

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 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 ~~with mental retardation~~ throughout proceedings conducted
148 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 shall be provided by any appropriate
201 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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Section 6. Section 92.55, Florida Statutes, is amended to read:

92.55 Judicial or other proceedings involving a victim or witness under the age of 16 or who has an intellectual disability ~~person with mental retardation~~; special protections.—

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

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

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

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

(2) In ruling upon the motion, the court shall take into consideration:

(a) The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the

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233 defendant's presence, and any other fact that the court deems
234 relevant; or

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

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

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

259 320.10 Exemptions.—

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

261 (a) Any motor vehicle or mobile home owned by, and operated

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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, 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

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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; 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.

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

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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 (20) through (31) 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.

~~(21)~~ ~~(20)~~ "Intermediate care facility for the developmentally disabled" or "ICF/DD" means a residential facility licensed and certified under ~~pursuant to~~ part VIII of chapter 400.

~~(22)~~ ~~(21)~~ "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.

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349 (23)~~(22)~~ "Personal care services" means individual
350 assistance with or supervision of essential activities of daily
351 living for self-care, including ambulation, bathing, dressing,
352 eating, grooming, and toileting, and other similar services that
353 are incidental to the care furnished and essential to the
354 health, safety, and welfare of the client if ~~when there is~~ no
355 one else is available to perform those services.

356 (24)~~(23)~~ "Prader-Willi syndrome" means an inherited
357 condition typified by neonatal hypotonia with failure to thrive,
358 hyperphagia or an excessive drive to eat which leads to obesity
359 usually at 18 to 36 months of age, mild to moderate mental
360 retardation, hypogonadism, short stature, mild facial
361 dysmorphism, and a characteristic neurobehavior.

362 (25)~~(24)~~ "Relative" means an individual who is connected by
363 affinity or consanguinity to the client and who is 18 years of
364 age or older.

365 (26)~~(25)~~ "Resident" means a any person who has a with
366 developmental disability and resides ~~disabilities residing~~ at a
367 residential facility, whether or not such person is a client of
368 the agency.

369 (27)~~(26)~~ "Residential facility" means a facility providing
370 room and board and personal care for persons who have ~~with~~
371 developmental disabilities.

372 (28)~~(27)~~ "Residential habilitation" means supervision and
373 training with the acquisition, retention, or improvement in
374 skills related to activities of daily living, such as personal
375 hygiene skills, homemaking skills, and the social and adaptive
376 skills necessary to enable the individual to reside in the
377 community.

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378 (29)~~(28)~~ "Residential habilitation center" means a
379 community residential facility licensed under this chapter which
380 provides habilitation services. The capacity of such a facility
381 may ~~shall~~ not be fewer than nine residents. After October 1,
382 1989, new residential habilitation centers may not be licensed
383 and the licensed capacity for any existing residential
384 habilitation center may not be increased.

385 (30)~~(29)~~ "Respite service" means appropriate, short-term,
386 temporary care that is provided to a person who has a ~~with~~
387 developmental disability in order ~~disabilities~~ to meet the
388 planned or emergency needs of the person or the family or other
389 direct service provider.

390 (31)~~(30)~~ "Restraint" means a physical device, method, or
391 drug used to control dangerous behavior.

392 (a) A physical restraint is any manual method or physical
393 or mechanical device, material, or equipment attached or
394 adjacent to an ~~the~~ individual's body so that he or she cannot
395 easily remove the restraint and which restricts freedom of
396 movement or normal access to one's body.

397 (b) A drug used as a restraint is a medication used to
398 control the person's behavior or to restrict his or her freedom
399 of movement and is not a standard treatment for the person's
400 medical or psychiatric condition. Physically holding a person
401 during a procedure to forcibly administer psychotropic
402 medication is a physical restraint.

403 (c) Restraint does not include physical devices, such as
404 orthopedically prescribed appliances, surgical dressings and
405 bandages, supportive body bands, or other physical holding ~~when~~
406 necessary for routine physical examinations and tests; for

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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.

~~(20) (31)~~ "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 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

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with and have the same meaning as the terms "mental retardation" or "retardation" and "mentally retarded" as defined in s. 393.063 before July 1, 2011.

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 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

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465 address of the person who has an intellectual disability ~~with~~
466 ~~mental retardation~~ or autism;

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

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

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

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

481 (3) NOTICE.—

482 (b) ~~If Whenever~~ a motion or petition has been filed
483 pursuant to s. 916.303 to dismiss criminal charges against a
484 defendant who has an intellectual disability ~~with retardation~~ or
485 autism, and a petition is filed to involuntarily admit the
486 defendant to residential services under this section, the notice
487 of the filing of the petition must ~~shall~~ also be given to the
488 defendant's attorney, the state attorney of the circuit from
489 which the defendant was committed, and the agency.

