

By the Committees on Criminal Justice; and Children, Families,
and Elder Affairs; and Senator Haridopolos

591-04779-10

20101388c2

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"; clarifying in s.
13 393.063, that the meaning of the terms "intellectual
14 disability" or "intellectually disabled" is the same
15 as the meaning of the terms "mental retardation,"
16 "retarded," and "mentally retarded" for purposes of
17 matters relating to the criminal laws and court rules;
18 amending s. 400.960, F.S.; revising definitions
19 relating to intermediate care facilities for the
20 developmentally disabled to delete unused terms;
21 amending s. 408.032, F.S.; conforming a cross-
22 reference; amending s. 409.908, F.S.; substituting the
23 term "intellectually disabled" for the term "mentally
24 retarded"; amending ss. 413.20, 440.49, and 499.0054,
25 F.S.; substituting the term "intellectual disability"
26 for the term "mental retardation"; amending s.
27 514.072, F.S.; conforming a cross-reference and
28 deleting obsolete provisions; amending ss. 627.6041,
29 627.6615, 641.31, 650.05, 765.204, 849.04, 914.16,

591-04779-10

20101388c2

30 914.17, 916.105, and 916.106, F.S.; substituting the
31 term "intellectual disability" for the term "mental
32 retardation"; amending s. 916.107, F.S.; substituting
33 the term "intellectual disability" for the term
34 "retardation"; providing a directive to the Division
35 of Statutory Revision; amending ss. 916.301, 916.3012,
36 916.302, 916.3025, 916.303, 916.304, 918.16, 921.137,
37 941.38, 944.602, 945.025, 945.12, 945.42, 947.185,
38 984.19, 985.14, 985.145, 985.18, 985.19, 985.195, and
39 985.61, F.S.; clarifying in s. 921.137 that the terms
40 "intellectual disability" or "intellectually disabled"
41 are interchangeable with and have the same meaning as
42 the terms "mental retardation," or "retardation" and
43 "mentally retarded," as defined prior to the effective
44 date of the act; substituting the term "intellectual
45 disability" for the term "mental retardation";
46 expressing legislative intent; providing an effective
47 date.

48
49 Be It Enacted by the Legislature of the State of Florida:

50
51 Section 1. Subsection (15) of section 39.502, Florida
52 Statutes, is amended to read:

53 39.502 Notice, process, and service.—

54 (15) A party who is identified as a person who has a ~~with~~
55 mental illness or ~~with~~ a developmental disability must be
56 informed by the court of the availability of advocacy services
57 through the department, the Arc of Florida ~~Association for~~
58 ~~Retarded Citizens~~, or other appropriate mental health or

591-04779-10

20101388c2

59 developmental disability advocacy groups and encouraged to seek
60 such services.

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

63 40.013 Persons disqualified or excused from jury service.—

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

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

71 86.041 Actions by executors, administrators, trustees,
72 etc.—Any person interested as or through an executor,
73 administrator, trustee, guardian, or other fiduciary, creditor,
74 devisee, legatee, heir, next of kin, or cestui que trust, in the
75 administration of a trust, a guardianship, or ~~of~~ the estate of a
76 decedent, an infant, a mental incompetent, or insolvent may have
77 a declaration of rights or equitable or legal relations to ~~in~~
78 ~~respect thereto~~:

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

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

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

87

591-04779-10

20101388c2

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

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

95 92.53 Videotaping of testimony of a victim or witness under
96 age 16 or who has an intellectual disability ~~person with mental~~
97 ~~retardation~~.—

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

111 (2) The motion may be filed by:

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

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

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

116 (d) The prosecuting attorney or the defendant, or the

591-04779-10

20101388c2

117 defendant's counsel.

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

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

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

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

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

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

591-04779-10

20101388c2

146 person ~~with mental retardation~~ throughout proceedings conducted
147 under this section.

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

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

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

160 92.54 Use of closed circuit television in proceedings
161 involving a victim or witness ~~victims or witnesses~~ under the age
162 of 16 or who has an intellectual disability ~~persons with mental~~
163 ~~retardation.~~

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

591-04779-10

20101388c2

175 shown by means of closed circuit television.

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

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

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

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

203 Section 6. Section 92.55, Florida Statutes, is amended to

591-04779-10

20101388c2

204 read:

205 92.55 Judicial or other proceedings involving a victim or
206 witness under the age of 16 or who has an intellectual
207 disability ~~person with mental retardation~~; special protections.-

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

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

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

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

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

228 (a) The age of the child, the nature of the offense or act,
229 the relationship of the child to the parties in the case or to
230 the defendant in a criminal action, the degree of emotional
231 trauma that will result to the child as a consequence of the
232 defendant's presence, and any other fact that the court deems

591-04779-10

20101388c2

233 relevant; or

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

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

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

257 320.10 Exemptions.—

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

259 (a) Any motor vehicle or mobile home owned by, and operated
260 exclusively for the personal use of, any member of the United
261 States Armed Forces who is not a resident of this state and who

591-04779-10

20101388c2

262 is stationed in the state while in compliance with military or
263 naval orders;

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

266 (c) Any motor vehicle owned and operated exclusively for
267 the benefit of the Boys' Clubs of America, the National Audubon
268 Society, the National Children's Cardiac Hospital, any humane
269 society, any nationally chartered veterans' organization that
270 maintains a state headquarters in this state, the Children's
271 Bible Mission, the Boy Scouts of America, the Girl Scouts of
272 America, the Salvation Army, the American National Red Cross,
273 the United Service Organization, any local member unit of the
274 National Urban League which provides free services to municipal
275 and county residents who are in need of such services, the Young
276 Men's Christian Association, the Young Men's Hebrew Association,
277 the Camp Fire Girls' Council, the Young Women's Christian
278 Association, the Young Women's Hebrew Association, any local
279 member unit of the Arc of Florida ~~Association for Retarded~~
280 ~~Citizens~~, the Children's Home Society of Florida, or the
281 Goodwill Industries. A not-for-profit organization named in this
282 paragraph and its local affiliate organizations is ~~shall be~~
283 eligible for the exemption if it ~~for so long as each~~ maintains
284 current articles of incorporation on file with the Department of
285 State and qualifies as a not-for-profit organization under s.
286 212.08;

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

591-04779-10

20101388c2

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

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

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

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

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

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

306 Section 8. Paragraph (d) of subsection (3) of section
307 383.14, Florida Statutes, is amended to read:

308 383.14 Screening for metabolic disorders, other hereditary
309 and congenital disorders, and environmental risk factors.—

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

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

319

591-04779-10

20101388c2

320 All provisions of this subsection must be coordinated with the
321 provisions and plans established under this chapter, chapter
322 411, and Pub. L. No. 99-457.

323 Section 9. Subsection (9) and subsections (20) through (31)
324 of section 393.063, Florida Statutes, are reordered and amended
325 to read:

326 393.063 Definitions.—For the purposes of this chapter, the
327 term:

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

334 ~~(21)~~ (20) "Intermediate care facility for the
335 developmentally disabled" or "ICF/DD" means a residential
336 facility licensed and certified under ~~pursuant to~~ part VIII of
337 chapter 400.

338 ~~(22)~~ (21) "Medical/dental services" means medically
339 necessary services that ~~which~~ are provided or ordered for a
340 client by a person licensed under chapter 458, chapter 459, or
341 chapter 466. Such services may include, but are not limited to,
342 prescription drugs, specialized therapies, nursing supervision,
343 hospitalization, dietary services, prosthetic devices, surgery,
344 specialized equipment and supplies, adaptive equipment, and
345 other services as required to prevent or alleviate a medical or
346 dental condition.

347 ~~(23)~~ (22) "Personal care services" means individual
348 assistance with or supervision of essential activities of daily

591-04779-10

20101388c2

349 living for self-care, including ambulation, bathing, dressing,
350 eating, grooming, and toileting, and other similar services that
351 are incidental to the care furnished and essential to the
352 health, safety, and welfare of the client if ~~when there is~~ no
353 one else is available to perform those services.

354 (24)~~(23)~~ "Prader-Willi syndrome" means an inherited
355 condition typified by neonatal hypotonia with failure to thrive,
356 hyperphagia or an excessive drive to eat which leads to obesity
357 usually at 18 to 36 months of age, mild to moderate mental
358 retardation, hypogonadism, short stature, mild facial
359 dysmorphism, and a characteristic neurobehavior.

360 (25)~~(24)~~ "Relative" means an individual who is connected by
361 affinity or consanguinity to the client and who is 18 years of
362 age or older.

363 (26)~~(25)~~ "Resident" means a any person who has a with
364 developmental disability and resides ~~disabilities residing~~ at a
365 residential facility, whether or not such person is a client of
366 the agency.

367 (27)~~(26)~~ "Residential facility" means a facility providing
368 room and board and personal care for persons who have with
369 developmental disabilities.

370 (28)~~(27)~~ "Residential habilitation" means supervision and
371 training with the acquisition, retention, or improvement in
372 skills related to activities of daily living, such as personal
373 hygiene skills, homemaking skills, and the social and adaptive
374 skills necessary to enable the individual to reside in the
375 community.

376 (29)~~(28)~~ "Residential habilitation center" means a
377 community residential facility licensed under this chapter which

591-04779-10

20101388c2

378 provides habilitation services. The capacity of such a facility
379 may ~~shall~~ not be fewer than nine residents. After October 1,
380 1989, new residential habilitation centers may not be licensed
381 and the licensed capacity for any existing residential
382 habilitation center may not be increased.

