

By Senator Steube

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1 A bill to be entitled
2 An act relating to involuntary commitment; amending s.
3 393.11, F.S.; revising the composition of the
4 petitioning commission; requiring the Agency for
5 Persons with Disabilities to provide certain notice of
6 eligibility determinations; requiring the court to
7 conduct annual hearings on the continued need for
8 involuntary placement in residential services;
9 revising duties of the court in hearings for
10 involuntary admission; providing for participation of
11 a guardian or guardian advocate in placement
12 determinations; amending s. 916.301, F.S.; revising
13 provisions relating to court appointment of certain
14 qualified experts to evaluate a defendant's mental
15 condition; amending s. 916.3012, F.S.; revising
16 provisions governing acceptable recommended training
17 for a defendant determined incompetent to proceed;
18 amending s. 916.302, F.S.; requiring the court to hold
19 a competency hearing within a specified timeframe when
20 a defendant is competent to proceed; providing for
21 referral of dually diagnosed defendants to the
22 Department of Children and Families or the agency for
23 placement in a facility; providing for transferring a
24 defendant between the department and the agency under
25 certain circumstances; amending s. 916.3025, F.S.;
26 providing for the court to retain jurisdiction over
27 certain defendants found nonrestorable to competency;
28 amending s. 916.303, F.S.; revising provisions
29 governing the dismissal of charges against a defendant

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30 found to be incompetent to proceed and who does not
31 have a guardian or guardian advocate; amending s.
32 916.304, F.S.; providing a limitation on conditional
33 release for community-based competency training for a
34 defendant who is incompetent to proceed; providing an
35 effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Section 393.11, Florida Statutes, is amended to
40 read:

41 393.11 Involuntary admission to residential services.—

42 (1) JURISDICTION.—If a person has an intellectual
43 disability or autism and requires involuntary admission to
44 residential services provided by the agency, the circuit court
45 of the county in which the person resides has jurisdiction to
46 conduct a hearing and enter an order involuntarily admitting the
47 person in order for the person to receive the care, treatment,
48 habilitation, and rehabilitation that the person needs. For the
49 purpose of identifying intellectual disability or autism,
50 diagnostic capability shall be established by the agency. Except
51 as otherwise specified, the proceedings under this section are
52 governed by the Florida Rules of Civil Procedure.

53 (2) PETITION.—

54 (a) A petition for involuntary admission to residential
55 services shall ~~may~~ be executed by a petitioning commission
56 unless the petition is filed pursuant to s. 916.303.

57 (b) The petitioning commission shall consist of three
58 persons. One of these persons shall be a physician licensed and

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59 practicing under chapter 458 or chapter 459 or a psychologist
60 licensed under chapter 490.

61 (c) The petition shall be verified and must:

62 1. State the name, age, and present address of the
63 commissioners and their relationship to the person who has an
64 intellectual disability or autism;

65 2. State the name, age, county of residence, and present
66 address of the person who has an intellectual disability or
67 autism;

68 3. Allege that the commission believes that the person
69 needs involuntary residential services and specify the factual
70 information on which the belief is based;

71 4. Allege that the person lacks sufficient capacity to give
72 express and informed consent to a voluntary application for
73 services pursuant to s. 393.065, does not have a guardian or
74 guardian advocate to consent to services on his or her behalf,
75 and lacks the basic survival and self-care skills to provide for
76 the person's well-being, or the person is likely to physically
77 injure others if allowed to remain at liberty; and

78 5. State whether a secure or nonsecure ~~which~~ residential
79 setting is the least restrictive and most appropriate
80 alternative and specify the factual information on which the
81 belief is based.

82 (d) The petition must be filed in the circuit court of the
83 county in which the person who has the intellectual disability
84 or autism resides.

85 (3) NOTICE.—

86 (a) Notice of the filing of the petition shall be given to
87 the individual and his or her legal guardian. The notice shall

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88 be given both verbally and in writing in the language of the
89 client, or in other modes of communication of the client, and in
90 English. Notice shall also be given to the agency and such other
91 persons as the court may direct. The petition for involuntary
92 admission to residential services shall be served with the
93 notice.

