

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

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

55 | amending s. 916.17, F.S.; clarifying circumstances under
56 | which the court may order the conditional release of a
57 | defendant; amending s. 916.301, F.S.; requiring that
58 | certain evaluations be conducted by certain qualified
59 | experts; requiring that the Agency for Persons with
60 | Disabilities provide the court with a list of certain
61 | available retardation and autism professionals; conforming
62 | provisions to the transfer of duties from the
63 | Developmental Disabilities Program Office within the
64 | Department of Children and Family Services to the agency;
65 | amending s. 916.3012, F.S.; clarifying provisions
66 | governing the determination of a defendant's mental
67 | competence to proceed; amending s. 916.302, F.S., relating
68 | to the involuntary commitment of a defendant; conforming
69 | provisions to the transfer of duties from the
70 | Developmental Disabilities Program Office within the
71 | Department of Children and Family Services to the agency;
72 | requiring that the department and agency submit an
73 | evaluation to the court before the transfer of a defendant
74 | from one civil or forensic facility to another; amending
75 | s. 916.3025, F.S.; clarifying that the committing court
76 | retains jurisdiction over a defendant placed on
77 | conditional release; providing for the transfer of
78 | continuing jurisdiction to another court where the
79 | defendant resides; amending s. 916.303, F.S.; clarifying
80 | provisions governing the dismissal of charges against a
81 | defendant found to be incompetent to proceed due to

82 | retardation or autism; amending s. 916.304, F.S.;

83 | providing for the conditional release of a defendant to a

84 | civil facility; amending ss. 921.137 and 985.223, F.S.,

85 | relating to provisions governing the imposition of the

86 | death sentence upon a defendant with mental retardation

87 | and the determination of incompetency in cases involving

88 | juvenile delinquency; conforming provisions to the

89 | transfer of duties from the Developmental Disabilities

90 | Program Office within the Department of Children and

91 | Family Services to the Agency for Persons with

92 | Disabilities; amending ss. 287.057, 408.036, 943.0585, and

93 | 943.059, F.S.; conforming cross-references; providing an

94 | effective date.

95 |

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

97 |

98 | Section 1. Section 916.105, Florida Statutes, is amended

99 | to read:

100 | 916.105 Legislative intent.--

101 | (1) It is the intent of the Legislature that the

102 | Department of Children and Family Services and the Agency for

103 | Persons with Disabilities, as appropriate, establish, locate,

104 | and maintain separate and secure forensic facilities and

105 | programs for the treatment or training of defendants who have

106 | been ~~are~~ charged with a felony and who have been found to be

107 | incompetent to proceed due to their mental illness, mental

108 | retardation, or autism, or who have been acquitted of a felony

109 ~~felonies~~ by reason of insanity, and who, while still under the
 110 jurisdiction of the committing court, are committed to the
 111 department or agency under the provisions of this chapter. Such
 112 ~~The separate, secure~~ facilities shall be sufficient to
 113 accommodate the number of defendants committed under the
 114 conditions noted above. 7 Except for those defendants found by
 115 the department or agency to be appropriate for treatment or
 116 training in a civil ~~treatment~~ facility or program pursuant to
 117 subsection (3), forensic. ~~Such secure~~ facilities shall be
 118 designed and administered so that ingress and egress, together
 119 with other requirements of this chapter, may be strictly
 120 controlled by staff responsible for security in order to protect
 121 the defendant, facility personnel, other clients, and citizens
 122 in adjacent communities.

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

132 (3) It is the intent of the Legislature that evaluation
 133 and services to defendants who have mental illness, mental
 134 retardation, or autism ~~are mentally ill, retarded, or autistic~~
 135 be provided in community settings, in community residential

136 facilities, or in civil, ~~nonforensic~~ facilities, whenever this
 137 is a feasible alternative to treatment or training in a state
 138 forensic facility.

139 (4) It is the intent of the Legislature to minimize and
 140 achieve an ongoing reduction in the use of restraint and
 141 seclusion on persons who are committed to a civil or forensic
 142 facility under this chapter.

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

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

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

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

161 (3)-(2) "Chemical weapon" means any shell, cartridge, bomb,
 162 gun, or other device capable of emitting chloroacetophenone

163 (CN), chlorobenzalmalononitrile (CS) or any derivatives thereof
164 in any form, or any other agent with lacrimatory properties, and
165 shall include products such as that commonly known as "mace."

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

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

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

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

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

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

186 ~~(8)(6)~~ "Express and informed consent" or "consent" means
187 consent given voluntarily in writing after a conscientious and
188 sufficient explanation and disclosure of the purpose of the
189 proposed treatment, the common side effects of the treatment, if

190 any, the expected duration of the treatment, and any alternative
191 treatment available.

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

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

198 ~~(b) Who has been found incompetent to proceed on a felony~~
199 ~~offense or has been acquitted of a felony offense by reason of~~
200 ~~insanity;~~

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

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

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

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

205 ~~(10)-(8)~~ "Forensic facility" means a separate and secure
206 facility established within the department or agency to serve
207 forensic clients. A such separate and secure facility means a
208 facilities shall be security-grade building for the purpose of
209 separately housing persons who have mental illness from persons
210 with retardation or autism and separately housing persons who
211 have been involuntarily committed pursuant to this chapter from
212 nonforensic residents buildings located on grounds distinct in
213 location from other facilities for persons who are mentally ill.
214 ~~The Florida State Hospital shall not be required to maintain~~
215 ~~separate facilities for mentally ill, retarded, or autistic~~

216 ~~defendants who are found incompetent to proceed or who are~~
217 ~~acquitted of a criminal offense by reason of insanity.~~

218 (11)~~(9)~~ "Incompetent to proceed" means unable to proceed
219 at any material stage of a criminal proceeding, which shall
220 include trial of the case, pretrial hearings involving questions
221 of fact on which the defendant might be expected to testify,
222 entry of a plea, proceedings for violation of probation or
223 violation of community control, sentencing, and hearings on
224 issues regarding a defendant's failure to comply with court
225 orders or conditions or other matters in which the mental
226 competence of the defendant is necessary for a just resolution
227 of the issues being considered.

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

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

243 ~~autistic,~~ and does not include intoxication or conditions
 244 manifested only by antisocial behavior or substance abuse
 245 impairment.

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

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

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

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

268 (15)~~(12)~~ "Retardation" has the same meaning as in s.
 269 393.063. ~~means significantly subaverage general intellectual~~

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

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

293 ~~(17)(13)~~ "Social service professional," for the purposes
294 of part III, means a person whose minimum qualifications include
295 a bachelor's degree and at least 2 years of social work,
296 clinical practice, special education, habilitation, or

297 equivalent experience working directly with persons with
298 retardation, autism, or other developmental disabilities.

