

House Bill No. 7199

An act relating to forensic treatment and training; amending s. 916.105, F.S.; revising legislative intent with respect to the treatment or training of defendants who have mental illness, mental retardation, or autism and are committed to the Agency for Persons with Disabilities; providing intent with respect to the use of restraint and seclusion; amending s. 916.106, F.S.; providing and revising definitions; amending s. 916.107, F.S., relating to the rights of forensic clients; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; revising provisions governing the involuntary treatment of clients; requiring the coordination of services between the department, the agency, and the Department of Corrections; amending s. 916.1075, F.S.; revising certain prohibitions on sexual misconduct involving covered persons of the Department of Children and Family Services or the Agency for Persons with Disabilities; defining the term "covered person"; requiring that notice of sexual misconduct be provided to the inspector general of the agency or department; amending s. 916.1081, F.S.; providing that an escape or an attempt to escape from a civil or forensic facility constitutes a second-degree felony; amending s. 916.1085, F.S.; providing for certain prohibitions concerning contraband articles to apply to facilities under the supervision or control of the Agency for Persons with Disabilities; deleting a cross-reference; amending s. 916.1091, F.S.; authorizing the use of chemical weapons by agency personnel; amending s. 916.1093, F.S.; authorizing the agency to enter into contracts and adopt rules; requiring department and agency rules to address the use of restraint and seclusion; providing requirements for such rules; amending s. 916.111, F.S.; revising provisions governing the training of mental health experts; amending s. 916.115, F.S.; requiring that the court appoint experts to determine the mental condition of a criminal defendant; requiring that the Department of Children and Family Services annually provide the courts with a list of certain mental health professionals; amending s. 916.12, F.S.; revising provisions governing the evaluation of a defendant's competence to proceed; amending s. 916.13, F.S.; revising conditions under which a defendant may be involuntarily committed for treatment; amending s. 916.145, F.S., relating to dismissal of charges against a defendant adjudicated incompetent; conforming provisions to changes made by the act; amending s. 916.15, F.S.; clarifying that the determination of not guilty by reason of insanity is made under a specified Florida Rule of Criminal Procedure; amending s. 916.16, F.S.; providing for the continuing jurisdiction of the court over a defendant involuntarily committed due to mental illness; amending s. 916.17, F.S.; clarifying circumstances under which the court may order the conditional release of a defendant; amending s. 916.301, F.S.; requiring that certain evaluations be conducted by certain qualified experts; requiring that the Agency for

Persons with Disabilities provide the court with a list of certain available retardation and autism professionals; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the agency; amending s. 916.3012, F.S.; clarifying provisions governing the determination of a defendant's mental competence to proceed; amending s. 916.302, F.S., relating to the involuntary commitment of a defendant; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the agency; requiring that the department and agency submit an evaluation to the court before the transfer of a defendant from one civil or forensic facility to another; amending s. 916.3025, F.S.; clarifying that the committing court retains jurisdiction over a defendant placed on conditional release; providing for the transfer of continuing jurisdiction to another court where the defendant resides; amending s. 916.303, F.S.; clarifying provisions governing the dismissal of charges against a defendant found to be incompetent to proceed due to retardation or autism; amending s. 916.304, F.S.; providing for the conditional release of a defendant to a civil facility; amending ss. 921.137 and 985.223, F.S., relating to provisions governing the imposition of the death sentence upon a defendant with mental retardation and the determination of incompetency in cases involving juvenile delinquency; conforming provisions to the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities; amending ss. 287.057, 408.036, 943.0585, and 943.059, F.S.; conforming cross-references; providing an effective date.

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

Section 1. 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 Services and the Agency for Persons with Disabilities, as appropriate, establish, locate, and maintain separate and secure forensic facilities and programs for the treatment or training of defendants who have been ~~are~~ charged with a felony and who have been found to be incompetent to proceed due to their mental illness, mental retardation, or autism, or who have been acquitted of a felony felonies by reason of insanity, and who, while still under the jurisdiction of the committing court, are committed to the department or agency under the provisions of this chapter. ~~Such~~ The separate, secure facilities shall be sufficient to accommodate the number of defendants committed under the conditions noted above, Except for those defendants found by the department or agency to be appropriate for treatment or training in a civil ~~treatment~~ facility or program pursuant to subsection (3), forensic. ~~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, facility personnel, other clients, and citizens in adjacent communities.

(2) It is ~~furth~~er the intent of the Legislature that treatment or training programs for defendants who are found to have mental illness, mental retardation, or autism ~~are found to be mentally ill, retarded, or autistic~~ and are involuntarily committed to the department or agency, 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 as provided in this chapter.

