

By the Committee on Children, Families, and Elder Affairs; and
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 s. 409.908,
17 F.S.; substituting the term "intellectually disabled"
18 for the term "mentally retarded"; amending ss. 413.20,
19 440.49, and 499.0054, F.S.; substituting the term
20 "intellectual disability" for the term "mental
21 retardation"; amending s. 514.072, F.S.; conforming a
22 cross-reference and deleting obsolete provisions;
23 amending ss. 627.6041, 627.6615, 641.31, 650.05,
24 765.204, 849.04, 914.16, 914.17, 916.105, and 916.106,
25 F.S.; substituting the term "intellectual disability"
26 for the term "mental retardation"; amending s.
27 916.107, F.S.; substituting the term "intellectual
28 disability" for the term "retardation"; providing a
29 directive to the Division of Statutory Revision;

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30 amending ss. 916.301, 916.3012, 916.302, 916.3025,
31 916.303, 916.304, 918.16, 921.137, 941.38, 944.602,
32 945.025, 945.12, 945.42, 947.185, 984.19, 985.14,
33 985.145, 985.18, 985.19, 985.195, and 985.61, F.S.;
34 substituting the term "intellectual disability" for
35 the term "mental retardation"; expressing legislative
36 intent; providing an effective date.

37

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

39

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

42 39.502 Notice, process, and service.—

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

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

52 40.013 Persons disqualified or excused from jury service.—

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

58 Section 3. Section 86.041, Florida Statutes, is amended to

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59 read:

60 86.041 Actions by executors, administrators, trustees,
61 etc.—Any person interested as or through an executor,
62 administrator, trustee, guardian, or other fiduciary, creditor,
63 devisee, legatee, heir, next of kin, or cestui que trust, in the
64 administration of a trust, a guardianship, or ~~of~~ the estate of a
65 decedent, an infant, a mental incompetent, or insolvent may have
66 a declaration of rights or equitable or legal relations to ~~in~~
67 ~~respect thereto~~:

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

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

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

76

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

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

84 92.53 Videotaping of testimony of a victim or witness under
85 age 16 or who has an intellectual disability ~~person with mental~~
86 ~~retardation~~.—

87 (1) On motion and hearing in camera and a finding that

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88 there is a substantial likelihood that a victim or witness who
89 is under the age of 16 or who has an intellectual disability ~~is~~
90 ~~a person with mental retardation~~ as defined in s. 393.063 would
91 suffer at least moderate emotional or mental harm due to the
92 presence of the defendant if such victim or witness ~~the child or~~
93 ~~person with mental retardation~~ is required to testify in open
94 court, or ~~that such victim or witness~~ is otherwise unavailable
95 as defined in s. 90.804(1), the trial court may order the
96 videotaping of the testimony of the victim or witness in a case,
97 whether civil or criminal in nature, in which videotaped
98 testimony is to be used ~~utilized~~ at trial in lieu of trial
99 testimony in open court.

100 (2) The motion may be filed by:

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

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

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

105 (d) The prosecuting attorney or the defendant, or the
106 defendant's counsel.

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

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

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

116 (c) The court finds at a hearing on the motion that the

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117 presence of a judge or special master is not necessary to
118 protect the victim or witness.

119 (4) The defendant and the defendant's counsel must ~~shall~~ be
120 present at the videotaping, unless the defendant has waived this
121 right. The court may require the defendant to view the testimony
122 from outside the presence of the child or the person who has an
123 intellectual disability ~~with mental retardation~~ by means of a
124 two-way mirror or another similar method that ensures ~~will~~
125 ~~ensure~~ that the defendant can observe and hear the testimony of
126 the victim or witness in person, but ~~that~~ the victim or witness
127 cannot hear or see the defendant. The defendant and the attorney
128 for the defendant may communicate by any appropriate private
129 method.

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

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

145 (7) The court shall make specific findings of fact, on the

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146 record, as to the basis for its ruling under this section.

147 Section 5. Section 92.54, Florida Statutes, is amended to
148 read:

149 92.54 Use of closed circuit television in proceedings
150 involving a victim or witness ~~victims or witnesses~~ under the age
151 of 16 or who has an intellectual disability ~~persons with mental~~
152 ~~retardation.~~

153 (1) Upon motion and hearing in camera and upon a finding
154 that there is a substantial likelihood that a victim or witness
155 under the age of 16 or who has an intellectual disability ~~the~~
156 ~~child or person with mental retardation~~ will suffer at least
157 moderate emotional or mental harm due to the presence of the
158 defendant if such victim or witness ~~the child or person with~~
159 ~~mental retardation~~ is required to testify in open court, or ~~that~~
160 ~~such victim or witness~~ is unavailable as defined in s.

161 90.804(1), the trial court may order that the testimony of the a
162 ~~child under the age of 16 or person with mental retardation who~~
163 ~~is a~~ victim or witness be taken outside of the courtroom and
164 shown by means of closed circuit television.

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

170 (3) Only the judge, the prosecutor, the defendant, the
171 attorney for the defendant, the operators of the videotape
172 equipment, an interpreter, and some other person who, in the
173 opinion of the court, contributes to the well-being of the child
174 or the person who has an intellectual disability ~~with mental~~

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175 ~~retardation~~ and who will not be a witness in the case may be in
176 the room during the recording of the testimony.

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

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

192 Section 6. Section 92.55, Florida Statutes, is amended to
193 read:

194 92.55 Judicial or other proceedings involving a victim or
195 witness under the age of 16 or who has an intellectual
196 disability ~~person with mental retardation~~; special protections.-

197 (1) Upon motion of any party, upon motion of a parent,
198 guardian, attorney, or guardian ad litem for a victim or witness
199 ~~child~~ under the age of 16 or who has an intellectual disability
200 ~~person with mental retardation~~, or upon its own motion, the
201 court may enter any order necessary to protect such a child
202 ~~under the age of 16 or person with mental retardation who is a~~
203 victim or witness in any judicial proceeding or other official

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204 proceeding from severe emotional or mental harm due to the
205 presence of the defendant if the victim or witness ~~child or~~
206 ~~person with mental retardation~~ is required to testify in open
207 court. Such orders must ~~shall~~ relate to the taking of testimony
208 and ~~shall~~ include, but are ~~not be~~ limited to:

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

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

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

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

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

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

232 (3) In addition to such other relief ~~as is~~ provided by law,

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233 the court may enter orders limiting the number of times that a
234 child or a person who has an intellectual disability ~~with mental~~
235 ~~retardation~~ may be interviewed, prohibiting depositions of such
236 ~~a child or person with mental retardation~~, requiring the
237 submission of questions prior to examination of the ~~a~~ child or
238 person ~~with mental retardation~~, setting the place and conditions
239 for interviewing the ~~a~~ child or person ~~with mental retardation~~
240 or for conducting any other proceeding, or permitting or
241 prohibiting the attendance of any person at any proceeding. The
242 court shall enter any order necessary to protect the rights of
243 all parties, including the defendant in any criminal action.

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

246 320.10 Exemptions.—

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

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

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

255 (c) Any motor vehicle owned and operated exclusively for
256 the benefit of the Boys' Clubs of America, the National Audubon
257 Society, the National Children's Cardiac Hospital, any humane
258 society, any nationally chartered veterans' organization that
259 maintains a state headquarters in this state, the Children's
260 Bible Mission, the Boy Scouts of America, the Girl Scouts of
261 America, the Salvation Army, the American National Red Cross,

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262 the United Service Organization, any local member unit of the
263 National Urban League which provides free services to municipal
264 and county residents who are in need of such services, the Young
265 Men's Christian Association, the Young Men's Hebrew Association,
266 the Camp Fire Girls' Council, the Young Women's Christian
267 Association, the Young Women's Hebrew Association, any local
268 member unit of the Arc of Florida ~~Association for Retarded~~
269 ~~Citizens~~, the Children's Home Society of Florida, or the
270 Goodwill Industries. A not-for-profit organization named in this
271 paragraph and its local affiliate organizations is ~~shall be~~
272 eligible for the exemption if it ~~for so long as each~~ maintains
273 current articles of incorporation on file with the Department of
274 State and qualifies as a not-for-profit organization under s.
275 212.08;

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

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

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

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

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

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

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

295 Section 8. Paragraph (d) of subsection (3) of section
296 383.14, Florida Statutes, is amended to read:

297 383.14 Screening for metabolic disorders, other hereditary
298 and congenital disorders, and environmental risk factors.—

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

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

308

309 All provisions of this subsection must be coordinated with the
310 provisions and plans established under this chapter, chapter
311 411, and Pub. L. No. 99-457.

312 Section 9. Subsection (9) and subsections (20) through (31)
313 of section 393.063, Florida Statutes, are reordered and amended
314 to read:

315 393.063 Definitions.—For the purposes of this chapter, the
316 term:

317 (9) "Developmental disability" means a disorder or syndrome
318 that is attributable to intellectual disability ~~retardation~~,
319 cerebral palsy, autism, spina bifida, or Prader-Willi syndrome;

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320 that manifests before the age of 18; and that constitutes a
321 substantial handicap that can reasonably be expected to continue
322 indefinitely.

