

By Senator Altman

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A bill to be entitled
An act relating to intellectual disabilities; amending
s. 39.502, F.S.; substituting the Arc of Florida for
the Association for Retarded Citizens for purposes of
certain proceedings relating to children; amending ss.
40.013, 86.041, 92.53, 92.54, and 92.55, F.S.;
substituting the term "intellectual disability" for
the term "mental retardation"; amending s. 320.10,
F.S.; substituting the Arc of Florida for the
Association for Retarded Citizens; amending ss.
383.14, 393.063, 393.11, and 394.455, F.S.;
substituting the term "intellectual disability" for
the term "mental retardation"; clarifying in s.
393.063, that the meaning of the terms "intellectual
disability" or "intellectually disabled" is the same
as the meaning of the terms "mental retardation,"
"retarded," and "mentally retarded" for purposes of
matters relating to the criminal laws and court rules;
amending s. 400.960, F.S.; revising definitions
relating to intermediate care facilities for the
developmentally disabled to delete unused terms;
amending s. 408.032, F.S.; conforming a cross-
reference; amending s. 409.908, F.S.; substituting the
term "intellectually disabled" for the term "mentally
retarded"; amending ss. 413.20, 440.49, and 499.0054,
F.S.; substituting the term "intellectual disability"
for the term "mental retardation"; amending s.
514.072, F.S.; conforming a cross-reference and
deleting obsolete provisions; amending ss. 627.6041,

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627.6615, 641.31, 650.05, 765.204, 849.04, 914.16,
914.17, 916.105, and 916.106, F.S.; substituting the
term "intellectual disability" for the term "mental
retardation"; amending s. 916.107, F.S.; substituting
the term "intellectual disability" for the term
"retardation"; providing a directive to the Division
of Statutory Revision; amending ss. 916.301, 916.3012,
916.302, 916.3025, 916.303, 916.304, 918.16, 921.137,
941.38, 944.602, 945.025, 945.12, 945.42, 947.185,
984.19, 985.14, 985.145, 985.18, 985.19, 985.195, and
985.61, F.S.; clarifying in s. 921.137, F.S., that the
terms "intellectual disability" or "intellectually
disabled" are interchangeable with and have the same
meaning as the terms "mental retardation," or
"retardation" and "mentally retarded," as defined
before the effective date of the act; substituting the
term "intellectual disability" for the term "mental
retardation"; expressing legislative intent; providing
an effective date.

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

Section 1. Subsection (15) of section 39.502, Florida
Statutes, is amended to read:

39.502 Notice, process, and service.—

(15) A party who is identified as a person who has a ~~with~~
mental illness or ~~with~~ a developmental disability must be
informed by the court of the availability of advocacy services
through the department, the Arc of Florida ~~Association for~~

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59 ~~Retarded Citizens~~, or other appropriate mental health or
60 developmental disability advocacy groups and encouraged to seek
61 such services.

62 Section 2. Subsection (9) of section 40.013, Florida
63 Statutes, is amended to read:

64 40.013 Persons disqualified or excused from jury service.—

65 (9) Any person who is responsible for the care of a person
66 who, because of mental illness, intellectual disability ~~mental~~
67 ~~retardation~~, senility, or other physical or mental incapacity,
68 is incapable of caring for himself or herself shall be excused
69 from jury service upon request.

70 Section 3. Section 86.041, Florida Statutes, is amended to
71 read:

72 86.041 Actions by executors, administrators, trustees,
73 etc.—Any person interested as or through an executor,
74 administrator, trustee, guardian, or other fiduciary, creditor,
75 devisee, legatee, heir, next of kin, or cestui que trust, in the
76 administration of a trust, a guardianship, or ~~of~~ the estate of a
77 decedent, an infant, a mental incompetent, or insolvent may have
78 a declaration of rights or equitable or legal relations to ~~in~~
79 ~~respect thereto~~:

80 (1) ~~To~~ Ascertain any class of creditors, devisees,
81 legatees, heirs, next of kin, or others; ~~or~~

82 (2) ~~To~~ Direct the executor, administrator, or trustee to
83 refrain from doing any particular act in his or her fiduciary
84 capacity; or

85 (3) ~~To~~ Determine any question relating to ~~arising in~~ the
86 administration of the guardianship, estate, or trust, including
87 questions of construction of wills and other writings.

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For the purpose of this section, a "mental incompetent" is one who, because of mental illness, intellectual disability ~~mental retardation~~, senility, excessive use of drugs or alcohol, or other mental incapacity, is incapable of ~~either~~ managing his or her property or caring for himself or herself, or both.

Section 4. Section 92.53, Florida Statutes, is amended to read:

92.53 Videotaping the ~~of~~ testimony of a victim or witness under age 16 or who has an intellectual disability ~~person with mental retardation~~.—

(1) On motion and hearing in camera and a finding that there is a substantial likelihood that a victim or witness who is under the age of 16 or who has an intellectual disability ~~is a person with mental retardation~~ as defined in s. 393.063 would suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness ~~the child or person with mental retardation~~ is required to testify in open court, or ~~that such victim or witness~~ is ~~otherwise~~ unavailable as defined in s. 90.804(1), the trial court may order the videotaping of the testimony of the victim or witness in a case, whether civil or criminal in nature, in which videotaped testimony is to be used ~~utilized~~ at trial in lieu of trial testimony in open court.

(2) The motion may be filed by:

(a) The victim or witness, or the victim's or witness's attorney, parent, legal guardian, or guardian ad litem;

(b) A trial judge on his or her own motion;

(c) Any party in a civil proceeding; or

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117 (d) The prosecuting attorney or the defendant, or the
118 defendant's counsel.

119 (3) The judge shall preside, or shall appoint a special
120 master to preside, at the videotaping unless ~~the following~~
121 ~~conditions are met:~~

122 (a) The child or the person who has the intellectual
123 disability ~~with mental retardation~~ is represented by a guardian
124 ad litem or counsel;

125 (b) The representative of the victim or witness and the
126 counsel for each party stipulate that the requirement for the
127 presence of the judge or special master may be waived; and

128 (c) The court finds at a hearing on the motion that the
129 presence of a judge or special master is not necessary to
130 protect the victim or witness.

131 (4) The defendant and the defendant's counsel must ~~shall~~ be
132 present at the videotaping, unless the defendant has waived this
133 right. The court may require the defendant to view the testimony
134 from outside the presence of the child or the person who has an
135 intellectual disability ~~with mental retardation~~ by means of a
136 two-way mirror or another similar method that ensures ~~will~~
137 ~~ensure~~ that the defendant can observe and hear the testimony of
138 the victim or witness in person, but ~~that~~ the victim or witness
139 cannot hear or see the defendant. The defendant and the attorney
140 for the defendant may communicate by any appropriate private
141 method.

142 (5) Any party, or the court on its own motion, may request
143 the aid of an interpreter, as provided in s. 90.606, to aid the
144 parties in formulating methods of questioning the child or
145 person who has the intellectual disability ~~with mental~~

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146 ~~retardation~~ and in interpreting the answers of the child or
147 person during ~~with mental retardation throughout~~ proceedings
148 conducted under this section.

149 (6) The motion referred to in subsection (1) may be made at
150 any time with reasonable notice to each party to the cause, and
151 videotaping of testimony may be made any time after the court
152 grants the motion. The videotaped testimony is ~~shall be~~
153 admissible as evidence in the trial of the cause; however, such
154 testimony is ~~shall not be~~ admissible in any trial or proceeding
155 in which such witness testifies by use of closed circuit
156 television pursuant to s. 92.54.

157 (7) The court shall make specific findings of fact, on the
158 record, as to the basis for its ruling under this section.

159 Section 5. Section 92.54, Florida Statutes, is amended to
160 read:

161 92.54 Use of closed circuit television in proceedings
162 involving a victim or witness ~~victims or witnesses~~ under the age
163 of 16 or who has an intellectual disability ~~persons with mental~~
164 ~~retardation.~~

165 (1) Upon motion and hearing in camera and upon a finding
166 that there is a substantial likelihood that a victim or witness
167 under the age of 16 or who has an intellectual disability ~~the~~
168 ~~child or person with mental retardation~~ will suffer at least
169 moderate emotional or mental harm due to the presence of the
170 defendant if such victim or witness ~~the child or person with~~
171 ~~mental retardation~~ is required to testify in open court, or ~~that~~
172 ~~such victim or witness~~ is unavailable as defined in s.
173 90.804(1), the trial court may order that the testimony of the a
174 ~~child under the age of 16 or person with mental retardation who~~

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175 ~~is a~~ victim or witness be taken outside of the courtroom and
176 shown by means of closed circuit television.

177 (2) The motion may be filed by the victim or witness; the
178 attorney, parent, legal guardian, or guardian ad litem of the
179 victim or witness; the prosecutor; the defendant or the
180 defendant's counsel; or the trial judge on his or her own
181 motion.

182 (3) Only the judge, the prosecutor, the defendant, the
183 attorney for the defendant, the operators of the videotape
184 equipment, an interpreter, and some other person who, in the
185 opinion of the court, contributes to the well-being of the child
186 or the person who has an intellectual disability ~~with mental~~
187 ~~retardation~~ and who will not be a witness in the case may be in
188 the room during the recording of the testimony.

189 (4) During the victim's or witness's ~~child's or person's~~
190 ~~with mental retardation~~ testimony by closed circuit television,
191 the court may require the defendant to view the testimony from
192 the courtroom. In such a case, the court shall permit the
193 defendant to observe and hear the testimony of the victim or
194 witness ~~child or person with mental retardation~~, but must ~~shall~~
195 ensure that the victim or witness ~~child or person with mental~~
196 ~~retardation~~ cannot hear or see the defendant. The defendant's
197 right to assistance of counsel, which includes the right to
198 immediate and direct communication with counsel conducting
199 cross-examination, must be protected and, upon the defendant's
200 request, such communication must ~~shall~~ be provided by any
201 appropriate electronic method.

