

By the Committee on Children, Families, and Elder Affairs; and
Senator Steube

586-03132-18

20181280c1

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; requiring the court to pay
11 reasonable fees for the evaluation and testimony by
12 members of the examining committee; deleting a
13 provision requiring such fees to be paid from each
14 county's general revenue fund; providing for
15 participation of a guardian or guardian advocate in
16 placement determinations; amending s. 916.301, F.S.;
17 revising provisions relating to court appointment of
18 certain qualified experts to evaluate a defendant's
19 mental condition; amending s. 916.3012, F.S.; revising
20 provisions governing acceptable recommended training
21 for a defendant determined incompetent to proceed;
22 amending s. 916.302, F.S.; requiring the court to hold
23 a competency hearing within a specified timeframe when
24 a defendant is competent to proceed; providing for
25 referral of dually diagnosed defendants to the
26 Department of Children and Families or the agency for
27 placement in a facility; providing for transferring a
28 defendant between the department and the agency under
29 certain circumstances; amending s. 916.3025, F.S.;

586-03132-18

20181280c1

30 providing for the court to retain jurisdiction over
31 certain defendants found nonrestorable to competency;
32 amending s. 916.303, F.S.; revising provisions
33 governing the dismissal of charges against a defendant
34 found to be incompetent to proceed and who does not
35 have a guardian or guardian advocate; amending s.
36 916.304, F.S.; providing a limitation on conditional
37 release for community-based competency training for a
38 defendant who is incompetent to proceed; providing an
39 effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Section 393.11, Florida Statutes, is amended to
44 read:

45 393.11 Involuntary admission to residential services.—

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

57 (2) PETITION.—

58 (a) A petition for involuntary admission to residential

586-03132-18

20181280c1

59 services shall ~~may~~ be executed by a petitioning commission
60 unless the petition is filed pursuant to s. 916.303.

61 (b) The petitioning commission shall consist of three
62 persons. One of these persons shall be a physician licensed and
63 practicing under chapter 458 or chapter 459 or a psychologist
64 licensed under chapter 490.

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

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

69 2. State the name, age, county of residence, and present
70 address of the person who has an intellectual disability or
71 autism;

72 3. Allege that the commission believes that the person
73 needs involuntary residential services and specify the factual
74 information on which the belief is based;

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

82 5. State whether a secure or nonsecure ~~which~~ residential
83 setting is the least restrictive and most appropriate
84 alternative and specify the factual information on which the
85 belief is based.

86 (d) The petition must be filed in the circuit court of the
87 county in which the person who has the intellectual disability

586-03132-18

20181280c1

88 or autism resides.

89 (3) NOTICE.—

90 (a) Notice of the filing of the petition shall be given to
91 the individual and his or her legal guardian. The notice shall
92 be given both verbally and in writing in the language of the
93 client, or in other modes of communication of the client, and in
94 English. Notice shall also be given to the agency and such other
95 persons as the court may direct. The petition for involuntary
96 admission to residential services shall be served with the
97 notice.

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

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

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

113 (4) AGENCY PARTICIPATION.—

114 (a) Upon receiving the petition, the court shall
115 immediately order the agency to examine the person being
116 considered for involuntary admission to residential services to

586-03132-18

20181280c1

117 determine if the person is eligible for agency services.

118 (b) Following examination, the agency shall file a written
119 report with the court at least 10 working days before the date
120 of the hearing. The report must be served on the petitioner, the
121 person who has the intellectual disability or autism and his or
122 her guardian or guardian advocate if one has been appointed, and
123 the person's attorney at the time the report is filed with the
124 court.

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

139 (5) EXAMINING COMMITTEE.—

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

145 (b) The court shall appoint at least two, but no more than

586-03132-18

20181280c1

146 three, qualified experts who must be disinterested in the
147 outcome of the proceeding and who meet the requirements for a
148 qualified evaluator as defined in paragraph (15)(d) ~~three~~
149 ~~disinterested experts who have demonstrated to the court an~~
150 ~~expertise in the diagnosis, evaluation, and treatment of persons~~
151 ~~who have intellectual disabilities or autism. The committee must~~
152 ~~include at least one licensed and qualified physician, one~~
153 ~~licensed and qualified psychologist, and one qualified~~
154 ~~professional who, at a minimum, has a master's degree in social~~
155 ~~work, special education, or vocational rehabilitation~~
156 ~~counseling,~~ to examine the person and to testify at the hearing
157 on the involuntary admission to residential services.