323 ~~(21)~~(20) "Intermediate care facility for the
324 developmentally disabled" or "ICF/DD" means a residential
325 facility licensed and certified under ~~pursuant to~~ part VIII of
326 chapter 400.

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

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

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

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349 (25)~~(24)~~ "Relative" means an individual who is connected by
350 affinity or consanguinity to the client and who is 18 years of
351 age or older.

352 (26)~~(25)~~ "Resident" means a any person who has a with
353 developmental disability and resides ~~disabilities residing~~ at a
354 residential facility, whether or not such person is a client of
355 the agency.

356 (27)~~(26)~~ "Residential facility" means a facility providing
357 room and board and personal care for persons who have with
358 developmental disabilities.

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

365 (29)~~(28)~~ "Residential habilitation center" means a
366 community residential facility licensed under this chapter which
367 provides habilitation services. The capacity of such a facility
368 may shall not be fewer than nine residents. After October 1,
369 1989, new residential habilitation centers may not be licensed
370 and the licensed capacity for any existing residential
371 habilitation center may not be increased.

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

377 (31)~~(30)~~ "Restraint" means a physical device, method, or

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378 drug used to control dangerous behavior.

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

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

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

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

404 (a) "Adaptive behavior" means the effectiveness or degree
405 with which an individual meets the standards of personal
406 independence and social responsibility expected of his or her

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407 age, cultural group, and community.

408 (b) "Significantly subaverage general intellectual
409 functioning," ~~for the purpose of this definition,~~ means
410 performance that ~~which~~ is two or more standard deviations from
411 the mean score on a standardized intelligence test specified in
412 the rules of the agency. ~~"Adaptive behavior," for the purpose of~~
413 ~~this definition, means the effectiveness or degree with which an~~
414 ~~individual meets the standards of personal independence and~~
415 ~~social responsibility expected of his or her age, cultural~~
416 ~~group, and community.~~

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

424 393.11 Involuntary admission to residential services.—

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

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436 ~~shall be~~ governed by the Florida Rules of Civil Procedure.

437 (2) PETITION.—

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

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

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

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

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

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

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

459 (3) NOTICE.—

460 (b) If ~~Whenever~~ a motion or petition has been filed
461 pursuant to s. 916.303 to dismiss criminal charges against a
462 defendant who has an intellectual disability ~~with retardation~~ or
463 autism, and a petition is filed to involuntarily admit the
464 defendant to residential services under this section, the notice

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465 of the filing of the petition must ~~shall~~ also be given to the
466 defendant's attorney, the state attorney of the circuit from
467 which the defendant was committed, and the agency.

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

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

478 (4) AGENCY PARTICIPATION.—

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

485 (5) EXAMINING COMMITTEE.—

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

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494 rehabilitation counseling, to examine the person and to testify
495 at the hearing on the involuntary admission to residential
496 services.

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

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

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

507 a. Lacks sufficient capacity to give express and informed
508 consent to a voluntary application for services pursuant to s.
509 393.065;

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

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

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

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

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

522 (f) The committee shall file the report with the court at

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

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

533 (6) COUNSEL; GUARDIAN AD LITEM.—

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

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

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552 (7) HEARING.—

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

559 (8) ORDER.—

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

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

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

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

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

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

578 (10) COMPETENCY.—

579 (a) The issue of competency is ~~shall be~~ separate and
580 distinct from a determination of the appropriateness of

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581 involuntary admission to residential services due to
582 intellectual disability ~~for a condition of mental retardation.~~

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

592 (12) APPEAL.—

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

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

600 394.455 Definitions.—As used in this part, unless the
601 context clearly requires otherwise, the term:

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

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610 antisocial behavior or substance abuse impairment.

611 Section 12. Subsections (3) through (13) of section
612 400.960, Florida Statutes, are amended to read:

613 400.960 Definitions.—As used in this part, the term:

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

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

616 (3)~~(5)~~ "Client" means any person determined by the Agency
617 for Persons with Disabilities to be eligible for developmental
618 services.

619 (4)~~(6)~~ "Developmentally disabled" ~~"developmental~~
620 ~~disability"~~ has the same meaning as "developmental disability"
621 as that term is defined in s. 393.063.

622 (5)~~(7)~~ "Direct service provider" means a person 18 years of
623 age or older who has direct contact with individuals who have
624 ~~with~~ developmental disabilities and who is unrelated to such ~~the~~
625 individuals ~~with developmental disabilities~~.

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

632 ~~(9) "Prader-Willi syndrome" has the same meaning as in s.~~
633 ~~393.063.~~

634 (7)~~(10)~~~~(a)~~ "Restraint" means a physical device, method, or
635 drug used to control behavior.

636 (a) A physical restraint is any manual method or physical
637 or mechanical device, material, or equipment attached or
638 adjacent to the individual's body so that he or she cannot

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

641 (b) A drug used as a restraint is a medication used to
642 control the person's behavior or to restrict his or her freedom
643 of movement. Physically holding a person during a procedure to
644 forcibly administer psychotropic medication is a physical
645 restraint.

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

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

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

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

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

666 408.032 Definitions relating to Health Facility and
667 Services Development Act.—As used in ss. 408.031-408.045, the

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668 term:

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

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

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

692 Section 15. Subsection (17) of section 413.20, Florida
693 Statutes, is amended to read:

694 413.20 Definitions.—As used in this part, the term:

695 (17) "Person who has a significant disability" means an
696 individual who has a disability that is a severe physical or

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697 mental impairment that seriously limits one or more functional
698 capacities, such as mobility, communication, self-care, self-
699 direction, interpersonal skills, work tolerance, or work skills,
700 in terms of an employment outcome; whose vocational
701 rehabilitation may be expected to require multiple vocational
702 rehabilitation services over an extended period of time; and who
703 has one or more physical or mental disabilities resulting from
704 amputation, arthritis, autism, blindness, burn injury, cancer,
705 cerebral palsy, cystic fibrosis, deafness, head injury, heart
706 disease, hemiplegia, hemophilia, respiratory or pulmonary
707 dysfunction, intellectual disability ~~mental retardation~~, mental
708 illness, multiple sclerosis, muscular dystrophy, musculoskeletal
709 disorder, neurological disorder, including stroke and epilepsy,
710 paraplegia, quadriplegia, or other spinal cord condition,
711 sickle-cell anemia, specific learning disability, end-stage
712 renal disease, or another disability or a combination of
713 disabilities which ~~that~~ is determined, after an assessment for
714 determining eligibility and vocational rehabilitation needs, to
715 cause comparable substantial functional limitation.

716 Section 16. Paragraph (a) of subsection (6) of section
717 440.49, Florida Statutes, is amended to read:

718 440.49 Limitation of liability for subsequent injury
719 through Special Disability Trust Fund.—

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

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

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- 726 1. Epilepsy.
727 2. Diabetes.
728 3. Cardiac disease.
729 4. Amputation of foot, leg, arm, or hand.
730 5. Total loss of sight of one or both eyes or a partial
731 loss of corrected vision of more than 75 percent bilaterally.
732 6. Residual disability from poliomyelitis.
733 7. Cerebral palsy.
734 8. Multiple sclerosis.
735 9. Parkinson's disease.
736 10. Meniscectomy.
737 11. Patellectomy.
738 12. Ruptured cruciate ligament.
739 13. Hemophilia.
740 14. Chronic osteomyelitis.
741 15. Surgical or spontaneous fusion of a major weight-
742 bearing joint.
743 16. Hyperinsulinism.
744 17. Muscular dystrophy.
745 18. Thrombophlebitis.
746 19. Herniated intervertebral disk.
747 20. Surgical removal of an intervertebral disk or spinal
748 fusion.
749 21. One or more back injuries or a disease process of the
750 back resulting in disability over a total of 120 or more days,
751 if substantiated by a doctor's opinion that there was a
752 preexisting impairment to the claimant's back.
753 22. Total deafness.
754 23. Intellectual disability if ~~Mental retardation, provided~~

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755 the employee's intelligence quotient is such that she or he
756 falls within the lowest 2 percentile of the general population.
757 However, ~~it shall not be necessary for the employer~~ does not
758 need to know the employee's actual intelligence quotient or
759 actual relative ranking in relation to the intelligence quotient
760 of the general population.

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

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

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

775 Section 17. Paragraph (g) of subsection (1) of section
776 499.0054, Florida Statutes, is amended to read:

777 499.0054 Advertising and labeling of drugs, devices, and
778 cosmetics; exemptions.—

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

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

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- 784 diseases, or processes:
- 785 1. Blood disorders.
 - 786 2. Bone or joint diseases.
 - 787 3. Kidney diseases or disorders.
 - 788 4. Cancer.
 - 789 5. Diabetes.
 - 790 6. Gall bladder diseases or disorders.
 - 791 7. Heart and vascular diseases.
 - 792 8. High blood pressure.
 - 793 9. Diseases or disorders of the ear or auditory apparatus,
 - 794 including hearing loss or deafness.
 - 795 10. Mental disease or intellectual disability ~~mental~~
 - 796 ~~retardation~~.
 - 797 11. Paralysis.
 - 798 12. Prostate gland disorders.
 - 799 13. Conditions of the scalp affecting hair loss.
 - 800 14. Baldness.
 - 801 15. Endocrine disorders.
 - 802 16. Sexual impotence.
 - 803 17. Tumors.
 - 804 18. Venereal diseases.
 - 805 19. Varicose ulcers.
 - 806 20. Breast enlargement.
 - 807 21. Purifying blood.
 - 808 22. Metabolic disorders.
 - 809 23. Immune system disorders or conditions affecting the
 - 810 immune system.
 - 811 24. Extension of life expectancy.
 - 812 25. Stress and tension.