202 (5) The court shall make specific findings of fact, on the
203 record, as to the basis for its ruling under this section.

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204 Section 6. Section 92.55, Florida Statutes, is amended to
205 read:

206 92.55 Judicial or other proceedings involving victim or
207 witness under the age of 16 or person who has an intellectual
208 disability ~~with mental retardation~~; special protections; use of
209 registered service or therapy animals.—

210 (1) Upon motion of any party, upon motion of a parent,
211 guardian, attorney, or guardian ad litem for a victim or witness
212 ~~child~~ under the age of 16 or person who has an intellectual
213 disability ~~with mental retardation~~, or upon its own motion, the
214 court may enter any order necessary to protect such ~~a child~~
215 ~~under the age of 16 or person with mental retardation who is a~~
216 victim or witness in any judicial proceeding or other official
217 proceeding from severe emotional or mental harm due to the
218 presence of the defendant if the victim or witness ~~child or~~
219 ~~person with mental retardation~~ is required to testify in open
220 court. Such orders must ~~shall~~ relate to the taking of testimony
221 and ~~shall~~ include, but are not ~~be~~ limited to:

222 (a) Interviewing or the taking of depositions as part of a
223 civil or criminal proceeding.

224 (b) Examination and cross-examination for the purpose of
225 qualifying as a witness or testifying in any proceeding.

226 (c) The use of testimony taken outside of the courtroom,
227 including proceedings under ss. 92.53 and 92.54.

228 (2) In ruling upon the motion, the court shall consider
229 ~~take into consideration~~:

230 (a) The age of the child, the nature of the offense or act,
231 the relationship of the child to the parties in the case or to
232 the defendant in a criminal action, the degree of emotional

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233 trauma that will result to the child as a consequence of the
234 defendant's presence, and any other fact that the court deems
235 relevant; or

236 (b) The age of the person who has an intellectual
237 disability ~~with mental retardation~~, the functional capacity of
238 such ~~the person with mental retardation~~, the nature of the
239 offenses or act, the relationship of the person ~~with mental~~
240 ~~retardation~~ to the parties in the case or to the defendant in a
241 criminal action, the degree of emotional trauma that will result
242 to the person ~~with mental retardation~~ as a consequence of the
243 defendant's presence, and any other fact that the court deems
244 relevant.

245 (3) In addition to such other relief ~~as is~~ provided by law,
246 the court may enter orders limiting the number of times that a
247 child or a person who has an intellectual disability ~~with mental~~
248 ~~retardation~~ may be interviewed, prohibiting depositions of such
249 ~~a child or person with mental retardation~~, requiring the
250 submission of questions before the ~~prior to~~ examination of the a
251 child or person ~~with mental retardation~~, setting the place and
252 conditions for interviewing the a child or person ~~with mental~~
253 ~~retardation~~ or for conducting any other proceeding, or
254 permitting or prohibiting the attendance of any person at any
255 proceeding. The court shall enter any order necessary to protect
256 the rights of all parties, including the defendant in any
257 criminal action.

258 (4) The court may set any other conditions it finds just
259 and appropriate when ~~on the~~ taking the ~~of~~ testimony of ~~by~~ a
260 child, including the use of a service or therapy animal that has
261 been evaluated and registered according to national standards,

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in any proceeding involving a sexual offense. When deciding whether to permit a child to testify with the assistance of a registered service or therapy animal, the court shall consider ~~take into consideration~~ the age of the child, the interests of the child, the rights of the parties to the litigation, and any other relevant factor that would facilitate the testimony by the child.

Section 7. Subsection (1) of section 320.10, Florida Statutes, is amended to read:

320.10 Exemptions.—

(1) The provisions of s. 320.08 do not apply to:

(a) Any motor vehicle or mobile home owned by, and operated exclusively for the personal use of, any member of the United States Armed Forces who is not a resident of this state and who is stationed in the state while in compliance with military or naval orders;

(b) Any motor vehicle owned or operated exclusively by the Federal Government;

(c) Any motor vehicle owned and operated exclusively for the benefit of the Boys' Clubs of America, the National Audubon Society, the National Children's Cardiac Hospital, any humane society, any nationally chartered veterans' organization that maintains a state headquarters in this state, the Children's Bible Mission, the Boy Scouts of America, the Girl Scouts of America, the Salvation Army, the American National Red Cross, the United Service Organization, any local member unit of the National Urban League which provides free services to municipal and county residents who are in need of such services, the Young Men's Christian Association, the Young Men's Hebrew Association,

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the Camp Fire Girls' Council, the Young Women's Christian Association, the Young Women's Hebrew Association, any local member unit of the Arc of Florida ~~Association for Retarded Citizens~~, the Children's Home Society of Florida, or the Goodwill Industries. A not-for-profit organization named in this paragraph and its local affiliate organizations is ~~shall be~~ eligible for the exemption if it ~~for so long as each~~ maintains current articles of incorporation on file with the Department of State and qualifies as a not-for-profit organization under s. 212.08;

(d) Any motor vehicle owned and operated by a church, temple, or synagogue for exclusive use as a community service van or to transport passengers without compensation to religious services or for religious education;

(e) Any motor vehicle owned and operated by the Civil Air Patrol or the United States Coast Guard Auxiliary;

(f) Any mobile blood bank unit when operated as a nonprofit service by an organization;

(g) Any mobile X-ray unit or truck or bus used exclusively for public health purposes;

(h) Any school bus owned and operated by a nonprofit educational or religious corporation;

(i) Any vehicle used by any of the various search and rescue units of the several counties for exclusive use as a search and rescue vehicle; or ~~and~~

(j) Any motor vehicle used by a community transportation coordinator or a transportation operator as defined in part I of chapter 427, and which is used exclusively to transport transportation disadvantaged persons.

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Section 8. Paragraph (d) of subsection (3) of section 383.14, Florida Statutes, is amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(3) DEPARTMENT OF HEALTH; POWERS AND DUTIES.—The department shall administer and provide certain services to implement the provisions of this section and shall:

(d) Maintain a confidential registry of cases, including information of importance for the purpose of followup services to prevent intellectual disabilities ~~mental retardation~~, to correct or ameliorate physical disabilities ~~handicaps~~, and for epidemiologic studies, if indicated. Such registry shall be exempt from the provisions of s. 119.07(1).

All provisions of this subsection must be coordinated with the provisions and plans established under this chapter, chapter 411, and Pub. L. No. 99-457.

Section 9. Subsection (9) and subsections (21) through (32) of section 393.063, Florida Statutes, are reordered and amended to read:

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

(9) "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability ~~retardation~~, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

(22) ~~(21)~~ "Intermediate care facility for the

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developmentally disabled" or "ICF/DD" means a residential facility licensed and certified under ~~pursuant to~~ part VIII of chapter 400.

~~(23)~~~~(22)~~ "Medical/dental services" means medically necessary services that ~~which~~ are provided or ordered for a client by a person licensed under chapter 458, chapter 459, or chapter 466. Such services may include, but are not limited to, prescription drugs, specialized therapies, nursing supervision, hospitalization, dietary services, prosthetic devices, surgery, specialized equipment and supplies, adaptive equipment, and other services as required to prevent or alleviate a medical or dental condition.

~~(24)~~~~(23)~~ "Personal care services" means individual assistance with or supervision of essential activities of daily living for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar services that are incidental to the care furnished and essential to the health, safety, and welfare of the client if ~~when there is~~ no one else is available to perform those services.

~~(25)~~~~(24)~~ "Prader-Willi syndrome" means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability ~~mental retardation~~, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

~~(26)~~~~(25)~~ "Relative" means an individual who is connected by affinity or consanguinity to the client and who is 18 years of age or older.

~~(27)~~~~(26)~~ "Resident" means a ~~any~~ person who has a ~~with~~

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developmental disability and resides ~~disabilities residing~~ at a residential facility, whether or not such person is a client of the agency.

(28)~~(27)~~ "Residential facility" means a facility providing room and board and personal care for persons who have ~~with~~ developmental disabilities.

(29)~~(28)~~ "Residential habilitation" means supervision and training with the acquisition, retention, or improvement in skills related to activities of daily living, such as personal hygiene skills, homemaking skills, and the social and adaptive skills necessary to enable the individual to reside in the community.

(30)~~(29)~~ "Residential habilitation center" means a community residential facility licensed under this chapter which provides habilitation services. The capacity of such a facility may ~~shall~~ not be fewer than nine residents. After October 1, 1989, new residential habilitation centers may not be licensed and the licensed capacity for any existing residential habilitation center may not be increased.

(31)~~(30)~~ "Respite service" means appropriate, short-term, temporary care that is provided to a person who has a ~~with~~ developmental disability in order ~~disabilities~~ to meet the planned or emergency needs of the person or the family or other direct service provider.

(32)~~(31)~~ "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 an ~~the~~ individual's body so that he or she cannot

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easily remove the restraint and which 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 is not a standard treatment for the person's medical or psychiatric condition. 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.

~~(21)-(32)~~ "Intellectual disability" ~~"Retardation"~~ means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which ~~that~~ manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of this definition, the term:

(a) "Adaptive behavior" 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.