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

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

171 (e) Each member of the committee shall prepare a written
172 report for the court. Each ~~The~~ report must explicitly document
173 the extent that the person meets the criteria for involuntary
174 admission. Each ~~The~~ report, and expert testimony, must include,

586-03132-18

20181280c1

175 but not be limited to:

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

179 ~~1.2.~~ Whether, because of the person's degree of
180 intellectual disability or autism, the person:

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

189 b. Is likely to physically injure others if allowed to
190 remain at liberty.

191 ~~2.3.~~ The purpose to be served by residential services.
192 ~~care;~~

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

198 ~~4.5.~~ The appropriate care, habilitation, and treatment for
199 the person with the intellectual disability or autism which is
200 within the agency's responsibilities under this chapter.

201 (f) Each ~~The~~ committee member shall file the report with
202 the court at least 10 working days before the date of the
203 hearing. The report must be served on the petitioner, the person

586-03132-18

20181280c1

204 who has the intellectual disability or autism and his or her
205 guardian or guardian advocate if one has been appointed, the
206 person's attorney at the time the report is filed with the
207 court, and the agency.

208 (g) The court ~~Members of the examining committee~~ shall pay
209 what it determines to be ~~receive~~ a reasonable fee for the
210 evaluation and testimony given by members of the examining
211 committee to be determined by the court. ~~The fees shall be paid~~
212 ~~from the general revenue fund of the county in which the person~~
213 ~~who has the intellectual disability or autism resided when the~~
214 ~~petition was filed.~~

215 (6) COUNSEL; GUARDIAN AD LITEM.—

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

229 (b) If the attorney, during the course of his or her
230 representation, reasonably believes that the person who has the
231 intellectual disability or autism cannot adequately act in his
232 or her own interest, the attorney may seek the appointment of a

586-03132-18

20181280c1

233 guardian ad litem. A prior finding of incapacity ~~incompetency~~ is
234 not required before a guardian ad litem is appointed pursuant to
235 this section.

236 (7) HEARING.—

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

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

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

261 (d) The person who has the intellectual disability or

586-03132-18

20181280c1

262 autism must be ~~physically~~ present, either in person or by
263 contemporaneous video communication technology, throughout the
264 entire initial proceeding on the petition for involuntary
265 admission to residential services. In accordance with Rule
266 1.451, Florida Rules of Civil Procedure, the court may authorize
267 testimony at the hearing by contemporaneous audio or video
268 communication technology upon agreement of the parties or for
269 good cause shown by written request of one party and by giving
270 reasonable notice to all other parties. If the person's attorney
271 believes that the person's presence at the hearing is not in his
272 or her best interest, the person's presence may be waived once
273 the court has seen the person and the hearing has commenced.

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

283 (f) The petitioning commission may be represented by
284 counsel at the hearing. The petitioning commission shall have
285 the right to call witnesses, present evidence, cross-examine
286 witnesses, and present argument on behalf of the petitioning
287 commission.

288 (g) All evidence shall be presented according to chapter
289 90. The burden of proof shall be on the party alleging the
290 appropriateness of the person's admission to residential

586-03132-18

20181280c1

291 services. The burden of proof shall be by clear and convincing
292 evidence.

293 (h) All stages of each proceeding shall be recorded
294 ~~stenographically reported~~.

295 (8) ORDER.—

296 (a) In all cases, the court shall issue written findings of
297 fact and conclusions of law to support its decision. The order
298 must state the basis for the findings of fact.

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

301 1. The person is intellectually disabled or autistic;
302 2. Placement in a residential setting is the least
303 restrictive and most appropriate alternative to meet the
304 person's needs and the order specifies whether the recommended
305 placement must be secure or nonsecure; and

306 3. Because of the person's degree of intellectual
307 disability or autism, the person:

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

317 b. Is likely to physically injure others if allowed to
318 remain at liberty.

319 (c) If the evidence presented to the court is not

586-03132-18

20181280c1

320 sufficient to warrant involuntary admission to residential
321 services, but the court feels that residential services would be
322 beneficial, the court may recommend that the person seek
323 voluntary admission.

