

HB 7199

2006
CS

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to forensic treatment and training;
7 amending s. 916.105, F.S.; revising legislative intent
8 with respect to the treatment or training of defendants
9 who have mental illness, mental retardation, or autism and
10 are committed to the Agency for Persons with Disabilities;
11 providing intent with respect to the use of restraint and
12 seclusion; amending s. 916.106, F.S.; providing and
13 revising definitions; amending s. 916.107, F.S., relating
14 to the rights of forensic clients; conforming provisions
15 to the transfer of duties from the Developmental
16 Disabilities Program Office within the Department of
17 Children and Family Services to the Agency for Persons
18 with Disabilities; revising provisions governing the
19 involuntary treatment of clients; requiring the
20 coordination of services between the department, the
21 agency, and the Department of Corrections; amending s.
22 916.1075, F.S.; revising certain prohibitions on sexual
23 misconduct involving covered persons of the Department of

Page 1 of 65

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

hb7199-01-c1

HB 7199

2006
CS

24 Children and Family Services or the Agency for Persons
25 with Disabilities; defining the term "covered person";
26 requiring that notice of sexual misconduct be provided to
27 the inspector general of the agency or department;
28 amending s. 916.1081, F.S.; providing that an escape or an
29 attempt to escape from a civil or forensic facility
30 constitutes a second-degree felony; amending s. 916.1085,
31 F.S.; providing for certain prohibitions concerning
32 contraband articles to apply to facilities under the
33 supervision or control of the Agency for Persons with
34 Disabilities; deleting a cross-reference; amending s.
35 916.1091, F.S.; authorizing the use of chemical weapons by
36 agency personnel; amending s. 916.1093, F.S.; authorizing
37 the agency to enter into contracts and adopt rules;
38 requiring department and agency rules to address the use
39 of restraint and seclusion; providing requirements for
40 such rules; amending s. 916.111, F.S.; revising provisions
41 governing the training of mental health experts; amending
42 s. 916.115, F.S.; requiring that the court appoint experts
43 to determine the mental condition of a criminal defendant;
44 requiring that the Department of Children and Family
45 Services annually provide the courts with a list of
46 certain mental health professionals; amending s. 916.12,
47 F.S.; revising provisions governing the evaluation of a
48 defendant's competence to proceed; amending s. 916.13,
49 F.S.; revising conditions under which a defendant may be
50 involuntarily committed for treatment; amending s.
51 916.145, F.S., relating to dismissal of charges against a

Page 2 of 65

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

hb7199-01-c1

HB 7199

2006
CS

52 | defendant adjudicated incompetent; conforming provisions
53 | to changes made by the act; amending s. 916.15, F.S.;
54 | clarifying that the determination of not guilty by reason
55 | of insanity is made under a specified Florida Rule of
56 | Criminal Procedure; amending s. 916.16, F.S.; providing
57 | for the continuing jurisdiction of the court over a
58 | defendant involuntarily committed due to mental illness;
59 | amending s. 916.17, F.S.; clarifying circumstances under
60 | which the court may order the conditional release of a
61 | defendant; amending s. 916.301, F.S.; requiring that
62 | certain evaluations be conducted by certain qualified
63 | experts; requiring that the Agency for Persons with
64 | Disabilities provide the court with a list of certain
65 | available retardation and autism professionals; conforming
66 | provisions to the transfer of duties from the
67 | Developmental Disabilities Program Office within the
68 | Department of Children and Family Services to the agency;
69 | amending s. 916.3012, F.S.; clarifying provisions
70 | governing the determination of a defendant's mental
71 | competence to proceed; amending s. 916.302, F.S., relating
72 | to the involuntary commitment of a defendant; conforming
73 | provisions to the transfer of duties from the
74 | Developmental Disabilities Program Office within the
75 | Department of Children and Family Services to the agency;
76 | requiring that the department and agency submit an
77 | evaluation to the court before the transfer of a defendant
78 | from one civil or forensic facility to another; amending
79 | s. 916.3025, F.S.; clarifying that the committing court

Page 3 of 65

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

hb7199-01-c1

HB 7199

2006
CS

80 retains jurisdiction over a defendant placed on
 81 conditional release; providing for the transfer of
 82 continuing jurisdiction to another court where the
 83 defendant resides; amending s. 916.303, F.S.; clarifying
 84 provisions governing the dismissal of charges against a
 85 defendant found to be incompetent to proceed due to
 86 retardation or autism; amending s. 916.304, F.S.;
 87 providing for the conditional release of a defendant to a
 88 civil facility; amending ss. 921.137 and 985.223, F.S.,
 89 relating to provisions governing the imposition of the
 90 death sentence upon a defendant with mental retardation
 91 and the determination of incompetency in cases involving
 92 juvenile delinquency; conforming provisions to the
 93 transfer of duties from the Developmental Disabilities
 94 Program Office within the Department of Children and
 95 Family Services to the Agency for Persons with
 96 Disabilities; amending ss. 287.057, 408.036, 943.0585, and
 97 943.059, F.S.; conforming cross-references; providing an
 98 effective date.

99

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

101

102 Section 1. Section 916.105, Florida Statutes, is amended
 103 to read:

104 916.105 Legislative intent.--

105 (1) It is the intent of the Legislature that the
 106 Department of Children and Family Services and the Agency for
 107 Persons with Disabilities, as appropriate, establish, locate,

HB 7199

2006
CS

108 | and maintain separate and secure forensic facilities and
 109 | programs for the treatment or training of defendants who have
 110 | been ~~are~~ charged with a felony and who have been found to be
 111 | incompetent to proceed due to their mental illness, mental
 112 | retardation, or autism, or who have been acquitted of a felony
 113 | ~~felonies~~ by reason of insanity, and who, while still under the
 114 | jurisdiction of the committing court, are committed to the
 115 | department or agency under the provisions of this chapter. Such
 116 | ~~The separate, secure~~ facilities shall be sufficient to
 117 | accommodate the number of defendants committed under the
 118 | conditions noted above. Except for those defendants found by
 119 | the department or agency to be appropriate for treatment or
 120 | training in a civil ~~treatment~~ facility or program pursuant to
 121 | subsection (3), forensic. ~~Such secure~~ facilities shall be
 122 | designed and administered so that ingress and egress, together
 123 | with other requirements of this chapter, may be strictly
 124 | controlled by staff responsible for security in order to protect
 125 | the defendant, facility personnel, other clients, and citizens
 126 | in adjacent communities.

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

HB 7199

2006
CS

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

143 (4) It is the intent of the Legislature to minimize and
 144 achieve an ongoing reduction in the use of restraint and
 145 seclusion in forensic facilities serving persons with
 146 developmental disabilities.

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

149 916.106 Definitions.--For the purposes of this chapter,
 150 the term:

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

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

HB 7199

2006
CS

163 ~~ability, and a markedly restricted repertoire of activities and~~
164 ~~interests.~~

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

170 (4)~~(3)~~ "Civil facility" means:

171 (a) A mental health facility established within the
172 department or by contract with the department to serve
173 individuals committed pursuant to chapter 394 and those
174 defendants committed pursuant to this chapter who do not require
175 the security provided in a forensic facility; or-

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

181 (5)~~(4)~~ "Court" means the circuit court.

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

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

HB 7199

2006
CS

190 ~~(8)(6)~~ "Express and informed consent" or "consent" means
191 consent given voluntarily in writing after a conscientious and
192 sufficient explanation and disclosure of the purpose of the
193 proposed treatment, the common side effects of the treatment, if
194 any, the expected duration of the treatment, and any alternative
195 treatment available.

196 ~~(9)(7)~~ "Forensic client" or "client" means any defendant
197 who has been ~~is mentally ill, retarded, or autistic and who is~~
198 committed to the department or agency pursuant to s. 916.13, s.
199 916.15, or s. 916.302. ~~this chapter and:~~

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

202 ~~(b) Who has been found incompetent to proceed on a felony~~
203 ~~offense or has been acquitted of a felony offense by reason of~~
204 ~~insanity;~~

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

206 ~~1. Be dangerous to himself or herself or others; or~~

207 ~~2. Present a clear and present potential to escape; and~~

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

209 ~~(10)(8)~~ "Forensic facility" means a separate and secure
210 facility established within the department or agency to serve
211 forensic clients. A Such separate and secure facility means a
212 facilities shall be security-grade building for the purpose of
213 separately housing persons who have mental illness from persons
214 with retardation or autism and separately housing persons who
215 have been involuntarily committed pursuant to this chapter from
216 nonforensic residents ~~buildings located on grounds distinct in~~
217 ~~location from other facilities for persons who are mentally ill.~~

HB 7199

2006
CS

218 ~~The Florida State Hospital shall not be required to maintain~~
219 ~~separate facilities for mentally ill, retarded, or autistic~~
220 ~~defendants who are found incompetent to proceed or who are~~
221 ~~acquitted of a criminal offense by reason of insanity.~~

222 (11)-(9) "Incompetent to proceed" means unable to proceed
223 at any material stage of a criminal proceeding, which shall
224 include trial of the case, pretrial hearings involving questions
225 of fact on which the defendant might be expected to testify,
226 entry of a plea, proceedings for violation of probation or
227 violation of community control, sentencing, and hearings on
228 issues regarding a defendant's failure to comply with court
229 orders or conditions or other matters in which the mental
230 competence of the defendant is necessary for a just resolution
231 of the issues being considered.

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

240 (13)-(11) "Mental illness" means an impairment of the
241 emotional processes that exercise conscious control of one's
242 actions, or of the ability to perceive or understand reality,
243 which impairment substantially interferes with a defendant's
244 ability to meet the ordinary demands of living. For the purposes
245 of this chapter, the term does not apply to defendants with only

HB 7199

2006
CS

246 mental retardation or autism ~~who are solely retarded or~~
247 ~~autistic,~~ and does not include intoxication or conditions
248 manifested only by antisocial behavior or substance abuse
249 impairment.

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

252 (a) A physical restraint is any manual method or physical
253 or mechanical device, material, or equipment attached or
254 adjacent to a person's body so that he or she cannot easily
255 remove the restraint and that restricts freedom of movement or
256 normal access to one's body.