(b) "Significantly subaverage general intellectual functioning," ~~for the purpose of this definition,~~ means performance that ~~which~~ is two or more standard deviations from

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the mean score on a standardized intelligence test specified in the rules of the agency. ~~"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.~~

For purposes of the application of the criminal laws and procedural rules of this state to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty, the terms "intellectual disability" or "intellectually disabled" are interchangeable with and have the same meaning as the terms "mental retardation" or "retardation" and "mentally retarded" as defined in this section before July 1, 2012.

Section 10. Subsection (1), paragraphs (c) and (d) of subsection (2), paragraphs (b) through (d) of subsection (3), paragraph (b) of subsection (4), paragraphs (b), (e), (f), and (g) of subsection (5), subsection (6), paragraph (d) of subsection (7), paragraph (b) of subsection (8), subsection (10), and paragraph (b) of subsection (12) of section 393.11, Florida Statutes, are amended to read:

393.11 Involuntary admission to residential services.—

(1) JURISDICTION.—If ~~When~~ a person has an intellectual disability ~~is mentally retarded~~ and requires involuntary admission to residential services provided by the agency, the circuit court of the county in which the person resides has ~~shall have~~ jurisdiction to conduct a hearing and enter an order involuntarily admitting the person in order for ~~that~~ the person

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to ~~may~~ receive the care, treatment, habilitation, and rehabilitation that ~~which~~ the person needs. For the purpose of identifying intellectual disability ~~mental-retardation~~, diagnostic capability shall be established by the agency. Except as otherwise specified, the proceedings under this section are ~~shall be~~ governed by the Florida Rules of Civil Procedure.

(2) PETITION.—

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

1. State the name, age, and present address of the commissioners and their relationship to the person who has an intellectual disability ~~with mental-retardation~~ or autism;

2. State the name, age, county of residence, and present address of the person who has an intellectual disability ~~with mental-retardation~~ or autism;

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

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

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

(d) The petition must ~~shall~~ be filed in the circuit court of the county in which the person who has the intellectual disability ~~with mental-retardation~~ or autism resides.

(3) NOTICE.—

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494 (b) If ~~Whenever~~ a motion or petition has been filed
495 pursuant to s. 916.303 to dismiss criminal charges against a
496 defendant who has an intellectual disability ~~with retardation~~ or
497 autism, and a petition is filed to involuntarily admit the
498 defendant to residential services under this section, the notice
499 of the filing of the petition must ~~shall~~ also be given to the
500 defendant's attorney, the state attorney of the circuit from
501 which the defendant was committed, and the agency.

502 (c) The notice must ~~shall~~ state that a hearing shall be set
503 to inquire into the need of the person who has an intellectual
504 disability ~~with mental retardation~~ or autism for involuntary
505 residential services. The notice must ~~shall~~ also state the date
506 of the hearing on the petition.

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

512 (4) AGENCY PARTICIPATION.—

513 (b) Following examination, the agency shall file a written
514 report with the court at least ~~not less than~~ 10 working days
515 before the date of the hearing. The report must be served on the
516 petitioner, the person who has the intellectual disability ~~with~~
517 ~~mental retardation~~, and the person's attorney at the time the
518 report is filed with the court.

519 (5) EXAMINING COMMITTEE.—

520 (b) The court shall appoint at least ~~no fewer than~~ three
521 disinterested experts who have demonstrated to the court an
522 expertise in the diagnosis, evaluation, and treatment of persons

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523 who have intellectual disabilities ~~with mental retardation~~. The
524 committee must include at least one licensed and qualified
525 physician, one licensed and qualified psychologist, and one
526 qualified professional who, at with a minimum, has ~~of~~ a masters
527 degree in social work, special education, or vocational
528 rehabilitation counseling, to examine the person and to testify
529 at the hearing on the involuntary admission to residential
530 services.

531 (e) The committee shall prepare a written report for the
532 court. The report must explicitly document the extent that the
533 person meets the criteria for involuntary admission. The report,
534 and expert testimony, must include, but not be limited to:

535 1. The degree of the person's intellectual disability
536 ~~mental retardation~~ and whether, using diagnostic capabilities
537 established by the agency, the person is eligible for agency
538 services;

539 2. Whether, because of the person's degree of intellectual
540 disability ~~mental retardation~~, the person:

541 a. Lacks sufficient capacity to give express and informed
542 consent to a voluntary application for services pursuant to s.
543 393.065;

544 b. Lacks basic survival and self-care skills to such a
545 degree that close supervision and habilitation in a residential
546 setting is necessary and if not provided would result in a real
547 and present threat of substantial harm to the person's well-
548 being; or

549 c. Is likely to physically injure others if allowed to
550 remain at liberty.

551 3. The purpose to be served by residential care;

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552 4. A recommendation on the type of residential placement
553 which would be the most appropriate and least restrictive for
554 the person; and

555 5. The appropriate care, habilitation, and treatment.

556 (f) The committee shall file the report with the court at
557 least ~~not less than~~ 10 working days before the date of the
558 hearing. The report must ~~shall~~ be served on the petitioner, the
559 person who has the intellectual disability ~~with mental~~
560 ~~retardation~~, the person's attorney at the time the report is
561 filed with the court, and the agency.

562 (g) Members of the examining committee shall receive a
563 reasonable fee to be determined by the court. The fees shall ~~are~~
564 ~~to~~ be paid from the general revenue fund of the county in which
565 the person who has the intellectual disability ~~with mental~~
566 ~~retardation~~ resided when the petition was filed.

567 (6) COUNSEL; GUARDIAN AD LITEM.—

568 (a) The person who has the intellectual disability ~~must~~
569 ~~with mental retardation~~ ~~shall~~ be represented by counsel at all
570 stages of the judicial proceeding. ~~If in the event~~ the person is
571 indigent and cannot afford counsel, the court shall appoint a
572 public defender at least ~~not less than~~ 20 working days before
573 the scheduled hearing. The person's counsel shall have full
574 access to the records of the service provider and the agency. In
575 all cases, the attorney shall represent the rights and legal
576 interests of the person ~~with mental retardation~~, regardless of
577 who initiates ~~may initiate~~ the proceedings or pays ~~pay~~ the
578 attorney's fee.

579 (b) If the attorney, during the course of his or her
580 representation, reasonably believes that the person who has the

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581 intellectual disability ~~with mental retardation~~ cannot
582 adequately act in his or her own interest, the attorney may seek
583 the appointment of a guardian ad litem. A prior finding of
584 incompetency is not required before a guardian ad litem is
585 appointed pursuant to this section.

586 (7) HEARING.—

587 (d) The person who has the intellectual disability must
588 ~~with mental retardation shall~~ be physically present throughout
589 the entire proceeding. If the person's attorney believes that
590 the person's presence at the hearing is not in his or her ~~the~~
591 ~~person's~~ best interest, the person's presence may be waived once
592 the court has seen the person and the hearing has commenced.

593 (8) ORDER.—

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

596 1. The person is intellectually disabled ~~mentally retarded~~
597 or autistic;

598 2. Placement in a residential setting is the least
599 restrictive and most appropriate alternative to meet the
600 person's needs; and

601 3. Because of the person's degree of intellectual
602 disability ~~mental retardation~~ or autism, the person:

603 a. Lacks sufficient capacity to give express and informed
604 consent to a voluntary application for services pursuant to s.
605 393.065 and lacks basic survival and self-care skills to such a
606 degree that close supervision and habilitation in a residential
607 setting is necessary and, if not provided, would result in a
608 real and present threat of substantial harm to the person's
609 well-being; or

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

612 (10) COMPETENCY.—

613 (a) The issue of competency is ~~shall be~~ separate and
614 distinct from a determination of the appropriateness of
615 involuntary admission to residential services due to
616 intellectual disability ~~for a condition of mental retardation~~.

617 (b) The issue of the competency of a person who has an
618 intellectual disability ~~with mental retardation~~ for purposes of
619 assigning guardianship shall be determined in a separate
620 proceeding according to the procedures and requirements of
621 chapter 744. The issue of the competency of a person who has an
622 intellectual disability ~~with mental retardation~~ or autism for
623 purposes of determining whether the person is competent to
624 proceed in a criminal trial shall be determined in accordance
625 with chapter 916.

626 (12) APPEAL.—

627 (b) The filing of an appeal by the person who has an
628 intellectual disability ~~stays with mental retardation shall stay~~
629 admission of the person into residential care. The stay remains
630 ~~shall remain~~ in effect during the pendency of all review
631 proceedings in Florida courts until a mandate issues.

632 Section 11. Subsection (18) of section 394.455, Florida
633 Statutes, is amended to read:

634 394.455 Definitions.—As used in this part, unless the
635 context clearly requires otherwise, the term:

636 (18) "Mental illness" means an impairment of the mental or
637 emotional processes that exercise conscious control of one's
638 actions or of the ability to perceive or understand reality,

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which impairment substantially interferes with the a person's ability to meet the ordinary demands of living, ~~regardless of etiology~~. For the purposes of this part, the term does not include a ~~retardation or~~ developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

Section 12. Subsections (3) through (13) of section 400.960, Florida Statutes, are amended to read:

400.960 Definitions.—As used in this part, the term:

~~(3) "Autism" has the same meaning as in s. 393.063.~~

~~(4) "Cerebral palsy" has the same meaning as in s. 393.063.~~

(3)~~(5)~~ "Client" means any person determined by the Agency for Persons with Disabilities to be eligible for developmental services.

(4)~~(6)~~ "Developmentally disabled" ~~"developmental disability"~~ has the same meaning as "developmental disability" as that term is defined in s. 393.063.

(5)~~(7)~~ "Direct service provider" means a person 18 years of age or older who has direct contact with individuals who have with developmental disabilities and who is unrelated to such ~~the~~ individuals ~~with developmental disabilities~~.

