

CHAMBER ACTION

1 The Health & Families Council recommends the following:

2 **Council/Committee Substitute**

3 Remove the entire bill and insert:

4 A bill to be entitled

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

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

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52 | to changes made by the act; amending s. 916.15, F.S.;

53 | clarifying that the determination of not guilty by reason

54 | of insanity is made under a specified Florida Rule of

55 | Criminal Procedure; amending s. 916.16, F.S.; providing

56 | for the continuing jurisdiction of the court over a

57 | defendant involuntarily committed due to mental illness;

58 | amending s. 916.17, F.S.; clarifying circumstances under

59 | which the court may order the conditional release of a

60 | defendant; amending s. 916.301, F.S.; requiring that

61 | certain evaluations be conducted by certain qualified

62 | experts; requiring that the Agency for Persons with

63 | Disabilities provide the court with a list of certain

64 | available retardation and autism professionals; conforming

65 | provisions to the transfer of duties from the

66 | Developmental Disabilities Program Office within the

67 | Department of Children and Family Services to the agency;

68 | amending s. 916.3012, F.S.; clarifying provisions

69 | governing the determination of a defendant's mental

70 | competence to proceed; amending s. 916.302, F.S., relating

71 | to the involuntary commitment of a defendant; conforming

72 | provisions to the transfer of duties from the

73 | Developmental Disabilities Program Office within the

74 | Department of Children and Family Services to the agency;

75 | requiring that the department and agency submit an

76 | evaluation to the court before the transfer of a defendant

77 | from one civil or forensic facility to another; amending

78 | s. 916.3025, F.S.; clarifying that the committing court

79 | retains jurisdiction over a defendant placed on

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

98
 99 Be It Enacted by the Legislature of the State of Florida:

100
 101 Section 1. Section 916.105, Florida Statutes, is amended
 102 to read:

103 916.105 Legislative intent.--

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

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

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

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

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

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

148 916.106 Definitions.--For the purposes of this chapter,
 149 the term:

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

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

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

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

169 (4)~~(3)~~ "Civil facility" means:

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

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

180 (5)~~(4)~~ "Court" means the circuit court.

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

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

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

195 (9)~~(7)~~ "Forensic client" or "client" means any defendant
196 who has been ~~is mentally ill, retarded, or autistic and who is~~
197 committed to the department or agency pursuant to s. 916.13, s.
198 916.15, or s. 916.302. ~~this chapter and:~~

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

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

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

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

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

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

208 (10)~~(8)~~ "Forensic facility" means a separate and secure
209 facility established within the department or agency to serve
210 forensic clients. A Such separate and secure facility means a
211 facilities shall be security-grade building for the purpose of
212 separately housing persons who have mental illness from persons
213 with retardation or autism and separately housing persons who
214 have been involuntarily committed pursuant to this chapter from
215 nonforensic residents buildings located on grounds distinct in
216 location from other facilities for persons who are mentally ill.

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

221 (11)~~(9)~~ "Incompetent to proceed" means unable to proceed
222 at any material stage of a criminal proceeding, which shall
223 include trial of the case, pretrial hearings involving questions
224 of fact on which the defendant might be expected to testify,
225 entry of a plea, proceedings for violation of probation or
226 violation of community control, sentencing, and hearings on
227 issues regarding a defendant's failure to comply with court
228 orders or conditions or other matters in which the mental
229 competence of the defendant is necessary for a just resolution
230 of the issues being considered.

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

239 (13)~~(11)~~ "Mental illness" means an impairment of the
240 emotional processes that exercise conscious control of one's
241 actions, or of the ability to perceive or understand reality,
242 which impairment substantially interferes with a defendant's
243 ability to meet the ordinary demands of living. For the purposes
244 of this chapter, the term does not apply to defendants with only

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

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

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

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

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

271 (15) ~~(12)~~ "Retardation" has the same meaning as in s.
 272 393.063. ~~means significantly subaverage general intellectual~~

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

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

296 (17) ~~(13)~~ "Social service professional," for the purposes
297 of part III, means a person whose minimum qualifications include
298 a bachelor's degree and at least 2 years of social work,
299 clinical practice, special education, habilitation, or

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

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

304 916.107 Rights of forensic clients.--

305 (1) RIGHT TO INDIVIDUAL DIGNITY.--

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

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

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

338 | (2) RIGHT TO TREATMENT.--

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

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

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

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

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

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

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

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

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

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

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

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

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

418

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

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

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

447 (4) QUALITY OF TREATMENT.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

543 (a) Such clinical record may be released:

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

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

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

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

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

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

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

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

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

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

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

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

597 (9) HABEAS CORPUS.--

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

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

615 (10) TRANSPORTATION.--

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

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

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

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

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

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

657 916.1075 Sexual misconduct prohibited; reporting required;
658 penalties.--

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

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

665 (b) "Sexual activity" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

726 916.1081 Escape from program; penalty.--

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

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

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

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744 916.1085 Introduction or removal of certain articles
745 unlawful; penalty.--

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

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

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

756 3. Any firearm or deadly weapon; or

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

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

770 (2)

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

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

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

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

794 916.1093 Operation and administration; rules.--

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

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

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

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

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

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826 (1) To provide:

827 (a) A plan for training ~~community~~ mental health

828 professionals to perform forensic evaluations and to standardize

829 the criteria and procedures to be used in these evaluations;

830 (b) Clinical protocols and procedures based upon the

831 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal

832 Procedure; and

833 (c) Training for ~~community~~ mental health professionals in

834 the application of these protocols and procedures in performing

835 forensic evaluations and providing reports to the courts; and

836 Section 10. Section 916.115, Florida Statutes, is amended

837 to read:

838 916.115 Appointment of experts.--

839 (1) ~~(a) Annually, the department shall provide the courts~~

840 ~~with a list of mental health professionals who have completed~~

841 ~~approved training as experts.~~

842 ~~(b)~~ The court shall ~~may~~ appoint no more than three experts

843 to determine ~~issues of~~ the mental condition of a defendant in a

844 criminal case, including ~~the issues of~~ competency to proceed,

845 insanity, ~~and involuntary hospitalization or placement, and~~

846 treatment. The experts ~~An expert~~ may evaluate the defendant in

847 jail or in another appropriate local facility or in a facility

848 of the Department of Corrections.