257 (b) A drug used as a restraint is a medication used to
258 control the person's behavior or to restrict his or her freedom
259 of movement and not part of the standard treatment regimen of an
260 individual with a diagnosed mental illness who is a client of
261 the department. Physically holding a person during a procedure
262 to forcibly administer psychotropic medication is a physical
263 restraint.

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

272 (15) ~~(12)~~ "Retardation" has the same meaning as in s.
273 393.063. ~~means significantly subaverage general intellectual~~

HB 7199

2006
CS

274 ~~functioning existing concurrently with deficits in adaptive~~
275 ~~behavior and manifested during the period from conception to age~~
276 ~~18. "Significantly subaverage general intellectual functioning,"~~
277 ~~for the purpose of this definition, means performance which is~~
278 ~~two or more standard deviations from the mean score on a~~
279 ~~standardized intelligence test specified in the rules of the~~
280 ~~department. "Adaptive behavior," for the purpose of this~~
281 ~~definition, means the effectiveness or degree with which an~~
282 ~~individual meets the standards of personal independence and~~
283 ~~social responsibility expected of the individual's age, cultural~~
284 ~~group, and community.~~

285 (16) "Seclusion" means the physical segregation of a
286 person in any fashion or the involuntary isolation of a person
287 in a room or area from which the person is prevented from
288 leaving. The prevention may be by physical barrier or by a staff
289 member who is acting in a manner, or who is physically situated,
290 so as to prevent the person from leaving the room or area. For
291 purposes of this chapter, the term does not mean isolation due
292 to a person's medical condition or symptoms, the confinement in
293 a forensic facility to a bedroom or area during normal hours of
294 sleep when there is not an active order for seclusion, or during
295 an emergency such as a riot or hostage situation when clients
296 may be temporarily placed in their rooms for their own safety.

297 (17) ~~(13)~~ "Social service professional," for the purposes
298 of part III, means a person whose minimum qualifications include
299 a bachelor's degree and at least 2 years of social work,
300 clinical practice, special education, habilitation, or

HB 7199

2006
CS

301 equivalent experience working directly with persons with
302 retardation, autism, or other developmental disabilities.

303 Section 3. Section 916.107, Florida Statutes, is amended
304 to read:

305 916.107 Rights of forensic clients.--

306 (1) RIGHT TO INDIVIDUAL DIGNITY.--

307 (a) The policy of the state is that the individual dignity
308 of the client shall be respected at all times and upon all
309 occasions, including any occasion when the forensic client is
310 detained, transported, or treated. Clients with mental illness,
311 retardation, or autism ~~Defendants who are mentally ill,~~
312 ~~retarded, or autistic~~ and who are charged with committing
313 felonies shall receive appropriate treatment or training. In a
314 criminal case involving a client ~~defendant~~ who has been
315 adjudicated incompetent to proceed or not guilty by reason of
316 insanity, a jail may be used as an emergency facility for up to
317 15 days following ~~from~~ the date the department or agency
318 receives a completed copy of the court commitment order
319 containing all ~~the~~ documentation required by the applicable
320 ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For
321 a forensic client ~~defendant who is mentally ill, retarded, or~~
322 ~~autistic,~~ who is held in a jail awaiting admission to a facility
323 of the department or agency, ~~and who has been adjudicated~~
324 ~~incompetent to proceed or not guilty by reason of insanity,~~
325 evaluation and treatment or training may ~~shall~~ be provided in
326 the jail by the local community mental health provider ~~public~~
327 ~~receiving facility~~ for mental health services, or ~~or~~ by the
328 developmental disabilities ~~services~~ program for persons with

HB 7199

2006
CS

329 | retardation or autism, the client's physician or psychologist,
330 | or any other appropriate program until the client is transferred
331 | to a civil or forensic facility ~~the custody of the department.~~

332 | (b) Forensic clients ~~Mentally ill, retarded, or autistic~~
333 | ~~defendants who are committed to the department pursuant to this~~
334 | ~~chapter and~~ who are initially placed in, or subsequently
335 | transferred to, a civil facility as described in part I of
336 | chapter 394 or to a residential facility as described in chapter
337 | 393 shall have the same rights as other persons committed to
338 | these facilities for as long as they remain there.

339 | (2) RIGHT TO TREATMENT.--

340 | (a) The policy of the state is that neither the department
341 | nor the agency shall ~~not~~ deny treatment or training to any
342 | client and that no services shall be delayed ~~at a facility~~
343 | because the forensic client is indigent pursuant to s. 27.52 and
344 | presently unable to pay. However, every reasonable effort to
345 | collect appropriate reimbursement for the cost of providing
346 | services to clients able to pay for the services, including
347 | reimbursement from insurance or other third-party payments,
348 | shall be made by facilities providing services pursuant to this
349 | chapter and in accordance with the provisions of s. 402.33.

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

355 | (c) Every forensic client ~~committed pursuant to this act~~
356 | shall be afforded the opportunity to participate in activities

HB 7199

2006
CS

357 | designed to enhance self-image and the beneficial effects of
358 | other treatments or training, as determined by the facility.

359 | (d) Not more than 30 days after admission, each client
360 | shall have and receive, in writing, an individualized treatment
361 | or training plan which the client has had an opportunity to
362 | assist in preparing.

363 | (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

364 | (a) A forensic client ~~committed to the department pursuant~~
365 | ~~to this act~~ shall be asked to give express and informed written
366 | consent for treatment. If a client ~~in a forensic facility~~
367 | refuses such treatment as is deemed necessary and essential by
368 | the client's multidisciplinary treatment team ~~at the forensic~~
369 | ~~facility~~ for the appropriate care of the client ~~and the safety~~
370 | ~~of the client or others~~, such treatment may be provided under
371 | the following circumstances:

372 | 1. In an emergency situation in which there is immediate
373 | danger to the safety of the client or others, such treatment may
374 | be provided upon the written order of a physician for a period
375 | not to exceed 48 hours, excluding weekends and legal holidays.
376 | If, after the 48-hour period, the client has not given express
377 | and informed consent to the treatment initially refused, the
378 | administrator or designee of the civil or forensic facility
379 | shall, within 48 hours, excluding weekends and legal holidays,
380 | petition the committing court or the circuit court serving the
381 | county in which the facility is located, at the option of the
382 | facility administrator or designee, for an order authorizing the
383 | continued treatment of the client. In the interim, the need for
384 | treatment shall be reviewed every 48 hours and may be continued

Page 14 of 65

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

hb7199-01-c1

HB 7199

2006
CS

385 without the consent of the client upon the continued written
386 order of a physician who has determined that the emergency
387 situation continues to present a danger to the safety of the
388 client or others.

389 2. In a situation other than an emergency situation, the
390 administrator or designee of the ~~forensic~~ facility shall
391 petition the court for an order authorizing necessary and
392 essential ~~the~~ treatment for ~~to~~ the client. The order shall allow
393 such treatment for a period not to exceed 90 days following ~~from~~
394 the date of the entry of the order. Unless the court is notified
395 in writing that the client has provided express and informed
396 consent in writing or that the client has been discharged by the
397 committing court, the administrator or designee shall, prior to
398 the expiration of the initial 90-day order, petition the court
399 for an order authorizing the continuation of treatment for
400 another 90-day period. This procedure shall be repeated until
401 the client provides consent or is discharged by the committing
402 court.

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

HB 7199

2006
CS

413 | the substitute judgment decision, the court must consider at
414 | least the following factors:

- 415 | a. The client's expressed preference regarding treatment;
416 | b. The probability of adverse side effects;
417 | c. The prognosis without treatment; and
418 | d. The prognosis with treatment.

419 |

420 | The hearing shall be as convenient to the client as may be
421 | consistent with orderly procedure and shall be conducted in
422 | physical settings not likely to be injurious to the client's
423 | condition. The court may appoint a general or special magistrate
424 | to preside at the hearing. The client or the client's guardian,
425 | and the representative, shall be provided with a copy of the
426 | petition and the date, time, and location of the hearing. The
427 | client has the right to have an attorney represent him or her at
428 | the hearing, and, if the client is indigent, the court shall
429 | appoint the office of the public defender to represent the
430 | client at the hearing. The client may testify or not, as he or
431 | she chooses, and has the right to cross-examine witnesses and
432 | may present his or her own witnesses.

433 | (b) In addition to the provisions of paragraph (a), in the
434 | case of surgical procedures requiring the use of a general
435 | anesthetic or electroconvulsive treatment or nonpsychiatric
436 | medical procedures, and prior to performing the procedure,
437 | written permission shall be obtained from the client, if the
438 | client is legally competent, from the parent or guardian of a
439 | minor client, or from the guardian of an incompetent client. The
440 | administrator or designee of the forensic facility or a

HB 7199

2006
CS

441 designated representative may, with the concurrence of the
 442 client's attending physician, authorize emergency surgical or
 443 nonpsychiatric medical treatment if such treatment is deemed
 444 lifesaving or for a situation threatening serious bodily harm to
 445 the client and permission of the client or the client's guardian
 446 could not ~~cannot~~ be obtained before provision of the needed
 447 treatment.

448 (4) QUALITY OF TREATMENT.--

449 (a) Each forensic client ~~committed pursuant to this~~
 450 ~~chapter~~ shall receive treatment or training suited to the
 451 client's needs, which shall be administered skillfully, safely,
 452 and humanely with full respect for the client's dignity and
 453 personal integrity. Each client shall receive such medical,
 454 vocational, social, educational, and rehabilitative services as
 455 the client's condition requires to bring about a return to court
 456 for disposition of charges or a return to the community. In
 457 order to achieve this goal, the department and the agency shall
 458 coordinate their services with each other, the Department of
 459 Corrections, is directed to coordinate the services of the
 460 Mental Health Program Office and the Developmental Disabilities
 461 Program Office with all other programs of the department and
 462 other appropriate state agencies.

463 (b) Forensic clients shall be free from the unnecessary
 464 use of restraint or seclusion. Restraints shall be employed only
 465 in emergencies or to protect the client or others from imminent
 466 injury. Restraints may not be employed as punishment or for the
 467 convenience of staff.

