

By Senator Haridopolos

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1                                   A bill to be entitled  
2           An act relating to intellectual disabilities; amending  
3           s. 39.502, F.S.; substituting the Arc of Florida for  
4           the Association for Retarded Citizens; amending ss.  
5           40.013, 86.041, 92.53, 92.54, and 92.55, F.S.;  
6           substituting the term "intellectual disability" for  
7           the term "mental retardation"; amending s. 320.10,  
8           F.S.; substituting the Arc of Florida for the  
9           Association for Retarded Citizens; amending ss.  
10          383.14, 393.063, 393.11, and 394.455, F.S.;  
11          substituting the term "intellectual disability" for  
12          the term "mental retardation"; amending s. 400.960,  
13          F.S.; revising definitions relating to intermediate  
14          care facilities for the developmentally disabled to  
15          delete unused terms; amending s. 408.032, F.S.;  
16          conforming a cross-reference; amending ss. 413.20,  
17          440.49, and 499.0054, F.S.; substituting the term  
18          "intellectual disability" for the term "mental  
19          retardation"; amending s. 514.072, F.S.; conforming a  
20          cross-reference and deleting obsolete provisions;  
21          amending ss. 627.6041, 627.6615, 641.31, 650.05,  
22          765.204, 849.04, 914.16, 914.17, 916.105, and 916.106,  
23          F.S.; substituting the term "intellectual disability"  
24          for the term "mental retardation"; providing a  
25          directive to the Division of Statutory Revision;  
26          amending ss. 916.301, 916.3012, 916.302, 916.3025,  
27          916.303, 916.304, 921.137, 941.38, 944.602, 945.025,  
28          945.12, 945.42, 947.185, 984.19, 985.14, 985.145,  
29          985.18, 985.19, 985.195, and 985.61, F.S.;

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30 substituting the term "intellectual disability" for  
31 the term "mental retardation"; providing an effective  
32 date.

33  
34 Be It Enacted by the Legislature of the State of Florida:

35  
36 Section 1. Subsection (15) of section 39.502, Florida  
37 Statutes, is amended to read:

38 39.502 Notice, process, and service.—

39 (15) A party who is identified as a person who has a ~~with~~  
40 mental illness or ~~with~~ a developmental disability must be  
41 informed by the court of the availability of advocacy services  
42 through the department, the Arc of Florida ~~Association for~~  
43 ~~Retarded Citizens~~, or other appropriate mental health or  
44 developmental disability advocacy groups and encouraged to seek  
45 such services.

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

48 40.013 Persons disqualified or excused from jury service.—

49 (9) Any person who is responsible for the care of a person  
50 who, because of mental illness, intellectual disability ~~mental~~  
51 ~~retardation~~, senility, or other physical or mental incapacity,  
52 is incapable of caring for himself or herself shall be excused  
53 from jury service upon request.

54 Section 3. Section 86.041, Florida Statutes, is amended to  
55 read:

56 86.041 Actions by executors, administrators, trustees,  
57 etc.—Any person interested as or through an executor,  
58 administrator, trustee, guardian, or other fiduciary, creditor,

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59 devisee, legatee, heir, next of kin, or cestui que trust, in the  
 60 administration of a trust, a guardianship, or ~~of~~ the estate of a  
 61 decedent, an infant, a mental incompetent, or insolvent may have  
 62 a declaration of rights or equitable or legal relations to in  
 63 ~~respect thereto:~~

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

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

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

72  
 73 For the purpose of this section, a "mental incompetent" is one  
 74 who, because of mental illness, intellectual disability ~~mental~~  
 75 ~~retardation~~, senility, excessive use of drugs or alcohol, or  
 76 other mental incapacity, is incapable of ~~either~~ managing his or  
 77 her property or caring for himself or herself, or both.

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

80 92.53 Videotaping of testimony of a victim or witness under  
 81 age 16 or who has an intellectual disability ~~person with mental~~  
 82 ~~retardation.~~

83 (1) On motion and hearing in camera and a finding that  
 84 there is a substantial likelihood that a victim or witness who  
 85 is under the age of 16 or who has an intellectual disability ~~is~~  
 86 ~~a person with mental retardation~~ as defined in s. 393.063 would  
 87 suffer at least moderate emotional or mental harm due to the

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88 presence of the defendant if such victim or witness ~~the child or~~  
89 ~~person with mental retardation~~ is required to testify in open  
90 court, or ~~that such victim or witness~~ is otherwise unavailable  
91 as defined in s. 90.804(1), the trial court may order the  
92 videotaping of the testimony of the victim or witness in a case,  
93 whether civil or criminal in nature, in which videotaped  
94 testimony is to be used ~~utilized~~ at trial in lieu of trial  
95 testimony in open court.

96 (2) The motion may be filed by:

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

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

100 (c) Any party in a civil proceeding; or

101 (d) The prosecuting attorney or the defendant, or the  
102 defendant's counsel.

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

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

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

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

115 (4) The defendant and the defendant's counsel must ~~shall~~ be  
116 present at the videotaping, unless the defendant has waived this

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117 right. The court may require the defendant to view the testimony  
118 from outside the presence of the child or the person who has an  
119 intellectual disability ~~with mental retardation~~ by means of a  
120 two-way mirror or another similar method that ensures ~~will~~  
121 ~~ensure~~ that the defendant can observe and hear the testimony of  
122 the victim or witness in person, but ~~that~~ the victim or witness  
123 cannot hear or see the defendant. The defendant and the attorney  
124 for the defendant may communicate by any appropriate private  
125 method.

126 (5) Any party, or the court on its own motion, may request  
127 the aid of an interpreter, as provided in s. 90.606, to aid the  
128 parties in formulating methods of questioning the child or  
129 person who has the intellectual disability ~~with mental~~  
130 ~~retardation~~ and in interpreting the answers of the child or  
131 person ~~with mental retardation~~ throughout proceedings conducted  
132 under this section.

133 (6) The motion referred to in subsection (1) may be made at  
134 any time with reasonable notice to each party to the cause, and  
135 videotaping of testimony may be made any time after the court  
136 grants the motion. The videotaped testimony is ~~shall be~~  
137 admissible as evidence in the trial of the cause; however, such  
138 testimony is ~~shall~~ not be admissible in any trial or proceeding  
139 in which such witness testifies by use of closed circuit  
140 television pursuant to s. 92.54.

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

143 Section 5. Section 92.54, Florida Statutes, is amended to  
144 read:

145 92.54 Use of closed circuit television in proceedings

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146 involving a victim or witness ~~victims or witnesses~~ under the age  
147 of 16 or who has an intellectual disability ~~persons with mental~~  
148 ~~retardation.~~

149 (1) Upon motion and hearing in camera and upon a finding  
150 that there is a substantial likelihood that a victim or witness  
151 under the age of 16 or who has an intellectual disability ~~the~~  
152 ~~child or person with mental retardation~~ will suffer at least  
153 moderate emotional or mental harm due to the presence of the  
154 defendant if such victim or witness ~~the child or person with~~  
155 ~~mental retardation~~ is required to testify in open court, or ~~that~~  
156 ~~such victim or witness~~ is unavailable as defined in s.  
157 90.804(1), the trial court may order that the testimony of the ~~a~~  
158 ~~child under the age of 16 or person with mental retardation who~~  
159 ~~is~~ a victim or witness be taken outside of the courtroom and  
160 shown by means of closed circuit television.

161 (2) The motion may be filed by the victim or witness; the  
162 attorney, parent, legal guardian, or guardian ad litem of the  
163 victim or witness; the prosecutor; the defendant or the  
164 defendant's counsel; or the trial judge on his or her own  
165 motion.

166 (3) Only the judge, the prosecutor, the defendant, the  
167 attorney for the defendant, the operators of the videotape  
168 equipment, an interpreter, and some other person who, in the  
169 opinion of the court, contributes to the well-being of the child  
170 or the person who has an intellectual disability ~~with mental~~  
171 ~~retardation~~ and who will not be a witness in the case may be in  
172 the room during the recording of the testimony.

173 (4) During the victim's or witness's ~~child's or person's~~  
174 ~~with mental retardation~~ testimony by closed circuit television,

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175 the court may require the defendant to view the testimony from  
176 the courtroom. In such a case, the court shall permit the  
177 defendant to observe and hear the testimony of the victim or  
178 witness ~~child or person with mental retardation~~, but must ~~shall~~  
179 ensure that the victim or witness ~~child or person with mental~~  
180 ~~retardation~~ cannot hear or see the defendant. The defendant's  
181 right to assistance of counsel, which includes the right to  
182 immediate and direct communication with counsel conducting  
183 cross-examination, must be protected and, upon the defendant's  
184 request, such communication shall be provided by any appropriate  
185 electronic method.

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

188 Section 6. Section 92.55, Florida Statutes, is amended to  
189 read:

190 92.55 Judicial or other proceedings involving a victim or  
191 witness under the age of 16 or who has an intellectual  
192 disability ~~person with mental retardation~~; special protections.-

193 (1) Upon motion of any party, upon motion of a parent,  
194 guardian, attorney, or guardian ad litem for a victim or witness  
195 ~~child~~ under the age of 16 or who has an intellectual disability  
196 ~~person with mental retardation~~, or upon its own motion, the  
197 court may enter any order necessary to protect such a ~~child~~  
198 ~~under the age of 16 or person with mental retardation who is a~~  
199 victim or witness in any judicial proceeding or other official  
200 proceeding from severe emotional or mental harm due to the  
201 presence of the defendant if the victim or witness ~~child or~~  
202 ~~person with mental retardation~~ is required to testify in open  
203 court. Such orders must ~~shall~~ relate to the taking of testimony

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204 and ~~shall~~ include, but are ~~not be~~ limited to:

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

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

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

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

213 (a) The age of the child, the nature of the offense or act,  
214 the relationship of the child to the parties in the case or to  
215 the defendant in a criminal action, the degree of emotional  
216 trauma that will result to the child as a consequence of the  
217 defendant's presence, and any other fact that the court deems  
218 relevant; or

219 (b) The age of the person who has an intellectual  
220 disability ~~with mental retardation~~, the functional capacity of  
221 such ~~the person with mental retardation~~, the nature of the  
222 offenses or act, the relationship of the person ~~with mental~~  
223 ~~retardation~~ to the parties in the case or to the defendant in a  
224 criminal action, the degree of emotional trauma that will result  
225 to the person ~~with mental retardation~~ as a consequence of the  
226 defendant's presence, and any other fact that the court deems  
227 relevant.

