

By Senator Silver

38-1102-99

See HB

1 A bill to be entitled
2 An act relating to developmental disabilities;
3 amending s. 393.063, F.S.; redefining the term
4 "intermediate care facility for the
5 developmentally disabled" and "residential
6 habilitation center"; defining the term "least
7 restrictive" with respect to placements of
8 persons with developmental disabilities;
9 amending s. 393.0651, F.S.; revising criteria
10 for the placement of clients; amending s.
11 393.067, F.S.; requiring unannounced monthly
12 inspections and reviews of residential
13 facilities and comprehensive transitional
14 education programs; providing for the licensure
15 of facilities as intermediate care facilities
16 for the developmentally disabled; amending s.
17 393.068, F.S.; deleting legislative recognition
18 of deinstitutionalization; amending s. 393.13,
19 F.S.; revising legislative intent with respect
20 to treatment and services for persons with
21 developmental disabilities; providing for an
22 annual plan for implementation of treatment
23 programs; providing for priority of legislative
24 funding; providing for civil actions to enforce
25 the rights of such persons; providing for
26 recovery of damages, costs, and attorney's
27 fees; amending ss. 92.53, 914.16, 914.17, and
28 918.16, F.S.; conforming cross-references;
29 repealing ss. 393.165 and 393.166, F.S., which
30 provide legislative findings and provide for
31 licensure of facilities under the Intermediate

1 Care Facility for the Developmentally Disabled
2 Program; providing an effective date.

3

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

5

6 Section 1. Present subsection (30) of section 393.063,
7 Florida Statutes, 1998 Supplement, is amended, present
8 subsections (32) through (41) and present subsections (43)
9 through (54) are renumbered as subsections (33) through (42)
10 and subsections (44) through (55), respectively, present
11 subsection (42) is renumbered as subsection (43) and amended,
12 and a new subsection (32) is added to that section, to read:

13 393.063 Definitions.--For the purposes of this
14 chapter:

15 (30) "Intermediate care facility for the
16 developmentally disabled" or "ICF/DD" means a
17 ~~state-owned-and-operated~~ residential facility licensed in
18 accordance with state law, and certified by the Federal
19 Government pursuant to the Social Security Act, as a provider
20 of Medicaid services to persons who are mentally retarded or
21 who have related conditions. ~~The capacity of such a facility~~
22 ~~shall not be more than 120 clients.~~

23 (32) "Least restrictive" means a placement,
24 residential or otherwise, that maximizes opportunities for the
25 most normalized lifestyle possible for an individual with
26 developmental disabilities based on that individual's unique
27 needs.

28 (43)~~(42)~~ "Residential habilitation center" means a
29 community residential facility operated primarily for the
30 diagnosis, treatment, habilitation, or rehabilitation of its
31 residents, which facility provides, in a structured

1 residential setting, individualized continuing evaluation,
2 planning, 24-hour supervision, and coordination and
3 integration of health or rehabilitative services to help each
4 resident reach his or her maximum functioning capabilities.
5 The capacity of such a facility shall not be less than nine
6 residents. ~~After October 1, 1989, no new residential~~
7 ~~habilitation centers shall be licensed and the licensed~~
8 ~~capacity shall not be increased for any existing residential~~
9 ~~habilitation center.~~

10 Section 2. Section 393.0651, Florida Statutes, is
11 amended to read:

12 393.0651 Family or individual support plan.--The
13 department shall provide for an appropriate family support
14 plan for children ages birth to 18 years of age and an
15 individual support plan for each client. The parent or
16 guardian of the client or, if competent, the client, or, when
17 appropriate, the client advocate, shall be consulted in the
18 development of the plan and shall receive a copy of the plan.
19 Each plan shall include the most appropriate, least
20 restrictive, and most cost-beneficial environment for
21 accomplishment of the objectives for client progress and a
22 specification of all services authorized. The plan shall
23 include provisions for the most appropriate level of care for
24 the client. Within the specification of needs and services for
25 each client, when residential care is necessary, the
26 department shall move toward placement of clients in
27 residential facilities based within the client's community.
28 The ultimate goal of each plan, whenever possible, shall be to
29 enable the client to live a dignified life in the least
30 restrictive setting possible, based on the individual's unique
31 needs, ~~be that in the home or in the community.~~ For children

