of this chapter. Such  
 112 ~~The separate, secure~~ facilities shall be sufficient to

113 accommodate the number of defendants committed under the  
 114 conditions noted above. Except for those defendants found by  
 115 the department or agency to be appropriate for treatment or  
 116 training in a civil ~~treatment~~ facility or program pursuant to  
 117 subsection (3), forensic. ~~Such secure~~ facilities shall be  
 118 designed and administered so that ingress and egress, together  
 119 with other requirements of this chapter, may be strictly  
 120 controlled by staff responsible for security in order to protect  
 121 the defendant, facility personnel, other clients, and citizens  
 122 in adjacent communities.

123 (2) It is ~~further~~ the intent of the Legislature that  
 124 treatment or training programs for defendants who are found to  
 125 have mental illness, mental retardation, or autism ~~are found to~~  
 126 ~~be mentally ill, retarded, or autistic~~ and are involuntarily  
 127 committed to the department or agency, and who are still under  
 128 the jurisdiction of the committing court, be provided in ~~such a~~  
 129 manner, subject to security requirements and other mandates of  
 130 this chapter, as to ensure the rights of the defendants as  
 131 provided in this chapter.

132 (3) It is the intent of the Legislature that evaluation  
 133 and services to defendants who have mental illness, mental  
 134 retardation, or autism ~~are mentally ill, retarded, or autistic~~  
 135 be provided in community settings, in community residential  
 136 facilities, or in civil, ~~nonforensic~~ facilities, whenever this  
 137 is a feasible alternative to treatment or training in a state  
 138 forensic facility.

139 (4) It is the intent of the Legislature to minimize and  
 140 achieve an ongoing reduction in the use of restraint and

141 seclusion in forensic facilities serving persons with  
 142 developmental disabilities.

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

145 916.106 Definitions.--For the purposes of this chapter,  
 146 the term:

147 (1) "Agency" means the Agency for Persons with  
 148 Disabilities. The agency is responsible for training forensic  
 149 clients who are developmentally disabled due to mental  
 150 retardation or autism and have been determined incompetent to  
 151 proceed.

152 (2)~~(1)~~ "Autism" has the same meaning as in s. 393.063.  
 153 ~~means a pervasive, neurologically based developmental disability~~  
 154 ~~of extended duration which causes severe learning,~~  
 155 ~~communication, and behavior disorders, with the age of onset of~~  
 156 ~~autism occurring during infancy or childhood. Individuals with~~  
 157 ~~autism exhibit impairment in reciprocal social interaction,~~  
 158 ~~impairment in verbal and nonverbal communication and imaginative~~  
 159 ~~ability, and a markedly restricted repertoire of activities and~~  
 160 ~~interests.~~

161 (3)~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb,  
 162 gun, or other device capable of emitting chloroacetophenone  
 163 (CN), chlorobenzalmalononitrile (CS) or any derivatives thereof  
 164 in any form, or any other agent with lacrimatory properties, and  
 165 shall include products such as that commonly known as "mace."

166 (4)~~(3)~~ "Civil facility" means:

167 (a) A mental health facility established within the  
 168 department or by contract with the department to serve

169 individuals committed pursuant to chapter 394 and those  
 170 defendants committed pursuant to this chapter who do not require  
 171 the security provided in a forensic facility; or-

172 (b) An intermediate care facility for the developmentally  
 173 disabled, a foster care facility, a group home facility, or a  
 174 supported living setting, as defined in s. 393.063, designated  
 175 by the agency to serve those defendants who do not require the  
 176 security provided in a forensic facility.

177 (5)-(4) "Court" means the circuit court.

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

181 (7)-(5) "Department" means the Department of Children and  
 182 Family Services. The department is responsible for the treatment  
 183 of forensic clients who have been determined incompetent to  
 184 proceed due to mental illness or who have been acquitted of a  
 185 felony by reason of insanity.

186 (8)-(6) "Express and informed consent" or "consent" means  
 187 consent given voluntarily in writing after a conscientious and  
 188 sufficient explanation and disclosure of the purpose of the  
 189 proposed treatment, the common side effects of the treatment, if  
 190 any, the expected duration of the treatment, and any alternative  
 191 treatment available.

192 (9)-(7) "Forensic client" or "client" means any defendant  
 193 who has been ~~is mentally ill, retarded, or autistic and who is~~  
 194 committed to the department or agency pursuant to s. 916.13, s.  
 195 916.15, or s. 916.302. ~~this chapter and:~~

196 ~~(a) Who has been determined to need treatment for a mental~~

197 ~~illness or training for retardation or autism;~~  
 198 ~~(b) Who has been found incompetent to proceed on a felony~~  
 199 ~~offense or has been acquitted of a felony offense by reason of~~  
 200 ~~insanity;~~  
 201 ~~(c) Who has been determined by the department to:~~  
 202 ~~1. Be dangerous to himself or herself or others; or~~  
 203 ~~2. Present a clear and present potential to escape; and~~  
 204 ~~(d) Who is an adult or a juvenile prosecuted as an adult.~~  
 205 (10)-(8) "Forensic facility" means a separate and secure  
 206 facility established within the department or agency to serve  
 207 forensic clients. A Such separate and secure facility means a  
 208 facilities shall be security-grade building for the purpose of  
 209 separately housing persons who have mental illness from persons  
 210 with retardation or autism and separately housing persons who  
 211 have been involuntarily committed pursuant to this chapter from  
 212 nonforensic residents buildings located on grounds distinct in  
 213 location from other facilities for persons who are mentally ill.  
 214 ~~The Florida State Hospital shall not be required to maintain~~  
 215 ~~separate facilities for mentally ill, retarded, or autistic~~  
 216 ~~defendants who are found incompetent to proceed or who are~~  
 217 ~~acquitted of a criminal offense by reason of insanity.~~  
 218 (11)-(9) "Incompetent to proceed" means unable to proceed  
 219 at any material stage of a criminal proceeding, which shall  
 220 include trial of the case, pretrial hearings involving questions  
 221 of fact on which the defendant might be expected to testify,  
 222 entry of a plea, proceedings for violation of probation or  
 223 violation of community control, sentencing, and hearings on  
 224 issues regarding a defendant's failure to comply with court



225 orders or conditions or other matters in which the mental  
 226 competence of the defendant is necessary for a just resolution  
 227 of the issues being considered.

228 ~~(12)(10)~~ "Institutional security personnel" means the  
 229 staff of forensic facilities ~~members~~ who meet or exceed the  
 230 requirements of s. 943.13 and who are responsible for providing  
 231 security, protecting ~~for protection of~~ clients and personnel,  
 232 enforcing ~~for the enforcement of~~ rules, preventing and  
 233 investigating ~~for prevention and investigation of~~ unauthorized  
 234 activities, and ~~for~~ safeguarding the interests of citizens in  
 235 the surrounding communities.

236 ~~(13)(11)~~ "Mental illness" means an impairment of the  
 237 emotional processes that exercise conscious control of one's  
 238 actions, or of the ability to perceive or understand reality,  
 239 which impairment substantially interferes with a defendant's  
 240 ability to meet the ordinary demands of living. For the purposes  
 241 of this chapter, the term does not apply to defendants with only  
 242 mental retardation or autism ~~who are solely retarded or~~  
 243 ~~autistic~~, and does not include intoxication or conditions  
 244 manifested only by antisocial behavior or substance abuse  
 245 impairment.

246 (14) "Restraint" means a physical device, method, or drug  
 247 used to control dangerous behavior.

248 (a) A physical restraint is any manual method or physical  
 249 or mechanical device, material, or equipment attached or  
 250 adjacent to an individual's body so that he or she cannot easily  
 251 remove the restraint and that restricts freedom of movement or  
 252 normal access to his or her body.

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253        (b) A drug used as a restraint is a medication used to  
254 control a person's behavior or to restrict his or her freedom of  
255 movement and is not a standard treatment for the person's  
256 medical or psychiatric condition. Physically holding a person  
257 during a procedure to forcibly administer psychotropic  
258 medication is a physical restraint.

259        (c) Restraint does not include physical devices, such as  
260 orthopedically prescribed appliances, surgical dressings and  
261 bandages, supportive body bands, or other physical holding when  
262 necessary for routine physical examinations and tests; for  
263 purposes of orthopedic, surgical, or other similar medical  
264 treatment; when used to provide support for the achievement of  
265 functional body position or proper balance; or when used to  
266 protect a person from falling out of bed.

267        (15)~~(12)~~ "Retardation" has the same meaning as in s.  
268 393.063. means significantly subaverage general intellectual  
269 functioning existing concurrently with deficits in adaptive  
270 behavior and manifested during the period from conception to age  
271 18. "Significantly subaverage general intellectual functioning,"  
272 for the purpose of this definition, means performance which is  
273 two or more standard deviations from the mean score on a  
274 standardized intelligence test specified in the rules of the  
275 department. "Adaptive behavior," for the purpose of this  
276 definition, means the effectiveness or degree with which an  
277 individual meets the standards of personal independence and  
278 social responsibility expected of the individual's age, cultural  
279 group, and community.

280        (16) "Seclusion" means the physical segregation of a

281 person in any fashion or the involuntary isolation of a person  
 282 in a room or area from which the person is prevented from  
 283 leaving. The prevention may be by physical barrier or by a staff  
 284 member who is acting in a manner, or who is physically situated,  
 285 so as to prevent the person from leaving the room or area. For  
 286 purposes of this chapter, the term does not mean isolation due  
 287 to a person's medical condition or symptoms, the confinement in  
 288 state mental health treatment facilities to a bedroom or area  
 289 during normal hours of sleep when there is not an active order  
 290 for seclusion, or during an emergency such as a riot or hostage  
 291 situation when clients may be temporarily placed in their rooms  
 292 for their own safety.

293 (17)~~(13)~~ "Social service professional," ~~for the purposes~~  
 294 ~~of part III,~~ means a person whose minimum qualifications include  
 295 a bachelor's degree and at least 2 years of social work,  
 296 clinical practice, special education, habilitation, or  
 297 equivalent experience working directly with persons with  
 298 retardation, autism, or other developmental disabilities.