228 (3) In addition to such other relief ~~as is~~ provided by law,  
229 the court may enter orders limiting the number of times that a  
230 child or a person who has an intellectual disability ~~with mental~~  
231 ~~retardation~~ may be interviewed, prohibiting depositions of such  
232 a child or person ~~with mental retardation~~, requiring the

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233 submission of questions prior to examination of the a child or  
234 person ~~with mental retardation~~, setting the place and conditions  
235 for interviewing the a child or person ~~with mental retardation~~  
236 or for conducting any other proceeding, or permitting or  
237 prohibiting the attendance of any person at any proceeding. The  
238 court shall enter any order necessary to protect the rights of  
239 all parties, including the defendant in any criminal action.

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

242 320.10 Exemptions.—

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

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

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

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

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262 the Camp Fire Girls' Council, the Young Women's Christian  
263 Association, the Young Women's Hebrew Association, any local  
264 member unit of the Arc of Florida ~~Association for Retarded~~  
265 ~~Citizens~~, the Children's Home Society of Florida, or the  
266 Goodwill Industries. A not-for-profit organization named in this  
267 paragraph and its local affiliate organizations is ~~shall be~~  
268 eligible for the exemption if it ~~for so long as each~~ maintains  
269 current articles of incorporation on file with the Department of  
270 State and qualifies as a not-for-profit organization under s.  
271 212.08;

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

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

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

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

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

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

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

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291 Section 8. Paragraph (d) of subsection (3) of section  
292 383.14, Florida Statutes, is amended to read:

293 383.14 Screening for metabolic disorders, other hereditary  
294 and congenital disorders, and environmental risk factors.—

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

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

304  
305 All provisions of this subsection must be coordinated with the  
306 provisions and plans established under this chapter, chapter  
307 411, and Pub. L. No. 99-457.

308 Section 9. Subsection (9) and subsections (20) through (31)  
309 of section 393.063, Florida Statutes, are reordered and amended  
310 to read:

311 393.063 Definitions.—For the purposes of this chapter, the  
312 term:

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

319 (21) ~~(20)~~ "Intermediate care facility for the

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

323 (22)~~(21)~~ "Medical/dental services" means medically  
324 necessary services that ~~which~~ are provided or ordered for a  
325 client by a person licensed under chapter 458, chapter 459, or  
326 chapter 466. Such services may include, but are not limited to,  
327 prescription drugs, specialized therapies, nursing supervision,  
328 hospitalization, dietary services, prosthetic devices, surgery,  
329 specialized equipment and supplies, adaptive equipment, and  
330 other services as required to prevent or alleviate a medical or  
331 dental condition.

332 (23)~~(22)~~ "Personal care services" means individual  
333 assistance with or supervision of essential activities of daily  
334 living for self-care, including ambulation, bathing, dressing,  
335 eating, grooming, and toileting, and other similar services that  
336 are incidental to the care furnished and essential to the  
337 health, safety, and welfare of the client if ~~when there is~~ no  
338 one else is available to perform those services.

339 (24)~~(23)~~ "Prader-Willi syndrome" means an inherited  
340 condition typified by neonatal hypotonia with failure to thrive,  
341 hyperphagia or an excessive drive to eat which leads to obesity  
342 usually at 18 to 36 months of age, mild to moderate mental  
343 retardation, hypogonadism, short stature, mild facial  
344 dysmorphism, and a characteristic neurobehavior.

345 (25)~~(24)~~ "Relative" means an individual who is connected by  
346 affinity or consanguinity to the client and who is 18 years of  
347 age or older.

348 (26)~~(25)~~ "Resident" means a ~~any~~ person who has a ~~with~~

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

352 ~~(27)-(26)~~ "Residential facility" means a facility providing  
353 room and board and personal care for persons who have ~~with~~  
354 developmental disabilities.

355 ~~(28)-(27)~~ "Residential habilitation" means supervision and  
356 training with the acquisition, retention, or improvement in  
357 skills related to activities of daily living, such as personal  
358 hygiene skills, homemaking skills, and the social and adaptive  
359 skills necessary to enable the individual to reside in the  
360 community.

361 ~~(29)-(28)~~ "Residential habilitation center" means a  
362 community residential facility licensed under this chapter which  
363 provides habilitation services. The capacity of such a facility  
364 may shall not be fewer than nine residents. After October 1,  
365 1989, new residential habilitation centers may not be licensed  
366 and the licensed capacity for any existing residential  
367 habilitation center may not be increased.

368 ~~(30)-(29)~~ "Respite service" means appropriate, short-term,  
369 temporary care that is provided to a person who has a ~~with~~  
370 developmental disability in order ~~disabilities~~ to meet the  
371 planned or emergency needs of the person or the family or other  
372 direct service provider.

373 ~~(31)-(30)~~ "Restraint" means a physical device, method, or  
374 drug used to control dangerous behavior.

375 (a) A physical restraint is any manual method or physical  
376 or mechanical device, material, or equipment attached or  
377 adjacent to an ~~the~~ individual's body so that he or she cannot

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378 easily remove the restraint and which restricts freedom of  
379 movement or normal access to one's body.

380 (b) A drug used as a restraint is a medication used to  
381 control the person's behavior or to restrict his or her freedom  
382 of movement and is not a standard treatment for the person's  
383 medical or psychiatric condition. Physically holding a person  
384 during a procedure to forcibly administer psychotropic  
385 medication is a physical restraint.

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

394 ~~(20)~~ ~~(31)~~ "Intellectual disability" ~~"Retardation"~~ means  
395 significantly subaverage general intellectual functioning  
396 existing concurrently with deficits in adaptive behavior which  
397 ~~that~~ manifests before the age of 18 and can reasonably be  
398 expected to continue indefinitely. For the purposes of this  
399 definition, the term:

400 (a) "Adaptive behavior" means the effectiveness or degree  
401 with which an individual meets the standards of personal  
402 independence and social responsibility expected of his or her  
403 age, cultural group, and community.

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

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407 the mean score on a standardized intelligence test specified in  
408 the rules of the agency. ~~"Adaptive behavior," for the purpose of~~  
409 ~~this definition, means the effectiveness or degree with which an~~  
410 ~~individual meets the standards of personal independence and~~  
411 ~~social responsibility expected of his or her age, cultural~~  
412 ~~group, and community.~~

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

420 393.11 Involuntary admission to residential services.-

421 (1) JURISDICTION.-If when a person has an intellectual  
422 disability ~~is mentally retarded~~ and requires involuntary  
423 admission to residential services provided by the agency, the  
424 circuit court of the county in which the person resides has  
425 ~~shall have~~ jurisdiction to conduct a hearing and enter an order  
426 involuntarily admitting the person in order for that the person  
427 to may receive the care, treatment, habilitation, and  
428 rehabilitation that ~~which~~ the person needs. For the purpose of  
429 identifying intellectual disability ~~mental retardation~~,  
430 diagnostic capability shall be established by the agency. Except  
431 as otherwise specified, the proceedings under this section are  
432 ~~shall be~~ governed by the Florida Rules of Civil Procedure.

433 (2) PETITION.-

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

435 1. State the name, age, and present address of the

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436 commissioners and their relationship to the person who has an  
 437 intellectual disability ~~with mental retardation~~ or autism;

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

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

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

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

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

455 (3) NOTICE.—

456 (b) If ~~Whenever~~ a motion or petition has been filed  
 457 pursuant to s. 916.303 to dismiss criminal charges against a  
 458 defendant who has an intellectual disability ~~with retardation~~ or  
 459 autism, and a petition is filed to involuntarily admit the  
 460 defendant to residential services under this section, the notice  
 461 of the filing of the petition must ~~shall~~ also be given to the  
 462 defendant's attorney, the state attorney of the circuit from  
 463 which the defendant was committed, and the agency.

464 (c) The notice must ~~shall~~ state that a hearing shall be set

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465 to inquire into the need of the person who has an intellectual  
466 disability ~~with mental retardation~~ or autism for involuntary  
467 residential services. The notice must ~~shall~~ also state the date  
468 of the hearing on the petition.

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

474 (4) AGENCY PARTICIPATION.—

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

481 (5) EXAMINING COMMITTEE.—

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

493 (e) The committee shall prepare a written report for the

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494 court. The report must explicitly document the extent that the  
495 person meets the criteria for involuntary admission. The report,  
496 and expert testimony, must include, but not be limited to:

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

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

503 a. Lacks sufficient capacity to give express and informed  
504 consent to a voluntary application for services pursuant to s.  
505 393.065;

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

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

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

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

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

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

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523 filed with the court, and the agency.

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

529 (6) COUNSEL; GUARDIAN AD LITEM.—

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

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

548 (7) HEARING.—

549 (d) The person who has the intellectual disability must  
550 ~~with mental retardation shall~~ be physically present throughout  
551 the entire proceeding. If the person's attorney believes that

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552 the person's presence at the hearing is not in his or her ~~the~~  
553 ~~person's~~ best interest, the person's presence may be waived once  
554 the court has seen the person and the hearing has commenced.

