

CHAPTER 98-92

Committee Substitute for Committee Substitute for Senate Bill No. 442

An act relating to forensic client services; amending s. 40.29, F.S., relating to estimated amount of pay for expert witnesses, to conform a reference; amending s. 393.11, F.S.; specifying persons or entities that may file petition for proposed involuntary admission to residential services arising out of ch. 916, F.S., relating to forensic services; providing for petitions for defendants with autism; revising requirements relating to notice of filing of petition or service of copy of order; prohibiting release from order for involuntary admission except by court order; amending and reorganizing ch. 916, F.S., the Forensic Client Services Act; creating pt. I of ch. 916, F.S.; providing general provisions of the chapter; amending s. 916.105, F.S.; revising legislative intent; amending s. 916.106, F.S.; providing or revising definitions with respect to ch. 916, F.S.; redefining "department" to refer to the Department of Children and Family Services in lieu of the Department of Health and Rehabilitative Services; amending s. 916.107, F.S.; revising state policy with respect to the rights of forensic clients, and conforming terminology; amending and renumbering s. 916.175, F.S., relating to criminal escape by a client; prohibiting escape or attempted escape from a facility or program by a client under specified circumstances, and providing penalties therefor; amending and renumbering s. 916.178, F.S.; prohibiting the introduction of certain articles into or upon, or the taking or attempt to take or send certain articles from, facility grounds, under specified circumstances, and providing penalties therefor; providing for enforcement by institutional security personnel or law enforcement officers; conforming a reference; amending and renumbering s. 916.19, F.S.; providing for client protection and security; renumbering s. 916.20, F.S., relating to departmental rulemaking; creating pt. II of ch. 916, F.S., relating to forensic services for persons who are mentally ill; amending and renumbering s. 916.108, F.S.; providing for evaluation of defendant for competency to proceed or for sanity, under specified circumstances; amending and renumbering s. 916.11, F.S.; revising time limits and guidelines relating to appointment of experts; amending s. 916.12, F.S.; providing duties of examining experts and guidelines with respect to reports on defendant's mental competence to proceed and recommended treatment for defendant to attain competence to proceed; amending s. 916.13, F.S.; providing criteria for involuntary commitment of defendant adjudicated incompetent to proceed due to mental illness; revising duties of the court or the department and guidelines relating to commitment and placement of defendant and filing of reports; amending s. 916.14, F.S.; providing for inapplicability of statute of limitations and of bar against former jeopardy under specified circumstances when defendant is incompetent to proceed; amending s. 916.145, F.S.; revising time limits and guidelines with respect to dismissal of charges against a defendant adjudicated incompetent to proceed;

providing for dismissal without prejudice under specified circumstances; amending s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity; conforming terminology; providing for mandatory departmental retention and treatment of defendant; reenacting s. 394.467(7)(a), F.S., relating to procedure for continued involuntary placement, to incorporate said amendment in a reference; amending s. 916.16, F.S.; providing for retention of jurisdiction by committing court over a defendant hospitalized as incompetent to proceed or because of a finding of not guilty by reason of insanity or over a defendant placed on conditional release; prohibiting release except by court order in specified circumstances; amending s. 916.17, F.S.; revising procedures and guidelines relating to conditional release and modification of release conditions, including filing requirements for plans for outpatient treatment; creating pt. III of ch. 916, F.S., relating to forensic services for persons who are mentally retarded or autistic; creating s. 916.301, F.S.; providing for appointment of experts who are retardation or autism professionals, under specified circumstances; providing for certain witness fees and evaluator fees as court costs; providing for reimbursement of certain travel and per diem expenses of state employees; creating s. 916.3012, F.S.; providing for determination of incompetence to proceed when the defendant's suspected mental condition is retardation or autism; creating s. 916.302, F.S.; providing for involuntary commitment of defendant determined to be incompetent to proceed due to retardation or autism; requiring the department to notify the court of transfer of a defendant; creating s. 916.3025, F.S.; providing for retention of jurisdiction over certain defendants found incompetent to proceed and ordered into a secure facility for retarded or autistic defendants; prohibiting release except by court order; creating s. 916.303, F.S.; providing for dismissal of charges without prejudice or involuntary admission to residential services or a training program under specified circumstances when the defendant is found incompetent to proceed due to retardation or autism; providing for petitions to continue defendant's placement in a secure facility or program under specified circumstances; creating s. 916.304, F.S.; providing for conditional release based on an approved plan for providing continuing community-based training of defendant; providing for modification of release conditions or termination of jurisdiction under specified circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 40.29, Florida Statutes, is amended to read:

40.29 Clerks to estimate amount for pay of jurors and witnesses and make requisition.—

(1) The clerk of the court in and for any county shall make an estimate of the amount necessary during any quarterly fiscal period beginning July

1 and during each succeeding quarterly fiscal period for the payment by the state of:

- (a) Jurors in the circuit court and the county court;
- (b) Witnesses before the grand jury;
- (c) Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned by a state attorney or on behalf of an indigent defendant;
- (d) Mental health professionals who are appointed pursuant to s. 394.473 and required in a court hearing involving an indigent; and
- (e) Expert witnesses who are appointed pursuant to s. 916.115(2) 916.11(3) and required in a court hearing involving an indigent;

and shall forward each such estimate to the State Courts Administrator no later than the date scheduled by the State Courts Administrator. At the time of any forwarding of such estimate, the clerk of such court shall make a requisition upon the State Courts Administrator for the amount of such estimate; and the State Courts Administrator may reduce the amount if in his or her judgment the requisition is excessive.

Section 2. Subsections (2), (3), (8), and (11) of section 393.11, Florida Statutes, are amended to read:

393.11 Involuntary admission to residential services.—

(2) PETITION.—

(a) A petition for involuntary admission to residential services may be executed by a petitioning commission. For proposed involuntary admission to residential services arising out of chapter 916, the petition may be filed by a petitioning commission, the department, the state attorney of the circuit from which the defendant was committed, or the defendant's attorney.

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

(c) The petition shall be verified and shall:

1. State the name, age, and present address of the commissioners and their relationship to the person with mental retardation or autism;

2. State the name, age, county of residence, and present address of the person with mental retardation or autism;

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

4. Allege that the person lacks sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to provide for the person's well-being or is likely to physically injure others if allowed to remain at liberty; and

5. State which residential setting is the least restrictive and most appropriate alternative and specify the factual information on which such belief is based.

(d) The petition shall be filed in the circuit court of the county in which the person with mental retardation or autism resides.

(3) NOTICE.—

(a) Notice of the filing of the petition shall be given to the individual and his or her ~~legal guardian parent or parents~~. The notice shall be given both verbally and in writing in the language of the client, or in other modes of communication of the client, and in English. Notice shall also be given to such other persons as the court may direct. The petition for involuntary admission to residential services shall be served with the notice.

(b) Whenever a motion or petition has been filed pursuant to s. 916.303 to dismiss criminal charges against a defendant with retardation or autism, and a petition is filed to involuntarily admit the defendant to residential services, the notice of the filing of the petition shall also be given to the defendant's attorney and to the state attorney of the circuit from which the defendant was committed.

~~(c)~~(b) The notice shall state that a hearing shall be set to inquire into the need of the person with mental retardation or autism for involuntary residential services. The notice shall also state the date of the hearing on the petition.

~~(d)~~(e) The notice shall state that the individual with mental retardation or autism has the right to be represented by counsel of his or her own choice and that, if the person cannot afford an attorney, the court shall appoint one.

(8) ORDER.—

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

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

1. The person is mentally retarded or autistic;
2. Placement in a residential setting is the least restrictive and most appropriate alternative to meet the person's needs; and
3. Because of the person's degree of mental retardation or autism, the person:

a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065 and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to the person's well-being; or

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

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

(d) If an order of involuntary admission to residential services provided by the developmental services program of the department is entered by the court, a copy of the written order shall be served upon the person, the person's counsel, ~~and the department, and the state attorney and the person's defense counsel, if applicable.~~ The order of involuntary admission sent to the department shall also be accompanied by a copy of the examining committee's report and other reports contained in the court file.

(e) Upon receiving the order, the department shall, within 45 days, provide the court with a copy of the person's family or individual support plan and copies of all examinations and evaluations, outlining the treatment and rehabilitative programs. The department shall document that the person has been placed in the most appropriate, least restrictive and cost-beneficial residential facility. A copy of the family or individual support plan and other examinations and evaluations shall be served upon the person and the person's counsel at the same time the documents are filed with the court.

(11) CONTINUING JURISDICTION.—The court which issues the initial order for involuntary admission to residential services under this section shall have continuing jurisdiction to enter further orders to ensure that the person is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behavioral programming. Upon request, the court may transfer the continuing jurisdiction to the court where a client resides if it is different from where the original involuntary admission order was issued. No person may be released from an order for involuntary admission to residential services except by the order of the court.

Section 3. For the purpose of incorporating the amendment to section 916.15, Florida Statutes, in a reference thereto, paragraph (a) of subsection (7) of section 394.467, Florida Statutes, is reenacted to read:

394.467 Involuntary placement.—

(7) PROCEDURE FOR CONTINUED INVOLUNTARY PLACEMENT.—

(a) Hearings on petitions for continued involuntary placement shall be administrative hearings and shall be conducted in accordance with the provisions of s. 120.57(1), except that any order entered by the hearing officer

shall be final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity shall be governed by the provisions of s. 916.15.

Section 4. Part I of chapter 916, Florida Statutes, consisting of sections 916.10, 916.105, 916.106, 916.107, 916.1081, 916.1085, 916.1091, and 916.1093, is created and entitled “General Provisions.”

Section 5. Section 916.105, Florida Statutes, is amended to read:

916.105 Legislative intent.—

(1) It is the intent of the Legislature that the Department of Children and Family Health and Rehabilitative Services establish, locate, and maintain separate and secure facilities and programs for the treatment or training of defendants forensic clients who are charged with a felony and who have been found to be incompetent to proceed due to their mental illness, retardation, or autism mentally retarded or mentally ill defendants, or who have been acquitted of felonies crimes by reason of insanity, and who, while still under the jurisdiction of the committing court, are committed to the department for mental retardation or mental health services under the provisions of this chapter. The separate, secure facilities shall be sufficient to accommodate the number of defendants clients committed under the conditions noted above, except those defendants clients found by the department to be appropriate for treatment or training in a civil mental health treatment facility or program. Such secure facilities shall be designed and administered so that ingress and egress, together with other requirements of this chapter, may be strictly controlled by staff responsible for security in order to protect the defendant client, facility hospital personnel, other clients, and citizens in adjacent communities.