849 ~~(a) (e)~~ To the extent possible, the ~~an~~ appointed experts

850 ~~expert~~ shall have completed forensic evaluator training approved

851 by the department and each shall be ~~either~~ a psychiatrist,

852 licensed psychologist, or physician.

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

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

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

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

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

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

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

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

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

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

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

900 916.12 Mental competence to proceed.--

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

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

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

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

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

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

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

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

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

941 (f) Testify relevantly.~~†~~

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

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

946 916.13 Involuntary commitment of defendant adjudicated
947 incompetent.--

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

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

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

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

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

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

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

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

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

990 916.145 ~~Adjudication of incompetency due to mental~~
991 ~~illness~~; Dismissal of charges.--The charges against any

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

1003 | Section 14. Section 916.15, Florida Statutes, is amended
 1004 | to read:

1005 | 916.15 Involuntary commitment of defendant adjudicated not
 1006 | guilty by reason of insanity.--

1007 | (1) The determination of whether a defendant is not guilty
 1008 | by reason of insanity shall be determined in accordance with
 1009 | Rule 3.217, Florida Rules of Criminal Procedure.

1010 | (2)~~(1)~~ A defendant who is acquitted of criminal charges
 1011 | because of a finding of not guilty by reason of insanity may be
 1012 | involuntarily committed pursuant to such finding if the
 1013 | defendant has a mental illness ~~is mentally ill~~ and, because of
 1014 | the illness, is manifestly dangerous to himself or herself or
 1015 | others.

1016 | (3)~~(2)~~ Every defendant acquitted of criminal charges by
 1017 | reason of insanity and found to meet the criteria for
 1018 | involuntary commitment may be committed and treated in
 1019 | accordance with the provisions of this section and the

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1020 applicable Florida Rules of Criminal Procedure. The department
 1021 shall admit a defendant so adjudicated to an appropriate
 1022 facility or program for treatment and shall retain and treat
 1023 such defendant. No later than 6 months after the date of
 1024 admission, prior to the end of any period of extended
 1025 commitment, or at any time the administrator or designee shall
 1026 have determined that the defendant no longer meets the criteria
 1027 for continued commitment placement, the administrator or
 1028 designee shall file a report with the court pursuant to the
 1029 applicable Florida Rules of Criminal Procedure.

1030 ~~(4)(3)~~ In all proceedings under this section ~~subsection~~,
 1031 both the defendant and the state shall have the right to a
 1032 hearing before the committing court. Evidence at such hearing
 1033 may be presented by the hospital administrator or the
 1034 administrator's designee as well as by the state and the
 1035 defendant. The defendant shall have the right to counsel at any
 1036 such hearing. In the event that a defendant is determined to be
 1037 indigent pursuant to s. 27.52, the public defender shall
 1038 represent the defendant. The parties shall have access to the
 1039 defendant's records at the treating facilities and may interview
 1040 or depose personnel who have had contact with the defendant at
 1041 the treating facilities.

1042 Section 15. Section 916.16, Florida Statutes, is amended
 1043 to read:

1044 916.16 Jurisdiction of committing court.--

1045 (1) The committing court shall retain jurisdiction over ~~in~~
 1046 ~~the case of~~ any defendant involuntarily committed due to a
 1047 determination of incompetency ~~hospitalized as incompetent to~~

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1048 | proceed due to mental illness or ~~because of~~ a finding of not
 1049 | guilty by reason of insanity pursuant to this chapter. The ~~No~~
 1050 | ~~such~~ defendant may not be released except by order of the
 1051 | committing court. An ~~The~~ administrative hearing examiner does
 1052 | not ~~shall~~ have ~~no~~ jurisdiction to determine issues of continuing
 1053 | commitment hospitalization or release of any defendant
 1054 | involuntarily committed ~~admitted~~ pursuant to this chapter.

1055 | (2) The committing court shall retain jurisdiction in the
 1056 | case of any defendant placed on conditional release pursuant to
 1057 | s. 916.17. ~~No~~ Such defendant may not be released from the
 1058 | conditions of release except by order of the committing court.

1059 | Section 16. Section 916.17, Florida Statutes, is amended
 1060 | to read:

1061 | 916.17 Conditional release.--

1062 | (1) Except for an inmate currently serving a prison
 1063 | sentence, ~~The committing court may order a conditional release~~
 1064 | ~~of any defendant who has been found to be incompetent to proceed~~
 1065 | ~~or not guilty by reason of insanity, based on an approved plan~~
 1066 | ~~for providing appropriate outpatient care and treatment.~~ the
 1067 | committing court may order a conditional release of any
 1068 | defendant in lieu of an involuntary commitment to a facility
 1069 | pursuant to s. 916.13 or s. 916.15 based upon an approved plan
 1070 | for providing appropriate outpatient care and treatment. Upon a
 1071 | recommendation that outpatient treatment of the defendant is
 1072 | appropriate, a written plan for outpatient treatment, including
 1073 | recommendations from qualified professionals, must be filed with
 1074 | the court, with copies to all parties. Such a plan may also be

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1075 submitted by the defendant and filed with the court with copies
1076 to all parties. The plan shall include:

1077 (a) Special provisions for residential care or adequate
1078 supervision of the defendant.

1079 (b) Provisions for outpatient mental health services.

1080 (c) If appropriate, recommendations for auxiliary services
1081 such as vocational training, educational services, or special
1082 medical care.

1083

1084 In its order of conditional release, the court shall specify the
1085 conditions of release based upon the release plan and shall
1086 direct the appropriate agencies or persons to submit periodic
1087 reports to the court regarding the defendant's compliance with
1088 the conditions of the release and progress in treatment, with
1089 copies to all parties.