490 (c) The notice must ~~shall~~ state that a hearing shall be set
491 to inquire into the need of the person who has an intellectual
492 disability ~~with mental retardation~~ or autism for involuntary
493 residential services. The notice must ~~shall~~ also state the date

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of the hearing on the petition.

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

(4) AGENCY PARTICIPATION.—

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

(5) EXAMINING COMMITTEE.—

(b) The court shall appoint at least ~~no fewer than~~ three disinterested experts who have demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities ~~with mental retardation~~. The committee must include at least one licensed and qualified physician, one licensed and qualified psychologist, and one qualified professional who, at with a minimum, has ~~of~~ a masters degree in social work, special education, or vocational rehabilitation counseling, to examine the person and to testify at the hearing on the involuntary admission to residential services.

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

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

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

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

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

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

3. The purpose to be served by residential care;

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

5. The appropriate care, habilitation, and treatment.

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

(g) Members of the examining committee shall receive a
reasonable fee to be determined by the court. The fees shall ~~are~~

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to be paid from the general revenue fund of the county in which the person who has the intellectual disability ~~with mental retardation~~ resided when the petition was filed.

(6) COUNSEL; GUARDIAN AD LITEM.—

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

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

(7) HEARING.—

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

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(8) ORDER.—

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

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

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

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

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

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

(10) COMPETENCY.—

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

(b) The issue of the competency of a person who has an intellectual disability ~~with mental retardation~~ for purposes of assigning guardianship shall be determined in a separate proceeding according to the procedures and requirements of chapter 744. The issue of the competency of a person who has an

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intellectual disability ~~with mental retardation~~ or autism for purposes of determining whether the person is competent to proceed in a criminal trial shall be determined in accordance with chapter 916.

(12) APPEAL.—

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

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

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

(18) "Mental illness" means an impairment of the mental or 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~~ 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

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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.~~

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

(a) A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body so that he or she cannot 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. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

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(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.

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

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

~~(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.~~

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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.

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

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

(16) "Person who has a significant disability" means an individual who has a disability that is a severe physical or mental impairment that seriously limits one or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of an employment outcome; whose vocational rehabilitation may be expected to require multiple vocational rehabilitation services over an extended period of time; and who has one or more physical or mental disabilities resulting from

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726 amputation, arthritis, autism, blindness, burn injury, cancer,
727 cerebral palsy, cystic fibrosis, deafness, head injury, heart
728 disease, hemiplegia, hemophilia, respiratory or pulmonary
729 dysfunction, intellectual disability ~~mental retardation~~, mental
730 illness, multiple sclerosis, muscular dystrophy, musculoskeletal
731 disorder, neurological disorder, including stroke and epilepsy,
732 paraplegia, quadriplegia, or other spinal cord condition,
733 sickle-cell anemia, specific learning disability, end-stage
734 renal disease, or another disability or a combination of
735 disabilities that is determined, after an assessment for
736 determining eligibility and vocational rehabilitation needs, to
737 cause comparable substantial functional limitation.

738 Section 16. Paragraph (a) of subsection (6) of section
739 440.49, Florida Statutes, is amended to read:

740 440.49 Limitation of liability for subsequent injury
741 through Special Disability Trust Fund.—

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

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

748 1. Epilepsy.

749 2. Diabetes.

750 3. Cardiac disease.

751 4. Amputation of foot, leg, arm, or hand.

752 5. Total loss of sight of one or both eyes or a partial
753 loss of corrected vision of more than 75 percent bilaterally.

754 6. Residual disability from poliomyelitis.

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- 755 7. Cerebral palsy.
756 8. Multiple sclerosis.
757 9. Parkinson's disease.
758 10. Meniscectomy.
759 11. Patellectomy.
760 12. Ruptured cruciate ligament.
761 13. Hemophilia.
762 14. Chronic osteomyelitis.
763 15. Surgical or spontaneous fusion of a major weight-
764 bearing joint.
765 16. Hyperinsulinism.
766 17. Muscular dystrophy.
767 18. Thrombophlebitis.
768 19. Herniated intervertebral disk.
769 20. Surgical removal of an intervertebral disk or spinal
770 fusion.
771 21. One or more back injuries or a disease process of the
772 back resulting in disability over a total of 120 or more days,
773 if substantiated by a doctor's opinion that there was a
774 preexisting impairment to the claimant's back.
775 22. Total deafness.
776 23. Intellectual disability if ~~Mental retardation, provided~~
777 the employee's intelligence quotient is such that she or he
778 falls within the lowest 2 percentile of the general population.
779 However, ~~it shall not be necessary for~~ the employer does not
780 need to know the employee's actual intelligence quotient or
781 actual relative ranking in relation to the intelligence quotient
782 of the general population.
783 24. Any permanent physical condition that ~~which~~, before

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784 ~~prior to~~ the industrial accident or occupational disease,
785 constitutes a 20 percent ~~20-percent~~ impairment of a member or of
786 the body as a whole.