299 Section 3. Section 916.107, Florida Statutes, is amended  
 300 to read:

301 916.107 Rights of forensic clients.--

302 (1) RIGHT TO INDIVIDUAL DIGNITY.--

303 (a) The policy of the state is that the individual dignity  
 304 of the client shall be respected at all times and upon all  
 305 occasions, including any occasion when the forensic client is  
 306 detained, transported, or treated. Clients with mental illness,  
 307 retardation, or autism ~~Defendants who are mentally ill,~~  
 308 ~~retarded, or autistic~~ and who are charged with committing

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309 felonies shall receive appropriate treatment or training. In a  
310 criminal case involving a client ~~defendant~~ who has been  
311 adjudicated incompetent to proceed or not guilty by reason of  
312 insanity, a jail may be used as an emergency facility for up to  
313 15 days following ~~from~~ the date the department or agency  
314 receives a completed copy of the court commitment order  
315 containing all ~~the~~ documentation required by the applicable  
316 ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For  
317 a forensic client ~~defendant who is mentally ill, retarded, or~~  
318 ~~autistic,~~ who is held in a jail awaiting admission to a facility  
319 of the department or agency, ~~and who has been adjudicated~~  
320 ~~incompetent to proceed or not guilty by reason of insanity,~~  
321 evaluation and treatment or training may ~~shall~~ be provided in  
322 the jail by the local community mental health provider ~~public~~  
323 ~~receiving facility~~ for mental health services, ~~or~~ by the  
324 developmental disabilities ~~services~~ program for persons with  
325 retardation or autism, the client's physician or psychologist,  
326 or any other appropriate program until the client is transferred  
327 to a civil or forensic facility ~~the custody of the department.~~

328 (b) Forensic clients ~~Mentally ill, retarded, or autistic~~  
329 ~~defendants who are committed to the department pursuant to this~~  
330 ~~chapter and~~ who are initially placed in, or subsequently  
331 transferred to, a civil facility as described in part I of  
332 chapter 394 or to a residential facility as described in chapter  
333 393 shall have the same rights as other persons committed to  
334 these facilities for as long as they remain there.

335 (2) RIGHT TO TREATMENT.--

336 (a) The policy of the state is that neither the department

337 nor the agency shall ~~not~~ deny treatment or training to any  
338 client and that no services shall be delayed ~~at a facility~~  
339 because the forensic client is indigent pursuant to s. 27.52 and  
340 presently unable to pay. However, every reasonable effort to  
341 collect appropriate reimbursement for the cost of providing  
342 services to clients able to pay for the services, including  
343 reimbursement from insurance or other third-party payments,  
344 shall be made by facilities providing services pursuant to this  
345 chapter and in accordance with the provisions of s. 402.33.

346 (b) Each forensic client shall be given, at the time of  
347 admission and at regular intervals thereafter, a physical  
348 examination, which shall include screening for communicable  
349 disease by a health practitioner authorized by law to give such  
350 screenings and examinations.

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

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

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

360 (a) A forensic client ~~committed to the department pursuant~~  
361 ~~to this act~~ shall be asked to give express and informed written  
362 consent for treatment. If a client ~~in a forensic facility~~  
363 refuses such treatment as is deemed necessary and essential by  
364 the client's multidisciplinary treatment team ~~at the forensic~~

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365 ~~facility~~ for the appropriate care of the client ~~and the safety~~  
366 ~~of the client or others~~, such treatment may be provided under  
367 the following circumstances:

368 1. In an emergency situation in which there is immediate  
369 danger to the safety of the client or others, such treatment may  
370 be provided upon the written order of a physician for a period  
371 not to exceed 48 hours, excluding weekends and legal holidays.  
372 If, after the 48-hour period, the client has not given express  
373 and informed consent to the treatment initially refused, the  
374 administrator or designee of the civil or forensic facility  
375 shall, within 48 hours, excluding weekends and legal holidays,  
376 petition the committing court or the circuit court serving the  
377 county in which the facility is located, at the option of the  
378 facility administrator or designee, for an order authorizing the  
379 continued treatment of the client. In the interim, the need for  
380 treatment shall be reviewed every 48 hours and may be continued  
381 without the consent of the client upon the continued written  
382 order of a physician who has determined that the emergency  
383 situation continues to present a danger to the safety of the  
384 client or others.

385 2. In a situation other than an emergency situation, the  
386 administrator or designee of the ~~forensic~~ facility shall  
387 petition the court for an order authorizing necessary and  
388 essential ~~the~~ treatment for ~~to~~ the client. The order shall allow  
389 such treatment for a period not to exceed 90 days following ~~from~~  
390 the date of the entry of the order. Unless the court is notified  
391 in writing that the client has provided express and informed  
392 consent in writing or that the client has been discharged by the

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393 committing court, the administrator or designee shall, prior to  
394 the expiration of the initial 90-day order, petition the court  
395 for an order authorizing the continuation of treatment for  
396 another 90-day period. This procedure shall be repeated until  
397 the client provides consent or is discharged by the committing  
398 court.

399 3. At the hearing on the issue of whether the court should  
400 enter an order authorizing treatment for which a client was  
401 unable to or ~~has~~ refused to give express and informed consent,  
402 the court shall determine by clear and convincing evidence that  
403 the client has mental illness, retardation, or autism ~~is~~  
404 ~~mentally ill, retarded, or autistic as defined in this chapter,~~  
405 that the treatment not consented to is essential to the care of  
406 the client, and that the treatment not consented to is not  
407 experimental and does not present an unreasonable risk of  
408 serious, hazardous, or irreversible side effects. In arriving at  
409 the substitute judgment decision, the court must consider at  
410 least the following factors:

- 411 a. The client's expressed preference regarding treatment;  
412 b. The probability of adverse side effects;  
413 c. The prognosis without treatment; and  
414 d. The prognosis with treatment.

415  
416 The hearing shall be as convenient to the client as may be  
417 consistent with orderly procedure and shall be conducted in  
418 physical settings not likely to be injurious to the client's  
419 condition. The court may appoint a general or special magistrate  
420 to preside at the hearing. The client or the client's guardian,

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421 and the representative, shall be provided with a copy of the  
422 petition and the date, time, and location of the hearing. The  
423 client has the right to have an attorney represent him or her at  
424 the hearing, and, if the client is indigent, the court shall  
425 appoint the office of the public defender to represent the  
426 client at the hearing. The client may testify or not, as he or  
427 she chooses, and has the right to cross-examine witnesses and  
428 may present his or her own witnesses.

429 (b) In addition to the provisions of paragraph (a), in the  
430 case of surgical procedures requiring the use of a general  
431 anesthetic or electroconvulsive treatment or nonpsychiatric  
432 medical procedures, and prior to performing the procedure,  
433 written permission shall be obtained from the client, if the  
434 client is legally competent, from the parent or guardian of a  
435 minor client, or from the guardian of an incompetent client. The  
436 administrator or designee of the forensic facility or a  
437 designated representative may, with the concurrence of the  
438 client's attending physician, authorize emergency surgical or  
439 nonpsychiatric medical treatment if such treatment is deemed  
440 lifesaving or for a situation threatening serious bodily harm to  
441 the client and permission of the client or the client's guardian  
442 could not ~~cannot~~ be obtained before provision of the needed  
443 treatment.

444 (4) QUALITY OF TREATMENT.--Each forensic client ~~committed~~  
445 ~~pursuant to this chapter~~ shall receive treatment or training  
446 suited to the client's needs, which shall be administered  
447 skillfully, safely, and humanely with full respect for the  
448 client's dignity and personal integrity. Each client shall



449 receive such medical, vocational, social, educational, and  
 450 rehabilitative services as the client's condition requires to  
 451 bring about a return to court for disposition of charges or a  
 452 return to the community. In order to achieve this goal, the  
 453 department and the agency shall coordinate their services with  
 454 each other, the Department of Corrections, is directed to  
 455 ~~coordinate the services of the Mental Health Program Office and~~  
 456 ~~the Developmental Disabilities Program Office with all other~~  
 457 ~~programs of the department~~ and other appropriate state agencies.

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

459 ~~(a)~~ Each forensic client ~~committed pursuant to the~~  
 460 ~~provisions of this chapter~~ has the right to communicate freely  
 461 and privately with persons outside the facility unless it is  
 462 determined that such communication is likely to be harmful to  
 463 the client or others. Clients shall have the right to contact  
 464 and to receive communication from their attorneys at any  
 465 reasonable time.

466 ~~(a)(b)~~ Each forensic client ~~committed under the provisions~~  
 467 ~~of this chapter~~ shall be allowed to receive, send, and mail  
 468 sealed, unopened correspondence; and no client's incoming or  
 469 outgoing correspondence shall be opened, delayed, held, or  
 470 censored by the facility unless there is reason to believe that  
 471 it contains items or substances that ~~which~~ may be harmful to the  
 472 client or others, in which case the administrator or designee  
 473 may direct reasonable examination of such mail and may regulate  
 474 the disposition of such items or substances. For purposes of  
 475 this paragraph, the term "correspondence" does shall not include  
 476 parcels or packages. Forensic facilities may ~~are authorized to~~

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477 promulgate reasonable institutional policies to provide for the  
478 inspection of parcels or packages and for the removal of  
479 contraband items for health or security reasons prior to the  
480 contents being given to a client.

481 (b)~~(e)~~ If a client's right to communicate is restricted by  
482 the administrator, written notice of such restriction and the  
483 duration of the restriction shall be served on the client or his  
484 or her legal guardian or representatives, and such restriction  
485 shall be recorded on the client's clinical record with the  
486 reasons therefor. The restriction of a client's right to  
487 communicate shall be reviewed at least every 7 days.

488 (c)~~(d)~~ Each forensic facility shall establish reasonable  
489 institutional policies governing visitors, visiting hours, and  
490 the use of telephones by clients in the least restrictive manner  
491 possible.

492 (d)~~(e)~~ Each forensic client ~~committed pursuant to this~~  
493 ~~chapter~~ shall have ready access to a telephone in order to  
494 report an alleged abuse. The facility or program staff shall  
495 orally and in writing inform each client of the procedure for  
496 reporting abuse and shall present the information in a language  
497 the client understands. A written copy of that procedure,  
498 including the telephone number of the central abuse hotline and  
499 reporting forms, shall be posted in plain view.

500 (e)~~(f)~~ The department's or agency's forensic facilities  
501 shall develop policies providing a procedure for reporting  
502 abuse. Facility staff shall be required, as a condition of  
503 employment, to become familiar with the procedures for the  
504 reporting of abuse.

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505 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A  
506 forensic client's right to possession of clothing and personal  
507 effects shall be respected. The department or agency by rule, or  
508 the administrator of any forensic facility by written  
509 institutional policy, may declare certain items to be hazardous  
510 to the health or welfare of clients or others or to the  
511 operation of the facility. Such items may be restricted from  
512 introduction into the facility or may be restricted from being  
513 in a client's possession. The administrator or designee may take  
514 temporary custody of such effects when required for medical and  
515 safety reasons. Custody of such personal effects shall be  
516 recorded in the client's clinical record.

517 (7) VOTING IN PUBLIC ELECTIONS.--A forensic client  
518 ~~committed pursuant to this chapter~~ who is eligible to vote  
519 according to the laws of the state has the right to vote in the  
520 primary and general elections. The department and agency shall  
521 establish rules to enable clients to obtain voter registration  
522 forms, applications for absentee ballots, and absentee ballots.