1090 (2) Upon the filing of an affidavit or statement under
1091 oath by any person that the defendant has failed to comply with
1092 the conditions of release, that the defendant's condition has
1093 deteriorated to the point that inpatient care is required, or
1094 that the release conditions should be modified, the court shall
1095 hold a hearing within 7 days after receipt of the affidavit or
1096 statement under oath. After the hearing, the court may modify
1097 the release conditions. The court may also order that the
1098 defendant be returned to the department if it is found, after
1099 the appointment and report of experts, that the person meets the
1100 criteria for involuntary commitment under s. 916.13 or s. 916.15
1101 ~~treatment~~.

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1102 (3) If at any time it is determined after a hearing that
1103 the defendant who has been conditionally released under
1104 subsection (1) no longer requires court-supervised followup
1105 care, the court shall terminate its jurisdiction in the cause
1106 and discharge the defendant.

1107 Section 17. Section 916.301, Florida Statutes, is amended
1108 to read:

1109 916.301 Appointment of experts.--

1110 (1) All evaluations ordered by the court under this part
1111 must be conducted by qualified experts who have expertise in
1112 evaluating persons with retardation or autism. The agency
1113 ~~department~~ shall maintain and provide the courts annually with a
1114 list of available retardation and autism professionals who are
1115 appropriately licensed and qualified to perform evaluations of
1116 defendants alleged to be incompetent to proceed due to
1117 retardation or autism. The courts may use professionals from
1118 this list when appointing experts and ordering evaluations under
1119 this part ~~for defendants suspected of being retarded or~~
1120 ~~autistic.~~

1121 (2) If a defendant's suspected mental condition is
1122 retardation or autism, the court shall appoint the following:
1123 ~~two experts, one of whom must be the developmental services~~
1124 ~~program of the department, each of whom will evaluate whether~~
1125 ~~the defendant meets the definition of retardation or autism and,~~
1126 ~~if so, whether the defendant is competent to proceed.~~

1127 (a) ~~(3)~~ At least one, or at the request of any party, two
1128 experts ~~the court may appoint one additional expert~~ to evaluate
1129 ~~the defendant. The expert appointed by the court will evaluate~~

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1130 whether the defendant meets the definition of retardation or
1131 autism and, if so, whether the defendant is competent to
1132 proceed.

1133 ~~(b)(4)~~ ~~The developmental services program shall select A~~
1134 psychologist selected by the agency who is licensed or
1135 authorized by law to practice in this state, with experience in
1136 evaluating persons suspected of having retardation or autism,
1137 and a social service professional, with experience in working
1138 with persons with retardation or autism ~~to evaluate the~~
1139 ~~defendant.~~

1140 ~~1.(a)~~ The psychologist shall evaluate whether the
1141 defendant meets the definition of retardation or autism and, if
1142 so, whether the defendant is incompetent to proceed due to
1143 retardation or autism.

1144 ~~2.(b)~~ The social service professional shall provide a
1145 social and developmental history of the defendant.

1146 ~~(5)~~ ~~All evaluations ordered by the court must be from~~
1147 ~~qualified experts with experience in evaluating persons with~~
1148 ~~retardation or autism.~~

1149 ~~(3)(6)~~ The ~~panel of~~ experts may examine the defendant in
1150 jail, in another appropriate local facility, in a facility of
1151 the Department of Corrections, or on an outpatient basis.

1152 ~~(4)(7)~~ Experts ~~Expert witnesses~~ appointed by the court to
1153 evaluate the mental condition of a defendant in a criminal case
1154 shall be allowed reasonable fees for services rendered as
1155 evaluators and as witnesses, which shall be paid by the court.
1156 State employees shall be paid expenses pursuant to s. 112.061.
1157 The fees shall be taxed as costs in the case. In order for the

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1158 | experts to be paid for the services rendered, the reports and
 1159 | testimony must explicitly address each of the factors and follow
 1160 | the procedures set out in this chapter and in the Florida Rules
 1161 | of Criminal Procedure.

1162 | Section 18. Subsections (1), (2), and (3) of section
 1163 | 916.3012, Florida Statutes, are amended to read:

1164 | 916.3012 Mental competence to proceed.--

1165 | (1) A defendant whose suspected mental condition is
 1166 | retardation or autism is incompetent to proceed within the
 1167 | meaning of this chapter if the defendant does not have
 1168 | sufficient present ability to consult with the defendant's
 1169 | lawyer with a reasonable degree of rational understanding or if
 1170 | the defendant has no rational, as well as factual, understanding
 1171 | of the proceedings against the defendant.

1172 | (2) The Experts in retardation or autism appointed
 1173 | pursuant to s. 916.301 shall first consider whether the
 1174 | defendant meets the definition of retardation or autism and, if
 1175 | so, consider the factors related to the issue of whether the
 1176 | defendant meets the criteria for competence to proceed as
 1177 | described in subsection (1); ~~that is, whether the defendant has~~
 1178 | ~~sufficient present ability to consult with counsel with a~~
 1179 | ~~reasonable degree of rational understanding and whether the~~
 1180 | ~~defendant has a rational, as well as factual, understanding of~~
 1181 | ~~the pending proceedings.~~

1182 | (3) In considering the issue of competence to proceed, the
 1183 | examining experts shall first consider and specifically include
 1184 | in their report the defendant's capacity to:

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1185 (a) Appreciate the charges or allegations against the
1186 defendant. ~~†~~

1187 (b) Appreciate the range and nature of possible penalties,
1188 if applicable, that may be imposed in the proceedings against
1189 the defendant. ~~†~~

1190 (c) Understand the adversarial nature of the legal
1191 process. ~~†~~

1192 (d) Disclose to counsel facts pertinent to the proceedings
1193 at issue. ~~†~~

1194 (e) Manifest appropriate courtroom behavior. ~~†~~ and

1195 (f) Testify relevantly. ~~†~~

1196 (g) ~~and include in their report~~ Any other factor deemed
1197 relevant by the experts.