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

301 916.107 Rights of forensic clients.--

302 (1) RIGHT TO INDIVIDUAL DIGNITY.--

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

324 developmental disabilities ~~services~~ program for persons with
325 retardation or autism, the client's physician or psychologist,
326 or any other appropriate program until the client is transferred
327 to a civil or forensic facility ~~the custody of the department.~~

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

335 (2) RIGHT TO TREATMENT.--

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

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

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

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

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

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

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

378 facility administrator or designee, for an order authorizing the
379 continued treatment of the client. In the interim, the need for
380 treatment shall be reviewed every 48 hours and may be continued
381 without the consent of the client upon the continued written
382 order of a physician who has determined that the emergency
383 situation continues to present a danger to the safety of the
384 client or others.

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

399 3. At the hearing on the issue of whether the court should
400 enter an order authorizing treatment for which a client was
401 unable to or ~~has~~ refused to give express and informed consent,
402 the court shall determine by clear and convincing evidence that
403 the client has mental illness, retardation, or autism ~~is~~
404 ~~mentally ill, retarded, or autistic as defined in this chapter,~~

405 that the treatment not consented to is essential to the care of
406 the client, and that the treatment not consented to is not
407 experimental and does not present an unreasonable risk of
408 serious, hazardous, or irreversible side effects. In arriving at
409 the substitute judgment decision, the court must consider at
410 least the following factors:

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

415

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

429 (b) In addition to the provisions of paragraph (a), in the
430 case of surgical procedures requiring the use of a general
431 anesthetic or electroconvulsive treatment or nonpsychiatric

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

444 (4) QUALITY OF TREATMENT.--

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

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

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

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

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

485 | contraband items for health or security reasons prior to the
486 | contents being given to a client.

487 | **(b)**~~(e)~~ If a client's right to communicate is restricted by
488 | the administrator, written notice of such restriction and the
489 | duration of the restriction shall be served on the client or his
490 | or her legal guardian or representatives, and such restriction
491 | shall be recorded on the client's clinical record with the
492 | reasons therefor. The restriction of a client's right to
493 | communicate shall be reviewed at least every 7 days.

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

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

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

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

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

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

538 confidential and exempt from the provisions of s. 119.07(1) and
 539 s. 24(a), Art. I of the State Constitution.

540 (a) Such clinical record may be released:

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

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

546 3. To a qualified researcher, as defined by rule; a staff
 547 member of the facility; or an employee of the department or
 548 agency when the administrator of the facility, or secretary or
 549 director of the department or agency, deems it necessary for
 550 treatment of the client, maintenance of adequate records,
 551 compilation of treatment data, or evaluation of programs.

552 4. For statistical and research purposes if the
 553 information is abstracted in such a way as to protect the
 554 identity of individuals.

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

562 6. To the parent or next of kin of a client ~~mentally ill,~~
 563 ~~retarded, or autistic person~~ who is committed to, or is being
 564 served by, a facility or program when such information is

565 | limited to that person's service plan and current physical and
 566 | mental condition. Release of such information shall be in
 567 | accordance with the code of ethics of the profession involved
 568 | and must comply with all state and federal laws and regulations
 569 | pertaining to the release of personal health information.

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

575 | 1. The Social Security Administration and the United
 576 | States Department of Veterans Affairs;

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

579 | 3. Jail personnel in the jail in ~~to~~ which a client may be
 580 | housed ~~returned~~; and

581 | 4. Community agencies and others expected to provide
 582 | followup care to the client upon the client's return to the
 583 | community.

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

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

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

594 (9) HABEAS CORPUS.--

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

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

612 (10) TRANSPORTATION.--

613 (a) The sheriff shall consult with the governing board of
614 the county as to the most appropriate and cost-effective means
615 of transportation for forensic clients who have been committed
616 for treatment or training. Such consultation shall include, but
617 is not limited to, consideration of the cost to the county of

618 transportation performed by sheriff's ~~department~~ personnel as
619 opposed to transportation performed by other means and, if
620 sheriff's ~~department~~ personnel are to be used for
621 transportation, the effect such use will have, if any, on
622 service delivery levels of the sheriff's road patrol. After such
623 consultation with the governing board of the county, the sheriff
624 shall determine the most appropriate and cost-effective means of
625 transportation for forensic clients committed for treatment or
626 training.

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

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

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

642 (11) LIABILITY FOR VIOLATIONS.--Any person who violates or
643 abuses any rights or privileges of a forensic client in the
644 custody of the department or agency that are provided under this

645 chapter shall be ~~by this act is~~ liable for damages as determined
 646 by law. Any person who acts in good faith in complying with the
 647 provisions of this chapter ~~act~~ is immune from civil or criminal
 648 liability for his or her actions in connection with the
 649 admission, diagnosis, treatment, training, or discharge of a
 650 client to or from a facility. However, this subsection does not
 651 relieve any person from liability if he or she is negligent.

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

654 916.1075 Sexual misconduct prohibited; reporting required;
 655 penalties.--

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

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

662 (b) "Sexual activity" means:

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

665 2. The oral, anal, or vaginal penetration by or union with
 666 the sexual organ of another or the anal or vaginal penetration
 667 of another by any other object.

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

672 4. Intentionally masturbating in the presence of another
673 person.

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

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

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

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

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

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

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

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

701 (5) A covered person ~~An employee~~ who witnesses sexual
702 misconduct, or who otherwise knows or has reasonable cause to
703 suspect that a person has engaged in sexual misconduct, shall
704 immediately report the incident to the department's central
705 abuse hotline and to the appropriate local law enforcement
706 agency. The covered person ~~Such employee~~ shall also prepare,
707 date, and sign an independent report that specifically describes
708 the nature of the sexual misconduct, the location and time of
709 the incident, and the persons involved. For an allegation
710 pertaining to a forensic client committed to the department or
711 agency, the covered person ~~employee~~ shall deliver the report
712 directly to the department's or agency's inspector general, as
713 appropriate, or to the supervisor or program director, who shall
714 provide copies to the department's or agency's ~~is responsible~~
715 ~~for providing copies to the department's~~ inspector general. The
716 ~~inspector general shall immediately conduct an appropriate~~
717 ~~administrative investigation, and, if there is probable cause to~~
718 ~~believe that sexual misconduct has occurred, the inspector~~
719 ~~general shall notify the state attorney in the circuit in which~~
720 ~~the incident occurred.~~

721 Section 5. Section 916.1081, Florida Statutes, is amended
722 to read:

723 916.1081 Escape from program; penalty.--

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

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

739 Section 6. Subsection (1) and paragraph (b) of subsection
 740 (2) of section 916.1085, Florida Statutes, are amended to read:
 741 916.1085 Introduction or removal of certain articles
 742 unlawful; penalty.--

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

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

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

767 (2)

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

771 Section 7. Section 916.1091, Florida Statutes, is amended
 772 to read:

773 916.1091 Duties, functions, and powers of institutional
 774 security personnel.--In case of emergency, and when necessary to
 775 provide protection and security to any client, to the personnel,
 776 equipment, buildings, or grounds of a department or agency

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

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

791 916.1093 Operation and administration; rules.--

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

797 (2) The department and agency are authorized ~~has authority~~
798 to adopt rules pursuant to ss. 120.536(1) and 120.54 to
799 implement the provisions of this chapter. Such rules must
800 address the use of restraint and seclusion in forensic
801 facilities and must be consistent with recognized best
802 practices; prohibit inherently dangerous restraint or seclusion
803 procedures; establish limitations on the use and duration of

804 restraint and seclusion; establish measures to ensure the safety
 805 of clients and staff during an incident of restraint or
 806 seclusion; establish procedures for staff to follow before,
 807 during, and after incidents of restraint or seclusion; establish
 808 professional qualifications of and training for staff who may
 809 order or be engaged in the use of restraint or seclusion;
 810 provide data reporting and data collection procedures relating
 811 to the use of restraint and seclusion; and provide for the
 812 documentation of the use of restraint or seclusion in the
 813 client's facility record.

