

1 A bill to be entitled
2 An act relating to involuntary commitment; amending s.
3 393.11, F.S.; requiring the Agency for Persons with
4 Disabilities to provide certain notice of eligibility
5 determinations; requiring the court to conduct annual
6 hearings on the continued need for involuntary
7 placement in residential services; revising duties of
8 the court in hearings for involuntary admission;
9 requiring the court to pay reasonable fees for the
10 evaluation and testimony given by members of the
11 examining committee; deleting a provision requiring
12 such fees to be paid from each county's general
13 revenue fund; providing for participation of a
14 guardian or guardian advocate in placement
15 determinations; amending s. 916.301, F.S.; revising
16 provisions relating to court appointment of certain
17 qualified experts to evaluate a defendant's mental
18 condition; allowing the court to determine reasonable
19 fees for experts; 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.;
 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
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.

64 | (c) The petition shall be verified and must:

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

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

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

74 | 4. Allege that the person lacks sufficient capacity to
75 | give express and informed consent to a voluntary application for

76 | services pursuant to s. 393.065, does not have a guardian or
 77 | guardian advocate to consent to services on his or her behalf,
 78 | and lacks the basic survival and self-care skills to provide for
 79 | the person's well-being, or the person is likely to physically
 80 | injure others if allowed to remain at liberty; and

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

85 | (d) The petition must be filed in the circuit court of the
 86 | county in which the person who has the intellectual disability
 87 | or autism resides.

88 | (3) NOTICE.—

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

97 | (b) If a motion or petition has been filed pursuant to s.
 98 | 916.303 to dismiss criminal charges against a defendant who has
 99 | an intellectual disability or autism, and a petition is filed to
 100 | involuntarily admit the defendant to residential services under

101 | this section, the notice of the filing of the petition must also
102 | be given to the defendant's attorney, the state attorney of the
103 | circuit from which the defendant was committed, and the agency.

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

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

112 | (4) AGENCY PARTICIPATION.—

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

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

124 | (c) The report must contain the findings of the agency's
125 | evaluation, any recommendations deemed appropriate, and a

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

138 (5) EXAMINING COMMITTEE.—

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

144 (b) The court shall appoint at least two, but no more than
 145 three, qualified experts who must be disinterested in the
 146 outcome of the proceeding and who meet the requirements for a
 147 qualified evaluator as defined in paragraph (15)(d) ~~three~~
 148 ~~disinterested experts who have demonstrated to the court an~~
 149 ~~expertise in the diagnosis, evaluation, and treatment of persons~~
 150 ~~who have intellectual disabilities or autism.~~ The committee must

151 include at least one licensed and qualified physician and, one
152 licensed and qualified psychologist, ~~and one qualified~~
153 ~~professional who, at a minimum, has a master's degree in social~~
154 ~~work, special education, or vocational rehabilitation~~
155 ~~counseling,~~ to examine the person and to testify at the hearing
156 on the involuntary admission to residential services. If a
157 licensed and qualified expert from one of these professions is
158 unavailable, the court may appoint two licensed and qualified
159 experts from the same profession.

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

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

173 (e) Each member of the committee shall prepare a written
174 report for the court. Each ~~The~~ report must explicitly document
175 the extent that the person meets the criteria for involuntary

176 admission. Each ~~The~~ report, and expert testimony, must include,
177 but not be limited to:

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

181 1.2. Whether, because of the person's degree of
182 intellectual disability or autism, the person:

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

191 b. Is likely to physically injure others if allowed to
192 remain at liberty.

193 ~~2.3.~~ The purpose to be served by residential services.
194 ~~care;~~

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

200 ~~4.5.~~ The appropriate care, habilitation, and treatment for

201 the person with the intellectual disability or autism which is
202 within the agency's responsibilities under this chapter.