1 under 6 years of age, the family support plan shall be
2 developed within the 45-day application period as specified in
3 s. 393.065(1); for all applicants 6 years of age or older, the
4 family or individual support plan shall be developed within
5 the 60-day period as specified in that subsection.

6 (1) The department shall develop and specify by rule
7 the core components of support plans to be used by each
8 district.

9 (2)(a) The family or individual support plan shall be
10 integrated with the individual education plan (IEP) for all
11 clients who are public school students entitled to a free
12 appropriate public education under the Individuals with
13 Disabilities Education Act, I.D.E.A., as amended. The family
14 or individual support plan and IEP shall be implemented to
15 maximize the attainment of educational and habilitation goals.
16 If the IEP for a student enrolled in a public school program
17 indicates placement in a public or private residential program
18 is necessary to provide special education and related services
19 to a client, the local education agency shall provide for the
20 costs of that service in accordance with the requirements of
21 the Individuals with Disabilities Education Act, I.D.E.A., as
22 amended. This shall not preclude local education agencies and
23 the department from sharing the residential service costs of
24 students who are clients and require residential placement.
25 Under no circumstances shall clients entitled to a public
26 education or their parents be assessed a fee by the department
27 under s. 402.33 for placement in a residential program.

28 (b) For clients who are entering or exiting the school
29 system, an interdepartmental staffing team composed of
30 representatives of the department and the local school system
31 shall develop a written transitional living and training plan

1 with the participation of the client or with the parent or
2 guardian of the client, or the client advocate, as
3 appropriate.

4 (3) Each family or individual support plan shall be
5 facilitated through case management designed solely to advance
6 the individual needs of the client.

7 (4) In the development of the family or individual
8 support plan, a client advocate may be appointed by the
9 support planning team for a client who is a minor or for a
10 client who is not capable of express and informed consent
11 when:

12 (a) The parent or guardian cannot be identified;

13 (b) The whereabouts of the parent or guardian cannot
14 be discovered; or

15 (c) The state is the only legal representative of the
16 client.

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18 Such appointment shall not be construed to extend the powers
19 of the client advocate to include any of those powers
20 delegated by law to a legal guardian.

21 (5) The department shall place a client in the most
22 appropriate and least restrictive, and cost-beneficial,
23 residential facility according to his or her individual
24 habilitation plan. The parent or guardian of the client or, if
25 competent, the client, or, when appropriate, the client
26 advocate, and the administrator of the residential facility to
27 which placement is proposed shall be consulted in determining
28 the appropriate placement for the client. ~~Considerations for~~
29 ~~placement shall be made in the following order:~~

30 ~~(a) Client's own home or the home of a family member~~
31 ~~or direct service provider.~~

1 ~~(b) Foster care facility.~~
2 ~~(c) Group home facility.~~
3 ~~(d) Intermediate care facility for the developmentally~~
4 ~~disabled.~~
5 ~~(e) Other facilities licensed by the department which~~
6 ~~offer special programs for people with developmental~~
7 ~~disabilities.~~
8 ~~(f) Developmental services institution.~~
9 (6) In developing a client's annual family or
10 individual support plan, the individual or family with the
11 assistance of the support planning team shall identify
12 measurable objectives for client progress and shall specify a
13 time period expected for achievement of each objective.
14 (7) The individual, family, and support coordinator
15 shall review progress in achieving the objectives specified in
16 each client's family or individual support plan, and shall
17 revise the plan annually, following consultation with the
18 client, if competent, or with the parent or guardian of the
19 client, or, when appropriate, the client advocate. The
20 department shall annually report in writing to the client, if
21 competent, or to the parent or guardian of the client, or to
22 the client advocate, when appropriate, with respect to the
23 client's habilitative and medical progress.
24 (8) Any client, or any parent of a minor client, or
25 guardian, authorized guardian advocate, or client advocate for
26 a client, who is substantially affected by the client's
27 initial family or individual support plan, or the annual
28 review thereof, shall have the right to file a notice to
29 challenge the decision pursuant to ss. 120.569 and 120.57.
30 Notice of such right to appeal shall be included in all
31 support plans provided by the department.