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

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

823 (1) To provide:

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

827 (b) Clinical protocols and procedures based upon the
 828 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
 829 Procedure; and

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

833 Section 10. Section 916.115, Florida Statutes, is amended
 834 to read:

835 916.115 Appointment of experts.--

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

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

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

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

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

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

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

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

878 (c)4. An expert retained by the defendant who is
879 represented by private counsel appointed under s. 27.5303 shall
880 be paid by the Justice Administrative Commission.

881 (d)5. An expert retained by a defendant who is indigent
882 for costs as determined by the court and who is represented by
883 private counsel, other than private counsel appointed under s.

884 27.5303, on a fee or pro bono basis, or who is representing
 885 himself or herself, shall be paid by the Justice Administrative
 886 Commission from funds specifically appropriated for these
 887 expenses.

888 (e)~~(b)~~ State employees shall be reimbursed for ~~paid~~
 889 expenses pursuant to s. 112.061.

890 (f)~~(e)~~ The fees shall be taxed as costs in the case.

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

895 Section 11. Subsections (1), (2), and (3) of section
 896 916.12, Florida Statutes, are amended to read:

897 916.12 Mental competence to proceed.--

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

904 (2) Mental health experts appointed pursuant to s. 916.115
 905 ~~An expert~~ shall first determine whether the defendant has a
 906 mental illness ~~person is mentally ill~~ and, if so, consider the
 907 factors related to the issue of whether the defendant meets the
 908 criteria for competence to proceed as described in subsection
 909 (1); ~~that is, whether the defendant has sufficient present~~
 910 ~~ability to consult with counsel with a reasonable degree of~~

911 ~~rational understanding and whether the defendant has a rational,~~
 912 ~~as well as factual, understanding of the pending proceedings.~~ A
 913 defendant must be evaluated by no fewer than two experts before
 914 the court commits the defendant or takes other action authorized
 915 by this chapter or the Florida Rules of Criminal Procedure,
 916 except if one expert finds that the defendant is incompetent to
 917 proceed and the parties stipulate to that finding, the court may
 918 commit the defendant or take other action authorized by this
 919 chapter or the rules without further evaluation or hearing, or
 920 the court may appoint no more than two additional experts to
 921 evaluate the defendant. Notwithstanding any stipulation by the
 922 state and the defendant, the court may require a hearing with
 923 testimony from the expert or experts before ordering the
 924 commitment of a defendant.

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

928 (a) Appreciate the charges or allegations against the
 929 defendant. †

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

933 (c) Understand the adversarial nature of the legal
 934 process. †

935 (d) Disclose to counsel facts pertinent to the proceedings
 936 at issue. †

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

938 (f) Testify relevantly.~~†~~
 939 (g) ~~and include in his or her report~~ Any other factor
 940 deemed relevant by the expert.

941 Section 12. Section 916.13, Florida Statutes, is amended
 942 to read:

943 916.13 Involuntary commitment of defendant adjudicated
 944 incompetent.--

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

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

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

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

963 (b) All available, less restrictive treatment
 964 alternatives, including treatment in community residential

965 facilities or community inpatient or outpatient settings, which
966 would offer an opportunity for improvement of the defendant's
967 condition have been judged to be inappropriate; and

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

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

985 Section 13. Section 916.145, Florida Statutes, is amended
986 to read:

987 916.145 ~~Adjudication of incompetency due to mental~~
988 ~~illness~~, Dismissal of charges.--The charges against any
989 defendant adjudicated incompetent to proceed due to the
990 defendant's mental illness shall be dismissed without prejudice
991 to the state if the defendant remains incompetent to proceed 5

992 years after such determination, unless the court in its order
993 specifies its reasons for believing that the defendant will
994 become competent to proceed within the foreseeable future and
995 specifies the time within which the defendant is expected to
996 become competent to proceed. The charges against the defendant
997 are dismissed without prejudice to the state to refile the
998 charges should the defendant be declared competent to proceed in
999 the future.

1000 Section 14. Section 916.15, Florida Statutes, is amended
1001 to read:

1002 916.15 Involuntary commitment of defendant adjudicated not
1003 guilty by reason of insanity.--

1004 (1) The determination of whether a defendant is not guilty
1005 by reason of insanity shall be determined in accordance with
1006 Rule 3.217, Florida Rules of Criminal Procedure.

1007 (2)~~(1)~~ A defendant who is acquitted of criminal charges
1008 because of a finding of not guilty by reason of insanity may be
1009 involuntarily committed pursuant to such finding if the
1010 defendant has a mental illness ~~is mentally ill~~ and, because of
1011 the illness, is manifestly dangerous to himself or herself or
1012 others.

1013 (3)~~(2)~~ Every defendant acquitted of criminal charges by
1014 reason of insanity and found to meet the criteria for
1015 involuntary commitment may be committed and treated in
1016 accordance with the provisions of this section and the
1017 applicable Florida Rules of Criminal Procedure. The department
1018 shall admit a defendant so adjudicated to an appropriate

1019 facility or program for treatment and shall retain and treat
 1020 such defendant. No later than 6 months after the date of
 1021 admission, prior to the end of any period of extended
 1022 commitment, or at any time the administrator or designee shall
 1023 have determined that the defendant no longer meets the criteria
 1024 for continued commitment placement, the administrator or
 1025 designee shall file a report with the court pursuant to the
 1026 applicable Florida Rules of Criminal Procedure.

1027 (4)~~(3)~~ In all proceedings under this section ~~subsection~~,
 1028 both the defendant and the state shall have the right to a
 1029 hearing before the committing court. Evidence at such hearing
 1030 may be presented by the hospital administrator or the
 1031 administrator's designee as well as by the state and the
 1032 defendant. The defendant shall have the right to counsel at any
 1033 such hearing. In the event that a defendant is determined to be
 1034 indigent pursuant to s. 27.52, the public defender shall
 1035 represent the defendant. The parties shall have access to the
 1036 defendant's records at the treating facilities and may interview
 1037 or depose personnel who have had contact with the defendant at
 1038 the treating facilities.