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

HB 7199

2006
CS

469 ~~(a)~~ Each forensic client ~~committed pursuant to the~~
470 ~~provisions of this chapter~~ has the right to communicate freely
471 and privately with persons outside the facility unless it is
472 determined that such communication is likely to be harmful to
473 the client or others. Clients shall have the right to contact
474 and to receive communication from their attorneys at any
475 reasonable time.

476 ~~(a)(b)~~ Each forensic client ~~committed under the provisions~~
477 ~~of this chapter~~ shall be allowed to receive, send, and mail
478 sealed, unopened correspondence; and no client's incoming or
479 outgoing correspondence shall be opened, delayed, held, or
480 censored by the facility unless there is reason to believe that
481 it contains items or substances that ~~which~~ may be harmful to the
482 client or others, in which case the administrator or designee
483 may direct reasonable examination of such mail and may regulate
484 the disposition of such items or substances. For purposes of
485 this paragraph, the term "correspondence" does ~~shall~~ not include
486 parcels or packages. Forensic facilities may ~~are authorized to~~
487 promulgate reasonable institutional policies to provide for the
488 inspection of parcels or packages and for the removal of
489 contraband items for health or security reasons prior to the
490 contents being given to a client.

491 ~~(b)(e)~~ If a client's right to communicate is restricted by
492 the administrator, written notice of such restriction and the
493 duration of the restriction shall be served on the client or his
494 or her legal guardian or representatives, and such restriction
495 shall be recorded on the client's clinical record with the

HB 7199

2006
CS

496 reasons therefor. The restriction of a client's right to
497 communicate shall be reviewed at least every 7 days.

498 ~~(c)~~ Each forensic facility shall establish reasonable
499 institutional policies governing visitors, visiting hours, and
500 the use of telephones by clients in the least restrictive manner
501 possible.

502 ~~(d)~~ Each forensic client ~~committed pursuant to this~~
503 ~~chapter~~ shall have ready access to a telephone in order to
504 report an alleged abuse. The facility or program staff shall
505 orally and in writing inform each client of the procedure for
506 reporting abuse and shall present the information in a language
507 the client understands. A written copy of that procedure,
508 including the telephone number of the central abuse hotline and
509 reporting forms, shall be posted in plain view.

510 ~~(e)~~ The department's or agency's forensic facilities
511 shall develop policies providing a procedure for reporting
512 abuse. Facility staff shall be required, as a condition of
513 employment, to become familiar with the procedures for the
514 reporting of abuse.

515 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A
516 forensic client's right to possession of clothing and personal
517 effects shall be respected. The department or agency by rule, or
518 the administrator of any forensic facility by written
519 institutional policy, may declare certain items to be hazardous
520 to the health or welfare of clients or others or to the
521 operation of the facility. Such items may be restricted from
522 introduction into the facility or may be restricted from being
523 in a client's possession. The administrator or designee may take

HB 7199

2006
CS

524 temporary custody of such effects when required for medical and
525 safety reasons. Custody of such personal effects shall be
526 recorded in the client's clinical record.

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

533 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record
534 for each forensic client shall be maintained. The record shall
535 include data pertaining to admission and such other information
536 as may be required under rules of the department or the agency.
537 Unless waived by express and informed consent of the client or
538 the client's legal guardian or, if the client is deceased, by
539 the client's personal representative or by that family member
540 who stands next in line of intestate succession or except as
541 otherwise provided in this subsection, the clinical record is
542 confidential and exempt from the provisions of s. 119.07(1) and
543 s. 24(a), Art. I of the State Constitution.

544 (a) Such clinical record may be released:

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

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

550 3. To a qualified researcher, as defined by rule; a staff
551 member of the facility; or an employee of the department or

HB 7199

2006
CS

552 | agency when the administrator of the facility, or secretary or
553 | director of the department or agency, deems it necessary for
554 | treatment of the client, maintenance of adequate records,
555 | compilation of treatment data, or evaluation of programs.

556 | 4. For statistical and research purposes if the
557 | information is abstracted in such a way as to protect the
558 | identity of individuals.

559 | 5. If a client receiving services ~~pursuant to this chapter~~
560 | has declared an intention to harm other persons. ~~When such a~~
561 | ~~declaration has been made~~, the administrator shall authorize the
562 | release of sufficient information to provide adequate warning to
563 | the person threatened with harm by the client, and to the
564 | committing court, the state attorney, and the attorney
565 | representing the client.

566 | 6. To the parent or next of kin of a client ~~mentally ill,~~
567 | ~~retarded, or autistic person~~ who is committed to, or is being
568 | served by, a facility or program when such information is
569 | limited to that person's service plan and current physical and
570 | mental condition. Release of such information shall be in
571 | accordance with the code of ethics of the profession involved
572 | and must comply with all state and federal laws and regulations
573 | pertaining to the release of personal health information.

574 | (b) Notwithstanding other provisions of this subsection,
575 | the department or agency may request or receive from or provide
576 | to any of the following entities client information to
577 | facilitate treatment, habilitation, rehabilitation, and
578 | continuity of care of any forensic client:

HB 7199

2006
CS

- 579 | 1. The Social Security Administration and the United
 580 | States Department of Veterans Affairs;
 581 | 2. Law enforcement agencies, state attorneys, defense
 582 | attorneys, and judges in regard to the client's status;
 583 | 3. Jail personnel in the jail in ~~to~~ which a client may be
 584 | housed ~~returned~~; and
 585 | 4. Community agencies and others expected to provide
 586 | followup care to the client upon the client's return to the
 587 | community.

588 | (c) The department or agency may provide notice to any
 589 | client's next of kin or first representative regarding any
 590 | serious medical illness or the death of the client.

591 | (d)1. Any law enforcement agency, facility, or other
 592 | governmental agency that receives information pursuant to this
 593 | subsection shall maintain the confidentiality of such
 594 | information except as otherwise provided herein.

595 | 2. Any agency or private practitioner who acts in good
 596 | faith in releasing information pursuant to this subsection is
 597 | not subject to civil or criminal liability for such release.

598 | (9) HABEAS CORPUS.--

599 | (a) At any time, and without notice, a forensic client
 600 | detained by a facility, or a relative, friend, guardian,
 601 | representative, or attorney on behalf of such client, may
 602 | petition for a writ of habeas corpus to question the cause and
 603 | legality of such detention and request that the committing court
 604 | issue a writ for release. Each client ~~committed pursuant to this~~
 605 | ~~chapter~~ shall receive a written notice of the right to petition
 606 | for a writ of habeas corpus.

HB 7199

2006
CS

607 (b) A client or his or her legal guardian or
608 representatives or attorney may file a petition in the circuit
609 court in the county where the client is committed alleging that
610 the client is being unjustly denied a right or privilege granted
611 herein or that a procedure authorized herein is being abused.
612 Upon the filing of such a petition, the circuit court shall have
613 the authority to conduct a judicial inquiry and to issue any
614 appropriate order to correct an abuse of the provisions of this
615 chapter.

616 (10) TRANSPORTATION.--

617 (a) The sheriff shall consult with the governing board of
618 the county as to the most appropriate and cost-effective means
619 of transportation for forensic clients who have been committed
620 for treatment or training. Such consultation shall include, but
621 is not limited to, consideration of the cost to the county of
622 transportation performed by sheriff's ~~department~~ personnel as
623 opposed to transportation performed by other means and, if
624 sheriff's ~~department~~ personnel are to be used for
625 transportation, the effect such use will have, if any, on
626 service delivery levels of the sheriff's road patrol. After such
627 consultation with the governing board of the county, the sheriff
628 shall determine the most appropriate and cost-effective means of
629 transportation for forensic clients committed for treatment or
630 training.

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

HB 7199

2006
CS

634 (c) Any company that transports a client pursuant to this
635 section is considered an independent contractor and is solely
636 liable for the safe and dignified transportation of the client.
637 Any transport company that contracts with the governing board of
638 a county for the transport of clients as provided for in this
639 section shall be insured and provide no less than \$100,000 in
640 liability insurance with respect to the transportation of the
641 clients.

642 (d) Any company that contracts with a governing board of a
643 county to transport clients shall comply with the applicable
644 rules of the department or agency to ensure the safety and
645 dignity of the clients.

646 (11) LIABILITY FOR VIOLATIONS.--Any person who violates or
647 abuses any rights or privileges of a forensic client in the
648 custody of the department or agency that are provided under this
649 chapter shall be ~~by this act is~~ liable for damages as determined
650 by law. Any person who acts in good faith in complying with the
651 provisions of this chapter ~~act~~ is immune from civil or criminal
652 liability for his or her actions in connection with the
653 admission, diagnosis, treatment, training, or discharge of a
654 client to or from a facility. However, this subsection does not
655 relieve any person from liability if he or she is negligent.

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

658 916.1075 Sexual misconduct prohibited; reporting required;
659 penalties.--

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

HB 7199

2006
CS

661 (a) "Covered person" means an employee, "~~includes any paid~~
662 ~~staff member~~, volunteer, or intern of the department or agency;
663 any person under contract with the department or agency; and any
664 person providing care or support to a forensic client on behalf
665 of the department, the agency, or their ~~its~~ providers.

666 (b) "Sexual activity" means:

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

669 2. The oral, anal, or vaginal penetration by or union with
670 the sexual organ of another or the anal or vaginal penetration
671 of another by any other object.

672 3. Intentionally touching in a lewd or lascivious manner
673 the breasts, genitals, the genital area, or buttocks, or the
674 clothing covering them, of a person, or forcing or enticing a
675 person to touch the perpetrator.

676 4. Intentionally masturbating in the presence of another
677 person.

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

680 6. Intentionally committing any other sexual act that does
681 not involve actual physical or sexual contact with the victim,
682 including, but not limited to, sadomasochistic abuse, sexual
683 bestiality, or the simulation of any act involving sexual
684 activity in the presence of a victim.

685 (c) "Sexual misconduct" means any sexual activity between
686 a covered person ~~an employee~~ and a forensic client in the
687 custody of the department or agency, regardless of the consent
688 of the client. The term does not include an act done for a bona

HB 7199

2006
CS

689 | fide medical purpose or an internal search conducted in the
690 | lawful performance of duty by a covered person ~~an employee~~.