(6)~~(8)~~ "Intermediate care facility for the developmentally disabled" means a residential facility licensed and certified in accordance with state law, and certified by the Federal Government, pursuant to the Social Security Act, as a provider of Medicaid services to persons who have ~~with~~ developmental disabilities.

~~(9) "Prader-Willi syndrome" has the same meaning as in s. 393.063.~~

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668 (7)~~(10)~~~~(a)~~ "Restraint" means a physical device, method, or
669 drug used to control behavior.

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

675 (b) A drug used as a restraint is a medication used to
676 control the person's behavior or to restrict his or her freedom
677 of movement. Physically holding a person during a procedure to
678 forcibly administer psychotropic medication is a physical
679 restraint.

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

688 ~~(11) "Retardation" has the same meaning as in s. 393.063.~~

689 (8)~~(12)~~ "Seclusion" means the physical segregation of a
690 person in any fashion or the involuntary isolation of a person
691 in a room or area from which the person is prevented from
692 leaving. The prevention may be by physical barrier or by a staff
693 member who is acting in a manner, or who is physically situated,
694 so as to prevent the person from leaving the room or area. For
695 purposes of this part, the term does not mean isolation due to a
696 person's medical condition or symptoms.

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~~(13) "Spina bifida" has the same meaning as in s. 393.063.~~

Section 13. Subsection (12) of section 408.032, Florida Statutes, is amended to read:

408.032 Definitions relating to Health Facility and Services Development Act.—As used in ss. 408.031-408.045, the term:

(12) "Intermediate care facility for the developmentally disabled" means a residential facility licensed under part VIII of chapter 400 ~~chapter 393 and certified by the Federal Government pursuant to the Social Security Act as a provider of Medicaid services to persons who are mentally retarded or who have a related condition.~~

Section 14. Subsection (8) of section 409.908, Florida Statutes, is amended to read:

(8) A provider of home-based or community-based services rendered pursuant to a federally approved waiver shall be reimbursed based on an established or negotiated rate for each service. These rates shall be established according to an analysis of the expenditure history and prospective budget developed by each contract provider participating in the waiver program, or under any other methodology adopted by the agency and approved by the Federal Government in accordance with the waiver. Privately owned and operated community-based residential facilities which meet agency requirements and which formerly received Medicaid reimbursement for the optional intermediate care facility for the intellectually disabled ~~mentally retarded~~ service may participate in the developmental services waiver as part of a home-and-community-based continuum of care for Medicaid recipients who receive waiver services.

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726 Section 15. Subsection (16) of section 413.20, Florida
727 Statutes, is amended to read:

728 413.20 Definitions.—As used in this part, the term:

729 (16) "Person who has a significant disability" means an
730 individual who has a disability that is a severe physical or
731 mental impairment that seriously limits one or more functional
732 capacities, such as mobility, communication, self-care, self-
733 direction, interpersonal skills, work tolerance, or work skills,
734 in terms of an employment outcome; whose vocational
735 rehabilitation may be expected to require multiple vocational
736 rehabilitation services over an extended period of time; and who
737 has one or more physical or mental disabilities resulting from
738 amputation, arthritis, autism, blindness, burn injury, cancer,
739 cerebral palsy, cystic fibrosis, deafness, head injury, heart
740 disease, hemiplegia, hemophilia, respiratory or pulmonary
741 dysfunction, intellectual disability ~~mental retardation~~, mental
742 illness, multiple sclerosis, muscular dystrophy, musculoskeletal
743 disorder, neurological disorder, including stroke and epilepsy,
744 paraplegia, quadriplegia, or other spinal cord condition,
745 sickle-cell anemia, specific learning disability, end-stage
746 renal disease, or another disability or a combination of
747 disabilities that is determined, after an assessment for
748 determining eligibility and vocational rehabilitation needs, to
749 cause comparable substantial functional limitation.

750 Section 16. Paragraph (a) of subsection (6) of section
751 440.49, Florida Statutes, is amended to read:

752 440.49 Limitation of liability for subsequent injury
753 through Special Disability Trust Fund.—

754 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

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(a) Reimbursement is not allowed under this section unless it is established that the employer knew of the preexisting permanent physical impairment before ~~prior to~~ the occurrence of the subsequent injury or occupational disease, and ~~that~~ the permanent physical impairment is one of the following:

1. Epilepsy.
2. Diabetes.
3. Cardiac disease.
4. Amputation of foot, leg, arm, or hand.
5. Total loss of sight of one or both eyes or a partial loss of corrected vision of more than 75 percent bilaterally.
6. Residual disability from poliomyelitis.
7. Cerebral palsy.
8. Multiple sclerosis.
9. Parkinson's disease.
10. Meniscectomy.
11. Patellectomy.
12. Ruptured cruciate ligament.
13. Hemophilia.
14. Chronic osteomyelitis.
15. Surgical or spontaneous fusion of a major weight-bearing joint.
16. Hyperinsulinism.
17. Muscular dystrophy.
18. Thrombophlebitis.
19. Herniated intervertebral disk.
20. Surgical removal of an intervertebral disk or spinal fusion.
21. One or more back injuries or a disease process of the

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back resulting in disability over a total of 120 or more days,
if substantiated by a doctor's opinion that there was a
preexisting impairment to the claimant's back.

22. Total deafness.

23. Intellectual disability if ~~Mental retardation, provided~~
the employee's intelligence quotient is such that she or he
falls within the lowest 2 percentile of the general population.
However, ~~it shall not be necessary for the employer~~ does not
need to know the employee's actual intelligence quotient or
actual relative ranking in relation to the intelligence quotient
of the general population.

24. Any permanent physical condition that ~~which~~, before
~~prior to~~ the industrial accident or occupational disease,
constitutes a 20 percent ~~20-percent~~ impairment of a member or of
the body as a whole.

25. Obesity if, ~~provided~~ the employee is 30 percent or more
over the average weight designated for her or his height and age
in the Table of Average Weight of Americans by Height and Age
prepared by the Society of Actuaries using data from the 1979
Build and Blood Pressure Study.

26. Any permanent physical impairment as provided ~~defined~~
in s. 440.15(3) which is a result of a prior industrial accident
with the same employer or the employer's parent company,
subsidiary, sister company, or affiliate located within the
geographical boundaries of this state.

Section 17. Paragraph (g) of subsection (1) of section
499.0054, Florida Statutes, is amended to read:

499.0054 Advertising and labeling of drugs, devices, and
cosmetics; exemptions.—

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(1) It is a violation of the Florida Drug and Cosmetic Act to perform or cause the performance of any of the following acts:

(g) The advertising of any drug or device represented to have any effect in any of the following conditions, disorders, diseases, or processes:

1. Blood disorders.
2. Bone or joint diseases.
3. Kidney diseases or disorders.
4. Cancer.
5. Diabetes.
6. Gall bladder diseases or disorders.
7. Heart and vascular diseases.
8. High blood pressure.
9. Diseases or disorders of the ear or auditory apparatus, including hearing loss or deafness.
10. Mental disease or intellectual disability ~~mental retardation~~.
11. Paralysis.
12. Prostate gland disorders.
13. Conditions of the scalp affecting hair loss.
14. Baldness.
15. Endocrine disorders.
16. Sexual impotence.
17. Tumors.
18. Venereal diseases.
19. Varicose ulcers.
20. Breast enlargement.
21. Purifying blood.

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22. Metabolic disorders.

23. Immune system disorders or conditions affecting the immune system.

24. Extension of life expectancy.

25. Stress and tension.

26. Brain stimulation or performance.

27. The body's natural defense mechanisms.

28. Blood flow.

29. Depression.

30. Human immunodeficiency virus or acquired immune deficiency syndrome or related disorders or conditions.

Section 18. Section 514.072, Florida Statutes, is amended to read:

514.072 Certification of swimming instructors for people who have developmental disabilities ~~required.~~—Any person working at a swimming pool who holds himself or herself out as a swimming instructor specializing in training people who have developmental disabilities, as defined in s. 393.063(10), may be certified by the Dan Marino Foundation, Inc., in addition to being certified under s. 514.071. The Dan Marino Foundation, Inc., must develop certification requirements and a training curriculum for swimming instructors for people who have developmental disabilities ~~and must submit the certification requirements to the Department of Health for review by January 1, 2007. A person certified under s. 514.071 before July 1, 2007, must meet the additional certification requirements of this section before January 1, 2008.~~ A person certified under s. 514.071 ~~on or after July 1, 2007,~~ must meet the additional certification requirements of this section within 6 months after

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871 receiving certification under s. 514.071.

872 Section 19. Section 627.6041, Florida Statutes, is amended
873 to read:

874 627.6041 ~~Handicapped~~ Children with disabilities;
875 continuation of coverage.—

876 (1) A hospital or medical expense insurance policy or
877 health care services plan contract that is delivered or issued
878 for delivery in this state and that provides that coverage of a
879 dependent child terminates ~~will terminate~~ upon attainment of the
880 limiting age for dependent children specified in the policy or
881 contract must ~~shall~~ also provide in substance that attainment of
882 the limiting age does not terminate the coverage of the child
883 while the child continues to be both:

884 (a) ~~(1)~~ Incapable of self-sustaining employment by reason of
885 an intellectual ~~mental retardation~~ or physical disability.
886 ~~handicap; and~~

887 (b) ~~(2)~~ Chiefly dependent upon the policyholder or
888 subscriber for support and maintenance.