1 Section 3. Subsections (2), (3), (9), (11), and (19)
2 of section 393.067, Florida Statutes, 1998 Supplement, are
3 amended to read:

4 393.067 Licensure of residential facilities and
5 comprehensive transitional education programs.--

6 (2) The department shall conduct unannounced monthly
7 inspections and reviews of residential facilities and
8 comprehensive transitional education programs ~~annually~~.

9 (3) An application for a license for a residential
10 facility or a comprehensive transitional education program
11 shall be made to the department ~~of Health and Rehabilitative~~
12 ~~Services~~ on a form furnished by it and shall be accompanied by
13 the appropriate license fee.

14 (9) The department and the Agency for Health Care
15 Administration, after consultation with the Department of
16 Community Affairs, shall adopt rules for residential
17 facilities under the respective regulatory jurisdiction of
18 each establishing minimum standards for the preparation and
19 annual update of a comprehensive emergency management plan.
20 At a minimum, the rules must provide for plan components that
21 address emergency evacuation transportation; adequate
22 sheltering arrangements; postdisaster activities, including
23 emergency power, food, and water; postdisaster transportation;
24 supplies; staffing; emergency equipment; individual
25 identification of residents and transfer of records; and
26 responding to family inquiries. The comprehensive emergency
27 management plan for all intermediate care facilities for the
28 developmentally disabled, facilities serving seven or more
29 people, and homes serving individuals who have complex medical
30 conditions is subject to review and approval by the local
31 emergency management agency. During its review, the local

1 emergency management agency shall ensure that the following
2 agencies, at a minimum, are given the opportunity to review
3 the plan: the Agency for Health Care Administration, the
4 Department of Children and Family ~~Health and Rehabilitative~~
5 Services, and the Department of Community Affairs. Also,
6 appropriate volunteer organizations must be given the
7 opportunity to review the plan. The local emergency
8 management agency shall complete its review within 60 days and
9 either approve the plan or advise the facility of necessary
10 revisions.

11 (11) The department may conduct announced ~~unannounced~~
12 inspections in addition to the unannounced monthly inspections
13 required under subsection (2). All inspections, whether
14 announced or unannounced, shall be designed to determine
15 compliance by residential facilities and comprehensive
16 transitional education programs with the applicable provisions
17 of this chapter and the rules adopted pursuant hereto,
18 including the rules adopted for training staff of a facility
19 or a program to detect and prevent sexual abuse of residents
20 and clients. The facility or program shall make copies of
21 inspection reports available to the public upon request.

22 (19) The department shall develop a plan by March 15,
23 1991, to phase out all of the unlicensed beds in developmental
24 services institutions by December 30, 1999, and, contingent
25 upon appropriations, ensure that all beds operating after that
26 date are licensed as intermediate care facilities for the
27 developmentally disabled. This plan must address among other
28 issues the transfer of funds from developmental services
29 institutions to the community.