691 | (2) A covered person ~~An employee~~ who engages in sexual
692 | misconduct with a forensic client who resides in a civil or
693 | forensic facility commits a felony of the second degree,
694 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
695 | Such person ~~An employee~~ may be found guilty of violating this
696 | subsection without having committed the crime of sexual battery.

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

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

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

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

705 | (5) A covered person ~~An employee~~ who witnesses sexual
706 | misconduct, or who otherwise knows or has reasonable cause to
707 | suspect that a person has engaged in sexual misconduct, shall
708 | immediately report the incident to the department's central
709 | abuse hotline and to the appropriate local law enforcement
710 | agency. The covered person ~~Such employee~~ shall also prepare,
711 | date, and sign an independent report that specifically describes
712 | the nature of the sexual misconduct, the location and time of
713 | the incident, and the persons involved. For an allegation
714 | pertaining to a forensic client committed to the department or
715 | agency, the covered person ~~employee~~ shall deliver the report
716 | directly to the department's or agency's inspector general, as

HB 7199

2006
CS

717 appropriate, or to the supervisor or program director, who shall
718 provide copies to the department's or agency's ~~is responsible~~
719 ~~for providing copies to the department's~~ inspector general. The
720 ~~inspector general shall immediately conduct an appropriate~~
721 ~~administrative investigation, and, if there is probable cause to~~
722 ~~believe that sexual misconduct has occurred, the inspector~~
723 ~~general shall notify the state attorney in the circuit in which~~
724 ~~the incident occurred.~~

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

727 916.1081 Escape from program; penalty.--

728 (1) A forensic client who is ~~A defendant~~ involuntarily
729 committed to the department or agency, who is in the custody of
730 the department or agency, and under the provisions of this
731 ~~chapter~~ who escapes or attempts to escape from a civil or
732 forensic facility or program commits a felony of the second
733 degree, punishable as provided in s. 775.082, s. 775.083, or s.
734 775.084.

735 (2) A person who is involuntarily committed to the
736 department or the agency, who is in the custody of the
737 Department of Corrections, and who escapes or attempts to escape
738 from a facility or program commits a felony of the second
739 degree, punishable as provided in s. 775.082, s. 775.083, or s.
740 775.084. Any punishment of imprisonment imposed under this
741 subsection shall run consecutive to any former sentence imposed
742 upon the person.

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

HB 7199

2006
CS

745 916.1085 Introduction or removal of certain articles
746 unlawful; penalty.--

747 (1) (a) Except as authorized by law or as specifically
748 authorized by the person in charge of a facility, it is unlawful
749 to introduce into or upon the grounds of any facility under the
750 supervision or control of the department or agency, or to take
751 or attempt to take or send therefrom, any of the following
752 articles, which are ~~hereby~~ declared to be contraband for the
753 purposes of this section:

754 1. Any intoxicating beverage or beverage which causes or
755 may cause an intoxicating effect;

756 2. Any controlled substance as defined in chapter 893;

757 3. Any firearm or deadly weapon; or

758 4. Any other item as determined by the department or the
759 agency, and as designated by ~~departmental~~ rule or ~~by the~~
760 ~~administrator of any facility, and designated~~ by written
761 institutional policies, to be hazardous to the welfare of
762 clients ~~patients~~ or the operation of the facility.

763 (b) It is unlawful to transmit to, attempt to transmit to,
764 or cause or attempt to cause to be transmitted to or received by
765 any client of any facility under the supervision or control of
766 the department or agency any article or thing declared by this
767 section to be contraband, at any place that ~~which~~ is outside of
768 the grounds of such facility, except as authorized by law or as
769 specifically authorized by the person in charge of such
770 facility.

771 (2)

HB 7199

2006
CS

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

775 Section 7. Section 916.1091, Florida Statutes, is amended
776 to read:

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

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

795 916.1093 Operation and administration; rules.--

796 (1) The department or agency ~~may is authorized to~~ enter
797 into contracts and do such things as may be necessary and
798 incidental to assure compliance with and to carry out the

HB 7199

2006
CS

799 | provisions of this chapter in accordance with the stated
800 | legislative intent.

801 | (2) The department and agency are authorized ~~has authority~~
802 | to adopt rules pursuant to ss. 120.536(1) and 120.54 to
803 | implement the provisions of this chapter. Such rules must
804 | address the use of restraint and seclusion in forensic
805 | facilities and must be consistent with recognized best
806 | practices; prohibit inherently dangerous restraint or seclusion
807 | procedures; establish limitations on the use and duration of
808 | restraint and seclusion; establish measures to ensure the safety
809 | of clients and staff during an incident of restraint or
810 | seclusion; establish procedures for staff to follow before,
811 | during, and after incidents of restraint or seclusion; establish
812 | professional qualifications of and training for staff who may
813 | order or be engaged in the use of restraint or seclusion;
814 | provide data reporting and data collection procedures relating
815 | to the use of restraint and seclusion; and provide for the
816 | documentation of the use of restraint or seclusion in the
817 | client's facility record.

818 | Section 9. Subsection (1) of section 916.111, Florida
819 | Statutes, is amended to read:

820 | 916.111 Training of mental health experts.--The evaluation
821 | of defendants for competency to proceed or for sanity at the
822 | time of the commission of the offense shall be conducted in such
823 | a way as to ensure uniform application of the criteria
824 | enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal
825 | Procedure. The department shall develop, and may contract with
826 | accredited institutions:

HB 7199

2006
CS

827 (1) To provide:

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

831 (b) Clinical protocols and procedures based upon the
832 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
833 Procedure; and

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

837 Section 10. Section 916.115, Florida Statutes, is amended
838 to read:

839 916.115 Appointment of experts.--

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

843 ~~(b)~~ The court shall ~~may~~ appoint no more than three experts
844 to determine ~~issues of~~ the mental condition of a defendant in a
845 criminal case, including ~~the issues of~~ competency to proceed,
846 insanity, and involuntary hospitalization or placement, and
847 treatment. The experts ~~An expert~~ may evaluate the defendant in
848 jail or in another appropriate local facility or in a facility
849 of the Department of Corrections.

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

HB 7199

2006
CS

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

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

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

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

876 ~~(b)3.~~ Pursuant to s. 29.005, the office of the state
877 attorney shall pay for any expert retained by the office and
878 ~~Notwithstanding subparagraph 1., the office of the state~~
879 ~~attorney shall pay~~ for any expert whom the office retains and
880 whom the office moves the court to appoint in order to ensure
881 that the expert has access to the defendant.

HB 7199

2006
CS

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

885 (d)5- An expert retained by a defendant who is indigent
886 for costs as determined by the court and who is represented by
887 private counsel, other than private counsel appointed under s.
888 27.5303, on a fee or pro bono basis, or who is representing
889 himself or herself, shall be paid by the Justice Administrative
890 Commission from funds specifically appropriated for these
891 expenses.

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

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

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

899 Section 11. Subsections (1), (2), and (3) of section
900 916.12, Florida Statutes, are amended to read:

901 916.12 Mental competence to proceed.--

902 (1) A defendant is incompetent to proceed within the
903 meaning of this chapter if the defendant does not have
904 sufficient present ability to consult with her or his lawyer
905 with a reasonable degree of rational understanding or if the
906 defendant has no rational, as well as factual, understanding of
907 the proceedings against her or him.

908 (2) Mental health experts appointed pursuant to s. 916.115
909 ~~An expert~~ shall first determine whether the defendant has a

HB 7199

2006
CS

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

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

932 (a) Appreciate the charges or allegations against the
933 defendant. †

934 (b) Appreciate the range and nature of possible penalties,
935 if applicable, that may be imposed in the proceedings against
936 the defendant. †

HB 7199

2006
CS

937 (c) Understand the adversarial nature of the legal
938 process.~~†~~

939 (d) Disclose to counsel facts pertinent to the proceedings
940 at issue.~~†~~

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

942 (f) Testify relevantly.~~†~~

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

945 Section 12. Section 916.13, Florida Statutes, is amended
946 to read:

947 916.13 Involuntary commitment of defendant adjudicated
948 incompetent.--

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

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

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

963 2. There is a substantial likelihood that in the near
964 future the defendant will inflict serious bodily harm on herself

HB 7199

2006
CS

965 or himself or another person, as evidenced by recent behavior
966 causing, attempting, or threatening such harm;

967 (b) All available, less restrictive treatment
968 alternatives, including treatment in community residential
969 facilities or community inpatient or outpatient settings, which
970 would offer an opportunity for improvement of the defendant's
971 condition have been judged to be inappropriate; and

972 (c) There is a substantial probability that the mental
973 illness causing the defendant's incompetence will respond to
974 treatment and the defendant will regain competency to proceed in
975 the reasonably foreseeable future.

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

989 Section 13. Section 916.145, Florida Statutes, is amended
990 to read:

991 916.145 ~~Adjudication of incompetency due to mental~~
992 ~~illness~~; Dismissal of charges.--The charges against any

HB 7199

2006
CS

993 defendant adjudicated incompetent to proceed due to the
994 defendant's mental illness shall be dismissed without prejudice
995 to the state if the defendant remains incompetent to proceed 5
996 years after such determination, unless the court in its order
997 specifies its reasons for believing that the defendant will
998 become competent to proceed within the foreseeable future and
999 specifies the time within which the defendant is expected to
1000 become competent to proceed. The charges against the defendant
1001 are dismissed without prejudice to the state to refile the
1002 charges should the defendant be declared competent to proceed in
1003 the future.

1004 Section 14. Section 916.15, Florida Statutes, is amended
1005 to read:

1006 916.15 Involuntary commitment of defendant adjudicated not
1007 guilty by reason of insanity.--

1008 (1) The determination of whether a defendant is not guilty
1009 by reason of insanity shall be determined in accordance with
1010 Rule 3.217, Florida Rules of Criminal Procedure.

1011 (2)~~(1)~~ A defendant who is acquitted of criminal charges
1012 because of a finding of not guilty by reason of insanity may be
1013 involuntarily committed pursuant to such finding if the
1014 defendant has a mental illness ~~is mentally ill~~ and, because of
1015 the illness, is manifestly dangerous to himself or herself or
1016 others.