(2) It is further the intent of the Legislature that treatment or training programs for defendants clients who are found to be mentally retarded or mentally ill, retarded, or autistic defendants and are involuntarily committed to the department certain mental retardation or mental health facilities, and who are still under the jurisdiction of the committing court, be provided in such a manner, subject to security requirements and other mandates of this chapter, as to ensure the rights of the defendants said clients as provided in this chapter.

(3) It is the intent of the Legislature that evaluation and services to defendants who are treatment of mentally ill, and mentally retarded, or autistic defendants be provided in community inpatient or outpatient settings, in community residential facilities, or in civil, nonforensic facilities, whenever this is a feasible alternative to treatment or training in a state forensic facility.

Section 6. Section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.—For the purposes of this chapter:

(1) “Autism” means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication,

and behavior disorders, with the age of onset of autism occurring during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

(2)(4) “Chemical weapon” means any shell, cartridge, bomb, gun, or other device capable of emitting chloroacetophenone (CN), chlorobenzal-malononitrile (CS) or any derivatives thereof in any form, or any other agent with lacrimatory properties, and shall include products such as that commonly known as “mace.”

(3) “Civil facility” means a mental health facility established within the department to serve individuals committed pursuant to chapter 394 and those defendants committed pursuant to this chapter who do not require the security provided in a forensic facility.

(4)(2) “Court” means the circuit court.

(5)(3) “Department” means the Department of Children and Family Health and Rehabilitative Services.

(6) “Express and informed consent” or “consent” means consent given voluntarily in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment, the common side effects of the treatment, if any, the expected duration of the treatment, and any alternative treatment available.

(7)(4) “Forensic client” or “client” “patient” means any defendant who is mentally ill, mentally retarded, or autistic and mentally ill person who is committed to the department pursuant to this chapter and:

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

(b) Who has been found incompetent to proceed on a felony offense stand trial or incompetent for sentencing, has been acquitted of a felony criminal offense by reason of insanity; has criminal charges pending, or has been found guilty of a criminal offense but is not an inmate of the Department of Corrections or any other correctional facility; and

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

1. Be dangerous to himself or herself or others; or
2. Present a clear and present potential to escape; and

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

(8)(5) “Forensic facility” means a separate and secure facility established within the department to serve for the treatment of forensic clients. Such separate and secure facilities shall be security-grade buildings located on grounds distinct in location from other ~~treatment~~ facilities for persons who are mentally ill. The Florida State Hospital shall not be required to maintain

separate treatment facilities for mentally ill, ~~or mentally retarded, or autistic~~ defendants who are persons found incompetent to proceed for trial or who are acquitted of a criminal offense by reason of insanity.

(9) “Incompetent to proceed” means unable to proceed at any material stage of a criminal proceeding, which shall include trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, proceedings for violation of probation or violation of community control, sentencing, and hearings on issues regarding a defendant’s failure to comply with court orders or conditions or other matters in which the mental competence of the defendant is necessary for a just resolution of the issues being considered.

(10)(6) “Institutional security personnel” means staff members who meet or exceed the requirements of s. 943.13 and who are responsible for providing security, for protection of clients and personnel, for the enforcement of rules, for prevention and investigation of unauthorized activities, and for safeguarding the interests of citizens in the surrounding communities.

(11)(7) “Mental illness” “Mentally ill” means having an impairment of the emotional processes that, of the ability to exercise conscious control of one’s actions, or of the ability to perceive or understand reality or to understand, which impairment substantially interferes with a defendant’s person’s ability to meet the ordinary demands of living, regardless of etiology; except that, For the purposes of this chapter, the term does not apply to defendants include simple intoxication, persons who are solely mentally retarded or autistic, and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment drug addiction.

(12)(8) “Mental Retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. “Adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual’s age, cultural group, and community.

(13) “Social service professional,” for the purposes of part III, means a person whose minimum qualifications include a bachelor’s degree and at least 2 years of social work, clinical practice, special education, habilitation, or equivalent experience working directly with persons with retardation, autism or other developmental disabilities.

Section 7. Section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(1) RIGHT TO INDIVIDUAL DIGNITY.—

(a) The policy of the state is that the individual dignity of the client patient shall be respected at all times and upon all occasions, including any occasion when the forensic client patient is detained, transported, or treated. Defendants Persons who are mentally ill, ~~or mentally retarded, or autistic~~ and who are charged with, ~~or who have been convicted of,~~ committing felonies criminal acts shall receive appropriate treatment or training. In a criminal case involving a defendant person who has been adjudicated incompetent to proceed stand trial or not guilty by reason of insanity, ~~or who has otherwise been found by the court to meet the criteria for involuntary commitment,~~ a jail may be used as an emergency facility for up to 15 days from the date the department receives a completed copy of the commitment order containing the documentation required by Rules 3.212 and 3.217, Florida Rules of Criminal Procedure. For In every case in which a defendant who is mentally ill, or mentally retarded, or autistic, who person is held in a jail, and who has been adjudicated incompetent to proceed or not guilty by reason of insanity, evaluation and treatment or training shall be provided in the jail by the local public receiving facility for mental health services or by the developmental services program for persons with retardation or autism, the client's patient's physician or clinical psychologist, or any other appropriate mental health program available to provide such treatment until the client person is transferred to the custody of the department.

(b) Mentally ill, ~~or mentally retarded, or autistic~~ defendants persons who are committed to the department pursuant to this chapter and who are initially placed in, or subsequently transferred to, a civil mental health treatment facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these civil facilities for as described in part I of chapter 394, as long as they remain there in a civil facility.

(2) RIGHT TO TREATMENT.—

(a) The policy of the state is that the department shall not deny treatment or training of mental illness or mental retardation to any client and that no services shall be delayed at a forensic mental health treatment facility because the forensic client is unable to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing mental health services to clients persons able to pay for the services, including reimbursement from insurance or other third-party payments, shall be made by forensic facilities providing services pursuant to this chapter and in accordance with the provisions of s. 402.33.

(b) Each client ~~who is a patient at a forensic facility~~ shall be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.

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

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

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A client person committed to the department pursuant to this act shall be asked to give express and informed written consent for treatment. ~~“Express and informed consent” or “consent” means consent given voluntarily in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment, the common side effects of the treatment, if any, the expected duration of the treatment, and any alternative treatment available.~~ If a client patient in a forensic facility refuses such treatment as is deemed necessary by the client’s patient’s multidisciplinary treatment team at the forensic facility for the appropriate care of the client patient and the safety of the client patient or others, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client patient or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client patient has not given express and informed consent to the treatment initially refused, the administrator or designee of the forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client patient. In the interim, treatment may be continued without the consent of the client patient upon the continued written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client patient or others.

2. In a situation other than an emergency situation, the administrator or designee of the forensic facility shall petition the court for an order authorizing the treatment ~~to~~ of the client patient. The order shall allow such treatment for a period not to exceed 90 days from the date of the entry of the order. Unless the court is notified in writing that the client patient has provided express and informed consent in writing or that the client patient has been discharged by the committing court, the administrator or designee shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the client patient provides consent or is discharged by the committing court.

3. At the hearing on the issue of whether the court should enter an order authorizing treatment for which a client patient has refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client patient is mentally ill, ~~or mentally retarded, or autistic~~ as defined in this chapter, that the treatment not consented to is essential to the care of the client patient, and that the treatment not consented to is not experimental and does not present an unreasonable risk of

serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

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

The hearing shall be as convenient to the client patient as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's patient's condition. The court may appoint a master to preside at the hearing. The client patient or the client's patient's guardian, and ~~the his or her~~ representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client patient has the right to have an attorney represent him or her at the hearing, and, if the client patient is indigent, the court shall appoint the office of the public defender to represent the client patient at the hearing. The client patient may testify or not, as he or she chooses, and has the right to cross-examine witnesses ~~testifying on behalf of the facility~~ and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment or nonpsychiatric medical procedures, and prior to performing the procedure, written permission shall be obtained from the client patient, if ~~the client he or she~~ is legally competent, from the parent or guardian of a minor client patient, or from the guardian of an incompetent client patient. The administrator or designee of the forensic facility or ~~a his or her~~ designated representative may, with the concurrence of the client's patient's attending physician, authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or for a situation threatening serious bodily harm to the client patient and permission of the client patient or the client's patient's guardian cannot be obtained.

(4) QUALITY OF TREATMENT.—Each client patient committed pursuant to this chapter shall receive treatment or training suited to the client's ~~his or her~~ needs, which shall be administered skillfully, safely, and humanely with full respect for the ~~the client's patient's~~ dignity and personal integrity. Each client patient shall receive such medical, vocational, social, educational, and rehabilitative services as the client's patient's condition requires to bring about a return to court for disposition of charges or a ~~an~~ early return to the ~~the his or her~~ community. In order to achieve this goal, the department is directed to coordinate the services of the Alcohol, Drug Abuse and Mental Health Program Office and the Developmental Services Program Office ~~its forensic mental health and mental retardation programs~~ with all other programs of the department and other appropriate state agencies.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

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

(b) Each client patient committed under the provisions of this chapter shall be allowed to receive, send, and mail sealed, unopened correspondence; and no client's patient's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the client patient or others, in which case the administrator or designee may direct reasonable examination of such mail and may regulate the disposition of such items or substances. "Correspondence" shall not include parcels or packages. Forensic facilities are authorized to promulgate reasonable institutional policies ~~rules~~ to provide for the inspection of parcels or packages and for the removal of contraband items for health or security reasons prior to the contents being given to a client resident.

(c) If a client's patient's right to communicate is restricted by the administrator, written notice of such restriction shall be served on the client patient or his or her legal ~~the patient's~~ guardian or representatives, and such restriction shall be recorded on the client's patient's clinical record with the reasons therefor. The restriction of a client's patient's right to communicate shall be reviewed at least every 7 ~~90~~ days.

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

(e) Each client patient committed pursuant to this chapter shall have ready access to a telephone in order to report an alleged abuse. The facility or program staff shall orally verbally and in writing inform each client patient of the procedure for reporting abuse and shall present the information in a language the client understands. A written copy of that procedure, including the telephone number of the abuse registry and reporting forms, shall be posted in plain view.

(f) The department's forensic facilities ~~department~~ shall develop policies ~~adopt rules~~ providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS PATIENTS.—A client's patient's right to possession of his or her clothing and personal effects shall be respected. The department by rule, or the administrator of any facility by written institutional policy, may declare certain items to be hazardous to the welfare of clients patients or others or to the operation of the facility. Such items may be restricted from introduction into the facility or may be restricted from being in a client's patient's possession. The administrator or designee may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the client's patient's clinical record.