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813 26. Brain stimulation or performance.

814 27. The body's natural defense mechanisms.

815 28. Blood flow.

816 29. Depression.

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

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

821 514.072 Certification of swimming instructors for people
822 who have developmental disabilities ~~required.~~—Any person working
823 at a swimming pool who holds himself or herself out as a
824 swimming instructor specializing in training people who have
825 developmental disabilities, as defined in s. 393.063(10), may be
826 certified by the Dan Marino Foundation, Inc., in addition to
827 being certified under s. 514.071. The Dan Marino Foundation,
828 Inc., must develop certification requirements and a training
829 curriculum for swimming instructors for people who have
830 developmental disabilities ~~and must submit the certification~~
831 ~~requirements to the Department of Health for review by January~~
832 ~~1, 2007. A person certified under s. 514.071 before July 1,~~
833 ~~2007, must meet the additional certification requirements of~~
834 ~~this section before January 1, 2008.~~ A person certified under s.
835 514.071 ~~on or after July 1, 2007,~~ must meet the additional
836 certification requirements of this section within 6 months after
837 receiving certification under s. 514.071.

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

840 627.6041 ~~Handicapped~~ Children with disabilities;
841 continuation of coverage.—

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

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

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

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

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

863 627.6615 ~~Handicapped~~ Children with disabilities;
864 continuation of coverage under group policy.—

865 (1) A group health insurance policy or health care services
866 plan contract that is delivered or issued for delivery in this
867 state and that provides that coverage of a dependent child of an
868 employee or other member of the covered group terminates ~~will~~
869 ~~terminate~~ upon attainment of the limiting age for dependent
870 children specified in the policy or contract must ~~shall~~ also

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871 provide in substance that attainment of the limiting age does
872 not terminate the coverage of the child while the child
873 continues to be both:

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

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

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

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

888 641.31 Health maintenance contracts.—

889 (29) If a health maintenance contract provides that
890 coverage of a dependent child of the subscriber terminates ~~will~~
891 ~~terminate~~ upon attainment of the limiting age for dependent
892 children which is specified in the contract, the contract must
893 also provide in substance that attainment of the limiting age
894 does not terminate the coverage of the child while the child
895 continues to be both:

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

899 (b) Chiefly dependent upon the employee or member for

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900 support and maintenance.

901
902 If the claim is denied under a contract for the stated reason
903 that the child has attained the limiting age for dependent
904 children specified in the contract, the notice or denial must
905 state that the subscriber has the burden of establishing that
906 the child continues to meet the criteria specified in this
907 subsection ~~paragraphs (a) and (b)~~.

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

910 650.05 Plans for coverage of employees of political
911 subdivisions.-

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

920 ~~(b)~~ The grants-in-aid and other revenue ~~referred to in~~
921 ~~paragraph (a)~~ specifically include, but are not limited to,
922 minimum foundation program grants to public school districts and
923 community colleges; gasoline, motor fuel, cigarette, racing, and
924 insurance premium taxes distributed to political subdivisions;
925 and amounts specifically appropriated as grants-in-aid for
926 mental health, intellectual disabilities ~~mental retardation~~, and
927 mosquito control programs.

928 Section 23. Subsection (1) of section 765.204, Florida

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929 Statutes, is amended to read:

930 765.204 Capacity of principal; procedure.—

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

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

939 849.04 Permitting minors and persons under guardianship to
 940 gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.
 941 O., keno or pool table, or billiard table, wheel of fortune, or
 942 other game of chance, ~~kept for the purpose of betting, who~~
 943 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is
 944 mentally incompetent or under guardianship to play at such game
 945 or to bet on such game of chance; or whoever aids or abets or
 946 otherwise encourages such playing or betting of any money or
 947 other valuable thing upon the result of such game of chance by a
 948 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under
 949 guardianship, commits ~~shall be guilty of~~ a felony of the third
 950 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 951 775.084. For the purpose of this section, the term a "person who
 952 is mentally incompetent person" means a person is one who
 953 because of mental illness, intellectual disability ~~mental~~
 954 ~~retardation~~, senility, excessive use of drugs or alcohol, or
 955 other mental incapacity is incapable of ~~either~~ managing his or
 956 her property or caring for himself or herself or both.

957 Section 25. Section 914.16, Florida Statutes, is amended to

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958 read:

959 914.16 Child abuse and sexual abuse of victims under age 16
960 or who has an intellectual disability ~~persons with mental~~
961 ~~retardation~~; limits on interviews.—The chief judge of each
962 judicial circuit, after consultation with the state attorney and
963 the public defender for the judicial circuit, the appropriate
964 chief law enforcement officer, and any other person deemed
965 appropriate by the chief judge, shall ~~provide by order~~
966 reasonable limits on the number of interviews which ~~that~~ a
967 victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s.
968 847.0135(5) who is under 16 years of age or a victim of a
969 violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who
970 has an intellectual disability ~~is a person with mental~~
971 ~~retardation~~ as defined in s. 393.063 must submit to for law
972 enforcement or discovery purposes. ~~The order shall,~~ To the
973 extent possible, the order must protect the victim from the
974 psychological damage of repeated interrogations while preserving
975 the rights of the public, the victim, and the person charged
976 with the violation.

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

979 914.17 Appointment of advocate for victims or witnesses who
980 are minors or intellectually disabled ~~persons with mental~~
981 ~~retardation~~.—

982 (1) A guardian ad litem or other advocate shall be
983 appointed by the court to represent a minor in any criminal
984 proceeding if the minor is a victim of or witness to child abuse
985 or neglect, ~~or if the minor is a victim of a sexual offense,~~ or
986 a witness to a sexual offense committed against another minor.

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987 The court may appoint a guardian ad litem or other advocate in
988 any other criminal proceeding in which a minor is involved as
989 ~~either~~ a victim or a witness. The guardian ad litem or other
990 advocate shall have full access to all evidence and reports
991 introduced during the proceedings, may interview witnesses, may
992 make recommendations to the court, shall be noticed and have the
993 right to appear on behalf of the minor at all proceedings, and
994 may request additional examinations by medical doctors,
995 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian
996 ad litem or other advocate shall ~~to perform the following~~
997 ~~services:~~

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

1000 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1001 whenever appropriate, of the minor's ability to understand and
1002 cooperate with any court proceeding; and

1003 (c) ~~To~~ Assist the minor and the minor's family in coping
1004 with the emotional effects of the crime and subsequent criminal
1005 proceedings in which the minor is involved.

1006 (2) An advocate shall be appointed by the court to
1007 represent a person who has an intellectual disability ~~with~~
1008 ~~mental retardation~~ as defined in s. 393.063 in any criminal
1009 proceeding if the person ~~with mental retardation~~ is a victim of
1010 or witness to abuse or neglect, ~~or if the person with mental~~
1011 ~~retardation is~~ a victim of a sexual offense, or a witness to a
1012 sexual offense committed against a minor or person who has an
1013 intellectual disability ~~with mental retardation~~. The court may
1014 appoint an advocate in any other criminal proceeding in which
1015 such a person ~~with mental retardation~~ is involved as ~~either~~ a

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1016 victim or a witness. The advocate shall have full access to all
1017 evidence and reports introduced during the proceedings, may
1018 interview witnesses, may make recommendations to the court,
1019 shall be noticed and have the right to appear on behalf of the
1020 person ~~with mental retardation~~ at all proceedings, and may
1021 request additional examinations by medical doctors,
1022 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate
1023 shall to perform the following services:

1024 (a) ~~To~~ Explain, in language understandable to the person
1025 ~~with mental retardation~~, all legal proceedings in which the
1026 person is ~~shall be~~ involved;

1027 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1028 whenever appropriate, of the person's ~~person with mental~~
1029 ~~retardation's~~ ability to understand and cooperate with any court
1030 proceedings; and

1031 (c) To assist the person ~~with mental retardation~~ and the
1032 person's family in coping with the emotional effects of the
1033 crime and subsequent criminal proceedings in which the person
1034 ~~with mental retardation~~ is involved.

1035 (3) Any person participating in a judicial proceeding as a
1036 guardian ad litem or other advocate is ~~shall be~~ presumed prima
1037 facie to be acting in good faith and in so doing is ~~shall be~~
1038 immune from any liability, civil or criminal, which ~~that~~
1039 ~~otherwise~~ might be incurred or imposed.