324 (d) If an order of involuntary admission to residential
325 services provided by the agency is entered by the court, a copy
326 of the written order shall be served upon the person and his or
327 her guardian or guardian advocate if one has been appointed, the
328 person's counsel, the agency, and the state attorney and the
329 person's defense counsel, if applicable. The order of
330 involuntary admission sent to the agency shall also be
331 accompanied by a copy of the examining committee's report and
332 other reports contained in the court file.

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

586-03132-18

20181280c1

349 ~~are filed with the court.~~

350 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
351 RESIDENTIAL SERVICES.—

352 (a) An order authorizing an admission to residential
353 services ~~care~~ may not be considered an adjudication of mental
354 incapacity ~~incompetency~~. A person is not presumed incapacitated
355 ~~incompetent~~ solely by reason of the person's involuntary
356 admission to residential services. A person may not be denied
357 the full exercise of all legal rights guaranteed to citizens of
358 this state and of the United States.

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

364 (10) CAPACITY ~~COMPETENCY~~.—

365 (a) The issue of capacity ~~competency~~ is separate and
366 distinct from a determination of the appropriateness of
367 involuntary admission to residential services due to
368 intellectual disability or autism.

369 (b) The issue of the capacity ~~competency~~ of a person who
370 has an intellectual disability or autism for purposes of
371 assigning guardianship shall be determined in a separate
372 proceeding according to the procedures and requirements of
373 chapter 744.

374 (11) COMPETENCY.—The issue of the competency of a person
375 who has an intellectual disability or autism for purposes of
376 determining whether the person is competent to proceed in a
377 criminal trial shall be determined in accordance with chapter

586-03132-18

20181280c1

378 916.

379 (12)~~(11)~~ CONTINUING JURISDICTION.—The court that ~~which~~
380 issues the initial order for involuntary admission to
381 residential services under this section has continuing
382 jurisdiction to enter further orders to ensure that the person
383 is receiving adequate care, treatment, habilitation, and
384 rehabilitation, as recommended in the person's individualized
385 support plan including psychotropic medication and behavioral
386 ~~programming~~. Upon request, the court may transfer the continuing
387 jurisdiction to the court where a client resides if it is
388 different from where the original involuntary admission order
389 was issued. A person may not be released from an order for
390 involuntary admission to residential services except by the
391 order of the court.

392 (13)~~(12)~~ APPEAL.—

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

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

402 (14)~~(13)~~ HABEAS CORPUS.—At any time and without notice, any
403 person involuntarily admitted into residential services ~~care~~, or
404 the person's parent or legal guardian in his or her behalf, is
405 entitled to file a petition for a writ of habeas corpus to
406 question the cause, legality, and appropriateness of the

586-03132-18

20181280c1

407 person's involuntary admission. Each person, or the person's
408 parent or legal guardian, shall receive specific written notice
409 of the right to petition for a writ of habeas corpus at the time
410 of his or her involuntary placement.

411 (15) ~~(14)~~ REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO
412 RESIDENTIAL SERVICES.—

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

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

586-03132-18

20181280c1

436 habilitation, and rehabilitation in the residential setting.

437 (c) The agency shall provide a copy of the review and
438 reasonable notice of the hearing to the appropriate state
439 attorney, if applicable, the person, the person's attorney, and
440 the person's guardian or guardian advocate, if appointed.

441 (d) For purposes of this section, the term "qualified
442 evaluator" means a psychiatrist licensed under chapter 458 or
443 chapter 459, or a psychologist licensed under chapter 490, who
444 has demonstrated to the court an expertise in the diagnosis,
445 evaluation, and treatment of persons who have an intellectual
446 disability or autism disabilities.