523 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record  
524 for each forensic client shall be maintained. The record shall  
525 include data pertaining to admission and such other information  
526 as may be required under rules of the department or the agency.  
527 Unless waived by express and informed consent of the client or  
528 the client's legal guardian or, if the client is deceased, by  
529 the client's personal representative or by that family member  
530 who stands next in line of intestate succession or except as  
531 otherwise provided in this subsection, the clinical record is  
532 confidential and exempt from the provisions of s. 119.07(1) and

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533 s. 24(a), Art. I of the State Constitution.

534 (a) Such clinical record may be released:

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

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

540 3. To a qualified researcher, as defined by rule; a staff  
541 member of the facility; or an employee of the department or  
542 agency when the administrator of the facility, or secretary or  
543 director of the department or agency, deems it necessary for  
544 treatment of the client, maintenance of adequate records,  
545 compilation of treatment data, or evaluation of programs.

546 4. For statistical and research purposes if the  
547 information is abstracted in such a way as to protect the  
548 identity of individuals.

549 5. If a client receiving services ~~pursuant to this chapter~~  
550 has declared an intention to harm other persons. ~~When such a~~  
551 ~~declaration has been made~~, the administrator shall authorize the  
552 release of sufficient information to provide adequate warning to  
553 the person threatened with harm by the client, and to the  
554 committing court, the state attorney, and the attorney  
555 representing the client.

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

561 accordance with the code of ethics of the profession involved  
 562 and must comply with all state and federal laws and regulations  
 563 pertaining to the release of personal health information.

564 (b) Notwithstanding other provisions of this subsection,  
 565 the department or agency may request or receive from or provide  
 566 to any of the following entities client information to  
 567 facilitate treatment, habilitation, rehabilitation, and  
 568 continuity of care of any forensic client:

- 569 1. The Social Security Administration and the United  
 570 States Department of Veterans Affairs;
- 571 2. Law enforcement agencies, state attorneys, defense  
 572 attorneys, and judges in regard to the client's status;
- 573 3. Jail personnel in the jail in ~~to~~ which a client may be  
 574 housed ~~returned~~; and
- 575 4. Community agencies and others expected to provide  
 576 followup care to the client upon the client's return to the  
 577 community.

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

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

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

588 (9) HABEAS CORPUS.--

589 (a) At any time, and without notice, a forensic client  
 590 detained by a facility, or a relative, friend, guardian,  
 591 representative, or attorney on behalf of such client, may  
 592 petition for a writ of habeas corpus to question the cause and  
 593 legality of such detention and request that the committing court  
 594 issue a writ for release. Each client ~~committed pursuant to this~~  
 595 ~~chapter~~ shall receive a written notice of the right to petition  
 596 for a writ of habeas corpus.

597 (b) A client or his or her legal guardian or  
 598 representatives or attorney may file a petition in the circuit  
 599 court in the county where the client is committed alleging that  
 600 the client is being unjustly denied a right or privilege granted  
 601 herein or that a procedure authorized herein is being abused.  
 602 Upon the filing of such a petition, the circuit court shall have  
 603 the authority to conduct a judicial inquiry and to issue any  
 604 appropriate order to correct an abuse of the provisions of this  
 605 chapter.

606 (10) TRANSPORTATION.--

607 (a) The sheriff shall consult with the governing board of  
 608 the county as to the most appropriate and cost-effective means  
 609 of transportation for forensic clients who have been committed  
 610 for treatment or training. Such consultation shall include, but  
 611 is not limited to, consideration of the cost to the county of  
 612 transportation performed by sheriff's ~~department~~ personnel as  
 613 opposed to transportation performed by other means and, if  
 614 sheriff's ~~department~~ personnel are to be used for  
 615 transportation, the effect such use will have, if any, on  
 616 service delivery levels of the sheriff's road patrol. After such

617 consultation with the governing board of the county, the sheriff  
 618 shall determine the most appropriate and cost-effective means of  
 619 transportation for forensic clients committed for treatment or  
 620 training.

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

624 (c) Any company that transports a client pursuant to this  
 625 section is considered an independent contractor and is solely  
 626 liable for the safe and dignified transportation of the client.  
 627 Any transport company that contracts with the governing board of  
 628 a county for the transport of clients as provided for in this  
 629 section shall be insured and provide no less than \$100,000 in  
 630 liability insurance with respect to the transportation of the  
 631 clients.

632 (d) Any company that contracts with a governing board of a  
 633 county to transport clients shall comply with the applicable  
 634 rules of the department or agency to ensure the safety and  
 635 dignity of the clients.

636 (11) LIABILITY FOR VIOLATIONS.--Any person who violates or  
 637 abuses any rights or privileges of a forensic client in the  
 638 custody of the department or agency that are provided under this  
 639 chapter shall be ~~by this act is~~ liable for damages as determined  
 640 by law. Any person who acts in good faith in complying with the  
 641 provisions of this chapter ~~act~~ is immune from civil or criminal  
 642 liability for his or her actions in connection with the  
 643 admission, diagnosis, treatment, training, or discharge of a  
 644 client to or from a facility. However, this subsection does not

645 | relieve any person from liability if he or she is negligent.

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

648 |       916.1075 Sexual misconduct prohibited; reporting required;  
649 | penalties.--

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

651 |       (a) "Covered person" means an employee, "~~includes any paid~~  
652 | ~~staff member~~, volunteer, or intern of the department or agency;  
653 | any person under contract with the department or agency; and any  
654 | person providing care or support to a forensic client on behalf  
655 | of the department, the agency, or their ~~its~~ providers.

656 |       (b) "Sexual activity" means:

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

659 |       2. The oral, anal, or vaginal penetration by or union with  
660 | the sexual organ of another or the anal or vaginal penetration  
661 | of another by any other object.

662 |       3. Intentionally touching in a lewd or lascivious manner  
663 | the breasts, genitals, the genital area, or buttocks, or the  
664 | clothing covering them, of a person, or forcing or enticing a  
665 | person to touch the perpetrator.

666 |       4. Intentionally masturbating in the presence of another  
667 | person.

668 |       5. Intentionally exposing the genitals in a lewd or  
669 | lascivious manner in the presence of another person.

670 |       6. Intentionally committing any other sexual act that does  
671 | not involve actual physical or sexual contact with the victim,  
672 | including, but not limited to, sadomasochistic abuse, sexual



673 bestiality, or the simulation of any act involving sexual  
 674 activity in the presence of a victim.

675 (c) "Sexual misconduct" means any sexual activity between  
 676 a covered person ~~an employee~~ and a forensic client in the  
 677 custody of the department or agency, regardless of the consent  
 678 of the client. The term does not include an act done for a bona  
 679 fide medical purpose or an internal search conducted in the  
 680 lawful performance of duty by a covered person ~~an employee~~.

681 (2) A covered person ~~An employee~~ who engages in sexual  
 682 misconduct with a forensic client who resides in a civil or  
 683 forensic facility commits a felony of the second degree,  
 684 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 685 Such person ~~An employee~~ may be found guilty of violating this  
 686 subsection without having committed the crime of sexual battery.

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

689 (4) This section does not apply to a covered person ~~an~~  
 690 ~~employee~~ who:

691 (a) Is legally married to the client; or

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

695 (5) A covered person ~~An employee~~ who witnesses sexual  
 696 misconduct, or who otherwise knows or has reasonable cause to  
 697 suspect that a person has engaged in sexual misconduct, shall  
 698 immediately report the incident to the department's central  
 699 abuse hotline and to the appropriate local law enforcement  
 700 agency. The covered person ~~Such employee~~ shall also prepare,

701 date, and sign an independent report that specifically describes  
 702 the nature of the sexual misconduct, the location and time of  
 703 the incident, and the persons involved. For an allegation  
 704 pertaining to a forensic client committed to the agency, the  
 705 covered person ~~employee~~ shall deliver the report to the  
 706 supervisor or program director, who shall provide copies to the  
 707 agency's ~~is responsible for providing copies to the department's~~  
 708 inspector general. For an allegation pertaining to a forensic  
 709 client committed to the department, the covered person shall  
 710 deliver the report to the supervisor or program director, who  
 711 shall provide copies to the department's inspector general. The  
 712 inspector general shall immediately conduct an appropriate  
 713 administrative investigation, and, if there is probable cause to  
 714 believe that sexual misconduct has occurred, the inspector  
 715 general shall notify the state attorney in the circuit in which  
 716 the incident occurred.

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

719 916.1081 Escape from program; penalty.--

720 (1) A forensic client who is ~~A defendant~~ involuntarily  
 721 committed to the department or agency, who is in the custody of  
 722 the department or agency, and ~~under the provisions of this~~  
 723 ~~chapter~~ who escapes or attempts to escape from a civil or  
 724 forensic facility ~~or program~~ commits a felony of the second  
 725 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 726 775.084.

727 (2) A person who is involuntarily committed to the  
 728 department or the agency, who is in the custody of the

729 Department of Corrections, and who escapes or attempts to escape  
 730 from a facility or program commits a felony of the second  
 731 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 732 775.084. Any punishment of imprisonment imposed under this  
 733 subsection shall run consecutive to any former sentence imposed  
 734 upon the person.

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

737 916.1085 Introduction or removal of certain articles  
 738 unlawful; penalty.--

739 (1) (a) Except as authorized by law or as specifically  
 740 authorized by the person in charge of a facility, it is unlawful  
 741 to introduce into or upon the grounds of any facility under the  
 742 supervision or control of the department or agency, or to take  
 743 or attempt to take or send therefrom, any of the following  
 744 articles, which are ~~hereby~~ declared to be contraband for the  
 745 purposes of this section:

- 746 1. Any intoxicating beverage or beverage which causes or  
 747 may cause an intoxicating effect;
- 748 2. Any controlled substance as defined in chapter 893;
- 749 3. Any firearm or deadly weapon; or
- 750 4. Any other item as determined by the department or the  
 751 agency, and as designated by ~~departmental~~ rule or ~~by the~~  
 752 ~~administrator of any facility, and designated~~ by written  
 753 institutional policies, to be hazardous to the welfare of  
 754 clients ~~patients~~ or the operation of the facility.

755 (b) It is unlawful to transmit to, attempt to transmit to,  
 756 or cause or attempt to cause to be transmitted to or received by

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757 any client of any facility under the supervision or control of  
758 the department or agency any article or thing declared by this  
759 section to be contraband, at any place that ~~which~~ is outside of  
760 the grounds of such facility, except as authorized by law or as  
761 specifically authorized by the person in charge of such  
762 facility.