1040 Section 27. Subsections (1), (2), and (3) of section
1041 916.105, Florida Statutes, are amended to read:

1042 916.105 Legislative intent.—

1043 (1) It is the intent of the Legislature that the Department
1044 of Children and Family Services and the Agency for Persons with

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1045 Disabilities, as appropriate, establish, locate, and maintain
1046 separate and secure forensic facilities and programs for the
1047 treatment or training of defendants who have been charged with a
1048 felony and who have been found to be incompetent to proceed due
1049 to their mental illness, intellectual disability ~~mental~~
1050 ~~retardation~~, or autism, or who have been acquitted of a felony
1051 by reason of insanity, and who, while still under the
1052 jurisdiction of the committing court, are committed to the
1053 department or agency under ~~the provisions of~~ this chapter. Such
1054 facilities must ~~shall~~ be sufficient to accommodate the number of
1055 defendants committed under the conditions noted above. Except
1056 for those defendants found by the department or agency to be
1057 appropriate for treatment or training in a civil facility or
1058 program pursuant to subsection (3), forensic facilities must
1059 ~~shall~~ be designed and administered so that ingress and egress,
1060 together with other requirements of this chapter, may be
1061 strictly controlled by staff responsible for security in order
1062 to protect the defendant, facility personnel, other clients, and
1063 citizens in adjacent communities.

1064 (2) It is the intent of the Legislature that treatment or
1065 training programs for defendants who are found to have mental
1066 illness, intellectual disability ~~mental retardation~~, or autism
1067 and are involuntarily committed to the department or agency, and
1068 who are still under the jurisdiction of the committing court, be
1069 provided in a manner, subject to security requirements and other
1070 mandates of this chapter, which ensures ~~as to ensure~~ the rights
1071 of the defendants as provided in this chapter.

1072 (3) It is the intent of the Legislature that evaluation and
1073 services to defendants who have mental illness, intellectual

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1074 disability ~~mental retardation~~, or autism be provided in
1075 community settings, in community residential facilities, or in
1076 civil facilities, whenever this is a feasible alternative to
1077 treatment or training in a state forensic facility.

1078 Section 28. Subsections (10) through (17) of section
1079 916.106, Florida Statutes, are reordered and amended to read:

1080 916.106 Definitions.—For the purposes of this chapter, the
1081 term:

1082 (10) "Forensic facility" means a separate and secure
1083 facility established within the department or agency to serve
1084 forensic clients. A separate and secure facility means a
1085 security-grade building for the purpose of separately housing
1086 persons who have mental illness from persons who have
1087 intellectual disabilities ~~with retardation~~ or autism and
1088 separately housing persons who have been involuntarily committed
1089 pursuant to this chapter from nonforensic residents.

1090 (11) "Incompetent to proceed" means unable to proceed at
1091 any material stage of a criminal proceeding, which includes
1092 ~~shall include~~ trial of the case, pretrial hearings involving
1093 questions of fact on which the defendant might be expected to
1094 testify, entry of a plea, proceedings for violation of probation
1095 or violation of community control, sentencing, and hearings on
1096 issues regarding a defendant's failure to comply with court
1097 orders or conditions or other matters in which the mental
1098 competence of the defendant is necessary for a just resolution
1099 of the issues being considered.

1100 (12) "Institutional security personnel" means the staff of
1101 forensic facilities who meet or exceed the requirements of s.
1102 943.13 and who are responsible for providing security,

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1103 protecting clients and personnel, enforcing rules, preventing
1104 and investigating unauthorized activities, and safeguarding the
1105 interests of residents ~~citizens~~ in the surrounding communities.

1106 (14)~~(13)~~ "Mental illness" means an impairment of the
1107 emotional processes that exercise conscious control of one's
1108 actions, or of the ability to perceive or understand reality,
1109 which impairment substantially interferes with the a defendant's
1110 ability to meet the ordinary demands of living. For the purposes
1111 of this chapter, the term does not apply to defendants who have
1112 only an intellectual disability ~~with only mental retardation~~ or
1113 autism and does not include intoxication or conditions
1114 manifested only by antisocial behavior or substance abuse
1115 impairment.

1116 (15)~~(14)~~ "Restraint" means a physical device, method, or
1117 drug used to control dangerous behavior.

1118 (a) A physical restraint is any manual method or physical
1119 or mechanical device, material, or equipment attached or
1120 adjacent to a person's body so that he or she cannot easily
1121 remove the restraint and that restricts freedom of movement or
1122 normal access to one's body.

1123 (b) A drug used as a restraint is a medication used to
1124 control the person's behavior or to restrict his or her freedom
1125 of movement and not part of the standard treatment regimen of
1126 the person with a diagnosed mental illness who is a client of
1127 the department. Physically holding a person during a procedure
1128 to forcibly administer psychotropic medication is a physical
1129 restraint.

1130 (c) Restraint does not include physical devices, such as
1131 orthopedically prescribed appliances, surgical dressings and

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1132 bandages, supportive body bands, or other physical holding ~~when~~
1133 necessary for routine physical examinations and tests; for
1134 purposes of orthopedic, surgical, or other similar medical
1135 treatment; ~~when used~~ to provide support for the achievement of
1136 functional body position or proper balance; or ~~when used~~ to
1137 protect a person from falling out of bed.

1138 (13)~~(15)~~ "Intellectual disability" ~~"Retardation"~~ has the
1139 same meaning as in s. 393.063.

1140 (16) "Seclusion" means the physical segregation of a person
1141 in any fashion or the involuntary isolation of a person in a
1142 room or area from which the person is prevented from leaving.
1143 The prevention may be by physical barrier or by a staff member
1144 who is acting in a manner, or who is physically situated, so as
1145 to prevent the person from leaving the room or area. For
1146 purposes of this chapter, the term does not mean isolation due
1147 to a person's medical condition or symptoms, the confinement in
1148 a forensic facility to a bedroom or area during normal hours of
1149 sleep when there is not an active order for seclusion, or during
1150 an emergency such as a riot or hostage situation when clients
1151 may be temporarily placed in their rooms for their own safety.

1152 (17) "Social service professional" means a person whose
1153 minimum qualifications include a bachelor's degree and at least
1154 2 years of social work, clinical practice, special education,
1155 habilitation, or equivalent experience working directly with
1156 persons who have intellectual disabilities ~~with retardation~~,
1157 autism, or other developmental disabilities.

1158 Section 29. Paragraph (a) of subsection (1) and paragraph
1159 (a) of subsection (3) of section 916.107, Florida Statutes, are
1160 amended to read:

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1161 916.107 Rights of forensic clients.—

1162 (1) RIGHT TO INDIVIDUAL DIGNITY.—

1163 (a) The policy of the state is that the individual dignity
1164 of the client shall be respected at all times and upon all
1165 occasions, including any occasion when the forensic client is
1166 detained, transported, or treated. Clients with mental illness,
1167 intellectual disability ~~retardation~~, or autism and who are
1168 charged with committing felonies shall receive appropriate
1169 treatment or training. In a criminal case involving a client who
1170 has been adjudicated incompetent to proceed or not guilty by
1171 reason of insanity, a jail may be used as an emergency facility
1172 for up to 15 days following the date the department or agency
1173 receives a completed copy of the court commitment order
1174 containing all documentation required by the applicable Florida
1175 Rules of Criminal Procedure. For a forensic client who is held
1176 in a jail awaiting admission to a facility of the department or
1177 agency, evaluation and treatment or training may be provided in
1178 the jail by the local community mental health provider for
1179 mental health services, by the developmental disabilities
1180 program for persons with intellectual disability ~~retardation~~ or
1181 autism, the client's physician or psychologist, or any other
1182 appropriate program until the client is transferred to a civil
1183 or forensic facility.

1184 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

1185 (a) A forensic client shall be asked to give express and
1186 informed written consent for treatment. If a client refuses such
1187 treatment as is deemed necessary and essential by the client's
1188 multidisciplinary treatment team for the appropriate care of the
1189 client, such treatment may be provided under the following

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1190 circumstances:

1191 1. In an emergency situation in which there is immediate
1192 danger to the safety of the client or others, such treatment may
1193 be provided upon the written order of a physician for a period
1194 not to exceed 48 hours, excluding weekends and legal holidays.
1195 If, after the 48-hour period, the client has not given express
1196 and informed consent to the treatment initially refused, the
1197 administrator or designee of the civil or forensic facility
1198 shall, within 48 hours, excluding weekends and legal holidays,
1199 petition the committing court or the circuit court serving the
1200 county in which the facility is located, at the option of the
1201 facility administrator or designee, for an order authorizing the
1202 continued treatment of the client. In the interim, the need for
1203 treatment shall be reviewed every 48 hours and may be continued
1204 without the consent of the client upon the continued written
1205 order of a physician who has determined that the emergency
1206 situation continues to present a danger to the safety of the
1207 client or others.

1208 2. In a situation other than an emergency situation, the
1209 administrator or designee of the facility shall petition the
1210 court for an order authorizing necessary and essential treatment
1211 for the client. The order shall allow such treatment for a
1212 period not to exceed 90 days following the date of the entry of
1213 the order. Unless the court is notified in writing that the
1214 client has provided express and informed consent in writing or
1215 that the client has been discharged by the committing court, the
1216 administrator or designee shall, prior to the expiration of the
1217 initial 90-day order, petition the court for an order
1218 authorizing the continuation of treatment for another 90-day

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1219 period. This procedure shall be repeated until the client
1220 provides consent or is discharged by the committing court.