1039 Section 15. Section 916.16, Florida Statutes, is amended
 1040 to read:

1041 916.16 Jurisdiction of committing court.--

1042 (1) The committing court shall retain jurisdiction over ~~in~~
 1043 ~~the case of~~ any defendant involuntarily committed due to a
 1044 determination of incompetency ~~hospitalized as incompetent~~ to
 1045 proceed due to mental illness or ~~because of~~ a finding of not

1046 guilty by reason of insanity pursuant to this chapter. ~~The~~ ~~Ne~~
 1047 ~~such~~ defendant may not be released except by order of the
 1048 committing court. ~~An~~ ~~The~~ administrative hearing examiner does
 1049 not ~~shall~~ have ~~no~~ jurisdiction to determine issues of continuing
 1050 commitment hospitalization or release of any defendant
 1051 involuntarily committed ~~admitted~~ pursuant to this chapter.

1052 (2) The committing court shall retain jurisdiction in the
 1053 case of any defendant placed on conditional release pursuant to
 1054 s. 916.17. ~~Ne~~ Such defendant may not be released from the
 1055 conditions of release except by order of the committing court.

1056 Section 16. Section 916.17, Florida Statutes, is amended
 1057 to read:

1058 916.17 Conditional release.--

1059 (1) Except for an inmate currently serving a prison
 1060 sentence, The committing court may order a conditional release
 1061 of any defendant who has been found to be incompetent to proceed
 1062 or not guilty by reason of insanity, based on an approved plan
 1063 for providing appropriate outpatient care and treatment. the
 1064 committing court may order a conditional release of any
 1065 defendant in lieu of an involuntary commitment to a facility
 1066 pursuant to s. 916.13 or s. 916.15 based upon an approved plan
 1067 for providing appropriate outpatient care and treatment. Upon a
 1068 recommendation that outpatient treatment of the defendant is
 1069 appropriate, a written plan for outpatient treatment, including
 1070 recommendations from qualified professionals, must be filed with
 1071 the court, with copies to all parties. Such a plan may also be

1072 submitted by the defendant and filed with the court with copies
1073 to all parties. The plan shall include:

1074 (a) Special provisions for residential care or adequate
1075 supervision of the defendant.

1076 (b) Provisions for outpatient mental health services.

1077 (c) If appropriate, recommendations for auxiliary services
1078 such as vocational training, educational services, or special
1079 medical care.

1080

1081 In its order of conditional release, the court shall specify the
1082 conditions of release based upon the release plan and shall
1083 direct the appropriate agencies or persons to submit periodic
1084 reports to the court regarding the defendant's compliance with
1085 the conditions of the release and progress in treatment, with
1086 copies to all parties.

1087 (2) Upon the filing of an affidavit or statement under
1088 oath by any person that the defendant has failed to comply with
1089 the conditions of release, that the defendant's condition has
1090 deteriorated to the point that inpatient care is required, or
1091 that the release conditions should be modified, the court shall
1092 hold a hearing within 7 days after receipt of the affidavit or
1093 statement under oath. After the hearing, the court may modify
1094 the release conditions. The court may also order that the
1095 defendant be returned to the department if it is found, after
1096 the appointment and report of experts, that the person meets the
1097 criteria for involuntary commitment under s. 916.13 or s. 916.15
1098 ~~treatment~~.

1099 (3) If at any time it is determined after a hearing that
 1100 the defendant who has been conditionally released under
 1101 subsection (1) no longer requires court-supervised followup
 1102 care, the court shall terminate its jurisdiction in the cause
 1103 and discharge the defendant.

1104 Section 17. Section 916.301, Florida Statutes, is amended
 1105 to read:

1106 916.301 Appointment of experts.--

1107 (1) All evaluations ordered by the court under this part
 1108 must be conducted by qualified experts who have expertise in
 1109 evaluating persons with retardation or autism. The agency
 1110 ~~department~~ shall maintain and provide the courts annually with a
 1111 list of available retardation and autism professionals who are
 1112 appropriately licensed and qualified to perform evaluations of
 1113 defendants alleged to be incompetent to proceed due to
 1114 retardation or autism. The courts may use professionals from
 1115 this list when appointing experts and ordering evaluations under
 1116 this part ~~for defendants suspected of being retarded or~~
 1117 ~~autistic.~~

1118 (2) If a defendant's suspected mental condition is
 1119 retardation or autism, the court shall appoint the following:
 1120 ~~two experts, one of whom must be the developmental services~~
 1121 ~~program of the department, each of whom will evaluate whether~~
 1122 ~~the defendant meets the definition of retardation or autism and,~~
 1123 ~~if so, whether the defendant is competent to proceed.~~

1124 (a) ~~(3)~~ At least one, or at the request of any party, two
 1125 experts ~~the court may appoint one additional expert~~ to evaluate

1126 ~~the defendant. The expert appointed by the court will evaluate~~
1127 whether the defendant meets the definition of retardation or
1128 autism and, if so, whether the defendant is competent to
1129 proceed.

1130 (b)~~(4)~~ ~~The developmental services program shall select A~~
1131 psychologist selected by the agency who is licensed or
1132 authorized by law to practice in this state, with experience in
1133 evaluating persons suspected of having retardation or autism,
1134 and a social service professional, with experience in working
1135 with persons with retardation or autism ~~to evaluate the~~
1136 ~~defendant.~~

1137 1.(a) The psychologist shall evaluate whether the
1138 defendant meets the definition of retardation or autism and, if
1139 so, whether the defendant is incompetent to proceed due to
1140 retardation or autism.

1141 2.(b) The social service professional shall provide a
1142 social and developmental history of the defendant.

1143 ~~(5) All evaluations ordered by the court must be from~~
1144 ~~qualified experts with experience in evaluating persons with~~
1145 ~~retardation or autism.~~

1146 (3)~~(6)~~ The ~~panel of~~ experts may examine the defendant in
1147 jail, in another appropriate local facility, in a facility of
1148 the Department of Corrections, or on an outpatient basis.

1149 (4)~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to
1150 evaluate the mental condition of a defendant in a criminal case
1151 shall be allowed reasonable fees for services rendered as
1152 evaluators and as witnesses, which shall be paid by the court.

1153 State employees shall be paid expenses pursuant to s. 112.061.
1154 The fees shall be taxed as costs in the case. In order for the
1155 experts to be paid for the services rendered, the reports and
1156 testimony must explicitly address each of the factors and follow
1157 the procedures set out in this chapter and in the Florida Rules
1158 of Criminal Procedure.

1159 Section 18. Subsections (1), (2), and (3) of section
1160 916.3012, Florida Statutes, are amended to read:

1161 916.3012 Mental competence to proceed.--

1162 (1) A defendant whose suspected mental condition is
1163 retardation or autism is incompetent to proceed within the
1164 meaning of this chapter if the defendant does not have
1165 sufficient present ability to consult with the defendant's
1166 lawyer with a reasonable degree of rational understanding or if
1167 the defendant has no rational, as well as factual, understanding
1168 of the proceedings against the defendant.