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

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

797 Section 17. Paragraph (g) of subsection (1) of section
798 499.0054, Florida Statutes, is amended to read:

799 499.0054 Advertising and labeling of drugs, devices, and
800 cosmetics; exemptions.—

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

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

- 807 1. Blood disorders.
- 808 2. Bone or joint diseases.
- 809 3. Kidney diseases or disorders.
- 810 4. Cancer.
- 811 5. Diabetes.
- 812 6. Gall bladder diseases or disorders.

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- 813 7. Heart and vascular diseases.
- 814 8. High blood pressure.
- 815 9. Diseases or disorders of the ear or auditory apparatus,
- 816 including hearing loss or deafness.
- 817 10. Mental disease or intellectual disability ~~mental~~
- 818 ~~retardation~~.
- 819 11. Paralysis.
- 820 12. Prostate gland disorders.
- 821 13. Conditions of the scalp affecting hair loss.
- 822 14. Baldness.
- 823 15. Endocrine disorders.
- 824 16. Sexual impotence.
- 825 17. Tumors.
- 826 18. Venereal diseases.
- 827 19. Varicose ulcers.
- 828 20. Breast enlargement.
- 829 21. Purifying blood.
- 830 22. Metabolic disorders.
- 831 23. Immune system disorders or conditions affecting the
- 832 immune system.
- 833 24. Extension of life expectancy.
- 834 25. Stress and tension.
- 835 26. Brain stimulation or performance.
- 836 27. The body's natural defense mechanisms.
- 837 28. Blood flow.
- 838 29. Depression.
- 839 30. Human immunodeficiency virus or acquired immune
- 840 deficiency syndrome or related disorders or conditions.
- 841 Section 18. Section 514.072, Florida Statutes, is amended

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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 receiving certification under s. 514.071.

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

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

(1) A hospital or medical expense insurance policy or health care services plan contract that is delivered or issued for delivery in this state and that provides that coverage of a dependent child 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

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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 policyholder or subscriber 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 policyholder has the burden of establishing that the child continues to meet the criteria specified in subsection ~~subsections~~ (1) ~~and (2)~~.

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

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

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

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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 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

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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 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~~

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958 ~~retardation.~~

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

961 849.04 Permitting minors and persons under guardianship to
962 gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.
963 O., keno or pool table, or billiard table, wheel of fortune, or
964 other game of chance, kept for the purpose of betting, who
965 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is
966 mentally incompetent or under guardianship to play at such game
967 or to bet on such game of chance; or whoever aids or abets or
968 otherwise encourages such playing or betting of any money or
969 other valuable thing upon the result of such game of chance by a
970 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under
971 guardianship, commits ~~shall be guilty of~~ a felony of the third
972 degree, punishable as provided in s. 775.082, s. 775.083, or s.
973 775.084. For the purpose of this section, the term a "person who
974 is mentally incompetent person" means a person ~~is one~~ who
975 because of mental illness, intellectual disability ~~mental~~
976 ~~retardation~~, senility, excessive use of drugs or alcohol, or
977 other mental incapacity is incapable of ~~either~~ managing his or
978 her property or caring for himself or herself or both.

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

981 914.16 Child abuse and sexual abuse of victims under age 16
982 or who have an intellectual disability ~~persons with mental~~
983 ~~retardation~~; limits on interviews. ~~The chief judge of each~~
984 judicial circuit, after consultation with the state attorney and
985 the public defender for the judicial circuit, the appropriate
986 chief law enforcement officer, and any other person deemed

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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.~~—

(1) A guardian ad litem or other advocate shall be
appointed by the court to represent a minor in any criminal
proceeding if the minor is a victim of or witness to child abuse
or neglect, ~~or if the minor is~~ a victim of a sexual offense, or
a witness to a sexual offense committed against another minor.
The court may appoint a guardian ad litem or other advocate in
any other criminal proceeding in which a minor is involved as
~~either~~ a victim or a witness. The guardian ad litem or other
advocate shall have full access to all evidence and reports
introduced during the proceedings, may interview witnesses, may
make recommendations to the court, shall be noticed and have the
right to appear on behalf of the minor at all proceedings, and