383 ~~(30)(29)~~ "Respite service" means appropriate, short-term,
384 temporary care that is provided to a person who has a ~~with~~
385 developmental disability in order ~~disabilities~~ to meet the
386 planned or emergency needs of the person or the family or other
387 direct service provider.

388 ~~(31)(30)~~ "Restraint" means a physical device, method, or
389 drug used to control dangerous behavior.

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

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

401 (c) Restraint does not include physical devices, such as
402 orthopedically prescribed appliances, surgical dressings and
403 bandages, supportive body bands, or other physical holding ~~when~~
404 necessary for routine physical examinations and tests; for
405 purposes of orthopedic, surgical, or other similar medical
406 treatment; ~~when used~~ to provide support for the achievement of

591-04779-10

20101388c2

407 functional body position or proper balance; or ~~when used~~ to
408 protect a person from falling out of bed.

409 (20) ~~(31)~~ "Intellectual disability" ~~"Retardation"~~ means
410 significantly subaverage general intellectual functioning
411 existing concurrently with deficits in adaptive behavior which
412 ~~that~~ manifests before the age of 18 and can reasonably be
413 expected to continue indefinitely. For the purposes of this
414 definition, the term:

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

419 (b) "Significantly subaverage general intellectual
420 functioning," for the purpose of this definition, means
421 performance that ~~which~~ is two or more standard deviations from
422 the mean score on a standardized intelligence test specified in
423 the rules of the agency. ~~"Adaptive behavior," for the purpose of~~
424 ~~this definition, means the effectiveness or degree with which an~~
425 ~~individual meets the standards of personal independence and~~
426 ~~social responsibility expected of his or her age, cultural~~
427 ~~group, and community.~~

428
429 For purposes of the application of the criminal laws and
430 procedural rules of this state to matters relating to pretrial,
431 trial, sentencing, and any matters relating to the imposition
432 and execution of the death penalty, the terms "intellectual
433 disability" or "intellectually disabled" are interchangeable
434 with and have the same meaning as the terms "mental
435 retardation," or "retardation" and "mentally retarded" as

591-04779-10

20101388c2

436 defined in s. 393.063 prior to July 1, 2010.

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

444 393.11 Involuntary admission to residential services.—

445 (1) JURISDICTION.—If ~~When~~ a person has an intellectual
446 disability ~~is mentally retarded~~ and requires involuntary
447 admission to residential services provided by the agency, the
448 circuit court of the county in which the person resides has
449 ~~shall have~~ jurisdiction to conduct a hearing and enter an order
450 involuntarily admitting the person in order for ~~that~~ the person
451 to may receive the care, treatment, habilitation, and
452 rehabilitation that ~~which~~ the person needs. For the purpose of
453 identifying intellectual disability ~~mental retardation~~,
454 diagnostic capability shall be established by the agency. Except
455 as otherwise specified, the proceedings under this section are
456 ~~shall be~~ governed by the Florida Rules of Civil Procedure.

457 (2) PETITION.—

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

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

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

591-04779-10

20101388c2

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

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

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

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

479 (3) NOTICE.—

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

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

493 (d) The notice must ~~shall~~ state that the individual who has

591-04779-10

20101388c2

494 an intellectual disability ~~with mental retardation~~ or autism has
495 the right to be represented by counsel of his or her own choice
496 and that, if the person cannot afford an attorney, the court
497 shall appoint one.

498 (4) AGENCY PARTICIPATION.—

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

505 (5) EXAMINING COMMITTEE.—

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

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

521 1. The degree of the person's intellectual disability
522 ~~mental retardation~~ and whether, using diagnostic capabilities

591-04779-10

20101388c2

523 established by the agency, the person is eligible for agency
524 services;

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

527 a. Lacks sufficient capacity to give express and informed
528 consent to a voluntary application for services pursuant to s.
529 393.065;

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

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

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

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

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

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

548 (g) Members of the examining committee shall receive a
549 reasonable fee to be determined by the court. The fees shall ~~are~~
550 ~~to~~ be paid from the general revenue fund of the county in which
551 the person who has the intellectual disability ~~with mental~~

591-04779-10

20101388c2

552 ~~retardation~~ resided when the petition was filed.

553 (6) COUNSEL; GUARDIAN AD LITEM.—

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

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

572 (7) HEARING.—

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

579 (8) ORDER.—

580 (b) An order of involuntary admission to residential

591-04779-10

20101388c2

581 services may not be entered unless the court finds that:

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

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

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

589 a. Lacks sufficient capacity to give express and informed
590 consent to a voluntary application for services pursuant to s.
591 393.065 and lacks basic survival and self-care skills to such a
592 degree that close supervision and habilitation in a residential
593 setting is necessary and, if not provided, would result in a
594 real and present threat of substantial harm to the person's
595 well-being; or

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

598 (10) COMPETENCY.—

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

603 (b) The issue of the competency of a person who has an
604 intellectual disability ~~with mental retardation~~ for purposes of
605 assigning guardianship shall be determined in a separate
606 proceeding according to the procedures and requirements of
607 chapter 744. The issue of the competency of a person who has an
608 intellectual disability ~~with mental retardation~~ or autism for
609 purposes of determining whether the person is competent to

591-04779-10

20101388c2

610 proceed in a criminal trial shall be determined in accordance
611 with chapter 916.

612 (12) APPEAL.—

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

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

620 394.455 Definitions.—As used in this part, unless the
621 context clearly requires otherwise, the term:

622 (18) "Mental illness" means an impairment of the mental or
623 emotional processes that exercise conscious control of one's
624 actions or of the ability to perceive or understand reality,
625 which impairment substantially interferes with the ~~a~~ person's
626 ability to meet the ordinary demands of living, ~~regardless of~~
627 ~~etiology~~. For the purposes of this part, the term does not
628 include a ~~retardation or~~ developmental disability as defined in
629 chapter 393, intoxication, or conditions manifested only by
630 antisocial behavior or substance abuse impairment.

631 Section 12. Subsections (3) through (13) of section
632 400.960, Florida Statutes, are amended to read:

633 400.960 Definitions.—As used in this part, the term:

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

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

636 (3) ~~(5)~~ "Client" means any person determined by the Agency
637 for Persons with Disabilities to be eligible for developmental
638 services.

591-04779-10

20101388c2

639 (4)~~(6)~~ "Developmentally disabled" ~~"developmental~~
640 ~~disability"~~ has the same meaning as "developmental disability"
641 as that term is defined in s. 393.063.

642 (5)~~(7)~~ "Direct service provider" means a person 18 years of
643 age or older who has direct contact with individuals who have
644 ~~with~~ developmental disabilities and who is unrelated to such ~~the~~
645 individuals ~~with developmental disabilities~~.

646 (6)~~(8)~~ "Intermediate care facility for the developmentally
647 disabled" means a residential facility licensed and certified in
648 accordance with state law, and certified by the Federal
649 Government, pursuant to the Social Security Act, as a provider
650 of Medicaid services to persons who have ~~with~~ developmental
651 disabilities.

652 ~~(9) "Prader-Willi syndrome" has the same meaning as in s.~~
653 ~~393.063.~~

654 (7)~~(10)~~~~(a)~~ "Restraint" means a physical device, method, or
655 drug used to control behavior.

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

661 (b) A drug used as a restraint is a medication used to
662 control the person's behavior or to restrict his or her freedom
663 of movement. Physically holding a person during a procedure to
664 forcibly administer psychotropic medication is a physical
665 restraint.

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

591-04779-10

20101388c2

668 bandages, supportive body bands, or other physical holding ~~when~~
669 necessary for routine physical examinations and tests; for
670 purposes of orthopedic, surgical, or other similar medical
671 treatment; ~~when used~~ to provide support for the achievement of
672 functional body position or proper balance; or ~~when used~~ to
673 protect a person from falling out of bed.

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

675 (8)~~(12)~~ "Seclusion" means the physical segregation of a
676 person in any fashion or the involuntary isolation of a person
677 in a room or area from which the person is prevented from
678 leaving. The prevention may be by physical barrier or by a staff
679 member who is acting in a manner, or who is physically situated,
680 so as to prevent the person from leaving the room or area. For
681 purposes of this part, the term does not mean isolation due to a
682 person's medical condition or symptoms.

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

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

686 408.032 Definitions relating to Health Facility and
687 Services Development Act.—As used in ss. 408.031-408.045, the
688 term:

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

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

591-04779-10

20101388c2

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

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

714 413.20 Definitions.—As used in this part, the term:

715 (17) "Person who has a significant disability" means an
716 individual who has a disability that is a severe physical or
717 mental impairment that seriously limits one or more functional
718 capacities, such as mobility, communication, self-care, self-
719 direction, interpersonal skills, work tolerance, or work skills,
720 in terms of an employment outcome; whose vocational
721 rehabilitation may be expected to require multiple vocational
722 rehabilitation services over an extended period of time; and who
723 has one or more physical or mental disabilities resulting from
724 amputation, arthritis, autism, blindness, burn injury, cancer,
725 cerebral palsy, cystic fibrosis, deafness, head injury, heart

591-04779-10

20101388c2

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

736 Section 16. Paragraph (a) of subsection (6) of section
737 440.49, Florida Statutes, is amended to read:

738 440.49 Limitation of liability for subsequent injury
739 through Special Disability Trust Fund.—

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

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

- 746 1. Epilepsy.
- 747 2. Diabetes.
- 748 3. Cardiac disease.
- 749 4. Amputation of foot, leg, arm, or hand.
- 750 5. Total loss of sight of one or both eyes or a partial
751 loss of corrected vision of more than 75 percent bilaterally.
- 752 6. Residual disability from poliomyelitis.
- 753 7. Cerebral palsy.
- 754 8. Multiple sclerosis.