555 (8) ORDER.—

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

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

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

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

565 a. Lacks sufficient capacity to give express and informed  
566 consent to a voluntary application for services pursuant to s.  
567 393.065 and lacks basic survival and self-care skills to such a  
568 degree that close supervision and habilitation in a residential  
569 setting is necessary and, if not provided, would result in a  
570 real and present threat of substantial harm to the person's  
571 well-being; or

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

574 (10) COMPETENCY.—

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

579 (b) The issue of the competency of a person who has an  
580 intellectual disability ~~with mental retardation~~ for purposes of

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581 assigning guardianship shall be determined in a separate  
582 proceeding according to the procedures and requirements of  
583 chapter 744. The issue of the competency of a person who has an  
584 intellectual disability ~~with mental retardation~~ or autism for  
585 purposes of determining whether the person is competent to  
586 proceed in a criminal trial shall be determined in accordance  
587 with chapter 916.

588 (12) APPEAL.—

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

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

596 394.455 Definitions.—As used in this part, unless the  
597 context clearly requires otherwise, the term:

598 (18) "Mental illness" means an impairment of the mental or  
599 emotional processes that exercise conscious control of one's  
600 actions or of the ability to perceive or understand reality,  
601 which impairment substantially interferes with the ~~a~~ person's  
602 ability to meet the ordinary demands of living, ~~regardless of~~  
603 ~~etiology~~. For the purposes of this part, the term does not  
604 include a ~~retardation or~~ developmental disability as defined in  
605 chapter 393, intoxication, or conditions manifested only by  
606 antisocial behavior or substance abuse impairment.

607 Section 12. Subsections (3) through (13) of section  
608 400.960, Florida Statutes, are amended to read:

609 400.960 Definitions.—As used in this part, the term:

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

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

612 (3)~~(5)~~ "Client" means any person determined by the Agency  
613 for Persons with Disabilities to be eligible for developmental  
614 services.

615 (4)~~(6)~~ "Developmentally disabled" ~~"developmental~~  
616 ~~disability"~~ has the same meaning as "developmental disability"  
617 as that term is defined in s. 393.063.

618 (5)~~(7)~~ "Direct service provider" means a person 18 years of  
619 age or older who has direct contact with individuals who have  
620 ~~with~~ developmental disabilities and who is unrelated to such ~~the~~  
621 individuals ~~with developmental disabilities~~.

622 (6)~~(8)~~ "Intermediate care facility for the developmentally  
623 disabled" means a residential facility licensed and certified in  
624 accordance with state law, and certified by the Federal  
625 Government, pursuant to the Social Security Act, as a provider  
626 of Medicaid services to persons who have ~~with~~ developmental  
627 disabilities.

628 ~~(9) "Prader-Willi syndrome" has the same meaning as in s.~~  
629 ~~393.063.~~

630 (7)~~(10)~~~~(a)~~ "Restraint" means a physical device, method, or  
631 drug used to control behavior.

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

637 (b) A drug used as a restraint is a medication used to  
638 control the person's behavior or to restrict his or her freedom

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639 of movement. Physically holding a person during a procedure to  
640 forcibly administer psychotropic medication is a physical  
641 restraint.

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

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

651 (8)~~(12)~~ "Seclusion" means the physical segregation of a  
652 person in any fashion or the involuntary isolation of a person  
653 in a room or area from which the person is prevented from  
654 leaving. The prevention may be by physical barrier or by a staff  
655 member who is acting in a manner, or who is physically situated,  
656 so as to prevent the person from leaving the room or area. For  
657 purposes of this part, the term does not mean isolation due to a  
658 person's medical condition or symptoms.

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

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

662 408.032 Definitions relating to Health Facility and  
663 Services Development Act.—As used in ss. 408.031-408.045, the  
664 term:

665 (12) "Intermediate care facility for the developmentally  
666 disabled" means a residential facility licensed under part VIII  
667 of chapter 400 ~~chapter 393~~ and certified by the Federal

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668 ~~Government pursuant to the Social Security Act as a provider of~~  
669 ~~Medicaid services to persons who are mentally retarded or who~~  
670 ~~have a related condition.~~

671 Section 14. Subsection (17) of section 413.20, Florida  
672 Statutes, is amended to read:

673 413.20 Definitions.—As used in this part, the term:

674 (17) "Person who has a significant disability" means an  
675 individual who has a disability that is a severe physical or  
676 mental impairment that seriously limits one or more functional  
677 capacities, such as mobility, communication, self-care, self-  
678 direction, interpersonal skills, work tolerance, or work skills,  
679 in terms of an employment outcome; whose vocational  
680 rehabilitation may be expected to require multiple vocational  
681 rehabilitation services over an extended period of time; and who  
682 has one or more physical or mental disabilities resulting from  
683 amputation, arthritis, autism, blindness, burn injury, cancer,  
684 cerebral palsy, cystic fibrosis, deafness, head injury, heart  
685 disease, hemiplegia, hemophilia, respiratory or pulmonary  
686 dysfunction, intellectual disability ~~mental retardation~~, mental  
687 illness, multiple sclerosis, muscular dystrophy, musculoskeletal  
688 disorder, neurological disorder, including stroke and epilepsy,  
689 paraplegia, quadriplegia, or other spinal cord condition,  
690 sickle-cell anemia, specific learning disability, end-stage  
691 renal disease, or another disability or a combination of  
692 disabilities which ~~that~~ is determined, after an assessment for  
693 determining eligibility and vocational rehabilitation needs, to  
694 cause comparable substantial functional limitation.

695 Section 15. Paragraph (a) of subsection (6) of section  
696 440.49, Florida Statutes, is amended to read:

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- 697 440.49 Limitation of liability for subsequent injury  
698 through Special Disability Trust Fund.—
- 699 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—
- 700 (a) Reimbursement is not allowed under this section unless  
701 it is established that the employer knew of the preexisting  
702 permanent physical impairment before ~~prior to~~ the occurrence of  
703 the subsequent injury or occupational disease, and ~~that~~ the  
704 permanent physical impairment is one of the following:
- 705 1. Epilepsy.
  - 706 2. Diabetes.
  - 707 3. Cardiac disease.
  - 708 4. Amputation of foot, leg, arm, or hand.
  - 709 5. Total loss of sight of one or both eyes or a partial  
710 loss of corrected vision of more than 75 percent bilaterally.
  - 711 6. Residual disability from poliomyelitis.
  - 712 7. Cerebral palsy.
  - 713 8. Multiple sclerosis.
  - 714 9. Parkinson's disease.
  - 715 10. Meniscectomy.
  - 716 11. Patellectomy.
  - 717 12. Ruptured cruciate ligament.
  - 718 13. Hemophilia.
  - 719 14. Chronic osteomyelitis.
  - 720 15. Surgical or spontaneous fusion of a major weight-  
721 bearing joint.
  - 722 16. Hyperinsulinism.
  - 723 17. Muscular dystrophy.
  - 724 18. Thrombophlebitis.
  - 725 19. Herniated intervertebral disk.

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726 20. Surgical removal of an intervertebral disk or spinal  
727 fusion.

728 21. One or more back injuries or a disease process of the  
729 back resulting in disability over a total of 120 or more days,  
730 if substantiated by a doctor's opinion that there was a  
731 preexisting impairment to the claimant's back.

732 22. Total deafness.

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

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

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

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

754 Section 16. Paragraph (g) of subsection (1) of section

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755 499.0054, Florida Statutes, is amended to read:

756 499.0054 Advertising and labeling of drugs, devices, and  
757 cosmetics; exemptions.—

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

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

- 764 1. Blood disorders.
- 765 2. Bone or joint diseases.
- 766 3. Kidney diseases or disorders.
- 767 4. Cancer.
- 768 5. Diabetes.
- 769 6. Gall bladder diseases or disorders.
- 770 7. Heart and vascular diseases.
- 771 8. High blood pressure.
- 772 9. Diseases or disorders of the ear or auditory apparatus,  
773 including hearing loss or deafness.
- 774 10. Mental disease or intellectual disability ~~mental~~  
775 ~~retardation~~.
- 776 11. Paralysis.
- 777 12. Prostate gland disorders.
- 778 13. Conditions of the scalp affecting hair loss.
- 779 14. Baldness.
- 780 15. Endocrine disorders.
- 781 16. Sexual impotence.
- 782 17. Tumors.
- 783 18. Venereal diseases.

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- 784 19. Varicose ulcers.  
 785 20. Breast enlargement.  
 786 21. Purifying blood.  
 787 22. Metabolic disorders.  
 788 23. Immune system disorders or conditions affecting the  
 789 immune system.  
 790 24. Extension of life expectancy.  
 791 25. Stress and tension.  
 792 26. Brain stimulation or performance.  
 793 27. The body's natural defense mechanisms.  
 794 28. Blood flow.  
 795 29. Depression.  
 796 30. Human immunodeficiency virus or acquired immune  
 797 deficiency syndrome or related disorders or conditions.

798 Section 17. Section 514.072, Florida Statutes, is amended  
 799 to read:

800 514.072 Certification of swimming instructors for people  
 801 who have developmental disabilities ~~required~~.—Any person working  
 802 at a swimming pool who holds himself or herself out as a  
 803 swimming instructor specializing in training people who have  
 804 developmental disabilities, as defined in s. 393.063(10), may be  
 805 certified by the Dan Marino Foundation, Inc., in addition to  
 806 being certified under s. 514.071. The Dan Marino Foundation,  
 807 Inc., must develop certification requirements and a training  
 808 curriculum for swimming instructors for people who have  
 809 developmental disabilities ~~and must submit the certification~~  
 810 ~~requirements to the Department of Health for review by January~~  
 811 ~~1, 2007. A person certified under s. 514.071 before July 1,~~  
 812 ~~2007, must meet the additional certification requirements of~~

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813 ~~this section before January 1, 2008.~~ A person certified under s.  
814 514.071 ~~on or after July 1, 2007,~~ must meet the additional  
815 certification requirements of this section within 6 months after  
816 receiving certification under s. 514.071.