(7) VOTING IN PUBLIC ELECTIONS.—A client patient committed pursuant to this chapter who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules to enable clients patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

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

(a) Such clinical record may be released:

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

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

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

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

5. If a client patient receiving services pursuant to this chapter has declared an intention to harm other persons. When such a declaration has been made, the administrator shall authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client; however, only the declaration may be disclosed.

6. To the parent or next of kin of a mentally ill, ~~or mentally retarded, or autistic~~ person who is committed to, or is being served treated by, a ~~forensic mental health~~ facility or program when such information is limited to that person's service treatment plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.

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

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

2. Law enforcement agencies, state attorneys, defense attorneys ~~public defenders or other attorneys defending the patient~~, and judges in regard to the client's patient's status;

3. Jail personnel in the jail to which a client may be returned; and

4. Community agencies and others expected to provide followup care to the client patient upon the client's ~~his or her~~ return to the community.

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

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

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

(9) HABEAS CORPUS.—

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

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

(10) TRANSPORTATION.—

(a) The sheriff shall consult with the governing board of the county as to the most appropriate and cost-effective means of transportation for forensic clients committed for treatment or training. Such consultation shall include, but is not limited to, consideration of the cost to the county of transportation performed by sheriff's department personnel as opposed to transportation performed by other means and, if sheriff's department personnel are to be used for transportation, the effect such use will have, if any, on service

delivery levels of the sheriff's road patrol. After such consultation with the governing board of the county, the sheriff shall determine the most appropriate and cost-effective means of transportation for forensic clients committed for treatment or training.

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

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

(d) Any company that contracts with a governing board of a county to transport clients ~~patients~~ shall comply with the applicable rules of the department to ensure the safety and dignity of the clients ~~patients~~.

(11) LIABILITY FOR VIOLATIONS.—Any person who violates or abuses any rights or privileges of a client ~~patient~~ provided by this act is liable for damages as determined by law. Any person who acts in good faith in complying with the provisions of this act is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, training, or discharge of a client ~~patient~~ to or from a facility. However, this subsection does not relieve any person from liability if he or she ~~the person~~ is negligent.

Section 8. Section 916.175, Florida Statutes, is renumbered as section 916.1081, Florida Statutes, and amended to read:

916.1081 ~~916.175~~ Escape from ~~treatment~~ program; penalty.—A defendant ~~client~~ involuntarily committed to the department under the provisions of this chapter who escapes or attempts to escape from a facility or program ~~commits the department is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 9. Section 916.178, Florida Statutes, is renumbered as section 916.1085, Florida Statutes, and amended to read:

916.1085 ~~916.178~~ Introduction or removal of certain articles unlawful; penalty.—

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

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

2. Any controlled substance as defined in chapter 893;
3. Any firearm or deadly weapon; or
4. Any other item items as determined by the department, and as designated by departmental rule or by the administrator of any facility, and designated by written institutional policies, to be hazardous to the welfare of patients or the operation of the facility.

(b) It is unlawful to transmit to, attempt to transmit to, or cause or attempt to cause to be transmitted to or received by any ~~client~~ patient of any facility any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such facility, except as authorized by law or as specifically authorized by the person in charge of such facility.

(2)(a) All individuals or vehicles entering upon the grounds of any ~~forensic~~ facility under the supervision or control of the department ~~may~~ shall be subject to reasonable search and seizure of any contraband materials introduced thereon, for purpose of enforcement of this chapter.

(b) These provisions shall be enforced by institutional security personnel as defined in s. 916.106(10)(6) or by a law enforcement officer as defined in s. 943.10.

(c) A person who ~~Whoever~~ violates any provision of subparagraph (1)(a)2. or subparagraph (1)(a)3. ~~commits is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Section 916.19, Florida Statutes, is renumbered as section 916.1091, Florida Statutes, and amended to read:

916.1091 ~~916.19~~ Duties, functions, and powers of institutional security personnel.—In case of emergency, and when necessary to provide protection and security to any client ~~patient~~, to the personnel, equipment, buildings, or grounds of a department facility, or to citizens in the surrounding community, institutional security personnel may, when authorized by the administrator of the facility or her or his designee when the administrator is not present, use a chemical weapon against a patient housed in a forensic facility. However, such weapon shall be used only to the extent necessary to provide such protection and security. Under no circumstances shall any such officer carry a chemical weapon on her or his person except during the period of the emergency for which its use was authorized. All chemical weapons shall be placed in secure storage when their use is not authorized as provided in this section.

Section 11. Section 916.20, Florida Statutes, is renumbered as section 916.1093, Florida Statutes.

Section 12. Part II of chapter 916, Florida Statutes, consisting of sections 916.111, 916.115, 916.12, 916.13, 916.14, 916.145, 916.15, 916.16, and 916.17, is created and entitled “Forensic Services for Persons Who are Mentally Ill.”

Section 13. Section 916.108, Florida Statutes, is renumbered as section 916.111, Florida Statutes, and amended to read:

916.111 ~~916.108~~ Training of mental health experts.—The evaluation of defendants for competency to ~~proceed stand trial~~ or for sanity at the time of the commission of the offense shall be conducted in such a way as to ensure uniform application of the criteria enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal Procedure. The department shall develop, and may contract with accredited institutions:

(1) To provide:

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

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

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

(2) To compile and maintain the necessary information for evaluating the success of this program, including the number of persons trained, the cost of operating the program, and the effect on the quality of forensic evaluations as measured by appropriateness of admissions to state forensic facilities and to community-based care programs.

Section 14. Section 916.11, Florida Statutes, is renumbered as section 916.115, Florida Statutes, and amended to read:

916.115 ~~916.11~~ Appointment of experts.—

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

(b) The court may appoint no more than three nor fewer than two experts to determine issues of the mental condition of a defendant in a criminal case, including the issues of competency to ~~proceed stand trial~~, insanity, and involuntary hospitalization or placement. The panel of experts may evaluate the defendant in jail or in another appropriate local facility.

(c) To the extent possible, ~~at least one of the appointed experts shall have completed forensic evaluator training approved by the department and be either a state-employed psychiatrist, licensed psychologist, or physician in the local vicinity; a psychiatrist, psychologist, or physician designated by the district alcohol, drug abuse, and mental health program office; or a community mental health center psychiatrist, psychologist, or physician.~~

~~(d) If a defendant's suspected mental condition is mental retardation, the court shall appoint the developmental services program of the Department~~

~~of Health and Rehabilitative Services to examine the defendant and determine whether she or he meets the definition of "retardation" in s. 393.063 and, if so, whether she or he is competent to stand trial.~~

(2) Expert witnesses appointed by the court to evaluate ~~determine~~ the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators of competence or sanity and as witnesses, which shall be paid by the county in which the indictment was found or the information or affidavit was filed. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case. In order for the experts to be paid for the services rendered, the reports and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 15. Section 916.12, Florida Statutes, is amended to read:

916.12 Mental competence to proceed ~~stand trial~~.—

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

(2) The experts shall first determine whether the person is mentally ill and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.

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

- (a) Appreciate the charges or allegations against the defendant;
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- (c) Understand the adversarial nature of the legal process;
- (d) Disclose to counsel facts pertinent to the proceedings at issue;
- (e) Manifest appropriate courtroom behavior; and
- (f) Testify relevantly;

and include in their report any other factor deemed relevant by the experts.

(4) If the experts should find that the defendant is incompetent to proceed, the experts shall report on any recommended treatment for the defendant to attain competence to proceed. In considering the issues relating to treatment, the examining experts shall specifically report on:

(a) The mental illness causing the incompetence;

(b) The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives in order of choices;

(c) The availability of acceptable treatment and, if treatment is available in the community, the expert shall so state in the report; and

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

~~(5)(2)~~ A defendant who, because of psychotropic medication, is able to understand the nature of proceedings and assist in ~~the defendant's own her or his~~ defense shall not automatically be deemed incompetent to ~~proceed stand trial~~ simply because the defendant's satisfactory mental functioning is dependent upon such medication. As used in this subsection, "psychotropic medication" means any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs.

Section 16. Section 916.13, Florida Statutes, is amended to read:

~~916.13 Involuntary commitment of defendant adjudicated incompetent to stand trial or incompetent for sentencing. —~~

(1) CRITERIA.—Every defendant who is charged with a felony and who is person adjudicated incompetent to ~~proceed stand trial or incompetent for sentencing~~, pursuant to the applicable Florida Rules of Criminal Procedure, may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) ~~The defendant person is mentally ill and because of the her or his mental illness, or that the person is mentally retarded and because of her or his mental retardation:~~

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

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

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpa-

tient settings, which would offer an opportunity for improvement of the defendant's person's condition have been judged to be inappropriate; and.

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

(2) ~~ADMISSION TO A FORENSIC FACILITY.—~~

(a) ~~Every person who has been charged with a felony and who has been adjudicated incompetent to proceed stand trial or incompetent for sentencing, and who meets the criteria for commitment to the department under the provisions of this chapter, may shall be committed to the department, and the department shall may retain and treat the defendant. No later than 6 months after the date of admission commitment or at the end of any period of extended commitment, or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed stand trial or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.~~

(b) ~~A defendant adjudicated incompetent to stand trial due to her or his mental retardation may be ordered into a secure facility designated by the department for retarded defendants. The department may not transfer a client from the secure facility to another residential setting without first notifying the court; the department may transfer such defendant unless the department receives written objection to the transfer from the court within 30 days after receipt of the notice by the court. No retarded client may be placed in the designated secure facility except by criminal court order. However, if criminal charges are subsequently dropped and the client is involuntarily admitted to retardation residential services, the placement at the secure facility may be continued if so ordered by the committing court following a hearing with the same due process requirements as set out in s. 393.11 for an initial involuntary admission. Such court hearings shall be held at least annually, with notice to the state attorney, and each order of continuing placement shall be based on a finding that the client is likely to physically injure others as specified in s. 393.11(1)(c)2. In no case may a client's placement in a secure facility exceed the maximum sentence for the crime for which she or he was charged.~~

Section 17. Section 916.14, Florida Statutes, is amended to read:

916.14 Statute of limitations; former jeopardy.—The statute of limitations shall not be applicable to criminal charges dismissed because of the incompetency of the defendant to proceed stand trial. If a defendant is declared incompetent to proceed stand trial during trial and afterwards is declared competent to proceed stand trial, the defendant's other, uncompleted trial shall not constitute former jeopardy.