1017 (3)~~(2)~~ Every defendant acquitted of criminal charges by
1018 reason of insanity and found to meet the criteria for
1019 involuntary commitment may be committed and treated in
1020 accordance with the provisions of this section and the

HB 7199

2006
CS

1021 applicable Florida Rules of Criminal Procedure. The department
 1022 shall admit a defendant so adjudicated to an appropriate
 1023 facility or program for treatment and shall retain and treat
 1024 such defendant. No later than 6 months after the date of
 1025 admission, prior to the end of any period of extended
 1026 commitment, or at any time the administrator or designee shall
 1027 have determined that the defendant no longer meets the criteria
 1028 for continued commitment placement, the administrator or
 1029 designee shall file a report with the court pursuant to the
 1030 applicable Florida Rules of Criminal Procedure.

1031 ~~(4)(3)~~ In all proceedings under this section ~~subsection~~,
 1032 both the defendant and the state shall have the right to a
 1033 hearing before the committing court. Evidence at such hearing
 1034 may be presented by the hospital administrator or the
 1035 administrator's designee as well as by the state and the
 1036 defendant. The defendant shall have the right to counsel at any
 1037 such hearing. In the event that a defendant is determined to be
 1038 indigent pursuant to s. 27.52, the public defender shall
 1039 represent the defendant. The parties shall have access to the
 1040 defendant's records at the treating facilities and may interview
 1041 or depose personnel who have had contact with the defendant at
 1042 the treating facilities.

1043 Section 15. Section 916.16, Florida Statutes, is amended
 1044 to read:

1045 916.16 Jurisdiction of committing court.--

1046 (1) The committing court shall retain jurisdiction over ~~in~~
 1047 ~~the case of~~ any defendant involuntarily committed due to a
 1048 determination of incompetency ~~hospitalized as incompetent to~~

HB 7199

2006
CS

1049 | proceed due to mental illness or ~~because of~~ a finding of not
1050 | guilty by reason of insanity pursuant to this chapter. The ~~No~~
1051 | ~~such~~ defendant may not be released except by order of the
1052 | committing court. An ~~The~~ administrative hearing examiner does
1053 | not ~~shall~~ have ~~no~~ jurisdiction to determine issues of continuing
1054 | commitment hospitalization or release of any defendant
1055 | involuntarily committed ~~admitted~~ pursuant to this chapter.

1056 | (2) The committing court shall retain jurisdiction in the
1057 | case of any defendant placed on conditional release pursuant to
1058 | s. 916.17. ~~No~~ Such defendant may not be released from the
1059 | conditions of release except by order of the committing court.

1060 | Section 16. Section 916.17, Florida Statutes, is amended
1061 | to read:

1062 | 916.17 Conditional release.--

1063 | (1) Except for an inmate currently serving a prison
1064 | sentence, ~~The committing court may order a conditional release~~
1065 | ~~of any defendant who has been found to be incompetent to proceed~~
1066 | ~~or not guilty by reason of insanity, based on an approved plan~~
1067 | ~~for providing appropriate outpatient care and treatment.~~ the
1068 | committing court may order a conditional release of any
1069 | defendant in lieu of an involuntary commitment to a facility
1070 | pursuant to s. 916.13 or s. 916.15 based upon an approved plan
1071 | for providing appropriate outpatient care and treatment. Upon a
1072 | recommendation that outpatient treatment of the defendant is
1073 | appropriate, a written plan for outpatient treatment, including
1074 | recommendations from qualified professionals, must be filed with
1075 | the court, with copies to all parties. Such a plan may also be

HB 7199

2006
CS

1076 submitted by the defendant and filed with the court with copies
1077 to all parties. The plan shall include:

1078 (a) Special provisions for residential care or adequate
1079 supervision of the defendant.

1080 (b) Provisions for outpatient mental health services.

1081 (c) If appropriate, recommendations for auxiliary services
1082 such as vocational training, educational services, or special
1083 medical care.

1084

1085 In its order of conditional release, the court shall specify the
1086 conditions of release based upon the release plan and shall
1087 direct the appropriate agencies or persons to submit periodic
1088 reports to the court regarding the defendant's compliance with
1089 the conditions of the release and progress in treatment, with
1090 copies to all parties.

1091 (2) Upon the filing of an affidavit or statement under
1092 oath by any person that the defendant has failed to comply with
1093 the conditions of release, that the defendant's condition has
1094 deteriorated to the point that inpatient care is required, or
1095 that the release conditions should be modified, the court shall
1096 hold a hearing within 7 days after receipt of the affidavit or
1097 statement under oath. After the hearing, the court may modify
1098 the release conditions. The court may also order that the
1099 defendant be returned to the department if it is found, after
1100 the appointment and report of experts, that the person meets the
1101 criteria for involuntary commitment under s. 916.13 or s. 916.15
1102 ~~treatment~~.

HB 7199

2006
CS

1103 (3) If at any time it is determined after a hearing that
1104 the defendant who has been conditionally released under
1105 subsection (1) no longer requires court-supervised followup
1106 care, the court shall terminate its jurisdiction in the cause
1107 and discharge the defendant.

1108 Section 17. Section 916.301, Florida Statutes, is amended
1109 to read:

1110 916.301 Appointment of experts.--

1111 (1) All evaluations ordered by the court under this part
1112 must be conducted by qualified experts who have expertise in
1113 evaluating persons with retardation or autism. The agency
1114 ~~department~~ shall maintain and provide the courts annually with a
1115 list of available retardation and autism professionals who are
1116 appropriately licensed and qualified to perform evaluations of
1117 defendants alleged to be incompetent to proceed due to
1118 retardation or autism. The courts may use professionals from
1119 this list when appointing experts and ordering evaluations under
1120 this part ~~for defendants suspected of being retarded or~~
1121 ~~autistic.~~

1122 (2) If a defendant's suspected mental condition is
1123 retardation or autism, the court shall appoint the following:
1124 ~~two experts, one of whom must be the developmental services~~
1125 ~~program of the department, each of whom will evaluate whether~~
1126 ~~the defendant meets the definition of retardation or autism and,~~
1127 ~~if so, whether the defendant is competent to proceed.~~

1128 (a) ~~(3)~~ At least one, or at the request of any party, two
1129 experts ~~the court may appoint one additional expert~~ to evaluate
1130 the defendant. ~~The expert appointed by the court will evaluate~~

HB 7199

2006
CS

1131 whether the defendant meets the definition of retardation or
1132 autism and, if so, whether the defendant is competent to
1133 proceed.

1134 ~~(b)(4)~~ ~~The developmental services program shall select A~~
1135 psychologist selected by the agency who is licensed or
1136 authorized by law to practice in this state, with experience in
1137 evaluating persons suspected of having retardation or autism,
1138 and a social service professional, with experience in working
1139 with persons with retardation or autism ~~to evaluate the~~
1140 ~~defendant.~~

1141 ~~1.(a)~~ The psychologist shall evaluate whether the
1142 defendant meets the definition of retardation or autism and, if
1143 so, whether the defendant is incompetent to proceed due to
1144 retardation or autism.

1145 ~~2.(b)~~ The social service professional shall provide a
1146 social and developmental history of the defendant.

1147 ~~(5)~~ ~~All evaluations ordered by the court must be from~~
1148 ~~qualified experts with experience in evaluating persons with~~
1149 ~~retardation or autism.~~

1150 ~~(3)(6)~~ The ~~panel of~~ experts may examine the defendant in
1151 jail, in another appropriate local facility, in a facility of
1152 the Department of Corrections, or on an outpatient basis.

1153 ~~(4)(7)~~ Experts ~~Expert witnesses~~ appointed by the court to
1154 evaluate the mental condition of a defendant in a criminal case
1155 shall be allowed reasonable fees for services rendered as
1156 evaluators and as witnesses, which shall be paid by the court.
1157 State employees shall be paid expenses pursuant to s. 112.061.
1158 The fees shall be taxed as costs in the case. In order for the

HB 7199

2006
CS

1159 | experts to be paid for the services rendered, the reports and
1160 | testimony must explicitly address each of the factors and follow
1161 | the procedures set out in this chapter and in the Florida Rules
1162 | of Criminal Procedure.

1163 | Section 18. Subsections (1), (2), and (3) of section
1164 | 916.3012, Florida Statutes, are amended to read:

1165 | 916.3012 Mental competence to proceed.--

1166 | (1) A defendant whose suspected mental condition is
1167 | retardation or autism is incompetent to proceed within the
1168 | meaning of this chapter if the defendant does not have
1169 | sufficient present ability to consult with the defendant's
1170 | lawyer with a reasonable degree of rational understanding or if
1171 | the defendant has no rational, as well as factual, understanding
1172 | of the proceedings against the defendant.

1173 | (2) The Experts in retardation or autism appointed
1174 | pursuant to s. 916.301 shall first consider whether the
1175 | defendant meets the definition of retardation or autism and, if
1176 | so, consider the factors related to the issue of whether the
1177 | defendant meets the criteria for competence to proceed as
1178 | described in subsection (1); ~~that is, whether the defendant has~~
1179 | ~~sufficient present ability to consult with counsel with a~~
1180 | ~~reasonable degree of rational understanding and whether the~~
1181 | ~~defendant has a rational, as well as factual, understanding of~~
1182 | ~~the pending proceedings.~~

1183 | (3) In considering the issue of competence to proceed, the
1184 | examining experts shall first consider and specifically include
1185 | in their report the defendant's capacity to:

HB 7199

2006
CS

1186 (a) Appreciate the charges or allegations against the
1187 defendant.†

1188 (b) Appreciate the range and nature of possible penalties,
1189 if applicable, that may be imposed in the proceedings against
1190 the defendant.†

1191 (c) Understand the adversarial nature of the legal
1192 process.†

1193 (d) Disclose to counsel facts pertinent to the proceedings
1194 at issue.†

1195 (e) Manifest appropriate courtroom behavior.† and

1196 (f) Testify relevantly.†

1197 (g) ~~and include in their report~~ Any other factor deemed
1198 relevant by the experts.