817 Section 18. Section 627.6041, Florida Statutes, is amended  
818 to read:

819 627.6041 ~~Handicapped~~ Children with disabilities;  
820 continuation of coverage.—

821 (1) A hospital or medical expense insurance policy or  
822 health care services plan contract that is delivered or issued  
823 for delivery in this state and that provides that coverage of a  
824 dependent child terminates ~~will terminate~~ upon attainment of the  
825 limiting age for dependent children specified in the policy or  
826 contract must ~~shall~~ also provide in substance that attainment of  
827 the limiting age does not terminate the coverage of the child  
828 while the child continues to be both:

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

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

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

840 Section 19. Section 627.6615, Florida Statutes, is amended  
841 to read:

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842           627.6615 ~~Handicapped~~ Children with disabilities;  
843 continuation of coverage under group policy.—

844           (1) A group health insurance policy or health care services  
845 plan contract that is delivered or issued for delivery in this  
846 state and that provides that coverage of a dependent child of an  
847 employee or other member of the covered group terminates ~~will~~  
848 ~~terminate~~ upon attainment of the limiting age for dependent  
849 children specified in the policy or contract must ~~shall~~ also  
850 provide in substance that attainment of the limiting age does  
851 not terminate the coverage of the child while the child  
852 continues to be both:

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

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

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

865           Section 20. Subsection (29) of section 641.31, Florida  
866 Statutes, is amended to read:

867           641.31 Health maintenance contracts.—

868           (29) If a health maintenance contract provides that  
869 coverage of a dependent child of the subscriber terminates ~~will~~  
870 ~~terminate~~ upon attainment of the limiting age for dependent

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871 children which is specified in the contract, the contract must  
872 also provide in substance that attainment of the limiting age  
873 does not terminate the coverage of the child while the child  
874 continues to be both:

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

877 ~~handicap, and~~

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

880

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

887 Section 21. Subsection (4) of section 650.05, Florida  
888 Statutes, is amended to read:

889 650.05 Plans for coverage of employees of political  
890 subdivisions.—

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

899 ~~(b)~~ The grants-in-aid and other revenue ~~referred to in~~

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900 ~~paragraph (a)~~ specifically include, but are not limited to,  
901 minimum foundation program grants to public school districts and  
902 community colleges; gasoline, motor fuel, cigarette, racing, and  
903 insurance premium taxes distributed to political subdivisions;  
904 and amounts specifically appropriated as grants-in-aid for  
905 mental health, intellectual disabilities ~~mental retardation~~, and  
906 mosquito control programs.

907 Section 22. Subsection (1) of section 765.204, Florida  
908 Statutes, is amended to read:

909 765.204 Capacity of principal; procedure.—

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

916 Section 23. Section 849.04, Florida Statutes, is amended to  
917 read:

918 849.04 Permitting minors and persons under guardianship to  
919 gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.  
920 O., keno or pool table, or billiard table, wheel of fortune, or  
921 other game of chance, ~~kept for the purpose of betting,~~ who  
922 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is  
923 mentally incompetent or under guardianship to play at such game  
924 or to bet on such game of chance; or whoever aids or abets or  
925 otherwise encourages such playing or betting of any money or  
926 other valuable thing upon the result of such game of chance by a  
927 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under  
928 guardianship, commits ~~shall be guilty of~~ a felony of the third

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929 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
930 775.084. For the purpose of this section, the term a "person who  
931 is mentally incompetent person" means a person ~~is one~~ who  
932 because of mental illness, intellectual disability ~~mental~~  
933 ~~retardation~~, senility, excessive use of drugs or alcohol, or  
934 other mental incapacity is incapable of ~~either~~ managing his or  
935 her property or caring for himself or herself or both.

936 Section 24. Section 914.16, Florida Statutes, is amended to  
937 read:

938 914.16 Child abuse and sexual abuse of victims under age 16  
939 or who has an intellectual disability ~~persons with mental~~  
940 ~~retardation~~; limits on interviews.—The chief judge of each  
941 judicial circuit, after consultation with the state attorney and  
942 the public defender for the judicial circuit, the appropriate  
943 chief law enforcement officer, and any other person deemed  
944 appropriate by the chief judge, shall ~~provide by order~~  
945 reasonable limits on the number of interviews which ~~that~~ a  
946 victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s.  
947 847.0135(5) who is under 16 years of age or a victim of a  
948 violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who  
949 has an intellectual disability ~~is a person with mental~~  
950 ~~retardation~~ as defined in s. 393.063 must submit to for law  
951 enforcement or discovery purposes. ~~The order shall,~~ To the  
952 extent possible, the order must protect the victim from the  
953 psychological damage of repeated interrogations while preserving  
954 the rights of the public, the victim, and the person charged  
955 with the violation.

956 Section 25. Section 914.17, Florida Statutes, is amended to  
957 read:

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958           914.17 Appointment of advocate for victims or witnesses who  
959 are minors or intellectually disabled ~~persons with mental~~  
960 ~~retardation.~~-

961           (1) A guardian ad litem or other advocate shall be  
962 appointed by the court to represent a minor in any criminal  
963 proceeding if the minor is a victim of or witness to child abuse  
964 or neglect, ~~or if the minor is a victim of a sexual offense,~~ or  
965 a witness to a sexual offense committed against another minor.  
966 The court may appoint a guardian ad litem or other advocate in  
967 any other criminal proceeding in which a minor is involved as  
968 ~~either~~ a victim or a witness. The guardian ad litem or other  
969 advocate shall have full access to all evidence and reports  
970 introduced during the proceedings, may interview witnesses, may  
971 make recommendations to the court, shall be noticed and have the  
972 right to appear on behalf of the minor at all proceedings, and  
973 may request additional examinations by medical doctors,  
974 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian  
975 ad litem or other advocate shall ~~to perform the following~~  
976 ~~services:~~

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

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

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

985           (2) An advocate shall be appointed by the court to  
986 represent a person who has an intellectual disability ~~with~~

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987 ~~mental retardation~~ as defined in s. 393.063 in any criminal  
 988 proceeding if the person ~~with mental retardation~~ is a victim of  
 989 or witness to abuse or neglect, ~~or if the person with mental~~  
 990 ~~retardation is~~ a victim of a sexual offense, or a witness to a  
 991 sexual offense committed against a minor or person who has an  
 992 intellectual disability ~~with mental retardation~~. The court may  
 993 appoint an advocate in any other criminal proceeding in which  
 994 such a person ~~with mental retardation~~ is involved as ~~either a~~  
 995 victim or a witness. The advocate shall have full access to all  
 996 evidence and reports introduced during the proceedings, may  
 997 interview witnesses, may make recommendations to the court,  
 998 shall be noticed and have the right to appear on behalf of the  
 999 person ~~with mental retardation~~ at all proceedings, and may  
 1000 request additional examinations by medical doctors,  
 1001 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate  
 1002 shall to perform the following services:

1003 (a) ~~To~~ Explain, in language understandable to the person  
 1004 ~~with mental retardation~~, all legal proceedings in which the  
 1005 person is ~~shall be~~ involved;

1006 (b) ~~To~~ Act, as a friend of the court, to advise the judge,  
 1007 whenever appropriate, of the person's ~~person with mental~~  
 1008 ~~retardation's~~ ability to understand and cooperate with any court  
 1009 proceedings; and

1010 (c) To assist the person ~~with mental retardation~~ and the  
 1011 person's family in coping with the emotional effects of the  
 1012 crime and subsequent criminal proceedings in which the person  
 1013 ~~with mental retardation~~ is involved.

1014 (3) Any person participating in a judicial proceeding as a  
 1015 guardian ad litem or other advocate is ~~shall be~~ presumed prima

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1016 facie to be acting in good faith and in so doing is ~~shall be~~  
1017 immune from any liability, civil or criminal, which ~~that~~  
1018 ~~otherwise~~ might be incurred or imposed.

1019 Section 26. Subsections (1), (2), and (3) of section  
1020 916.105, Florida Statutes, are amended to read:

1021 916.105 Legislative intent.—

1022 (1) It is the intent of the Legislature that the Department  
1023 of Children and Family Services and the Agency for Persons with  
1024 Disabilities, as appropriate, establish, locate, and maintain  
1025 separate and secure forensic facilities and programs for the  
1026 treatment or training of defendants who have been charged with a  
1027 felony and who have been found to be incompetent to proceed due  
1028 to their mental illness, intellectual disability ~~mental~~  
1029 ~~retardation~~, or autism, or who have been acquitted of a felony  
1030 by reason of insanity, and who, while still under the  
1031 jurisdiction of the committing court, are committed to the  
1032 department or agency under ~~the provisions of~~ this chapter. Such  
1033 facilities must ~~shall~~ be sufficient to accommodate the number of  
1034 defendants committed under the conditions noted above. Except  
1035 for those defendants found by the department or agency to be  
1036 appropriate for treatment or training in a civil facility or  
1037 program pursuant to subsection (3), forensic facilities must  
1038 ~~shall~~ be designed and administered so that ingress and egress,  
1039 together with other requirements of this chapter, may be  
1040 strictly controlled by staff responsible for security in order  
1041 to protect the defendant, facility personnel, other clients, and  
1042 citizens in adjacent communities.