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may request additional examinations by medical doctors,
psychiatrists, or psychologists. ~~It is the duty of~~ The guardian
ad litem or other advocate shall ~~to perform the following~~
~~services:~~

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

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

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

(2) An advocate shall be appointed by the court to
represent a person who has an intellectual disability ~~with~~
~~mental retardation~~ as defined in s. 393.063 in any criminal
proceeding if the person ~~with mental retardation~~ is a victim of
or witness to abuse or neglect, ~~or if the person with mental~~
~~retardation is~~ a victim of a sexual offense, or a witness to a
sexual offense committed against a minor or person who has an
intellectual disability ~~with mental retardation~~. The court may
appoint an advocate in any other criminal proceeding in which
such a person ~~with mental retardation~~ is involved as ~~either~~ a
victim or a witness. The advocate shall have full access to all
evidence and reports introduced during the proceedings, may
interview witnesses, may make recommendations to the court,
shall be noticed and have the right to appear on behalf of the
person ~~with mental retardation~~ at all proceedings, and may
request additional examinations by medical doctors,
psychiatrists, or psychologists. ~~It is the duty of~~ The advocate

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shall ~~to perform the following services:~~

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

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

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

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

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

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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 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 (10) through (17) of section 916.106, Florida Statutes, are reordered and amended to read:

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

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term:

(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 any material stage of a criminal proceeding, which includes ~~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)~~ "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

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1132 ability to meet the ordinary demands of living. For the purposes
1133 of this chapter, the term does not apply to defendants who have
1134 only an intellectual disability ~~with only mental retardation~~ or
1135 autism and does not include intoxication or conditions
1136 manifested only by antisocial behavior or substance abuse
1137 impairment.

1138 (15) ~~(14)~~ "Restraint" means a physical device, method, or
1139 drug used to control dangerous behavior.

1140 (a) A physical restraint is any manual method or physical
1141 or mechanical device, material, or equipment attached or
1142 adjacent to a person's body so that he or she cannot easily
1143 remove the restraint and that restricts freedom of movement or
1144 normal access to one's body.

1145 (b) A drug used as a restraint is a medication used to
1146 control the person's behavior or to restrict his or her freedom
1147 of movement and not part of the standard treatment regimen of
1148 the person with a diagnosed mental illness who is a client of
1149 the department. Physically holding a person during a procedure
1150 to forcibly administer psychotropic medication is a physical
1151 restraint.

1152 (c) Restraint does not include physical devices, such as
1153 orthopedically prescribed appliances, surgical dressings and
1154 bandages, supportive body bands, or other physical holding ~~when~~
1155 necessary for routine physical examinations and tests; for
1156 purposes of orthopedic, surgical, or other similar medical
1157 treatment; ~~when used~~ to provide support for the achievement of
1158 functional body position or proper balance; or ~~when used~~ to
1159 protect a person from falling out of bed.

1160 (13) ~~(15)~~ "Intellectual disability" ~~"Retardation"~~ has the

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1161 same meaning as in s. 393.063.

1162 (16) "Seclusion" means the physical segregation of a person
1163 in any fashion or the involuntary isolation of a person in a
1164 room or area from which the person is prevented from leaving.
1165 The prevention may be by physical barrier or by a staff member
1166 who is acting in a manner, or who is physically situated, so as
1167 to prevent the person from leaving the room or area. For
1168 purposes of this chapter, the term does not mean isolation due
1169 to a person's medical condition or symptoms, the confinement in
1170 a forensic facility to a bedroom or area during normal hours of
1171 sleep when there is not an active order for seclusion, or during
1172 an emergency such as a riot or hostage situation when clients
1173 may be temporarily placed in their rooms for their own safety.

1174 (17) "Social service professional" means a person whose
1175 minimum qualifications include a bachelor's degree and at least
1176 2 years of social work, clinical practice, special education,
1177 habilitation, or equivalent experience working directly with
1178 persons who have intellectual disabilities ~~with retardation~~,
1179 autism, or other developmental disabilities.