94 (b) If a motion or petition has been filed pursuant to s.
95 916.303 to dismiss criminal charges against a defendant who has
96 an intellectual disability or autism, and a petition is filed to
97 involuntarily admit the defendant to residential services under
98 this section, the notice of the filing of the petition must also
99 be given to the defendant's attorney, the state attorney of the
100 circuit from which the defendant was committed, and the agency.

101 (c) The notice must state that a hearing shall be set to
102 inquire into the need of the person who has an intellectual
103 disability or autism for involuntary residential services. The
104 notice must also state the date of the hearing on the petition.

105 (d) The notice must state that the individual who has an
106 intellectual disability or autism has the right to be
107 represented by counsel of his or her own choice and that, if the
108 person cannot afford an attorney, the court shall appoint one.

109 (4) AGENCY PARTICIPATION.—

110 (a) Upon receiving the petition, the court shall
111 immediately order the agency to examine the person being
112 considered for involuntary admission to residential services to
113 determine if the person is eligible for agency services.

114 (b) Following examination, the agency shall file a written
115 report with the court at least 10 working days before the date
116 of the hearing. The report must be served on the petitioner, the

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117 person who has the intellectual disability or autism and his or
118 her guardian or guardian advocate if one has been appointed, and
119 the person's attorney at the time the report is filed with the
120 court.

121 (c) The report must contain the findings of the agency's
122 evaluation, any recommendations deemed appropriate, and a
123 determination of whether the person is eligible for services
124 under this chapter. If the agency determines the person is not
125 eligible for agency services, the agency shall provide written
126 notification of its eligibility determination to the person or
127 his or her attorney, and the person shall have a right to appeal
128 that determination under the Medicaid fair hearing process in s.
129 393.125. The agency must also notify the person or his or her
130 attorney that the person may appeal the agency determination
131 under the procedures in s. 393.125. In such circumstance, the
132 proceeding for the petition of involuntary admission to
133 residential services under this section shall be stayed pending
134 the outcome of any appellate proceeding.

135 (5) EXAMINING COMMITTEE.—

136 (a) If the agency examination determines the person is
137 eligible for agency services ~~Upon receiving the petition, the~~
138 court shall immediately appoint an examining committee to
139 examine the person being considered for involuntary admission to
140 residential services provided by the agency.

141 (b) The court shall appoint at least two, but no more than
142 three, qualified experts who must be disinterested in the
143 outcome of the proceeding and who meet the requirements for a
144 qualified evaluator as defined in paragraph (15) (d) ~~three~~
145 ~~disinterested experts who have demonstrated to the court an~~

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146 ~~expertise in the diagnosis, evaluation, and treatment of persons~~
147 ~~who have intellectual disabilities or autism. The committee must~~
148 ~~include at least one licensed and qualified physician, one~~
149 ~~licensed and qualified psychologist, and one qualified~~
150 ~~professional who, at a minimum, has a master's degree in social~~
151 ~~work, special education, or vocational rehabilitation~~
152 ~~counseling, to examine the person and to testify at the hearing~~
153 ~~on the involuntary admission to residential services.~~

154 (c) Counsel for the person who is being considered for
155 involuntary admission to residential services, and counsel for
156 the petition commission, counsel from the state attorney in
157 cases arising out of chapter 916, and counsel for the agency has
158 the right to challenge the qualifications of those appointed to
159 the examining committee.

160 (d) Members of the committee may not be employees of the
161 agency or be associated with each other in practice or in
162 employer-employee relationships. Members of the committee may
163 not have served as members of the petitioning commission.
164 Members of the committee may not be employees of the members of
165 the petitioning commission or be associated in practice with
166 members of the commission.