763 (2)

764 (b) These provisions shall be enforced by institutional  
765 security personnel ~~as defined in s. 916.106(10)~~ or by a law  
766 enforcement officer as defined in s. 943.10.

767 Section 7. Section 916.1091, Florida Statutes, is amended  
768 to read:

769 916.1091 Duties, functions, and powers of institutional  
770 security personnel.--In case of emergency, and when necessary to  
771 provide protection and security to any client, to the personnel,  
772 equipment, buildings, or grounds of a department or agency  
773 facility, or to citizens in the surrounding community,  
774 institutional security personnel may, when authorized by the  
775 administrator of the facility or her or his designee when the  
776 administrator is not present, use a chemical weapon against a  
777 patient housed in a forensic facility. However, such weapon  
778 shall be used only to the extent necessary to provide ~~such~~  
779 protection and security. Under no circumstances shall any ~~such~~  
780 officer carry a chemical weapon on her or his person except  
781 during the period of the emergency for which its use was  
782 authorized. All chemical weapons shall be placed in secure  
783 storage when their use is not authorized as provided in this  
784 section.

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

787 916.1093 Operation and administration; rules.--

788 (1) The department or agency may ~~is authorized to~~ enter  
 789 into contracts and do such things as may be necessary and  
 790 incidental to assure compliance with and to carry out the  
 791 provisions of this chapter in accordance with the stated  
 792 legislative intent.

793 (2) The department or agency may ~~has authority to~~ adopt  
 794 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
 795 provisions of this chapter. Such rules must address the use of  
 796 restraint and seclusion in forensic facilities and must be  
 797 consistent with recognized best practices; prohibit inherently  
 798 dangerous restraint or seclusion procedures; establish  
 799 limitations on the use and duration of restraint and seclusion;  
 800 establish measures to ensure the safety of clients and staff  
 801 during an incident of restraint or seclusion; establish  
 802 procedures for staff to follow before, during, and after  
 803 incidents of restraint or seclusion; establish professional  
 804 qualifications of and training for staff who may order or be  
 805 engaged in the use of restraint or seclusion; and establish  
 806 mandatory reporting, data collection, and data-dissemination  
 807 procedures and requirements relating to the use of restraint and  
 808 seclusion, including a requirement that each instance of the use  
 809 of restraint or seclusion be documented in the facility's client  
 810 record.

811 Section 9. Subsection (1) of section 916.111, Florida  
 812 Statutes, is amended to read:

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813           916.111 Training of mental health experts.--The evaluation  
 814 of defendants for competency to proceed or for sanity at the  
 815 time of the commission of the offense shall be conducted in such  
 816 a way as to ensure uniform application of the criteria  
 817 enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal  
 818 Procedure. The department shall develop, and may contract with  
 819 accredited institutions:

820           (1) To provide:

821           (a) A plan for training ~~community~~ mental health  
 822 professionals to perform forensic evaluations and to standardize  
 823 the criteria and procedures to be used in these evaluations;

824           (b) Clinical protocols and procedures based upon the  
 825 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal  
 826 Procedure; and

827           (c) Training for ~~community~~ mental health professionals in  
 828 the application of these protocols and procedures in performing  
 829 forensic evaluations and providing reports to the courts; and

830           Section 10. Section 916.115, Florida Statutes, is amended  
 831 to read:

832           916.115 Appointment of experts.--

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

836           ~~(b)~~ The court shall ~~may~~ appoint no more than three experts  
 837 to determine ~~issues of~~ the mental condition of a defendant in a  
 838 criminal case, including ~~the issues of~~ competency to proceed,  
 839 insanity, ~~and involuntary hospitalization or placement,~~ and  
 840 treatment. The panel of experts ~~An expert~~ may evaluate the

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841 defendant in jail or in another appropriate local facility or in  
842 a facility of the Department of Corrections.

843 (a)(e) To the extent possible, the an appointed experts  
844 ~~expert~~ shall have completed forensic evaluator training approved  
845 by the department and each shall be ~~either~~ a psychiatrist,  
846 licensed psychologist, or physician.

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

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

854 ~~(a)1.~~ The court shall pay for any expert that it appoints  
855 by court order, upon motion of counsel for the defendant or the  
856 state or upon its own motion. If the defense or the state  
857 retains an expert and waives the confidentiality of the expert's  
858 report, the court may pay for no more than two additional  
859 experts appointed by court order. If an expert appointed by the  
860 court upon motion of counsel for the defendant specifically to  
861 evaluate the competence of the defendant to proceed also  
862 addresses ~~in his or her evaluation~~ issues related to sanity as  
863 an affirmative defense, the court shall pay only for that  
864 portion of the expert's fees relating to the evaluation on  
865 competency to proceed, and the balance of the fees shall be  
866 chargeable to the defense.

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

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869            (b)3- Pursuant to s. 29.005, the office of the state  
870 attorney shall pay for any expert retained by the office and-  
871 ~~Notwithstanding subparagraph 1., the office of the state~~  
872 ~~attorney shall pay~~ for any expert whom the office retains and  
873 whom the office moves the court to appoint in order to ensure  
874 that the expert has access to the defendant.

875            (c)4- An expert retained by the defendant who is  
876 represented by private counsel appointed under s. 27.5303 shall  
877 be paid by the Justice Administrative Commission.

878            (d)5- An expert retained by a defendant who is indigent  
879 for costs as determined by the court and who is represented by  
880 private counsel, other than private counsel appointed under s.  
881 27.5303, on a fee or pro bono basis, or who is representing  
882 himself or herself, shall be paid by the Justice Administrative  
883 Commission from funds specifically appropriated for these  
884 expenses.

885            (e)6- State employees shall be reimbursed for ~~paid~~  
886 expenses pursuant to s. 112.061.

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

888            (g)8- In order for an expert to be paid for the services  
889 rendered, the expert's report and testimony must explicitly  
890 address each of the factors and follow the procedures set out in  
891 this chapter and in the Florida Rules of Criminal Procedure.

892            Section 11. Subsections (1), (2), and (3) of section  
893 916.12, Florida Statutes, are amended to read:

894            916.12 Mental competence to proceed.--

895            (1) A defendant is incompetent to proceed within the  
896 meaning of this chapter if the defendant does not have



897 sufficient present ability to consult with her or his lawyer  
 898 with a reasonable degree of rational understanding or if the  
 899 defendant has no rational, as well as factual, understanding of  
 900 the proceedings against her or him.

901 (2) Mental health experts appointed pursuant to s. 916.115  
 902 ~~An expert~~ shall first determine whether the defendant has a  
 903 mental illness ~~person is mentally ill~~ and, if so, consider the  
 904 factors related to the issue of whether the defendant meets the  
 905 criteria for competence to proceed as described in subsection  
 906 (1); ~~that is, whether the defendant has sufficient present~~  
 907 ~~ability to consult with counsel with a reasonable degree of~~  
 908 ~~rational understanding and whether the defendant has a rational,~~  
 909 ~~as well as factual, understanding of the pending proceedings.~~ A  
 910 defendant must be evaluated by no fewer than two experts before  
 911 the court commits the defendant or takes other action authorized  
 912 by this chapter or the Florida Rules of Criminal Procedure,  
 913 except if one expert finds that the defendant is incompetent to  
 914 proceed and the parties stipulate to that finding, the court may  
 915 commit the defendant or take other action authorized by this  
 916 chapter or the rules without further evaluation or hearing, or  
 917 the court may appoint no more than two additional experts to  
 918 evaluate the defendant. Notwithstanding any stipulation by the  
 919 state and the defendant, the court may require a hearing with  
 920 testimony from the expert or experts before ordering the  
 921 commitment of a defendant.

922 (3) In considering the issue of competence to proceed, an  
 923 examining expert shall first consider and specifically include  
 924 in his or her report the defendant's capacity to:

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925 (a) Appreciate the charges or allegations against the  
 926 defendant.~~+~~

927 (b) Appreciate the range and nature of possible penalties,  
 928 if applicable, that may be imposed in the proceedings against  
 929 the defendant.~~+~~

930 (c) Understand the adversarial nature of the legal  
 931 process.~~+~~

932 (d) Disclose to counsel facts pertinent to the proceedings  
 933 at issue.~~+~~

934 (e) Manifest appropriate courtroom behavior.~~+~~~~and~~

935 (f) Testify relevantly.~~+~~

936 ~~(g) and include in his or her report~~ Any other factor  
 937 deemed relevant by the expert.

938 Section 12. Section 916.13, Florida Statutes, is amended  
 939 to read:

940 916.13 Involuntary commitment of defendant adjudicated  
 941 incompetent.--

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

947 (a) The defendant has a mental illness ~~is mentally ill~~ and  
 948 because of the mental illness:

949 1. The defendant is manifestly incapable of surviving  
 950 alone or with the help of willing and responsible family or  
 951 friends, including available alternative services, and, without  
 952 treatment, the defendant is likely to suffer from neglect or

953 | refuse to care for herself or himself and such neglect or  
 954 | refusal poses a real and present threat of substantial harm to  
 955 | the defendant's well-being; or ~~and~~

956 |         2. There is a substantial likelihood that in the near  
 957 | future the defendant will inflict serious bodily harm on herself  
 958 | or himself or another person, as evidenced by recent behavior  
 959 | causing, attempting, or threatening such harm;

960 |         (b) All available, less restrictive treatment  
 961 | alternatives, including treatment in community residential  
 962 | facilities or community inpatient or outpatient settings, which  
 963 | would offer an opportunity for improvement of the defendant's  
 964 | condition have been judged to be inappropriate; and

965 |         (c) There is a substantial probability that the mental  
 966 | illness causing the defendant's incompetence will respond to  
 967 | treatment and the defendant will regain competency to proceed in  
 968 | the reasonably foreseeable future.

969 |         (2) A defendant who has been charged with a felony and who  
 970 | has been adjudicated incompetent to proceed due to mental  
 971 | illness, and who meets the criteria for involuntary commitment  
 972 | to the department under the provisions of this chapter, may be  
 973 | committed to the department, and the department shall retain and  
 974 | treat the defendant. No later than 6 months after the date of  
 975 | admission and ~~or~~ at the end of any period of extended  
 976 | commitment, or at any time the administrator or designee shall  
 977 | have determined that the defendant has regained competency to  
 978 | proceed or no longer meets the criteria for continued  
 979 | commitment, the administrator or designee shall file a report  
 980 | with the court pursuant to the applicable Florida Rules of

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981 Criminal Procedure.