1221 3. At the hearing on the issue of whether the court should
1222 enter an order authorizing treatment for which a client was
1223 unable to or refused to give express and informed consent, the
1224 court shall determine by clear and convincing evidence that the
1225 client has mental illness, intellectual disability ~~retardation~~,
1226 or autism, that the treatment not consented to is essential to
1227 the care of the client, and that the treatment not consented to
1228 is not experimental and does not present an unreasonable risk of
1229 serious, hazardous, or irreversible side effects. In arriving at
1230 the substitute judgment decision, the court must consider at
1231 least the following factors:

- 1232 a. The client's expressed preference regarding treatment;
 - 1233 b. The probability of adverse side effects;
 - 1234 c. The prognosis without treatment; and
 - 1235 d. The prognosis with treatment.
- 1236

1237 The hearing shall be as convenient to the client as may be
1238 consistent with orderly procedure and shall be conducted in
1239 physical settings not likely to be injurious to the client's
1240 condition. The court may appoint a general or special magistrate
1241 to preside at the hearing. The client or the client's guardian,
1242 and the representative, shall be provided with a copy of the
1243 petition and the date, time, and location of the hearing. The
1244 client has the right to have an attorney represent him or her at
1245 the hearing, and, if the client is indigent, the court shall
1246 appoint the office of the public defender to represent the
1247 client at the hearing. The client may testify or not, as he or

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1248 she chooses, and has the right to cross-examine witnesses and
1249 may present his or her own witnesses.

1250 Section 30. The Division of Statutory Revision is requested
1251 to rename part III of chapter 916, Florida Statutes, consisting
1252 of ss. 916.301-916.304, as "Forensic Services for Persons who
1253 are Intellectually Disabled or Autistic."

1254 Section 31. Subsections (1) and (2) of section 916.301,
1255 Florida Statutes, are amended to read:

1256 916.301 Appointment of experts.—

1257 (1) All evaluations ordered by the court under this part
1258 must be conducted by qualified experts who have expertise in
1259 evaluating persons who have an intellectual disability ~~with~~
1260 ~~retardation~~ or autism. The agency shall maintain and provide the
1261 courts annually with a list of available ~~retardation and autism~~
1262 professionals who are appropriately licensed and qualified to
1263 perform evaluations of defendants alleged to be incompetent to
1264 proceed due to intellectual disability ~~retardation~~ or autism.
1265 The courts may use professionals from this list when appointing
1266 experts and ordering evaluations under this part.

1267 (2) If a defendant's suspected mental condition is
1268 intellectual disability ~~retardation~~ or autism, the court shall
1269 appoint the following:

1270 (a) At least one, or at the request of any party, two
1271 experts to evaluate whether the defendant meets the definition
1272 of intellectual disability ~~retardation~~ or autism and, if so,
1273 whether the defendant is competent to proceed; and

1274 (b) A psychologist selected by the agency who is licensed
1275 or authorized by law to practice in this state, with experience
1276 in evaluating persons suspected of having an intellectual

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1277 disability ~~retardation~~ or autism, and a social service
1278 professional, with experience in working with persons who have
1279 an intellectual disability ~~with retardation~~ or autism.

1280 1. The psychologist shall evaluate whether the defendant
1281 meets the definition of intellectual disability ~~retardation~~ or
1282 autism and, if so, whether the defendant is incompetent to
1283 proceed due to intellectual disability ~~retardation~~ or autism.

1284 2. The social service professional shall provide a social
1285 and developmental history of the defendant.

1286 Section 32. Subsections (1), (2), and (4) of section
1287 916.3012, Florida Statutes, are amended to read:

1288 916.3012 Mental competence to proceed.—

1289 (1) A defendant whose suspected mental condition is
1290 intellectual disability ~~retardation~~ or autism is incompetent to
1291 proceed within the meaning of this chapter if the defendant does
1292 not have sufficient present ability to consult with the
1293 defendant's lawyer with a reasonable degree of rational
1294 understanding or if the defendant has no rational, as well as
1295 factual, understanding of the proceedings against the defendant.

1296 (2) Experts in intellectual disability ~~retardation~~ or
1297 autism appointed pursuant to s. 916.301 shall first consider
1298 whether the defendant meets the definition of intellectual
1299 disability ~~retardation~~ or autism and, if so, consider the
1300 factors related to the issue of whether the defendant meets the
1301 criteria for competence to proceed as described in subsection
1302 (1).

1303 (4) If the experts ~~should~~ find that the defendant is
1304 incompetent to proceed, the experts shall report on any
1305 recommended training for the defendant to attain competence to

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1306 proceed. In considering the issues relating to training, the
1307 examining experts shall specifically report on:

1308 (a) The intellectual disability ~~retardation~~ or autism
1309 causing the incompetence;

1310 (b) The training appropriate for the intellectual
1311 disability ~~retardation~~ or autism of the defendant and an
1312 explanation of each of the possible training alternatives in
1313 order of choices;

1314 (c) The availability of acceptable training and, if
1315 training is available in the community, the expert shall so
1316 state in the report; and

1317 (d) The likelihood of the defendant's attaining competence
1318 under the training recommended, an assessment of the probable
1319 duration of the training required to restore competence, and the
1320 probability that the defendant will attain competence to proceed
1321 in the foreseeable future.

1322 Section 33. Subsection (1), paragraphs (a) and (b) of
1323 subsection (2), and paragraph (a) of subsection (3) of section
1324 916.302, Florida Statutes, are amended to read:

1325 916.302 Involuntary commitment of defendant determined to
1326 be incompetent to proceed.—

1327 (1) CRITERIA.—Every defendant who is charged with a felony
1328 and who is adjudicated incompetent to proceed due to
1329 intellectual disability ~~retardation~~ or autism may be
1330 involuntarily committed for training upon a finding by the court
1331 of clear and convincing evidence that:

1332 (a) The defendant has an intellectual disability
1333 ~~retardation~~ or autism;

1334 (b) There is a substantial likelihood that in the near

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1335 future the defendant will inflict serious bodily harm on himself
1336 or herself or another person, as evidenced by recent behavior
1337 causing, attempting, or threatening such harm;

1338 (c) All available, less restrictive alternatives, including
1339 services provided in community residential facilities or other
1340 community settings, which would offer an opportunity for
1341 improvement of the condition have been judged to be
1342 inappropriate; and

1343 (d) There is a substantial probability that the
1344 intellectual disability ~~retardation~~ or autism causing the
1345 defendant's incompetence will respond to training and the
1346 defendant will regain competency to proceed in the reasonably
1347 foreseeable future.

1348 (2) ADMISSION TO A FACILITY.—

1349 (a) A defendant who has been charged with a felony and who
1350 is found to be incompetent to proceed due to intellectual
1351 disability ~~retardation~~ or autism, and who meets the criteria for
1352 involuntary commitment to the agency under ~~the provisions of~~
1353 this chapter, shall be committed to the agency, and the agency
1354 shall retain and provide appropriate training for the defendant.
1355 Within ~~No later than~~ 6 months after the date of admission or at
1356 the end of any period of extended commitment or at any time the
1357 administrator or designee determines ~~shall have determined~~ that
1358 the defendant has regained competency to proceed or no longer
1359 meets the criteria for continued commitment, the administrator
1360 or designee shall file a report with the court pursuant to this
1361 chapter and the applicable Florida Rules of Criminal Procedure.

1362 (b) A defendant determined to be incompetent to proceed due
1363 to intellectual disability ~~retardation~~ or autism may be ordered

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1364 by a circuit court into a forensic facility designated by the
1365 agency for defendants who have an intellectual disability ~~mental~~
1366 ~~retardation~~ or autism.

1367 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

1368 (a) If a defendant has both an intellectual disability
1369 ~~mental retardation~~ or autism and ~~has~~ a mental illness,
1370 evaluations must address which condition is primarily affecting
1371 the defendant's competency to proceed. Referral of the defendant
1372 should be made to a civil or forensic facility most appropriate
1373 to address the symptoms that are the cause of the defendant's
1374 incompetence.

1375 Section 34. Subsection (1) of section 916.3025, Florida
1376 Statutes, is amended to read:

1377 916.3025 Jurisdiction of committing court.—

1378 (1) The committing court shall retain jurisdiction in the
1379 case of any defendant found to be incompetent to proceed due to
1380 intellectual disability ~~retardation~~ or autism and ordered into a
1381 forensic facility designated by the agency for defendants who
1382 have intellectual disabilities ~~mental retardation~~ or autism. A
1383 defendant may not be released except by the order of the
1384 committing court. An administrative hearing examiner does not
1385 have jurisdiction to determine issues of continuing commitment
1386 or release of any defendant involuntarily committed pursuant to
1387 this chapter.