1198 Section 19. Section 916.302, Florida Statutes, is amended
1199 to read:

1200 916.302 Involuntary commitment of defendant determined to
1201 be incompetent to proceed ~~due to retardation or autism.--~~

1202 (1) CRITERIA.--Every defendant who is charged with a
1203 felony and who is adjudicated ~~found to be~~ incompetent to proceed
1204 due to retardation or autism, ~~pursuant to this chapter and the~~
1205 ~~applicable Florida Rules of Criminal Procedure,~~ may be
1206 involuntarily committed for training upon a finding by the court
1207 of clear and convincing evidence that:

1208 (a) The defendant has retardation or autism ~~is retarded or~~
1209 ~~autistic;~~

1210 (b) There is a substantial likelihood that in the near
1211 future the defendant will inflict serious bodily harm on himself

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1212 or herself or another person, as evidenced by recent behavior
1213 causing, attempting, or threatening such harm;

1214 (c) All available, less restrictive alternatives,
1215 including services provided in community residential facilities
1216 or other community settings, which would offer an opportunity
1217 for improvement of the condition have been judged to be
1218 inappropriate; and

1219 (d) There is a substantial probability that the
1220 retardation or autism causing the defendant's incompetence will
1221 respond to training and the defendant will regain competency to
1222 proceed in the reasonably foreseeable future.

1223 (2) ADMISSION TO A FACILITY.--

1224 (a) A defendant who has been charged with a felony and who
1225 is found to be incompetent to proceed due to retardation or
1226 autism, and who meets the criteria for involuntary commitment to
1227 the agency department under the provisions of this chapter,
1228 shall be committed to the agency department, and the agency
1229 department shall retain and provide appropriate training for
1230 ~~serve~~ the defendant. No later than 6 months after the date of
1231 admission or at the end of any period of extended commitment or
1232 at any time the administrator or designee shall have determined
1233 that the defendant has regained competency to proceed or no
1234 longer meets the criteria for continued commitment, the
1235 administrator or designee shall file a report with the court
1236 pursuant to this chapter and the applicable Florida Rules of
1237 Criminal Procedure.

1238 (b) A defendant determined to be incompetent to proceed
1239 due to retardation or autism may be ordered by a circuit court

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1240 into a forensic ~~secure~~ facility designated by the agency
1241 ~~department~~ for ~~retarded or autistic~~ defendants who have mental
1242 retardation or autism.

1243 (c) The agency ~~department~~ may transfer a defendant from a
1244 designated forensic ~~secure~~ facility to another designated
1245 forensic ~~secure~~ facility and must notify the court of the
1246 transfer within 30 days after the transfer is completed.

1247 (d) The agency ~~department~~ may not transfer a defendant
1248 from a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~
1249 facility without first notifying the court, and all parties, 30
1250 days before the proposed transfer. If the court objects to the
1251 proposed transfer ~~to a nonsecure facility~~, it must send its
1252 written objection to the agency ~~department~~. The agency
1253 ~~department~~ may transfer the defendant unless it receives the
1254 written objection from the court within 30 days after the
1255 court's receipt of the notice of the proposed transfer.

1256 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

1257 (a) If a defendant has ~~is~~ both mental retardation or
1258 autism ~~retarded or autistic~~ and has a mental illness ~~mentally~~
1259 ~~ill~~, evaluations must address which condition is primarily
1260 affecting the defendant's competency to proceed. Referral of the
1261 defendant should be made to a civil or forensic ~~the~~ facility ~~or~~
1262 ~~program~~ most appropriate to address the symptoms that ~~which~~ are
1263 the cause of the defendant's incompetence.

1264 (b) Transfer from one civil or forensic facility ~~or~~
1265 ~~program~~ to another civil or forensic facility ~~or program~~ may
1266 occur when, in the department's and agency's judgment, it is in
1267 the defendant's best treatment or training interests. The

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1268 | department and agency shall submit an evaluation and
 1269 | justification for the transfer to the court. The court may
 1270 | consult with an outside expert if necessary. Transfer will
 1271 | require an amended order from the committing court.

1272 | Section 20. Section 916.3025, Florida Statutes, is amended
 1273 | to read:

1274 | 916.3025 Jurisdiction of committing court.--

1275 | (1) The committing court shall retain jurisdiction in the
 1276 | case of any defendant found to be incompetent to proceed due to
 1277 | retardation or autism and ordered into a forensic secure
 1278 | facility designated by the agency department for retarded or
 1279 | autistic defendants who have mental retardation or autism. ~~A~~ ~~No~~
 1280 | defendant may not be released except by the order of the
 1281 | committing court. An administrative hearing examiner does not
 1282 | have jurisdiction to determine issues of continuing commitment
 1283 | or release of any defendant involuntarily committed pursuant to
 1284 | this chapter.

1285 | (2) The committing court shall retain jurisdiction in the
 1286 | case of any defendant placed on conditional release pursuant to
 1287 | s. 916.304. ~~No~~ Such defendant may not be released from the
 1288 | conditions of release except by order of the committing court.

1289 | (3) The committing court shall consider a ~~the~~ petition to
 1290 | involuntarily admit a defendant whose charges have been
 1291 | dismissed to residential services provided by the agency
 1292 | department's developmental services program ~~a person whose~~
 1293 | ~~charges have been dismissed,~~ and, when applicable, to continue
 1294 | secure placement of such person as provided in s. 916.303. The
 1295 | committing court shall retain jurisdiction over such person so

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1296 | long as he or she remains in secure placement or is on
 1297 | conditional release as provided in s. 916.304. However, upon
 1298 | request, the court may transfer continuing jurisdiction to the
 1299 | court in the circuit where the defendant resides. The defendant
 1300 | may not be released from an order for secure placement except by
 1301 | order of the court.

1302 | Section 21. Section 916.303, Florida Statutes, is amended
 1303 | to read:

1304 | 916.303 Determination of incompetency due to retardation
 1305 | or autism; dismissal of charges.--

1306 | (1) The charges against any defendant found to be
 1307 | incompetent to proceed due to retardation or autism shall be
 1308 | dismissed without prejudice to the state if the defendant
 1309 | remains incompetent to proceed within a reasonable time after
 1310 | such determination, not to exceed 2 years, unless the court in
 1311 | its order specifies its reasons for believing that the defendant
 1312 | will become competent to proceed within the foreseeable future
 1313 | and specifies the time within which the defendant is expected to
 1314 | become competent to proceed. The charges may be refiled by the
 1315 | state if against the defendant are dismissed without prejudice
 1316 | ~~to the state to refile the charges should~~ the defendant is ~~be~~
 1317 | declared competent to proceed in the future.