591-04779-10

20101388c2

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

591-04779-10

20101388c2

784 the body as a whole.

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

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

795 Section 17. Paragraph (g) of subsection (1) of section
796 499.0054, Florida Statutes, is amended to read:

797 499.0054 Advertising and labeling of drugs, devices, and
798 cosmetics; exemptions.-

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

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

- 805 1. Blood disorders.
- 806 2. Bone or joint diseases.
- 807 3. Kidney diseases or disorders.
- 808 4. Cancer.
- 809 5. Diabetes.
- 810 6. Gall bladder diseases or disorders.
- 811 7. Heart and vascular diseases.
- 812 8. High blood pressure.

591-04779-10

20101388c2

813 9. Diseases or disorders of the ear or auditory apparatus,
814 including hearing loss or deafness.

815 10. Mental disease or intellectual disability ~~mental~~
816 ~~retardation~~.

817 11. Paralysis.

818 12. Prostate gland disorders.

819 13. Conditions of the scalp affecting hair loss.

820 14. Baldness.

821 15. Endocrine disorders.

822 16. Sexual impotence.

823 17. Tumors.

824 18. Venereal diseases.

825 19. Varicose ulcers.

826 20. Breast enlargement.

827 21. Purifying blood.

828 22. Metabolic disorders.

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

831 24. Extension of life expectancy.

832 25. Stress and tension.

833 26. Brain stimulation or performance.

834 27. The body's natural defense mechanisms.

835 28. Blood flow.

836 29. Depression.

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

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

841 514.072 Certification of swimming instructors for people

591-04779-10

20101388c2

842 who have developmental disabilities ~~required~~.—Any person working
 843 at a swimming pool who holds himself or herself out as a
 844 swimming instructor specializing in training people who have
 845 developmental disabilities, as defined in s. 393.063~~(10)~~, may be
 846 certified by the Dan Marino Foundation, Inc., in addition to
 847 being certified under s. 514.071. The Dan Marino Foundation,
 848 Inc., must develop certification requirements and a training
 849 curriculum for swimming instructors for people who have
 850 developmental disabilities ~~and must submit the certification~~
 851 ~~requirements to the Department of Health for review by January~~
 852 ~~1, 2007. A person certified under s. 514.071 before July 1,~~
 853 ~~2007, must meet the additional certification requirements of~~
 854 ~~this section before January 1, 2008.~~ A person certified under s.
 855 514.071 ~~on or after July 1, 2007,~~ must meet the additional
 856 certification requirements of this section within 6 months after
 857 receiving certification under s. 514.071.

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

860 627.6041 ~~Handicapped~~ Children with disabilities;
 861 continuation of coverage.—

862 (1) A hospital or medical expense insurance policy or
 863 health care services plan contract that is delivered or issued
 864 for delivery in this state and that provides that coverage of a
 865 dependent child terminates ~~will terminate~~ upon attainment of the
 866 limiting age for dependent children specified in the policy or
 867 contract must ~~shall~~ also provide in substance that attainment of
 868 the limiting age does not terminate the coverage of the child
 869 while the child continues to be both:

870 (a) ~~(1)~~ Incapable of self-sustaining employment by reason of

591-04779-10

20101388c2

871 an intellectual or ~~mental retardation~~ or physical disability.
872 ~~handicap; and~~

873 (b)(2) Chiefly dependent upon the policyholder or
874 subscriber for support and maintenance.

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

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

883 627.6615 ~~Handicapped~~ Children with disabilities;
884 continuation of coverage under group policy.—

885 (1) A group health insurance policy or health care services
886 plan contract that is delivered or issued for delivery in this
887 state and that provides that coverage of a dependent child of an
888 employee or other member of the covered group terminates ~~will~~
889 ~~terminate~~ upon attainment of the limiting age for dependent
890 children specified in the policy or contract must ~~shall~~ also
891 provide in substance that attainment of the limiting age does
892 not terminate the coverage of the child while the child
893 continues to be both:

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

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

899 (2) If a claim is denied under a policy or contract for the

591-04779-10

20101388c2

900 stated reason that the child has attained the limiting age for
901 dependent children specified in the policy or contract, the
902 notice of denial must state that the certificateholder or
903 subscriber has the burden of establishing that the child
904 continues to meet the criteria specified in subsection
905 ~~subsections~~ (1) and ~~(2)~~.

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

908 641.31 Health maintenance contracts.—

909 (29) If a health maintenance contract provides that
910 coverage of a dependent child of the subscriber terminates ~~will~~
911 ~~terminate~~ upon attainment of the limiting age for dependent
912 children which is specified in the contract, the contract must
913 also provide in substance that attainment of the limiting age
914 does not terminate the coverage of the child while the child
915 continues to be both:

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

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

921
922 If the claim is denied under a contract for the stated reason
923 that the child has attained the limiting age for dependent
924 children specified in the contract, the notice or denial must
925 state that the subscriber has the burden of establishing that
926 the child continues to meet the criteria specified in this
927 subsection ~~paragraphs (a) and (b)~~.

928 Section 22. Subsection (4) of section 650.05, Florida

591-04779-10

20101388c2

929 Statutes, is amended to read:

930 650.05 Plans for coverage of employees of political
931 subdivisions.-

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

940 ~~(b)~~ The grants-in-aid and other revenue ~~referred to in~~
941 ~~paragraph (a)~~ specifically include, but are not limited to,
942 minimum foundation program grants to public school districts and
943 community colleges; gasoline, motor fuel, cigarette, racing, and
944 insurance premium taxes distributed to political subdivisions;
945 and amounts specifically appropriated as grants-in-aid for
946 mental health, intellectual disabilities ~~mental retardation~~, and
947 mosquito control programs.

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

950 765.204 Capacity of principal; procedure.-

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

957 Section 24. Section 849.04, Florida Statutes, is amended to

591-04779-10

20101388c2

958 read:

959 849.04 Permitting minors and persons under guardianship to
960 gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.
961 O., keno or pool table, or billiard table, wheel of fortune, or
962 other game of chance, kept for the purpose of betting, who
963 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is
964 mentally incompetent or under guardianship to play at such game
965 or to bet on such game of chance; or whoever aids or abets or
966 otherwise encourages such playing or betting of any money or
967 other valuable thing upon the result of such game of chance by a
968 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under
969 guardianship, commits ~~shall be guilty of~~ a felony of the third
970 degree, punishable as provided in s. 775.082, s. 775.083, or s.
971 775.084. For the purpose of this section, the term a "person who
972 is mentally incompetent ~~person~~ means a person is one who
973 because of mental illness, intellectual disability ~~mental~~
974 ~~retardation~~, senility, excessive use of drugs or alcohol, or
975 other mental incapacity is incapable of ~~either~~ managing his or
976 her property or caring for himself or herself or both.

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

979 914.16 Child abuse and sexual abuse of victims under age 16
980 or who has an intellectual disability ~~persons with mental~~
981 ~~retardation~~; limits on interviews.—The chief judge of each
982 judicial circuit, after consultation with the state attorney and
983 the public defender for the judicial circuit, the appropriate
984 chief law enforcement officer, and any other person deemed
985 appropriate by the chief judge, shall ~~provide by~~ order
986 reasonable limits on the number of interviews which ~~that~~ a

591-04779-10

20101388c2

987 victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s.
988 847.0135(5) who is under 16 years of age or a victim of a
989 violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who
990 has an intellectual disability ~~is a person with mental~~
991 ~~retardation~~ as defined in s. 393.063 must submit to for law
992 enforcement or discovery purposes. ~~The order shall,~~ To the
993 extent possible, the order must protect the victim from the
994 psychological damage of repeated interrogations while preserving
995 the rights of the public, the victim, and the person charged
996 with the violation.

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

999 914.17 Appointment of advocate for victims or witnesses who
1000 are minors or intellectually disabled ~~persons with mental~~
1001 ~~retardation~~.-

1002 (1) A guardian ad litem or other advocate shall be
1003 appointed by the court to represent a minor in any criminal
1004 proceeding if the minor is a victim of or witness to child abuse
1005 or neglect, ~~or if the minor is a victim of a sexual offense,~~ or
1006 a witness to a sexual offense committed against another minor.
1007 The court may appoint a guardian ad litem or other advocate in
1008 any other criminal proceeding in which a minor is involved as
1009 ~~either~~ a victim or a witness. The guardian ad litem or other
1010 advocate shall have full access to all evidence and reports
1011 introduced during the proceedings, may interview witnesses, may
1012 make recommendations to the court, shall be noticed and have the
1013 right to appear on behalf of the minor at all proceedings, and
1014 may request additional examinations by medical doctors,
1015 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian

591-04779-10

20101388c2

1016 ad litem or other advocate shall ~~to perform the following~~
1017 ~~services:~~

1018 (a) ~~To~~ Explain, in language understandable to the minor,
1019 all legal proceedings in which the minor is ~~shall be~~ involved;

1020 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1021 whenever appropriate, of the minor's ability to understand and
1022 cooperate with any court proceeding; and

1023 (c) ~~To~~ Assist the minor and the minor's family in coping
1024 with the emotional effects of the crime and subsequent criminal
1025 proceedings in which the minor is involved.