1043 (2) It is the intent of the Legislature that treatment or  
1044 training programs for defendants who are found to have mental

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1045 illness, intellectual disability ~~mental retardation~~, or autism  
1046 and are involuntarily committed to the department or agency, and  
1047 who are still under the jurisdiction of the committing court, be  
1048 provided in a manner, subject to security requirements and other  
1049 mandates of this chapter, which ensures ~~as to ensure~~ the rights  
1050 of the defendants as provided in this chapter.

1051 (3) It is the intent of the Legislature that evaluation and  
1052 services to defendants who have mental illness, intellectual  
1053 disability ~~mental retardation~~, or autism be provided in  
1054 community settings, in community residential facilities, or in  
1055 civil facilities, whenever this is a feasible alternative to  
1056 treatment or training in a state forensic facility.

1057 Section 27. Subsections (10) through (17) of section  
1058 916.106, Florida Statutes, are reordered and amended to read:

1059 916.106 Definitions.—For the purposes of this chapter, the  
1060 term:

1061 (10) "Forensic facility" means a separate and secure  
1062 facility established within the department or agency to serve  
1063 forensic clients. A separate and secure facility means a  
1064 security-grade building for the purpose of separately housing  
1065 persons who have mental illness from persons who have  
1066 intellectual disabilities ~~with retardation~~ or autism and  
1067 separately housing persons who have been involuntarily committed  
1068 pursuant to this chapter from nonforensic residents.

1069 (11) "Incompetent to proceed" means unable to proceed at  
1070 any material stage of a criminal proceeding, which includes  
1071 ~~shall include~~ trial of the case, pretrial hearings involving  
1072 questions of fact on which the defendant might be expected to  
1073 testify, entry of a plea, proceedings for violation of probation

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1074 or violation of community control, sentencing, and hearings on  
1075 issues regarding a defendant's failure to comply with court  
1076 orders or conditions or other matters in which the mental  
1077 competence of the defendant is necessary for a just resolution  
1078 of the issues being considered.

1079 (12) "Institutional security personnel" means the staff of  
1080 forensic facilities who meet or exceed the requirements of s.  
1081 943.13 and who are responsible for providing security,  
1082 protecting clients and personnel, enforcing rules, preventing  
1083 and investigating unauthorized activities, and safeguarding the  
1084 interests of residents ~~citizens~~ in the surrounding communities.

1085 ~~(14)-(13)~~ "Mental illness" means an impairment of the  
1086 emotional processes that exercise conscious control of one's  
1087 actions, or of the ability to perceive or understand reality,  
1088 which impairment substantially interferes with the ~~a~~ defendant's  
1089 ability to meet the ordinary demands of living. For the purposes  
1090 of this chapter, the term does not apply to defendants who have  
1091 only an intellectual disability ~~with only mental retardation~~ or  
1092 autism and does not include intoxication or conditions  
1093 manifested only by antisocial behavior or substance abuse  
1094 impairment.

1095 ~~(15)-(14)~~ "Restraint" means a physical device, method, or  
1096 drug used to control dangerous behavior.

1097 (a) A physical restraint is any manual method or physical  
1098 or mechanical device, material, or equipment attached or  
1099 adjacent to a person's body so that he or she cannot easily  
1100 remove the restraint and that restricts freedom of movement or  
1101 normal access to one's body.

1102 (b) A drug used as a restraint is a medication used to

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1103 control the person's behavior or to restrict his or her freedom  
1104 of movement and not part of the standard treatment regimen of  
1105 the person with a diagnosed mental illness who is a client of  
1106 the department. Physically holding a person during a procedure  
1107 to forcibly administer psychotropic medication is a physical  
1108 restraint.

1109 (c) Restraint does not include physical devices, such as  
1110 orthopedically prescribed appliances, surgical dressings and  
1111 bandages, supportive body bands, or other physical holding ~~when~~  
1112 necessary for routine physical examinations and tests; for  
1113 purposes of orthopedic, surgical, or other similar medical  
1114 treatment; ~~when used~~ to provide support for the achievement of  
1115 functional body position or proper balance; or ~~when used~~ to  
1116 protect a person from falling out of bed.

1117 (13) ~~(15)~~ "Intellectual disability" ~~"Retardation"~~ has the  
1118 same meaning as in s. 393.063.

1119 (16) "Seclusion" means the physical segregation of a person  
1120 in any fashion or the involuntary isolation of a person in a  
1121 room or area from which the person is prevented from leaving.  
1122 The prevention may be by physical barrier or by a staff member  
1123 who is acting in a manner, or who is physically situated, so as  
1124 to prevent the person from leaving the room or area. For  
1125 purposes of this chapter, the term does not mean isolation due  
1126 to a person's medical condition or symptoms, the confinement in  
1127 a forensic facility to a bedroom or area during normal hours of  
1128 sleep when there is not an active order for seclusion, or during  
1129 an emergency such as a riot or hostage situation when clients  
1130 may be temporarily placed in their rooms for their own safety.

1131 (17) "Social service professional" means a person whose

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1132 minimum qualifications include a bachelor's degree and at least  
1133 2 years of social work, clinical practice, special education,  
1134 habilitation, or equivalent experience working directly with  
1135 persons who have intellectual disabilities ~~with retardation~~,  
1136 autism, or other developmental disabilities.

1137 Section 28. The Division of Statutory Revision is requested  
1138 to rename part III of chapter 916, Florida Statutes, consisting  
1139 of ss. 916.301-916.304, as "Forensic Services for Persons who  
1140 are Intellectually Disabled or Autistic."

1141 Section 29. Subsections (1) and (2) of section 916.301,  
1142 Florida Statutes, are amended to read:

1143 916.301 Appointment of experts.—

1144 (1) All evaluations ordered by the court under this part  
1145 must be conducted by qualified experts who have expertise in  
1146 evaluating persons who have an intellectual disability ~~with~~  
1147 ~~retardation~~ or autism. The agency shall maintain and provide the  
1148 courts annually with a list of available ~~retardation and autism~~  
1149 professionals who are appropriately licensed and qualified to  
1150 perform evaluations of defendants alleged to be incompetent to  
1151 proceed due to intellectual disability ~~retardation~~ or autism.  
1152 The courts may use professionals from this list when appointing  
1153 experts and ordering evaluations under this part.

1154 (2) If a defendant's suspected mental condition is  
1155 intellectual disability ~~retardation~~ or autism, the court shall  
1156 appoint the following:

1157 (a) At least one, or at the request of any party, two  
1158 experts to evaluate whether the defendant meets the definition  
1159 of intellectual disability ~~retardation~~ or autism and, if so,  
1160 whether the defendant is competent to proceed; and

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1161 (b) A psychologist selected by the agency who is licensed  
1162 or authorized by law to practice in this state, with experience  
1163 in evaluating persons suspected of having an intellectual  
1164 disability ~~retardation~~ or autism, and a social service  
1165 professional, with experience in working with persons who have  
1166 an intellectual disability ~~with retardation~~ or autism.

1167 1. The psychologist shall evaluate whether the defendant  
1168 meets the definition of intellectual disability ~~retardation~~ or  
1169 autism and, if so, whether the defendant is incompetent to  
1170 proceed due to intellectual disability ~~retardation~~ or autism.

1171 2. The social service professional shall provide a social  
1172 and developmental history of the defendant.

1173 Section 30. Subsections (1), (2), and (4) of section  
1174 916.3012, Florida Statutes, are amended to read:

1175 916.3012 Mental competence to proceed.—

1176 (1) A defendant whose suspected mental condition is  
1177 intellectual disability ~~retardation~~ or autism is incompetent to  
1178 proceed within the meaning of this chapter if the defendant does  
1179 not have sufficient present ability to consult with the  
1180 defendant's lawyer with a reasonable degree of rational  
1181 understanding or if the defendant has no rational, as well as  
1182 factual, understanding of the proceedings against the defendant.

1183 (2) Experts in intellectual disability ~~retardation~~ or  
1184 autism appointed pursuant to s. 916.301 shall first consider  
1185 whether the defendant meets the definition of intellectual  
1186 disability ~~retardation~~ or autism and, if so, consider the  
1187 factors related to the issue of whether the defendant meets the  
1188 criteria for competence to proceed as described in subsection  
1189 (1).

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1190 (4) If the experts ~~should~~ find that the defendant is  
1191 incompetent to proceed, the experts shall report on any  
1192 recommended training for the defendant to attain competence to  
1193 proceed. In considering the issues relating to training, the  
1194 examining experts shall specifically report on:

1195 (a) The intellectual disability ~~retardation~~ or autism  
1196 causing the incompetence;

1197 (b) The training appropriate for the intellectual  
1198 disability ~~retardation~~ or autism of the defendant and an  
1199 explanation of each of the possible training alternatives in  
1200 order of choices;

1201 (c) The availability of acceptable training and, if  
1202 training is available in the community, the expert shall so  
1203 state in the report; and

1204 (d) The likelihood of the defendant's attaining competence  
1205 under the training recommended, an assessment of the probable  
1206 duration of the training required to restore competence, and the  
1207 probability that the defendant will attain competence to proceed  
1208 in the foreseeable future.

1209 Section 31. Subsection (1), paragraphs (a) and (b) of  
1210 subsection (2), and paragraph (a) of subsection (3) of section  
1211 916.302, Florida Statutes, are amended to read:

1212 916.302 Involuntary commitment of defendant determined to  
1213 be incompetent to proceed.—

1214 (1) CRITERIA.—Every defendant who is charged with a felony  
1215 and who is adjudicated incompetent to proceed due to  
1216 intellectual disability ~~retardation~~ or autism may be  
1217 involuntarily committed for training upon a finding by the court  
1218 of clear and convincing evidence that:

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1219 (a) The defendant has an intellectual disability  
1220 ~~retardation~~ or autism;

1221 (b) There is a substantial likelihood that in the near  
1222 future the defendant will inflict serious bodily harm on himself  
1223 or herself or another person, as evidenced by recent behavior  
1224 causing, attempting, or threatening such harm;

1225 (c) All available, less restrictive alternatives, including  
1226 services provided in community residential facilities or other  
1227 community settings, which would offer an opportunity for  
1228 improvement of the condition have been judged to be  
1229 inappropriate; and

1230 (d) There is a substantial probability that the  
1231 intellectual disability ~~retardation~~ or autism causing the  
1232 defendant's incompetence will respond to training and the  
1233 defendant will regain competency to proceed in the reasonably  
1234 foreseeable future.