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

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

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

916.106 Definitions.—For the purposes of this chapter, the term:

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

~~(2)(1) “Autism” has the same meaning as in s. 393.063. 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.~~

(3)(2) “Chemical weapon” means any shell, cartridge, bomb, gun, or other device capable of emitting chloroacetophenone (CN), chlorobenzal-malonitrile (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.”

~~(4)(3)~~ “Civil facility” means:

(a) A mental health facility established within the department or by contract with 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; or-

(b) An intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting, as

defined in s. 393.063, designated by the agency to serve those defendants who do not require the security provided in a forensic facility.

~~(5)(4)~~ “Court” means the circuit court.

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

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

~~(8)(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.

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

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

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

~~(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 a juvenile prosecuted as an adult.~~

~~(10)(8)~~ “Forensic facility” means a separate and secure facility established within the department or agency to serve forensic clients. A Such separate and secure facility means a facilities shall be security-grade building for the purpose of separately housing persons who have mental illness from persons with retardation or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from non-forensic residents buildings located on grounds distinct in location from other facilities for persons who are mentally ill. The Florida State Hospital shall not be required to maintain separate facilities for mentally ill, retarded, or autistic defendants who are found incompetent to proceed or who are acquitted of a criminal offense by reason of insanity.

~~(11)(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.

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

~~(13)~~(11) "Mental illness" means an impairment of the emotional processes that exercise conscious control of one's actions, or of the ability to perceive or understand reality, which impairment substantially interferes with a defendant's ability to meet the ordinary demands of living. For the purposes of this chapter, the term does not apply to defendants with only mental retardation or autism ~~who are solely retarded or autistic~~, and does not include intoxication or conditions manifested only by antisocial behavior or substance abuse impairment.

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

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

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

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

~~(15)~~(12) "Retardation" has the same meaning as in s. 393.063. ~~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.

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

(17)~~(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 3. 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 shall be respected at all times and upon all occasions, including any occasion when the forensic client is detained, transported, or treated. Clients with mental illness, retardation, or autism ~~Defendants who are mentally ill, retarded, or autistic~~ and who are charged with committing felonies shall receive appropriate treatment or training. In a criminal case involving a client defendant who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following from the date the department or agency receives a completed copy of the court commitment order containing all the documentation required by the applicable Rules 3.212 and 3.217, Florida Rules of Criminal Procedure. ~~For a forensic client defendant who is mentally ill, retarded, or autistic, who is held in a jail awaiting admission to a facility of the department or agency, and who has been adjudicated incompetent to proceed or not guilty by reason of insanity, evaluation and treatment or training may shall be provided in the jail by the local community mental health provider public receiving facility for mental health services, or by the developmental disabilities services program for persons with retardation or autism, the client’s physician or psychologist, or any other appropriate program until the client is transferred to a civil or forensic facility the custody of the department.~~

(b) ~~Forensic clients Mentally ill, retarded, or autistic defendants who are committed to the department pursuant to this chapter and who are initially placed in, or subsequently transferred to, a civil 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 facilities for as long as they remain there.

(2) RIGHT TO TREATMENT.—

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

(b) Each forensic client 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 forensic client ~~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 shall have and receive, in writing, an individualized treatment or training plan which the client has had an opportunity to assist in preparing.

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client ~~committed to the department pursuant to this act~~ shall be asked to give express and informed written consent for treatment. If a client in a forensic facility refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team at the forensic facility for the appropriate care of the client and the safety of the client 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 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 has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or 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. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client 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 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 necessary and essential the treatment ~~for~~ to the client. The order shall allow such treatment for a period not to exceed 90 days following ~~from~~ the date of the entry of the order. Unless the court is notified in writing that the client has provided express and informed consent in writing or that the client 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 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 ~~was unable to or~~ has refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client has mental illness, retardation, or autism ~~is mentally ill, retarded, or autistic as defined in this chapter~~, that the treatment not consented to is essential to the care of the client, 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 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 as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate to preside at the hearing. The client or the client's guardian, and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses 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, if the client is legally competent, from the parent or guardian of a minor client, or from the guardian of an incompetent client. The administrator or designee of the forensic facility or a designated representative may, with the concurrence of the client'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 and permission of the client or the client's guardian could not ~~cannot~~ be obtained before provision of the needed treatment.

(4) QUALITY OF TREATMENT.—

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

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

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

(a) Each forensic client ~~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 or others. Clients shall have the right to contact and to receive communication from their attorneys at any reasonable time.