167 (e) Each member of the committee shall prepare a written
168 report for the court. Each ~~The~~ report must explicitly document
169 the extent that the person meets the criteria for involuntary
170 admission. Each ~~The~~ report, and expert testimony, must include,
171 but not be limited to:

172 1. ~~The degree of the person's intellectual disability or~~
173 ~~autism and whether, using diagnostic capabilities established by~~
174 ~~the agency, the person is eligible for agency services;~~

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175 ~~1.2.~~ Whether, because of the person's degree of
176 intellectual disability or autism, the person:

177 a. Lacks sufficient capacity to give express and informed
178 consent to a voluntary application for services pursuant to s.
179 393.065, does not have a guardian or guardian advocate to
180 consent to services on his or her behalf, and lacks basic
181 survival and self-care skills to such a degree that close
182 supervision and habilitation in a residential setting is
183 necessary and, if not provided, would result in a threat of
184 substantial harm to the person's well-being; or

185 b. Is likely to physically injure others if allowed to
186 remain at liberty.

187 ~~2.3.~~ The purpose to be served by residential services.
188 ~~care;~~

189 ~~3.4.~~ A recommendation on the type of residential placement
190 which would be the most appropriate and least restrictive for
191 the person, including an assessment of the need for secure
192 placement if, in the opinion of the examining committee members,
193 the person presents a danger to others.; ~~and~~

194 ~~4.5.~~ The appropriate care, habilitation, and treatment for
195 the person with the intellectual disability or autism which is
196 within the agency's responsibilities under this chapter.

197 (f) Each ~~The~~ committee member shall file the report with
198 the court at least 10 working days before the date of the
199 hearing. The report must be served on the petitioner, the person
200 who has the intellectual disability or autism and his or her
201 guardian or guardian advocate if one has been appointed, the
202 person's attorney at the time the report is filed with the
203 court, and the agency.

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204 (g) Members of the examining committee shall receive a
205 reasonable fee to be determined by the court. The fees shall be
206 paid from the general revenue fund of the county in which the
207 person who has the intellectual disability or autism resided
208 when the petition was filed.

209 (6) COUNSEL; GUARDIAN AD LITEM.—

210 (a) The person who has the intellectual disability or
211 autism must be represented by counsel at all stages of the
212 judicial proceeding, including annual hearings under subsection
213 (15) which require a court to determine the continued need for a
214 person's involuntary placement resulting from an involuntary
215 admission to residential services. If the person is indigent and
216 cannot afford counsel, the court shall appoint a public defender
217 at least 20 working days before the scheduled hearing. The
218 person's counsel shall have full access to the records of the
219 service provider and the agency. In all cases, the attorney
220 shall represent the rights and legal interests of the person,
221 regardless of who initiates the proceedings or pays the attorney
222 fee.

223 (b) If the attorney, during the course of his or her
224 representation, reasonably believes that the person who has the
225 intellectual disability or autism cannot adequately act in his
226 or her own interest, the attorney may seek the appointment of a
227 guardian ad litem. A prior finding of incapacity ~~incompetency~~ is
228 not required before a guardian ad litem is appointed pursuant to
229 this section.

230 (7) HEARING.—

231 (a) The hearing for involuntary admission shall be
232 conducted, and the order shall be entered, in the county in

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233 which the petition is filed. The hearing shall be conducted in a
234 physical setting not likely to be injurious to the person's
235 condition. When a petition for involuntary admission to
236 residential services is considered at a hearing, the court must
237 consider whether there is an alternative to involuntary
238 commitment under this section that will sufficiently address the
239 person's need for residential services. The court shall use the
240 least restrictive means available to assist a person who is
241 subject to a petition for involuntary admission to residential
242 services. The court shall determine if the person has a guardian
243 or guardian advocate and the scope of the authorized powers of
244 the guardian or guardian advocate to make decisions regarding
245 the residence, medical treatment, or other services necessary to
246 sufficiently address the needs of the person.

247 (b) A hearing on the petition must be held as soon as
248 practicable after the petition is filed, but reasonable delay
249 for the purpose of investigation, discovery, or procuring
250 counsel or witnesses shall be granted.