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

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

217 (6) COUNSEL; GUARDIAN AD LITEM.—

218 (a) The person who has the intellectual disability or
219 autism must be represented by counsel at all stages of the
220 judicial proceeding, including annual hearings under subsection
221 (15) which require a court to determine the continued need for a
222 person's involuntary placement resulting from an involuntary
223 admission to residential services. If the person is indigent and
224 cannot afford counsel, the court shall appoint a public defender
225 at least 20 working days before the scheduled hearing. The

226 person's counsel shall have full access to the records of the
227 service provider and the agency. In all cases, the attorney
228 shall represent the rights and legal interests of the person,
229 regardless of who initiates the proceedings or pays the attorney
230 fee.

231 (b) If the attorney, during the course of his or her
232 representation, reasonably believes that the person who has the
233 intellectual disability or autism cannot adequately act in his
234 or her own interest, the attorney may seek the appointment of a
235 guardian ad litem. A prior finding of incapacity ~~incompetency~~ is
236 not required before a guardian ad litem is appointed pursuant to
237 this section.

238 (7) HEARING.—

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

251 or guardian advocate and the scope of the authorized powers of
252 the guardian or guardian advocate to make decisions regarding
253 the residence, medical treatment, or other services necessary to
254 sufficiently address the needs of the person.

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

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

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

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

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

290 (g) All evidence shall be presented according to chapter
291 90. The burden of proof shall be on the party alleging the
292 appropriateness of the person's admission to residential
293 services. The burden of proof shall be by clear and convincing
294 evidence.

295 (h) All stages of each proceeding shall be recorded
296 ~~stenographically reported~~.

297 (8) ORDER.—

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

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

303 1. The person is intellectually disabled or autistic;

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

308 3. Because of the person's degree of intellectual
309 disability or autism, the person:

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

319 b. Is likely to physically injure others if allowed to
320 remain at liberty.

321 (c) If the evidence presented to the court is not
322 sufficient to warrant involuntary admission to residential
323 services, but the court feels that residential services would be
324 beneficial, the court may recommend that the person seek
325 voluntary admission.

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

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

351 ~~are filed with the court.~~

352 (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
353 RESIDENTIAL SERVICES.—

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

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

366 (10) CAPACITY ~~COMPETENCY~~.—

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

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

376 (11) COMPETENCY.—The issue of the competency of a person
 377 who has an intellectual disability or autism for purposes of
 378 determining whether the person is competent to proceed in a
 379 criminal trial shall be determined in accordance with chapter
 380 916.

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

395 (13) ~~(12)~~ APPEAL.—

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

400 (b) The filing of an appeal by the person who has an

401 intellectual disability or autism stays admission of the person
402 into residential services ~~care~~. The stay remains in effect
403 during the pendency of all review proceedings in Florida courts
404 until a mandate issues.

405 ~~(14)-(13)~~ (14) HABEAS CORPUS.—At any time and without notice,
406 any person involuntarily admitted into residential services
407 ~~care~~, or the person's parent or legal guardian in his or her
408 behalf, is entitled to file a petition for a writ of habeas
409 corpus to question the cause, legality, and appropriateness of
410 the person's involuntary admission. Each person, or the person's
411 parent or legal guardian, shall receive specific written notice
412 of the right to petition for a writ of habeas corpus at the time
413 of his or her involuntary placement.

414 ~~(15)-(14)~~ (15) REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO
415 RESIDENTIAL SERVICES.—

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

426 | the person has had a guardian or guardian advocate appointed
 427 | since the commitment.

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

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

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

450 | Section 2. Section 916.301, Florida Statutes, is amended

451 to read:

452 916.301 Appointment of experts.—

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

464 (2) For a competency evaluation when ~~if~~ a defendant's
465 suspected mental condition is intellectual disability or autism,
466 the court shall order the agency to select an expert to evaluate
467 whether the defendant meets the definition of intellectual
468 disability or autism and, if so, whether the defendant is
469 competent to proceed due to intellectual disability or autism.
470 ~~appoint the following:~~

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

476 proceed; and

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

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

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

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

492 (4) Experts appointed by the court, including experts
493 selected by the agency, to evaluate the mental condition of a
494 defendant in a criminal case shall be allowed reasonable fees,
495 as determined and paid by the court, for services rendered as
496 evaluators and as witnesses, ~~which shall be paid by the court.~~
497 State employees shall be paid expenses pursuant to s. 112.061.
498 The fees shall be taxed as costs in the case. In order for the
499 experts to be paid for the services rendered, the reports and
500 testimony must explicitly address each of the factors and follow

501 the procedures set out in this chapter and in the Florida Rules
502 of Criminal Procedure.