1169 (2) The Experts in retardation or autism appointed
1170 pursuant to s. 916.301 shall first consider whether the
1171 defendant meets the definition of retardation or autism and, if
1172 so, consider the factors related to the issue of whether the
1173 defendant meets the criteria for competence to proceed as
1174 described in subsection (1), ~~that is, whether the defendant has~~
1175 ~~sufficient present ability to consult with counsel with a~~
1176 ~~reasonable degree of rational understanding and whether the~~
1177 ~~defendant has a rational, as well as factual, understanding of~~
1178 ~~the pending proceedings.~~

1179 (3) In considering the issue of competence to proceed, the
 1180 examining experts shall first consider and specifically include
 1181 in their report the defendant's capacity to:

1182 (a) Appreciate the charges or allegations against the
 1183 defendant.†

1184 (b) Appreciate the range and nature of possible penalties,
 1185 if applicable, that may be imposed in the proceedings against
 1186 the defendant.†

1187 (c) Understand the adversarial nature of the legal
 1188 process.†

1189 (d) Disclose to counsel facts pertinent to the proceedings
 1190 at issue.†

1191 (e) Manifest appropriate courtroom behavior.† and

1192 (f) Testify relevantly.†

1193 (g) ~~and include in their report~~ Any other factor deemed
 1194 relevant by the experts.

1195 Section 19. Section 916.302, Florida Statutes, is amended
 1196 to read:

1197 916.302 Involuntary commitment of defendant determined to
 1198 be incompetent to proceed ~~due to retardation or autism.--~~

1199 (1) CRITERIA.--Every defendant who is charged with a
 1200 felony and who is adjudicated ~~found to be~~ incompetent to proceed
 1201 due to retardation or autism, ~~pursuant to this chapter and the~~
 1202 ~~applicable Florida Rules of Criminal Procedure,~~ may be
 1203 involuntarily committed for training upon a finding by the court
 1204 of clear and convincing evidence that:

1205 (a) The defendant has retardation or autism ~~is retarded or~~
 1206 ~~autistic~~;

1207 (b) There is a substantial likelihood that in the near
 1208 future the defendant will inflict serious bodily harm on himself
 1209 or herself or another person, as evidenced by recent behavior
 1210 causing, attempting, or threatening such harm;

1211 (c) All available, less restrictive alternatives,
 1212 including services provided in community residential facilities
 1213 or other community settings, which would offer an opportunity
 1214 for improvement of the condition have been judged to be
 1215 inappropriate; and

1216 (d) There is a substantial probability that the
 1217 retardation or autism causing the defendant's incompetence will
 1218 respond to training and the defendant will regain competency to
 1219 proceed in the reasonably foreseeable future.

1220 (2) ADMISSION TO A FACILITY.--

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

1232 administrator or designee shall file a report with the court
1233 pursuant to this chapter and the applicable Florida Rules of
1234 Criminal Procedure.

1235 (b) A defendant determined to be incompetent to proceed
1236 due to retardation or autism may be ordered by a circuit court
1237 into a forensic secure facility designated by the agency
1238 ~~department~~ for ~~retarded or autistic~~ defendants who have mental
1239 retardation or autism.

1240 (c) The agency ~~department~~ may transfer a defendant from a
1241 designated forensic secure facility to another designated
1242 forensic secure facility and must notify the court of the
1243 transfer within 30 days after the transfer is completed.

1244 (d) The agency ~~department~~ may not transfer a defendant
1245 from a designated forensic secure facility to a civil nonsecure
1246 facility without first notifying the court, and all parties, 30
1247 days before the proposed transfer. If the court objects to the
1248 proposed transfer ~~to a nonsecure facility~~, it must send its
1249 written objection to the agency ~~department~~. The agency
1250 ~~department~~ may transfer the defendant unless it receives the
1251 written objection from the court within 30 days after the
1252 court's receipt of the notice of the proposed transfer.

1253 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--

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

1259 ~~program~~ most appropriate to address the symptoms that ~~which~~ are
 1260 the cause of the defendant's incompetence.

1261 (b) Transfer from one civil or forensic facility ~~or~~
 1262 ~~program~~ to another civil or forensic facility ~~or program~~ may
 1263 occur when, in the department's and agency's judgment, it is in
 1264 the defendant's best treatment or training interests. The
 1265 department and agency shall submit an evaluation and
 1266 justification for the transfer to the court. The court may
 1267 consult with an outside expert if necessary. Transfer will
 1268 require an amended order from the committing court.

1269 Section 20. Section 916.3025, Florida Statutes, is amended
 1270 to read:

1271 916.3025 Jurisdiction of committing court.--

1272 (1) The committing court shall retain jurisdiction in the
 1273 case of any defendant found to be incompetent to proceed due to
 1274 retardation or autism and ordered into a forensic secure
 1275 facility designated by the agency ~~department~~ for ~~retarded or~~
 1276 ~~autistic~~ defendants who have mental retardation or autism. A ~~No~~
 1277 defendant may not be released except by the order of the
 1278 committing court. An administrative hearing examiner does not
 1279 have jurisdiction to determine issues of continuing commitment
 1280 or release of any defendant involuntarily committed pursuant to
 1281 this chapter.

1282 (2) The committing court shall retain jurisdiction in the
 1283 case of any defendant placed on conditional release pursuant to
 1284 s. 916.304. ~~No~~ Such defendant may not be released from the
 1285 conditions of release except by order of the committing court.

1286 (3) The committing court shall consider a ~~the~~ petition to
1287 involuntarily admit a defendant whose charges have been
1288 dismissed to residential services provided by the agency
1289 ~~department's developmental services program a person whose~~
1290 ~~charges have been dismissed,~~ and, when applicable, to continue
1291 secure placement of such person as provided in s. 916.303. The
1292 committing court shall retain jurisdiction over such person so
1293 long as he or she remains in secure placement or is on
1294 conditional release as provided in s. 916.304. However, upon
1295 request, the court may transfer continuing jurisdiction to the
1296 court in the circuit where the defendant resides. The defendant
1297 may not be released from an order for secure placement except by
1298 order of the court.

1299 Section 21. Section 916.303, Florida Statutes, is amended
1300 to read:

1301 916.303 Determination of incompetency due to retardation
1302 or autism; dismissal of charges.--

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

1313 ~~to the state to refile the charges should the defendant~~ is ~~be~~
1314 declared competent to proceed in the future.

1315 (2) ~~(a)~~ If the charges are dismissed and if the defendant
1316 is considered to lack sufficient capacity to give express and
1317 informed consent to a voluntary application for services and
1318 lacks the basic survival and self-care skills to provide for his
1319 or her well-being or is likely to physically injure himself or
1320 herself or others if allowed to remain at liberty, the agency
1321 ~~department~~, the state attorney, or the defendant's attorney
1322 shall ~~may~~ apply to the committing court to involuntarily admit
1323 the defendant to residential services pursuant to s. 393.11.