1180 Section 29. Paragraph (a) of subsection (1) and paragraph
1181 (a) of subsection (3) of section 916.107, Florida Statutes, are
1182 amended to read:

1183 916.107 Rights of forensic clients.—

1184 (1) RIGHT TO INDIVIDUAL DIGNITY.—

1185 (a) The policy of the state is that the individual dignity
1186 of the client shall be respected at all times and upon all
1187 occasions, including any occasion when the forensic client is
1188 detained, transported, or treated. Clients with mental illness,
1189 intellectual disability ~~retardation~~, or autism and who are

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1190 charged with committing felonies shall receive appropriate
1191 treatment or training. In a criminal case involving a client who
1192 has been adjudicated incompetent to proceed or not guilty by
1193 reason of insanity, a jail may be used as an emergency facility
1194 for up to 15 days following the date the department or agency
1195 receives a completed copy of the court commitment order
1196 containing all documentation required by the applicable Florida
1197 Rules of Criminal Procedure. For a forensic client who is held
1198 in a jail awaiting admission to a facility of the department or
1199 agency, evaluation and treatment or training may be provided in
1200 the jail by the local community mental health provider for
1201 mental health services, by the developmental disabilities
1202 program for persons with intellectual disability ~~retardation~~ or
1203 autism, the client's physician or psychologist, or any other
1204 appropriate program until the client is transferred to a civil
1205 or forensic facility.

1206 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

1207 (a) A forensic client shall be asked to give express and
1208 informed written consent for treatment. If a client refuses such
1209 treatment as is deemed necessary and essential by the client's
1210 multidisciplinary treatment team for the appropriate care of the
1211 client, such treatment may be provided under the following
1212 circumstances:

1213 1. In an emergency situation in which there is immediate
1214 danger to the safety of the client or others, such treatment may
1215 be provided upon the written order of a physician for a period
1216 not to exceed 48 hours, excluding weekends and legal holidays.
1217 If, after the 48-hour period, the client has not given express
1218 and informed consent to the treatment initially refused, the

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1219 administrator or designee of the civil or forensic facility
1220 shall, within 48 hours, excluding weekends and legal holidays,
1221 petition the committing court or the circuit court serving the
1222 county in which the facility is located, at the option of the
1223 facility administrator or designee, for an order authorizing the
1224 continued treatment of the client. In the interim, the need for
1225 treatment shall be reviewed every 48 hours and may be continued
1226 without the consent of the client upon the continued written
1227 order of a physician who has determined that the emergency
1228 situation continues to present a danger to the safety of the
1229 client or others.

1230 2. In a situation other than an emergency situation, the
1231 administrator or designee of the facility shall petition the
1232 court for an order authorizing necessary and essential treatment
1233 for the client. The order shall allow such treatment for a
1234 period not to exceed 90 days following the date of the entry of
1235 the order. Unless the court is notified in writing that the
1236 client has provided express and informed consent in writing or
1237 that the client has been discharged by the committing court, the
1238 administrator or designee shall, before ~~prior to~~ the expiration
1239 of the initial 90-day order, petition the court for an order
1240 authorizing the continuation of treatment for another 90-day
1241 period. This procedure shall be repeated until the client
1242 provides consent or is discharged by the committing court.

1243 3. At the hearing on the issue of whether the court should
1244 enter an order authorizing treatment for which a client was
1245 unable to or refused to give express and informed consent, the
1246 court shall determine by clear and convincing evidence that the
1247 client has mental illness, intellectual disability ~~retardation~~,

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

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

Section 31. Subsections (1) and (2) of section 916.301,

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Florida Statutes, are amended to read:

916.301 Appointment of experts.—

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

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

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

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

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

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1306 2. The social service professional shall provide a social
1307 and developmental history of the defendant.

1308 Section 32. Subsections (1), (2), and (4) of section
1309 916.3012, Florida Statutes, are amended to read:

1310 916.3012 Mental competence to proceed.—

1311 (1) A defendant whose suspected mental condition is
1312 intellectual disability ~~retardation~~ or autism is incompetent to
1313 proceed within the meaning of this chapter if the defendant does
1314 not have sufficient present ability to consult with the
1315 defendant's lawyer with a reasonable degree of rational
1316 understanding or if the defendant has no rational, as well as
1317 factual, understanding of the proceedings against the defendant.

1318 (2) Experts in intellectual disability ~~retardation~~ or
1319 autism appointed pursuant to s. 916.301 shall first consider
1320 whether the defendant meets the definition of intellectual
1321 disability ~~retardation~~ or autism and, if so, consider the
1322 factors related to the issue of whether the defendant meets the
1323 criteria for competence to proceed as described in subsection
1324 (1).

1325 (4) If the experts ~~should~~ find that the defendant is
1326 incompetent to proceed, the experts shall report on any
1327 recommended training for the defendant to attain competence to
1328 proceed. In considering the issues relating to training, the
1329 examining experts shall specifically report on:

1330 (a) The intellectual disability ~~retardation~~ or autism
1331 causing the incompetence;

1332 (b) The training appropriate for the intellectual
1333 disability ~~retardation~~ or autism of the defendant and an
1334 explanation of each of the possible training alternatives in

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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 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

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1364 inappropriate; and

1365 (d) There is a substantial probability that the
1366 intellectual disability ~~retardation~~ or autism causing the
1367 defendant's incompetence will respond to training and the
1368 defendant will regain competency to proceed in the reasonably
1369 foreseeable future.