251 (c) The court may appoint a general or special magistrate
252 to preside. Except as otherwise specified, the magistrate's
253 proceeding shall be governed by the Florida Rules of Civil
254 Procedure.

255 (d) The person who has the intellectual disability or
256 autism must be ~~physically~~ present, either in person or by
257 contemporaneous video communication technology, throughout the
258 entire initial proceeding on the petition for involuntary
259 admission to residential services. In accordance with Rule
260 1.451, Florida Rules of Civil Procedure, the court may authorize
261 testimony at the hearing by contemporaneous audio or video

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262 communication technology upon agreement of the parties or for
263 good cause shown by written request of one party and by giving
264 reasonable notice to all other parties. If the person's attorney
265 believes that the person's presence at the hearing is not in his
266 or her best interest, the person's presence may be waived once
267 the court has seen the person and the hearing has commenced.

268 (e) The person has the right to present evidence and to
269 cross-examine all witnesses and other evidence alleging the
270 appropriateness of the person's admission to residential
271 services care. Other relevant and material evidence regarding
272 the appropriateness of the person's admission to residential
273 services; the most appropriate, least restrictive residential
274 placement; and the appropriate care, treatment, and habilitation
275 of the person, including written or oral reports, may be
276 introduced at the hearing by any interested person.

277 (f) The petitioning commission may be represented by
278 counsel at the hearing. The petitioning commission shall have
279 the right to call witnesses, present evidence, cross-examine
280 witnesses, and present argument on behalf of the petitioning
281 commission.

282 (g) All evidence shall be presented according to chapter
283 90. The burden of proof shall be on the party alleging the
284 appropriateness of the person's admission to residential
285 services. The burden of proof shall be by clear and convincing
286 evidence.

287 (h) All stages of each proceeding shall be recorded
288 ~~stenographically reported~~.

289 (8) ORDER.—

290 (a) In all cases, the court shall issue written findings of

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291 fact and conclusions of law to support its decision. The order
292 must state the basis for the findings of fact.

293 (b) An order of involuntary admission to residential
294 services may not be entered unless the court finds that:

295 1. The person is intellectually disabled or autistic;

296 2. Placement in a residential setting is the least
297 restrictive and most appropriate alternative to meet the
298 person's needs and the order specifies whether the recommended
299 placement must be secure or nonsecure; and

300 3. Because of the person's degree of intellectual
301 disability or autism, the person:

302 a. Lacks sufficient capacity to give express and informed
303 consent to a voluntary application for services pursuant to s.
304 393.065, does not have a guardian or guardian advocate to
305 consent to services on his or her behalf, and lacks basic
306 survival and self-care skills to such a degree that close
307 supervision and habilitation in a residential setting is
308 necessary and, if not provided, would result in a real and
309 present threat of substantial harm to the person's well-being;
310 or

311 b. Is likely to physically injure others if allowed to
312 remain at liberty.

313 (c) If the evidence presented to the court is not
314 sufficient to warrant involuntary admission to residential
315 services, but the court feels that residential services would be
316 beneficial, the court may recommend that the person seek
317 voluntary admission.

318 (d) If an order of involuntary admission to residential
319 services provided by the agency is entered by the court, a copy

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320 of the written order shall be served upon the person and his or
321 her guardian or guardian advocate if one has been appointed, the
322 person's counsel, the agency, and the state attorney and the
323 person's defense counsel, if applicable. The order of
324 involuntary admission sent to the agency shall also be
325 accompanied by a copy of the examining committee's report and
326 other reports contained in the court file.