1318 | (2)~~(a)~~ If the charges are dismissed and if the defendant
 1319 | is considered to lack sufficient capacity to give express and
 1320 | informed consent to a voluntary application for services and
 1321 | lacks the basic survival and self-care skills to provide for his
 1322 | or her well-being or is likely to physically injure himself or
 1323 | herself or others if allowed to remain at liberty, the agency

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1324 ~~department~~, the state attorney, or the defendant's attorney
 1325 shall ~~may~~ apply to the committing court to involuntarily admit
 1326 the defendant to residential services pursuant to s. 393.11.
 1327 (3)(b) If the defendant is considered to need involuntary
 1328 residential services for reasons described in subsection (2)
 1329 ~~under s. 393.11~~ and, further, there is a substantial likelihood
 1330 that the defendant will injure another person or continues to
 1331 present a danger of escape, and all available less restrictive
 1332 alternatives, including services in community residential
 1333 facilities or other community settings, which would offer an
 1334 opportunity for improvement of the condition have been judged to
 1335 be inappropriate, ~~then the agency person or entity filing the~~
 1336 ~~petition under s. 393.11~~, the state attorney, or the defendant's
 1337 counsel may request, ~~the petitioning commission, or the~~
 1338 ~~department may also petition~~ the committing court to continue
 1339 the defendant's placement in a secure facility ~~or program~~
 1340 pursuant to this part section. Any placement so continued under
 1341 this subsection must be ~~defendant involuntarily admitted under~~
 1342 ~~this paragraph shall have his or her status~~ reviewed by the
 1343 court at least annually at a hearing. The annual review and
 1344 hearing shall determine whether the defendant continues to meet
 1345 the criteria described in this subsection ~~for involuntary~~
 1346 ~~residential services~~ and, if so, whether the defendant still
 1347 requires involuntary placement in a secure facility ~~or program~~
 1348 ~~because the court finds that the defendant is likely to~~
 1349 ~~physically injure others as specified in s. 393.11~~ and whether
 1350 the defendant is receiving adequate care, treatment,
 1351 habilitation, and rehabilitation, including psychotropic

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1352 medication and behavioral programming. Notice of the annual
 1353 review and review hearing shall be given to the state attorney
 1354 and ~~to~~ the defendant's attorney. In no instance may a
 1355 defendant's placement in a secure facility ~~or program~~ exceed the
 1356 maximum sentence for the crime for which the defendant was
 1357 charged.

1358 Section 22. Section 916.304, Florida Statutes, is amended
 1359 to read:

1360 916.304 Conditional release.--

1361 (1) Except for an inmate currently serving a prison
 1362 sentence, the committing court may order a conditional release
 1363 of any defendant who has been found to be incompetent to proceed
 1364 due to retardation or autism, based on an approved plan for
 1365 providing ~~continuing~~ community-based training. The committing
 1366 criminal court may order a conditional release of any defendant
 1367 to a civil facility in lieu of an involuntary commitment to a
 1368 forensic facility pursuant to s. 916.302. Upon a recommendation
 1369 that community-based training for the defendant is appropriate,
 1370 a written plan for community-based training, including
 1371 recommendations from qualified professionals, may be filed with
 1372 the court, with copies to all parties. Such a plan may also be
 1373 submitted by the defendant and filed with the court, with copies
 1374 to all parties. The plan must ~~shall~~ include:

1375 (a) Special provisions for residential care and adequate
 1376 supervision of the defendant, including recommended location of
 1377 placement.

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1378 (b) Recommendations for auxiliary services such as
1379 vocational training, psychological training, educational
1380 services, leisure services, and special medical care.

1381
1382 In its order of conditional release, the court shall specify the
1383 conditions of release based upon the release plan and shall
1384 direct the appropriate agencies or persons to submit periodic
1385 reports to the courts regarding the defendant's compliance with
1386 the conditions of the release and progress in training, with
1387 copies to all parties.

1388 (2) Upon the filing of an affidavit or statement under
1389 oath by any person that the defendant has failed to comply with
1390 the conditions of release, that the defendant's condition has
1391 deteriorated, or that the release conditions should be modified,
1392 the court shall hold a hearing within 7 days after receipt of
1393 the affidavit or statement under oath. With notice to the court
1394 and all parties, the agency may detain a defendant in a forensic
1395 facility until the hearing occurs. After the hearing, the court
1396 may modify the release conditions. The court may also order that
1397 the defendant be placed into more appropriate programs for
1398 further training or may order the defendant to be committed
1399 ~~returned to a forensic facility involuntary residential services~~
1400 ~~of the department~~ if it is found, after the appointment and
1401 report of experts, that the defendant meets the criteria for
1402 placement in a forensic facility involuntary residential
1403 services.

1404 (3) If at any time it is determined after a hearing that
1405 the defendant conditionally released under subsection (1) no

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1406 | longer requires court-supervised followup care, the court shall
 1407 | terminate its jurisdiction in the cause and discharge the
 1408 | defendant.

1409 | Section 23. Subsection (1) of section 921.137, Florida
 1410 | Statutes, is amended to read:

1411 | 921.137 Imposition of the death sentence upon a ~~mentally~~
 1412 | ~~retarded~~ defendant with mental retardation prohibited.--

1413 | (1) As used in this section, the term "mental retardation"
 1414 | means significantly subaverage general intellectual functioning
 1415 | existing concurrently with deficits in adaptive behavior and
 1416 | manifested during the period from conception to age 18. The term
 1417 | "significantly subaverage general intellectual functioning," for
 1418 | the purpose of this section, means performance that is two or
 1419 | more standard deviations from the mean score on a standardized
 1420 | intelligence test specified in the rules of the Agency for
 1421 | Persons with Disabilities ~~Department of Children and Family~~
 1422 | ~~Services~~. The term "adaptive behavior," for the purpose of this
 1423 | definition, means the effectiveness or degree with which an
 1424 | individual meets the standards of personal independence and
 1425 | social responsibility expected of his or her age, cultural
 1426 | group, and community. The Agency for Persons with Disabilities
 1427 | ~~Department of Children and Family Services~~ shall adopt rules to
 1428 | specify the standardized intelligence tests as provided in this
 1429 | subsection.