982 Section 13. Section 916.145, Florida Statutes, is amended  
 983 to read:

984 916.145 ~~Adjudication of incompetency due to mental~~  
 985 ~~illness~~, Dismissal of charges.--The charges against any  
 986 defendant adjudicated incompetent to proceed due to the  
 987 defendant's mental illness shall be dismissed without prejudice  
 988 to the state if the defendant remains incompetent to proceed 5  
 989 years after such determination, unless the court in its order  
 990 specifies its reasons for believing that the defendant will  
 991 become competent to proceed within the foreseeable future and  
 992 specifies the time within which the defendant is expected to  
 993 become competent to proceed. The charges against the defendant  
 994 are dismissed without prejudice to the state to refile the  
 995 charges should the defendant be declared competent to proceed in  
 996 the future.

997 Section 14. Section 916.15, Florida Statutes, is amended  
 998 to read:

999 916.15 Involuntary commitment of defendant adjudicated not  
 1000 guilty by reason of insanity.--

1001 (1) The determination of whether a defendant is not guilty  
 1002 by reason of insanity shall be determined in accordance with  
 1003 Rule 3.217, Florida Rules of Criminal Procedure.

1004 (2) ~~(1)~~ A defendant who is acquitted of criminal charges  
 1005 because of a finding of not guilty by reason of insanity may be  
 1006 involuntarily committed pursuant to such finding if the  
 1007 defendant has a mental illness ~~is mentally ill~~ and, because of  
 1008 the illness, is manifestly dangerous to himself or herself or

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1009 others.

1010        (3)~~(2)~~ Every defendant acquitted of criminal charges by  
1011 reason of insanity and found to meet the criteria for  
1012 involuntary commitment may be committed and treated in  
1013 accordance with the provisions of this section and the  
1014 applicable Florida Rules of Criminal Procedure. The department  
1015 shall admit a defendant so adjudicated to an appropriate  
1016 facility or program for treatment and shall retain and treat  
1017 such defendant. No later than 6 months after the date of  
1018 admission, prior to the end of any period of extended  
1019 commitment, or at any time the administrator or designee shall  
1020 have determined that the defendant no longer meets the criteria  
1021 for continued commitment placement, the administrator or  
1022 designee shall file a report with the court pursuant to the  
1023 applicable Florida Rules of Criminal Procedure.

1024        (4)~~(3)~~ In all proceedings under this section ~~subsection~~,  
1025 both the defendant and the state shall have the right to a  
1026 hearing before the committing court. Evidence at such hearing  
1027 may be presented by the hospital administrator or the  
1028 administrator's designee as well as by the state and the  
1029 defendant. The defendant shall have the right to counsel at any  
1030 such hearing. In the event that a defendant is determined to be  
1031 indigent pursuant to s. 27.52, the public defender shall  
1032 represent the defendant. The parties shall have access to the  
1033 defendant's records at the treating facilities and may interview  
1034 or depose personnel who have had contact with the defendant at  
1035 the treating facilities.

1036        Section 15. Section 916.16, Florida Statutes, is amended

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1037 to read:

1038 916.16 Jurisdiction of committing court.--

1039 (1) The committing court shall retain jurisdiction over ~~in~~  
 1040 ~~the case of~~ any defendant involuntarily committed due to a  
 1041 determination of incompetency ~~hospitalized as incompetent to~~  
 1042 proceed due to mental illness or ~~because of~~ a finding of not  
 1043 guilty by reason of insanity pursuant to this chapter. The ~~No~~  
 1044 ~~such~~ defendant may not be released except by order of the  
 1045 committing court. An ~~The~~ administrative hearing examiner does  
 1046 not shall have ~~no~~ jurisdiction to determine issues of continuing  
 1047 commitment hospitalization or release of any defendant  
 1048 involuntarily committed ~~admitted~~ pursuant to this chapter.

1049 (2) The committing court shall retain jurisdiction in the  
 1050 case of any defendant placed on conditional release pursuant to  
 1051 s. 916.17. ~~No~~ Such defendant may not be released from the  
 1052 conditions of release except by order of the committing court.

1053 Section 16. Section 916.17, Florida Statutes, is amended  
 1054 to read:

1055 916.17 Conditional release.--

1056 (1) Except for an inmate currently serving a prison  
 1057 sentence, ~~The committing court may order a conditional release~~  
 1058 ~~of any defendant who has been found to be incompetent to proceed~~  
 1059 ~~or not guilty by reason of insanity, based on an approved plan~~  
 1060 ~~for providing appropriate outpatient care and treatment.~~ the  
 1061 committing court may order a conditional release of any  
 1062 defendant in lieu of an involuntary commitment to a facility  
 1063 pursuant to s. 916.13 or s. 916.15 based upon an approved plan  
 1064 for providing appropriate outpatient care and treatment. Upon a

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1065 recommendation that outpatient treatment of the defendant is  
1066 appropriate, a written plan for outpatient treatment, including  
1067 recommendations from qualified professionals, must be filed with  
1068 the court, with copies to all parties. Such a plan may also be  
1069 submitted by the defendant and filed with the court with copies  
1070 to all parties. The plan shall include:

1071 (a) Special provisions for residential care or adequate  
1072 supervision of the defendant.

1073 (b) Provisions for outpatient mental health services.

1074 (c) If appropriate, recommendations for auxiliary services  
1075 such as vocational training, educational services, or special  
1076 medical care.

1077

1078 In its order of conditional release, the court shall specify the  
1079 conditions of release based upon the release plan and shall  
1080 direct the appropriate agencies or persons to submit periodic  
1081 reports to the court regarding the defendant's compliance with  
1082 the conditions of the release and progress in treatment, with  
1083 copies to all parties.

1084 (2) Upon the filing of an affidavit or statement under  
1085 oath by any person that the defendant has failed to comply with  
1086 the conditions of release, that the defendant's condition has  
1087 deteriorated to the point that inpatient care is required, or  
1088 that the release conditions should be modified, the court shall  
1089 hold a hearing within 7 days after receipt of the affidavit or  
1090 statement under oath. After the hearing, the court may modify  
1091 the release conditions. The court may also order that the  
1092 defendant be returned to the department if it is found, after

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1093 the appointment and report of experts, that the person meets the  
 1094 criteria for involuntary commitment under s. 916.13 or s. 916.15  
 1095 ~~treatment.~~

1096 (3) If at any time it is determined after a hearing that  
 1097 the defendant who has been conditionally released under  
 1098 subsection (1) no longer requires court-supervised followup  
 1099 care, the court shall terminate its jurisdiction in the cause  
 1100 and discharge the defendant.

1101 Section 17. Section 916.301, Florida Statutes, is amended  
 1102 to read:

1103 916.301 Appointment of experts.--

1104 (1) All evaluations ordered by the court under this part  
 1105 must be conducted by qualified experts who have expertise in  
 1106 evaluating persons with retardation or autism. The agency  
 1107 ~~department~~ shall maintain and provide the courts annually with a  
 1108 list of available retardation and autism professionals who are  
 1109 appropriately licensed and qualified to perform evaluations of  
 1110 defendants alleged to be incompetent to proceed due to  
 1111 retardation or autism. The courts may use professionals from  
 1112 this list when appointing experts and ordering evaluations under  
 1113 this part ~~for defendants suspected of being retarded or~~  
 1114 ~~autistic.~~

1115 (2) If a defendant's suspected mental condition is  
 1116 retardation or autism, the court shall appoint a panel of  
 1117 experts consisting of: ~~two experts, one of whom must be the~~  
 1118 ~~developmental services program of the department, each of whom~~  
 1119 ~~will evaluate whether the defendant meets the definition of~~  
 1120 ~~retardation or autism and, if so, whether the defendant is~~



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1121 ~~competent to proceed.~~

1122 (a)~~(3)~~ At least one, or at the request of any party, two  
1123 experts ~~the court may appoint one additional expert~~ to evaluate  
1124 ~~the defendant. The expert appointed by the court will evaluate~~  
1125 whether the defendant meets the definition of retardation or  
1126 autism and, if so, whether the defendant is competent to  
1127 proceed.

1128 (b)~~(4)~~ ~~The developmental services program shall select A~~  
1129 psychologist selected by the agency who is licensed or  
1130 authorized by law to practice in this state, with experience in  
1131 evaluating persons suspected of having retardation or autism,  
1132 and a social service professional, with experience in working  
1133 with persons with retardation or autism ~~to evaluate the~~  
1134 ~~defendant.~~

1135 1.(a) The psychologist shall evaluate whether the  
1136 defendant meets the definition of retardation or autism and, if  
1137 so, whether the defendant is incompetent to proceed due to  
1138 retardation or autism.

1139 2.(b) The social service professional shall provide a  
1140 social and developmental history of the defendant.

1141 ~~(5) All evaluations ordered by the court must be from~~  
1142 ~~qualified experts with experience in evaluating persons with~~  
1143 ~~retardation or autism.~~

1144 (3)~~(6)~~ The panel of experts may examine the defendant in  
1145 jail, in another appropriate local facility, in a facility of  
1146 the Department of Corrections, or on an outpatient basis.

1147 (4)~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to  
1148 evaluate the mental condition of a defendant in a criminal case

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1149 shall be allowed reasonable fees for services rendered as  
 1150 evaluators and as witnesses, which shall be paid by the court.  
 1151 State employees shall be paid expenses pursuant to s. 112.061.  
 1152 The fees shall be taxed as costs in the case. In order for the  
 1153 experts to be paid for the services rendered, the reports and  
 1154 testimony must explicitly address each of the factors and follow  
 1155 the procedures set out in this chapter and in the Florida Rules  
 1156 of Criminal Procedure.

1157 Section 18. Subsections (1), (2), and (3) of section  
 1158 916.3012, Florida Statutes, are amended to read:

1159 916.3012 Mental competence to proceed.--

1160 (1) A defendant whose suspected mental condition is  
 1161 retardation or autism is incompetent to proceed within the  
 1162 meaning of this chapter if the defendant does not have  
 1163 sufficient present ability to consult with the defendant's  
 1164 lawyer with a reasonable degree of rational understanding or if  
 1165 the defendant has no rational, as well as factual, understanding  
 1166 of the proceedings against the defendant.

1167 (2) The Experts in retardation or autism appointed  
 1168 pursuant to s. 916.301 shall first consider whether the  
 1169 defendant meets the definition of retardation or autism and, if  
 1170 so, consider the factors related to the issue of whether the  
 1171 defendant meets the criteria for competence to proceed as  
 1172 described in subsection (1), ~~that is, whether the defendant has~~  
 1173 ~~sufficient present ability to consult with counsel with a~~  
 1174 ~~reasonable degree of rational understanding and whether the~~  
 1175 ~~defendant has a rational, as well as factual, understanding of~~  
 1176 ~~the pending proceedings.~~

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1177 (3) In considering the issue of competence to proceed, the  
 1178 examining experts shall first consider and specifically include  
 1179 in their report the defendant's capacity to:

1180 (a) Appreciate the charges or allegations against the  
 1181 defendant. ~~†~~

1182 (b) Appreciate the range and nature of possible penalties,  
 1183 if applicable, that may be imposed in the proceedings against  
 1184 the defendant. ~~†~~

1185 (c) Understand the adversarial nature of the legal  
 1186 process. ~~†~~

1187 (d) Disclose to counsel facts pertinent to the proceedings  
 1188 at issue. ~~†~~

1189 (e) Manifest appropriate courtroom behavior. ~~† and~~

1190 (f) Testify relevantly. ~~†~~

1191 (g) ~~and include in their report~~ Any other factor deemed  
 1192 relevant by the experts.