327 (e) The court may also order special provisions for
328 residential services and adequate supervision of the person,
329 when recommended by the agency, in order to ensure that the
330 person is placed and maintained in the least restrictive, most
331 appropriate setting. Special provisions may include auxiliary
332 services that the agency provides to reduce risk and that the
333 person must comply with to maintain community safety. ~~Upon~~
334 ~~receiving the order, the agency shall, within 45 days, provide~~
335 ~~the court with a copy of the person's family or individual~~
336 ~~support plan and copies of all examinations and evaluations,~~
337 ~~outlining the treatment and rehabilitative programs. The agency~~
338 ~~shall document that the person has been placed in the most~~
339 ~~appropriate, least restrictive and cost-beneficial residential~~
340 ~~setting. A copy of the family or individual support plan and~~
341 ~~other examinations and evaluations shall be served upon the~~
342 ~~person and the person's counsel at the same time the documents~~
343 ~~are filed with the court.~~

344 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
345 RESIDENTIAL SERVICES.—

346 (a) An order authorizing an admission to residential
347 services ~~care~~ may not be considered an adjudication of mental
348 incapacity ~~incompetency~~. A person is not presumed incapacitated

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349 ~~incompetent~~ solely by reason of the person's involuntary
350 admission to residential services. A person may not be denied
351 the full exercise of all legal rights guaranteed to citizens of
352 this state and of the United States.

353 (b) Any minor involuntarily admitted to residential
354 services shall be evaluated pursuant to subsection (15) and,
355 within the 6 months before ~~upon~~ reaching majority, be given a
356 hearing to determine the continued appropriateness of his or her
357 involuntary admission.

358 (10) CAPACITY ~~COMPETENCY~~.—

359 (a) The issue of capacity ~~competency~~ is separate and
360 distinct from a determination of the appropriateness of
361 involuntary admission to residential services due to
362 intellectual disability or autism.

363 (b) The issue of the capacity ~~competency~~ of a person who
364 has an intellectual disability or autism for purposes of
365 assigning guardianship shall be determined in a separate
366 proceeding according to the procedures and requirements of
367 chapter 744.

368 (11) COMPETENCY.—The issue of the competency of a person
369 who has an intellectual disability or autism for purposes of
370 determining whether the person is competent to proceed in a
371 criminal trial shall be determined in accordance with chapter
372 916.

373 (12) ~~(11)~~ CONTINUING JURISDICTION.—The court that ~~which~~
374 issues the initial order for involuntary admission to
375 residential services under this section has continuing
376 jurisdiction to enter further orders to ensure that the person
377 is receiving adequate care, treatment, habilitation, and

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378 rehabilitation, as recommended in the person's individualized
379 support plan ~~including psychotropic medication and behavioral~~
380 ~~programming~~. Upon request, the court may transfer the continuing
381 jurisdiction to the court where a client resides if it is
382 different from where the original involuntary admission order
383 was issued. A person may not be released from an order for
384 involuntary admission to residential services except by the
385 order of the court.

386 (13)~~(12)~~ APPEAL.—

387 (a) Any party to the proceeding who is affected by an order
388 of the court, including the agency, may appeal to the
389 appropriate district court of appeal within the time and in the
390 manner prescribed by the Florida Rules of Appellate Procedure.

391 (b) The filing of an appeal by the person who has an
392 intellectual disability or autism stays admission of the person
393 into residential services ~~care~~. The stay remains in effect
394 during the pendency of all review proceedings in Florida courts
395 until a mandate issues.

396 (14)~~(13)~~ HABEAS CORPUS.—At any time and without notice, any
397 person involuntarily admitted into residential services ~~care~~, or
398 the person's parent or legal guardian in his or her behalf, is
399 entitled to file a petition for a writ of habeas corpus to
400 question the cause, legality, and appropriateness of the
401 person's involuntary admission. Each person, or the person's
402 parent or legal guardian, shall receive specific written notice
403 of the right to petition for a writ of habeas corpus at the time
404 of his or her involuntary placement.

405 (15)~~(14)~~ REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO
406 RESIDENTIAL SERVICES.—

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407 (a) If a person is involuntarily admitted to residential
408 services provided by the agency, the agency shall employ or, if
409 necessary, contract with a qualified evaluator to conduct a
410 review annually, unless otherwise ordered, to determine the
411 propriety of the person's continued involuntary admission to
412 residential services based on the criteria in paragraph (8) (b).
413 The review shall include an assessment of the most appropriate
414 and least restrictive type of residential placement for the
415 person. If the person was committed under the criteria in sub-
416 subparagraph (8) (b) 3.a., the review must also address whether
417 the person has had a guardian or guardian advocate appointed
418 since the commitment.