1388 Section 35. Section 916.303, Florida Statutes, is amended
1389 to read:

1390 916.303 Determination of incompetency ~~due to retardation or~~
1391 ~~autism~~; dismissal of charges.—

1392 (1) The charges against any defendant found to be

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1393 incompetent to proceed due to intellectual disability
1394 ~~retardation~~ or autism shall be dismissed without prejudice to
1395 the state if the defendant remains incompetent to proceed within
1396 a reasonable time after such determination, not to exceed 2
1397 years, unless the court in its order specifies its reasons for
1398 believing that the defendant will become competent to proceed
1399 within the foreseeable future and specifies the time within
1400 which the defendant is expected to become competent to proceed.
1401 The charges may be refiled by the state if the defendant is
1402 declared competent to proceed in the future.

1403 (2) If the charges are dismissed and if the defendant is
1404 considered to lack sufficient capacity to give express and
1405 informed consent to a voluntary application for services and
1406 lacks the basic survival and self-care skills to provide for his
1407 or her well-being or is likely to physically injure himself or
1408 herself or others if allowed to remain at liberty, the agency,
1409 the state attorney, or the defendant's attorney shall apply to
1410 the committing court to involuntarily admit the defendant to
1411 residential services pursuant to s. 393.11.

1412 (3) If the defendant is considered to need involuntary
1413 residential services for reasons described in subsection (2)
1414 and, further, there is a substantial likelihood that the
1415 defendant will injure another person or continues to present a
1416 danger of escape, and all available less restrictive
1417 alternatives, including services in community residential
1418 facilities or other community settings, which would offer an
1419 opportunity for improvement of the condition have been judged to
1420 be inappropriate, the agency, the state attorney, or the
1421 defendant's counsel may request the committing court to continue

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1422 the defendant's placement in a secure facility pursuant to this
1423 part. Any placement so continued ~~under this subsection~~ must be
1424 reviewed by the court at least annually at a hearing. The annual
1425 review and hearing must ~~shall~~ determine whether the defendant
1426 continues to meet the criteria described in this subsection and,
1427 if so, whether the defendant still requires involuntary
1428 placement in a secure facility and whether the defendant is
1429 receiving adequate care, treatment, habilitation, and
1430 rehabilitation, including psychotropic medication and behavioral
1431 programming. Notice of the annual review and review hearing
1432 shall be given to the state attorney and the defendant's
1433 attorney. ~~In no instance may~~ A defendant's placement in a secure
1434 facility may not exceed the maximum sentence for the crime for
1435 which the defendant was charged.

1436 Section 36. Subsection (1) of section 916.304, Florida
1437 Statutes, is amended to read:

1438 916.304 Conditional release.—

1439 (1) Except for an inmate currently serving a prison
1440 sentence, the committing court may order a conditional release
1441 of any defendant who has been found to be incompetent to proceed
1442 due to intellectual disability ~~retardation~~ or autism, based on
1443 an approved plan for providing community-based training. The
1444 committing criminal court may order a conditional release of any
1445 defendant to a civil facility in lieu of an involuntary
1446 commitment to a forensic facility pursuant to s. 916.302. Upon a
1447 recommendation that community-based training for the defendant
1448 is appropriate, a written plan for community-based training,
1449 including recommendations from qualified professionals, may be
1450 filed with the court, with copies to all parties. Such a plan

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1451 may also be submitted by the defendant and filed with the court,
1452 with copies to all parties. The plan must include:

1453 (a) Special provisions for residential care and adequate
1454 supervision of the defendant, including recommended location of
1455 placement.

1456 (b) Recommendations for auxiliary services such as
1457 vocational training, psychological training, educational
1458 services, leisure services, and special medical care.

1459
1460 In its order of conditional release, the court shall specify the
1461 conditions of release based upon the release plan and shall
1462 direct the appropriate agencies or persons to submit periodic
1463 reports to the courts regarding the defendant's compliance with
1464 the conditions of the release and progress in training, with
1465 copies to all parties.

1466 Section 37. Subsection (1) of section 918.16, Florida
1467 Statutes, is amended to read:

1468 918.16 Sex offenses; testimony of person under age 16 or
1469 person with mental retardation; testimony of victim; courtroom
1470 cleared; exceptions.—

1471 (1) Except as provided in subsection (2), in the trial of
1472 any case, civil or criminal, when any person under the age of 16
1473 or any person with intellectual disability ~~mental retardation~~ as
1474 defined in s. 393.063 is testifying concerning any sex offense,
1475 the court shall clear the courtroom of all persons except
1476 parties to the cause and their immediate families or guardians,
1477 attorneys and their secretaries, officers of the court, jurors,
1478 newspaper reporters or broadcasters, court reporters, and, at
1479 the request of the victim, victim or witness advocates

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1480 designated by the state attorney's office.

1481 Section 38. Section 921.137, Florida Statutes, is amended
1482 to read:

1483 921.137 Imposition of the death sentence upon an
1484 intellectually disabled a defendant ~~with mental retardation~~
1485 prohibited.-

1486 (1) As used in this section, the term:

1487 (a) "Adaptive behavior" means the effectiveness or degree
1488 with which an individual meets the standards of personal
1489 independence and social responsibility expected of his or her
1490 age, cultural group, and community.

1491 (b) "Intellectual disability" or "intellectually disabled"
1492 "mental retardation" means significantly subaverage general
1493 intellectual functioning existing concurrently with deficits in
1494 adaptive behavior and manifested during the period from
1495 conception to age 18. The term

1496 (c) "Significantly subaverage general intellectual
1497 functioning," for the purpose of this section, means performance
1498 that is two or more standard deviations from the mean score on a
1499 standardized intelligence test specified in the rules of the
1500 Agency for Persons with Disabilities. The term "adaptive
1501 behavior," for the purpose of this definition, means the
1502 effectiveness or degree with which an individual meets the
1503 standards of personal independence and social responsibility
1504 expected of his or her age, cultural group, and community. The
1505 Agency for Persons with Disabilities shall adopt rules to
1506 specify the standardized intelligence tests as provided in this
1507 subsection.

1508 (2) A sentence of death may not be imposed upon a defendant

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1509 convicted of a capital felony if it is determined in accordance
1510 with this section that the defendant is intellectually disabled
1511 ~~has mental retardation~~.

1512 (3) A defendant charged with a capital felony who intends
1513 to raise intellectual disability ~~mental retardation~~ as a bar to
1514 the death sentence must give notice of such intention in
1515 accordance with the rules of court governing notices of intent
1516 to offer expert testimony regarding mental health mitigation
1517 during the penalty phase of a capital trial.

1518 (4) After a defendant who has given notice of his or her
1519 intention to raise intellectual disability ~~mental retardation~~ as
1520 a bar to the death sentence is convicted of a capital felony and
1521 an advisory jury has returned a recommended sentence of death,
1522 the defendant may file a motion to determine whether the
1523 defendant is intellectually disabled ~~has mental retardation~~.

1524 Upon receipt of the motion, the court shall appoint two experts
1525 in the field of intellectual disabilities ~~mental retardation~~ who
1526 shall evaluate the defendant and report their findings to the
1527 court and all interested parties before ~~prior to~~ the final
1528 sentencing hearing. Notwithstanding s. 921.141 or s. 921.142,
1529 the final sentencing hearing shall be held without a jury. At
1530 the ~~final sentencing~~ hearing, the court shall consider the
1531 findings of the court-appointed experts and consider the
1532 findings of any other expert which are ~~is~~ offered by the state
1533 or the defense on the issue of whether the defendant has an
1534 intellectual disability ~~has mental retardation~~. If the court
1535 finds, by clear and convincing evidence, that the defendant is
1536 intellectually disabled ~~has mental retardation as defined in~~
1537 ~~subsection (1)~~, the court may not impose a sentence of death and

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1538 shall enter a written order that sets forth with specificity the
1539 findings in support of the determination.

1540 (5) If a defendant waives his or her right to a recommended
1541 sentence by an advisory jury following a plea of guilt or nolo
1542 contendere to a capital felony and adjudication of guilt by the
1543 court, or following a jury finding of guilt of a capital felony,
1544 upon acceptance of the waiver by the court, a defendant who has
1545 given notice as required in subsection (3) may file a motion for
1546 a determination of intellectual disability ~~mental retardation~~.
1547 Upon granting the motion, the court shall proceed as provided in
1548 subsection (4).

1549 (6) If, following a recommendation by an advisory jury that
1550 the defendant be sentenced to life imprisonment, the state
1551 intends to request the court to order that the defendant be
1552 sentenced to death, the state must inform the defendant of such
1553 request if the defendant has notified the court of his or her
1554 intent to raise intellectual disability ~~mental retardation~~ as a
1555 bar to the death sentence. After receipt of the notice from the
1556 state, the defendant may file a motion requesting a
1557 determination by the court of whether the defendant is
1558 intellectually disabled ~~has mental retardation~~. Upon granting
1559 the motion, the court shall proceed as provided in subsection
1560 (4).

1561 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~
1562 ~~to s. 924.07~~, a determination of intellectual disability ~~mental~~
1563 ~~retardation~~ made under subsection (4).