889 (2) If a claim is denied under a policy or contract for the
890 stated reason that the child has attained the limiting age for
891 dependent children specified in the policy or contract, the
892 notice of denial must state that the policyholder has the burden
893 of establishing that the child continues to meet the criteria
894 specified in subsection ~~subsections~~ (1) ~~and (2)~~.

895 Section 20. Section 627.6615, Florida Statutes, is amended
896 to read:

897 627.6615 ~~Handicapped~~ Children with disabilities;
898 continuation of coverage under group policy.—

899 (1) A group health insurance policy or health care services

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plan contract that is delivered or issued for delivery in this state and that provides that coverage of a dependent child of an employee or other member of the covered group terminates ~~will terminate~~ upon attainment of the limiting age for dependent children specified in the policy or contract must ~~shall~~ also provide in substance that attainment of the limiting age does not terminate the coverage of the child while the child continues to be both:

(a) ~~(1)~~ Incapable of self-sustaining employment by reason of an intellectual ~~mental retardation~~ or physical disability. ~~handicap; and~~

(b) ~~(2)~~ Chiefly dependent upon the employee or member for support and maintenance.

(2) If a claim is denied under a policy or contract for the stated reason that the child has attained the limiting age for dependent children specified in the policy or contract, the notice of denial must state that the certificateholder or subscriber has the burden of establishing that the child continues to meet the criteria specified in subsection ~~subsections (1) and (2)~~.

Section 21. Subsection (29) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(29) If a health maintenance contract provides that coverage of a dependent child of the subscriber terminates ~~will terminate~~ upon attainment of the limiting age for dependent children which is specified in the contract, the contract must also provide in substance that attainment of the limiting age does not terminate the coverage of the child while the child

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continues to be both:

(a) Incapable of self-sustaining employment by reason of an intellectual ~~mental retardation~~ or physical disability.
~~handicap, and~~

(b) Chiefly dependent upon the employee or member for support and maintenance.

If the claim is denied under a contract for the stated reason that the child has attained the limiting age for dependent children specified in the contract, the notice or denial must state that the subscriber has the burden of establishing that the child continues to meet the criteria specified in this subsection ~~paragraphs (a) and (b)~~.

Section 22. Subsection (4) of section 650.05, Florida Statutes, is amended to read:

650.05 Plans for coverage of employees of political subdivisions.—

(4) ~~(a)~~ Notwithstanding any other provision of this chapter, effective January 1, 1972, all state political subdivisions receiving financial aid which ~~that~~ provide social security coverage for their employees pursuant to ~~the provisions of~~ this chapter and the ~~provisions of the~~ various retirement systems as authorized by law shall, in addition to other purposes, use ~~utilize~~ all grants-in-aid and other revenue received from the state to pay the employer's share of social security cost.

~~(b)~~ The grants-in-aid and other revenue ~~referred to in paragraph (a)~~ specifically include, but are not limited to, minimum foundation program grants to public school districts and community colleges; gasoline, motor fuel, cigarette, racing, and

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insurance premium taxes distributed to political subdivisions;
and amounts specifically appropriated as grants-in-aid for
mental health, intellectual disabilities ~~mental retardation~~, and
mosquito control programs.

Section 23. Subsection (1) of section 765.204, Florida
Statutes, is amended to read:

765.204 Capacity of principal; procedure.—

(1) A principal is presumed to be capable of making health
care decisions for herself or himself unless she or he is
determined to be incapacitated. Incapacity may not be inferred
from the person's voluntary or involuntary hospitalization for
mental illness or from her or his intellectual disability ~~mental
retardation~~.

Section 24. Section 849.04, Florida Statutes, is amended to
read:

849.04 Permitting minors and persons under guardianship to
gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.
O., keno or pool table, or billiard table, wheel of fortune, or
other game of chance, kept for the purpose of betting, who
willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is
mentally incompetent or under guardianship to play at such game
or to bet on such game of chance; or whoever aids or abets or
otherwise encourages such playing or betting of any money or
other valuable thing upon the result of such game of chance by a
~~any~~ minor or ~~any~~ person who is mentally incompetent or under
guardianship, commits ~~shall be guilty of~~ a felony of the third
degree, punishable as provided in s. 775.082, s. 775.083, or s.
775.084. For the purpose of this section, the term a "person who
is mentally incompetent person" means a person ~~is one~~ who

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because of mental illness, intellectual disability ~~mental retardation~~, senility, excessive use of drugs or alcohol, or other mental incapacity is incapable of ~~either~~ managing his or her property or caring for himself or herself or both.

Section 25. Section 914.16, Florida Statutes, is amended to read:

914.16 Child abuse and sexual abuse of victims under age 16 or who have an intellectual disability ~~persons with mental retardation~~; limits on interviews.—The chief judge of each judicial circuit, after consultation with the state attorney and the public defender for the judicial circuit, the appropriate chief law enforcement officer, and any other person deemed appropriate by the chief judge, shall ~~provide by~~ order reasonable limits on the number of interviews which ~~that~~ a victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s. 847.0135(5) who is under 16 years of age or a victim of a violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who has an intellectual disability ~~is a person with mental retardation~~ as defined in s. 393.063 must submit to for law enforcement or discovery purposes. ~~The order shall,~~ To the extent possible, the order must protect the victim from the psychological damage of repeated interrogations while preserving the rights of the public, the victim, and the person charged with the violation.

Section 26. Section 914.17, Florida Statutes, is amended to read:

914.17 Appointment of advocate for victims or witnesses who are minors or intellectually disabled ~~persons with mental retardation~~.—

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1016 (1) A guardian ad litem or other advocate shall be
1017 appointed by the court to represent a minor in any criminal
1018 proceeding if the minor is a victim of or witness to child abuse
1019 or neglect, ~~or if the minor is a victim of a sexual offense,~~ or
1020 a witness to a sexual offense committed against another minor.
1021 The court may appoint a guardian ad litem or other advocate in
1022 any other criminal proceeding in which a minor is involved as
1023 ~~either~~ a victim or a witness. The guardian ad litem or other
1024 advocate shall have full access to all evidence and reports
1025 introduced during the proceedings, may interview witnesses, may
1026 make recommendations to the court, shall be noticed and have the
1027 right to appear on behalf of the minor at all proceedings, and
1028 may request additional examinations by medical doctors,
1029 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian
1030 ad litem or other advocate shall ~~to perform the following~~
1031 ~~services:~~

1032 (a) ~~To~~ Explain, in language understandable to the minor,
1033 all legal proceedings in which the minor is ~~shall be~~ involved;

1034 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1035 whenever appropriate, of the minor's ability to understand and
1036 cooperate with any court proceeding; and

1037 (c) ~~To~~ Assist the minor and the minor's family in coping
1038 with the emotional effects of the crime and subsequent criminal
1039 proceedings in which the minor is involved.

1040 (2) An advocate shall be appointed by the court to
1041 represent a person who has an intellectual disability ~~with~~
1042 ~~mental retardation~~ as defined in s. 393.063 in any criminal
1043 proceeding if the person ~~with mental retardation~~ is a victim of
1044 or witness to abuse or neglect, ~~or if the person with mental~~

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1045 ~~retardation is~~ a victim of a sexual offense, or a witness to a
1046 sexual offense committed against a minor or person who has an
1047 intellectual disability ~~with mental retardation~~. The court may
1048 appoint an advocate in any other criminal proceeding in which
1049 such a person ~~with mental retardation~~ is involved as ~~either~~ a
1050 victim or a witness. The advocate shall have full access to all
1051 evidence and reports introduced during the proceedings, may
1052 interview witnesses, may make recommendations to the court,
1053 shall be noticed and have the right to appear on behalf of the
1054 person ~~with mental retardation~~ at all proceedings, and may
1055 request additional examinations by medical doctors,
1056 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate
1057 shall ~~to perform the following services:~~

1058 (a) ~~To~~ Explain, in language understandable to the person
1059 ~~with mental retardation~~, all legal proceedings in which the
1060 person is ~~shall be~~ involved;

1061 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1062 whenever appropriate, of the person's ~~person with mental~~
1063 ~~retardation's~~ ability to understand and cooperate with any court
1064 proceedings; and

1065 (c) ~~To~~ Assist the person ~~with mental retardation~~ and the
1066 person's family in coping with the emotional effects of the
1067 crime and subsequent criminal proceedings in which the person
1068 ~~with mental retardation~~ is involved.

1069 (3) Any person participating in a judicial proceeding as a
1070 guardian ad litem or other advocate is ~~shall be~~ presumed prima
1071 facie to be acting in good faith and in so doing is ~~shall be~~
1072 immune from any liability, civil or criminal, which ~~that~~
1073 ~~otherwise~~ might be incurred or imposed.

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Section 27. Subsections (1), (2), and (3) of section 916.105, Florida Statutes, are 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 charged with a felony and who have been found to be incompetent to proceed due to their mental illness, intellectual disability ~~mental retardation~~, or autism, or who have been acquitted of a felony 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 facilities must ~~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 facility or program pursuant to subsection (3), forensic facilities must ~~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 the intent of the Legislature that treatment or training programs for defendants who are found to have mental illness, intellectual disability ~~mental retardation~~, or autism and are involuntarily committed to the department or agency, and who are still under the jurisdiction of the committing court, be

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provided in a manner, subject to security requirements and other mandates of this chapter, which ensures ~~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, intellectual disability ~~mental retardation~~, or autism be provided in community settings, in community residential facilities, or in civil facilities, whenever this is a feasible alternative to treatment or training in a state forensic facility.

Section 28. Subsections (1), (10), (11), (12), and (17) of section 916.106, Florida Statutes, are amended, and subsections (13) through (15) of that section are reordered and 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 intellectual disability ~~mental retardation~~ or autism and have been determined incompetent to proceed.