1199 Section 19. Section 916.302, Florida Statutes, is amended
1200 to read:

1201 916.302 Involuntary commitment of defendant determined to
1202 be incompetent to proceed ~~due to retardation or autism.--~~

1203 (1) CRITERIA.--Every defendant who is charged with a
1204 felony and who is adjudicated ~~found to be~~ incompetent to proceed
1205 due to retardation or autism, pursuant to this chapter and the
1206 ~~applicable Florida Rules of Criminal Procedure,~~ may be
1207 involuntarily committed for training upon a finding by the court
1208 of clear and convincing evidence that:

1209 (a) The defendant has retardation or autism ~~is retarded or~~
1210 ~~autistic;~~

1211 (b) There is a substantial likelihood that in the near
1212 future the defendant will inflict serious bodily harm on himself

HB 7199

2006
CS

1213 | or herself or another person, as evidenced by recent behavior
1214 | causing, attempting, or threatening such harm;

1215 | (c) All available, less restrictive alternatives,
1216 | including services provided in community residential facilities
1217 | or other community settings, which would offer an opportunity
1218 | for improvement of the condition have been judged to be
1219 | inappropriate; and

1220 | (d) There is a substantial probability that the
1221 | retardation or autism causing the defendant's incompetence will
1222 | respond to training and the defendant will regain competency to
1223 | proceed in the reasonably foreseeable future.

1224 | (2) ADMISSION TO A FACILITY.--

1225 | (a) A defendant who has been charged with a felony and who
1226 | is found to be incompetent to proceed due to retardation or
1227 | autism, and who meets the criteria for involuntary commitment to
1228 | the agency department under the provisions of this chapter,
1229 | shall be committed to the agency department, and the agency
1230 | department shall retain and provide appropriate training for
1231 | ~~serve~~ the defendant. No later than 6 months after the date of
1232 | admission or at the end of any period of extended commitment or
1233 | at any time the administrator or designee shall have determined
1234 | that the defendant has regained competency to proceed or no
1235 | longer meets the criteria for continued commitment, the
1236 | administrator or designee shall file a report with the court
1237 | pursuant to this chapter and the applicable Florida Rules of
1238 | Criminal Procedure.

1239 | (b) A defendant determined to be incompetent to proceed
1240 | due to retardation or autism may be ordered by a circuit court

HB 7199

2006
CS

1241 into a forensic ~~secure~~ facility designated by the agency
1242 ~~department~~ for ~~retarded or autistic~~ defendants who have mental
1243 retardation or autism.

1244 (c) The agency ~~department~~ may transfer a defendant from a
1245 designated forensic ~~secure~~ facility to another designated
1246 forensic ~~secure~~ facility and must notify the court of the
1247 transfer within 30 days after the transfer is completed.

1248 (d) The agency ~~department~~ may not transfer a defendant
1249 from a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~
1250 facility without first notifying the court, and all parties, 30
1251 days before the proposed transfer. If the court objects to the
1252 proposed transfer ~~to a nonsecure facility~~, it must send its
1253 written objection to the agency ~~department~~. The agency
1254 ~~department~~ may transfer the defendant unless it receives the
1255 written objection from the court within 30 days after the
1256 court's receipt of the notice of the proposed transfer.

1257 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

1258 (a) If a defendant has is both mental retardation or
1259 autism ~~retarded or autistic~~ and has a mental illness ~~mentally~~
1260 ~~ill~~, evaluations must address which condition is primarily
1261 affecting the defendant's competency to proceed. Referral of the
1262 defendant should be made to a civil or forensic ~~the~~ facility ~~or~~
1263 ~~program~~ most appropriate to address the symptoms that ~~which~~ are
1264 the cause of the defendant's incompetence.

1265 (b) Transfer from one civil or forensic facility ~~or~~
1266 ~~program~~ to another civil or forensic facility ~~or program~~ may
1267 occur when, in the department's and agency's judgment, it is in
1268 the defendant's best treatment or training interests. The

HB 7199

2006
CS

1269 | department and agency shall submit an evaluation and
 1270 | justification for the transfer to the court. The court may
 1271 | consult with an outside expert if necessary. Transfer will
 1272 | require an amended order from the committing court.

1273 | Section 20. Section 916.3025, Florida Statutes, is amended
 1274 | to read:

1275 | 916.3025 Jurisdiction of committing court.--

1276 | (1) The committing court shall retain jurisdiction in the
 1277 | case of any defendant found to be incompetent to proceed due to
 1278 | retardation or autism and ordered into a forensic secure
 1279 | facility designated by the agency department for retarded or
 1280 | autistic defendants who have mental retardation or autism. A No
 1281 | defendant may not be released except by the order of the
 1282 | committing court. An administrative hearing examiner does not
 1283 | have jurisdiction to determine issues of continuing commitment
 1284 | or release of any defendant involuntarily committed pursuant to
 1285 | this chapter.

1286 | (2) The committing court shall retain jurisdiction in the
 1287 | case of any defendant placed on conditional release pursuant to
 1288 | s. 916.304. No Such defendant may not be released from the
 1289 | conditions of release except by order of the committing court.

1290 | (3) The committing court shall consider a the petition to
 1291 | involuntarily admit a defendant whose charges have been
 1292 | dismissed to residential services provided by the agency
 1293 | department's developmental services program a person whose
 1294 | charges have been dismissed, and, when applicable, to continue
 1295 | secure placement of such person as provided in s. 916.303. The
 1296 | committing court shall retain jurisdiction over such person so

HB 7199

2006
CS

1297 long as he or she remains in secure placement or is on
1298 conditional release as provided in s. 916.304. However, upon
1299 request, the court may transfer continuing jurisdiction to the
1300 court in the circuit where the defendant resides. The defendant
1301 may not be released from an order for secure placement except by
1302 order of the court.

1303 Section 21. Section 916.303, Florida Statutes, is amended
1304 to read:

1305 916.303 Determination of incompetency due to retardation
1306 or autism; dismissal of charges.--

1307 (1) The charges against any defendant found to be
1308 incompetent to proceed due to retardation or autism shall be
1309 dismissed without prejudice to the state if the defendant
1310 remains incompetent to proceed within a reasonable time after
1311 such determination, not to exceed 2 years, unless the court in
1312 its order specifies its reasons for believing that the defendant
1313 will become competent to proceed within the foreseeable future
1314 and specifies the time within which the defendant is expected to
1315 become competent to proceed. The charges may be refiled by the
1316 state if against the defendant are dismissed without prejudice
1317 ~~to the state to refile the charges should~~ the defendant is ~~be~~
1318 declared competent to proceed in the future.

1319 (2)(a) If the charges are dismissed and if the defendant
1320 is considered to lack sufficient capacity to give express and
1321 informed consent to a voluntary application for services and
1322 lacks the basic survival and self-care skills to provide for his
1323 or her well-being or is likely to physically injure himself or
1324 herself or others if allowed to remain at liberty, the agency

HB 7199

2006
CS

1325 ~~department~~, the state attorney, or the defendant's attorney
1326 shall ~~may~~ apply to the committing court to involuntarily admit
1327 the defendant to residential services pursuant to s. 393.11.

1328 (3) ~~(b)~~ If the defendant is considered to need involuntary
1329 residential services for reasons described in subsection (2)
1330 ~~under s. 393.11~~ and, further, there is a substantial likelihood
1331 that the defendant will injure another person or continues to
1332 present a danger of escape, and all available less restrictive
1333 alternatives, including services in community residential
1334 facilities or other community settings, which would offer an
1335 opportunity for improvement of the condition have been judged to
1336 be inappropriate, ~~then the agency person or entity filing the~~
1337 ~~petition under s. 393.11~~, the state attorney, or the defendant's
1338 counsel may request, ~~the petitioning commission, or the~~
1339 ~~department may also petition~~ the committing court to continue
1340 the defendant's placement in a secure facility ~~or program~~
1341 pursuant to this part section. Any placement so continued under
1342 this subsection must be ~~defendant involuntarily admitted under~~
1343 ~~this paragraph shall have his or her status~~ reviewed by the
1344 court at least annually at a hearing. The annual review and
1345 hearing shall determine whether the defendant continues to meet
1346 the criteria described in this subsection ~~for involuntary~~
1347 ~~residential services~~ and, if so, whether the defendant still
1348 requires involuntary placement in a secure facility ~~or program~~
1349 ~~because the court finds that the defendant is likely to~~
1350 ~~physically injure others as specified in s. 393.11~~ and whether
1351 the defendant is receiving adequate care, treatment,
1352 habilitation, and rehabilitation, including psychotropic

Page 49 of 65

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

hb7199-01-c1

HB 7199

2006
CS

1353 medication and behavioral programming. Notice of the annual
1354 review and review hearing shall be given to the state attorney
1355 and ~~to~~ the defendant's attorney. In no instance may a
1356 defendant's placement in a secure facility ~~or program~~ exceed the
1357 maximum sentence for the crime for which the defendant was
1358 charged.

1359 Section 22. Section 916.304, Florida Statutes, is amended
1360 to read:

1361 916.304 Conditional release.--

1362 (1) Except for an inmate currently serving a prison
1363 sentence, the committing court may order a conditional release
1364 of any defendant who has been found to be incompetent to proceed
1365 due to retardation or autism, based on an approved plan for
1366 providing ~~continuing~~ community-based training. The committing
1367 criminal court may order a conditional release of any defendant
1368 to a civil facility in lieu of an involuntary commitment to a
1369 forensic facility pursuant to s. 916.302. Upon a recommendation
1370 that community-based training for the defendant is appropriate,
1371 a written plan for community-based training, including
1372 recommendations from qualified professionals, may be filed with
1373 the court, with copies to all parties. Such a plan may also be
1374 submitted by the defendant and filed with the court, with copies
1375 to all parties. The plan must ~~shall~~ include:

1376 (a) Special provisions for residential care and adequate
1377 supervision of the defendant, including recommended location of
1378 placement.

HB 7199

2006
CS

1379 (b) Recommendations for auxiliary services such as
1380 vocational training, psychological training, educational
1381 services, leisure services, and special medical care.

1382

1383 In its order of conditional release, the court shall specify the
1384 conditions of release based upon the release plan and shall
1385 direct the appropriate agencies or persons to submit periodic
1386 reports to the courts regarding the defendant's compliance with
1387 the conditions of the release and progress in training, with
1388 copies to all parties.