1193 Section 19. Section 916.302, Florida Statutes, is amended  
 1194 to read:

1195 916.302 Involuntary commitment of defendant determined to  
 1196 be incompetent to proceed ~~due to retardation or autism.--~~

1197 (1) CRITERIA.--Every defendant who is charged with a  
 1198 felony and who is adjudicated ~~found to be~~ incompetent to proceed  
 1199 due to retardation or autism, ~~pursuant to this chapter and the~~  
 1200 ~~applicable Florida Rules of Criminal Procedure,~~ may be  
 1201 involuntarily committed for training upon a finding by the court  
 1202 of clear and convincing evidence that:

1203 (a) The defendant has retardation or autism ~~is retarded or~~  
 1204 ~~autistic;~~

1205 (b) There is a substantial likelihood that in the near  
 1206 future the defendant will inflict serious bodily harm on himself  
 1207 or herself or another person, as evidenced by recent behavior  
 1208 causing, attempting, or threatening such harm;

1209 (c) All available, less restrictive alternatives,  
 1210 including services provided in community residential facilities  
 1211 or other community settings, which would offer an opportunity  
 1212 for improvement of the condition have been judged to be  
 1213 inappropriate; and

1214 (d) There is a substantial probability that the  
 1215 retardation or autism causing the defendant's incompetence will  
 1216 respond to training and the defendant will regain competency to  
 1217 proceed in the reasonably foreseeable future.

1218 (2) ADMISSION TO A FACILITY.--

1219 (a) A defendant who has been charged with a felony and who  
 1220 is found to be incompetent to proceed due to retardation or  
 1221 autism, and who meets the criteria for involuntary commitment to  
 1222 the agency department under the provisions of this chapter,  
 1223 shall be committed to the agency department, and the agency  
 1224 department shall retain and provide appropriate training for  
 1225 ~~serve~~ the defendant. No later than 6 months after the date of  
 1226 admission or at the end of any period of extended commitment or  
 1227 at any time the administrator or designee shall have determined  
 1228 that the defendant has regained competency to proceed or no  
 1229 longer meets the criteria for continued commitment, the  
 1230 administrator or designee shall file a report with the court  
 1231 pursuant to this chapter and the applicable Florida Rules of  
 1232 Criminal Procedure.

1233 (b) A defendant determined to be incompetent to proceed  
 1234 due to retardation or autism may be ordered by a circuit court  
 1235 into a forensic secure facility designated by the agency  
 1236 ~~department~~ for ~~retarded or autistic~~ defendants who have mental  
 1237 retardation or autism.

1238 (c) The agency ~~department~~ may transfer a defendant from a  
 1239 designated forensic secure facility to another designated  
 1240 forensic secure facility and must notify the court of the  
 1241 transfer within 30 days after the transfer is completed.

1242 (d) The agency ~~department~~ may not transfer a defendant  
 1243 from a designated forensic secure facility to a civil nonsecure  
 1244 facility without first notifying the court, and all parties, 30  
 1245 days before the proposed transfer. If the court objects to the  
 1246 proposed transfer ~~to a nonsecure facility~~, it must send its  
 1247 written objection to the agency ~~department~~. The agency  
 1248 ~~department~~ may transfer the defendant unless it receives the  
 1249 written objection from the court within 30 days after the  
 1250 court's receipt of the notice of the proposed transfer.

1251 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

1252 (a) If a defendant has is both mental retardation or  
 1253 autism ~~retarded or autistic~~ and has a mental illness ~~mentally~~  
 1254 ~~ill~~, evaluations must address which condition is primarily  
 1255 affecting the defendant's competency to proceed. Referral of the  
 1256 defendant should be made to a civil or forensic ~~the~~ facility ~~or~~  
 1257 ~~program~~ most appropriate to address the symptoms that ~~which~~ are  
 1258 the cause of the defendant's incompetence.

1259 (b) Transfer from one civil or forensic facility ~~or~~  
 1260 ~~program~~ to another civil or forensic facility ~~or program~~ may

1261 occur when, in the department's and agency's judgment, it is in  
 1262 the defendant's best treatment or training interests. The  
 1263 department and agency shall submit an evaluation and  
 1264 justification for the transfer to the court. The court may  
 1265 consult with an outside expert if necessary. Transfer will  
 1266 require an amended order from the committing court.

1267 Section 20. Section 916.3025, Florida Statutes, is amended  
 1268 to read:

1269 916.3025 Jurisdiction of committing court.--

1270 (1) The committing court shall retain jurisdiction in the  
 1271 case of any defendant found to be incompetent to proceed due to  
 1272 retardation or autism and ordered into a forensic secure  
 1273 facility designated by the agency ~~department~~ for retarded or  
 1274 autistic defendants who have mental retardation or autism. ~~A~~ No  
 1275 defendant may not be released except by the order of the  
 1276 committing court. An administrative hearing examiner does not  
 1277 have jurisdiction to determine issues of continuing commitment  
 1278 or release of any defendant involuntarily committed pursuant to  
 1279 this chapter.

1280 (2) The committing court shall retain jurisdiction in the  
 1281 case of any defendant placed on conditional release pursuant to  
 1282 s. 916.304. ~~No~~ Such defendant may not be released from the  
 1283 conditions of release except by order of the committing court.

1284 (3) The committing court shall consider a ~~the~~ petition to  
 1285 involuntarily admit a defendant whose charges have been  
 1286 dismissed to residential services provided by the agency  
 1287 ~~department's developmental services program a person whose~~  
 1288 ~~charges have been dismissed,~~ and, when applicable, to continue

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1289 secure placement of such person as provided in s. 916.303. The  
 1290 committing court shall retain jurisdiction over such person so  
 1291 long as he or she remains in secure placement or is on  
 1292 conditional release as provided in s. 916.304. However, upon  
 1293 request the court may transfer continuing jurisdiction to the  
 1294 court in the circuit where the defendant resides. The defendant  
 1295 may not be released from an order for secure placement except by  
 1296 order of the court.

1297 Section 21. Section 916.303, Florida Statutes, is amended  
 1298 to read:

1299 916.303 Determination of incompetency due to retardation  
 1300 or autism; dismissal of charges.--

1301 (1) The charges against any defendant found to be  
 1302 incompetent to proceed due to retardation or autism shall be  
 1303 dismissed without prejudice to the state if the defendant  
 1304 remains incompetent to proceed within a reasonable time after  
 1305 such determination, not to exceed 2 years, unless the court in  
 1306 its order specifies its reasons for believing that the defendant  
 1307 will become competent to proceed within the foreseeable future  
 1308 and specifies the time within which the defendant is expected to  
 1309 become competent to proceed. The charges may be refiled by the  
 1310 state if against the defendant are dismissed without prejudice  
 1311 to the state to refile the charges should the defendant is be  
 1312 declared competent to proceed in the future.

1313 (2)~~(a)~~ If the charges are dismissed and if the defendant  
 1314 is considered to lack sufficient capacity to give express and  
 1315 informed consent to a voluntary application for services and  
 1316 lacks the basic survival and self-care skills to provide for his

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1317 or her well-being or is likely to physically injure himself or  
1318 herself or others if allowed to remain at liberty, the agency  
1319 ~~department~~, the state attorney, or the defendant's attorney  
1320 shall ~~may~~ apply to the committing court to involuntarily admit  
1321 the defendant to residential services pursuant to s. 393.11.

1322 (3)(b) If the defendant is considered to need involuntary  
1323 residential services for reasons described in subsection (2)  
1324 ~~under s. 393.11~~ and, further, there is a substantial likelihood  
1325 that the defendant will injure another person or continues to  
1326 present a danger of escape, and all available less restrictive  
1327 alternatives, including services in community residential  
1328 facilities or other community settings, which would offer an  
1329 opportunity for improvement of the condition have been judged to  
1330 be inappropriate, ~~then the~~ agency ~~person or entity filing the~~  
1331 ~~petition under s. 393.11~~, the state attorney, or the defendant's  
1332 counsel may request, ~~the petitioning commission, or the~~  
1333 ~~department may also petition~~ the committing court to continue  
1334 the defendant's placement in a secure facility ~~or program~~  
1335 pursuant to this part section. Any placement so continued under  
1336 this subsection must be defendant involuntarily admitted under  
1337 ~~this paragraph shall have his or her status~~ reviewed by the  
1338 court at least annually at a hearing. The annual review and  
1339 hearing shall determine whether the defendant continues to meet  
1340 the criteria described in this subsection ~~for involuntary~~  
1341 ~~residential services~~ and, if so, whether the defendant still  
1342 requires involuntary placement in a secure facility ~~or program~~  
1343 ~~because the court finds that the defendant is likely to~~  
1344 ~~physically injure others as specified in s. 393.11~~ and whether



1345 the defendant is receiving adequate care, treatment,  
 1346 habilitation, and rehabilitation, including psychotropic  
 1347 medication and behavioral programming. Notice of the annual  
 1348 review and review hearing shall be given to the state attorney  
 1349 and ~~to~~ the defendant's attorney. In no instance may a  
 1350 defendant's placement in a secure facility ~~or program~~ exceed the  
 1351 maximum sentence for the crime for which the defendant was  
 1352 charged.

1353 Section 22. Section 916.304, Florida Statutes, is amended  
 1354 to read:

1355 916.304 Conditional release.--

1356 (1) Except for an inmate currently serving a prison  
 1357 sentence, the committing court may order a conditional release  
 1358 of any defendant who has been found to be incompetent to proceed  
 1359 due to retardation or autism, based on an approved plan for  
 1360 providing ~~continuing~~ community-based training. The committing  
 1361 criminal court may order a conditional release of any defendant  
 1362 to a civil facility in lieu of an involuntary commitment to a  
 1363 forensic facility pursuant to s. 916.302. Upon a recommendation  
 1364 that community-based training for the defendant is appropriate,  
 1365 a written plan for community-based training, including  
 1366 recommendations from qualified professionals, may be filed with  
 1367 the court, with copies to all parties. Such a plan may also be  
 1368 submitted by the defendant and filed with the court, with copies  
 1369 to all parties. The plan must ~~shall~~ include:

1370 (a) Special provisions for residential care and adequate  
 1371 supervision of the defendant, including recommended location of  
 1372 placement.