419 (b) A placement resulting from an involuntary admission to
420 residential services must be reviewed by the court at a hearing
421 annually, unless a shorter review period is ordered at a
422 previous hearing. The agency shall provide to the court the
423 completed review ~~reviews~~ by the qualified evaluator. The ~~review~~
424 ~~and~~ hearing must occur within 30 days after the court receives
425 the review and determines ~~determine~~ whether the person continues
426 to be eligible for agency services and meets ~~meet~~ the criteria
427 in paragraph (8) (b) and, if so, whether the person still
428 requires involuntary placement in a residential setting and
429 whether the person is receiving adequate care, treatment,
430 habilitation, and rehabilitation in the residential setting.

431 (c) The agency shall provide a copy of the review and
432 reasonable notice of the hearing to the appropriate state
433 attorney, if applicable, the person, the person's attorney, and
434 the person's guardian or guardian advocate, if appointed.

435 (d) For purposes of this section, the term "qualified

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436 evaluator" means a psychiatrist licensed under chapter 458 or
437 chapter 459, or a psychologist licensed under chapter 490, who
438 has demonstrated to the court an expertise in the diagnosis,
439 evaluation, and treatment of persons who have an intellectual
440 disability or autism ~~disabilities~~.

441 Section 2. Section 916.301, Florida Statutes, is amended to
442 read:

443 916.301 Appointment of experts.—

444 (1) All evaluations ordered by the court under this part
445 must be conducted by a qualified expert ~~experts~~ who meets the
446 requirements for a qualified evaluator as defined in s. 393.11
447 ~~have expertise in evaluating persons who have an intellectual~~
448 ~~disability or autism. The agency shall maintain and provide the~~
449 ~~courts annually with a list of available professionals who are~~
450 ~~appropriately licensed and qualified to perform evaluations of~~
451 ~~defendants alleged to be incompetent to proceed due to~~
452 ~~intellectual disability or autism. The courts may use~~
453 ~~professionals from this list when appointing experts and~~
454 ~~ordering evaluations under this part.~~

455 (2) If a defendant's suspected mental condition is
456 intellectual disability or autism, the court shall appoint the
457 agency to select an expert to evaluate whether the defendant
458 meets the definition of intellectual disability or autism and,
459 if so, whether the defendant is competent to proceed due to
460 intellectual disability or autism. ~~following:~~

461 ~~(a) At least one, or~~ At the request of any party, the court
462 may appoint an additional expert or direct the agency to select
463 an additional expert ~~two experts~~ to evaluate whether the
464 defendant meets the definition of intellectual disability or

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465 autism and, if so, whether the defendant is competent to
466 proceed; and

467 ~~(b) A psychologist selected by the agency who is licensed~~
468 ~~or authorized by law to practice in this state, with experience~~
469 ~~in evaluating persons suspected of having an intellectual~~
470 ~~disability or autism, and a social service professional, with~~
471 ~~experience in working with persons who have an intellectual~~
472 ~~disability or autism.~~

473 ~~1. The psychologist shall evaluate whether the defendant~~
474 ~~meets the definition of intellectual disability or autism and,~~
475 ~~if so, whether the defendant is incompetent to proceed due to~~
476 ~~intellectual disability or autism.~~

477 ~~2. The social service professional shall provide a social~~
478 ~~and developmental history of the defendant.~~

479 (3) The experts may examine the defendant in jail, in
480 another appropriate local facility, in a facility of the
481 Department of Corrections, or on an outpatient basis.

482 (4) Experts appointed by the court, including experts
483 selected by the agency, to evaluate the mental condition of a
484 defendant in a criminal case shall be allowed reasonable fees
485 for services rendered as evaluators and as witnesses, which
486 shall be paid by the court. State employees shall be paid
487 expenses pursuant to s. 112.061. The fees shall be taxed as
488 costs in the case. In order for the experts to be paid for the
489 services rendered, the reports and testimony must explicitly
490 address each of the factors and follow the procedures set out in
491 this chapter and in the Florida Rules of Criminal Procedure.