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

1340 court at least annually at a hearing. The annual review and
 1341 hearing shall determine whether the defendant continues to meet
 1342 the criteria described in this subsection ~~for involuntary~~
 1343 ~~residential services~~ and, if so, whether the defendant still
 1344 requires involuntary placement in a secure facility ~~or program~~
 1345 ~~because the court finds that the defendant is likely to~~
 1346 ~~physically injure others as specified in s. 393.11~~ and whether
 1347 the defendant is receiving adequate care, treatment,
 1348 habilitation, and rehabilitation, including psychotropic
 1349 medication and behavioral programming. Notice of the annual
 1350 review and review hearing shall be given to the state attorney
 1351 and ~~to~~ the defendant's attorney. In no instance may a
 1352 defendant's placement in a secure facility ~~or program~~ exceed the
 1353 maximum sentence for the crime for which the defendant was
 1354 charged.

1355 Section 22. Section 916.304, Florida Statutes, is amended
 1356 to read:

1357 916.304 Conditional release.--

1358 (1) Except for an inmate currently serving a prison
 1359 sentence, the committing court may order a conditional release
 1360 of any defendant who has been found to be incompetent to proceed
 1361 due to retardation or autism, based on an approved plan for
 1362 providing ~~continuing~~ community-based training. The committing
 1363 criminal court may order a conditional release of any defendant
 1364 to a civil facility in lieu of an involuntary commitment to a
 1365 forensic facility pursuant to s. 916.302. Upon a recommendation
 1366 that community-based training for the defendant is appropriate,

1367 a written plan for community-based training, including
1368 recommendations from qualified professionals, may be filed with
1369 the court, with copies to all parties. Such a plan may also be
1370 submitted by the defendant and filed with the court, with copies
1371 to all parties. The plan must ~~shall~~ include:

1372 (a) Special provisions for residential care and adequate
1373 supervision of the defendant, including recommended location of
1374 placement.

1375 (b) Recommendations for auxiliary services such as
1376 vocational training, psychological training, educational
1377 services, leisure services, and special medical care.

1378

1379 In its order of conditional release, the court shall specify the
1380 conditions of release based upon the release plan and shall
1381 direct the appropriate agencies or persons to submit periodic
1382 reports to the courts regarding the defendant's compliance with
1383 the conditions of the release and progress in training, with
1384 copies to all parties.

1385 (2) Upon the filing of an affidavit or statement under
1386 oath by any person that the defendant has failed to comply with
1387 the conditions of release, that the defendant's condition has
1388 deteriorated, or that the release conditions should be modified,
1389 the court shall hold a hearing within 7 days after receipt of
1390 the affidavit or statement under oath. With notice to the court
1391 and all parties, the agency may detain a defendant in a forensic
1392 facility until the hearing occurs. After the hearing, the court
1393 may modify the release conditions. The court may also order that

1394 the defendant be placed into more appropriate programs for
1395 further training or may order the defendant to be committed
1396 ~~returned to a forensic facility involuntary residential services~~
1397 ~~of the department~~ if it is found, after the appointment and
1398 report of experts, that the defendant meets the criteria for
1399 placement in a forensic facility involuntary residential
1400 services.

1401 (3) If at any time it is determined after a hearing that
1402 the defendant conditionally released under subsection (1) no
1403 longer requires court-supervised followup care, the court shall
1404 terminate its jurisdiction in the cause and discharge the
1405 defendant.

1406 Section 23. Subsection (1) of section 921.137, Florida
1407 Statutes, is amended to read:

1408 921.137 Imposition of the death sentence upon a ~~mentally~~
1409 ~~retarded~~ defendant with mental retardation prohibited.--

1410 (1) As used in this section, the term "mental retardation"
1411 means significantly subaverage general intellectual functioning
1412 existing concurrently with deficits in adaptive behavior and
1413 manifested during the period from conception to age 18. The term
1414 "significantly subaverage general intellectual functioning," for
1415 the purpose of this section, means performance that is two or
1416 more standard deviations from the mean score on a standardized
1417 intelligence test specified in the rules of the Agency for
1418 Persons with Disabilities ~~Department of Children and Family~~
1419 ~~Services~~. The term "adaptive behavior," for the purpose of this
1420 definition, means the effectiveness or degree with which an

1421 individual meets the standards of personal independence and
1422 social responsibility expected of his or her age, cultural
1423 group, and community. The Agency for Persons with Disabilities
1424 ~~Department of Children and Family Services~~ shall adopt rules to
1425 specify the standardized intelligence tests as provided in this
1426 subsection.

1427 Section 24. Paragraphs (d), (e), (g), and (h) of
1428 subsection (1), subsections (2), (3), and (4), paragraph (b) of
1429 subsection (5), and paragraph (a) of subsection (6) of section
1430 985.223, Florida Statutes, are amended to read:

1431 985.223 Incompetency in juvenile delinquency cases.--

1432 (1) If, at any time prior to or during a delinquency case,
1433 the court has reason to believe that the child named in the
1434 petition may be incompetent to proceed with the hearing, the
1435 court on its own motion may, or on the motion of the child's
1436 attorney or state attorney must, stay all proceedings and order
1437 an evaluation of the child's mental condition.

1438 (d) For incompetency evaluations related to mental
1439 illness, the Department of Children and Family Services shall
1440 maintain and annually provide the courts with a list of
1441 available mental health professionals who have completed a
1442 training program approved by the Department of Children and
1443 Family Services to perform the evaluations.

1444 (e) For incompetency evaluations related to mental
1445 retardation or autism, the court shall order the Agency for
1446 Persons with Disabilities ~~Developmental Disabilities Program~~
1447 ~~Office within the Department of Children and Family Services~~ to

1448 examine the child to determine if the child meets the definition
 1449 of "retardation" or "autism" in s. 393.063 and, if so, whether
 1450 the child is competent to proceed with delinquency proceedings.

1451 (g) Immediately upon the filing of the court order finding
 1452 a child incompetent to proceed, the clerk of the court shall
 1453 notify the Department of Children and Family Services and the
 1454 Agency for Persons with Disabilities and fax or hand deliver to
 1455 the department and to the agency ~~of Children and Family Services~~
 1456 a referral packet that ~~which~~ includes, at a minimum, the court
 1457 order, the charging documents, the petition, and the court-
 1458 appointed evaluator's reports.

1459 (h) After placement of the child in the appropriate
 1460 setting, the Department of Children and Family Services in
 1461 consultation with the Agency for Persons with Disabilities, as
 1462 appropriate, must, within 30 days after placement of the
 1463 ~~Department of Children and Family Services~~ places the child,
 1464 prepare and submit to the court a treatment or training plan for
 1465 the child's restoration of competency. A copy of the ~~treatment~~
 1466 plan must be served upon the child's attorney, the state
 1467 attorney, and the attorneys representing the Department of
 1468 Juvenile Justice.