447 Section 2. Section 916.301, Florida Statutes, is amended to
448 read:

449 916.301 Appointment of experts.-

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

461 (2) For a competency evaluation when ~~If~~ a defendant's
462 suspected mental condition is intellectual disability or autism,
463 the court shall order the agency to select an expert to evaluate
464 whether the defendant meets the definition of intellectual

586-03132-18

20181280c1

465 disability or autism and, if so, whether the defendant is
466 incompetent to proceed due to intellectual disability or autism.
467 ~~appoint the following:~~

468 ~~(a) At least one, or~~ At the request of any party, the court
469 may appoint an additional expert or direct the agency to select
470 an additional expert ~~two experts~~ to evaluate whether the
471 defendant meets the definition of intellectual disability or
472 autism and, if so, whether the defendant is competent to
473 proceed; and

474 ~~(b) A psychologist selected by the agency who is licensed~~
475 ~~or authorized by law to practice in this state, with experience~~
476 ~~in evaluating persons suspected of having an intellectual~~
477 ~~disability or autism, and a social service professional, with~~
478 ~~experience in working with persons who have an intellectual~~
479 ~~disability or autism.~~

480 ~~1. The psychologist shall evaluate whether the defendant~~
481 ~~meets the definition of intellectual disability or autism and,~~
482 ~~if so, whether the defendant is incompetent to proceed due to~~
483 ~~intellectual disability or autism.~~

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

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

489 (4) Experts appointed by the court, including experts
490 selected by the agency, to evaluate the mental condition of a
491 defendant in a criminal case shall be allowed reasonable fees,
492 as determined and paid by the court, for services rendered as
493 evaluators and as witnesses, ~~which shall be paid by the court.~~

586-03132-18

20181280c1

494 State employees shall be paid expenses pursuant to s. 112.061.
495 The fees shall be taxed as costs in the case. In order for the
496 experts to be paid for the services rendered, the reports and
497 testimony must explicitly address each of the factors and follow
498 the procedures set out in this chapter and in the Florida Rules
499 of Criminal Procedure.

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

502 916.3012 Mental competence to proceed.—

503 (4) If the experts find that the defendant is incompetent
504 to proceed, the experts shall report on any recommended training
505 for the defendant to attain competence to proceed. In
506 considering the issues relating to training, the examining
507 experts shall specifically report on:

508 (a) The intellectual disability or autism causing the
509 incompetence. ~~†~~

510 (b) The training appropriate for the intellectual
511 disability or autism of the defendant and whether that training
512 should occur in the community or in a forensic facility. ~~an~~
513 ~~explanation of each of the possible training alternatives in~~
514 ~~order of choices;~~

515 ~~(c) The availability of acceptable training and, if~~
516 ~~training is available in the community, the expert shall so~~
517 ~~state in the report; and~~

518 (c) ~~(d)~~ The likelihood of the defendant's attaining
519 competence under the training recommended, an assessment of the
520 probable duration of the training required to restore
521 competence, and the probability that the defendant will attain
522 competence to proceed in the foreseeable future.

586-03132-18

20181280c1

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

526 916.302 Involuntary commitment of defendant determined to
527 be incompetent to proceed.—

528 (2) ADMISSION TO A FACILITY.—

529 (e) A competency hearing shall be held within 30 days after
530 the court receives notification that the defendant is competent
531 to proceed or no longer meets the criteria for continued
532 commitment. The defendant must be discharged from the forensic
533 facility and transported to the committing court's jurisdiction
534 for the hearing.

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

538 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

539 (a) If a defendant has both an intellectual disability or
540 autism and a mental illness, evaluations must address which
541 condition is primarily affecting the defendant's competency to
542 proceed. Referral of the defendant shall ~~should~~ be made to the
543 department or the agency for placement in an appropriate
544 facility ~~a civil or forensic facility most appropriate~~ to
545 address the symptoms that are the cause of the defendant's
546 incompetence.

547 (b) Transfer between the department and the agency ~~from one~~
548 ~~civil or forensic facility to another civil or forensic facility~~
549 may occur when, in the department's and agency's judgment, it is
550 in the defendant's best treatment or training interests. The
551 department and agency shall submit an evaluation and

586-03132-18

20181280c1

552 justification for the transfer to the court. The court may
553 consult with an outside expert if necessary. Transfer requires
554 ~~will require~~ an amended order from the committing court.

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

557 916.3025 Jurisdiction of committing court.—

558 (3) The committing court shall consider a petition to
559 involuntarily admit a defendant who has been deemed
560 nonrestorable to competency by the court ~~whose charges have been~~
561 ~~dismissed~~ to residential services provided by the agency and,
562 when applicable, to continue secure placement of such person as
563 provided in s. 916.303. The committing court shall retain
564 jurisdiction over such person so long as he or she remains in
565 secure placement or is on conditional release as provided in s.
566 916.304. However, upon request, the court may transfer
567 continuing jurisdiction to the court in the circuit where the
568 defendant resides. The defendant may not be released from an
569 order for secure placement except by order of the court.