1026 (2) An advocate shall be appointed by the court to
1027 represent a person who has an intellectual disability with
1028 ~~mental retardation~~ as defined in s. 393.063 in any criminal
1029 proceeding if the person ~~with mental retardation~~ is a victim of
1030 or witness to abuse or neglect, ~~or if the person with mental~~
1031 ~~retardation is~~ a victim of a sexual offense, or a witness to a
1032 sexual offense committed against a minor or person who has an
1033 intellectual disability with mental retardation. The court may
1034 appoint an advocate in any other criminal proceeding in which
1035 such a person with mental retardation is involved as ~~either a~~
1036 victim or a witness. The advocate shall have full access to all
1037 evidence and reports introduced during the proceedings, may
1038 interview witnesses, may make recommendations to the court,
1039 shall be noticed and have the right to appear on behalf of the
1040 person ~~with mental retardation~~ at all proceedings, and may
1041 request additional examinations by medical doctors,
1042 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate
1043 shall ~~to perform the following services:~~

1044 (a) ~~To~~ Explain, in language understandable to the person

591-04779-10

20101388c2

1045 ~~with mental retardation~~, all legal proceedings in which the
1046 person is ~~shall be~~ involved;

1047 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1048 whenever appropriate, of the person's ~~person with mental~~
1049 ~~retardation's~~ ability to understand and cooperate with any court
1050 proceedings; and

1051 (c) To assist the person ~~with mental retardation~~ and the
1052 person's family in coping with the emotional effects of the
1053 crime and subsequent criminal proceedings in which the person
1054 ~~with mental retardation~~ is involved.

1055 (3) Any person participating in a judicial proceeding as a
1056 guardian ad litem or other advocate is ~~shall be~~ presumed prima
1057 facie to be acting in good faith and in so doing is ~~shall be~~
1058 immune from any liability, civil or criminal, which ~~that~~
1059 ~~otherwise~~ might be incurred or imposed.

1060 Section 27. Subsections (1), (2), and (3) of section
1061 916.105, Florida Statutes, are amended to read:

1062 916.105 Legislative intent.—

1063 (1) It is the intent of the Legislature that the Department
1064 of Children and Family Services and the Agency for Persons with
1065 Disabilities, as appropriate, establish, locate, and maintain
1066 separate and secure forensic facilities and programs for the
1067 treatment or training of defendants who have been charged with a
1068 felony and who have been found to be incompetent to proceed due
1069 to their mental illness, intellectual disability ~~mental~~
1070 ~~retardation~~, or autism, or who have been acquitted of a felony
1071 by reason of insanity, and who, while still under the
1072 jurisdiction of the committing court, are committed to the
1073 department or agency under ~~the provisions of~~ this chapter. Such

591-04779-10

20101388c2

1074 facilities must ~~shall~~ be sufficient to accommodate the number of
1075 defendants committed under the conditions noted above. Except
1076 for those defendants found by the department or agency to be
1077 appropriate for treatment or training in a civil facility or
1078 program pursuant to subsection (3), forensic facilities must
1079 ~~shall~~ be designed and administered so that ingress and egress,
1080 together with other requirements of this chapter, may be
1081 strictly controlled by staff responsible for security in order
1082 to protect the defendant, facility personnel, other clients, and
1083 citizens in adjacent communities.

1084 (2) It is the intent of the Legislature that treatment or
1085 training programs for defendants who are found to have mental
1086 illness, intellectual disability ~~mental retardation~~, or autism
1087 and are involuntarily committed to the department or agency, and
1088 who are still under the jurisdiction of the committing court, be
1089 provided in a manner, subject to security requirements and other
1090 mandates of this chapter, which ensures ~~as to ensure~~ the rights
1091 of the defendants as provided in this chapter.

1092 (3) It is the intent of the Legislature that evaluation and
1093 services to defendants who have mental illness, intellectual
1094 disability ~~mental retardation~~, or autism be provided in
1095 community settings, in community residential facilities, or in
1096 civil facilities, whenever this is a feasible alternative to
1097 treatment or training in a state forensic facility.

1098 Section 28. Subsections (10) through (17) of section
1099 916.106, Florida Statutes, are reordered and amended to read:

1100 916.106 Definitions.—For the purposes of this chapter, the
1101 term:

1102 (10) "Forensic facility" means a separate and secure

591-04779-10

20101388c2

1103 facility established within the department or agency to serve
1104 forensic clients. A separate and secure facility means a
1105 security-grade building for the purpose of separately housing
1106 persons who have mental illness from persons who have
1107 intellectual disabilities ~~with retardation~~ or autism and
1108 separately housing persons who have been involuntarily committed
1109 pursuant to this chapter from nonforensic residents.

1110 (11) "Incompetent to proceed" means unable to proceed at
1111 any material stage of a criminal proceeding, which includes
1112 ~~shall include~~ trial of the case, pretrial hearings involving
1113 questions of fact on which the defendant might be expected to
1114 testify, entry of a plea, proceedings for violation of probation
1115 or violation of community control, sentencing, and hearings on
1116 issues regarding a defendant's failure to comply with court
1117 orders or conditions or other matters in which the mental
1118 competence of the defendant is necessary for a just resolution
1119 of the issues being considered.

1120 (12) "Institutional security personnel" means the staff of
1121 forensic facilities who meet or exceed the requirements of s.
1122 943.13 and who are responsible for providing security,
1123 protecting clients and personnel, enforcing rules, preventing
1124 and investigating unauthorized activities, and safeguarding the
1125 interests of residents ~~citizens~~ in the surrounding communities.

1126 (14) ~~(13)~~ "Mental illness" means an impairment of the
1127 emotional processes that exercise conscious control of one's
1128 actions, or of the ability to perceive or understand reality,
1129 which impairment substantially interferes with the ~~a~~ defendant's
1130 ability to meet the ordinary demands of living. For the purposes
1131 of this chapter, the term does not apply to defendants who have

591-04779-10

20101388c2

1132 only an intellectual disability ~~with only mental retardation~~ or
1133 autism and does not include intoxication or conditions
1134 manifested only by antisocial behavior or substance abuse
1135 impairment.

1136 (15) ~~(14)~~ "Restraint" means a physical device, method, or
1137 drug used to control dangerous behavior.

1138 (a) A physical restraint is any manual method or physical
1139 or mechanical device, material, or equipment attached or
1140 adjacent to a person's body so that he or she cannot easily
1141 remove the restraint and that restricts freedom of movement or
1142 normal access to one's body.

1143 (b) A drug used as a restraint is a medication used to
1144 control the person's behavior or to restrict his or her freedom
1145 of movement and not part of the standard treatment regimen of
1146 the person with a diagnosed mental illness who is a client of
1147 the department. Physically holding a person during a procedure
1148 to forcibly administer psychotropic medication is a physical
1149 restraint.

1150 (c) Restraint does not include physical devices, such as
1151 orthopedically prescribed appliances, surgical dressings and
1152 bandages, supportive body bands, or other physical holding ~~when~~
1153 necessary for routine physical examinations and tests; for
1154 purposes of orthopedic, surgical, or other similar medical
1155 treatment; ~~when used~~ to provide support for the achievement of
1156 functional body position or proper balance; or ~~when used~~ to
1157 protect a person from falling out of bed.

1158 (13) ~~(15)~~ "Intellectual disability" ~~"Retardation"~~ has the
1159 same meaning as in s. 393.063.

1160 (16) "Seclusion" means the physical segregation of a person

591-04779-10

20101388c2

1161 in any fashion or the involuntary isolation of a person in a
1162 room or area from which the person is prevented from leaving.
1163 The prevention may be by physical barrier or by a staff member
1164 who is acting in a manner, or who is physically situated, so as
1165 to prevent the person from leaving the room or area. For
1166 purposes of this chapter, the term does not mean isolation due
1167 to a person's medical condition or symptoms, the confinement in
1168 a forensic facility to a bedroom or area during normal hours of
1169 sleep when there is not an active order for seclusion, or during
1170 an emergency such as a riot or hostage situation when clients
1171 may be temporarily placed in their rooms for their own safety.

1172 (17) "Social service professional" means a person whose
1173 minimum qualifications include a bachelor's degree and at least
1174 2 years of social work, clinical practice, special education,
1175 habilitation, or equivalent experience working directly with
1176 persons who have intellectual disabilities ~~with retardation~~,
1177 autism, or other developmental disabilities.

