

DOES THE DEFENDANT...

Give a history of special schools or classes?...workshop?...group home?

Show a naive eagerness to confess or to please?...slow reactions?...short attention span?...inappropriate reactions?

CAN THE DEFENDANT...

Tell time?...find numbers in the phone book?...use a telephone?...give directions to his home?...add or subtract coins?...read or write?

FOR MORE INFORMATION 

CONTROLLING STATUTES 

PLACEMENT OPTIONS 

DEFENDANTS WITH RETARDATION

↻ DILEMMA FOR CRIMINAL JUSTICE PERSONNEL ↻

⇒ When the defendant has a chronic disability manifested before adulthood (age 18) with substantial limitations in learning, self-direction, capacity for independent living or economic self-sufficiency and possibly in self-care and language, that person may have a developmental disability known as retardation.

⇒ Florida Statute §916.11(1)(d) - says that if mental retardation is suspected the individual SHALL be examined by the Developmental Services Program of the Florida Department of Children and Families. Section 916.11(1)(d) was intended to correct the traditional error of using psychiatrists to evaluate retardation.

⇒ The court procedures for an individual with retardation are *DIFFERENT* than for an individual with a mental illness.

SOME DIAGNOSTIC CLUES

⇒ Each Florida Department of Children and Families district has staff assigned as court liaison. Each should have made the system relationships that will alert them to the presence of a person in jail who has mental retardation. If the defendant is a current recipient of services from the Florida Department of Children and Families Developmental Services Program, any arrest should be brought to the liaison's attention. They should provide assistance to counsel, support to the defendant and family and initiative in finding appropriate services, supports and residential opportunities to present as options to the court at hearings or through counsel.

⇒ The Florida Association for Retarded Citizens (1-800-226-1155), the Florida Developmental Disabilities Council (1-800-580-7801), and the Advocacy Center (1-800-342-0823) are good referral sources.

⇒ The director and social workers at the Mentally Retarded Defendants Program (MRDP) at Florida State Hospital are experts in these procedures (850) 663-7375. Sample orders are available from your Florida Department of Children and Families Developmental Services court liaison, the Mentally Retarded Defendant Program or the Developmental Services State Program Office located in Tallahassee (850/488-3673). Computer software with sample orders is also available.

⇒ Court Ordered Placements are made through the MRDP at Florida State Hospital.

H
E
L
P



FOR MORE INFORMATION



FLORIDA STATUTES

CHAPTER 916 MENTALLY DEFICIENT AND
MENTALLY ILL DEFENDANTS
§916.11 APPOINTMENT OF EXPERTS

§916.12 MENTAL COMPETENCE TO
STAND TRIAL (TO PROCEED)

§916.13 INVOLUNTARY COMMITMENT
OF DEFENDANT ADJUDICATED
INCOMPETENT TO STAND
TRIAL

§393.11 HEARING AND ORDER FOR
INVOLUNTARY ADMISSION TO
RESIDENTIAL SERVICES

§916.145 ADJUDICATION OF
INCOMPETENCE DUE TO
RETARDATION; DISMISSAL OF
CHARGES

CHAPTER 947 PROBATION AND PAROLE
§947.185 APPLICATION FOR MENTAL
RETARDATION SERVICES AS
CONDITION FOR PAROLE

CHAPTER 948 PROBATION & COMMUNITY
CONTROL
§948.08 PRE-TRIAL INTERVENTION
PROGRAM

NOTE WELL:

916.11(1)(d) says that if a defendant's suspected mental condition is retardation, the court SHALL appoint the Developmental Services Program to examine the defendant and determine whether he meets the definition of retardation in 393.063 and whether he is competent to proceed (stand trial).

916.12(1) See also Fla. Rules of Criminal Procedure 3.211, amended 1988, for criteria, "each of which SHALL be specifically addressed in the report."

916.13(1)(a)&(b) suggest a wide range of community placements as first choices.

916.13(2)(a) directs that the evaluation of competency to stand trial shall be reported within six months.

916.13(2)(b) says the defendant may be ordered to a secure facility designated by the Florida Department of Children and Families; may be retained there if criminal charges are later dismissed (see 916.145) and the as in 393.11. Hearings shall be at least annual. Each order of continuing placement must be based on findings of continued dangerousness to others (see 393.11(5)(e)2.c.).

916.13(2)(b) directs that the defendant shall never be held longer than the alleged crime's maximum sentence.

Charges SHALL be dismissed if the defendant remains incompetent to stand trial at the end of two years.

The Commission may require the parolee to apply for retardation services from the Florida Department of Children and Families.

Defendants with retardation may participate in a pre-trial intervention program when the essential needs are for services such as supervision, counseling and education as the appropriate least restrictive alternative

CONTROLLING STATUTES

Two sections of the Florida Statutes (916.105(3) and 916.13(1)(b)) document the legislative intent that all available less restrictive alternatives, including community treatment and placement, must be considered before placement in a secure forensic facility.