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

572 916.303 Determination of incompetency; dismissal of
573 charges.—

574 (2) If the charges are dismissed and ~~if~~ the defendant is
575 considered to lack sufficient capacity to give express and
576 informed consent to a voluntary application for services, does
577 not have a guardian or guardian advocate to consent to services
578 on his or her behalf, and lacks the basic survival and self-care
579 skills to provide for his or her well-being, or the defendant is
580 likely to physically injure himself or herself or others if

586-03132-18

20181280c1

581 allowed to remain at liberty, the agency, the state attorney, or
582 the defendant's attorney may file a petition in ~~shall apply to~~
583 the committing court to involuntarily admit the defendant to
584 residential services pursuant to s. 393.11 in lieu of a petition
585 for involuntary admission to residential services executed by a
586 petitioning commission.

587 ~~(3) If the defendant is considered to need involuntary~~
588 ~~residential services for reasons described in subsection (2)~~
589 ~~and, further, there is a substantial likelihood that the~~
590 ~~defendant will injure another person or continues to present a~~
591 ~~danger of escape, and all available less restrictive~~
592 ~~alternatives, including services in community residential~~
593 ~~facilities or other community settings, which would offer an~~
594 ~~opportunity for improvement of the condition have been judged to~~
595 ~~be inappropriate, the agency, the state attorney, or the~~
596 ~~defendant's counsel may request the committing court to continue~~
597 ~~the defendant's placement in a secure facility pursuant to this~~
598 ~~part. Any placement so continued must be reviewed by the court~~
599 ~~at least annually at a hearing. The annual review and hearing~~
600 ~~must determine whether the defendant continues to meet the~~
601 ~~criteria described in this subsection and, if so, whether the~~
602 ~~defendant still requires involuntary placement in a secure~~
603 ~~facility and whether the defendant is receiving adequate care,~~
604 ~~treatment, habilitation, and rehabilitation, including~~
605 ~~psychotropic medication and behavioral programming. Notice of~~
606 ~~the annual review and review hearing shall be given to the state~~
607 ~~attorney and the defendant's attorney. A defendant's placement~~
608 ~~in a secure facility may not exceed the maximum sentence for the~~
609 ~~crime for which the defendant was charged.~~

586-03132-18

20181280c1

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

612 916.304 Conditional release.—

613 (1) Except for an inmate currently serving a prison
614 sentence, the committing court may order a conditional release
615 of any defendant who has been found to be incompetent to proceed
616 due to intellectual disability or autism, based on an approved
617 plan for providing community-based competency training. The
618 conditional release for community-based competency training may
619 not exceed 2 years. If the defendant remains incompetent after
620 receiving competency training for 2 years, the provisions of s.
621 916.303 apply ~~The committing criminal court may order a~~
622 ~~conditional release of any defendant to a civil facility in lieu~~
623 ~~of an involuntary commitment to a forensic facility pursuant to~~
624 ~~s. 916.302.~~

625 (a) Upon a recommendation that community-based competency
626 training for the defendant is appropriate, a written plan for
627 community-based competency training, including recommendations
628 from qualified professionals, may be filed with the court, with
629 copies to all parties. Such a plan may also be submitted by the
630 defendant and filed with the court, with copies to all parties.
631 If the agency has determined the defendant is eligible for
632 agency services, the plan must include:

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

636 ~~(b)~~ ~~Recommendations for auxiliary services such as~~
637 ~~vocational training, psychological training, educational~~
638 ~~services, leisure services, and special medical care.~~

586-03132-18

20181280c1

639 (b) In its order of conditional release, the court shall
640 specify the conditions of release based upon the release plan
641 and shall direct the appropriate agencies or persons to submit
642 periodic reports to the courts regarding the defendant's
643 compliance with the conditions of the release and progress in
644 training, with copies to all parties. A defendant who the agency
645 has determined is ineligible for agency services may be ordered
646 to receive community-based competency training by the agency,
647 but may not be ordered to receive any residential services and
648 supervision by the agency.

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