(10) "Forensic facility" means a separate and secure facility established within the department or agency to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities ~~with retardation~~ or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents.

(11) "Incompetent to proceed" means unable to proceed at

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any material stage of a criminal proceeding, which includes the
~~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) "Institutional security personnel" means the staff of
forensic facilities who meet or exceed the requirements of s.
943.13 and who are responsible for providing security,
protecting clients and personnel, enforcing rules, preventing
and investigating unauthorized activities, and safeguarding the
interests of residents ~~citizens~~ in the surrounding communities.

~~(14)-(13)~~ (14) "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 the a defendant's
ability to meet the ordinary demands of living. For the purposes
of this chapter, the term does not apply to defendants who have
only an intellectual disability ~~with only mental retardation~~ or
autism and does not include intoxication or conditions
manifested only by antisocial behavior or substance abuse
impairment.

~~(15)-(14)~~ (15) "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

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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.

~~(13)-(15)~~ "Intellectual disability" ~~"Retardation"~~ has the same meaning as in s. 393.063.

(17) "Social service professional" 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 who have intellectual disabilities ~~with retardation~~, autism, or other developmental disabilities.

Section 29. Paragraph (a) of subsection (1) and paragraph (a) of subsection (3) of section 916.107, Florida Statutes, are amended to read:

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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, intellectual disability ~~retardation~~, or autism and who are charged with committing felonies shall receive appropriate treatment or training. In a criminal case involving a client 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 the date the department or agency receives a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure. For a forensic client who is held in a jail awaiting admission to a facility of the department or agency, evaluation and treatment or training may be provided in the jail by the local community mental health provider for mental health services, by the developmental disabilities program for persons with intellectual disability ~~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.

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following

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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 facility shall petition the court for an order authorizing necessary and essential treatment for the client. The order shall allow such treatment for a period not to exceed 90 days following 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, before ~~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

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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 refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client has mental illness, intellectual disability ~~retardation~~, or autism, 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

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1277 she chooses, and has the right to cross-examine witnesses and
1278 may present his or her own witnesses.

1279 Section 30. The Division of Statutory Revision is requested
1280 to rename part III of chapter 916, Florida Statutes, consisting
1281 of ss. 916.301-916.304, as "Forensic Services for Persons who
1282 are Intellectually Disabled or Autistic."

1283 Section 31. Subsections (1) and (2) of section 916.301,
1284 Florida Statutes, are amended to read:

1285 916.301 Appointment of experts.—

1286 (1) All evaluations ordered by the court under this part
1287 must be conducted by qualified experts who have expertise in
1288 evaluating persons who have an intellectual disability with
1289 ~~retardation~~ or autism. The agency shall maintain and provide the
1290 courts annually with a list of available ~~retardation and autism~~
1291 professionals who are appropriately licensed and qualified to
1292 perform evaluations of defendants alleged to be incompetent to
1293 proceed due to intellectual disability ~~retardation~~ or autism.
1294 The courts may use professionals from this list when appointing
1295 experts and ordering evaluations under this part.

1296 (2) If a defendant's suspected mental condition is
1297 intellectual disability ~~retardation~~ or autism, the court shall
1298 appoint the following:

1299 (a) At least one, or at the request of any party, two
1300 experts to evaluate whether the defendant meets the definition
1301 of intellectual disability ~~retardation~~ or autism and, if so,
1302 whether the defendant is competent to proceed; and

1303 (b) A psychologist selected by the agency who is licensed
1304 or authorized by law to practice in this state, with experience
1305 in evaluating persons suspected of having an intellectual

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1306 disability ~~retardation~~ or autism, and a social service
1307 professional, with experience in working with persons who have
1308 an intellectual disability ~~with retardation~~ or autism.

1309 1. The psychologist shall evaluate whether the defendant
1310 meets the definition of intellectual disability ~~retardation~~ or
1311 autism and, if so, whether the defendant is incompetent to
1312 proceed due to intellectual disability ~~retardation~~ or autism.

1313 2. The social service professional shall provide a social
1314 and developmental history of the defendant.

1315 Section 32. Subsections (1), (2), and (4) of section
1316 916.3012, Florida Statutes, are amended to read:

1317 916.3012 Mental competence to proceed.—

1318 (1) A defendant whose suspected mental condition is
1319 intellectual disability ~~retardation~~ or autism is incompetent to
1320 proceed within the meaning of this chapter if the defendant does
1321 not have sufficient present ability to consult with the
1322 defendant's lawyer with a reasonable degree of rational
1323 understanding or if the defendant has no rational, as well as
1324 factual, understanding of the proceedings against the defendant.

1325 (2) Experts in intellectual disability ~~retardation~~ or
1326 autism appointed pursuant to s. 916.301 shall first consider
1327 whether the defendant meets the definition of intellectual
1328 disability ~~retardation~~ or autism and, if so, consider the
1329 factors related to the issue of whether the defendant meets the
1330 criteria for competence to proceed as described in subsection
1331 (1).

1332 (4) If the experts ~~should~~ find that the defendant is
1333 incompetent to proceed, the experts shall report on any
1334 recommended training for the defendant to attain competence to

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proceed. In considering the issues relating to training, the examining experts shall specifically report on:

(a) The intellectual disability ~~retardation~~ or autism causing the incompetence;

(b) The training appropriate for the intellectual disability ~~retardation~~ or autism of the defendant and an explanation of each of the possible training alternatives in order of choices;

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

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

Section 33. Subsection (1), paragraphs (a) and (b) of subsection (2), and paragraph (a) of subsection (3) of section 916.302, Florida Statutes, are amended to read:

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

(1) CRITERIA.—Every defendant who is charged with a felony and who is adjudicated incompetent to proceed due to intellectual disability ~~retardation~~ or autism may be involuntarily committed for training upon a finding by the court of clear and convincing evidence that:

(a) The defendant has an intellectual disability ~~retardation~~ or autism;

(b) There is a substantial likelihood that in the near

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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 intellectual disability ~~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 intellectual disability ~~retardation~~ or autism, and who meets the criteria for involuntary commitment to the agency under ~~the provisions of~~ this chapter, shall be committed to the agency, and the agency shall retain and provide appropriate training for the defendant. Within ~~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 determines ~~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 intellectual disability ~~retardation~~ or autism may be ordered

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by a circuit court into a forensic facility designated by the agency for defendants who have an intellectual disability ~~mental retardation~~ or autism.

(3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

(a) If a defendant has both an intellectual disability ~~mental retardation~~ or autism and ~~has~~ a mental illness, 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 facility most appropriate to address the symptoms that are the cause of the defendant's incompetence.

Section 34. Subsection (1) of 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 intellectual disability ~~retardation~~ or autism and ordered into a forensic facility designated by the agency for defendants who have intellectual disabilities ~~mental retardation~~ or autism. A 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.

Section 35. 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

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1422 incompetent to proceed due to intellectual disability
1423 ~~retardation~~ or autism shall be dismissed without prejudice to
1424 the state if the defendant remains incompetent to proceed within
1425 a reasonable time after such determination, not to exceed 2
1426 years, unless the court in its order specifies its reasons for
1427 believing that the defendant will become competent to proceed
1428 within the foreseeable future and specifies the time within
1429 which the defendant is expected to become competent to proceed.
1430 The charges may be refiled by the state if the defendant is
1431 declared competent to proceed in the future.

1432 (2) If the charges are dismissed and if the defendant is
1433 considered to lack sufficient capacity to give express and
1434 informed consent to a voluntary application for services and
1435 lacks the basic survival and self-care skills to provide for his
1436 or her well-being or is likely to physically injure himself or
1437 herself or others if allowed to remain at liberty, the agency,
1438 the state attorney, or the defendant's attorney shall apply to
1439 the committing court to involuntarily admit the defendant to
1440 residential services pursuant to s. 393.11.

1441 (3) If the defendant is considered to need involuntary
1442 residential services for reasons described in subsection (2)
1443 and, further, there is a substantial likelihood that the
1444 defendant will injure another person or continues to present a
1445 danger of escape, and all available less restrictive
1446 alternatives, including services in community residential
1447 facilities or other community settings, which would offer an
1448 opportunity for improvement of the condition have been judged to
1449 be inappropriate, the agency, the state attorney, or the
1450 defendant's counsel may request the committing court to continue

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the defendant's placement in a secure facility pursuant to this part. Any placement so continued ~~under this subsection~~ must be reviewed by the court at least annually at a hearing. The annual review and hearing must ~~shall~~ determine whether the defendant continues to meet the criteria described in this subsection and, if so, whether the defendant still requires involuntary placement in a secure facility 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 the defendant's attorney. ~~In no instance may~~ A defendant's placement in a secure facility may not exceed the maximum sentence for the crime for which the defendant was charged.

Section 36. Subsection (1) of 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 intellectual disability ~~retardation~~ or autism, based on an approved plan for providing 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

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may also be submitted by the defendant and filed with the court, with copies to all parties. The plan must 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.

Section 37. Section 918.16, Florida Statutes, is amended to read:

918.16 Sex offenses; testimony of person under age 16 or who has an intellectual disability ~~person with mental retardation~~; testimony of victim; courtroom cleared; exceptions.—

(1) Except as provided in subsection (2), in the trial of any case, civil or criminal, if ~~when~~ any person under the age of 16 or any person with an intellectual disability ~~mental retardation~~ as defined in s. 393.063 is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court

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reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney's office.

(2) ~~If~~ When the victim of a sex offense is testifying concerning that offense in any civil or criminal trial, the court shall clear the courtroom of all persons upon the request of the victim, regardless of the victim's age or mental capacity, except that parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney may remain in the courtroom.