1430 | Section 24. Paragraphs (d), (e), (g), and (h) of
 1431 | subsection (1), subsections (2), (3), and (4), paragraph (b) of
 1432 | subsection (5), and paragraph (a) of subsection (6) of section
 1433 | 985.223, Florida Statutes, are amended to read:

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1434 985.223 Incompetency in juvenile delinquency cases.--

1435 (1) If, at any time prior to or during a delinquency case,
1436 the court has reason to believe that the child named in the
1437 petition may be incompetent to proceed with the hearing, the
1438 court on its own motion may, or on the motion of the child's
1439 attorney or state attorney must, stay all proceedings and order
1440 an evaluation of the child's mental condition.

1441 (d) For incompetency evaluations related to mental
1442 illness, the Department of Children and Family Services shall
1443 maintain and annually provide the courts with a list of
1444 available mental health professionals who have completed a
1445 training program approved by the Department of Children and
1446 Family Services to perform the evaluations.

1447 (e) For incompetency evaluations related to mental
1448 retardation or autism, the court shall order the Agency for
1449 Persons with Disabilities ~~Developmental Disabilities Program~~
1450 ~~Office within the Department of Children and Family Services~~ to
1451 examine the child to determine if the child meets the definition
1452 of "retardation" or "autism" in s. 393.063 and, if so, whether
1453 the child is competent to proceed with delinquency proceedings.

1454 (g) Immediately upon the filing of the court order finding
1455 a child incompetent to proceed, the clerk of the court shall
1456 notify the Department of Children and Family Services and the
1457 Agency for Persons with Disabilities and fax or hand deliver to
1458 the department and to the agency of Children and Family Services
1459 a referral packet that ~~which~~ includes, at a minimum, the court
1460 order, the charging documents, the petition, and the court-
1461 appointed evaluator's reports.

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1462 (h) After placement of the child in the appropriate
 1463 setting, the Department of Children and Family Services in
 1464 consultation with the Agency for Persons with Disabilities, as
 1465 appropriate, must, within 30 days after placement of the
 1466 ~~Department of Children and Family Services~~ places the child,
 1467 prepare and submit to the court a treatment or training plan for
 1468 the child's restoration of competency. A copy of the ~~treatment~~
 1469 plan must be served upon the child's attorney, the state
 1470 attorney, and the attorneys representing the Department of
 1471 Juvenile Justice.

1472 (2) A child ~~who is mentally ill or retarded,~~ who is
 1473 adjudicated incompetent to proceed, and who has committed a
 1474 delinquent act or violation of law, either of which would be a
 1475 felony if committed by an adult, must be committed to the
 1476 Department of Children and Family Services for treatment or
 1477 training. A child who has been adjudicated incompetent to
 1478 proceed because of age or immaturity, or for any reason other
 1479 than for mental illness or retardation or autism, must not be
 1480 committed to the department or to the Department of Children and
 1481 Family Services for restoration-of-competency treatment or
 1482 training services. For purposes of this section, a child who has
 1483 committed a delinquent act or violation of law, either of which
 1484 would be a misdemeanor if committed by an adult, may not be
 1485 committed to the department or to the Department of Children and
 1486 Family Services for restoration-of-competency treatment or
 1487 training services.

1488 (3) If the court finds that a child has mental illness,
 1489 mental retardation, or autism ~~is mentally ill or retarded~~ and

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1490 adjudicates the child incompetent to proceed, the court must
 1491 also determine whether the child meets the criteria for secure
 1492 placement. A child may be placed in a secure facility or program
 1493 if the court makes a finding by clear and convincing evidence
 1494 that:

1495 (a) The child has mental illness, mental retardation, or
 1496 autism ~~is mentally ill~~ and because of the mental illness, mental
 1497 retardation, or autism, ~~or the child is mentally retarded and~~
 1498 ~~because of the mental retardation:~~

1499 1. The child is manifestly incapable of surviving with the
 1500 help of willing and responsible family or friends, including
 1501 available alternative services, and without treatment or
 1502 training the child is likely to either suffer from neglect or
 1503 refuse to care for self, and such neglect or refusal poses a
 1504 real and present threat of substantial harm to the child's well-
 1505 being; or

1506 2. There is a substantial likelihood that in the near
 1507 future the child will inflict serious bodily harm on self or
 1508 others, as evidenced by recent behavior causing, attempting, or
 1509 threatening such harm; and

1510 (b) All available less restrictive alternatives, including
 1511 treatment or training in community residential facilities or
 1512 community settings which would offer an opportunity for
 1513 improvement of the child's condition, are inappropriate.

1514 (4) A child who is determined to have mental retardation
 1515 or autism ~~be mentally ill or retarded~~, who has been adjudicated
 1516 incompetent to proceed, and who meets the criteria set forth in
 1517 subsection (3), must be committed to the Department of Children

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1518 and Family Services, and receive treatment or training ~~the~~
 1519 ~~Department of Children and Family Services must treat or train~~
 1520 ~~the child~~ in a secure facility or program that ~~which~~ is the
 1521 least restrictive alternative consistent with public safety. Any
 1522 placement of a child to a secure residential program must be
 1523 separate from adult forensic programs. If the child attains
 1524 competency, then custody, case management, and supervision of
 1525 the child will be transferred to the department in order to
 1526 continue delinquency proceedings; however, the court retains
 1527 authority to order the Department of Children and Family
 1528 Services to provide continued treatment or training to maintain
 1529 competency.

1530 (a) A child adjudicated incompetent due to mental
 1531 retardation or autism may be ordered into a secure program or
 1532 facility designated by the Department of Children and Family
 1533 Services for ~~retarded~~ children with mental retardation or
 1534 autism.

1535 (b) A child adjudicated incompetent due to mental illness
 1536 may be ordered into a secure program or facility designated by
 1537 the Department of Children and Family Services for ~~mentally ill~~
 1538 children have mental illnesses.