1564 (8) This section does not apply to a defendant who was
1565 sentenced to death before June 12, 2001 ~~prior to the effective~~
1566 ~~date of this act~~.

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1567 Section 39. Paragraph (b) of subsection (2) of section
1568 941.38, Florida Statutes, is amended to read:

1569 941.38 Extradition of persons alleged to be of unsound
1570 mind.—

1571 (2) For the purpose of this section:

1572 (b) A "mentally incompetent person" is one who because of
1573 mental illness, intellectual disability ~~mental retardation~~,
1574 senility, excessive use of drugs or alcohol, or other mental
1575 incapacity is incapable of ~~either~~ managing his or her property
1576 or caring for himself or herself or both.

1577 Section 40. Section 944.602, Florida Statutes, is amended
1578 to read:

1579 944.602 Agency notification before release of
1580 intellectually disabled ~~mentally retarded~~ inmates.—Before the
1581 release by parole, release by reason of gain-time allowances
1582 provided for in s. 944.291, or expiration of sentence of any
1583 inmate who has been diagnosed as having an intellectual
1584 disability ~~mentally retarded~~ as defined in s. 393.063, the
1585 Department of Corrections shall notify the Agency for Persons
1586 with Disabilities in order that sufficient time be allowed to
1587 notify the inmate or the inmate's representative, in writing, at
1588 least 7 days before ~~prior to~~ the inmate's release, of available
1589 community services.

1590 Section 41. Subsection (2) of section 945.025, Florida
1591 Statutes, is amended to read:

1592 945.025 Jurisdiction of department.—

1593 (2) In establishing, operating, and using ~~utilizing~~ these
1594 facilities, the department shall attempt, whenever possible, to
1595 avoid the placement of nondangerous offenders who have potential

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1596 for rehabilitation with repeat offenders or dangerous offenders.
1597 Medical, mental, and psychological problems must ~~shall~~ be
1598 diagnosed and treated whenever possible. The Department of
1599 Children and Family Services and the Agency for Persons with
1600 Disabilities shall cooperate to ensure the delivery of services
1601 to persons under the custody or supervision of the department.
1602 ~~If~~ ~~When it is the intent of the department~~ intends to transfer a
1603 ~~mentally ill or retarded~~ prisoner who has a mental illness or
1604 intellectual disability to the Department of Children and Family
1605 Services or the Agency for Persons with Disabilities, an
1606 involuntary commitment hearing shall be held in accordance with
1607 ~~according to the provisions of~~ chapter 393 or chapter 394.

1608 Section 42. Subsection (5) of section 945.12, Florida
1609 Statutes, is amended to read:

1610 945.12 Transfers for rehabilitative treatment.—

1611 (5) When the department plans to release a mentally ill or
1612 intellectually disabled ~~retarded~~ offender, an involuntary
1613 commitment hearing shall be held as soon as possible before
1614 ~~prior to his or her release~~ in accordance with, ~~according to the~~
1615 ~~provisions of~~ chapter 393 or chapter 394.

1616 Section 43. Subsection (9) of section 945.42, Florida
1617 Statutes, is amended to read:

1618 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
1619 945.40-945.49, the following terms shall have the meanings
1620 ascribed to them, unless the context shall clearly indicate
1621 otherwise:

1622 (9) "Mentally ill" means an impairment of the mental or
1623 emotional processes that, ~~of the ability to~~ exercise conscious
1624 control of one's actions, ~~or of the ability to perceive or~~

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1625 understand reality, which impairment substantially interferes
1626 with the ~~a~~ person's ability to meet the ordinary demands of
1627 living. However, ~~regardless of etiology, except that~~, for the
1628 purposes of transferring ~~transfer of~~ an inmate to a mental
1629 health treatment facility, the term does not include a
1630 ~~retardation or~~ developmental disability as defined in chapter
1631 393, simple intoxication, or conditions manifested only by
1632 antisocial behavior or substance abuse addiction. However, an
1633 individual who is ~~mentally retarded or~~ developmentally disabled
1634 may also have a mental illness.

1635 Section 44. Section 947.185, Florida Statutes, is amended
1636 to read:

1637 947.185 Application for intellectual disability ~~mental~~
1638 ~~retardation~~ services as condition of parole.—The Parole
1639 Commission may require as a condition of parole that any inmate
1640 who has been diagnosed as having an intellectual disability
1641 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,
1642 apply for services from the Agency for Persons with
1643 Disabilities.

1644 Section 45. Subsection (4) of section 984.19, Florida
1645 Statutes, is amended to read:

1646 984.19 Medical screening and treatment of child;
1647 examination of parent, guardian, or person requesting custody.—

1648 (4) A judge may order that a child alleged to be or
1649 adjudicated a child in need of services be treated by a licensed
1650 health care professional. The judge may also order such child to
1651 receive mental health or intellectual disability ~~retardation~~
1652 services from a psychiatrist, psychologist, or other appropriate
1653 service provider. If it is necessary to place the child in a

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1654 residential facility for such services, ~~then~~ the procedures and
1655 criteria established in s. 394.467 or chapter 393 shall be used,
1656 as whichever is applicable. A child may be provided ~~mental~~
1657 ~~health or retardation~~ services in emergency situations, pursuant
1658 to the procedures and criteria contained in s. 394.463(1) or
1659 chapter 393, as whichever is applicable.

1660 Section 46. Paragraph (a) of subsection (3) of section
1661 985.14, Florida Statutes, is amended to read:

1662 985.14 Intake and case management system.—

1663 (3) The intake and case management system shall facilitate
1664 consistency in the recommended placement of each child, and in
1665 the assessment, classification, and placement process, with the
1666 following purposes:

1667 (a) An individualized, multidisciplinary assessment process
1668 that identifies the priority needs of each ~~individual~~ child for
1669 rehabilitation and treatment and identifies any needs of the
1670 child's parents or guardians for services that would enhance
1671 their ability to provide adequate support, guidance, and
1672 supervision for the child. This process begins ~~shall begin~~ with
1673 the detention risk assessment instrument and decision, includes
1674 ~~shall include~~ the intake preliminary screening and comprehensive
1675 assessment for substance abuse treatment services, mental health
1676 services, intellectual disability ~~retardation~~ services, literacy
1677 services, and other educational and treatment services as
1678 components, additional assessment of the child's treatment
1679 needs, and classification regarding the child's risks to the
1680 community and, for a serious or habitual delinquent child,
1681 includes ~~shall include the~~ assessment for placement in a serious
1682 or habitual delinquent children program under s. 985.47. The

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1683 completed multidisciplinary assessment process must ~~shall~~ result
1684 in the predisposition report.

1685 Section 47. Paragraph (g) of subsection (1) and subsection
1686 (5) of section 985.145, Florida Statutes, is amended to read:

1687 985.145 Responsibilities of juvenile probation officer
1688 during intake; screenings and assessments.—

1689 (1) The juvenile probation officer shall serve as the
1690 primary case manager for the purpose of managing, coordinating,
1691 and monitoring the services provided to the child. Each program
1692 administrator within the Department of Children and Family
1693 Services shall cooperate with the primary case manager in
1694 carrying out the duties and responsibilities described in this
1695 section. In addition to duties specified in other sections and
1696 through departmental rules, the assigned juvenile probation
1697 officer shall be responsible for the following:

1698 (g) *Comprehensive assessment.*—The juvenile probation
1699 officer, pursuant to uniform procedures established by the
1700 department and upon determining that the report, affidavit, or
1701 complaint is complete, shall:

1702 1. Perform the preliminary screening and make referrals for
1703 a comprehensive assessment regarding the child's need for
1704 substance abuse treatment services, mental health services,
1705 intellectual disability ~~retardation~~ services, literacy services,
1706 or other educational or treatment services.

1707 2. If ~~When~~ indicated by the preliminary screening, provide
1708 for a comprehensive assessment of the child and family for
1709 substance abuse problems, using community-based licensed
1710 programs with clinical expertise and experience in the
1711 assessment of substance abuse problems.

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1712 3. If ~~When~~ indicated by the preliminary screening, provide
1713 for a comprehensive assessment of the child and family for
1714 mental health problems, using community-based psychologists,
1715 psychiatrists, or other licensed mental health professionals who
1716 have clinical expertise and experience in the assessment of
1717 mental health problems.

1718 (5) If the screening and assessment indicate that the
1719 interests of the child and the public will be best served
1720 ~~thereby~~, the juvenile probation officer, with the approval of
1721 the state attorney, may refer the child for care, diagnostic,
1722 and evaluation services; substance abuse treatment services;
1723 mental health services; intellectual disability ~~retardation~~
1724 services; a diversionary, arbitration, or mediation program;
1725 community service work; or other programs or treatment services
1726 voluntarily accepted by the child and the child's parents or
1727 legal guardian. If ~~Whenever~~ a child volunteers to participate in
1728 any work program under this chapter or volunteers to work in a
1729 specified state, county, municipal, or community service
1730 organization supervised work program or to work for the victim,
1731 the child is ~~shall be~~ considered an employee of the state for
1732 the purposes of liability. In determining the child's average
1733 weekly wage, unless otherwise determined by a specific funding
1734 program, all remuneration received from the employer is
1735 considered a gratuity, and the child is not entitled to any
1736 benefits otherwise payable under s. 440.15~~7~~, regardless of
1737 whether the child may be receiving wages and remuneration from
1738 other employment with another employer and regardless of the
1739 child's future wage-earning capacity.