1178 Section 29. Paragraph (a) of subsection (1) and paragraph
1179 (a) of subsection (3) of section 916.107, Florida Statutes, are
1180 amended to read:

1181 916.107 Rights of forensic clients.—

1182 (1) RIGHT TO INDIVIDUAL DIGNITY.—

1183 (a) The policy of the state is that the individual dignity
1184 of the client shall be respected at all times and upon all
1185 occasions, including any occasion when the forensic client is
1186 detained, transported, or treated. Clients with mental illness,
1187 intellectual disability ~~retardation~~, or autism and who are
1188 charged with committing felonies shall receive appropriate
1189 treatment or training. In a criminal case involving a client who

591-04779-10

20101388c2

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

1204 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

1205 (a) A forensic client shall be asked to give express and
1206 informed written consent for treatment. If a client refuses such
1207 treatment as is deemed necessary and essential by the client's
1208 multidisciplinary treatment team for the appropriate care of the
1209 client, such treatment may be provided under the following
1210 circumstances:

1211 1. In an emergency situation in which there is immediate
1212 danger to the safety of the client or others, such treatment may
1213 be provided upon the written order of a physician for a period
1214 not to exceed 48 hours, excluding weekends and legal holidays.
1215 If, after the 48-hour period, the client has not given express
1216 and informed consent to the treatment initially refused, the
1217 administrator or designee of the civil or forensic facility
1218 shall, within 48 hours, excluding weekends and legal holidays,

591-04779-10

20101388c2

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

1228 2. In a situation other than an emergency situation, the
1229 administrator or designee of the facility shall petition the
1230 court for an order authorizing necessary and essential treatment
1231 for the client. The order shall allow such treatment for a
1232 period not to exceed 90 days following the date of the entry of
1233 the order. Unless the court is notified in writing that the
1234 client has provided express and informed consent in writing or
1235 that the client has been discharged by the committing court, the
1236 administrator or designee shall, prior to the expiration of the
1237 initial 90-day order, petition the court for an order
1238 authorizing the continuation of treatment for another 90-day
1239 period. This procedure shall be repeated until the client
1240 provides consent or is discharged by the committing court.

1241 3. At the hearing on the issue of whether the court should
1242 enter an order authorizing treatment for which a client was
1243 unable to or refused to give express and informed consent, the
1244 court shall determine by clear and convincing evidence that the
1245 client has mental illness, intellectual disability ~~retardation~~,
1246 or autism, that the treatment not consented to is essential to
1247 the care of the client, and that the treatment not consented to

591-04779-10

20101388c2

1248 is not experimental and does not present an unreasonable risk of
1249 serious, hazardous, or irreversible side effects. In arriving at
1250 the substitute judgment decision, the court must consider at
1251 least the following factors:

- 1252 a. The client's expressed preference regarding treatment;
- 1253 b. The probability of adverse side effects;
- 1254 c. The prognosis without treatment; and
- 1255 d. The prognosis with treatment.

1256
1257 The hearing shall be as convenient to the client as may be
1258 consistent with orderly procedure and shall be conducted in
1259 physical settings not likely to be injurious to the client's
1260 condition. The court may appoint a general or special magistrate
1261 to preside at the hearing. The client or the client's guardian,
1262 and the representative, shall be provided with a copy of the
1263 petition and the date, time, and location of the hearing. The
1264 client has the right to have an attorney represent him or her at
1265 the hearing, and, if the client is indigent, the court shall
1266 appoint the office of the public defender to represent the
1267 client at the hearing. The client may testify or not, as he or
1268 she chooses, and has the right to cross-examine witnesses and
1269 may present his or her own witnesses.

1270 Section 30. The Division of Statutory Revision is requested
1271 to rename part III of chapter 916, Florida Statutes, consisting
1272 of ss. 916.301-916.304, as "Forensic Services for Persons who
1273 are Intellectually Disabled or Autistic."

1274 Section 31. Subsections (1) and (2) of section 916.301,
1275 Florida Statutes, are amended to read:

1276 916.301 Appointment of experts.-

591-04779-10

20101388c2

1277 (1) All evaluations ordered by the court under this part
1278 must be conducted by qualified experts who have expertise in
1279 evaluating persons who have an intellectual disability ~~with~~
1280 ~~retardation~~ or autism. The agency shall maintain and provide the
1281 courts annually with a list of available ~~retardation and autism~~
1282 professionals who are appropriately licensed and qualified to
1283 perform evaluations of defendants alleged to be incompetent to
1284 proceed due to intellectual disability ~~retardation~~ or autism.
1285 The courts may use professionals from this list when appointing
1286 experts and ordering evaluations under this part.

1287 (2) If a defendant's suspected mental condition is
1288 intellectual disability ~~retardation~~ or autism, the court shall
1289 appoint the following:

1290 (a) At least one, or at the request of any party, two
1291 experts to evaluate whether the defendant meets the definition
1292 of intellectual disability ~~retardation~~ or autism and, if so,
1293 whether the defendant is competent to proceed; and

1294 (b) A psychologist selected by the agency who is licensed
1295 or authorized by law to practice in this state, with experience
1296 in evaluating persons suspected of having an intellectual
1297 disability ~~retardation~~ or autism, and a social service
1298 professional, with experience in working with persons who have
1299 an intellectual disability ~~with retardation~~ or autism.

1300 1. The psychologist shall evaluate whether the defendant
1301 meets the definition of intellectual disability ~~retardation~~ or
1302 autism and, if so, whether the defendant is incompetent to
1303 proceed due to intellectual disability ~~retardation~~ or autism.

1304 2. The social service professional shall provide a social
1305 and developmental history of the defendant.

591-04779-10

20101388c2

1306 Section 32. Subsections (1), (2), and (4) of section
1307 916.3012, Florida Statutes, are amended to read:

1308 916.3012 Mental competence to proceed.—

1309 (1) A defendant whose suspected mental condition is
1310 intellectual disability ~~retardation~~ or autism is incompetent to
1311 proceed within the meaning of this chapter if the defendant does
1312 not have sufficient present ability to consult with the
1313 defendant's lawyer with a reasonable degree of rational
1314 understanding or if the defendant has no rational, as well as
1315 factual, understanding of the proceedings against the defendant.

1316 (2) Experts in intellectual disability ~~retardation~~ or
1317 autism appointed pursuant to s. 916.301 shall first consider
1318 whether the defendant meets the definition of intellectual
1319 disability ~~retardation~~ or autism and, if so, consider the
1320 factors related to the issue of whether the defendant meets the
1321 criteria for competence to proceed as described in subsection
1322 (1).

1323 (4) If the experts ~~should~~ find that the defendant is
1324 incompetent to proceed, the experts shall report on any
1325 recommended training for the defendant to attain competence to
1326 proceed. In considering the issues relating to training, the
1327 examining experts shall specifically report on:

1328 (a) The intellectual disability ~~retardation~~ or autism
1329 causing the incompetence;

1330 (b) The training appropriate for the intellectual
1331 disability ~~retardation~~ or autism of the defendant and an
1332 explanation of each of the possible training alternatives in
1333 order of choices;

1334 (c) The availability of acceptable training and, if

591-04779-10

20101388c2

1335 training is available in the community, the expert shall so
1336 state in the report; and

1337 (d) The likelihood of the defendant's attaining competence
1338 under the training recommended, an assessment of the probable
1339 duration of the training required to restore competence, and the
1340 probability that the defendant will attain competence to proceed
1341 in the foreseeable future.

1342 Section 33. Subsection (1), paragraphs (a) and (b) of
1343 subsection (2), and paragraph (a) of subsection (3) of section
1344 916.302, Florida Statutes, are amended to read:

1345 916.302 Involuntary commitment of defendant determined to
1346 be incompetent to proceed.—

1347 (1) CRITERIA.—Every defendant who is charged with a felony
1348 and who is adjudicated incompetent to proceed due to
1349 intellectual disability ~~retardation~~ or autism may be
1350 involuntarily committed for training upon a finding by the court
1351 of clear and convincing evidence that:

1352 (a) The defendant has an intellectual disability
1353 ~~retardation~~ or autism;

1354 (b) There is a substantial likelihood that in the near
1355 future the defendant will inflict serious bodily harm on himself
1356 or herself or another person, as evidenced by recent behavior
1357 causing, attempting, or threatening such harm;

1358 (c) All available, less restrictive alternatives, including
1359 services provided in community residential facilities or other
1360 community settings, which would offer an opportunity for
1361 improvement of the condition have been judged to be
1362 inappropriate; and

1363 (d) There is a substantial probability that the

591-04779-10

20101388c2

1364 intellectual disability ~~retardation~~ or autism causing the
1365 defendant's incompetence will respond to training and the
1366 defendant will regain competency to proceed in the reasonably
1367 foreseeable future.

1368 (2) ADMISSION TO A FACILITY.—

1369 (a) A defendant who has been charged with a felony and who
1370 is found to be incompetent to proceed due to intellectual
1371 disability ~~retardation~~ or autism, and who meets the criteria for
1372 involuntary commitment to the agency under ~~the provisions of~~
1373 this chapter, shall be committed to the agency, and the agency
1374 shall retain and provide appropriate training for the defendant.
1375 Within ~~No later than~~ 6 months after the date of admission or at
1376 the end of any period of extended commitment or at any time the
1377 administrator or designee determines ~~shall have determined~~ that
1378 the defendant has regained competency to proceed or no longer
1379 meets the criteria for continued commitment, the administrator
1380 or designee shall file a report with the court pursuant to this
1381 chapter and the applicable Florida Rules of Criminal Procedure.

1382 (b) A defendant determined to be incompetent to proceed due
1383 to intellectual disability ~~retardation~~ or autism may be ordered
1384 by a circuit court into a forensic facility designated by the
1385 agency for defendants who have an intellectual disability ~~mental~~
1386 ~~retardation~~ or autism.

1387 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

1388 (a) If a defendant has both an intellectual disability
1389 ~~mental retardation~~ or autism and ~~has~~ a mental illness,
1390 evaluations must address which condition is primarily affecting
1391 the defendant's competency to proceed. Referral of the defendant
1392 should be made to a civil or forensic facility most appropriate

591-04779-10

20101388c2

1393 to address the symptoms that are the cause of the defendant's
1394 incompetence.