1539 (c) Whenever a child is placed in a secure residential
 1540 facility, the department will provide transportation to the
 1541 secure residential facility for admission and from the secure
 1542 residential facility upon discharge.

1543 (d) The purpose of the treatment or training is the
 1544 restoration of the child's competency to proceed.

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1545 (e) The service provider must file a written report with
1546 the court pursuant to the applicable Florida Rules of Juvenile
1547 Procedure not later than 6 months after the date of commitment,
1548 or at the end of any period of extended treatment or training,
1549 and at any time the Department of Children and Family Services,
1550 through its service provider determines the child has attained
1551 competency or no longer meets the criteria for secure placement,
1552 or at such shorter intervals as ordered by the court. A copy of
1553 a written report evaluating the child's competency must be filed
1554 by the provider with the court and with the state attorney, the
1555 child's attorney, the department, and the Department of Children
1556 and Family Services.

1557 (5)

1558 (b) Whenever the provider files a report with the court
1559 informing the court that the child will never become competent
1560 to proceed, the Department of Children and Family Services will
1561 develop a discharge plan for the child prior to any hearing
1562 determining whether the child will ever become competent to
1563 proceed and send the. ~~The Department of Children and Family~~
1564 ~~Services must send the proposed discharge~~ plan to the court, the
1565 state attorney, the child's attorney, and the attorneys
1566 representing the Department of Juvenile Justice. The provider
1567 will continue to provide services to the child until the court
1568 issues the order finding the child will never become competent
1569 to proceed.

1570 (6) (a) If a child is determined to have mental illness,
1571 mental retardation, or autism ~~be mentally ill or retarded~~ and is
1572 found to be incompetent to proceed but does not meet the

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1573 criteria set forth in subsection (3), the court shall commit the
 1574 child to the Department of Children and Family Services and
 1575 shall order the Department of Children and Family Services to
 1576 provide appropriate treatment and training in the community. The
 1577 purpose of the treatment or training is the restoration of the
 1578 child's competency to proceed.

1579 Section 25. Paragraph (b) of subsection (14) of section
 1580 287.057, Florida Statutes, is amended to read:

1581 287.057 Procurement of commodities or contractual
 1582 services.--

1583 (14)

1584 (b) Notwithstanding paragraph (a), the Department of
 1585 Children and Family Services may enter into agreements, not to
 1586 exceed 20 years, with a private provider to finance, design, and
 1587 construct a forensic treatment facility, as defined in s.

1588 916.106(10)~~(8)~~, of at least 200 beds and to operate all aspects
 1589 of daily operations within the forensic treatment facility. The
 1590 selected contractor is authorized to sponsor the issuance of
 1591 tax-exempt certificates of participation or other securities to
 1592 finance the project, and the state is authorized to enter into a
 1593 lease-purchase agreement for the forensic treatment facility.

1594 This paragraph expires July 1, 2006.

1595 Section 26. Paragraph (r) of subsection (3) of section
 1596 408.036, Florida Statutes, is amended to read:

1597 408.036 Projects subject to review; exemptions.--

1598 (3) EXEMPTIONS.--Upon request, the following projects are
 1599 subject to exemption from the provisions of subsection (1):

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1600 (r) For beds in state mental health treatment facilities
1601 defined in s. 394.455 ~~operated under s. 394.455(30)~~ and state
1602 mental health forensic facilities operated under chapter 916 ~~s.~~
1603 ~~916.106(8)~~.

1604 Section 27. Paragraph (a) of subsection (4) of section
1605 943.0585, Florida Statutes, is amended to read:

1606 943.0585 Court-ordered expunction of criminal history
1607 records.--The courts of this state have jurisdiction over their
1608 own procedures, including the maintenance, expunction, and
1609 correction of judicial records containing criminal history
1610 information to the extent such procedures are not inconsistent
1611 with the conditions, responsibilities, and duties established by
1612 this section. Any court of competent jurisdiction may order a
1613 criminal justice agency to expunge the criminal history record
1614 of a minor or an adult who complies with the requirements of
1615 this section. The court shall not order a criminal justice
1616 agency to expunge a criminal history record until the person
1617 seeking to expunge a criminal history record has applied for and
1618 received a certificate of eligibility for expunction pursuant to
1619 subsection (2). A criminal history record that relates to a
1620 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
1621 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
1622 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
1623 s. 916.1075, or a violation enumerated in s. 907.041 may not be
1624 expunged, without regard to whether adjudication was withheld,
1625 if the defendant was found guilty of or pled guilty or nolo
1626 contendere to the offense, or if the defendant, as a minor, was
1627 found to have committed, or pled guilty or nolo contendere to

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

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1628 committing, the offense as a delinquent act. The court may only
 1629 order expunction of a criminal history record pertaining to one
 1630 arrest or one incident of alleged criminal activity, except as
 1631 provided in this section. The court may, at its sole discretion,
 1632 order the expunction of a criminal history record pertaining to
 1633 more than one arrest if the additional arrests directly relate
 1634 to the original arrest. If the court intends to order the
 1635 expunction of records pertaining to such additional arrests,
 1636 such intent must be specified in the order. A criminal justice
 1637 agency may not expunge any record pertaining to such additional
 1638 arrests if the order to expunge does not articulate the
 1639 intention of the court to expunge a record pertaining to more
 1640 than one arrest. This section does not prevent the court from
 1641 ordering the expunction of only a portion of a criminal history
 1642 record pertaining to one arrest or one incident of alleged
 1643 criminal activity. Notwithstanding any law to the contrary, a
 1644 criminal justice agency may comply with laws, court orders, and
 1645 official requests of other jurisdictions relating to expunction,
 1646 correction, or confidential handling of criminal history records
 1647 or information derived therefrom. This section does not confer
 1648 any right to the expunction of any criminal history record, and
 1649 any request for expunction of a criminal history record may be
 1650 denied at the sole discretion of the court.