Section 18. Section 916.145, Florida Statutes, is amended to read:

916.145 Adjudication of incompetency due to mental illness retardation; dismissal of charges.—The charges against any defendant adjudicated in-

~~competent to proceed stand trial due to the defendant's his or her mental illness retardation shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed 5 years after such determination stand trial 2 years after such adjudication, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future stand trial and specifies the time within which the defendant is expected to become competent to proceed stand trial. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.~~

Section 19. Section 916.15, Florida Statutes, is amended to read:

916.15 Involuntary commitment of defendant adjudicated not guilty by reason of insanity.—

(1) A ~~defendant person~~ who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed pursuant to such finding if the ~~defendant person~~ is mentally ill and, because of the ~~person's~~ illness, is manifestly dangerous to himself or herself or others.

(2) Every ~~defendant person~~ acquitted of criminal charges by reason of insanity and found to meet the criteria for involuntary commitment may be committed and treated in accordance with the provisions of this section and the applicable Florida Rules of Criminal Procedure. The department shall admit a defendant so adjudicated to an appropriate facility or program for treatment and shall ~~may~~ retain and treat such defendant. No later than 6 months after the date of admission, prior to the end of any period of extended commitment, or at any time the administrator ~~or designee~~ shall have determined that the defendant no longer meets the criteria for continued commitment placement, the administrator ~~or designee~~ shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(3) In all proceedings under this subsection, both the defendant patient and the state shall have the right to a hearing before the committing court. Evidence at such hearing may be presented by the hospital administrator or the ~~administrator's his or her~~ designee as well as by the state and the defendant. The defendant shall have the right to counsel at any such hearing. In the event that a defendant cannot afford counsel, the court shall appoint the public defender to represent the defendant. The parties shall have access to the defendant's records at the treating facilities and may interview or depose personnel who have had contact with the defendant at the treating facilities.

Section 20. Section 916.16, Florida Statutes, is amended to read:

916.16 Jurisdiction of committing court.—

(1) The committing court shall retain jurisdiction in the case of any defendant patient hospitalized as incompetent to proceed or because of a finding of not guilty by reason of insanity or, if retarded, admitted to retardation residential services pursuant to this chapter. No such defendant

person may be released except by order of the committing court. The administrative hearing examiner shall have no jurisdiction to determine issues of continuing hospitalization or release of any defendant ~~person~~ admitted pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release. No such defendant may be released from the conditions of release except by order of the committing court.

Section 21. Section 916.17, Florida Statutes, is amended to read:

916.17 Conditional release.—

(1) The committing court may order a conditional release of any defendant who has been ~~found to be incompetent to proceed committed according to a finding of incompetency to stand trial or an adjudication of not guilty~~ by reason of insanity, based on an approved plan for providing appropriate outpatient care and treatment. The committing court may order a conditional release of any defendant in lieu of an involuntary commitment to a facility pursuant to s. 916.13 or s. 916.15. Upon a recommendation that ~~At such time as the administrator shall determine~~ outpatient treatment of the defendant ~~is to be appropriate, she or he may file with the court, with copies to all parties,~~ a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court with copies to all parties. The plan shall include:

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

(b) Provisions for outpatient mental health services.

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

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

(2) Upon the filing of an affidavit or statement under oath by any person ~~If at any time it appears~~ that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. After the hearing, the court and may modify the release conditions. The court may also ~~or~~ order that the defendant be returned to the department if it is found, after the appointment and report of experts, that the person meets the criteria for involuntary further treatment.

(3) If at any time it is determined after a hearing that the defendant no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 22. Part III of chapter 916, Florida Statutes, consisting of sections 916.301, 916.3012, 916.302, 916.3025, 916.303, and 916.304, is created and entitled "Forensic Services for Persons Who Are Retarded or Autistic."

Section 23. Section 916.301, Florida Statutes, is created to read:

916.301 Appointment of experts.—

(1) The department shall provide the courts annually with a list of retardation and autism professionals who are qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when ordering evaluations for defendants suspected of being retarded or autistic.

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

(3) At the request of any party, the court may appoint one additional expert to evaluate the defendant. The expert appointed by the court will evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.

(4) The developmental services program shall select a psychologist who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism, and a social service professional with experience in working with persons with retardation or autism to evaluate the defendant.

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

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

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

(6) The panel of experts may examine the defendant in jail, in another appropriate local facility, or on an out-patient basis.

(7) Expert witnesses appointed by the court to evaluate the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators and as witnesses, which shall be paid by the county in which the indictment was found or the information or affidavit was filed. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case. In order for the experts to be paid

for the services rendered, the reports and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 24. Section 916.3012, Florida Statutes, is created to read:

916.3012 Mental competence to proceed.—

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

(2) The experts shall first consider whether the defendant meets the definition of retardation or autism and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.

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

- (a) Appreciate the charges or allegations against the defendant;
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- (c) Understand the adversarial nature of the legal process;
- (d) Disclose to counsel facts pertinent to the proceedings at issue;
- (e) Manifest appropriate courtroom behavior; and
- (f) Testify relevantly;

and include in their report any other factor deemed relevant by the experts.

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

- (a) The retardation or autism causing the incompetence;
- (b) The training appropriate for the retardation or autism of the defendant and an explanation of each of the possible training alternatives in order of choices;

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

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

Section 25. Section 916.302, Florida Statutes, is created to read:

916.302 Involuntary commitment of defendant determined to be incompetent to proceed due to retardation or autism.—

(1) CRITERIA.—Every defendant who is charged with a felony and who is found to be incompetent to proceed, pursuant to this chapter and the applicable Florida Rules of Criminal Procedure, may be involuntarily committed for training upon a finding by the court of clear and convincing evidence that:

(a) The defendant is retarded or autistic;

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

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

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

(2) ADMISSION TO A FACILITY.—

(a) A defendant who has been charged with a felony and who is found to be incompetent to proceed, and who meets the criteria for commitment to the department under the provisions of this chapter, shall be committed to the department, and the department shall retain and serve the defendant. No later than 6 months after the date of admission or at the end of any period of extended commitment or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to this chapter and the applicable Florida Rules of Criminal Procedure.

(b) A defendant determined to be incompetent to proceed due to retardation or autism may be ordered by a circuit court into a secure facility designated by the department for retarded or autistic defendants.

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

(d) The department may not transfer a defendant from a designated secure facility to a nonsecure facility without first notifying the court, and all parties, 30 days before the proposed transfer. If the court objects to the proposed transfer to a nonsecure facility, it must send its written objection to the department. The department may transfer the defendant unless it receives the written objection from the court within 30 days after the court's receipt of the notice of the proposed transfer.

(3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

(a) If a defendant is both retarded or autistic and mentally ill, evaluations must address which condition is primarily affecting the defendant's competency to proceed. Referral of the defendant should be made to the facility or program most appropriate to address the symptoms which are the cause of the defendant's incompetence.

(b) Transfer from one facility or program to another facility or program may occur when, in the department's judgment, it is in the defendant's best treatment or training interests. Transfer will require an amended order from the committing court.

Section 26. Section 916.3025, Florida Statutes, is created to read:

916.3025 Jurisdiction of committing court.—

(1) The committing court shall retain jurisdiction in the case of any defendant found to be incompetent to proceed and ordered into a secure facility designated by the department for retarded or autistic defendants. No defendant may be released except by the order of the committing court.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release. No such defendant may be released from the conditions of release except by order of the committing court.

(3) The committing court shall consider the petition to involuntarily admit to residential services provided by the department's developmental services program a person whose charges have been dismissed, and, when applicable, to continue secure placement of such person as provided in s. 916.303. The committing court shall retain jurisdiction over such person so long as he or she remains in secure placement or is on conditional release.

Section 27. Section 916.303, Florida Statutes, is created to read:

916.303 Determination of incompetency due to retardation or autism; dismissal of charges.—

(1) The charges against any defendant found to be incompetent to proceed due to retardation or autism shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 years, unless the court in its

order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

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

(b) If the defendant is considered to need involuntary residential services under s. 393.11 and, further, there is a substantial likelihood that the defendant will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate, then the person or entity filing the petition under s. 393.11, the state attorney, the defendant's counsel, the petitioning commission, or the department may also petition the committing court to continue the defendant's placement in a secure facility or program pursuant to this section. Any defendant involuntarily admitted under this paragraph shall have his status reviewed by the court at least annually at a hearing. The annual review and hearing shall determine whether the defendant continues to meet the criteria for involuntary residential services and, if so, whether the defendant still requires placement in a secure facility or program because the court finds that the defendant is likely to physically injure others as specified in s. 393.11 and whether the defendant is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behaviorial programming. Notice of the annual review and review hearing shall be given to the state attorney and to the defendant's attorney. In no instance may a defendant's placement in a secure facility or program exceed the maximum sentence for the crime for which the defendant was charged.

Section 28. Section 916.304, Florida Statutes, is created to read:

916.304 Conditional release.—

(1) The committing court may order a conditional release of any defendant who has been found to be incompetent to proceed, based on an approved plan for providing continuing community-based training. The committing criminal court may order a conditional release of any defendant in lieu of an involuntary commitment to a forensic facility pursuant to s. 916.302. Upon a recommendation that community-based training for the defendant is appropriate, a written plan for community-based training, including recommendations from qualified professionals, may be filed with the court, with

copies to all parties. Such a plan may also be submitted by the defendant and filed with the court, with copies to all parties. The plan shall include:

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

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

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

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. After the hearing, the court may modify the release conditions. The court may also order that the defendant be placed into more appropriate programs for further training or may order the defendant to be returned to involuntary residential services of the department if it is found, after the appointment and report of experts, that the defendant meets the criteria for involuntary residential services.

(3) If at any time it is determined after a hearing that the defendant no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 29. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.