1395 Section 34. Subsection (1) of section 916.3025, Florida
1396 Statutes, is amended to read:

1397 916.3025 Jurisdiction of committing court.—

1398 (1) The committing court shall retain jurisdiction in the
1399 case of any defendant found to be incompetent to proceed due to
1400 intellectual disability ~~retardation~~ or autism and ordered into a
1401 forensic facility designated by the agency for defendants who
1402 have intellectual disabilities ~~mental retardation~~ or autism. A
1403 defendant may not be released except by the order of the
1404 committing court. An administrative hearing examiner does not
1405 have jurisdiction to determine issues of continuing commitment
1406 or release of any defendant involuntarily committed pursuant to
1407 this chapter.

1408 Section 35. Section 916.303, Florida Statutes, is amended
1409 to read:

1410 916.303 Determination of incompetency ~~due to retardation or~~
1411 ~~autism~~; dismissal of charges.—

1412 (1) The charges against any defendant found to be
1413 incompetent to proceed due to intellectual disability
1414 ~~retardation~~ or autism shall be dismissed without prejudice to
1415 the state if the defendant remains incompetent to proceed within
1416 a reasonable time after such determination, not to exceed 2
1417 years, unless the court in its order specifies its reasons for
1418 believing that the defendant will become competent to proceed
1419 within the foreseeable future and specifies the time within
1420 which the defendant is expected to become competent to proceed.
1421 The charges may be refiled by the state if the defendant is

591-04779-10

20101388c2

1422 declared competent to proceed in the future.

1423 (2) If the charges are dismissed and if the defendant is
1424 considered to lack sufficient capacity to give express and
1425 informed consent to a voluntary application for services and
1426 lacks the basic survival and self-care skills to provide for his
1427 or her well-being or is likely to physically injure himself or
1428 herself or others if allowed to remain at liberty, the agency,
1429 the state attorney, or the defendant's attorney shall apply to
1430 the committing court to involuntarily admit the defendant to
1431 residential services pursuant to s. 393.11.

1432 (3) If the defendant is considered to need involuntary
1433 residential services for reasons described in subsection (2)
1434 and, further, there is a substantial likelihood that the
1435 defendant will injure another person or continues to present a
1436 danger of escape, and all available less restrictive
1437 alternatives, including services in community residential
1438 facilities or other community settings, which would offer an
1439 opportunity for improvement of the condition have been judged to
1440 be inappropriate, the agency, the state attorney, or the
1441 defendant's counsel may request the committing court to continue
1442 the defendant's placement in a secure facility pursuant to this
1443 part. Any placement so continued ~~under this subsection~~ must be
1444 reviewed by the court at least annually at a hearing. The annual
1445 review and hearing must ~~shall~~ determine whether the defendant
1446 continues to meet the criteria described in this subsection and,
1447 if so, whether the defendant still requires involuntary
1448 placement in a secure facility and whether the defendant is
1449 receiving adequate care, treatment, habilitation, and
1450 rehabilitation, including psychotropic medication and behavioral

591-04779-10

20101388c2

1451 programming. Notice of the annual review and review hearing
1452 shall be given to the state attorney and the defendant's
1453 attorney. ~~In no instance may~~ A defendant's placement in a secure
1454 facility may not exceed the maximum sentence for the crime for
1455 which the defendant was charged.

1456 Section 36. Subsection (1) of section 916.304, Florida
1457 Statutes, is amended to read:

1458 916.304 Conditional release.—

1459 (1) Except for an inmate currently serving a prison
1460 sentence, the committing court may order a conditional release
1461 of any defendant who has been found to be incompetent to proceed
1462 due to intellectual disability ~~retardation~~ or autism, based on
1463 an approved plan for providing community-based training. The
1464 committing criminal court may order a conditional release of any
1465 defendant to a civil facility in lieu of an involuntary
1466 commitment to a forensic facility pursuant to s. 916.302. Upon a
1467 recommendation that community-based training for the defendant
1468 is appropriate, a written plan for community-based training,
1469 including recommendations from qualified professionals, may be
1470 filed with the court, with copies to all parties. Such a plan
1471 may also be submitted by the defendant and filed with the court,
1472 with copies to all parties. The plan must include:

1473 (a) Special provisions for residential care and adequate
1474 supervision of the defendant, including recommended location of
1475 placement.

1476 (b) Recommendations for auxiliary services such as
1477 vocational training, psychological training, educational
1478 services, leisure services, and special medical care.

1479

591-04779-10

20101388c2

1480 In its order of conditional release, the court shall specify the
1481 conditions of release based upon the release plan and shall
1482 direct the appropriate agencies or persons to submit periodic
1483 reports to the courts regarding the defendant's compliance with
1484 the conditions of the release and progress in training, with
1485 copies to all parties.

1486 Section 37. Subsection (1) of section 918.16, Florida
1487 Statutes, is amended to read:

1488 918.16 Sex offenses; testimony of person under age 16 or
1489 person with mental retardation; testimony of victim; courtroom
1490 cleared; exceptions.—

1491 (1) Except as provided in subsection (2), in the trial of
1492 any case, civil or criminal, when any person under the age of 16
1493 or any person with intellectual disability ~~mental retardation~~ as
1494 defined in s. 393.063 is testifying concerning any sex offense,
1495 the court shall clear the courtroom of all persons except
1496 parties to the cause and their immediate families or guardians,
1497 attorneys and their secretaries, officers of the court, jurors,
1498 newspaper reporters or broadcasters, court reporters, and, at
1499 the request of the victim, victim or witness advocates
1500 designated by the state attorney's office.

1501 Section 38. Section 921.137, Florida Statutes, is amended
1502 to read:

1503 921.137 Imposition of the death sentence upon an
1504 intellectually disabled ~~a defendant with mental retardation~~
1505 prohibited.—

1506 (1) As used in this section, the term "intellectually
1507 disabled" or "intellectual disability" ~~"mental retardation"~~
1508 means significantly subaverage general intellectual functioning

591-04779-10

20101388c2

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

1522 (2) A sentence of death may not be imposed upon a defendant
1523 convicted of a capital felony if it is determined in accordance
1524 with this section that the defendant is intellectually disabled
1525 ~~has mental retardation~~.

1526 (3) A defendant charged with a capital felony who intends
1527 to raise intellectual disability ~~mental retardation~~ as a bar to
1528 the death sentence must give notice of such intention in
1529 accordance with the rules of court governing notices of intent
1530 to offer expert testimony regarding mental health mitigation
1531 during the penalty phase of a capital trial.

1532 (4) After a defendant who has given notice of his or her
1533 intention to raise intellectual disability ~~mental retardation~~ as
1534 a bar to the death sentence is convicted of a capital felony and
1535 an advisory jury has returned a recommended sentence of death,
1536 the defendant may file a motion to determine whether the
1537 defendant is intellectually disabled ~~has mental retardation~~.

591-04779-10

20101388c2

1538 Upon receipt of the motion, the court shall appoint two experts
1539 in the field of intellectual disabilities ~~mental retardation~~ who
1540 shall evaluate the defendant and report their findings to the
1541 court and all interested parties prior to the final sentencing
1542 hearing. Notwithstanding s. 921.141 or s. 921.142, the final
1543 sentencing hearing shall be held without a jury. At the final
1544 sentencing hearing, the court shall consider the findings of the
1545 court-appointed experts and consider the findings of any other
1546 expert which is offered by the state or the defense on the issue
1547 of whether the defendant has an intellectual disability ~~mental~~
1548 ~~retardation~~. If the court finds, by clear and convincing
1549 evidence, that the defendant has an intellectual disability
1550 ~~mental retardation~~ as defined in subsection (1), the court may
1551 not impose a sentence of death and shall enter a written order
1552 that sets forth with specificity the findings in support of the
1553 determination.

1554 (5) If a defendant waives his or her right to a recommended
1555 sentence by an advisory jury following a plea of guilt or nolo
1556 contendere to a capital felony and adjudication of guilt by the
1557 court, or following a jury finding of guilt of a capital felony,
1558 upon acceptance of the waiver by the court, a defendant who has
1559 given notice as required in subsection (3) may file a motion for
1560 a determination of intellectual disability ~~mental retardation~~.

1561 Upon granting the motion, the court shall proceed as provided in
1562 subsection (4).

1563 (6) If, following a recommendation by an advisory jury that
1564 the defendant be sentenced to life imprisonment, the state
1565 intends to request the court to order that the defendant be
1566 sentenced to death, the state must inform the defendant of such

591-04779-10

20101388c2

1567 request if the defendant has notified the court of his or her
1568 intent to raise intellectual disability ~~mental retardation~~ as a
1569 bar to the death sentence. After receipt of the notice from the
1570 state, the defendant may file a motion requesting a
1571 determination by the court of whether the defendant is
1572 intellectually disabled ~~has mental retardation~~. Upon granting
1573 the motion, the court shall proceed as provided in subsection
1574 (4).

1575 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~
1576 ~~to s. 924.07,~~ a determination of intellectual disability ~~mental~~
1577 ~~retardation~~ made under subsection (4).