30 Section 4. Subsection (1) of section 393.068, Florida
31 Statutes, is amended to read:

1 393.068 Family care program.--
2 (1) The family care program is established for the
3 purpose of providing services and support to families and
4 individuals with developmental disabilities in order to
5 maintain the individual in the home environment and avoid
6 costly out-of-home residential placement. ~~The Legislature~~
7 ~~recognizes the importance of family support in the long-range~~
8 ~~success of deinstitutionalization.~~Services and support
9 available to families and individuals with developmental
10 disabilities shall emphasize community living and enable
11 individuals with developmental disabilities to enjoy typical
12 lifestyles. Support and flexibility in coordinating support
13 and services are core elements in caring for the individual
14 who is developmentally disabled. One way to accomplish this is
15 to recognize that families are the greatest resource available
16 to individuals who have developmental disabilities and that
17 families must be supported in their role as primary care
18 givers. Services and support authorized under this program
19 shall include the services listed under s. 393.066(4) and, in
20 addition, shall include, but not be limited to:
21 (a) Attendant care.
22 (b) Barrier-free modifications to the home.
23 (c) Home visitation by agency workers.
24 (d) In-home subsidies.
25 (e) Low-interest loans.
26 (f) Parent training.
27 (g) Respite care.
28 (h) Modifications for vehicles used to transport the
29 individual with a developmental disability.
30 (i) Facilitated communication.
31 (j) Family counseling.

- 1 (k) Equipment and supplies.
2 (l) Self-advocacy training.
3 (m) Roommate services.
4 (n) Integrated community activities.
5 (o) Emergency services.
6 (p) Support coordination.
7 (q) Other support services as identified by the family
8 or individual.

9 Section 5. Paragraphs (b) and (d) of subsection (2) of
10 section 393.13, Florida Statutes, are amended, and subsection
11 (8) is added to that section, to read:

12 393.13 Personal treatment of persons who are
13 developmentally disabled.--

14 (2) LEGISLATIVE INTENT.--

15 (b) The Legislature further finds and declares that
16 the design and delivery of treatment and services to persons
17 who are developmentally disabled should be directed by the
18 principles of normalization and therefore should:

19 ~~1. Abate the use of large institutions.~~

20 1.2. Continue the development of community-based
21 services as an alternative to institutional placement when
22 appropriate and based on the individual's unique needs which
23 ~~provide reasonable alternatives to institutionalization in~~
24 ~~settings that are least restrictive to the client.~~

25 ~~2.3. Provide training and education to individuals who~~
26 ~~are developmentally disabled which will maximize their~~
27 ~~potential to lead independent and productive lives and which~~
28 ~~will, when appropriate, afford opportunities for outward~~
29 ~~mobility from institutions.~~

30 (d) It is the intent of the Legislature that all
31 persons with developmental disabilities shall have all the

1 rights enjoyed by all other citizens of the state and the
2 United States and, therefore, the Legislature intends:

3 1. To articulate the existing legal and human rights
4 of persons who are developmentally disabled so that they may
5 be exercised and protected. ~~Persons with developmental~~
6 ~~disabilities shall have all the rights enjoyed by citizens of~~
7 ~~the state and the United States.~~

8 2. To provide a mechanism for the identification,
9 evaluation, and treatment of persons with developmental
10 disabilities.

11 3. To divert those individuals from institutional
12 commitment who, by virtue of individualized comprehensive
13 assessment, can be placed in a community residence or
14 community program ~~less costly, more effective community~~
15 ~~environments and programs.~~

16 4. To develop an annual ~~a~~ plan which will indicate the
17 most effective and efficient manner in which to implement
18 treatment programs and residential placements which are
19 meaningful to individuals with developmental disabilities,
20 while safeguarding and respecting the legal and human rights
21 of such individuals. Each annual plan shall review and revise
22 the previous year's annual plan.

23 5. Once the annual plan developed under ~~the provisions~~
24 ~~of~~ subparagraph 4. is presented to the Legislature, to fund
25 the recommended treatment programs and residential placements
26 to the fullest extent possible within ~~improvements in the~~
27 program in accordance with the availability of state
28 resources, and to make such funding a legislative priority
29 ~~yearly priorities determined by the Legislature.~~

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1 6. To ensure that persons with developmental
2 disabilities receive treatment and habilitation which fosters
3 the developmental potential of the individual.