1469 (2) A child ~~who is mentally ill or retarded,~~ who is
 1470 adjudicated incompetent to proceed, and who has committed a
 1471 delinquent act or violation of law, either of which would be a
 1472 felony if committed by an adult, must be committed to the
 1473 Department of Children and Family Services for treatment or
 1474 training. A child who has been adjudicated incompetent to

1475 proceed because of age or immaturity, or for any reason other
 1476 than for mental illness or retardation or autism, must not be
 1477 committed to the department or to the Department of Children and
 1478 Family Services for restoration-of-competency treatment or
 1479 training services. For purposes of this section, a child who has
 1480 committed a delinquent act or violation of law, either of which
 1481 would be a misdemeanor if committed by an adult, may not be
 1482 committed to the department or to the Department of Children and
 1483 Family Services for restoration-of-competency treatment or
 1484 training services.

1485 (3) If the court finds that a child has mental illness,
 1486 mental retardation, or autism ~~is mentally ill or retarded~~ and
 1487 adjudicates the child incompetent to proceed, the court must
 1488 also determine whether the child meets the criteria for secure
 1489 placement. A child may be placed in a secure facility or program
 1490 if the court makes a finding by clear and convincing evidence
 1491 that:

1492 (a) The child has mental illness, mental retardation, or
 1493 autism ~~is mentally ill~~ and because of the mental illness, mental
 1494 retardation, or autism, ~~or the child is mentally retarded and~~
 1495 ~~because of the mental retardation:~~

1496 1. The child is manifestly incapable of surviving with the
 1497 help of willing and responsible family or friends, including
 1498 available alternative services, and without treatment or
 1499 training the child is likely to either suffer from neglect or
 1500 refuse to care for self, and such neglect or refusal poses a

1501 real and present threat of substantial harm to the child's well-
1502 being; or

1503 2. There is a substantial likelihood that in the near
1504 future the child will inflict serious bodily harm on self or
1505 others, as evidenced by recent behavior causing, attempting, or
1506 threatening such harm; and

1507 (b) All available less restrictive alternatives, including
1508 treatment or training in community residential facilities or
1509 community settings which would offer an opportunity for
1510 improvement of the child's condition, are inappropriate.

1511 (4) A child who is determined to have mental illness,
1512 mental retardation, or autism ~~be mentally ill or retarded~~, who
1513 has been adjudicated incompetent to proceed, and who meets the
1514 criteria set forth in subsection (3), must be committed to the
1515 Department of Children and Family Services, and receive
1516 treatment or training ~~the Department of Children and Family~~
1517 ~~Services must treat or train the child~~ in a secure facility or
1518 program that ~~which~~ is the least restrictive alternative
1519 consistent with public safety. Any placement of a child to a
1520 secure residential program must be separate from adult forensic
1521 programs. If the child attains competency, then custody, case
1522 management, and supervision of the child will be transferred to
1523 the department in order to continue delinquency proceedings;
1524 however, the court retains authority to order the Department of
1525 Children and Family Services to provide continued treatment or
1526 training to maintain competency.

1527 (a) A child adjudicated incompetent due to mental
1528 retardation or autism may be ordered into a secure program or
1529 facility designated by the Department of Children and Family
1530 Services for ~~retarded~~ children with mental retardation or
1531 autism.

1532 (b) A child adjudicated incompetent due to mental illness
1533 may be ordered into a secure program or facility designated by
1534 the Department of Children and Family Services for ~~mentally ill~~
1535 children have mental illnesses.

1536 (c) Whenever a child is placed in a secure residential
1537 facility, the department will provide transportation to the
1538 secure residential facility for admission and from the secure
1539 residential facility upon discharge.

1540 (d) The purpose of the treatment or training is the
1541 restoration of the child's competency to proceed.

1542 (e) The service provider must file a written report with
1543 the court pursuant to the applicable Florida Rules of Juvenile
1544 Procedure not later than 6 months after the date of commitment,
1545 or at the end of any period of extended treatment or training,
1546 and at any time the Department of Children and Family Services,
1547 through its service provider determines the child has attained
1548 competency or no longer meets the criteria for secure placement,
1549 or at such shorter intervals as ordered by the court. A copy of
1550 a written report evaluating the child's competency must be filed
1551 by the provider with the court and with the state attorney, the
1552 child's attorney, the department, and the Department of Children
1553 and Family Services.

1554 (5)
 1555 (b) Whenever the provider files a report with the court
 1556 informing the court that the child will never become competent
 1557 to proceed, the Department of Children and Family Services will
 1558 develop a discharge plan for the child prior to any hearing
 1559 determining whether the child will ever become competent to
 1560 proceed and send the. ~~The Department of Children and Family~~
 1561 ~~Services must send the proposed discharge~~ plan to the court, the
 1562 state attorney, the child's attorney, and the attorneys
 1563 representing the Department of Juvenile Justice. The provider
 1564 will continue to provide services to the child until the court
 1565 issues the order finding the child will never become competent
 1566 to proceed.

1567 (6) (a) If a child is determined to have mental illness,
 1568 mental retardation, or autism ~~be mentally ill or retarded~~ and is
 1569 found to be incompetent to proceed but does not meet the
 1570 criteria set forth in subsection (3), the court shall commit the
 1571 child to the Department of Children and Family Services and
 1572 shall order the Department of Children and Family Services to
 1573 provide appropriate treatment and training in the community. The
 1574 purpose of the treatment or training is the restoration of the
 1575 child's competency to proceed.

1576 Section 25. Paragraph (b) of subsection (14) of section
 1577 287.057, Florida Statutes, is amended to read:

1578 287.057 Procurement of commodities or contractual
 1579 services.--

1580 (14)

1581 (b) Notwithstanding paragraph (a), the Department of
 1582 Children and Family Services may enter into agreements, not to
 1583 exceed 20 years, with a private provider to finance, design, and
 1584 construct a forensic treatment facility, as defined in s.
 1585 916.106(10)~~(8)~~, of at least 200 beds and to operate all aspects
 1586 of daily operations within the forensic treatment facility. The
 1587 selected contractor is authorized to sponsor the issuance of
 1588 tax-exempt certificates of participation or other securities to
 1589 finance the project, and the state is authorized to enter into a
 1590 lease-purchase agreement for the forensic treatment facility.
 1591 This paragraph expires July 1, 2006.

1592 Section 26. Paragraph (r) of subsection (3) of section
 1593 408.036, Florida Statutes, is amended to read:

1594 408.036 Projects subject to review; exemptions.--

1595 (3) EXEMPTIONS.--Upon request, the following projects are
 1596 subject to exemption from the provisions of subsection (1):

1597 (r) For beds in state mental health treatment facilities
 1598 defined in s. 394.455 ~~operated under s. 394.455(30)~~ and state
 1599 mental health forensic facilities operated under chapter 916 ~~s.~~
 1600 ~~916.106(8)~~.