1389 (2) Upon the filing of an affidavit or statement under
1390 oath by any person that the defendant has failed to comply with
1391 the conditions of release, that the defendant's condition has
1392 deteriorated, or that the release conditions should be modified,
1393 the court shall hold a hearing within 7 days after receipt of
1394 the affidavit or statement under oath. With notice to the court
1395 and all parties, the agency may detain a defendant in a forensic
1396 facility until the hearing occurs. After the hearing, the court
1397 may modify the release conditions. The court may also order that
1398 the defendant be placed into more appropriate programs for
1399 further training or may order the defendant to be committed
1400 ~~returned to a forensic facility involuntary residential services~~
1401 ~~of the department~~ if it is found, after the appointment and
1402 report of experts, that the defendant meets the criteria for
1403 placement in a forensic facility involuntary residential
1404 services.

1405 (3) If at any time it is determined after a hearing that
1406 the defendant conditionally released under subsection (1) no

HB 7199

2006
CS

1407 longer requires court-supervised followup care, the court shall
1408 terminate its jurisdiction in the cause and discharge the
1409 defendant.

1410 Section 23. Subsection (1) of section 921.137, Florida
1411 Statutes, is amended to read:

1412 921.137 Imposition of the death sentence upon a ~~mentally~~
1413 ~~retarded~~ defendant with mental retardation prohibited.--

1414 (1) As used in this section, the term "mental retardation"
1415 means significantly subaverage general intellectual functioning
1416 existing concurrently with deficits in adaptive behavior and
1417 manifested during the period from conception to age 18. The term
1418 "significantly subaverage general intellectual functioning," for
1419 the purpose of this section, means performance that is two or
1420 more standard deviations from the mean score on a standardized
1421 intelligence test specified in the rules of the Agency for
1422 Persons with Disabilities ~~Department of Children and Family~~
1423 ~~Services~~. The term "adaptive behavior," for the purpose of this
1424 definition, means the effectiveness or degree with which an
1425 individual meets the standards of personal independence and
1426 social responsibility expected of his or her age, cultural
1427 group, and community. The Agency for Persons with Disabilities
1428 ~~Department of Children and Family Services~~ shall adopt rules to
1429 specify the standardized intelligence tests as provided in this
1430 subsection.

1431 Section 24. Paragraphs (d), (e), (g), and (h) of
1432 subsection (1), subsections (2), (3), and (4), paragraph (b) of
1433 subsection (5), and paragraph (a) of subsection (6) of section
1434 985.223, Florida Statutes, are amended to read:

HB 7199

2006
CS

1435 985.223 Incompetency in juvenile delinquency cases.--

1436 (1) If, at any time prior to or during a delinquency case,
1437 the court has reason to believe that the child named in the
1438 petition may be incompetent to proceed with the hearing, the
1439 court on its own motion may, or on the motion of the child's
1440 attorney or state attorney must, stay all proceedings and order
1441 an evaluation of the child's mental condition.

1442 (d) For incompetency evaluations related to mental
1443 illness, the Department of Children and Family Services shall
1444 maintain and annually provide the courts with a list of
1445 available mental health professionals who have completed a
1446 training program approved by the Department of Children and
1447 Family Services to perform the evaluations.

1448 (e) For incompetency evaluations related to mental
1449 retardation or autism, the court shall order the Agency for
1450 Persons with Disabilities ~~Developmental Disabilities Program~~
1451 ~~Office within the Department of Children and Family Services~~ to
1452 examine the child to determine if the child meets the definition
1453 of "retardation" or "autism" in s. 393.063 and, if so, whether
1454 the child is competent to proceed with delinquency proceedings.

1455 (g) Immediately upon the filing of the court order finding
1456 a child incompetent to proceed, the clerk of the court shall
1457 notify the Department of Children and Family Services and the
1458 Agency for Persons with Disabilities and fax or hand deliver to
1459 the department and to the agency of Children and Family Services
1460 a referral packet that ~~which~~ includes, at a minimum, the court
1461 order, the charging documents, the petition, and the court-
1462 appointed evaluator's reports.

HB 7199

2006
CS

1463 (h) After placement of the child in the appropriate
1464 setting, the Department of Children and Family Services in
1465 consultation with the Agency for Persons with Disabilities, as
1466 appropriate, must, within 30 days after placement of the
1467 ~~Department of Children and Family Services~~ places the child,
1468 prepare and submit to the court a treatment or training plan for
1469 the child's restoration of competency. A copy of the ~~treatment~~
1470 plan must be served upon the child's attorney, the state
1471 attorney, and the attorneys representing the Department of
1472 Juvenile Justice.

1473 (2) A child ~~who is mentally ill or retarded,~~ who is
1474 adjudicated incompetent to proceed, and who has committed a
1475 delinquent act or violation of law, either of which would be a
1476 felony if committed by an adult, must be committed to the
1477 Department of Children and Family Services for treatment or
1478 training. A child who has been adjudicated incompetent to
1479 proceed because of age or immaturity, or for any reason other
1480 than for mental illness or retardation or autism, must not be
1481 committed to the department or to the Department of Children and
1482 Family Services for restoration-of-competency treatment or
1483 training services. For purposes of this section, a child who has
1484 committed a delinquent act or violation of law, either of which
1485 would be a misdemeanor if committed by an adult, may not be
1486 committed to the department or to the Department of Children and
1487 Family Services for restoration-of-competency treatment or
1488 training services.

1489 (3) If the court finds that a child has mental illness,
1490 mental retardation, or autism ~~is mentally ill or retarded~~ and

HB 7199

2006
CS

1491 adjudicates the child incompetent to proceed, the court must
 1492 also determine whether the child meets the criteria for secure
 1493 placement. A child may be placed in a secure facility or program
 1494 if the court makes a finding by clear and convincing evidence
 1495 that:

1496 (a) The child has mental illness, mental retardation, or
 1497 autism ~~is mentally ill~~ and because of the mental illness, mental
 1498 retardation, or autism, ~~or the child is mentally retarded and~~
 1499 ~~because of the mental retardation:~~

1500 1. The child is manifestly incapable of surviving with the
 1501 help of willing and responsible family or friends, including
 1502 available alternative services, and without treatment or
 1503 training the child is likely to either suffer from neglect or
 1504 refuse to care for self, and such neglect or refusal poses a
 1505 real and present threat of substantial harm to the child's well-
 1506 being; or

1507 2. There is a substantial likelihood that in the near
 1508 future the child will inflict serious bodily harm on self or
 1509 others, as evidenced by recent behavior causing, attempting, or
 1510 threatening such harm; and

1511 (b) All available less restrictive alternatives, including
 1512 treatment or training in community residential facilities or
 1513 community settings which would offer an opportunity for
 1514 improvement of the child's condition, are inappropriate.

1515 (4) A child who is determined to have mental retardation
 1516 or autism ~~be mentally ill or retarded~~, who has been adjudicated
 1517 incompetent to proceed, and who meets the criteria set forth in
 1518 subsection (3), must be committed to the Department of Children

HB 7199

2006
CS

1519 | and Family Services, and receive treatment or training ~~the~~
 1520 | ~~Department of Children and Family Services must treat or train~~
 1521 | ~~the child~~ in a secure facility or program that ~~which~~ is the
 1522 | least restrictive alternative consistent with public safety. Any
 1523 | placement of a child to a secure residential program must be
 1524 | separate from adult forensic programs. If the child attains
 1525 | competency, then custody, case management, and supervision of
 1526 | the child will be transferred to the department in order to
 1527 | continue delinquency proceedings; however, the court retains
 1528 | authority to order the Department of Children and Family
 1529 | Services to provide continued treatment or training to maintain
 1530 | competency.

1531 | (a) A child adjudicated incompetent due to mental
 1532 | retardation or autism may be ordered into a secure program or
 1533 | facility designated by the Department of Children and Family
 1534 | Services for ~~retarded~~ children with mental retardation or
 1535 | autism.

1536 | (b) A child adjudicated incompetent due to mental illness
 1537 | may be ordered into a secure program or facility designated by
 1538 | the Department of Children and Family Services for ~~mentally ill~~
 1539 | children have mental illnesses.

1540 | (c) Whenever a child is placed in a secure residential
 1541 | facility, the department will provide transportation to the
 1542 | secure residential facility for admission and from the secure
 1543 | residential facility upon discharge.

1544 | (d) The purpose of the treatment or training is the
 1545 | restoration of the child's competency to proceed.

HB 7199

2006
CS

1546 (e) The service provider must file a written report with
1547 the court pursuant to the applicable Florida Rules of Juvenile
1548 Procedure not later than 6 months after the date of commitment,
1549 or at the end of any period of extended treatment or training,
1550 and at any time the Department of Children and Family Services,
1551 through its service provider determines the child has attained
1552 competency or no longer meets the criteria for secure placement,
1553 or at such shorter intervals as ordered by the court. A copy of
1554 a written report evaluating the child's competency must be filed
1555 by the provider with the court and with the state attorney, the
1556 child's attorney, the department, and the Department of Children
1557 and Family Services.

1558 (5)

1559 (b) Whenever the provider files a report with the court
1560 informing the court that the child will never become competent
1561 to proceed, the Department of Children and Family Services will
1562 develop a discharge plan for the child prior to any hearing
1563 determining whether the child will ever become competent to
1564 proceed and send the. ~~The Department of Children and Family~~
1565 ~~Services must send the proposed discharge~~ plan to the court, the
1566 state attorney, the child's attorney, and the attorneys
1567 representing the Department of Juvenile Justice. The provider
1568 will continue to provide services to the child until the court
1569 issues the order finding the child will never become competent
1570 to proceed.

1571 (6) (a) If a child is determined to have mental illness,
1572 mental retardation, or autism ~~be mentally ill or retarded~~ and is
1573 found to be incompetent to proceed but does not meet the

HB 7199

2006
CS

1574 criteria set forth in subsection (3), the court shall commit the
 1575 child to the Department of Children and Family Services and
 1576 shall order the Department of Children and Family Services to
 1577 provide appropriate treatment and training in the community. The
 1578 purpose of the treatment or training is the restoration of the
 1579 child's competency to proceed.