4 7. To provide programs for the proper habilitation and
5 treatment of persons with developmental disabilities which
6 shall include, but not be limited to, comprehensive
7 medical/dental care, education, recreation, specialized
8 therapies, training, social services, transportation,
9 guardianship, family care programs, day services, and
10 habilitative and rehabilitative services suited to the needs
11 of the individual regardless of age, degree of disability, ~~or~~
12 ~~handicapping condition, or ability. No person with~~
13 ~~developmental disabilities shall be deprived of these~~
14 ~~enumerated services by reason of inability to pay.~~

15 8. To facilitate ~~fully effectuate~~ the normalization
16 principle through the establishment of community services for
17 persons with developmental disabilities as an ~~a viable and~~
18 ~~practical~~ alternative to institutional care, when appropriate,
19 at each stage of individual life development.

20 9. To ensure that if care in a residential facility
21 becomes necessary, residential placements ~~it~~ shall be in the
22 least restrictive setting possible based on the individual's
23 unique needs.

24 (8) CIVIL ENFORCEMENT.--

25 (a) Any person with a developmental disability whose
26 rights as specified in this section are deprived or infringed
27 upon shall have an action against any licensee or state agency
28 responsible for the violation. The action may be brought by
29 the individual or his or her guardian, by a person or
30 organization acting on behalf of the individual with the
31 consent of the individual or his or her guardian, or by the

1 personal representative of the estate of a deceased individual
2 when the cause of death resulted from the deprivation of or
3 infringement upon the decedent's rights. The action may be
4 brought in any court of competent jurisdiction to enforce such
5 rights and to recover actual and punitive damages for any
6 deprivation of or infringement upon the rights of an
7 individual. Any plaintiff who prevails in any such action may
8 be entitled to recover reasonable attorney's fees, costs of
9 the action, and damages, unless the court finds that the
10 plaintiff has acted in bad faith, with malicious purpose, and
11 that there was a complete absence of a justiciable issue of
12 either law or fact. Prevailing defendants may be entitled to
13 recover reasonable attorney's fees pursuant to s. 57.105. The
14 remedies provided in this subsection are in addition to and
15 cumulative with other legal and administrative remedies
16 available to an individual and to the agency.

17 (b) Attorney's fees shall be based on the following
18 criteria:

- 19 1. The time and labor required.
- 20 2. The novelty and difficulty of the questions.
- 21 3. The skill requisite to perform the legal services
22 properly.
- 23 4. The preclusion of other employment by the attorney
24 due to the acceptance of the case.
- 25 5. The customary fee.
- 26 6. Whether the fee is fixed or contingent.
- 27 7. The amount involved or the results obtained.
- 28 8. The experience, reputation, and ability of the
29 attorney.
- 30 9. The type of fee arrangement between the attorney
31 and the client.

1 10. Whether the relevant market requires a contingency
2 fee multiplier to obtain competent counsel.

3 11. Whether the attorney was able to mitigate the risk
4 of nonpayment in any way.

5 (c) For the purposes of this subsection, punitive
6 damages may be awarded for conduct which is willful, wanton,
7 gross or flagrant, reckless, or consciously indifferent to the
8 rights of the individual.

9 Section 6. Subsection (1) of section 92.53, Florida
10 Statutes, is amended to read:

11 92.53 Videotaping of testimony of victim or witness
12 under age 16 or person with mental retardation.--

13 (1) On motion and hearing in camera and a finding that
14 there is a substantial likelihood that a victim or witness who
15 is under the age of 16 or who is a person with mental
16 retardation as defined in s. 393.063(45)~~(41)~~would suffer at
17 least moderate emotional or mental harm due to the presence of
18 the defendant if the child or person with mental retardation
19 is required to testify in open court, or that such victim or
20 witness is otherwise unavailable as defined in s. 90.804(1),
21 the trial court may order the videotaping of the testimony of
22 the victim or witness in a case, whether civil or criminal in
23 nature, in which videotaped testimony is to be utilized at
24 trial in lieu of trial testimony in open court.