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

505 916.3012 Mental competence to proceed.—

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

511 (a) The intellectual disability or autism causing the
512 incompetence.~~;~~

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

518 ~~(c) The availability of acceptable training and, if~~
519 ~~training is available in the community, the expert shall so~~
520 ~~state in the report; and~~

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

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

529 916.302 Involuntary commitment of defendant determined to
 530 be incompetent to proceed.—

531 (2) ADMISSION TO A FACILITY.—

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

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

541 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

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

550 (b) Transfer between the department and the agency ~~from~~

551 ~~one civil or forensic facility to another civil or forensic~~
552 ~~facility~~ may occur when, in the department's and agency's
553 judgment, it is in the defendant's best treatment or training
554 interests. The department and agency shall submit an evaluation
555 and justification for the transfer to the court. The court may
556 consult with an outside expert if necessary. Transfer requires
557 ~~will require~~ an amended order from the committing court.

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

560 916.3025 Jurisdiction of committing court.—

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

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

575 916.303 Determination of incompetency; dismissal of

576 charges.—

577 (2) If the charges are dismissed and ~~if~~ the defendant is
578 considered to lack sufficient capacity to give express and
579 informed consent to a voluntary application for services, does
580 not have a guardian or guardian advocate to consent to services
581 on his or her behalf, and lacks the basic survival and self-care
582 skills to provide for his or her well-being, or the defendant is
583 likely to physically injure himself or herself or others if
584 allowed to remain at liberty, the agency, the state attorney, or
585 the defendant's attorney may file a petition in ~~shall apply to~~
586 the committing court to involuntarily admit the defendant to
587 residential services pursuant to s. 393.11 in lieu of a petition
588 for involuntary admission to residential services executed by a
589 petitioning commission.

590 ~~(3) If the defendant is considered to need involuntary~~
591 ~~residential services for reasons described in subsection (2)~~
592 ~~and, further, there is a substantial likelihood that the~~
593 ~~defendant will injure another person or continues to present a~~
594 ~~danger of escape, and all available less restrictive~~
595 ~~alternatives, including services in community residential~~
596 ~~facilities or other community settings, which would offer an~~
597 ~~opportunity for improvement of the condition have been judged to~~
598 ~~be inappropriate, the agency, the state attorney, or the~~
599 ~~defendant's counsel may request the committing court to continue~~
600 ~~the defendant's placement in a secure facility pursuant to this~~

601 ~~part. Any placement so continued must be reviewed by the court~~
602 ~~at least annually at a hearing. The annual review and hearing~~
603 ~~must determine whether the defendant continues to meet the~~
604 ~~criteria described in this subsection and, if so, whether the~~
605 ~~defendant still requires involuntary placement in a secure~~
606 ~~facility and whether the defendant is receiving adequate care,~~
607 ~~treatment, habilitation, and rehabilitation, including~~
608 ~~psychotropic medication and behavioral programming. Notice of~~
609 ~~the annual review and review hearing shall be given to the state~~
610 ~~attorney and the defendant's attorney. A defendant's placement~~
611 ~~in a secure facility may not exceed the maximum sentence for the~~
612 ~~crime for which the defendant was charged.~~

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

615 916.304 Conditional release.—

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

626 ~~of an involuntary commitment to a forensic facility pursuant to~~
627 ~~s. 916.302.~~

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

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

639 ~~(b)~~ ~~Recommendations for auxiliary services such as~~
640 ~~vocational training, psychological training, educational~~
641 ~~services, leisure services, and special medical care.~~

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

651 | supervision by the agency.

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