492 Section 3. Subsection (4) of section 916.3012, Florida
493 Statutes, is amended to read:

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494 916.3012 Mental competence to proceed.—

495 (4) If the experts find that the defendant is incompetent
496 to proceed, the experts shall report on any recommended training
497 for the defendant to attain competence to proceed. In
498 considering the issues relating to training, the examining
499 experts shall specifically report on:

500 (a) The intellectual disability or autism causing the
501 incompetence.~~;~~

502 (b) The training appropriate for the intellectual
503 disability or autism of the defendant and whether that training
504 should occur in the community or in a forensic facility. ~~an~~
505 ~~explanation of each of the possible training alternatives in~~
506 ~~order of choices;~~

507 ~~(c) The availability of acceptable training and, if~~
508 ~~training is available in the community, the expert shall so~~
509 ~~state in the report; and~~

510 (c)~~(d)~~ The likelihood of the defendant's attaining
511 competence under the training recommended, an assessment of the
512 probable duration of the training required to restore
513 competence, and the probability that the defendant will attain
514 competence to proceed in the foreseeable future.

515 Section 4. Subsection (3) of section 916.302, Florida
516 Statutes, is amended, and paragraphs (e) and (f) are added to
517 subsection (2) of that section, to read:

518 916.302 Involuntary commitment of defendant determined to
519 be incompetent to proceed.—

520 (2) ADMISSION TO A FACILITY.—

521 (e) A competency hearing shall be held within 30 days after
522 the court receives notification that the defendant is competent

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523 to proceed or no longer meets the criteria for continued
524 commitment. The defendant must be discharged from the forensic
525 facility and transported to the committing court's jurisdiction
526 for the hearing.

527 (f) If recommended by the expert, the court may order
528 maintenance competency training to occur in the jail while the
529 defendant awaits trial.

530 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

531 (a) If a defendant has both an intellectual disability or
532 autism and a mental illness, evaluations must address which
533 condition is primarily affecting the defendant's competency to
534 proceed. Referral of the defendant shall ~~should~~ be made to the
535 department or the agency for placement in an appropriate
536 facility ~~a civil or forensic facility most appropriate to~~
537 address the symptoms that are the cause of the defendant's
538 incompetence.

539 (b) Transfer between the department and the agency ~~from one~~
540 ~~civil or forensic facility to another civil or forensic facility~~
541 may occur when, in the department's and agency's judgment, it is
542 in the defendant's best treatment or training interests. The
543 department and agency shall submit an evaluation and
544 justification for the transfer to the court. The court may
545 consult with an outside expert if necessary. Transfer requires
546 ~~will require~~ an amended order from the committing court.

547 Section 5. Subsection (3) of section 916.3025, Florida
548 Statutes, is amended to read:

549 916.3025 Jurisdiction of committing court.—

550 (3) The committing court shall consider a petition to
551 involuntarily admit a defendant who has been deemed

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552 nonrestorable to competency by the court ~~whose charges have been~~
553 ~~dismissed~~ to residential services provided by the agency and,
554 when applicable, to continue secure placement of such person as
555 provided in s. 916.303. The committing court shall retain
556 jurisdiction over such person so long as he or she remains in
557 secure placement or is on conditional release as provided in s.
558 916.304. However, upon request, the court may transfer
559 continuing jurisdiction to the court in the circuit where the
560 defendant resides. The defendant may not be released from an
561 order for secure placement except by order of the court.