1235 (2) ADMISSION TO A FACILITY.—

1236 (a) A defendant who has been charged with a felony and who  
1237 is found to be incompetent to proceed due to intellectual  
1238 disability ~~retardation~~ or autism, and who meets the criteria for  
1239 involuntary commitment to the agency under ~~the provisions of~~  
1240 this chapter, shall be committed to the agency, and the agency  
1241 shall retain and provide appropriate training for the defendant.  
1242 Within ~~No later than~~ 6 months after the date of admission or at  
1243 the end of any period of extended commitment or at any time the  
1244 administrator or designee determines ~~shall have determined~~ that  
1245 the defendant has regained competency to proceed or no longer  
1246 meets the criteria for continued commitment, the administrator  
1247 or designee shall file a report with the court pursuant to this

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chapter and the applicable Florida Rules of Criminal Procedure.

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

(3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

(a) If a defendant has both an intellectual disability ~~mental retardation~~ or autism and ~~has~~ a mental illness, evaluations must address which condition is primarily affecting the defendant's competency to proceed. Referral of the defendant should be made to a civil or forensic facility most appropriate to address the symptoms that are the cause of the defendant's incompetence.

Section 32. 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 33. Section 916.303, Florida Statutes, is amended to read:

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1277 916.303 Determination of incompetency ~~due to retardation or~~  
1278 ~~autism~~; dismissal of charges.—

1279 (1) The charges against any defendant found to be  
1280 incompetent to proceed due to intellectual disability  
1281 ~~retardation~~ or autism shall be dismissed without prejudice to  
1282 the state if the defendant remains incompetent to proceed within  
1283 a reasonable time after such determination, not to exceed 2  
1284 years, unless the court in its order specifies its reasons for  
1285 believing that the defendant will become competent to proceed  
1286 within the foreseeable future and specifies the time within  
1287 which the defendant is expected to become competent to proceed.  
1288 The charges may be refiled by the state if the defendant is  
1289 declared competent to proceed in the future.

1290 (2) If the charges are dismissed and if the defendant is  
1291 considered to lack sufficient capacity to give express and  
1292 informed consent to a voluntary application for services and  
1293 lacks the basic survival and self-care skills to provide for his  
1294 or her well-being or is likely to physically injure himself or  
1295 herself or others if allowed to remain at liberty, the agency,  
1296 the state attorney, or the defendant's attorney shall apply to  
1297 the committing court to involuntarily admit the defendant to  
1298 residential services pursuant to s. 393.11.

1299 (3) If the defendant is considered to need involuntary  
1300 residential services for reasons described in subsection (2)  
1301 and, further, there is a substantial likelihood that the  
1302 defendant will injure another person or continues to present a  
1303 danger of escape, and all available less restrictive  
1304 alternatives, including services in community residential  
1305 facilities or other community settings, which would offer an

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1306 opportunity for improvement of the condition have been judged to  
1307 be inappropriate, the agency, the state attorney, or the  
1308 defendant's counsel may request the committing court to continue  
1309 the defendant's placement in a secure facility pursuant to this  
1310 part. Any placement so continued ~~under this subsection~~ must be  
1311 reviewed by the court at least annually at a hearing. The annual  
1312 review and hearing must ~~shall~~ determine whether the defendant  
1313 continues to meet the criteria described in this subsection and,  
1314 if so, whether the defendant still requires involuntary  
1315 placement in a secure facility and whether the defendant is  
1316 receiving adequate care, treatment, habilitation, and  
1317 rehabilitation, including psychotropic medication and behavioral  
1318 programming. Notice of the annual review and review hearing  
1319 shall be given to the state attorney and the defendant's  
1320 attorney. ~~In no instance may~~ A defendant's placement in a secure  
1321 facility may not exceed the maximum sentence for the crime for  
1322 which the defendant was charged.

1323 Section 34. Subsection (1) of section 916.304, Florida  
1324 Statutes, is amended to read:

1325 916.304 Conditional release.—

1326 (1) Except for an inmate currently serving a prison  
1327 sentence, the committing court may order a conditional release  
1328 of any defendant who has been found to be incompetent to proceed  
1329 due to intellectual disability ~~retardation~~ or autism, based on  
1330 an approved plan for providing community-based training. The  
1331 committing criminal court may order a conditional release of any  
1332 defendant to a civil facility in lieu of an involuntary  
1333 commitment to a forensic facility pursuant to s. 916.302. Upon a  
1334 recommendation that community-based training for the defendant

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1335 is appropriate, a written plan for community-based training,  
1336 including recommendations from qualified professionals, may be  
1337 filed with the court, with copies to all parties. Such a plan  
1338 may also be submitted by the defendant and filed with the court,  
1339 with copies to all parties. The plan must include:

1340 (a) Special provisions for residential care and adequate  
1341 supervision of the defendant, including recommended location of  
1342 placement.

1343 (b) Recommendations for auxiliary services such as  
1344 vocational training, psychological training, educational  
1345 services, leisure services, and special medical care.

1346  
1347 In its order of conditional release, the court shall specify the  
1348 conditions of release based upon the release plan and shall  
1349 direct the appropriate agencies or persons to submit periodic  
1350 reports to the courts regarding the defendant's compliance with  
1351 the conditions of the release and progress in training, with  
1352 copies to all parties.

1353 Section 35. Section 921.137, Florida Statutes, is amended  
1354 to read:

1355 921.137 Imposition of the death sentence upon an  
1356 intellectually disabled a defendant ~~with mental retardation~~  
1357 prohibited.-

1358 (1) As used in this section, the term:

1359 (a) "Adaptive behavior" means the effectiveness or degree  
1360 with which an individual meets the standards of personal  
1361 independence and social responsibility expected of his or her  
1362 age, cultural group, and community.

1363 (b) "Intellectual disability" or "intellectually disabled"

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1364 ~~"mental retardation"~~ means significantly subaverage general  
1365 intellectual functioning existing concurrently with deficits in  
1366 adaptive behavior and manifested during the period from  
1367 conception to age 18. ~~The term~~

1368 (c) "Significantly subaverage general intellectual  
1369 functioning," ~~for the purpose of this section,~~ means performance  
1370 that is two or more standard deviations from the mean score on a  
1371 standardized intelligence test specified in the rules of the  
1372 Agency for Persons with Disabilities. ~~The term "adaptive~~  
1373 ~~behavior," for the purpose of this definition, means the~~  
1374 ~~effectiveness or degree with which an individual meets the~~  
1375 ~~standards of personal independence and social responsibility~~  
1376 ~~expected of his or her age, cultural group, and community. The~~  
1377 ~~Agency for Persons with Disabilities shall adopt rules to~~  
1378 ~~specify the standardized intelligence tests as provided in this~~  
1379 ~~subsection.~~

1380 (2) A sentence of death may not be imposed upon a defendant  
1381 convicted of a capital felony if it is determined in accordance  
1382 with this section that the defendant is intellectually disabled  
1383 ~~has mental retardation.~~

1384 (3) A defendant charged with a capital felony who intends  
1385 to raise intellectual disability ~~mental retardation~~ as a bar to  
1386 the death sentence must give notice of such intention in  
1387 accordance with the rules of court governing notices of intent  
1388 to offer expert testimony regarding mental health mitigation  
1389 during the penalty phase of a capital trial.

1390 (4) After a defendant who has given notice of his or her  
1391 intention to raise intellectual disability ~~mental retardation~~ as  
1392 a bar to the death sentence is convicted of a capital felony and

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1393 an advisory jury has returned a recommended sentence of death,  
1394 the defendant may file a motion to determine whether the  
1395 defendant is intellectually disabled ~~has mental retardation~~.  
1396 Upon receipt of the motion, the court shall appoint two experts  
1397 in the field of intellectual disabilities ~~mental retardation~~ who  
1398 shall evaluate the defendant and report their findings to the  
1399 court and all interested parties before ~~prior to~~ the final  
1400 sentencing hearing. Notwithstanding s. 921.141 or s. 921.142,  
1401 the final sentencing hearing shall be held without a jury. At  
1402 the ~~final sentencing~~ hearing, the court shall consider the  
1403 findings of the court-appointed experts and consider the  
1404 findings of any other expert which are ~~is~~ offered by the state  
1405 or the defense on the issue of whether the defendant has an  
1406 intellectual disability ~~has mental retardation~~. If the court  
1407 finds, by clear and convincing evidence, that the defendant is  
1408 intellectually disabled ~~has mental retardation as defined in~~  
1409 ~~subsection (1)~~, the court may not impose a sentence of death and  
1410 shall enter a written order that sets forth with specificity the  
1411 findings in support of the determination.

1412 (5) If a defendant waives his or her right to a recommended  
1413 sentence by an advisory jury following a plea of guilt or nolo  
1414 contendere to a capital felony and adjudication of guilt by the  
1415 court, or following a jury finding of guilt of a capital felony,  
1416 upon acceptance of the waiver by the court, a defendant who has  
1417 given notice as required in subsection (3) may file a motion for  
1418 a determination of intellectual disability ~~mental retardation~~.  
1419 Upon granting the motion, the court shall proceed as provided in  
1420 subsection (4).