CHAPTER 98-92

Committee Substitute for Committee Substitute for Senate Bill No. 442

An act relating to forensic client services; amending s. 40.29, F.S., relating to estimated amount of pay for expert witnesses, to conform a reference; amending s. 393.11, F.S.; specifying persons or entities that may file petition for proposed involuntary admission to residential services arising out of ch. 916, F.S., relating to forensic services; providing for petitions for defendants with autism; revising requirements relating to notice of filing of petition or service of copy of order; prohibiting release from order for involuntary admission except by court order; amending and reorganizing ch. 916, F.S., the Forensic Client Services Act; creating pt. I of ch. 916, F.S.; providing general provisions of the chapter; amending s. 916.105, F.S.; revising legislative intent; amending s. 916.106, F.S.; providing or revising definitions with respect to ch. 916, F.S.; redefining "department" to refer to the Department of Children and Family Services in lieu of the Department of Health and Rehabilitative Services; amending s. 916.107, F.S.; revising state policy with respect to the rights of forensic clients, and conforming terminology; amending and renumbering s. 916.175, F.S., relating to criminal escape by a client; prohibiting escape or attempted escape from a facility or program by a client under specified circumstances, and providing penalties therefor; amending and renumbering s. 916.178, F.S.; prohibiting the introduction of certain articles into or upon, or the taking or attempt to take or send certain articles from, facility grounds, under specified circumstances, and providing penalties therefor; providing for enforcement by institutional security personnel or law enforcement officers; conforming a reference; amending and renumbering s. 916.19, F.S.; providing for client protection and security; renumbering s. 916.20, F.S., relating to departmental rulemaking; creating pt. II of ch. 916, F.S., relating to forensic services for persons who are mentally ill; amending and renumbering s. 916.108, F.S.; providing for evaluation of defendant for competency to proceed or for sanity, under specified circumstances; amending and renumbering s. 916.11, F.S.; revising time limits and guidelines relating to appointment of experts; amending s. 916.12, F.S.; providing duties of examining experts and guidelines with respect to reports on defendant's mental competence to proceed and recommended treatment for defendant to attain competence to proceed; amending s. 916.13, F.S.; providing criteria for involuntary commitment of defendant adjudicated incompetent to proceed due to mental illness; revising duties of the court or the department and guidelines relating to commitment and placement of defendant and filing of reports; amending s. 916.14, F.S.; providing for inapplicability of statute of limitations and of bar against former jeopardy under specified circumstances when defendant is incompetent to proceed; amending s. 916.145, F.S.; revising time limits and guidelines with respect to dismissal of

charges against a defendant adjudicated incompetent to proceed; providing for dismissal without prejudice under specified circumstances; amending s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity; conforming terminology; providing for mandatory departmental retention and treatment of defendant; reenacting s. 394.467(7)(a), F.S., relating to procedure for continued involuntary placement, to incorporate said amendment in a reference; amending s. 916.16, F.S.; providing for retention of jurisdiction by committing court over a defendant hospitalized as incompetent to proceed or because of a finding of not guilty by reason of insanity or over a defendant placed on conditional release; prohibiting release except by court order in specified circumstances; amending s. 916.17, F.S.; revising procedures and guidelines relating to conditional release and modification of release conditions, including filing requirements for plans for outpatient treatment; creating pt. III of ch. 916, F.S., relating to forensic services for persons who are mentally retarded or autistic; creating s. 916.301, F.S.; providing for appointment of experts who are retardation or autism professionals, under specified circumstances; providing for certain witness fees and evaluator fees as court costs; providing for reimbursement of certain travel and per diem expenses of state employees; creating s. 916.3012, F.S.; providing for determination of incompetence to proceed when the defendant's suspected mental condition is retardation or autism; creating s. 916.302, F.S.; providing for involuntary commitment of defendant determined to be incompetent to proceed due to retardation or autism; requiring the department to notify the court of transfer of a defendant; creating s. 916.3025, F.S.; providing for retention of jurisdiction over certain defendants found incompetent to proceed and ordered into a secure facility for retarded or autistic defendants; prohibiting release except by court order; creating s. 916.303, F.S.; providing for dismissal of charges without prejudice or involuntary admission to residential services or a training program under specified circumstances when the defendant is found incompetent to proceed due to retardation or autism; providing for petitions to continue defendant's placement in a secure facility or program under specified circumstances; creating s. 916.304, F.S.; providing for conditional release based on an approved plan for providing continuing community-based training of defendant; providing for modification of release conditions or termination of jurisdiction under specified circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 40.29, Florida Statutes, is amended to read:

40.29 Clerks to estimate amount for pay of jurors and witnesses and make requisition.—

(1) The clerk of the court in and for any county shall make an estimate of the amount necessary during any quarterly fiscal period beginning July

1 and during each succeeding quarterly fiscal period for the payment by the state of:

- (a) Jurors in the circuit court and the county court;
- (b) Witnesses before the grand jury;
- (c) Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned by a state attorney or on behalf of an indigent defendant;
- (d) Mental health professionals who are appointed pursuant to s. 394.473 and required in a court hearing involving an indigent; and
- (e) Expert witnesses who are appointed pursuant to s. 916.115(2) 916.11(3) and required in a court hearing involving an indigent;

and shall forward each such estimate to the State Courts Administrator no later than the date scheduled by the State Courts Administrator. At the time of any forwarding of such estimate, the clerk of such court shall make a requisition upon the State Courts Administrator for the amount of such estimate; and the State Courts Administrator may reduce the amount if in his or her judgment the requisition is excessive.

Section 2. Subsections (2), (3), (8), and (11) of section 393.11, Florida Statutes, are amended to read:

393.11 Involuntary admission to residential services.—

(2) PETITION.—

(a) A petition for involuntary admission to residential services may be executed by a petitioning commission. For proposed involuntary admission to residential services arising out of chapter 916, the petition may be filed by a petitioning commission, the department, the state attorney of the circuit from which the defendant was committed, or the defendant's attorney.

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

(c) The petition shall be verified and shall:

1. State the name, age, and present address of the commissioners and their relationship to the person with mental retardation or autism;

2. State the name, age, county of residence, and present address of the person with mental retardation or autism;

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

4. Allege that the person lacks sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to provide for the person's well-being or is likely to physically injure others if allowed to remain at liberty; and

5. State which residential setting is the least restrictive and most appropriate alternative and specify the factual information on which such belief is based.

(d) The petition shall be filed in the circuit court of the county in which the person with mental retardation or autism resides.

(3) NOTICE.—

(a) Notice of the filing of the petition shall be given to the individual and his or her ~~legal guardian parent or parents~~. The notice shall be given both verbally and in writing in the language of the client, or in other modes of communication of the client, and in English. Notice shall also be given to such other persons as the court may direct. The petition for involuntary admission to residential services shall be served with the notice.

(b) Whenever a motion or petition has been filed pursuant to s. 916.303 to dismiss criminal charges against a defendant with retardation or autism, and a petition is filed to involuntarily admit the defendant to residential services, the notice of the filing of the petition shall also be given to the defendant's attorney and to the state attorney of the circuit from which the defendant was committed.

~~(c)~~(b) The notice shall state that a hearing shall be set to inquire into the need of the person with mental retardation or autism for involuntary residential services. The notice shall also state the date of the hearing on the petition.

~~(d)~~(e) The notice shall state that the individual with mental retardation or autism has the right to be represented by counsel of his or her own choice and that, if the person cannot afford an attorney, the court shall appoint one.

(8) ORDER.—

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

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

1. The person is mentally retarded or autistic;
2. Placement in a residential setting is the least restrictive and most appropriate alternative to meet the person's needs; and
3. Because of the person's degree of mental retardation or autism, the person:

a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065 and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to the person's well-being; or

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

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

(d) If an order of involuntary admission to residential services provided by the developmental services program of the department is entered by the court, a copy of the written order shall be served upon the person, the person's counsel, ~~and the department, and the state attorney and the person's defense counsel, if applicable.~~ The order of involuntary admission sent to the department shall also be accompanied by a copy of the examining committee's report and other reports contained in the court file.

(e) Upon receiving the order, the department shall, within 45 days, provide the court with a copy of the person's family or individual support plan and copies of all examinations and evaluations, outlining the treatment and rehabilitative programs. The department shall document that the person has been placed in the most appropriate, least restrictive and cost-beneficial residential facility. A copy of the family or individual support plan and other examinations and evaluations shall be served upon the person and the person's counsel at the same time the documents are filed with the court.

(11) CONTINUING JURISDICTION.—The court which issues the initial order for involuntary admission to residential services under this section shall have continuing jurisdiction to enter further orders to ensure that the person is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behavioral programming. Upon request, the court may transfer the continuing jurisdiction to the court where a client resides if it is different from where the original involuntary admission order was issued. No person may be released from an order for involuntary admission to residential services except by the order of the court.

Section 3. For the purpose of incorporating the amendment to section 916.15, Florida Statutes, in a reference thereto, paragraph (a) of subsection (7) of section 394.467, Florida Statutes, is reenacted to read:

394.467 Involuntary placement.—

(7) PROCEDURE FOR CONTINUED INVOLUNTARY PLACEMENT.—

(a) Hearings on petitions for continued involuntary placement shall be administrative hearings and shall be conducted in accordance with the provisions of s. 120.57(1), except that any order entered by the hearing officer

shall be final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity shall be governed by the provisions of s. 916.15.

Section 4. Part I of chapter 916, Florida Statutes, consisting of sections 916.10, 916.105, 916.106, 916.107, 916.1081, 916.1085, 916.1091, and 916.1093, is created and entitled “General Provisions.”

Section 5. Section 916.105, Florida Statutes, is amended to read:

916.105 Legislative intent.—

(1) It is the intent of the Legislature that the Department of Children and Family Health and Rehabilitative Services establish, locate, and maintain separate and secure facilities and programs for the treatment or training of defendants forensic clients who are charged with a felony and who have been found to be incompetent to proceed due to their mental illness, retardation, or autism mentally retarded or mentally ill defendants, or who have been acquitted of felonies crimes by reason of insanity, and who, while still under the jurisdiction of the committing court, are committed to the department for mental retardation or mental health services under the provisions of this chapter. The separate, secure facilities shall be sufficient to accommodate the number of defendants clients committed under the conditions noted above, except those defendants clients found by the department to be appropriate for treatment or training in a civil mental health treatment facility or program. Such secure facilities shall be designed and administered so that ingress and egress, together with other requirements of this chapter, may be strictly controlled by staff responsible for security in order to protect the defendant client, facility hospital personnel, other clients, and citizens in adjacent communities.

(2) It is further the intent of the Legislature that treatment or training programs for defendants clients who are found to be mentally retarded or mentally ill, retarded, or autistic defendants and are involuntarily committed to the department certain mental retardation or mental health facilities, and who are still under the jurisdiction of the committing court, be provided in such a manner, subject to security requirements and other mandates of this chapter, as to ensure the rights of the defendants said clients as provided in this chapter.

(3) It is the intent of the Legislature that evaluation and services to defendants who are treatment of mentally ill, and mentally retarded, or autistic defendants be provided in community inpatient or outpatient settings, in community residential facilities, or in civil, nonforensic facilities, whenever this is a feasible alternative to treatment or training in a state forensic facility.