25 Section 7. Section 914.16, Florida Statutes, is
26 amended to read:

27 914.16 Child abuse and sexual abuse of victims under
28 age 16 or persons with mental retardation; limits on
29 interviews.--The chief judge of each judicial circuit, after
30 consultation with the state attorney and the public defender
31 for the judicial circuit, the appropriate chief law

1 enforcement officer, and any other person deemed appropriate
2 by the chief judge, shall provide by order reasonable limits
3 on the number of interviews that a victim of a violation of s.
4 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
5 or a victim of a violation of s. 794.011, s. 800.02, s.
6 800.03, or s. 825.102 who is a person with mental retardation
7 as defined in s. 393.063(45)~~(41)~~ must submit to for law
8 enforcement or discovery purposes. The order shall, to the
9 extent possible, protect the victim from the psychological
10 damage of repeated interrogations while preserving the rights
11 of the public, the victim, and the person charged with the
12 violation.

13 Section 8. Subsection (2) of section 914.17, Florida
14 Statutes, is amended to read:

15 914.17 Appointment of advocate for victims or
16 witnesses who are minors or persons with mental retardation.--

17 (2) An advocate shall be appointed by the court to
18 represent a person with mental retardation as defined in s.
19 393.063(45)~~(41)~~ in any criminal proceeding if the person with
20 mental retardation is a victim of or witness to abuse or
21 neglect, or if the person with mental retardation is a victim
22 of a sexual offense or a witness to a sexual offense committed
23 against a minor or person with mental retardation. The court
24 may appoint an advocate in any other criminal proceeding in
25 which a person with mental retardation is involved as either a
26 victim or a witness. The advocate shall have full access to
27 all evidence and reports introduced during the proceedings,
28 may interview witnesses, may make recommendations to the
29 court, shall be noticed and have the right to appear on behalf
30 of the person with mental retardation at all proceedings, and
31 may request additional examinations by medical doctors,

1 psychiatrists, or psychologists. It is the duty of the
2 advocate to perform the following services:

3 (a) To explain, in language understandable to the
4 person with mental retardation, all legal proceedings in which
5 the person shall be involved;

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

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

14 Section 9. Section 918.16, Florida Statutes, is
15 amended to read:

16 918.16 Sex offenses; testimony of person under age 16
17 or person with mental retardation; courtroom cleared;
18 exceptions.--In the trial of any case, civil or criminal, when
19 any person under the age of 16 or any person with mental
20 retardation as defined in s. 393.063(45)~~(41)~~is testifying
21 concerning any sex offense, the court shall clear the
22 courtroom of all persons except parties to the cause and their
23 immediate families or guardians, attorneys and their
24 secretaries, officers of the court, jurors, newspaper
25 reporters or broadcasters, court reporters, and at the request
26 of the victim, victim or witness advocates designated by the
27 state attorney's office.

28 Section 10. Sections 393.165 and 393.166, Florida
29 Statutes, are repealed.

30 Section 11. This act shall take effect July 1, 1999.

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LEGISLATIVE SUMMARY

Revises criteria for licensure of facilities for persons with developmental disabilities and for placement of clients in those facilities. Requires unannounced monthly inspections and reviews of residential facilities and comprehensive education programs. Revises legislative intent, under "The Bill of Rights of Persons who are Developmentally Disabled," with respect to the treatment and services provided to such persons. Provides legislative intent for development of annual plans for implementation of treatment programs and residential placements, and for making funding of such implementation a legislative priority. Provides for civil actions to enforce the rights of persons with developmental disabilities. Provides for recovery of actual and punitive damages, and costs and attorney's fees.