1370 (2) ADMISSION TO A FACILITY.—

1371 (a) A defendant who has been charged with a felony and who
1372 is found to be incompetent to proceed due to intellectual
1373 disability ~~retardation~~ or autism, and who meets the criteria for
1374 involuntary commitment to the agency under ~~the provisions of~~
1375 this chapter, shall be committed to the agency, and the agency
1376 shall retain and provide appropriate training for the defendant.
1377 Within ~~No later than~~ 6 months after the date of admission or at
1378 the end of any period of extended commitment or at any time the
1379 administrator or designee determines ~~shall have determined~~ that
1380 the defendant has regained competency to proceed or no longer
1381 meets the criteria for continued commitment, the administrator
1382 or designee shall file a report with the court pursuant to this
1383 chapter and the applicable Florida Rules of Criminal Procedure.

1384 (b) A defendant determined to be incompetent to proceed due
1385 to intellectual disability ~~retardation~~ or autism may be ordered
1386 by a circuit court into a forensic facility designated by the
1387 agency for defendants who have an intellectual disability ~~mental~~
1388 ~~retardation~~ or autism.

1389 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

1390 (a) If a defendant has both an intellectual disability
1391 ~~mental retardation~~ or autism and ~~has~~ a mental illness,
1392 evaluations must address which condition is primarily affecting

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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 incompetent to proceed due to intellectual disability ~~retardation~~ or autism shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 years, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within

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1422 which the defendant is expected to become competent to proceed.
1423 The charges may be refiled by the state if the defendant is
1424 declared competent to proceed in the future.

1425 (2) If the charges are dismissed and if the defendant is
1426 considered to lack sufficient capacity to give express and
1427 informed consent to a voluntary application for services and
1428 lacks the basic survival and self-care skills to provide for his
1429 or her well-being or is likely to physically injure himself or
1430 herself or others if allowed to remain at liberty, the agency,
1431 the state attorney, or the defendant's attorney shall apply to
1432 the committing court to involuntarily admit the defendant to
1433 residential services pursuant to s. 393.11.

1434 (3) If the defendant is considered to need involuntary
1435 residential services for reasons described in subsection (2)
1436 and, further, there is a substantial likelihood that the
1437 defendant will injure another person or continues to present a
1438 danger of escape, and all available less restrictive
1439 alternatives, including services in community residential
1440 facilities or other community settings, which would offer an
1441 opportunity for improvement of the condition have been judged to
1442 be inappropriate, the agency, the state attorney, or the
1443 defendant's counsel may request the committing court to continue
1444 the defendant's placement in a secure facility pursuant to this
1445 part. Any placement so continued ~~under this subsection~~ must be
1446 reviewed by the court at least annually at a hearing. The annual
1447 review and hearing must ~~shall~~ determine whether the defendant
1448 continues to meet the criteria described in this subsection and,
1449 if so, whether the defendant still requires involuntary
1450 placement in a secure facility and whether the defendant is

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1451 receiving adequate care, treatment, habilitation, and
1452 rehabilitation, including psychotropic medication and behavioral
1453 programming. Notice of the annual review and review hearing
1454 shall be given to the state attorney and the defendant's
1455 attorney. ~~In no instance may~~ A defendant's placement in a secure
1456 facility may not exceed the maximum sentence for the crime for
1457 which the defendant was charged.

1458 Section 36. Subsection (1) of section 916.304, Florida
1459 Statutes, is amended to read:

1460 916.304 Conditional release.—

1461 (1) Except for an inmate currently serving a prison
1462 sentence, the committing court may order a conditional release
1463 of any defendant who has been found to be incompetent to proceed
1464 due to intellectual disability ~~retardation~~ or autism, based on
1465 an approved plan for providing community-based training. The
1466 committing criminal court may order a conditional release of any
1467 defendant to a civil facility in lieu of an involuntary
1468 commitment to a forensic facility pursuant to s. 916.302. Upon a
1469 recommendation that community-based training for the defendant
1470 is appropriate, a written plan for community-based training,
1471 including recommendations from qualified professionals, may be
1472 filed with the court, with copies to all parties. Such a plan
1473 may also be submitted by the defendant and filed with the court,
1474 with copies to all parties. The plan must include:

1475 (a) Special provisions for residential care and adequate
1476 supervision of the defendant, including recommended location of
1477 placement.