Section 6. Section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.—For the purposes of this chapter:

(1) “Autism” means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication,

and behavior disorders, with the age of onset of autism occurring during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

(2)(4) “Chemical weapon” means any shell, cartridge, bomb, gun, or other device capable of emitting chloroacetophenone (CN), chlorobenzal-malononitrile (CS) or any derivatives thereof in any form, or any other agent with lacrimatory properties, and shall include products such as that commonly known as “mace.”

(3) “Civil facility” means a mental health facility established within the department to serve individuals committed pursuant to chapter 394 and those defendants committed pursuant to this chapter who do not require the security provided in a forensic facility.

(4)(2) “Court” means the circuit court.

(5)(3) “Department” means the Department of Children and Family Health and Rehabilitative Services.

(6) “Express and informed consent” or “consent” means consent given voluntarily in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment, the common side effects of the treatment, if any, the expected duration of the treatment, and any alternative treatment available.

(7)(4) “Forensic client” or “client” “patient” means any defendant who is mentally ill, mentally retarded, or autistic and mentally ill person who is committed to the department pursuant to this chapter and:

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

(b) Who has been found incompetent to proceed on a felony offense stand trial or incompetent for sentencing, has been acquitted of a felony criminal offense by reason of insanity; ~~has criminal charges pending, or has been found guilty of a criminal offense but is not an inmate of the Department of Corrections or any other correctional facility; and~~

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

1. Be dangerous to himself or herself or others; or
2. Present a clear and present potential to escape; and

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

(8)(5) “Forensic facility” means a separate and secure facility established within the department to serve for the treatment of forensic clients. Such separate and secure facilities shall be security-grade buildings located on grounds distinct in location from other treatment facilities for persons who are mentally ill. The Florida State Hospital shall not be required to maintain

separate treatment facilities for mentally ill, ~~or mentally retarded, or autistic~~ defendants who are persons found incompetent to proceed for trial or who are acquitted of a criminal offense by reason of insanity.

(9) “Incompetent to proceed” means unable to proceed at any material stage of a criminal proceeding, which shall include trial of the case, pretrial hearings involving questions of fact on which the defendant might be expected to testify, entry of a plea, proceedings for violation of probation or violation of community control, sentencing, and hearings on issues regarding a defendant’s failure to comply with court orders or conditions or other matters in which the mental competence of the defendant is necessary for a just resolution of the issues being considered.

(10)(6) “Institutional security personnel” means staff members who meet or exceed the requirements of s. 943.13 and who are responsible for providing security, for protection of clients and personnel, for the enforcement of rules, for prevention and investigation of unauthorized activities, and for safeguarding the interests of citizens in the surrounding communities.

(11)(7) “Mental illness” “Mentally ill” means having an impairment of the emotional processes that, of the ability to exercise conscious control of one’s actions, or of the ability to perceive or understand reality or to understand, which impairment substantially interferes with a defendant’s person’s ability to meet the ordinary demands of living, regardless of etiology; except that, For the purposes of this chapter, the term does not apply to defendants include simple intoxication, persons who are solely mentally retarded or autistic, and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment drug addiction.

(12)(8) “Mental Retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the department. “Adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual’s age, cultural group, and community.

(13) “Social service professional,” for the purposes of part III, means a person whose minimum qualifications include a bachelor’s degree and at least 2 years of social work, clinical practice, special education, habilitation, or equivalent experience working directly with persons with retardation, autism or other developmental disabilities.

Section 7. Section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(1) RIGHT TO INDIVIDUAL DIGNITY.—

(a) The policy of the state is that the individual dignity of the client patient shall be respected at all times and upon all occasions, including any occasion when the forensic client patient is detained, transported, or treated. Defendants Persons who are mentally ill, ~~or mentally retarded, or autistic~~ and who are charged with, ~~or who have been convicted of,~~ committing felonies criminal acts shall receive appropriate treatment or training. In a criminal case involving a defendant person who has been adjudicated incompetent to proceed stand trial or not guilty by reason of insanity, ~~or who has otherwise been found by the court to meet the criteria for involuntary commitment,~~ a jail may be used as an emergency facility for up to 15 days from the date the department receives a completed copy of the commitment order containing the documentation required by Rules 3.212 and 3.217, Florida Rules of Criminal Procedure. ~~For In every case in which a defendant who is mentally ill, or mentally retarded, or autistic, who person is held in a jail, and who has been adjudicated incompetent to proceed or not guilty by reason of insanity,~~ evaluation and treatment or training shall be provided in the jail by the local public receiving facility for mental health services or by the developmental services program for persons with retardation or autism, the client's patient's physician or clinical psychologist, or any other appropriate mental health program available to provide such treatment until the client person is transferred to the custody of the department.

(b) Mentally ill, ~~or mentally retarded, or autistic~~ defendants persons who are committed to the department pursuant to this chapter and who are initially placed in, or subsequently transferred to, a civil mental health treatment facility as described in part I of chapter 394 or to a residential facility as described in chapter 393 shall have the same rights as other persons committed to these civil facilities for as described in part I of chapter 394, as long as they remain there in a civil facility.

(2) RIGHT TO TREATMENT.—

(a) The policy of the state is that the department shall not deny treatment or training of mental illness or mental retardation to any client and that no services shall be delayed at a ~~forensic mental health treatment facility because the forensic client is unable to pay.~~ However, every reasonable effort to collect appropriate reimbursement for the cost of providing mental health services to clients persons able to pay for the services, including reimbursement from insurance or other third-party payments, shall be made by ~~forensic facilities providing services pursuant to this chapter and in accordance with the provisions of s. 402.33.~~

(b) Each client ~~who is a patient at a forensic facility~~ shall be given, at the time of admission and at regular intervals thereafter, a physical examination, which shall include screening for communicable disease by a health practitioner authorized by law to give such screenings and examinations.

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

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

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A client person committed to the department pursuant to this act shall be asked to give express and informed written consent for treatment. ~~“Express and informed consent” or “consent” means consent given voluntarily in writing after a conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment, the common side effects of the treatment, if any, the expected duration of the treatment, and any alternative treatment available.~~ If a client patient in a forensic facility refuses such treatment as is deemed necessary by the client’s patient’s multidisciplinary treatment team at the forensic facility for the appropriate care of the client patient and the safety of the client patient or others, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client patient or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client patient has not given express and informed consent to the treatment initially refused, the administrator or designee of the forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client patient. In the interim, treatment may be continued without the consent of the client patient upon the continued written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client patient or others.

2. In a situation other than an emergency situation, the administrator or designee of the forensic facility shall petition the court for an order authorizing the treatment ~~to~~ of the client patient. The order shall allow such treatment for a period not to exceed 90 days from the date of the entry of the order. Unless the court is notified in writing that the client patient has provided express and informed consent in writing or that the client patient has been discharged by the committing court, the administrator or designee shall, prior to the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for another 90-day period. This procedure shall be repeated until the client patient provides consent or is discharged by the committing court.

3. At the hearing on the issue of whether the court should enter an order authorizing treatment for which a client patient has refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client patient is mentally ill, ~~or mentally retarded, or autistic~~ as defined in this chapter, that the treatment not consented to is essential to the care of the client patient, and that the treatment not consented to is not experimental and does not present an unreasonable risk of

serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

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

The hearing shall be as convenient to the client patient as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's patient's condition. The court may appoint a master to preside at the hearing. The client patient or the client's patient's guardian, and ~~the his or her~~ representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client patient has the right to have an attorney represent him or her at the hearing, and, if the client patient is indigent, the court shall appoint the office of the public defender to represent the client patient at the hearing. The client patient may testify or not, as he or she chooses, and has the right to cross-examine witnesses ~~testifying on behalf of the facility~~ and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general anesthetic or electroconvulsive treatment or nonpsychiatric medical procedures, and prior to performing the procedure, written permission shall be obtained from the client patient, if ~~the client he or she~~ is legally competent, from the parent or guardian of a minor client patient, or from the guardian of an incompetent client patient. The administrator or designee of the forensic facility or ~~a his or her~~ designated representative may, with the concurrence of the client's patient's attending physician, authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or for a situation threatening serious bodily harm to the client patient and permission of the client patient or the client's patient's guardian cannot be obtained.

(4) QUALITY OF TREATMENT.—Each client patient committed pursuant to this chapter shall receive treatment or training suited to the client's ~~his or her~~ needs, which shall be administered skillfully, safely, and humanely with full respect for the ~~the client's patient's~~ dignity and personal integrity. Each client patient shall receive such medical, vocational, social, educational, and rehabilitative services as the client's patient's condition requires to bring about a return to court for disposition of charges or a ~~an~~ early return to the ~~the his or her~~ community. In order to achieve this goal, the department is directed to coordinate the services of the Alcohol, Drug Abuse and Mental Health Program Office and the Developmental Services Program Office ~~its forensic mental health and mental retardation programs~~ with all other programs of the department and other appropriate state agencies.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

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

(b) Each client patient committed under the provisions of this chapter shall be allowed to receive, send, and mail sealed, unopened correspondence; and no client's patient's incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the client patient or others, in which case the administrator or designee may direct reasonable examination of such mail and may regulate the disposition of such items or substances. "Correspondence" shall not include parcels or packages. Forensic facilities are authorized to promulgate reasonable institutional policies ~~rules~~ to provide for the inspection of parcels or packages and for the removal of contraband items for health or security reasons prior to the contents being given to a client resident.

(c) If a client's patient's right to communicate is restricted by the administrator, written notice of such restriction shall be served on the client patient or his or her legal ~~the patient's~~ guardian or representatives, and such restriction shall be recorded on the client's patient's clinical record with the reasons therefor. The restriction of a client's patient's right to communicate shall be reviewed at least every 7 90 days.

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

(e) Each client patient committed pursuant to this chapter shall have ready access to a telephone in order to report an alleged abuse. The facility or program staff shall orally verbally and in writing inform each client patient of the procedure for reporting abuse and shall present the information in a language the client understands. A written copy of that procedure, including the telephone number of the abuse registry and reporting forms, shall be posted in plain view.

(f) The department's forensic facilities ~~department~~ shall develop policies ~~adopt rules~~ providing a procedure for reporting abuse. Facility staff shall be required, as a condition of employment, to become familiar with the procedures for the reporting of abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS PATIENTS.—A client's patient's right to possession of his or her clothing and personal effects shall be respected. The department by rule, or the administrator of any facility by written institutional policy, may declare certain items to be hazardous to the welfare of clients patients or others or to the operation of the facility. Such items may be restricted from introduction into the facility or may be restricted from being in a client's patient's possession. The administrator or designee may take temporary custody of such effects when required for medical and safety reasons. Custody of such personal effects shall be recorded in the client's patient's clinical record.