1601 Section 27. Paragraph (a) of subsection (4) of section
 1602 943.0585, Florida Statutes, is amended to read:

1603 943.0585 Court-ordered expunction of criminal history
 1604 records.--The courts of this state have jurisdiction over their
 1605 own procedures, including the maintenance, expunction, and
 1606 correction of judicial records containing criminal history
 1607 information to the extent such procedures are not inconsistent

1608 with the conditions, responsibilities, and duties established by
1609 this section. Any court of competent jurisdiction may order a
1610 criminal justice agency to expunge the criminal history record
1611 of a minor or an adult who complies with the requirements of
1612 this section. The court shall not order a criminal justice
1613 agency to expunge a criminal history record until the person
1614 seeking to expunge a criminal history record has applied for and
1615 received a certificate of eligibility for expunction pursuant to
1616 subsection (2). A criminal history record that relates to a
1617 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
1618 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
1619 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
1620 s. 916.1075, or a violation enumerated in s. 907.041 may not be
1621 expunged, without regard to whether adjudication was withheld,
1622 if the defendant was found guilty of or pled guilty or nolo
1623 contendere to the offense, or if the defendant, as a minor, was
1624 found to have committed, or pled guilty or nolo contendere to
1625 committing, the offense as a delinquent act. The court may only
1626 order expunction of a criminal history record pertaining to one
1627 arrest or one incident of alleged criminal activity, except as
1628 provided in this section. The court may, at its sole discretion,
1629 order the expunction of a criminal history record pertaining to
1630 more than one arrest if the additional arrests directly relate
1631 to the original arrest. If the court intends to order the
1632 expunction of records pertaining to such additional arrests,
1633 such intent must be specified in the order. A criminal justice
1634 agency may not expunge any record pertaining to such additional

1635 | arrests if the order to expunge does not articulate the
1636 | intention of the court to expunge a record pertaining to more
1637 | than one arrest. This section does not prevent the court from
1638 | ordering the expunction of only a portion of a criminal history
1639 | record pertaining to one arrest or one incident of alleged
1640 | criminal activity. Notwithstanding any law to the contrary, a
1641 | criminal justice agency may comply with laws, court orders, and
1642 | official requests of other jurisdictions relating to expunction,
1643 | correction, or confidential handling of criminal history records
1644 | or information derived therefrom. This section does not confer
1645 | any right to the expunction of any criminal history record, and
1646 | any request for expunction of a criminal history record may be
1647 | denied at the sole discretion of the court.

1648 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
1649 | criminal history record of a minor or an adult which is ordered
1650 | expunged by a court of competent jurisdiction pursuant to this
1651 | section must be physically destroyed or obliterated by any
1652 | criminal justice agency having custody of such record; except
1653 | that any criminal history record in the custody of the
1654 | department must be retained in all cases. A criminal history
1655 | record ordered expunged that is retained by the department is
1656 | confidential and exempt from the provisions of s. 119.07(1) and
1657 | s. 24(a), Art. I of the State Constitution and not available to
1658 | any person or entity except upon order of a court of competent
1659 | jurisdiction. A criminal justice agency may retain a notation
1660 | indicating compliance with an order to expunge.

1661 (a) The person who is the subject of a criminal history
 1662 record that is expunged under this section or under other
 1663 provisions of law, including former s. 893.14, former s. 901.33,
 1664 and former s. 943.058, may lawfully deny or fail to acknowledge
 1665 the arrests covered by the expunged record, except when the
 1666 subject of the record:

- 1667 1. Is a candidate for employment with a criminal justice
 1668 agency;
- 1669 2. Is a defendant in a criminal prosecution;
- 1670 3. Concurrently or subsequently petitions for relief under
 1671 this section or s. 943.059;
- 1672 4. Is a candidate for admission to The Florida Bar;
- 1673 5. Is seeking to be employed or licensed by or to contract
 1674 with the Department of Children and Family Services or the
 1675 Department of Juvenile Justice or to be employed or used by such
 1676 contractor or licensee in a sensitive position having direct
 1677 contact with children, the developmentally disabled, the aged,
 1678 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 1679 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 1680 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and~~
 1681 ~~(13)~~, s. 985.407, or chapter 400; or
- 1682 6. Is seeking to be employed or licensed by the Department
 1683 of Education, any district school board, any university
 1684 laboratory school, any charter school, any private or parochial
 1685 school, or any local governmental entity that licenses child
 1686 care facilities.

1687 Section 28. Paragraph (a) of subsection (4) of section
 1688 943.059, Florida Statutes, is amended to read:
 1689 943.059 Court-ordered sealing of criminal history
 1690 records.--The courts of this state shall continue to have
 1691 jurisdiction over their own procedures, including the
 1692 maintenance, sealing, and correction of judicial records
 1693 containing criminal history information to the extent such
 1694 procedures are not inconsistent with the conditions,
 1695 responsibilities, and duties established by this section. Any
 1696 court of competent jurisdiction may order a criminal justice
 1697 agency to seal the criminal history record of a minor or an
 1698 adult who complies with the requirements of this section. The
 1699 court shall not order a criminal justice agency to seal a
 1700 criminal history record until the person seeking to seal a
 1701 criminal history record has applied for and received a
 1702 certificate of eligibility for sealing pursuant to subsection
 1703 (2). A criminal history record that relates to a violation of s.
 1704 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 1705 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
 1706 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or
 1707 a violation enumerated in s. 907.041 may not be sealed, without
 1708 regard to whether adjudication was withheld, if the defendant
 1709 was found guilty of or pled guilty or nolo contendere to the
 1710 offense, or if the defendant, as a minor, was found to have
 1711 committed or pled guilty or nolo contendere to committing the
 1712 offense as a delinquent act. The court may only order sealing of
 1713 a criminal history record pertaining to one arrest or one

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

1734 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
1735 history record of a minor or an adult which is ordered sealed by
1736 a court of competent jurisdiction pursuant to this section is
1737 confidential and exempt from the provisions of s. 119.07(1) and
1738 s. 24(a), Art. I of the State Constitution and is available only
1739 to the person who is the subject of the record, to the subject's
1740 attorney, to criminal justice agencies for their respective

1741 criminal justice purposes, or to those entities set forth in
 1742 subparagraphs (a)1., 4., 5., and 6. for their respective
 1743 licensing and employment purposes.

1744 (a) The subject of a criminal history record sealed under
 1745 this section or under other provisions of law, including former
 1746 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 1747 deny or fail to acknowledge the arrests covered by the sealed
 1748 record, except when the subject of the record:

1749 1. Is a candidate for employment with a criminal justice
 1750 agency;

1751 2. Is a defendant in a criminal prosecution;

1752 3. Concurrently or subsequently petitions for relief under
 1753 this section or s. 943.0585;

1754 4. Is a candidate for admission to The Florida Bar;

1755 5. Is seeking to be employed or licensed by or to contract
 1756 with the Department of Children and Family Services or the
 1757 Department of Juvenile Justice or to be employed or used by such
 1758 contractor or licensee in a sensitive position having direct
 1759 contact with children, the developmentally disabled, the aged,
 1760 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 1761 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 1762 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s.~~
 1763 ~~916.106(10) and (13)~~, s. 985.407, or chapter 400; or

1764 6. Is seeking to be employed or licensed by the Department
 1765 of Education, any district school board, any university
 1766 laboratory school, any charter school, any private or parochial

1767 | school, or any local governmental entity that licenses child
1768 | care facilities.

1769 | Section 29. This act shall take effect upon becoming a
1770 | law.