(a)(b) Each forensic client ~~committed under the provisions of this chapter~~ shall be allowed to receive, send, and mail sealed, unopened correspondence; and no client'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 that ~~which~~ may be harmful to the client 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. For purposes of this paragraph, the term "correspondence" does shall not include parcels or packages. Forensic facilities may be authorized to promulgate reasonable institutional policies 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.

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

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

(d)(e) Each forensic client 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 and in writing inform each client 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 central abuse hotline and reporting forms, shall be posted in plain view.

(e)(f) The department's or agency's forensic facilities shall develop policies 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.—A forensic client's right to possession of clothing and personal effects shall be respected. The department or agency by rule, or the administrator of any forensic facility by written institutional policy, may declare certain items to be hazardous to the health or welfare of clients 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 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 clinical record.

(7) VOTING IN PUBLIC ELECTIONS.—A forensic client ~~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 and agency shall establish rules to enable clients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) CLINICAL RECORD; CONFIDENTIALITY.—A clinical record for each forensic client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under rules of the department or the agency. Unless waived by express and informed consent of the client or the client's legal guardian or, if the client is deceased, by the client'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 or the client'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 or agency when the administrator of the facility, or secretary or director of the department or agency, deems it necessary for treatment of the client, 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 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.

6. To the parent or next of kin of a client ~~mentally ill, retarded, or autistic person~~ who is committed to, or is being served by, a facility or program when such information is limited to that person's service plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved and must comply with all state and federal laws and regulations pertaining to the release of personal health information.

(b) Notwithstanding other provisions of this subsection, the department or agency 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, and judges in regard to the client's status;

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

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

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

(d)1. Any law enforcement agency, 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 forensic client detained by a facility, or a relative, friend, guardian, representative, or attorney on behalf of such client, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the committing court issue

a writ for release. Each client ~~committed pursuant to this chapter~~ shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) A client or his or her legal guardian or representatives or attorney may file a petition in the circuit court in the county where the client is committed alleging that the client 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 who have been 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 to and from a facility.

(c) Any company that transports a client pursuant to this section is considered an independent contractor and is solely liable for the safe and dignified transportation of the client. Any transport company that contracts with the governing board of a county for the transport of clients 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.

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

(11) LIABILITY FOR VIOLATIONS.—Any person who violates or abuses any rights or privileges of a forensic client in the custody of the department or agency that are provided under this chapter ~~shall be 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 chapter ~~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 to or from a facility. However, this subsection does not relieve any person from liability if he or she is negligent.

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

916.1075 Sexual misconduct prohibited; reporting required; penalties.—

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

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

(b) “Sexual activity” means:

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

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

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

4. Intentionally masturbating in the presence of another person.

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

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

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

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

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

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

(a) Is legally married to the client; or

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

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

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

916.1081 ~~Escape from program; penalty.—~~

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

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

Section 6. Subsection (1) and paragraph (b) of subsection (2) of section 916.1085, Florida Statutes, are amended to read:

916.1085 ~~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 facility, it is unlawful to introduce into or upon the grounds of any facility under the supervision or control of the department or agency, 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 as determined by the department or the agency, 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 clients 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 of any facility under the supervision or control of the department or agency any article or thing declared by this section to be contraband, at any place ~~that 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)

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

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

916.1091 Duties, functions, and powers of institutional security personnel.—In case of emergency, and when necessary to provide protection and security to any client, to the personnel, equipment, buildings, or grounds of a department or agency 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 8. Section 916.1093, Florida Statutes, is amended to read:

916.1093 Operation and administration; rules.—

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

(2) The department and agency are authorized ~~has authority~~ to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Such rules must address the use of restraint and seclusion in forensic facilities and must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications of and training for staff who may order or be engaged in the use of

restraint or seclusion; provide data reporting and data collection procedures relating to the use of restraint and seclusion; and provide for the documentation of the use of restraint or seclusion in the client's facility record.

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

916.111 Training of mental health experts.—The evaluation of defendants for competency to proceed 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

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

916.115 Appointment of experts.—

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

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

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

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

~~(2) 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 of competence or sanity and as witnesses.~~

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

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

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

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

~~(d)5.~~ An expert retained by a defendant who is indigent for costs as determined by the court and who is represented by private counsel, other than private counsel appointed under s. 27.5303, on a fee or pro bono basis, or who is representing himself or herself, shall be paid by the Justice Administrative Commission from funds specifically appropriated for these expenses.