(7) VOTING IN PUBLIC ELECTIONS.—A client patient committed pursuant to this chapter who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules to enable clients patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

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

(a) Such clinical record may be released:

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

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

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

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

5. If a client patient receiving services pursuant to this chapter has declared an intention to harm other persons. When such a declaration has been made, the administrator shall authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the client, and to the committing court, the state attorney, and the attorney representing the client; however, only the declaration may be disclosed.

6. To the parent or next of kin of a mentally ill, ~~or mentally retarded, or autistic~~ person who is committed to, or is being served treated by, a ~~forensic mental health~~ facility or program when such information is limited to that person's service treatment plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.

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

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

2. Law enforcement agencies, state attorneys, defense attorneys ~~public defenders or other attorneys defending the patient~~, and judges in regard to the client's patient's status;

3. Jail personnel in the jail to which a client may be returned; and

4. Community agencies and others expected to provide followup care to the client patient upon the client's ~~his or her~~ return to the community.

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

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

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

(9) HABEAS CORPUS.—

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

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

(10) TRANSPORTATION.—

(a) The sheriff shall consult with the governing board of the county as to the most appropriate and cost-effective means of transportation for forensic clients committed for treatment or training. Such consultation shall include, but is not limited to, consideration of the cost to the county of transportation performed by sheriff's department personnel as opposed to transportation performed by other means and, if sheriff's department personnel are to be used for transportation, the effect such use will have, if any, on service

delivery levels of the sheriff's road patrol. After such consultation with the governing board of the county, the sheriff shall determine the most appropriate and cost-effective means of transportation for forensic clients committed for treatment or training.

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

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

(d) Any company that contracts with a governing board of a county to transport clients ~~patients~~ shall comply with the applicable rules of the department to ensure the safety and dignity of the clients ~~patients~~.

(11) LIABILITY FOR VIOLATIONS.—Any person who violates or abuses any rights or privileges of a client ~~patient~~ provided by this act is liable for damages as determined by law. Any person who acts in good faith in complying with the provisions of this act is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, training, or discharge of a client ~~patient~~ to or from a facility. However, this subsection does not relieve any person from liability if he or she ~~the person~~ is negligent.

Section 8. Section 916.175, Florida Statutes, is renumbered as section 916.1081, Florida Statutes, and amended to read:

916.1081 ~~916.175~~ Escape from ~~treatment~~ program; penalty.—A defendant ~~client~~ involuntarily committed to the department under the provisions of this chapter who escapes or attempts to escape from a facility or program ~~commits the department is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 9. Section 916.178, Florida Statutes, is renumbered as section 916.1085, Florida Statutes, and amended to read:

916.1085 ~~916.178~~ Introduction or removal of certain articles unlawful; penalty.—

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

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

2. Any controlled substance as defined in chapter 893;
3. Any firearm or deadly weapon; or
4. Any other item items as determined by the department, and as designated by departmental rule or by the administrator of any facility, and designated by written institutional policies, to be hazardous to the welfare of patients or the operation of the facility.

(b) It is unlawful to transmit to, attempt to transmit to, or cause or attempt to cause to be transmitted to or received by any ~~client~~ patient of any facility any article or thing declared by this section to be contraband, at any place which is outside of the grounds of such facility, except as authorized by law or as specifically authorized by the person in charge of such facility.

(2)(a) All individuals or vehicles entering upon the grounds of any ~~forensic~~ facility under the supervision or control of the department ~~may~~ shall be subject to reasonable search and seizure of any contraband materials introduced thereon, for purpose of enforcement of this chapter.

(b) These provisions shall be enforced by institutional security personnel as defined in s. 916.106(10)(6) or by a law enforcement officer as defined in s. 943.10.

(c) A person who ~~Whoever~~ violates any provision of subparagraph (1)(a)2. or subparagraph (1)(a)3. ~~commits is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Section 916.19, Florida Statutes, is renumbered as section 916.1091, Florida Statutes, and amended to read:

916.1091 ~~916.19~~ Duties, functions, and powers of institutional security personnel.—In case of emergency, and when necessary to provide protection and security to any client ~~patient~~, to the personnel, equipment, buildings, or grounds of a department facility, or to citizens in the surrounding community, institutional security personnel may, when authorized by the administrator of the facility or her or his designee when the administrator is not present, use a chemical weapon against a patient housed in a forensic facility. However, such weapon shall be used only to the extent necessary to provide such protection and security. Under no circumstances shall any such officer carry a chemical weapon on her or his person except during the period of the emergency for which its use was authorized. All chemical weapons shall be placed in secure storage when their use is not authorized as provided in this section.

Section 11. Section 916.20, Florida Statutes, is renumbered as section 916.1093, Florida Statutes.

Section 12. Part II of chapter 916, Florida Statutes, consisting of sections 916.111, 916.115, 916.12, 916.13, 916.14, 916.145, 916.15, 916.16, and 916.17, is created and entitled “Forensic Services for Persons Who are Mentally Ill.”

Section 13. Section 916.108, Florida Statutes, is renumbered as section 916.111, Florida Statutes, and amended to read:

916.111 ~~916.108~~ Training of mental health experts.—The evaluation of defendants for competency to ~~proceed stand trial~~ or for sanity at the time of the commission of the offense shall be conducted in such a way as to ensure uniform application of the criteria enumerated in Rules 3.210 and 3.216, Florida Rules of Criminal Procedure. The department shall develop, and may contract with accredited institutions:

(1) To provide:

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

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

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

(2) To compile and maintain the necessary information for evaluating the success of this program, including the number of persons trained, the cost of operating the program, and the effect on the quality of forensic evaluations as measured by appropriateness of admissions to state forensic facilities and to community-based care programs.

Section 14. Section 916.11, Florida Statutes, is renumbered as section 916.115, Florida Statutes, and amended to read:

916.115 ~~916.11~~ Appointment of experts.—

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

(b) The court may appoint no more than three nor fewer than two experts to determine issues of the mental condition of a defendant in a criminal case, including the issues of competency to ~~proceed stand trial~~, insanity, and involuntary hospitalization or placement. The panel of experts may evaluate the defendant in jail or in another appropriate local facility.

(c) To the extent possible, ~~at least one of the appointed experts shall have completed forensic evaluator training approved by the department and be either a state-employed psychiatrist, licensed psychologist, or physician in the local vicinity; a psychiatrist, psychologist, or physician designated by the district alcohol, drug abuse, and mental health program office; or a community mental health center psychiatrist, psychologist, or physician.~~

~~(d) If a defendant's suspected mental condition is mental retardation, the court shall appoint the developmental services program of the Department~~

~~of Health and Rehabilitative Services to examine the defendant and determine whether she or he meets the definition of "retardation" in s. 393.063 and, if so, whether she or he is competent to stand trial.~~

(2) Expert witnesses appointed by the court to evaluate ~~determine~~ the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators of competence or sanity and as witnesses, which shall be paid by the county in which the indictment was found or the information or affidavit was filed. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case. In order for the experts to be paid for the services rendered, the reports and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 15. Section 916.12, Florida Statutes, is amended to read:

916.12 Mental competence to proceed ~~stand trial~~.—

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

(2) The experts shall first determine whether the person is mentally ill and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.

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

- (a) Appreciate the charges or allegations against the defendant;
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- (c) Understand the adversarial nature of the legal process;
- (d) Disclose to counsel facts pertinent to the proceedings at issue;
- (e) Manifest appropriate courtroom behavior; and
- (f) Testify relevantly;

and include in their report any other factor deemed relevant by the experts.

(4) If the experts should find that the defendant is incompetent to proceed, the experts shall report on any recommended treatment for the defendant to attain competence to proceed. In considering the issues relating to treatment, the examining experts shall specifically report on:

(a) The mental illness causing the incompetence;

(b) The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives in order of choices;

(c) The availability of acceptable treatment and, if treatment is available in the community, the expert shall so state in the report; and

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

~~(5)(2)~~ A defendant who, because of psychotropic medication, is able to understand the nature of proceedings and assist in ~~the defendant's own her or his~~ defense shall not automatically be deemed incompetent to ~~proceed stand trial~~ simply because the defendant's satisfactory mental functioning is dependent upon such medication. As used in this subsection, "psychotropic medication" means any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs.

Section 16. Section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent ~~to stand trial or incompetent for sentencing.~~—

(1) CRITERIA.—Every defendant who is charged with a felony and who is person adjudicated incompetent to ~~proceed stand trial or incompetent for sentencing~~, pursuant to the applicable Florida Rules of Criminal Procedure, may be involuntarily committed for treatment upon a finding by the court of clear and convincing evidence that:

(a) The defendant person is mentally ill and because of the her or his mental illness, ~~or that the person is mentally retarded and because of her or his mental retardation:~~

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

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

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpa-

tient settings, which would offer an opportunity for improvement of the defendant's person's condition have been judged to be inappropriate; and.

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

(2) ~~ADMISSION TO A FORENSIC FACILITY.—~~

(a) ~~Every person who has been charged with a felony and who has been adjudicated incompetent to proceed stand trial or incompetent for sentencing, and who meets the criteria for commitment to the department under the provisions of this chapter, may shall be committed to the department, and the department shall may retain and treat the defendant. No later than 6 months after the date of admission commitment or at the end of any period of extended commitment, or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed stand trial or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.~~

(b) ~~A defendant adjudicated incompetent to stand trial due to her or his mental retardation may be ordered into a secure facility designated by the department for retarded defendants. The department may not transfer a client from the secure facility to another residential setting without first notifying the court; the department may transfer such defendant unless the department receives written objection to the transfer from the court within 30 days after receipt of the notice by the court. No retarded client may be placed in the designated secure facility except by criminal court order. However, if criminal charges are subsequently dropped and the client is involuntarily admitted to retardation residential services, the placement at the secure facility may be continued if so ordered by the committing court following a hearing with the same due process requirements as set out in s. 393.11 for an initial involuntary admission. Such court hearings shall be held at least annually, with notice to the state attorney, and each order of continuing placement shall be based on a finding that the client is likely to physically injure others as specified in s. 393.11(1)(c)2. In no case may a client's placement in a secure facility exceed the maximum sentence for the crime for which she or he was charged.~~

Section 17. Section 916.14, Florida Statutes, is amended to read:

916.14 Statute of limitations; former jeopardy.—The statute of limitations shall not be applicable to criminal charges dismissed because of the incompetency of the defendant to proceed stand trial. If a defendant is declared incompetent to proceed stand trial during trial and afterwards is declared competent to proceed stand trial, the defendant's other, uncompleted trial shall not constitute former jeopardy.