1421 (6) If, following a recommendation by an advisory jury that

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1422 the defendant be sentenced to life imprisonment, the state  
1423 intends to request the court to order that the defendant be  
1424 sentenced to death, the state must inform the defendant of such  
1425 request if the defendant has notified the court of his or her  
1426 intent to raise intellectual disability ~~mental retardation~~ as a  
1427 bar to the death sentence. After receipt of the notice from the  
1428 state, the defendant may file a motion requesting a  
1429 determination by the court of whether the defendant is  
1430 intellectually disabled ~~has mental retardation~~. Upon granting  
1431 the motion, the court shall proceed as provided in subsection  
1432 (4).

1433 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~  
1434 ~~to s. 924.07~~, a determination of intellectual disability ~~mental~~  
1435 ~~retardation~~ made under subsection (4).

1436 (8) This section does not apply to a defendant who was  
1437 sentenced to death before June 12, 2001 ~~prior to the effective~~  
1438 ~~date of this act~~.

1439 Section 36. Paragraph (b) of subsection (2) of section  
1440 941.38, Florida Statutes, is amended to read:

1441 941.38 Extradition of persons alleged to be of unsound  
1442 mind.—

1443 (2) For the purpose of this section:

1444 (b) A "mentally incompetent person" is one who because of  
1445 mental illness, intellectual disability ~~mental retardation~~,  
1446 senility, excessive use of drugs or alcohol, or other mental  
1447 incapacity is incapable of ~~either~~ managing his or her property  
1448 or caring for himself or herself or both.

1449 Section 37. Section 944.602, Florida Statutes, is amended  
1450 to read:

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1451           944.602 Agency notification before release of  
1452 intellectually disabled ~~mentally retarded~~ inmates.—Before the  
1453 release by parole, release by reason of gain-time allowances  
1454 provided for in s. 944.291, or expiration of sentence of any  
1455 inmate who has been diagnosed as having an intellectual  
1456 disability ~~mentally retarded~~ as defined in s. 393.063, the  
1457 Department of Corrections shall notify the Agency for Persons  
1458 with Disabilities in order that sufficient time be allowed to  
1459 notify the inmate or the inmate's representative, in writing, at  
1460 least 7 days before ~~prior to~~ the inmate's release, of available  
1461 community services.

1462           Section 38. Subsection (2) of section 945.025, Florida  
1463 Statutes, is amended to read:

1464           945.025 Jurisdiction of department.—

1465           (2) In establishing, operating, and using ~~utilizing~~ these  
1466 facilities, the department shall attempt, whenever possible, to  
1467 avoid the placement of nondangerous offenders who have potential  
1468 for rehabilitation with repeat offenders or dangerous offenders.  
1469 Medical, mental, and psychological problems must ~~shall~~ be  
1470 diagnosed and treated whenever possible. The Department of  
1471 Children and Family Services and the Agency for Persons with  
1472 Disabilities shall cooperate to ensure the delivery of services  
1473 to persons under the custody or supervision of the department.  
1474 If ~~When it is the intent of the department~~ intends to transfer a  
1475 ~~mentally ill or retarded~~ prisoner who has a mental illness or  
1476 intellectual disability to the Department of Children and Family  
1477 Services or the Agency for Persons with Disabilities, an  
1478 involuntary commitment hearing shall be held in accordance with  
1479 ~~according to the provisions of~~ chapter 393 or chapter 394.

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1480 Section 39. Subsection (5) of section 945.12, Florida  
1481 Statutes, is amended to read:

1482 945.12 Transfers for rehabilitative treatment.—

1483 (5) When the department plans to release a mentally ill or  
1484 intellectually disabled ~~retarded~~ offender, an involuntary  
1485 commitment hearing shall be held as soon as possible before  
1486 ~~prior to his or her release in accordance with, according to the~~  
1487 ~~provisions of~~ chapter 393 or chapter 394.

1488 Section 40. Subsection (9) of section 945.42, Florida  
1489 Statutes, is amended to read:

1490 945.42 Definitions; ss. 945.40-945.49.—As used in ss.  
1491 945.40-945.49, the following terms shall have the meanings  
1492 ascribed to them, unless the context shall clearly indicate  
1493 otherwise:

1494 (9) "Mentally ill" means an impairment of the mental or  
1495 emotional processes that, ~~of the ability to~~ exercise conscious  
1496 control of one's actions, ~~or of the ability to~~ perceive or  
1497 understand reality, which impairment substantially interferes  
1498 with the ~~a~~ person's ability to meet the ordinary demands of  
1499 living. However, ~~regardless of etiology, except that~~, for the  
1500 purposes of transferring ~~transfer of~~ an inmate to a mental  
1501 health treatment facility, the term does not include a  
1502 ~~retardation or~~ developmental disability as defined in chapter  
1503 393, simple intoxication, or conditions manifested only by  
1504 antisocial behavior or substance abuse addiction. However, an  
1505 individual who is ~~mentally retarded or~~ developmentally disabled  
1506 may also have a mental illness.

1507 Section 41. Section 947.185, Florida Statutes, is amended  
1508 to read:

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1509           947.185 Application for intellectual disability ~~mental~~  
 1510 ~~retardation~~ services as condition of parole.—The Parole  
 1511 Commission may require as a condition of parole that any inmate  
 1512 who has been diagnosed as having an intellectual disability  
 1513 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,  
 1514 apply for services from the Agency for Persons with  
 1515 Disabilities.

1516           Section 42. Subsection (4) of section 984.19, Florida  
 1517 Statutes, is amended to read:

1518           984.19 Medical screening and treatment of child;  
 1519 examination of parent, guardian, or person requesting custody.—

1520           (4) A judge may order that a child alleged to be or  
 1521 adjudicated a child in need of services be treated by a licensed  
 1522 health care professional. The judge may also order such child to  
 1523 receive mental health or intellectual disability ~~retardation~~  
 1524 services from a psychiatrist, psychologist, or other appropriate  
 1525 service provider. If it is necessary to place the child in a  
 1526 residential facility for such services, ~~then~~ the procedures and  
 1527 criteria established in s. 394.467 or chapter 393 shall be used,  
 1528 as whichever is applicable. A child may be provided ~~mental~~  
 1529 ~~health or retardation~~ services in emergency situations, pursuant  
 1530 to the procedures and criteria contained in s. 394.463(1) or  
 1531 chapter 393, as whichever is applicable.

1532           Section 43. Paragraph (a) of subsection (3) of section  
 1533 985.14, Florida Statutes, is amended to read:

1534           985.14 Intake and case management system.—

1535           (3) The intake and case management system shall facilitate  
 1536 consistency in the recommended placement of each child, and in  
 1537 the assessment, classification, and placement process, with the

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1538 following purposes:

1539 (a) An individualized, multidisciplinary assessment process  
1540 that identifies the priority needs of each ~~individual~~ child for  
1541 rehabilitation and treatment and identifies any needs of the  
1542 child's parents or guardians for services that would enhance  
1543 their ability to provide adequate support, guidance, and  
1544 supervision for the child. This process begins ~~shall begin~~ with  
1545 the detention risk assessment instrument and decision, includes  
1546 ~~shall include~~ the intake preliminary screening and comprehensive  
1547 assessment for substance abuse treatment services, mental health  
1548 services, intellectual disability ~~retardation~~ services, literacy  
1549 services, and other educational and treatment services as  
1550 components, additional assessment of the child's treatment  
1551 needs, and classification regarding the child's risks to the  
1552 community and, for a serious or habitual delinquent child,  
1553 includes ~~shall include the~~ assessment for placement in a serious  
1554 or habitual delinquent children program under s. 985.47. The  
1555 completed multidisciplinary assessment process must ~~shall~~ result  
1556 in the predisposition report.

1557 Section 44. Paragraph (g) of subsection (1) and subsection  
1558 (5) of section 985.145, Florida Statutes, is amended to read:

1559 985.145 Responsibilities of juvenile probation officer  
1560 during intake; screenings and assessments.—

1561 (1) The juvenile probation officer shall serve as the  
1562 primary case manager for the purpose of managing, coordinating,  
1563 and monitoring the services provided to the child. Each program  
1564 administrator within the Department of Children and Family  
1565 Services shall cooperate with the primary case manager in  
1566 carrying out the duties and responsibilities described in this

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1567 section. In addition to duties specified in other sections and  
1568 through departmental rules, the assigned juvenile probation  
1569 officer shall be responsible for the following:

1570 (g) *Comprehensive assessment.*—The juvenile probation  
1571 officer, pursuant to uniform procedures established by the  
1572 department and upon determining that the report, affidavit, or  
1573 complaint is complete, shall:

1574 1. Perform the preliminary screening and make referrals for  
1575 a comprehensive assessment regarding the child's need for  
1576 substance abuse treatment services, mental health services,  
1577 intellectual disability ~~retardation~~ services, literacy services,  
1578 or other educational or treatment services.

1579 2. If ~~When~~ indicated by the preliminary screening, provide  
1580 for a comprehensive assessment of the child and family for  
1581 substance abuse problems, using community-based licensed  
1582 programs with clinical expertise and experience in the  
1583 assessment of substance abuse problems.

1584 3. If ~~When~~ indicated by the preliminary screening, provide  
1585 for a comprehensive assessment of the child and family for  
1586 mental health problems, using community-based psychologists,  
1587 psychiatrists, or other licensed mental health professionals who  
1588 have clinical expertise and experience in the assessment of  
1589 mental health problems.