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

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

~~(g)(d)~~ In order for an expert to be paid for the services rendered, the expert's report 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 11. Subsections (1), (2), and (3) of section 916.12, Florida Statutes, are amended to read:

916.12 Mental competence to proceed.—

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

(2) Mental health experts appointed pursuant to s. 916.115 ~~An expert~~ shall first determine whether the defendant has a mental illness ~~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 as described in subsection (1); ~~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.~~ A defendant must be evaluated by no fewer than two experts before the court commits the defendant or takes other action authorized by this chapter or the Florida Rules of Criminal Procedure, except if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding, the court may commit the defendant or take other action authorized by this chapter or the rules without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant. Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.

(3) In considering the issue of competence to proceed, an examining expert shall first consider and specifically include in his or her 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.;
- (f) Testify relevantly.;
- (g) ~~and include in his or her report~~ Any other factor deemed relevant by the expert.

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

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(1) Every defendant who is charged with a felony and who is adjudicated incompetent to proceed, ~~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 has a mental illness ~~is mentally ill~~ and because of the mental illness:

1. The defendant 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 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 well-being; or and

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

(b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant'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) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment to the department under the provisions of this chapter, may be committed to the department, and the department shall retain and treat the defendant. No later than 6 months after the date of admission and 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 the applicable Florida Rules of Criminal Procedure.

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

916.145 ~~Adjudication of incompetency due to mental illness; Dismissal of charges.~~—The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed 5 years after such determination, 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.

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

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

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

~~(2)~~(1) A defendant 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 has a mental illness ~~is mentally ill~~ and, because of the illness, is manifestly dangerous to himself or herself or others.

(3)(2) Every defendant 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 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.

(4)(3) In all proceedings under this section subsection, both the defendant 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 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 is determined to be indigent pursuant to s. 27.52, the public defender shall 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 15. Section 916.16, Florida Statutes, is amended to read:

916.16 Jurisdiction of committing court.—

(1) The committing court shall retain jurisdiction over in the case of any defendant involuntarily committed due to a determination of incompetency ~~hospitalized as incompetent to proceed due to mental illness or because of~~ a finding of not guilty by reason of insanity pursuant to this chapter. The ~~No such~~ defendant may not be released except by order of the committing court. An ~~The~~ administrative hearing examiner does not shall have no jurisdiction to determine issues of continuing commitment hospitalization or release of any defendant involuntarily committed admitted pursuant to this chapter.

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.17. ~~No~~ Such defendant may not be released from the conditions of release except by order of the committing court.

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

916.17 Conditional release.—

(1) Except for an inmate currently serving a prison sentence, The ~~committing court may order a conditional release of any defendant who has been found to be incompetent to proceed or 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 based upon an approved plan for providing appropriate outpatient care and treatment. Upon a recommendation that outpatient treatment of the defendant is appropriate, 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 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 may modify the release conditions. The court may also 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 commitment under s. 916.13 or s. 916.15 ~~treatment.~~

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

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

916.301 Appointment of experts.—

(1) All evaluations ordered by the court under this part must be conducted by qualified experts who have expertise in evaluating persons with retardation or autism. The agency department shall maintain and provide the courts annually with a list of available retardation and autism professionals who are appropriately licensed and 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 appointing

experts and ordering evaluations under this part for defendants suspected of being retarded or autistic.

(2) If a defendant's suspected mental condition is retardation or autism, the court shall appoint the following: 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.

~~(a)(3) At least one, or at the request of any party, two experts 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.~~

~~(b)(4) The developmental services program shall select A psychologist selected by the agency 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.~~

1.(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.

2.(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.~~

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

(4)(7) Experts ~~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 court. 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 18. Subsections (1), (2), and (3) of section 916.3012, Florida Statutes, are amended 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 in retardation or autism appointed pursuant to s. 916.301 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 as described in subsection (1); 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.;
- (f) Testify relevantly.;
- (g) and include in their report Any other factor deemed relevant by the experts.

Section 19. Section 916.302, Florida Statutes, is amended 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 adjudicated found to be incompetent to proceed due to retardation or autism, 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 has retardation or autism ~~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 due to retardation or autism, and who meets the criteria for involuntary commitment to the agency department under the provisions of this chapter, shall be committed to the agency department, and the agency department shall retain and provide appropriate training for ~~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 forensic secure facility designated by the agency department for ~~retarded or autistic~~ defendants who have mental retardation or autism.

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

(d) The agency department may not transfer a defendant from a designated forensic secure facility to a civil 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 agency department. The agency 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 ~~has is~~ both mental retardation or autism ~~retarded or autistic~~ and has a mental illness ~~mentally ill~~, evaluations must address which condition is primarily affecting the defendant's competency to proceed. Referral of the defendant should be made to a civil or forensic the facility ~~or program~~ most appropriate to address the symptoms that which are the cause of the defendant's incompetence.