562 Section 6. Subsections (2) and (3) of section 916.303,
563 Florida Statutes, are amended to read:

564 916.303 Determination of incompetency; dismissal of
565 charges.—

566 (2) If the charges are dismissed and ~~if~~ the defendant is
567 considered to lack sufficient capacity to give express and
568 informed consent to a voluntary application for services, does
569 not have a guardian or guardian advocate to consent to services
570 on his or her behalf, and lacks the basic survival and self-care
571 skills to provide for his or her well-being, or the defendant is
572 likely to physically injure himself or herself or others if
573 allowed to remain at liberty, the agency, the state attorney, or
574 the defendant's attorney may file a petition in ~~shall apply to~~
575 the committing court to involuntarily admit the defendant to
576 residential services pursuant to s. 393.11 in lieu of a petition
577 for involuntary admission to residential services executed by a
578 petitioning commission.

579 ~~(3) If the defendant is considered to need involuntary~~
580 ~~residential services for reasons described in subsection (2)~~

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581 ~~and, further, there is a substantial likelihood that the~~
582 ~~defendant will injure another person or continues to present a~~
583 ~~danger of escape, and all available less restrictive~~
584 ~~alternatives, including services in community residential~~
585 ~~facilities or other community settings, which would offer an~~
586 ~~opportunity for improvement of the condition have been judged to~~
587 ~~be inappropriate, the agency, the state attorney, or the~~
588 ~~defendant's counsel may request the committing court to continue~~
589 ~~the defendant's placement in a secure facility pursuant to this~~
590 ~~part. Any placement so continued must be reviewed by the court~~
591 ~~at least annually at a hearing. The annual review and hearing~~
592 ~~must determine whether the defendant continues to meet the~~
593 ~~criteria described in this subsection and, if so, whether the~~
594 ~~defendant still requires involuntary placement in a secure~~
595 ~~facility and whether the defendant is receiving adequate care,~~
596 ~~treatment, habilitation, and rehabilitation, including~~
597 ~~psychotropic medication and behavioral programming. Notice of~~
598 ~~the annual review and review hearing shall be given to the state~~
599 ~~attorney and the defendant's attorney. A defendant's placement~~
600 ~~in a secure facility may not exceed the maximum sentence for the~~
601 ~~crime for which the defendant was charged.~~

602 Section 7. Subsection (1) of section 916.304, Florida
603 Statutes, is amended to read:

604 916.304 Conditional release.—

605 (1) Except for an inmate currently serving a prison
606 sentence, the committing court may order a conditional release
607 of any defendant who has been found to be incompetent to proceed
608 due to intellectual disability or autism, based on an approved
609 plan for providing community-based competency training. The

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610 conditional release for community-based competency training may
611 not exceed 2 years. If the defendant remains incompetent after
612 receiving competency training for 2 years, the provisions of s.
613 916.303 apply ~~The committing criminal court may order a~~
614 ~~conditional release of any defendant to a civil facility in lieu~~
615 ~~of an involuntary commitment to a forensic facility pursuant to~~
616 ~~s. 916.302.~~

617 (a) Upon a recommendation that community-based competency
618 training for the defendant is appropriate, a written plan for
619 community-based competency training, including recommendations
620 from qualified professionals, may be filed with the court, with
621 copies to all parties. Such a plan may also be submitted by the
622 defendant and filed with the court, with copies to all parties.
623 If the agency has determined the defendant is eligible for
624 agency services, the plan must include:

625 ~~(a) special provisions for the defendant to receive~~
626 ~~residential services care and adequate supervision of the~~
627 ~~defendant, including recommended location of placement.~~

628 ~~(b) Recommendations for auxiliary services such as~~
629 ~~vocational training, psychological training, educational~~
630 ~~services, leisure services, and special medical care.~~

631 (b) In its order of conditional release, the court shall
632 specify the conditions of release based upon the release plan
633 and shall direct the appropriate agencies or persons to submit
634 periodic reports to the courts regarding the defendant's
635 compliance with the conditions of the release and progress in
636 training, with copies to all parties. A defendant who the agency
637 has determined is ineligible for agency services may be ordered
638 to receive community-based competency training by the agency,

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639 but may not be ordered to receive any residential services and
640 supervision by the agency.

641 Section 8. This act shall take effect July 1, 2018.