1478 (b) Recommendations for auxiliary services such as
1479 vocational training, psychological training, educational

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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. Subsection (1) of section 918.16, Florida Statutes, is amended to read:

918.16 Sex offenses; testimony of person under age 16 or 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, when any person under the age of 16 or any person with 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 reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney's office.

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

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1509 disabled" or "intellectual disability" ~~"mental retardation"~~
1510 means significantly subaverage general intellectual functioning
1511 existing concurrently with deficits in adaptive behavior and
1512 manifested during the period from conception to age 18. The term
1513 "significantly subaverage general intellectual functioning," for
1514 the purpose of this section, means performance that is two or
1515 more standard deviations from the mean score on a standardized
1516 intelligence test specified in the rules of the Agency for
1517 Persons with Disabilities. The term "adaptive behavior," for the
1518 purpose of this definition, means the effectiveness or degree
1519 with which an individual meets the standards of personal
1520 independence and social responsibility expected of his or her
1521 age, cultural group, and community. The Agency for Persons with
1522 Disabilities shall adopt rules to specify the standardized
1523 intelligence tests as provided in this subsection.

1524 (2) A sentence of death may not be imposed upon a defendant
1525 convicted of a capital felony if it is determined in accordance
1526 with this section that the defendant is intellectually disabled
1527 ~~has mental retardation~~.

1528 (3) A defendant charged with a capital felony who intends
1529 to raise intellectual disability ~~mental retardation~~ as a bar to
1530 the death sentence must give notice of such intention in
1531 accordance with the rules of court governing notices of intent
1532 to offer expert testimony regarding mental health mitigation
1533 during the penalty phase of a capital trial.

1534 (4) After a defendant who has given notice of his or her
1535 intention to raise intellectual disability ~~mental retardation~~ as
1536 a bar to the death sentence is convicted of a capital felony and
1537 an advisory jury has returned a recommended sentence of death,

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

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

(6) If, following a recommendation by an advisory jury that the defendant be sentenced to life imprisonment, the state

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intends to request the court to order that the defendant be sentenced to death, the state must inform the defendant of such request if the defendant has notified the court of his or her intent to raise intellectual disability ~~mental retardation~~ as a bar to the death sentence. After receipt of the notice from the state, the defendant may file a motion requesting a determination by the court of whether the defendant is intellectually disabled ~~has mental retardation~~. Upon granting the motion, the court shall proceed as provided in subsection (4).

(7) Pursuant to s. 924.07, the state may appeal, ~~pursuant to s. 924.07,~~ a determination of intellectual disability ~~mental retardation~~ made under subsection (4).

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

(9) For purposes of the application of the criminal laws and procedural rules of this state to 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 those terms were defined before July 1, 2011.

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

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

(2) For the purpose of this section:

(b) A "mentally incompetent person" is one who because of

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1596 mental illness, intellectual disability ~~mental retardation~~,
1597 senility, excessive use of drugs or alcohol, or other mental
1598 incapacity is incapable of ~~either~~ managing his or her property
1599 or caring for himself or herself or both.

1600 Section 40. Section 944.602, Florida Statutes, is amended
1601 to read:

1602 944.602 Agency notification before release of
1603 intellectually disabled ~~mentally retarded~~ inmates.—Before the
1604 release by parole, release by reason of gain-time allowances
1605 provided for in s. 944.291, or expiration of sentence of any
1606 inmate who has been diagnosed as having an intellectual
1607 disability ~~mentally retarded~~ as defined in s. 393.063, the
1608 Department of Corrections shall notify the Agency for Persons
1609 with Disabilities in order that sufficient time be allowed to
1610 notify the inmate or the inmate's representative, in writing, at
1611 least 7 days before ~~prior to~~ the inmate's release, of available
1612 community services.

1613 Section 41. Subsection (2) of section 945.025, Florida
1614 Statutes, is amended to read:

1615 945.025 Jurisdiction of department.—

1616 (2) In establishing, operating, and using ~~utilizing~~ these
1617 facilities, the department shall attempt, whenever possible, to
1618 avoid the placement of nondangerous offenders who have potential
1619 for rehabilitation with repeat offenders or dangerous offenders.
1620 Medical, mental, and psychological problems must ~~shall~~ be
1621 diagnosed and treated whenever possible. The Department of
1622 Children and Family Services and the Agency for Persons with
1623 Disabilities shall cooperate to ensure the delivery of services
1624 to persons under the custody or supervision of the department.