1580 Section 25. Paragraph (b) of subsection (14) of section
 1581 287.057, Florida Statutes, is amended to read:

1582 287.057 Procurement of commodities or contractual
 1583 services.--

1584 (14)

1585 (b) Notwithstanding paragraph (a), the Department of
 1586 Children and Family Services may enter into agreements, not to
 1587 exceed 20 years, with a private provider to finance, design, and
 1588 construct a forensic treatment facility, as defined in s.

1589 916.106(10)~~(8)~~, of at least 200 beds and to operate all aspects
 1590 of daily operations within the forensic treatment facility. The
 1591 selected contractor is authorized to sponsor the issuance of
 1592 tax-exempt certificates of participation or other securities to
 1593 finance the project, and the state is authorized to enter into a
 1594 lease-purchase agreement for the forensic treatment facility.
 1595 This paragraph expires July 1, 2006.

1596 Section 26. Paragraph (r) of subsection (3) of section
 1597 408.036, Florida Statutes, is amended to read:

1598 408.036 Projects subject to review; exemptions.--

1599 (3) EXEMPTIONS.--Upon request, the following projects are
 1600 subject to exemption from the provisions of subsection (1):

HB 7199

2006
CS

1601 (r) For beds in state mental health treatment facilities
 1602 defined in s. 394.455 ~~operated under s. 394.455(30)~~ and state
 1603 mental health forensic facilities operated under chapter 916 ~~s.~~
 1604 ~~916.106(8)~~.

1605 Section 27. Paragraph (a) of subsection (4) of section
 1606 943.0585, Florida Statutes, is amended to read:

1607 943.0585 Court-ordered expunction of criminal history
 1608 records.--The courts of this state have jurisdiction over their
 1609 own procedures, including the maintenance, expunction, and
 1610 correction of judicial records containing criminal history
 1611 information to the extent such procedures are not inconsistent
 1612 with the conditions, responsibilities, and duties established by
 1613 this section. Any court of competent jurisdiction may order a
 1614 criminal justice agency to expunge the criminal history record
 1615 of a minor or an adult who complies with the requirements of
 1616 this section. The court shall not order a criminal justice
 1617 agency to expunge a criminal history record until the person
 1618 seeking to expunge a criminal history record has applied for and
 1619 received a certificate of eligibility for expunction pursuant to
 1620 subsection (2). A criminal history record that relates to a
 1621 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 1622 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
 1623 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
 1624 s. 916.1075, or a violation enumerated in s. 907.041 may not be
 1625 expunged, without regard to whether adjudication was withheld,
 1626 if the defendant was found guilty of or pled guilty or nolo
 1627 contendere to the offense, or if the defendant, as a minor, was
 1628 found to have committed, or pled guilty or nolo contendere to

HB 7199

2006
CS

1629 committing, the offense as a delinquent act. The court may only
1630 order expunction of a criminal history record pertaining to one
1631 arrest or one incident of alleged criminal activity, except as
1632 provided in this section. The court may, at its sole discretion,
1633 order the expunction of a criminal history record pertaining to
1634 more than one arrest if the additional arrests directly relate
1635 to the original arrest. If the court intends to order the
1636 expunction of records pertaining to such additional arrests,
1637 such intent must be specified in the order. A criminal justice
1638 agency may not expunge any record pertaining to such additional
1639 arrests if the order to expunge does not articulate the
1640 intention of the court to expunge a record pertaining to more
1641 than one arrest. This section does not prevent the court from
1642 ordering the expunction of only a portion of a criminal history
1643 record pertaining to one arrest or one incident of alleged
1644 criminal activity. Notwithstanding any law to the contrary, a
1645 criminal justice agency may comply with laws, court orders, and
1646 official requests of other jurisdictions relating to expunction,
1647 correction, or confidential handling of criminal history records
1648 or information derived therefrom. This section does not confer
1649 any right to the expunction of any criminal history record, and
1650 any request for expunction of a criminal history record may be
1651 denied at the sole discretion of the court.

1652 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
1653 criminal history record of a minor or an adult which is ordered
1654 expunged by a court of competent jurisdiction pursuant to this
1655 section must be physically destroyed or obliterated by any
1656 criminal justice agency having custody of such record; except

HB 7199

2006
CS

1657 | that any criminal history record in the custody of the
 1658 | department must be retained in all cases. A criminal history
 1659 | record ordered expunged that is retained by the department is
 1660 | confidential and exempt from the provisions of s. 119.07(1) and
 1661 | s. 24(a), Art. I of the State Constitution and not available to
 1662 | any person or entity except upon order of a court of competent
 1663 | jurisdiction. A criminal justice agency may retain a notation
 1664 | indicating compliance with an order to expunge.

1665 | (a) The person who is the subject of a criminal history
 1666 | record that is expunged under this section or under other
 1667 | provisions of law, including former s. 893.14, former s. 901.33,
 1668 | and former s. 943.058, may lawfully deny or fail to acknowledge
 1669 | the arrests covered by the expunged record, except when the
 1670 | subject of the record:

- 1671 | 1. Is a candidate for employment with a criminal justice
- 1672 | agency;
- 1673 | 2. Is a defendant in a criminal prosecution;
- 1674 | 3. Concurrently or subsequently petitions for relief under
- 1675 | this section or s. 943.059;
- 1676 | 4. Is a candidate for admission to The Florida Bar;
- 1677 | 5. Is seeking to be employed or licensed by or to contract
- 1678 | with the Department of Children and Family Services or the
- 1679 | Department of Juvenile Justice or to be employed or used by such
- 1680 | contractor or licensee in a sensitive position having direct
- 1681 | contact with children, the developmentally disabled, the aged,
- 1682 | or the elderly as provided in s. 110.1127(3), s. 393.063, s.
- 1683 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

HB 7199

2006
CS

1684 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and~~
1685 ~~(13)~~, s. 985.407, or chapter 400; or

1686 6. Is seeking to be employed or licensed by the Department
1687 of Education, any district school board, any university
1688 laboratory school, any charter school, any private or parochial
1689 school, or any local governmental entity that licenses child
1690 care facilities.

1691 Section 28. Paragraph (a) of subsection (4) of section
1692 943.059, Florida Statutes, is amended to read:

1693 943.059 Court-ordered sealing of criminal history
1694 records.--The courts of this state shall continue to have
1695 jurisdiction over their own procedures, including the
1696 maintenance, sealing, and correction of judicial records
1697 containing criminal history information to the extent such
1698 procedures are not inconsistent with the conditions,
1699 responsibilities, and duties established by this section. Any
1700 court of competent jurisdiction may order a criminal justice
1701 agency to seal the criminal history record of a minor or an
1702 adult who complies with the requirements of this section. The
1703 court shall not order a criminal justice agency to seal a
1704 criminal history record until the person seeking to seal a
1705 criminal history record has applied for and received a
1706 certificate of eligibility for sealing pursuant to subsection
1707 (2). A criminal history record that relates to a violation of s.
1708 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
1709 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
1710 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
1711 a violation enumerated in s. 907.041 may not be sealed, without

HB 7199

2006
CS

1712 regard to whether adjudication was withheld, if the defendant
1713 was found guilty of or pled guilty or nolo contendere to the
1714 offense, or if the defendant, as a minor, was found to have
1715 committed or pled guilty or nolo contendere to committing the
1716 offense as a delinquent act. The court may only order sealing of
1717 a criminal history record pertaining to one arrest or one
1718 incident of alleged criminal activity, except as provided in
1719 this section. The court may, at its sole discretion, order the
1720 sealing of a criminal history record pertaining to more than one
1721 arrest if the additional arrests directly relate to the original
1722 arrest. If the court intends to order the sealing of records
1723 pertaining to such additional arrests, such intent must be
1724 specified in the order. A criminal justice agency may not seal
1725 any record pertaining to such additional arrests if the order to
1726 seal does not articulate the intention of the court to seal
1727 records pertaining to more than one arrest. This section does
1728 not prevent the court from ordering the sealing of only a
1729 portion of a criminal history record pertaining to one arrest or
1730 one incident of alleged criminal activity. Notwithstanding any
1731 law to the contrary, a criminal justice agency may comply with
1732 laws, court orders, and official requests of other jurisdictions
1733 relating to sealing, correction, or confidential handling of
1734 criminal history records or information derived therefrom. This
1735 section does not confer any right to the sealing of any criminal
1736 history record, and any request for sealing a criminal history
1737 record may be denied at the sole discretion of the court.

1738 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
1739 history record of a minor or an adult which is ordered sealed by

HB 7199

2006
CS

1740 a court of competent jurisdiction pursuant to this section is
 1741 confidential and exempt from the provisions of s. 119.07(1) and
 1742 s. 24(a), Art. I of the State Constitution and is available only
 1743 to the person who is the subject of the record, to the subject's
 1744 attorney, to criminal justice agencies for their respective
 1745 criminal justice purposes, or to those entities set forth in
 1746 subparagraphs (a)1., 4., 5., and 6. for their respective
 1747 licensing and employment purposes.

1748 (a) The subject of a criminal history record sealed under
 1749 this section or under other provisions of law, including former
 1750 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 1751 deny or fail to acknowledge the arrests covered by the sealed
 1752 record, except when the subject of the record:

- 1753 1. Is a candidate for employment with a criminal justice
 1754 agency;
- 1755 2. Is a defendant in a criminal prosecution;
- 1756 3. Concurrently or subsequently petitions for relief under
 1757 this section or s. 943.0585;
- 1758 4. Is a candidate for admission to The Florida Bar;
- 1759 5. Is seeking to be employed or licensed by or to contract
 1760 with the Department of Children and Family Services or the
 1761 Department of Juvenile Justice or to be employed or used by such
 1762 contractor or licensee in a sensitive position having direct
 1763 contact with children, the developmentally disabled, the aged,
 1764 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 1765 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 1766 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s.~~
 1767 ~~916.106(10) and (13)~~, s. 985.407, or chapter 400; or

HB 7199

2006
CS

1768 | 6. Is seeking to be employed or licensed by the Department
1769 | of Education, any district school board, any university
1770 | laboratory school, any charter school, any private or parochial
1771 | school, or any local governmental entity that licenses child
1772 | care facilities.

1773 | Section 29. This act shall take effect upon becoming a
1774 | law.