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1373 (b) Recommendations for auxiliary services such as  
1374 vocational training, psychological training, educational  
1375 services, leisure services, and special medical care.  
1376

1377 In its order of conditional release, the court shall specify the  
1378 conditions of release based upon the release plan and shall  
1379 direct the appropriate agencies or persons to submit periodic  
1380 reports to the courts regarding the defendant's compliance with  
1381 the conditions of the release and progress in training, with  
1382 copies to all parties.

1383 (2) Upon the filing of an affidavit or statement under  
1384 oath by any person that the defendant has failed to comply with  
1385 the conditions of release, that the defendant's condition has  
1386 deteriorated, or that the release conditions should be modified,  
1387 the court shall hold a hearing within 7 days after receipt of  
1388 the affidavit or statement under oath. With notice to the court,  
1389 the agency may detain a defendant in a forensic facility until  
1390 the hearing occurs. After the hearing, the court may modify the  
1391 release conditions. The court may also order that the defendant  
1392 be placed into more appropriate programs for further training or  
1393 may order the defendant to be committed ~~returned~~ to a forensic  
1394 facility ~~involuntary residential services of the department~~ if  
1395 it is found, after the appointment and report of experts, that  
1396 the defendant meets the criteria for placement in a forensic  
1397 facility ~~involuntary residential services.~~

1398 (3) If at any time it is determined after a hearing that  
1399 the defendant conditionally released under subsection (1) no  
1400 longer requires court-supervised followup care, the court shall

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1401 terminate its jurisdiction in the cause and discharge the  
 1402 defendant.

1403 Section 23. Subsection (1) of section 921.137, Florida  
 1404 Statutes, is amended to read:

1405 921.137 Imposition of the death sentence upon a ~~mentally~~  
 1406 ~~retarded~~ defendant with mental retardation prohibited.--

1407 (1) As used in this section, the term "mental retardation"  
 1408 means significantly subaverage general intellectual functioning  
 1409 existing concurrently with deficits in adaptive behavior and  
 1410 manifested during the period from conception to age 18. The term  
 1411 "significantly subaverage general intellectual functioning," for  
 1412 the purpose of this section, means performance that is two or  
 1413 more standard deviations from the mean score on a standardized  
 1414 intelligence test specified in the rules of the Agency for  
 1415 Persons with Disabilities ~~Department of Children and Family~~  
 1416 ~~Services~~. The term "adaptive behavior," for the purpose of this  
 1417 definition, means the effectiveness or degree with which an  
 1418 individual meets the standards of personal independence and  
 1419 social responsibility expected of his or her age, cultural  
 1420 group, and community. The Agency for Persons with Disabilities  
 1421 ~~Department of Children and Family Services~~ shall adopt rules to  
 1422 specify the standardized intelligence tests as provided in this  
 1423 subsection.

1424 Section 24. Paragraphs (d), (e), (g), and (h) of  
 1425 subsection (1), subsections (2), (3), and (4), paragraph (b) of  
 1426 subsection (5), and paragraph (a) of subsection (6) of section  
 1427 985.223, Florida Statutes, are amended to read:

1428 985.223 Incompetency in juvenile delinquency cases.--

1429 (1) If, at any time prior to or during a delinquency case,  
 1430 the court has reason to believe that the child named in the  
 1431 petition may be incompetent to proceed with the hearing, the  
 1432 court on its own motion may, or on the motion of the child's  
 1433 attorney or state attorney must, stay all proceedings and order  
 1434 an evaluation of the child's mental condition.

1435 (d) For incompetency evaluations related to mental  
 1436 illness, the Department of Children and Family Services shall  
 1437 maintain and annually provide the courts with a list of  
 1438 available mental health professionals who have completed a  
 1439 training program approved by the Department of Children and  
 1440 Family Services to perform the evaluations.

1441 (e) For incompetency evaluations related to mental  
 1442 retardation or autism, the court shall order the Agency for  
 1443 Persons with Disabilities ~~Developmental Disabilities Program~~  
 1444 ~~Office within the Department of Children and Family Services~~ to  
 1445 examine the child to determine if the child meets the definition  
 1446 of "retardation" or "autism" in s. 393.063 and, if so, whether  
 1447 the child is competent to proceed with delinquency proceedings.

1448 (g) Immediately upon the filing of the court order finding  
 1449 a child incompetent to proceed, the clerk of the court shall  
 1450 notify the Department of Children and Family Services and the  
 1451 Agency for Persons with Disabilities and fax or hand deliver to  
 1452 the department and to the agency ~~of Children and Family Services~~  
 1453 a referral packet that ~~which~~ includes, at a minimum, the court  
 1454 order, the charging documents, the petition, and the court-  
 1455 appointed evaluator's reports.

1456 (h) After placement of the child in the appropriate

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1457 | setting, the Department of Children and Family Services in  
 1458 | consultation with the Agency for Persons with Disabilities, as  
 1459 | appropriate, must, within 30 days after placement of the  
 1460 | ~~Department of Children and Family Services places~~ the child,  
 1461 | prepare and submit to the court a treatment or training plan for  
 1462 | the child's restoration of competency. A copy of the ~~treatment~~  
 1463 | plan must be served upon the child's attorney, the state  
 1464 | attorney, and the attorneys representing the Department of  
 1465 | Juvenile Justice.

1466 |         (2) A child ~~who is mentally ill or retarded,~~ who is  
 1467 | adjudicated incompetent to proceed, and who has committed a  
 1468 | delinquent act or violation of law, either of which would be a  
 1469 | felony if committed by an adult, must be committed to the  
 1470 | Department of Children and Family Services for treatment or  
 1471 | training. A child who has been adjudicated incompetent to  
 1472 | proceed because of age or immaturity, or for any reason other  
 1473 | than for mental illness or retardation or autism, must not be  
 1474 | committed to the department or to the Department of Children and  
 1475 | Family Services for restoration-of-competency treatment or  
 1476 | training services. For purposes of this section, a child who has  
 1477 | committed a delinquent act or violation of law, either of which  
 1478 | would be a misdemeanor if committed by an adult, may not be  
 1479 | committed to the department or to the Department of Children and  
 1480 | Family Services for restoration-of-competency treatment or  
 1481 | training services.

1482 |         (3) If the court finds that a child has mental illness,  
 1483 | mental retardation, or autism ~~is mentally ill or retarded~~ and  
 1484 | adjudicates the child incompetent to proceed, the court must

1485 also determine whether the child meets the criteria for secure  
 1486 placement. A child may be placed in a secure facility or program  
 1487 if the court makes a finding by clear and convincing evidence  
 1488 that:

1489 (a) The child has mental illness, mental retardation, or  
 1490 autism ~~is mentally ill~~ and because of the mental illness, mental  
 1491 retardation, or autism, ~~or the child is mentally retarded and~~  
 1492 ~~because of the mental retardation:~~

1493 1. The child is manifestly incapable of surviving with the  
 1494 help of willing and responsible family or friends, including  
 1495 available alternative services, and without treatment or  
 1496 training the child is likely to either suffer from neglect or  
 1497 refuse to care for self, and such neglect or refusal poses a  
 1498 real and present threat of substantial harm to the child's well-  
 1499 being; or

1500 2. There is a substantial likelihood that in the near  
 1501 future the child will inflict serious bodily harm on self or  
 1502 others, as evidenced by recent behavior causing, attempting, or  
 1503 threatening such harm; and

1504 (b) All available less restrictive alternatives, including  
 1505 treatment or training in community residential facilities or  
 1506 community settings which would offer an opportunity for  
 1507 improvement of the child's condition, are inappropriate.

1508 (4) A child who is determined to have mental retardation  
 1509 or autism ~~be mentally ill or retarded~~, who has been adjudicated  
 1510 incompetent to proceed, and who meets the criteria set forth in  
 1511 subsection (3), must be committed to the Department of Children  
 1512 and Family Services, ~~and~~ receive treatment or training ~~the~~

1513 ~~Department of Children and Family Services must treat or train~~  
 1514 ~~the child~~ in a secure facility or program that ~~which~~ is the  
 1515 least restrictive alternative consistent with public safety. Any  
 1516 placement of a child to a secure residential program must be  
 1517 separate from adult forensic programs. If the child attains  
 1518 competency, then custody, case management, and supervision of  
 1519 the child will be transferred to the department in order to  
 1520 continue delinquency proceedings; however, the court retains  
 1521 authority to order the Department of Children and Family  
 1522 Services to provide continued treatment or training to maintain  
 1523 competency.

1524 (a) A child adjudicated incompetent due to mental  
 1525 retardation or autism may be ordered into a secure program or  
 1526 facility designated by the Department of Children and Family  
 1527 Services for ~~retarded~~ children with mental retardation or  
 1528 autism.

1529 (b) A child adjudicated incompetent due to mental illness  
 1530 may be ordered into a secure program or facility designated by  
 1531 the Department of Children and Family Services for ~~mentally ill~~  
 1532 children have mental illnesses.

1533 (c) Whenever a child is placed in a secure residential  
 1534 facility, the department will provide transportation to the  
 1535 secure residential facility for admission and from the secure  
 1536 residential facility upon discharge.

1537 (d) The purpose of the treatment or training is the  
 1538 restoration of the child's competency to proceed.

1539 (e) The service provider must file a written report with  
 1540 the court pursuant to the applicable Florida Rules of Juvenile

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1541 Procedure not later than 6 months after the date of commitment,  
 1542 or at the end of any period of extended treatment or training,  
 1543 and at any time the Department of Children and Family Services,  
 1544 through its service provider determines the child has attained  
 1545 competency or no longer meets the criteria for secure placement,  
 1546 or at such shorter intervals as ordered by the court. A copy of  
 1547 a written report evaluating the child's competency must be filed  
 1548 by the provider with the court and with the state attorney, the  
 1549 child's attorney, the department, and the Department of Children  
 1550 and Family Services.

1551 (5)

1552 (b) Whenever the provider files a report with the court  
 1553 informing the court that the child will never become competent  
 1554 to proceed, the Department of Children and Family Services will  
 1555 develop a discharge plan for the child prior to any hearing  
 1556 determining whether the child will ever become competent to  
 1557 proceed and send the. ~~The Department of Children and Family~~  
 1558 ~~Services must send the proposed discharge~~ plan to the court, the  
 1559 state attorney, the child's attorney, and the attorneys  
 1560 representing the Department of Juvenile Justice. The provider  
 1561 will continue to provide services to the child until the court  
 1562 issues the order finding the child will never become competent  
 1563 to proceed.