Section 38. Section 921.137, Florida Statutes, is amended to read:

921.137 Imposition of the death sentence upon an intellectually disabled a defendant ~~with mental retardation~~ prohibited.—

(1) As used in this section, the term "intellectually disabled" or "intellectual disability" ~~"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. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal

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independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

(2) A sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined in accordance with this section that the defendant is intellectually disabled ~~has mental retardation~~.

(3) A defendant charged with a capital felony who intends to raise intellectual disability ~~mental retardation~~ as a bar to the death sentence must give notice of such intention in accordance with the rules of court governing notices of intent to offer expert testimony regarding mental health mitigation during the penalty phase of a capital trial.

(4) After a defendant who has given notice of his or her intention to raise intellectual disability ~~mental retardation~~ as a bar to the death sentence is convicted of a capital felony and an advisory jury has returned a recommended sentence of death, the defendant may file a motion to determine whether the defendant is intellectually disabled ~~has mental retardation~~.

Upon receipt of the motion, the court shall appoint two experts in the field of intellectual disabilities ~~mental retardation~~ who shall evaluate the defendant and report their findings to the court and all interested parties prior to the final sentencing hearing. Notwithstanding s. 921.141 or s. 921.142, the final sentencing hearing shall be held without a jury. At the final sentencing hearing, the court shall consider the findings of the court-appointed experts and consider the findings of any other expert which is offered by the state or the defense on the issue

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1567 of whether the defendant has an intellectual disability ~~mental~~
1568 ~~retardation~~. If the court finds, by clear and convincing
1569 evidence, that the defendant has an intellectual disability
1570 ~~mental retardation~~ as defined in subsection (1), the court may
1571 not impose a sentence of death and shall enter a written order
1572 that sets forth with specificity the findings in support of the
1573 determination.

1574 (5) If a defendant waives his or her right to a recommended
1575 sentence by an advisory jury following a plea of guilt or nolo
1576 contendere to a capital felony and adjudication of guilt by the
1577 court, or following a jury finding of guilt of a capital felony,
1578 upon acceptance of the waiver by the court, a defendant who has
1579 given notice as required in subsection (3) may file a motion for
1580 a determination of intellectual disability ~~mental retardation~~.
1581 Upon granting the motion, the court shall proceed as provided in
1582 subsection (4).

1583 (6) If, following a recommendation by an advisory jury that
1584 the defendant be sentenced to life imprisonment, the state
1585 intends to request the court to order that the defendant be
1586 sentenced to death, the state must inform the defendant of such
1587 request if the defendant has notified the court of his or her
1588 intent to raise intellectual disability ~~mental retardation~~ as a
1589 bar to the death sentence. After receipt of the notice from the
1590 state, the defendant may file a motion requesting a
1591 determination by the court of whether the defendant is
1592 intellectually disabled ~~has mental retardation~~. Upon granting
1593 the motion, the court shall proceed as provided in subsection
1594 (4).

1595 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~

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1596 ~~to s. 924.07,~~ a determination of intellectual disability ~~mental~~
1597 ~~retardation~~ made under subsection (4).

1598 (8) This section does not apply to a defendant who was
1599 sentenced to death before June 12, 2001 ~~prior to the effective~~
1600 ~~date of this act.~~

1601 (9) For purposes of the application of the criminal laws
1602 and procedural rules of this state to any matters relating to
1603 the imposition and execution of the death penalty, the terms
1604 "intellectual disability" or "intellectually disabled" are
1605 interchangeable with and have the same meaning as the terms
1606 "mental retardation" or "retardation" and "mentally retarded" as
1607 those terms were defined before July 1, 2012.

1608 Section 39. Paragraph (b) of subsection (2) of section
1609 941.38, Florida Statutes, is amended to read:

1610 941.38 Extradition of persons alleged to be of unsound
1611 mind.—

1612 (2) For the purpose of this section:

1613 (b) A "mentally incompetent person" is one who because of
1614 mental illness, intellectual disability ~~mental retardation~~,
1615 senility, excessive use of drugs or alcohol, or other mental
1616 incapacity is incapable of ~~either~~ managing his or her property
1617 or caring for himself or herself or both.

1618 Section 40. Section 944.602, Florida Statutes, is amended
1619 to read:

1620 944.602 Agency notification before release of
1621 intellectually disabled ~~mentally retarded~~ inmates.—Before the
1622 release by parole, release by reason of gain-time allowances
1623 provided for in s. 944.291, or expiration of sentence of any
1624 inmate who has been diagnosed as having an intellectual

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disability ~~mentally retarded~~ as defined in s. 393.063, the Department of Corrections shall notify the Agency for Persons with Disabilities in order that sufficient time be allowed to notify the inmate or the inmate's representative, in writing, at least 7 days before ~~prior to~~ the inmate's release, of available community services.

Section 41. Subsection (2) of section 945.025, Florida Statutes, is amended to read:

945.025 Jurisdiction of department.—

(2) In establishing, operating, and using ~~utilizing~~ these facilities, the department shall attempt, whenever possible, to avoid the placement of nondangerous offenders who have potential for rehabilitation with repeat offenders or dangerous offenders. Medical, mental, and psychological problems must ~~shall~~ be diagnosed and treated whenever possible. The Department of Children and Family Services and the Agency for Persons with Disabilities shall cooperate to ensure the delivery of services to persons under the custody or supervision of the department. ~~If When it is the intent of the department~~ intends to transfer a ~~mentally ill or retarded~~ prisoner who has a mental illness or intellectual disability to the Department of Children and Family Services or the Agency for Persons with Disabilities, an involuntary commitment hearing shall be held in accordance with ~~according to the provisions of~~ chapter 393 or chapter 394.

Section 42. Subsection (5) of section 945.12, Florida Statutes, is amended to read:

945.12 Transfers for rehabilitative treatment.—

(5) When the department plans to release an offender who is a mentally ill or intellectually disabled ~~retarded offender~~, an

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involuntary commitment hearing shall be held as soon as possible
before ~~prior to~~ his or her release in accordance with, ~~according~~
~~to the provisions of~~ chapter 393 or chapter 394.

Section 43. Subsection (9) of section 945.42, Florida
Statutes, is amended to read:

945.42 Definitions; ss. 945.40-945.49.—As used in ss.
945.40-945.49, the following terms shall have the meanings
ascribed to them, unless the context shall clearly indicate
otherwise:

(9) "Mentally ill" means an impairment of the mental or
emotional processes that, ~~of the ability to~~ exercise conscious
control of one's actions, ~~or of the ability to~~ perceive or
understand reality, which impairment substantially interferes
with the ~~a~~ person's ability to meet the ordinary demands of
living. However, ~~regardless of etiology, except that~~, for the
purposes of transferring ~~transfer of~~ an inmate to a mental
health treatment facility, the term does not include a
~~retardation or~~ developmental disability as defined in s. 393.063
~~chapter 393~~, simple intoxication, or conditions manifested only
by antisocial behavior or substance abuse addiction. However, an
individual who is ~~mentally retarded or~~ developmentally disabled
may also have a mental illness.

Section 44. Section 947.185, Florida Statutes, is amended
to read:

947.185 Application for intellectual disability ~~mental~~
~~retardation~~ services as condition of parole.—The Parole
Commission may require as a condition of parole that any inmate
who has been diagnosed as having an intellectual disability
~~mentally retarded~~ as defined in s. 393.063 shall, upon release,

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1683 apply for services from the Agency for Persons with
1684 Disabilities.

1685 Section 45. Subsection (4) of section 984.19, Florida
1686 Statutes, is amended to read:

1687 984.19 Medical screening and treatment of child;
1688 examination of parent, guardian, or person requesting custody.-

1689 (4) A judge may order that a child alleged to be or
1690 adjudicated a child in need of services be treated by a licensed
1691 health care professional. The judge may also order such child to
1692 receive mental health or intellectual disability ~~retardation~~
1693 services from a psychiatrist, psychologist, or other appropriate
1694 service provider. If it is necessary to place the child in a
1695 residential facility for such services, ~~then~~ the procedures and
1696 criteria established in s. 394.467 or chapter 393 shall be used,
1697 as whichever is applicable. A child may be provided ~~mental~~
1698 ~~health or retardation~~ services in emergency situations, pursuant
1699 to the procedures and criteria contained in s. 394.463(1) or
1700 chapter 393, as whichever is applicable.

1701 Section 46. Paragraph (a) of subsection (3) of section
1702 985.14, Florida Statutes, is amended to read:

1703 985.14 Intake and case management system.-

1704 (3) The intake and case management system shall facilitate
1705 consistency in the recommended placement of each child, and in
1706 the assessment, classification, and placement process, with the
1707 following purposes:

1708 (a) An individualized, multidisciplinary assessment process
1709 that identifies the priority needs of each ~~individual~~ child for
1710 rehabilitation and treatment and identifies any needs of the
1711 child's parents or guardians for services that would enhance

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1712 their ability to provide adequate support, guidance, and
1713 supervision for the child. This process begins ~~shall begin~~ with
1714 the detention risk assessment instrument and decision, includes
1715 ~~shall include~~ the intake preliminary screening and comprehensive
1716 assessment for substance abuse treatment services, mental health
1717 services, intellectual disability ~~retardation~~ services, literacy
1718 services, and other educational and treatment services as
1719 components, additional assessment of the child's treatment
1720 needs, and classification regarding the child's risks to the
1721 community and, for a serious or habitual delinquent child,
1722 includes ~~shall include the~~ assessment for placement in a serious
1723 or habitual delinquent children program under s. 985.47. The
1724 completed multidisciplinary assessment process must ~~shall~~ result
1725 in the predisposition report.