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1625 ~~If~~ ~~When it is the intent of the department~~ intends to transfer a
1626 ~~mentally ill or retarded~~ prisoner who has a mental illness or
1627 intellectual disability to the Department of Children and Family
1628 Services or the Agency for Persons with Disabilities, an
1629 involuntary commitment hearing shall be held in accordance with
1630 ~~according to the provisions of~~ chapter 393 or chapter 394.

1631 Section 42. Subsection (5) of section 945.12, Florida
1632 Statutes, is amended to read:

1633 945.12 Transfers for rehabilitative treatment.—

1634 (5) When the department plans to release a mentally ill or
1635 intellectually disabled ~~retarded~~ offender, an involuntary
1636 commitment hearing shall be held as soon as possible before
1637 ~~prior to his or her release in accordance with, according to the~~
1638 ~~provisions of~~ chapter 393 or chapter 394.

1639 Section 43. Subsection (9) of section 945.42, Florida
1640 Statutes, is amended to read:

1641 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
1642 945.40-945.49, the following terms shall have the meanings
1643 ascribed to them, unless the context shall clearly indicate
1644 otherwise:

1645 (9) "Mentally ill" means an impairment of the mental or
1646 emotional processes ~~that, of the ability to~~ exercise conscious
1647 control of one's actions, ~~or of the ability to~~ perceive or
1648 understand reality, which impairment substantially interferes
1649 with the ~~a~~ person's ability to meet the ordinary demands of
1650 living. However, ~~regardless of etiology, except that,~~ for the
1651 purposes of transferring ~~transfer of~~ an inmate to a mental
1652 health treatment facility, the term does not include a
1653 ~~retardation or~~ developmental disability as defined in chapter

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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, apply for services from the Agency for Persons with Disabilities.

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

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

(4) A judge may order that a child alleged to be or adjudicated a child in need of services be treated by a licensed health care professional. The judge may also order such child to receive mental health 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, ~~then~~ the procedures and criteria established in s. 394.467 or chapter 393 shall be used, as whichever is applicable. A child may be provided ~~mental health or retardation~~ services in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1) or chapter 393, as ~~whichever is~~ applicable.

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

985.14 Intake and case management system.—

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

(a) An individualized, multidisciplinary assessment process that identifies the priority needs of each ~~individual~~ child for rehabilitation and treatment and identifies any needs of the child's parents or guardians for services that would enhance their ability to provide adequate support, guidance, and supervision for the child. This process begins ~~shall begin~~ with the detention risk assessment instrument and decision, includes ~~shall include~~ the intake preliminary screening and comprehensive assessment for substance abuse treatment services, mental health services, intellectual disability ~~retardation~~ services, literacy services, and other educational and treatment services as components, additional assessment of the child's treatment needs, and classification regarding the child's risks to the community and, for a serious or habitual delinquent child, includes ~~shall include the~~ assessment for placement in a serious or habitual delinquent children program under s. 985.47. The completed multidisciplinary assessment process must ~~shall~~ result in the predisposition report.

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

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

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

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

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(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 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, 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

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

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

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

985.19 Incompetency in juvenile delinquency cases.—

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

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

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

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1828 misdemeanor if committed by an adult, may not be committed to
1829 the department or to the Department of Children and Family
1830 Services for restoration-of-competency treatment or training
1831 services.

1832 (3) If the court finds that a child has mental illness,
1833 intellectual disability ~~mental retardation~~, or autism and
1834 adjudicates the child incompetent to proceed, the court must
1835 also determine whether the child meets the criteria for secure
1836 placement. A child may be placed in a secure facility or program
1837 if the court makes a finding by clear and convincing evidence
1838 that:

1839 (a) The child has mental illness, intellectual disability
1840 ~~mental retardation~~, or autism and because of the mental illness,
1841 intellectual disability ~~mental retardation~~, or autism:

1842 1. The child is manifestly incapable of surviving with the
1843 help of willing and responsible family or friends, including
1844 available alternative services, and without treatment or
1845 training the child is likely to ~~either~~ suffer from neglect or
1846 refuse to care for self, and such neglect or refusal poses a
1847 real and present threat of substantial harm to the child's well-
1848 being; or

1849 2. There is a substantial likelihood that in the near
1850 future the child will inflict serious bodily harm on self or
1851 others, as evidenced by recent behavior causing, attempting, or
1852 threatening such harm; and

1853 (b) All available less restrictive alternatives, including
1854 treatment or training in community residential facilities or
1855 community settings which would offer an opportunity for
1856 improvement of the child's condition, are inappropriate.

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

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

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

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

(d) The purpose of the treatment or training is the

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restoration of the child's competency to proceed.

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

(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~~

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

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

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

Section 53. This act shall take effect July 1, 2011.