1564 (6) (a) If a child is determined to have mental illness,  
 1565 mental retardation, or autism ~~be mentally ill or retarded~~ and is  
 1566 found to be incompetent to proceed but does not meet the  
 1567 criteria set forth in subsection (3), the court shall commit the  
 1568 child to the Department of Children and Family Services and



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1569 shall order the Department of Children and Family Services to  
 1570 provide appropriate treatment and training in the community. The  
 1571 purpose of the treatment or training is the restoration of the  
 1572 child's competency to proceed.

1573 Section 25. Paragraph (b) of subsection (14) of section  
 1574 287.057, Florida Statutes, is amended to read:

1575 287.057 Procurement of commodities or contractual  
 1576 services.--

1577 (14)

1578 (b) Notwithstanding paragraph (a), the Department of  
 1579 Children and Family Services may enter into agreements, not to  
 1580 exceed 20 years, with a private provider to finance, design, and  
 1581 construct a forensic treatment facility, as defined in s.

1582 916.106(10)~~(8)~~, of at least 200 beds and to operate all aspects  
 1583 of daily operations within the forensic treatment facility. The  
 1584 selected contractor is authorized to sponsor the issuance of  
 1585 tax-exempt certificates of participation or other securities to  
 1586 finance the project, and the state is authorized to enter into a  
 1587 lease-purchase agreement for the forensic treatment facility.  
 1588 This paragraph expires July 1, 2006.

1589 Section 26. Paragraph (r) of subsection (3) of section  
 1590 408.036, Florida Statutes, is amended to read:

1591 408.036 Projects subject to review; exemptions.--

1592 (3) EXEMPTIONS.--Upon request, the following projects are  
 1593 subject to exemption from the provisions of subsection (1):

1594 (r) For beds in state mental health treatment facilities  
 1595 operated under s. 394.455(30) and state mental health forensic  
 1596 facilities operated under chapter 916 ~~s. 916.106(8)~~.

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1597 Section 27. Paragraph (a) of subsection (4) of section  
1598 943.0585, Florida Statutes, is amended to read:  
1599 943.0585 Court-ordered expunction of criminal history  
1600 records.--The courts of this state have jurisdiction over their  
1601 own procedures, including the maintenance, expunction, and  
1602 correction of judicial records containing criminal history  
1603 information to the extent such procedures are not inconsistent  
1604 with the conditions, responsibilities, and duties established by  
1605 this section. Any court of competent jurisdiction may order a  
1606 criminal justice agency to expunge the criminal history record  
1607 of a minor or an adult who complies with the requirements of  
1608 this section. The court shall not order a criminal justice  
1609 agency to expunge a criminal history record until the person  
1610 seeking to expunge a criminal history record has applied for and  
1611 received a certificate of eligibility for expunction pursuant to  
1612 subsection (2). A criminal history record that relates to a  
1613 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
1614 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,  
1615 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,  
1616 s. 916.1075, or a violation enumerated in s. 907.041 may not be  
1617 expunged, without regard to whether adjudication was withheld,  
1618 if the defendant was found guilty of or pled guilty or nolo  
1619 contendere to the offense, or if the defendant, as a minor, was  
1620 found to have committed, or pled guilty or nolo contendere to  
1621 committing, the offense as a delinquent act. The court may only  
1622 order expunction of a criminal history record pertaining to one  
1623 arrest or one incident of alleged criminal activity, except as  
1624 provided in this section. The court may, at its sole discretion,

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1625 order the expunction of a criminal history record pertaining to  
1626 more than one arrest if the additional arrests directly relate  
1627 to the original arrest. If the court intends to order the  
1628 expunction of records pertaining to such additional arrests,  
1629 such intent must be specified in the order. A criminal justice  
1630 agency may not expunge any record pertaining to such additional  
1631 arrests if the order to expunge does not articulate the  
1632 intention of the court to expunge a record pertaining to more  
1633 than one arrest. This section does not prevent the court from  
1634 ordering the expunction of only a portion of a criminal history  
1635 record pertaining to one arrest or one incident of alleged  
1636 criminal activity. Notwithstanding any law to the contrary, a  
1637 criminal justice agency may comply with laws, court orders, and  
1638 official requests of other jurisdictions relating to expunction,  
1639 correction, or confidential handling of criminal history records  
1640 or information derived therefrom. This section does not confer  
1641 any right to the expunction of any criminal history record, and  
1642 any request for expunction of a criminal history record may be  
1643 denied at the sole discretion of the court.

1644 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
1645 criminal history record of a minor or an adult which is ordered  
1646 expunged by a court of competent jurisdiction pursuant to this  
1647 section must be physically destroyed or obliterated by any  
1648 criminal justice agency having custody of such record; except  
1649 that any criminal history record in the custody of the  
1650 department must be retained in all cases. A criminal history  
1651 record ordered expunged that is retained by the department is  
1652 confidential and exempt from the provisions of s. 119.07(1) and

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1653 s. 24(a), Art. I of the State Constitution and not available to  
 1654 any person or entity except upon order of a court of competent  
 1655 jurisdiction. A criminal justice agency may retain a notation  
 1656 indicating compliance with an order to expunge.

1657 (a) The person who is the subject of a criminal history  
 1658 record that is expunged under this section or under other  
 1659 provisions of law, including former s. 893.14, former s. 901.33,  
 1660 and former s. 943.058, may lawfully deny or fail to acknowledge  
 1661 the arrests covered by the expunged record, except when the  
 1662 subject of the record:

1663 1. Is a candidate for employment with a criminal justice  
 1664 agency;

1665 2. Is a defendant in a criminal prosecution;

1666 3. Concurrently or subsequently petitions for relief under  
 1667 this section or s. 943.059;

1668 4. Is a candidate for admission to The Florida Bar;

1669 5. Is seeking to be employed or licensed by or to contract  
 1670 with the Department of Children and Family Services or the  
 1671 Department of Juvenile Justice or to be employed or used by such  
 1672 contractor or licensee in a sensitive position having direct  
 1673 contact with children, the developmentally disabled, the aged,  
 1674 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
 1675 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 1676 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and~~  
 1677 ~~(13)~~, s. 985.407, or chapter 400; or

1678 6. Is seeking to be employed or licensed by the Department  
 1679 of Education, any district school board, any university  
 1680 laboratory school, any charter school, any private or parochial

1681 school, or any local governmental entity that licenses child  
 1682 care facilities.

1683 Section 28. Paragraph (a) of subsection (4) of section  
 1684 943.059, Florida Statutes, is amended to read:

1685 943.059 Court-ordered sealing of criminal history  
 1686 records.--The courts of this state shall continue to have  
 1687 jurisdiction over their own procedures, including the  
 1688 maintenance, sealing, and correction of judicial records  
 1689 containing criminal history information to the extent such  
 1690 procedures are not inconsistent with the conditions,  
 1691 responsibilities, and duties established by this section. Any  
 1692 court of competent jurisdiction may order a criminal justice  
 1693 agency to seal the criminal history record of a minor or an  
 1694 adult who complies with the requirements of this section. The  
 1695 court shall not order a criminal justice agency to seal a  
 1696 criminal history record until the person seeking to seal a  
 1697 criminal history record has applied for and received a  
 1698 certificate of eligibility for sealing pursuant to subsection  
 1699 (2). A criminal history record that relates to a violation of s.  
 1700 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
 1701 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.  
 1702 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or  
 1703 a violation enumerated in s. 907.041 may not be sealed, without  
 1704 regard to whether adjudication was withheld, if the defendant  
 1705 was found guilty of or pled guilty or nolo contendere to the  
 1706 offense, or if the defendant, as a minor, was found to have  
 1707 committed or pled guilty or nolo contendere to committing the  
 1708 offense as a delinquent act. The court may only order sealing of

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1709 a criminal history record pertaining to one arrest or one  
1710 incident of alleged criminal activity, except as provided in  
1711 this section. The court may, at its sole discretion, order the  
1712 sealing of a criminal history record pertaining to more than one  
1713 arrest if the additional arrests directly relate to the original  
1714 arrest. If the court intends to order the sealing of records  
1715 pertaining to such additional arrests, such intent must be  
1716 specified in the order. A criminal justice agency may not seal  
1717 any record pertaining to such additional arrests if the order to  
1718 seal does not articulate the intention of the court to seal  
1719 records pertaining to more than one arrest. This section does  
1720 not prevent the court from ordering the sealing of only a  
1721 portion of a criminal history record pertaining to one arrest or  
1722 one incident of alleged criminal activity. Notwithstanding any  
1723 law to the contrary, a criminal justice agency may comply with  
1724 laws, court orders, and official requests of other jurisdictions  
1725 relating to sealing, correction, or confidential handling of  
1726 criminal history records or information derived therefrom. This  
1727 section does not confer any right to the sealing of any criminal  
1728 history record, and any request for sealing a criminal history  
1729 record may be denied at the sole discretion of the court.

1730 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
1731 history record of a minor or an adult which is ordered sealed by  
1732 a court of competent jurisdiction pursuant to this section is  
1733 confidential and exempt from the provisions of s. 119.07(1) and  
1734 s. 24(a), Art. I of the State Constitution and is available only  
1735 to the person who is the subject of the record, to the subject's  
1736 attorney, to criminal justice agencies for their respective

1737 criminal justice purposes, or to those entities set forth in  
 1738 subparagraphs (a)1., 4., 5., and 6. for their respective  
 1739 licensing and employment purposes.

1740 (a) The subject of a criminal history record sealed under  
 1741 this section or under other provisions of law, including former  
 1742 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 1743 deny or fail to acknowledge the arrests covered by the sealed  
 1744 record, except when the subject of the record:

1745 1. Is a candidate for employment with a criminal justice  
 1746 agency;

1747 2. Is a defendant in a criminal prosecution;

1748 3. Concurrently or subsequently petitions for relief under  
 1749 this section or s. 943.0585;

1750 4. Is a candidate for admission to The Florida Bar;

1751 5. Is seeking to be employed or licensed by or to contract  
 1752 with the Department of Children and Family Services or the  
 1753 Department of Juvenile Justice or to be employed or used by such  
 1754 contractor or licensee in a sensitive position having direct  
 1755 contact with children, the developmentally disabled, the aged,  
 1756 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
 1757 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 1758 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s.~~  
 1759 ~~916.106(10) and (13)~~, s. 985.407, or chapter 400; or

1760 6. Is seeking to be employed or licensed by the Department  
 1761 of Education, any district school board, any university  
 1762 laboratory school, any charter school, any private or parochial  
 1763 school, or any local governmental entity that licenses child  
 1764 care facilities.

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1765 |           Section 29. This act shall take effect upon becoming a  
1766 | law.