1726 Section 47. Paragraph (g) of subsection (1) and subsection
1727 (5) of section 985.145, Florida Statutes, are amended to read:

1728 985.145 Responsibilities of juvenile probation officer
1729 during intake; screenings and assessments.—

1730 (1) The juvenile probation officer shall serve as the
1731 primary case manager for the purpose of managing, coordinating,
1732 and monitoring the services provided to the child. Each program
1733 administrator within the Department of Children and Family
1734 Services shall cooperate with the primary case manager in
1735 carrying out the duties and responsibilities described in this
1736 section. In addition to duties specified in other sections and
1737 through departmental rules, the assigned juvenile probation
1738 officer shall be responsible for the following:

1739 (g) *Comprehensive assessment.*—The juvenile probation
1740 officer, pursuant to uniform procedures established by the

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department and upon determining that the report, affidavit, or complaint is complete, shall:

1. Perform the preliminary screening and make referrals for a comprehensive assessment regarding the child's need for substance abuse treatment services, mental health services, intellectual disability ~~retardation~~ services, literacy services, or other educational or treatment services.

2. If ~~When~~ indicated by the preliminary screening, provide for a comprehensive assessment of the child and family for substance abuse problems, using community-based licensed programs with clinical expertise and experience in the assessment of substance abuse problems.

3. If ~~When~~ indicated by the preliminary screening, provide for a comprehensive assessment of the child and family for mental health problems, using community-based psychologists, psychiatrists, or other licensed mental health professionals who have clinical expertise and experience in the assessment of mental health problems.

(5) If the screening and assessment indicate that the interests of the child and the public will be best served ~~thereby~~, the juvenile probation officer, with the approval of the state attorney, may refer the child for care, diagnostic, and evaluation services; substance abuse treatment services; mental health services; intellectual disability ~~retardation~~ services; a diversionary, arbitration, or mediation program; community service work; or other programs or treatment services voluntarily accepted by the child and the child's parents or legal guardian. If ~~Whenever~~ a child volunteers to participate in any work program under this chapter or volunteers to work in a

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specified state, county, municipal, or community service organization supervised work program or to work for the victim, the child ~~is shall be~~ considered an employee of the state for the purposes of liability. In determining the child's average weekly wage, unless otherwise determined by a specific funding program, all remuneration received from the employer is considered a gratuity, and the child is not entitled to any benefits otherwise payable under s. 440.15~~7~~, regardless of whether the child may be receiving wages and remuneration from other employment with another employer and regardless of the child's future wage-earning capacity.

Section 48. Subsections (2) and (6) of section 985.18, Florida Statutes, are amended to read:

985.18 Medical, psychiatric, psychological, substance abuse, and educational examination and treatment.—

(2) ~~If Whenever~~ a child has been found to have committed a delinquent act, or before such finding with the consent of any parent or legal custodian of the child, the court may order the child to be treated by a physician. The court may also order the child to receive mental health, substance abuse, or intellectual disability ~~retardation~~ services from a psychiatrist, psychologist, or other appropriate service provider. If it is necessary to place the child in a residential facility for such services, the procedures and criteria established in chapter 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable, must ~~shall~~ be used. After a child has been adjudicated delinquent, if an educational needs assessment by the district school board or the Department of Children and Family Services has been ~~previously~~ conducted, the court shall order the report

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1799 ~~of such needs assessment~~ included in the child's court record in
1800 lieu of a new assessment. For purposes of this section, an
1801 educational needs assessment includes, but is not limited to,
1802 reports of intelligence and achievement tests, screening for
1803 learning and other disabilities ~~and other handicaps~~, and
1804 screening for the need for alternative education.

1805 (6) A physician must ~~shall~~ be immediately notified by the
1806 person taking the child into custody or the person having
1807 custody if there are indications of physical injury or illness,
1808 or the child shall be taken to the nearest available hospital
1809 for emergency care. A child may be provided mental health,
1810 substance abuse, or intellectual disability ~~retardation~~
1811 ~~services~~, in emergency situations, pursuant to chapter 393,
1812 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a
1813 hearing, the court may order the custodial parent or parents,
1814 guardian, or other custodian, if found able to do so, to
1815 reimburse the county or state for the expense involved in such
1816 emergency treatment or care.

1817 Section 49. Paragraph (e) of subsection (1), subsections
1818 (2) through (4), and paragraph (a) of subsection (6) of section
1819 985.19, Florida Statutes, are amended to read:

1820 985.19 Incompetency in juvenile delinquency cases.—

1821 (1) If, at any time prior to or during a delinquency case,
1822 the court has reason to believe that the child named in the
1823 petition may be incompetent to proceed with the hearing, the
1824 court on its own motion may, or on the motion of the child's
1825 attorney or state attorney must, stay all proceedings and order
1826 an evaluation of the child's mental condition.

1827 (e) For incompetency evaluations related to intellectual

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1828 disability ~~mental retardation~~ or autism, the court shall order
1829 the Agency for Persons with Disabilities to examine the child to
1830 determine if the child meets the definition of "intellectual
1831 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,
1832 whether the child is competent to proceed with delinquency
1833 proceedings.

1834 (2) A child who is adjudicated incompetent to proceed, and
1835 who has committed a delinquent act or violation of law, either
1836 of which would be a felony if committed by an adult, must be
1837 committed to the Department of Children and Family Services for
1838 treatment or training. A child who has been adjudicated
1839 incompetent to proceed because of age or immaturity, or for any
1840 reason other than for mental illness, intellectual disability,
1841 ~~or retardation~~ or autism, must not be committed to the
1842 department or to the Department of Children and Family Services
1843 for restoration-of-competency treatment or training services.
1844 For purposes of this section, a child who has committed a
1845 delinquent act or violation of law, either of which would be a
1846 misdemeanor if committed by an adult, may not be committed to
1847 the department or to the Department of Children and Family
1848 Services for restoration-of-competency treatment or training
1849 services.

1850 (3) If the court finds that a child has mental illness,
1851 intellectual disability ~~mental retardation~~, or autism and
1852 adjudicates the child incompetent to proceed, the court must
1853 also determine whether the child meets the criteria for secure
1854 placement. A child may be placed in a secure facility or program
1855 if the court makes a finding by clear and convincing evidence
1856 that:

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(a) The child has mental illness, intellectual disability
~~mental retardation~~, or autism and because of the mental illness,
intellectual disability ~~mental retardation~~, or autism:

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, intellectual disability ~~mental retardation~~, or autism, 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 in a secure facility or program that 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 shall ~~will~~ be transferred to the department in order

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1886 to continue delinquency proceedings; however, the court retains
1887 authority to order the Department of Children and Family
1888 Services to provide continued treatment or training to maintain
1889 competency.

1890 (a) A child adjudicated incompetent due to intellectual
1891 disability ~~mental retardation~~ or autism may be ordered into a
1892 secure program or facility designated by the Department of
1893 Children and Family Services for children who have intellectual
1894 disabilities ~~with mental retardation~~ or autism.

1895 (b) A child adjudicated incompetent due to mental illness
1896 may be ordered into a secure program or facility designated by
1897 the Department of Children and Family Services for children
1898 having mental illnesses.

1899 (c) ~~If Whenever~~ a child is placed in a secure residential
1900 facility, the department shall ~~will~~ provide transportation to
1901 the secure residential facility for admission and from the
1902 secure residential facility upon discharge.

1903 (d) The purpose of the treatment or training is the
1904 restoration of the child's competency to proceed.

1905 (e) The service provider must file a written report with
1906 the court pursuant to the applicable Florida Rules of Juvenile
1907 Procedure within ~~not later than~~ 6 months after the date of
1908 commitment, or at the end of any period of extended treatment or
1909 training, and at any time the Department of Children and Family
1910 Services, through its service provider, determines the child has
1911 attained competency or no longer meets the criteria for secure
1912 placement, or at such shorter intervals as ordered by the court.
1913 A copy of a written report evaluating the child's competency
1914 must be filed by the provider with the court and with the state

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attorney, the child's attorney, the department, and the
Department of Children and Family Services.

(6) (a) If a child is determined to have mental illness,
intellectual disability ~~mental retardation~~, or autism 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 50. Section 985.195, Florida Statutes, is amended
to read:

985.195 Transfer to other treatment services.—Any child
committed to the department may be transferred to intellectual
disability ~~retardation~~, mental health, or substance abuse
treatment facilities for diagnosis and evaluation pursuant to
chapter 393, chapter 394, or chapter 397, as ~~whichever is~~
applicable, for up to ~~a period not to exceed~~ 90 days.

Section 51. Paragraph (b) of subsection (1) of section
985.61, Florida Statutes, is amended to read:

985.61 Early delinquency intervention program; criteria.—

(1) The Department of Juvenile Justice shall, contingent
upon specific appropriation and with the cooperation of local
law enforcement agencies, the judiciary, district school board
personnel, the office of the state attorney, the office of the
public defender, the Department of Children and Family Services,
and community service agencies that work with children,
establish an early delinquency intervention program, the

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1944 components of which shall include, but not be limited to:

1945 (b) Treatment modalities, including substance abuse
1946 treatment services, mental health services, and ~~retardation~~
1947 services for intellectual disabilities.

1948 Section 52. It is the intent of the Legislature that this
1949 act not expand or contract the scope or application of any
1950 provision of the Florida Statutes. This act may not be construed
1951 to change the application of any provision of Florida Statutes
1952 to any person.

1953 Section 53. This act shall take effect July 1, 2012.