1590 (5) If the screening and assessment indicate that the  
1591 interests of the child and the public will be best served  
1592 ~~thereby~~, the juvenile probation officer, with the approval of  
1593 the state attorney, may refer the child for care, diagnostic,  
1594 and evaluation services; substance abuse treatment services;  
1595 mental health services; intellectual disability ~~retardation~~

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1596 services; a diversionary, arbitration, or mediation program;  
1597 community service work; or other programs or treatment services  
1598 voluntarily accepted by the child and the child's parents or  
1599 legal guardian. ~~If Whenever~~ a child volunteers to participate in  
1600 any work program under this chapter or volunteers to work in a  
1601 specified state, county, municipal, or community service  
1602 organization supervised work program or to work for the victim,  
1603 the child is ~~shall be~~ considered an employee of the state for  
1604 the purposes of liability. In determining the child's average  
1605 weekly wage, unless otherwise determined by a specific funding  
1606 program, all remuneration received from the employer is  
1607 considered a gratuity, and the child is not entitled to any  
1608 benefits otherwise payable under s. 440.15~~7~~ regardless of  
1609 whether the child may be receiving wages and remuneration from  
1610 other employment with another employer and regardless of the  
1611 child's future wage-earning capacity.

1612 Section 45. Subsections (2) and (6) of section 985.18,  
1613 Florida Statutes, are amended to read:

1614 985.18 Medical, psychiatric, psychological, substance  
1615 abuse, and educational examination and treatment.—

1616 (2) ~~If Whenever~~ a child has been found to have committed a  
1617 delinquent act, or before such finding with the consent of any  
1618 parent or legal custodian of the child, the court may order the  
1619 child to be treated by a physician. The court may also order the  
1620 child to receive mental health, substance abuse, or intellectual  
1621 disability ~~retardation~~ services from a psychiatrist,  
1622 psychologist, or other appropriate service provider. If it is  
1623 necessary to place the child in a residential facility for such  
1624 services, the procedures and criteria established in chapter

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1625 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable,  
1626 must ~~shall~~ be used. After a child has been adjudicated  
1627 delinquent, if an educational needs assessment by the district  
1628 school board or the Department of Children and Family Services  
1629 has been ~~previously~~ conducted, the court shall order the report  
1630 ~~of such needs assessment~~ included in the child's court record in  
1631 lieu of a new assessment. For purposes of this section, an  
1632 educational needs assessment includes, but is not limited to,  
1633 reports of intelligence and achievement tests, screening for  
1634 learning and other disabilities ~~and other handicaps~~, and  
1635 screening for the need for alternative education.

1636 (6) A physician must ~~shall~~ be immediately notified by the  
1637 person taking the child into custody or the person having  
1638 custody if there are indications of physical injury or illness,  
1639 or the child shall be taken to the nearest available hospital  
1640 for emergency care. A child may be provided mental health,  
1641 substance abuse, or intellectual disability ~~retardation~~  
1642 ~~services~~, in emergency situations, pursuant to chapter 393,  
1643 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a  
1644 hearing, the court may order the custodial parent or parents,  
1645 guardian, or other custodian, if found able to do so, to  
1646 reimburse the county or state for the expense involved in such  
1647 emergency treatment or care.

1648 Section 46. Paragraph (e) of subsection (1), subsections  
1649 (2) through (4), and paragraph (a) of subsection (6) of section  
1650 985.19, Florida Statutes, are amended to read:

1651 985.19 Incompetency in juvenile delinquency cases.—

1652 (1) If, at any time prior to or during a delinquency case,  
1653 the court has reason to believe that the child named in the

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1654 petition may be incompetent to proceed with the hearing, the  
1655 court on its own motion may, or on the motion of the child's  
1656 attorney or state attorney must, stay all proceedings and order  
1657 an evaluation of the child's mental condition.

1658 (e) For incompetency evaluations related to intellectual  
1659 disability ~~mental retardation~~ or autism, the court shall order  
1660 the Agency for Persons with Disabilities to examine the child to  
1661 determine if the child meets the definition of "intellectual  
1662 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,  
1663 whether the child is competent to proceed with delinquency  
1664 proceedings.

1665 (2) A child who is adjudicated incompetent to proceed, and  
1666 who has committed a delinquent act or violation of law, either  
1667 of which would be a felony if committed by an adult, must be  
1668 committed to the Department of Children and Family Services for  
1669 treatment or training. A child who has been adjudicated  
1670 incompetent to proceed because of age or immaturity, or for any  
1671 reason other than for mental illness, intellectual disability,  
1672 ~~or retardation~~ or autism, must not be committed to the  
1673 department or to the Department of Children and Family Services  
1674 for restoration-of-competency treatment or training services.  
1675 For purposes of this section, a child who has committed a  
1676 delinquent act or violation of law, either of which would be a  
1677 misdemeanor if committed by an adult, may not be committed to  
1678 the department or to the Department of Children and Family  
1679 Services for restoration-of-competency treatment or training  
1680 services.

1681 (3) If the court finds that a child has mental illness,  
1682 intellectual disability ~~mental retardation~~, or autism and

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1683 adjudicates the child incompetent to proceed, the court must  
1684 also determine whether the child meets the criteria for secure  
1685 placement. A child may be placed in a secure facility or program  
1686 if the court makes a finding by clear and convincing evidence  
1687 that:

1688 (a) The child has mental illness, intellectual disability  
1689 ~~mental retardation~~, or autism and because of the mental illness,  
1690 intellectual disability ~~mental retardation~~, or autism:

1691 1. The child is manifestly incapable of surviving with the  
1692 help of willing and responsible family or friends, including  
1693 available alternative services, and without treatment or  
1694 training the child is likely to ~~either~~ suffer from neglect or  
1695 refuse to care for self, and such neglect or refusal poses a  
1696 real and present threat of substantial harm to the child's well-  
1697 being; or

1698 2. There is a substantial likelihood that in the near  
1699 future the child will inflict serious bodily harm on self or  
1700 others, as evidenced by recent behavior causing, attempting, or  
1701 threatening such harm; and

1702 (b) All available less restrictive alternatives, including  
1703 treatment or training in community residential facilities or  
1704 community settings, which would offer an opportunity for  
1705 improvement of the child's condition, are inappropriate.

1706 (4) A child who is determined to have mental illness,  
1707 intellectual disability ~~mental retardation~~, or autism, who has  
1708 been adjudicated incompetent to proceed, and who meets the  
1709 criteria set forth in subsection (3), must be committed to the  
1710 Department of Children and Family Services and receive treatment  
1711 or training in a secure facility or program that is the least

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1712 restrictive alternative consistent with public safety. Any  
1713 placement of a child to a secure residential program must be  
1714 separate from adult forensic programs. If the child attains  
1715 competency, ~~then~~ custody, case management, and supervision of  
1716 the child shall ~~will~~ be transferred to the department in order  
1717 to continue delinquency proceedings; however, the court retains  
1718 authority to order the Department of Children and Family  
1719 Services to provide continued treatment or training to maintain  
1720 competency.

1721 (a) A child adjudicated incompetent due to intellectual  
1722 disability ~~mental retardation~~ or autism may be ordered into a  
1723 secure program or facility designated by the Department of  
1724 Children and Family Services for children who have intellectual  
1725 disabilities ~~with mental retardation~~ or autism.

1726 (b) A child adjudicated incompetent due to mental illness  
1727 may be ordered into a secure program or facility designated by  
1728 the Department of Children and Family Services for children  
1729 having mental illnesses.

1730 (c) If ~~Whenever~~ a child is placed in a secure residential  
1731 facility, the department shall ~~will~~ provide transportation to  
1732 the secure residential facility for admission and from the  
1733 secure residential facility upon discharge.

1734 (d) The purpose of the treatment or training is the  
1735 restoration of the child's competency to proceed.

1736 (e) The service provider must file a written report with  
1737 the court pursuant to the applicable Florida Rules of Juvenile  
1738 Procedure within ~~not later than~~ 6 months after the date of  
1739 commitment, or at the end of any period of extended treatment or  
1740 training, and at any time the Department of Children and Family

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1741 Services, through its service provider, determines the child has  
1742 attained competency or no longer meets the criteria for secure  
1743 placement, or at such shorter intervals as ordered by the court.  
1744 A copy of a written report evaluating the child's competency  
1745 must be filed by the provider with the court and with the state  
1746 attorney, the child's attorney, the department, and the  
1747 Department of Children and Family Services.

1748 (6) (a) If a child is determined to have mental illness,  
1749 intellectual disability ~~mental retardation~~, or autism and is  
1750 found to be incompetent to proceed but does not meet the  
1751 criteria set forth in subsection (3), the court shall commit the  
1752 child to the Department of Children and Family Services and  
1753 ~~shall~~ order the Department of Children and Family Services to  
1754 provide appropriate treatment and training in the community. The  
1755 purpose of the treatment or training is the restoration of the  
1756 child's competency to proceed.

1757 Section 47. Section 985.195, Florida Statutes, is amended  
1758 to read:

1759 985.195 Transfer to other treatment services.—Any child  
1760 committed to the department may be transferred to intellectual  
1761 disability ~~retardation~~, mental health, or substance abuse  
1762 treatment facilities for diagnosis and evaluation pursuant to  
1763 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~  
1764 applicable, for up to a period ~~not to exceed~~ 90 days.

1765 Section 48. Paragraph (b) of subsection (1) of section  
1766 985.61, Florida Statutes, is amended to read:

1767 985.61 Early delinquency intervention program; criteria.—

1768 (1) The Department of Juvenile Justice shall, contingent  
1769 upon specific appropriation and with the cooperation of local

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1770 law enforcement agencies, the judiciary, district school board  
1771 personnel, the office of the state attorney, the office of the  
1772 public defender, the Department of Children and Family Services,  
1773 and community service agencies that work with children,  
1774 establish an early delinquency intervention program, the  
1775 components of which shall include, but not be limited to:

1776 (b) Treatment modalities, including substance abuse  
1777 treatment services, mental health services, and ~~retardation~~  
1778 services for intellectual disabilities.

1779 Section 49. This act shall take effect July 1, 2010.