The Florida Department of Children and Families maintains a high security holding area for alleged felons adjudged incompetent to stand trial on the basis of retardation. It is a prison like environment where defendants are trained in the specialized language and concepts of trial procedure. The program is designed to test the client's continuing incompetence to stand trial, on which it must report to the court within six (6) months. If testing discloses competency, the defendant is sent back to court for a hearing.

1) If the court rejects the decision of the evaluators in the forensic facility and reaffirms the judgment of incompetency to proceed, the defendant returns to the secure facility if a vacancy exists; otherwise, they go on the secure facility waiting list. When the defendant has continued to test incompetent to proceed over a period of two years, charges must be dismissed (916.145) and the defendant released. In those instances where the defendant is considered dangerous, the court may order continued placement at a high security facility, following a hearing which insures due process protections. This placement may continue, subject to hearings at least annually, if the defendant is found likely to physically injure others, but never longer than the alleged crime's maximum sentence.

2) If the court accepts the competency assessment, the defendant may go to trial or its alternatives.

a) If the defendant is convicted and sentenced, the relevant Florida Department of Children and Families staff and defense counsel should alert the Department of Corrections to the existence of the disability, so they may obtain through the Lake Butler assignment center, the least dangerous prison placement. Florida prisons have no segregated areas for this vulnerable population.

b) If the situation does not demand the highest security but judicial control is needed, a pre-trial intervention program (948.08), with contractual agreement and close supervision, provided jointly by probation officers and Florida Department of Children and Families Developmental Services personnel, may be ordered.

c) If even less security is required, some courts opt for dismissing charges and, if the defendant meets the 393.063 criteria, committing involuntarily under 393.11 to the Florida Department of Children and Families residential services for closely supervised living.

d) If the court chooses, charges may be dismissed and the person released.

AVAILABLE OPTIONS

Supported Living - involves an individualized array of supports and services that assist an adult who has a developmental disability to establish and maintain his/her own household in the community. Each supported living arrangement is unique, with the level of assistance geared to the individual's unique life circumstances. Intensity of support can range from a few hours of drop-in assistance on a monthly, weekly or daily basis to situations where paid staff live in the home with the individual.

Developmental Services Foster & Group Homes - for the non-dangerous individual who requires supervision.

Specialized Group Homes - There are a few facilities with staff and moderate security to provide a less restrictive alternative to a high security holding area or prison.

Developmental Services Institutions (DSIs, aka Sunlands)...for a lack of community facilities some provisions have been made for less dangerous defendants.

Community Supports and Services - A variety of supports and services can be coordinated to assist individuals to lead productive lives in their communities. Some examples include: supported employment, training, counseling, and case management services. For more information about these and other services contact your local Department of Children and Families Developmental Services district office.

PLACEMENT OPTIONS

- By case law (HRS v. OWENS 305 So 2d 314) a court may not order the Florida Department of Children and Families to place in a specific facility...but can describe the level of security required.
- Even if adjudged competent to stand trial, clients with retardation may not have sufficient grasp of abstract reasoning to judge plea bargaining and other options, so defense counsel may have to use more influence than they are trained to do.
- Programs for rehabilitation of sex offenders currently will not accept individuals with low I.Q. scores.
- Defense counsel, Note Well: §916.13(2)(b) says, "In no case may a client's placement in a secure facility exceed the maximum sentence for the crime for which he was charged." The Florida Department of Children and Families needs guidance from defense counsel on what that sentence might have been, therefore, the max sentence should be reflected in a pre-sentence investigation report, for there is no monitoring system such as the Department of Corrections would have, and the defendant could be denied eventual release.
- Baker Act procedure may *NOT* process persons whose behavior at issue is primarily based on mental retardation.

→ RETARDATION IS NOT NOT NOT NOT MENTAL ILLNESS ←

RETARDATION

MENTAL ILLNESS

CHAPTER 393	←←←←←←←← Florida Statutes →→→→→→→→	Chapter 394
Psychologists/Educators	←←←←←←←← Experts →→→→→→→→	Psychiatrists
Non-episodic	←←←←←←←← Characteristics →→→→→→→→	May be Sporadic, Unpredictable
Sub-average Intelligence		Any Level of Intelligence
Subject to Training/Education		Subject to Therapy/Treatment

▪REVISED MAY 1997▪

▪DOLORES NORLEY, ATTORNEY ▪ 529 SANS SOUCI AVE ▪ DELAND, FL 32720 ☎ 904-736-9497▪

THIS BROCHURE WAS FUNDED BY THE FLORIDA DEVELOPMENTAL DISABILITIES COUNCIL AND THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES - DEVELOPMENTAL SERVICES PROGRAM