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

Section 20. Section 916.3025, Florida Statutes, is amended 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 due to retardation or autism and ordered into a forensic secure facility designated by the agency department for retarded or autistic defendants who have mental retardation or autism. ~~A~~ No defendant may not be released except by the order of the committing court. An administrative hearing examiner does not have jurisdiction to determine issues of continuing commitment or release of any defendant involuntarily committed pursuant to this chapter.

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

(3) The committing court shall consider ~~a~~ the petition to involuntarily admit a defendant whose charges have been dismissed to residential services provided by the agency 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 as provided in s. 916.304. However, upon request, the court may transfer continuing jurisdiction to the court in the circuit where the defendant resides. The defendant may not be released from an order for secure placement except by order of the court.

Section 21. Section 916.303, Florida Statutes, is amended 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 may be refiled by the state if against the defendant are dismissed without prejudice to the state to refile the charges should the defendant is ~~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 agency department, the state attorney, or the defendant's attorney shall ~~may~~ apply to the commit-

ting court to involuntarily admit the defendant to residential services pursuant to s. 393.11.

(3)(b) If the defendant is considered to need involuntary residential services for reasons described in subsection (2) 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 agency person or entity filing the petition under s. 393.11, the state attorney, or the defendant's counsel may request, 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 part section. Any placement so continued under this subsection must be defendant involuntarily admitted under this paragraph shall have his or her 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 described in this subsection for involuntary residential services and, if so, whether the defendant still requires involuntary 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 behavioral 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 22. Section 916.304, Florida Statutes, is amended to read:

916.304 Conditional release.—

(1) Except for an inmate currently serving a prison sentence, the committing court may order a conditional release of any defendant who has been found to be incompetent to proceed due to retardation or autism, based on an approved plan for providing ~~continuing~~ community-based training. The committing criminal court may order a conditional release of any defendant to a civil facility 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 must ~~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. With notice to the court and all parties, the agency may detain a defendant in a forensic facility until the hearing occurs. 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 committed ~~returned to a forensic facility involuntary residential services of the department~~ if it is found, after the appointment and report of experts, that the defendant meets the criteria for placement in a forensic facility ~~involuntary residential services.~~

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

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

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

(1) As used in this section, the term “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. The term “significantly subaverage general intellectual functioning,” for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities ~~Department of Children and Family Services~~. The term “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 his or her age, cultural group, and community. The Agency for Persons with Disabilities ~~Department of Children and Family Services~~ shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

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

985.223 Incompetency in juvenile delinquency cases.—

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

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

(e) For incompetency evaluations related to mental retardation or autism, the court shall order the Agency for Persons with Disabilities Developmental Disabilities Program Office ~~within the Department of Children and Family Services~~ to examine the child to determine if the child meets the definition of "retardation" or "autism" in s. 393.063 and, if so, whether the child is competent to proceed with delinquency proceedings.

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

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

(2) A child ~~who is mentally ill or retarded~~, who is adjudicated incompetent to proceed, and who has committed a delinquent act or violation of law, either of which would be a felony if committed by an adult, must be committed to the Department of Children and Family Services for treatment or training. A child who has been adjudicated incompetent to proceed because of age or immaturity, or for any reason other than for mental illness or retardation or autism, must not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services. For purposes of this section, a child who has committed a delinquent act or violation of law, either of which would be a misdemeanor if committed by an adult, may not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services.

(3) If the court finds that a child has mental illness, mental retardation, or autism ~~is mentally ill or retarded~~ and adjudicates the child incompetent to proceed, the court must also determine whether the child meets the

criteria for secure placement. A child may be placed in a secure facility or program if the court makes a finding by clear and convincing evidence that:

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

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

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

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

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

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

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

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

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

(e) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile Procedure not later than 6

months after the date of commitment, or at the end of any period of extended treatment or training, and at any time the Department of Children and Family Services, through its service provider determines the child has attained competency or no longer meets the criteria for secure placement, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court and with the state attorney, the child's attorney, the department, and the Department of Children and Family Services.

(5)

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

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

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

287.057 Procurement of commodities or contractual services.—

(14)

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

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

408.036 Projects subject to review; exemptions.—

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

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

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

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt

from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

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

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

Section 28. Paragraph (a) of subsection (4) of section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or

pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

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

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s. 916.106(10) and (13)~~, s. 985.407, or chapter 400; or

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.

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

Approved by the Governor June 12, 2006.

Filed in Office Secretary of State June 12, 2006.