1740 Section 48. Subsections (2) and (6) of section 985.18,

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1741 Florida Statutes, are amended to read:

1742 985.18 Medical, psychiatric, psychological, substance
1743 abuse, and educational examination and treatment.—

1744 (2) ~~If Whenever~~ a child has been found to have committed a
1745 delinquent act, or before such finding with the consent of any
1746 parent or legal custodian of the child, the court may order the
1747 child to be treated by a physician. The court may also order the
1748 child to receive mental health, substance abuse, or intellectual
1749 disability ~~retardation~~ services from a psychiatrist,
1750 psychologist, or other appropriate service provider. If it is
1751 necessary to place the child in a residential facility for such
1752 services, the procedures and criteria established in chapter
1753 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable,
1754 must ~~shall~~ be used. After a child has been adjudicated
1755 delinquent, if an educational needs assessment by the district
1756 school board or the Department of Children and Family Services
1757 has been ~~previously~~ conducted, the court shall order the report
1758 ~~of such needs assessment~~ included in the child's court record in
1759 lieu of a new assessment. For purposes of this section, an
1760 educational needs assessment includes, but is not limited to,
1761 reports of intelligence and achievement tests, screening for
1762 learning and other disabilities ~~and other handicaps~~, and
1763 screening for the need for alternative education.

1764 (6) A physician must ~~shall~~ be immediately notified by the
1765 person taking the child into custody or the person having
1766 custody if there are indications of physical injury or illness,
1767 or the child shall be taken to the nearest available hospital
1768 for emergency care. A child may be provided mental health,
1769 substance abuse, or intellectual disability ~~retardation~~

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1770 services, in emergency situations, pursuant to chapter 393,
1771 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a
1772 hearing, the court may order the custodial parent or parents,
1773 guardian, or other custodian, if found able to do so, to
1774 reimburse the county or state for the expense involved in such
1775 emergency treatment or care.

1776 Section 49. Paragraph (e) of subsection (1), subsections
1777 (2) through (4), and paragraph (a) of subsection (6) of section
1778 985.19, Florida Statutes, are amended to read:

1779 985.19 Incompetency in juvenile delinquency cases.—

1780 (1) If, at any time prior to or during a delinquency case,
1781 the court has reason to believe that the child named in the
1782 petition may be incompetent to proceed with the hearing, the
1783 court on its own motion may, or on the motion of the child's
1784 attorney or state attorney must, stay all proceedings and order
1785 an evaluation of the child's mental condition.

1786 (e) For incompetency evaluations related to intellectual
1787 disability ~~mental retardation~~ or autism, the court shall order
1788 the Agency for Persons with Disabilities to examine the child to
1789 determine if the child meets the definition of "intellectual
1790 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,
1791 whether the child is competent to proceed with delinquency
1792 proceedings.

1793 (2) A child who is adjudicated incompetent to proceed, and
1794 who has committed a delinquent act or violation of law, either
1795 of which would be a felony if committed by an adult, must be
1796 committed to the Department of Children and Family Services for
1797 treatment or training. A child who has been adjudicated
1798 incompetent to proceed because of age or immaturity, or for any

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1799 reason other than for mental illness, intellectual disability,
1800 ~~or retardation~~ or autism, must not be committed to the
1801 department or to the Department of Children and Family Services
1802 for restoration-of-competency treatment or training services.
1803 For purposes of this section, a child who has committed a
1804 delinquent act or violation of law, either of which would be a
1805 misdemeanor if committed by an adult, may not be committed to
1806 the department or to the Department of Children and Family
1807 Services for restoration-of-competency treatment or training
1808 services.

1809 (3) If the court finds that a child has mental illness,
1810 intellectual disability ~~mental retardation~~, or autism and
1811 adjudicates the child incompetent to proceed, the court must
1812 also determine whether the child meets the criteria for secure
1813 placement. A child may be placed in a secure facility or program
1814 if the court makes a finding by clear and convincing evidence
1815 that:

1816 (a) The child has mental illness, intellectual disability
1817 ~~mental retardation~~, or autism and because of the mental illness,
1818 intellectual disability ~~mental retardation~~, or autism:

1819 1. The child is manifestly incapable of surviving with the
1820 help of willing and responsible family or friends, including
1821 available alternative services, and without treatment or
1822 training the child is likely to ~~either~~ suffer from neglect or
1823 refuse to care for self, and such neglect or refusal poses a
1824 real and present threat of substantial harm to the child's well-
1825 being; or

1826 2. There is a substantial likelihood that in the near
1827 future the child will inflict serious bodily harm on self or

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1828 others, as evidenced by recent behavior causing, attempting, or
1829 threatening such harm; and

1830 (b) All available less restrictive alternatives, including
1831 treatment or training in community residential facilities or
1832 community settings, which would offer an opportunity for
1833 improvement of the child's condition, are inappropriate.

1834 (4) A child who is determined to have mental illness,
1835 intellectual disability ~~mental retardation~~, or autism, who has
1836 been adjudicated incompetent to proceed, and who meets the
1837 criteria set forth in subsection (3), must be committed to the
1838 Department of Children and Family Services and receive treatment
1839 or training in a secure facility or program that is the least
1840 restrictive alternative consistent with public safety. Any
1841 placement of a child to a secure residential program must be
1842 separate from adult forensic programs. If the child attains
1843 competency, ~~then~~ custody, case management, and supervision of
1844 the child shall ~~will~~ be transferred to the department in order
1845 to continue delinquency proceedings; however, the court retains
1846 authority to order the Department of Children and Family
1847 Services to provide continued treatment or training to maintain
1848 competency.

1849 (a) A child adjudicated incompetent due to intellectual
1850 disability ~~mental retardation~~ or autism may be ordered into a
1851 secure program or facility designated by the Department of
1852 Children and Family Services for children who have intellectual
1853 disabilities ~~with mental retardation~~ or autism.

1854 (b) A child adjudicated incompetent due to mental illness
1855 may be ordered into a secure program or facility designated by
1856 the Department of Children and Family Services for children

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1857 having mental illnesses.

1858 (c) If ~~Whenever~~ a child is placed in a secure residential
1859 facility, the department shall ~~will~~ provide transportation to
1860 the secure residential facility for admission and from the
1861 secure residential facility upon discharge.

1862 (d) The purpose of the treatment or training is the
1863 restoration of the child's competency to proceed.

1864 (e) The service provider must file a written report with
1865 the court pursuant to the applicable Florida Rules of Juvenile
1866 Procedure within ~~not later than~~ 6 months after the date of
1867 commitment, or at the end of any period of extended treatment or
1868 training, and at any time the Department of Children and Family
1869 Services, through its service provider, determines the child has
1870 attained competency or no longer meets the criteria for secure
1871 placement, or at such shorter intervals as ordered by the court.
1872 A copy of a written report evaluating the child's competency
1873 must be filed by the provider with the court and with the state
1874 attorney, the child's attorney, the department, and the
1875 Department of Children and Family Services.

1876 (6) (a) If a child is determined to have mental illness,
1877 intellectual disability ~~mental retardation~~, or autism and is
1878 found to be incompetent to proceed but does not meet the
1879 criteria set forth in subsection (3), the court shall commit the
1880 child to the Department of Children and Family Services and
1881 ~~shall~~ order the Department of Children and Family Services to
1882 provide appropriate treatment and training in the community. The
1883 purpose of the treatment or training is the restoration of the
1884 child's competency to proceed.

1885 Section 50. Section 985.195, Florida Statutes, is amended

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1886 to read:

1887 985.195 Transfer to other treatment services.—Any child
1888 committed to the department may be transferred to intellectual
1889 disability ~~retardation~~, mental health, or substance abuse
1890 treatment facilities for diagnosis and evaluation pursuant to
1891 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~
1892 applicable, for up to a period not to exceed 90 days.

1893 Section 51. Paragraph (b) of subsection (1) of section
1894 985.61, Florida Statutes, is amended to read:

1895 985.61 Early delinquency intervention program; criteria.—

1896 (1) The Department of Juvenile Justice shall, contingent
1897 upon specific appropriation and with the cooperation of local
1898 law enforcement agencies, the judiciary, district school board
1899 personnel, the office of the state attorney, the office of the
1900 public defender, the Department of Children and Family Services,
1901 and community service agencies that work with children,
1902 establish an early delinquency intervention program, the
1903 components of which shall include, but not be limited to:

1904 (b) Treatment modalities, including substance abuse
1905 treatment services, mental health services, and ~~retardation~~
1906 services for intellectual disabilities.

1907 Section 52. It is the intent of the legislature that this
1908 act is not intended to expand or contract the scope or
1909 application of any provisions of the Florida Statutes. Nothing
1910 in this act may be construed to change the application of any
1911 provisions of the Florida Statutes to any person.

1912 Section 53. This act shall take effect July 1, 2010.