1651 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 1652 criminal history record of a minor or an adult which is ordered
 1653 expunged by a court of competent jurisdiction pursuant to this
 1654 section must be physically destroyed or obliterated by any
 1655 criminal justice agency having custody of such record; except

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1656 | that any criminal history record in the custody of the
 1657 | department must be retained in all cases. A criminal history
 1658 | record ordered expunged that is retained by the department is
 1659 | confidential and exempt from the provisions of s. 119.07(1) and
 1660 | s. 24(a), Art. I of the State Constitution and not available to
 1661 | any person or entity except upon order of a court of competent
 1662 | jurisdiction. A criminal justice agency may retain a notation
 1663 | indicating compliance with an order to expunge.

1664 | (a) The person who is the subject of a criminal history
 1665 | record that is expunged under this section or under other
 1666 | provisions of law, including former s. 893.14, former s. 901.33,
 1667 | and former s. 943.058, may lawfully deny or fail to acknowledge
 1668 | the arrests covered by the expunged record, except when the
 1669 | subject of the record:

- 1670 | 1. Is a candidate for employment with a criminal justice
- 1671 | agency;
- 1672 | 2. Is a defendant in a criminal prosecution;
- 1673 | 3. Concurrently or subsequently petitions for relief under
- 1674 | this section or s. 943.059;
- 1675 | 4. Is a candidate for admission to The Florida Bar;
- 1676 | 5. Is seeking to be employed or licensed by or to contract
- 1677 | with the Department of Children and Family Services or the
- 1678 | Department of Juvenile Justice or to be employed or used by such
- 1679 | contractor or licensee in a sensitive position having direct
- 1680 | contact with children, the developmentally disabled, the aged,
- 1681 | or the elderly as provided in s. 110.1127(3), s. 393.063, s.
- 1682 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

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1683 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and~~
1684 ~~(13)~~, s. 985.407, or chapter 400; or

1685 6. Is seeking to be employed or licensed by the Department
1686 of Education, any district school board, any university
1687 laboratory school, any charter school, any private or parochial
1688 school, or any local governmental entity that licenses child
1689 care facilities.

1690 Section 28. Paragraph (a) of subsection (4) of section
1691 943.059, Florida Statutes, is amended to read:

1692 943.059 Court-ordered sealing of criminal history
1693 records.--The courts of this state shall continue to have
1694 jurisdiction over their own procedures, including the
1695 maintenance, sealing, and correction of judicial records
1696 containing criminal history information to the extent such
1697 procedures are not inconsistent with the conditions,
1698 responsibilities, and duties established by this section. Any
1699 court of competent jurisdiction may order a criminal justice
1700 agency to seal the criminal history record of a minor or an
1701 adult who complies with the requirements of this section. The
1702 court shall not order a criminal justice agency to seal a
1703 criminal history record until the person seeking to seal a
1704 criminal history record has applied for and received a
1705 certificate of eligibility for sealing pursuant to subsection
1706 (2). A criminal history record that relates to a violation of s.
1707 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
1708 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
1709 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
1710 a violation enumerated in s. 907.041 may not be sealed, without

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1711 regard to whether adjudication was withheld, if the defendant
 1712 was found guilty of or pled guilty or nolo contendere to the
 1713 offense, or if the defendant, as a minor, was found to have
 1714 committed or pled guilty or nolo contendere to committing the
 1715 offense as a delinquent act. The court may only order sealing of
 1716 a criminal history record pertaining to one arrest or one
 1717 incident of alleged criminal activity, except as provided in
 1718 this section. The court may, at its sole discretion, order the
 1719 sealing of a criminal history record pertaining to more than one
 1720 arrest if the additional arrests directly relate to the original
 1721 arrest. If the court intends to order the sealing of records
 1722 pertaining to such additional arrests, such intent must be
 1723 specified in the order. A criminal justice agency may not seal
 1724 any record pertaining to such additional arrests if the order to
 1725 seal does not articulate the intention of the court to seal
 1726 records pertaining to more than one arrest. This section does
 1727 not prevent the court from ordering the sealing of only a
 1728 portion of a criminal history record pertaining to one arrest or
 1729 one incident of alleged criminal activity. Notwithstanding any
 1730 law to the contrary, a criminal justice agency may comply with
 1731 laws, court orders, and official requests of other jurisdictions
 1732 relating to sealing, correction, or confidential handling of
 1733 criminal history records or information derived therefrom. This
 1734 section does not confer any right to the sealing of any criminal
 1735 history record, and any request for sealing a criminal history
 1736 record may be denied at the sole discretion of the court.

1737 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 1738 history record of a minor or an adult which is ordered sealed by

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1739 a court of competent jurisdiction pursuant to this section is
 1740 confidential and exempt from the provisions of s. 119.07(1) and
 1741 s. 24(a), Art. I of the State Constitution and is available only
 1742 to the person who is the subject of the record, to the subject's
 1743 attorney, to criminal justice agencies for their respective
 1744 criminal justice purposes, or to those entities set forth in
 1745 subparagraphs (a)1., 4., 5., and 6. for their respective
 1746 licensing and employment purposes.

1747 (a) The subject of a criminal history record sealed under
 1748 this section or under other provisions of law, including former
 1749 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 1750 deny or fail to acknowledge the arrests covered by the sealed
 1751 record, except when the subject of the record:

- 1752 1. Is a candidate for employment with a criminal justice
 1753 agency;
- 1754 2. Is a defendant in a criminal prosecution;
- 1755 3. Concurrently or subsequently petitions for relief under
 1756 this section or s. 943.0585;
- 1757 4. Is a candidate for admission to The Florida Bar;
- 1758 5. Is seeking to be employed or licensed by or to contract
 1759 with the Department of Children and Family Services or the
 1760 Department of Juvenile Justice or to be employed or used by such
 1761 contractor or licensee in a sensitive position having direct
 1762 contact with children, the developmentally disabled, the aged,
 1763 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 1764 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 1765 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s.~~
 1766 ~~916.106(10) and (13)~~, s. 985.407, or chapter 400; or

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1767 6. Is seeking to be employed or licensed by the Department
1768 of Education, any district school board, any university
1769 laboratory school, any charter school, any private or parochial
1770 school, or any local governmental entity that licenses child
1771 care facilities.

1772 Section 29. This act shall take effect upon becoming a
1773 law.