Section 18. Section 916.145, Florida Statutes, is amended to read:

916.145 Adjudication of incompetency due to mental illness retardation; dismissal of charges.—The charges against any defendant adjudicated in-

~~competent to proceed stand trial due to the defendant's his or her mental illness retardation shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed 5 years after such determination stand trial 2 years after such adjudication, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future stand trial and specifies the time within which the defendant is expected to become competent to proceed stand trial. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.~~

Section 19. Section 916.15, Florida Statutes, is amended to read:

916.15 Involuntary commitment of defendant adjudicated not guilty by reason of insanity.—

(1) A ~~defendant person~~ who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed pursuant to such finding if the ~~defendant person~~ is mentally ill and, because of the ~~person's~~ illness, is manifestly dangerous to himself or herself or others.

(2) Every ~~defendant person~~ acquitted of criminal charges by reason of insanity and found to meet the criteria for involuntary commitment may be committed and treated in accordance with the provisions of this section and the applicable Florida Rules of Criminal Procedure. The department shall admit a defendant so adjudicated to an appropriate facility or program for treatment and shall ~~may~~ retain and treat such defendant. No later than 6 months after the date of admission, prior to the end of any period of extended commitment, or at any time the administrator ~~or designee~~ shall have determined that the defendant no longer meets the criteria for continued commitment placement, the administrator ~~or designee~~ shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(3) In all proceedings under this subsection, both the defendant patient and the state shall have the right to a hearing before the committing court. Evidence at such hearing may be presented by the hospital administrator or the administrator's his or her ~~designee~~ as well as by the state and the defendant. The defendant shall have the right to counsel at any such hearing. In the event that a defendant cannot afford counsel, the court shall appoint the public defender to represent the defendant. The parties shall have access to the defendant's records at the treating facilities and may interview or depose personnel who have had contact with the defendant at the treating facilities.

Section 20. Section 916.16, Florida Statutes, is amended to read:

916.16 Jurisdiction of committing court.—

(1) The committing court shall retain jurisdiction in the case of any defendant patient hospitalized as incompetent to proceed or because of a finding of not guilty by reason of insanity or, if retarded, admitted to retardation residential services pursuant to this chapter. No such defendant

person may be released except by order of the committing court. The administrative hearing examiner shall have no jurisdiction to determine issues of continuing hospitalization or release of any defendant ~~person~~ admitted pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release. No such defendant may be released from the conditions of release except by order of the committing court.

Section 21. Section 916.17, Florida Statutes, is amended to read:

916.17 Conditional release.—

(1) The committing court may order a conditional release of any defendant who has been ~~found to be incompetent to proceed committed according to a finding of incompetency to stand trial or an adjudication of not guilty~~ by reason of insanity, based on an approved plan for providing appropriate outpatient care and treatment. The committing court may order a conditional release of any defendant in lieu of an involuntary commitment to a facility pursuant to s. 916.13 or s. 916.15. Upon a recommendation that ~~At such time as the administrator shall determine~~ outpatient treatment of the defendant ~~is to be appropriate, she or he may file with the court, with copies to all parties,~~ a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court with copies to all parties. The plan shall include:

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

(b) Provisions for outpatient mental health services.

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

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

(2) Upon the filing of an affidavit or statement under oath by any person ~~If at any time it appears~~ that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. After the hearing, the court and may modify the release conditions. The court may also ~~or~~ order that the defendant be returned to the department if it is found, after the appointment and report of experts, that the person meets the criteria for involuntary further treatment.

(3) If at any time it is determined after a hearing that the defendant no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 22. Part III of chapter 916, Florida Statutes, consisting of sections 916.301, 916.3012, 916.302, 916.3025, 916.303, and 916.304, is created and entitled "Forensic Services for Persons Who Are Retarded or Autistic."

Section 23. Section 916.301, Florida Statutes, is created to read:

916.301 Appointment of experts.—

(1) The department shall provide the courts annually with a list of retardation and autism professionals who are qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when ordering evaluations for defendants suspected of being retarded or autistic.

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

(3) At the request of any party, the court may appoint one additional expert to evaluate the defendant. The expert appointed by the court will evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.

(4) The developmental services program shall select a psychologist who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism, and a social service professional with experience in working with persons with retardation or autism to evaluate the defendant.

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

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

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

(6) The panel of experts may examine the defendant in jail, in another appropriate local facility, or on an out-patient basis.

(7) Expert witnesses appointed by the court to evaluate the mental condition of a defendant in a criminal case shall be allowed reasonable fees for services rendered as evaluators and as witnesses, which shall be paid by the county in which the indictment was found or the information or affidavit was filed. State employees shall be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case. In order for the experts to be paid

for the services rendered, the reports and testimony must explicitly address each of the factors and follow the procedures set out in this chapter and in the Florida Rules of Criminal Procedure.

Section 24. Section 916.3012, Florida Statutes, is created to read:

916.3012 Mental competence to proceed.—

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

(2) The experts shall first consider whether the defendant meets the definition of retardation or autism and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed; that is, whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.

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

- (a) Appreciate the charges or allegations against the defendant;
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- (c) Understand the adversarial nature of the legal process;
- (d) Disclose to counsel facts pertinent to the proceedings at issue;
- (e) Manifest appropriate courtroom behavior; and
- (f) Testify relevantly;

and include in their report any other factor deemed relevant by the experts.

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

- (a) The retardation or autism causing the incompetence;
- (b) The training appropriate for the retardation or autism of the defendant and an explanation of each of the possible training alternatives in order of choices;

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

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

Section 25. Section 916.302, Florida Statutes, is created to read:

916.302 Involuntary commitment of defendant determined to be incompetent to proceed due to retardation or autism.—

(1) CRITERIA.—Every defendant who is charged with a felony and who is found to be incompetent to proceed, pursuant to this chapter and the applicable Florida Rules of Criminal Procedure, may be involuntarily committed for training upon a finding by the court of clear and convincing evidence that:

(a) The defendant is retarded or autistic;

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

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

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

(2) ADMISSION TO A FACILITY.—

(a) A defendant who has been charged with a felony and who is found to be incompetent to proceed, and who meets the criteria for commitment to the department under the provisions of this chapter, shall be committed to the department, and the department shall retain and serve the defendant. No later than 6 months after the date of admission or at the end of any period of extended commitment or at any time the administrator or designee shall have determined that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to this chapter and the applicable Florida Rules of Criminal Procedure.

(b) A defendant determined to be incompetent to proceed due to retardation or autism may be ordered by a circuit court into a secure facility designated by the department for retarded or autistic defendants.

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

(d) The department may not transfer a defendant from a designated secure facility to a nonsecure facility without first notifying the court, and all parties, 30 days before the proposed transfer. If the court objects to the proposed transfer to a nonsecure facility, it must send its written objection to the department. The department may transfer the defendant unless it receives the written objection from the court within 30 days after the court's receipt of the notice of the proposed transfer.

(3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

(a) If a defendant is both retarded or autistic and mentally ill, evaluations must address which condition is primarily affecting the defendant's competency to proceed. Referral of the defendant should be made to the facility or program most appropriate to address the symptoms which are the cause of the defendant's incompetence.

(b) Transfer from one facility or program to another facility or program may occur when, in the department's judgment, it is in the defendant's best treatment or training interests. Transfer will require an amended order from the committing court.

Section 26. Section 916.3025, Florida Statutes, is created to read:

916.3025 Jurisdiction of committing court.—

(1) The committing court shall retain jurisdiction in the case of any defendant found to be incompetent to proceed and ordered into a secure facility designated by the department for retarded or autistic defendants. No defendant may be released except by the order of the committing court.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release. No such defendant may be released from the conditions of release except by order of the committing court.

(3) The committing court shall consider the petition to involuntarily admit to residential services provided by the department's developmental services program a person whose charges have been dismissed, and, when applicable, to continue secure placement of such person as provided in s. 916.303. The committing court shall retain jurisdiction over such person so long as he or she remains in secure placement or is on conditional release.

Section 27. Section 916.303, Florida Statutes, is created to read:

916.303 Determination of incompetency due to retardation or autism; dismissal of charges.—

(1) The charges against any defendant found to be incompetent to proceed due to retardation or autism shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 years, unless the court in its

order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.

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

(b) If the defendant is considered to need involuntary residential services under s. 393.11 and, further, there is a substantial likelihood that the defendant will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate, then the person or entity filing the petition under s. 393.11, the state attorney, the defendant's counsel, the petitioning commission, or the department may also petition the committing court to continue the defendant's placement in a secure facility or program pursuant to this section. Any defendant involuntarily admitted under this paragraph shall have his status reviewed by the court at least annually at a hearing. The annual review and hearing shall determine whether the defendant continues to meet the criteria for involuntary residential services and, if so, whether the defendant still requires placement in a secure facility or program because the court finds that the defendant is likely to physically injure others as specified in s. 393.11 and whether the defendant is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behaviorial programming. Notice of the annual review and review hearing shall be given to the state attorney and to the defendant's attorney. In no instance may a defendant's placement in a secure facility or program exceed the maximum sentence for the crime for which the defendant was charged.

Section 28. Section 916.304, Florida Statutes, is created to read:

916.304 Conditional release.—

(1) The committing court may order a conditional release of any defendant who has been found to be incompetent to proceed, based on an approved plan for providing continuing community-based training. The committing criminal court may order a conditional release of any defendant in lieu of an involuntary commitment to a forensic facility pursuant to s. 916.302. Upon a recommendation that community-based training for the defendant is appropriate, a written plan for community-based training, including recommendations from qualified professionals, may be filed with the court, with

copies to all parties. Such a plan may also be submitted by the defendant and filed with the court, with copies to all parties. The plan shall include:

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

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

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

(2) Upon the filing of an affidavit or statement under oath by any person that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated, or that the release conditions should be modified, the court shall hold a hearing within 7 days after receipt of the affidavit or statement under oath. After the hearing, the court may modify the release conditions. The court may also order that the defendant be placed into more appropriate programs for further training or may order the defendant to be returned to involuntary residential services of the department if it is found, after the appointment and report of experts, that the defendant meets the criteria for involuntary residential services.

(3) If at any time it is determined after a hearing that the defendant no longer requires court-supervised followup care, the court shall terminate its jurisdiction in the cause and discharge the defendant.

Section 29. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.