1578 (8) This section does not apply to a defendant who was
1579 sentenced to death before June 12, 2001 ~~prior to the effective~~
1580 ~~date of this act.~~

1581 (9) For purposes of the application of the criminal laws
1582 and procedural rules of this state to any matters relating to
1583 the imposition and execution of the death penalty, the terms
1584 "intellectual disability" or "intellectually disabled" are
1585 interchangeable with and have the same meaning as the terms
1586 "mental retardation," or "retardation" and "mentally retarded"
1587 as defined prior to July 1, 2010.

1588 Section 39. Paragraph (b) of subsection (2) of section
1589 941.38, Florida Statutes, is amended to read:

1590 941.38 Extradition of persons alleged to be of unsound
1591 mind.—

1592 (2) For the purpose of this section:

1593 (b) A "mentally incompetent person" is one who because of
1594 mental illness, intellectual disability ~~mental retardation~~,
1595 senility, excessive use of drugs or alcohol, or other mental

591-04779-10

20101388c2

1596 incapacity is incapable of ~~either~~ managing his or her property
1597 or caring for himself or herself or both.

1598 Section 40. Section 944.602, Florida Statutes, is amended
1599 to read:

1600 944.602 Agency notification before release of
1601 intellectually disabled ~~mentally retarded~~ inmates.—Before the
1602 release by parole, release by reason of gain-time allowances
1603 provided for in s. 944.291, or expiration of sentence of any
1604 inmate who has been diagnosed as having an intellectual
1605 disability ~~mentally retarded~~ as defined in s. 393.063, the
1606 Department of Corrections shall notify the Agency for Persons
1607 with Disabilities in order that sufficient time be allowed to
1608 notify the inmate or the inmate's representative, in writing, at
1609 least 7 days before ~~prior to~~ the inmate's release, of available
1610 community services.

1611 Section 41. Subsection (2) of section 945.025, Florida
1612 Statutes, is amended to read:

1613 945.025 Jurisdiction of department.—

1614 (2) In establishing, operating, and using ~~utilizing~~ these
1615 facilities, the department shall attempt, whenever possible, to
1616 avoid the placement of nondangerous offenders who have potential
1617 for rehabilitation with repeat offenders or dangerous offenders.
1618 Medical, mental, and psychological problems must ~~shall~~ be
1619 diagnosed and treated whenever possible. The Department of
1620 Children and Family Services and the Agency for Persons with
1621 Disabilities shall cooperate to ensure the delivery of services
1622 to persons under the custody or supervision of the department.
1623 If ~~When it is the intent of~~ the department intends to transfer a
1624 ~~mentally ill or retarded~~ prisoner who has a mental illness or

591-04779-10

20101388c2

1625 intellectual disability to the Department of Children and Family
1626 Services or the Agency for Persons with Disabilities, an
1627 involuntary commitment hearing shall be held in accordance with
1628 ~~according to the provisions of~~ chapter 393 or chapter 394.

1629 Section 42. Subsection (5) of section 945.12, Florida
1630 Statutes, is amended to read:

1631 945.12 Transfers for rehabilitative treatment.—

1632 (5) When the department plans to release a mentally ill or
1633 intellectually disabled ~~retarded~~ offender, an involuntary
1634 commitment hearing shall be held as soon as possible before
1635 ~~prior to~~ his or her release in accordance with, ~~according to the~~
1636 ~~provisions of~~ chapter 393 or chapter 394.

1637 Section 43. Subsection (9) of section 945.42, Florida
1638 Statutes, is amended to read:

1639 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
1640 945.40-945.49, the following terms shall have the meanings
1641 ascribed to them, unless the context shall clearly indicate
1642 otherwise:

1643 (9) "Mentally ill" means an impairment of the mental or
1644 emotional processes that, ~~of the ability to~~ exercise conscious
1645 control of one's actions, ~~or of the ability to perceive or~~
1646 understand reality, which impairment substantially interferes
1647 with the a person's ability to meet the ordinary demands of
1648 living. However, ~~regardless of etiology, except that~~, for the
1649 purposes of transferring ~~transfer of~~ an inmate to a mental
1650 health treatment facility, the term does not include a
1651 ~~retardation or~~ developmental disability as defined in chapter
1652 393, simple intoxication, or conditions manifested only by
1653 antisocial behavior or substance abuse addiction. However, an

591-04779-10

20101388c2

1654 individual who is ~~mentally retarded~~ or developmentally disabled
1655 may also have a mental illness.

1656 Section 44. Section 947.185, Florida Statutes, is amended
1657 to read:

1658 947.185 Application for intellectual disability ~~mental~~
1659 ~~retardation~~ services as condition of parole.—The Parole
1660 Commission may require as a condition of parole that any inmate
1661 who has been diagnosed as having an intellectual disability
1662 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,
1663 apply for services from the Agency for Persons with
1664 Disabilities.

1665 Section 45. Subsection (4) of section 984.19, Florida
1666 Statutes, is amended to read:

1667 984.19 Medical screening and treatment of child;
1668 examination of parent, guardian, or person requesting custody.—

1669 (4) A judge may order that a child alleged to be or
1670 adjudicated a child in need of services be treated by a licensed
1671 health care professional. The judge may also order such child to
1672 receive mental health or intellectual disability ~~retardation~~
1673 services from a psychiatrist, psychologist, or other appropriate
1674 service provider. If it is necessary to place the child in a
1675 residential facility for such services, ~~then~~ the procedures and
1676 criteria established in s. 394.467 or chapter 393 shall be used,
1677 as whichever is applicable. A child may be provided ~~mental~~
1678 ~~health or retardation~~ services in emergency situations, pursuant
1679 to the procedures and criteria contained in s. 394.463(1) or
1680 chapter 393, as ~~whichever is~~ applicable.

1681 Section 46. Paragraph (a) of subsection (3) of section
1682 985.14, Florida Statutes, is amended to read:

591-04779-10

20101388c2

1683 985.14 Intake and case management system.—

1684 (3) The intake and case management system shall facilitate
1685 consistency in the recommended placement of each child, and in
1686 the assessment, classification, and placement process, with the
1687 following purposes:

1688 (a) An individualized, multidisciplinary assessment process
1689 that identifies the priority needs of each ~~individual~~ child for
1690 rehabilitation and treatment and identifies any needs of the
1691 child's parents or guardians for services that would enhance
1692 their ability to provide adequate support, guidance, and
1693 supervision for the child. This process begins ~~shall begin~~ with
1694 the detention risk assessment instrument and decision, includes
1695 ~~shall include~~ the intake preliminary screening and comprehensive
1696 assessment for substance abuse treatment services, mental health
1697 services, intellectual disability ~~retardation~~ services, literacy
1698 services, and other educational and treatment services as
1699 components, additional assessment of the child's treatment
1700 needs, and classification regarding the child's risks to the
1701 community and, for a serious or habitual delinquent child,
1702 includes ~~shall include the~~ assessment for placement in a serious
1703 or habitual delinquent children program under s. 985.47. The
1704 completed multidisciplinary assessment process must ~~shall~~ result
1705 in the predisposition report.

1706 Section 47. Paragraph (g) of subsection (1) and subsection
1707 (5) of section 985.145, Florida Statutes, are amended to read:

1708 985.145 Responsibilities of juvenile probation officer
1709 during intake; screenings and assessments.—

1710 (1) The juvenile probation officer shall serve as the
1711 primary case manager for the purpose of managing, coordinating,

591-04779-10

20101388c2

1712 and monitoring the services provided to the child. Each program
1713 administrator within the Department of Children and Family
1714 Services shall cooperate with the primary case manager in
1715 carrying out the duties and responsibilities described in this
1716 section. In addition to duties specified in other sections and
1717 through departmental rules, the assigned juvenile probation
1718 officer shall be responsible for the following:

1719 (g) *Comprehensive assessment.*—The juvenile probation
1720 officer, pursuant to uniform procedures established by the
1721 department and upon determining that the report, affidavit, or
1722 complaint is complete, shall:

1723 1. Perform the preliminary screening and make referrals for
1724 a comprehensive assessment regarding the child's need for
1725 substance abuse treatment services, mental health services,
1726 intellectual disability ~~retardation~~ services, literacy services,
1727 or other educational or treatment services.

1728 2. If ~~When~~ indicated by the preliminary screening, provide
1729 for a comprehensive assessment of the child and family for
1730 substance abuse problems, using community-based licensed
1731 programs with clinical expertise and experience in the
1732 assessment of substance abuse problems.

1733 3. If ~~When~~ indicated by the preliminary screening, provide
1734 for a comprehensive assessment of the child and family for
1735 mental health problems, using community-based psychologists,
1736 psychiatrists, or other licensed mental health professionals who
1737 have clinical expertise and experience in the assessment of
1738 mental health problems.

1739 (5) If the screening and assessment indicate that the
1740 interests of the child and the public will be best served

591-04779-10

20101388c2

1741 ~~thereby~~, the juvenile probation officer, with the approval of
1742 the state attorney, may refer the child for care, diagnostic,
1743 and evaluation services; substance abuse treatment services;
1744 mental health services; intellectual disability ~~retardation~~
1745 services; a diversionary, arbitration, or mediation program;
1746 community service work; or other programs or treatment services
1747 voluntarily accepted by the child and the child's parents or
1748 legal guardian. If ~~Whenever~~ a child volunteers to participate in
1749 any work program under this chapter or volunteers to work in a
1750 specified state, county, municipal, or community service
1751 organization supervised work program or to work for the victim,
1752 the child is ~~shall be~~ considered an employee of the state for
1753 the purposes of liability. In determining the child's average
1754 weekly wage, unless otherwise determined by a specific funding
1755 program, all remuneration received from the employer is
1756 considered a gratuity, and the child is not entitled to any
1757 benefits otherwise payable under s. 440.15~~7~~, regardless of
1758 whether the child may be receiving wages and remuneration from
1759 other employment with another employer and regardless of the
1760 child's future wage-earning capacity.

1761 Section 48. Subsections (2) and (6) of section 985.18,
1762 Florida Statutes, are amended to read:

1763 985.18 Medical, psychiatric, psychological, substance
1764 abuse, and educational examination and treatment.—

1765 (2) If ~~Whenever~~ a child has been found to have committed a
1766 delinquent act, or before such finding with the consent of any
1767 parent or legal custodian of the child, the court may order the
1768 child to be treated by a physician. The court may also order the
1769 child to receive mental health, substance abuse, or intellectual

591-04779-10

20101388c2

1770 disability ~~retardation~~ services from a psychiatrist,
1771 psychologist, or other appropriate service provider. If it is
1772 necessary to place the child in a residential facility for such
1773 services, the procedures and criteria established in chapter
1774 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable,
1775 must ~~shall~~ be used. After a child has been adjudicated
1776 delinquent, if an educational needs assessment by the district
1777 school board or the Department of Children and Family Services
1778 has been ~~previously~~ conducted, the court shall order the report
1779 ~~of such needs assessment~~ included in the child's court record in
1780 lieu of a new assessment. For purposes of this section, an
1781 educational needs assessment includes, but is not limited to,
1782 reports of intelligence and achievement tests, screening for
1783 learning and other disabilities ~~and other handicaps~~, and
1784 screening for the need for alternative education.

1785 (6) A physician must ~~shall~~ be immediately notified by the
1786 person taking the child into custody or the person having
1787 custody if there are indications of physical injury or illness,
1788 or the child shall be taken to the nearest available hospital
1789 for emergency care. A child may be provided mental health,
1790 substance abuse, or intellectual disability ~~retardation~~
1791 services, in emergency situations, pursuant to chapter 393,
1792 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a
1793 hearing, the court may order the custodial parent or parents,
1794 guardian, or other custodian, if found able to do so, to
1795 reimburse the county or state for the expense involved in such
1796 emergency treatment or care.

1797 Section 49. Paragraph (e) of subsection (1), subsections
1798 (2) through (4), and paragraph (a) of subsection (6) of section

591-04779-10

20101388c2

1799 985.19, Florida Statutes, are amended to read:

1800 985.19 Incompetency in juvenile delinquency cases.—

1801 (1) If, at any time prior to or during a delinquency case,
1802 the court has reason to believe that the child named in the
1803 petition may be incompetent to proceed with the hearing, the
1804 court on its own motion may, or on the motion of the child's
1805 attorney or state attorney must, stay all proceedings and order
1806 an evaluation of the child's mental condition.

1807 (e) For incompetency evaluations related to intellectual
1808 disability ~~mental retardation~~ or autism, the court shall order
1809 the Agency for Persons with Disabilities to examine the child to
1810 determine if the child meets the definition of "intellectual
1811 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,
1812 whether the child is competent to proceed with delinquency
1813 proceedings.

1814 (2) A child who is adjudicated incompetent to proceed, and
1815 who has committed a delinquent act or violation of law, either
1816 of which would be a felony if committed by an adult, must be
1817 committed to the Department of Children and Family Services for
1818 treatment or training. A child who has been adjudicated
1819 incompetent to proceed because of age or immaturity, or for any
1820 reason other than for mental illness, intellectual disability,
1821 ~~or retardation~~ or autism, must not be committed to the
1822 department or to the Department of Children and Family Services
1823 for restoration-of-competency treatment or training services.
1824 For purposes of this section, a child who has committed a
1825 delinquent act or violation of law, either of which would be a
1826 misdemeanor if committed by an adult, may not be committed to
1827 the department or to the Department of Children and Family

591-04779-10

20101388c2

1828 Services for restoration-of-competency treatment or training
1829 services.

1830 (3) If the court finds that a child has mental illness,
1831 intellectual disability ~~mental retardation~~, or autism and
1832 adjudicates the child incompetent to proceed, the court must
1833 also determine whether the child meets the criteria for secure
1834 placement. A child may be placed in a secure facility or program
1835 if the court makes a finding by clear and convincing evidence
1836 that:

1837 (a) The child has mental illness, intellectual disability
1838 ~~mental retardation~~, or autism and because of the mental illness,
1839 intellectual disability ~~mental retardation~~, or autism:

1840 1. The child is manifestly incapable of surviving with the
1841 help of willing and responsible family or friends, including
1842 available alternative services, and without treatment or
1843 training the child is likely to ~~either~~ suffer from neglect or
1844 refuse to care for self, and such neglect or refusal poses a
1845 real and present threat of substantial harm to the child's well-
1846 being; or

1847 2. There is a substantial likelihood that in the near
1848 future the child will inflict serious bodily harm on self or
1849 others, as evidenced by recent behavior causing, attempting, or
1850 threatening such harm; and

1851 (b) All available less restrictive alternatives, including
1852 treatment or training in community residential facilities or
1853 community settings, which would offer an opportunity for
1854 improvement of the child's condition, are inappropriate.

1855 (4) A child who is determined to have mental illness,
1856 intellectual disability ~~mental retardation~~, or autism, who has

591-04779-10

20101388c2

1857 been adjudicated incompetent to proceed, and who meets the
1858 criteria set forth in subsection (3), must be committed to the
1859 Department of Children and Family Services and receive treatment
1860 or training in a secure facility or program that is the least
1861 restrictive alternative consistent with public safety. Any
1862 placement of a child to a secure residential program must be
1863 separate from adult forensic programs. If the child attains
1864 competency, ~~then~~ custody, case management, and supervision of
1865 the child shall ~~will~~ be transferred to the department in order
1866 to continue delinquency proceedings; however, the court retains
1867 authority to order the Department of Children and Family
1868 Services to provide continued treatment or training to maintain
1869 competency.

1870 (a) A child adjudicated incompetent due to intellectual
1871 disability ~~mental retardation~~ or autism may be ordered into a
1872 secure program or facility designated by the Department of
1873 Children and Family Services for children who have intellectual
1874 disabilities ~~with mental retardation~~ or autism.

1875 (b) A child adjudicated incompetent due to mental illness
1876 may be ordered into a secure program or facility designated by
1877 the Department of Children and Family Services for children
1878 having mental illnesses.

1879 (c) If ~~Whenever~~ a child is placed in a secure residential
1880 facility, the department shall ~~will~~ provide transportation to
1881 the secure residential facility for admission and from the
1882 secure residential facility upon discharge.

1883 (d) The purpose of the treatment or training is the
1884 restoration of the child's competency to proceed.

1885 (e) The service provider must file a written report with

591-04779-10

20101388c2

1886 the court pursuant to the applicable Florida Rules of Juvenile
1887 Procedure within ~~not later than~~ 6 months after the date of
1888 commitment, or at the end of any period of extended treatment or
1889 training, and at any time the Department of Children and Family
1890 Services, through its service provider, determines the child has
1891 attained competency or no longer meets the criteria for secure
1892 placement, or at such shorter intervals as ordered by the court.
1893 A copy of a written report evaluating the child's competency
1894 must be filed by the provider with the court and with the state
1895 attorney, the child's attorney, the department, and the
1896 Department of Children and Family Services.

1897 (6) (a) If a child is determined to have mental illness,
1898 intellectual disability ~~mental retardation~~, or autism and is
1899 found to be incompetent to proceed but does not meet the
1900 criteria set forth in subsection (3), the court shall commit the
1901 child to the Department of Children and Family Services and
1902 ~~shall~~ order the Department of Children and Family Services to
1903 provide appropriate treatment and training in the community. The
1904 purpose of the treatment or training is the restoration of the
1905 child's competency to proceed.

1906 Section 50. Section 985.195, Florida Statutes, is amended
1907 to read:

1908 985.195 Transfer to other treatment services.—Any child
1909 committed to the department may be transferred to intellectual
1910 disability ~~retardation~~, mental health, or substance abuse
1911 treatment facilities for diagnosis and evaluation pursuant to
1912 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~
1913 applicable, for up to ~~a period not to exceed~~ 90 days.

1914 Section 51. Paragraph (b) of subsection (1) of section

591-04779-10

20101388c2

1915 985.61, Florida Statutes, is amended to read:

1916 985.61 Early delinquency intervention program; criteria.—

1917 (1) The Department of Juvenile Justice shall, contingent
1918 upon specific appropriation and with the cooperation of local
1919 law enforcement agencies, the judiciary, district school board
1920 personnel, the office of the state attorney, the office of the
1921 public defender, the Department of Children and Family Services,
1922 and community service agencies that work with children,
1923 establish an early delinquency intervention program, the
1924 components of which shall include, but not be limited to:

1925 (b) Treatment modalities, including substance abuse
1926 treatment services, mental health services, and ~~retardation~~
1927 services for intellectual disabilities.

1928 Section 52. It is the intent of the Legislature that this
1929 act is not intended to expand or contract the scope or
1930 application of any provisions of the Florida Statutes. Nothing
1931 in this act may be construed to change the application of any
1932 provisions of the Florida Statutes to any person.

1933 Section 53. This act shall take effect July 1, 2010.