

1 A bill to be entitled
2 An act relating to the Agency for Persons with
3 Disabilities; amending s. 20.197, F.S.; providing for the
4 director of the Agency for Persons with Disabilities to be
5 subject to confirmation by the Senate; amending s. 39.202,
6 F.S.; providing for certain employees, agents, and
7 contract providers of the agency to have access to records
8 concerning cases of child abuse or neglect for specified
9 purposes; amending s. 39.502, F.S.; requiring the court to
10 inform certain persons regarding advocacy services
11 provided by the agency; amending s. 287.155, F.S.;
12 authorizing the agency to purchase vehicles under certain
13 circumstances; amending s. 383.14, F.S.; providing for
14 appointment of a representative from the agency, rather
15 than from the Developmental Disabilities Program Office of
16 the Department of Children and Family Services, to be
17 appointed to the Genetics and Newborn Screening Advisory
18 Council; repealing s. 393.061, F.S., relating to a short
19 title; amending s. 393.062, F.S.; revising legislative
20 findings and intent regarding services for individuals
21 with developmental disabilities; conforming terminology;
22 amending s. 393.063, F.S.; providing, revising, and
23 deleting definitions applicable to ch. 393, F.S., relating
24 to developmental disabilities; amending s. 393.064, F.S.;
25 revising the duties of the Agency for Persons with
26 Disabilities with respect to prevention services,
27 evaluations and assessments, intervention services, and
28 support services; amending s. 393.0641, F.S., relating to

29 | the program for the prevention and treatment of severe
30 | self-injurious behavior; providing a definition; amending
31 | s. 393.065, F.S.; deleting an obsolete reference; amending
32 | s. 393.0651, F.S.; revising provisions relating to
33 | individual and family support plans; deleting a
34 | prohibition against assessing certain fees; creating s.
35 | 393.0654, F.S.; providing criteria for an exemption from
36 | the prohibition on conflicting employment or contractual
37 | relationships for direct care providers employed by the
38 | agency; amending s. 393.0655, F.S.; providing
39 | applicability of provisions relating to dismissal of
40 | employees for noncompliance with certain standards
41 | established for persons who provide care and services to
42 | persons with developmental disabilities; amending s.
43 | 393.0657, F.S.; revising an exemption from certain
44 | requirements for refingerprinting and rescreening;
45 | revising requirements for background screening; deleting
46 | obsolete language; amending s. 393.066, F.S.; revising
47 | certain requirements for the services provided by the
48 | agency; requiring agency approval for purchased services;
49 | revising the agency's rulemaking authority; amending s.
50 | 393.067, F.S.; revising requirements governing the
51 | agency's licensure procedures; specifying that a license
52 | from the agency is not a property right; revising the
53 | requirements for background screening of applicants for
54 | licensure and managers, supervisors, and staff members of
55 | service providers; requiring that the agency adopt rules
56 | governing the reporting of incidents; deleting certain

57 | responsibilities of the Agency for Health Care
58 | Administration with respect to the development and review
59 | of emergency management plans; deleting certain zoning
60 | requirements for alternative living centers and
61 | independent living education centers; amending s.
62 | 393.0673, F.S.; deleting a requirement that certain fines
63 | be deposited into the Resident Protection Trust Fund;
64 | requiring that the agency adopt rules for evaluating
65 | violations and determining the amount of fines; amending
66 | s. 393.0674, F.S.; providing a penalty for failure by a
67 | provider to comply with background screening requirements;
68 | amending s. 393.0675, F.S.; deleting certain obsolete
69 | provisions requiring that a provider be of good moral
70 | character; amending s. 393.0678, F.S., relating to
71 | receivership proceedings, to delete obsolete language;
72 | amending s. 393.068, F.S.; requiring that the family care
73 | program emphasize self-determination; revising certain
74 | requirements for reimbursing a family care program
75 | provider; amending s. 393.0695, F.S.; requiring the agency
76 | to reassess in-home subsidies quarterly rather than
77 | annually; amending s. 393.075, F.S., relating to liability
78 | coverage for facilities licensed by the agency; conforming
79 | terminology; amending s. 393.11, F.S.; providing
80 | jurisdiction for hearings in cases of involuntary
81 | admission of a person with autism to residential services;
82 | providing that s. 916.302, F.S., shall control in cases of
83 | involuntary commitment of a person with mental retardation
84 | or autism who is charged with a felony; deleting provision

85 relating to entities authorized to file a petition for
86 involuntary admission to residential services; providing
87 for agency participation and deleting an obsolete
88 reference; providing for persons with autism to be
89 examined prior to a determination of involuntary admission
90 to residential services; requiring the hearing for
91 involuntary admission to be conducted in the county in
92 which the petition is filed; providing that the competency
93 of a person with mental retardation or autism to stand
94 trial is determined under ch. 916, F.S.; amending s.
95 393.122, F.S., clarifying requirements governing
96 applications for continued residential services; amending
97 s. 393.125, F.S.; prohibiting a service provider of an
98 applicant or client from acting as that applicant's or
99 client's authorized representatives for purposes of
100 requesting an administrative hearing; amending s. 393.13,
101 F.S., relating to treatment of persons with developmental
102 disabilities; revising the short title; revising
103 legislative intent and terminology; removing requirement
104 that clients be afforded minimum wage protection and fair
105 compensation for labor under certain circumstances;
106 providing the right of clients to be free from the
107 imposition of unnecessary seclusion; requiring the agency
108 to adopt rules for the use of restraints and seclusion;
109 requiring the central record of a client to remain the
110 property of the agency; prescribing duties of agency local
111 area offices with regard to submission of certain reports;
112 revising composition of the resident government of a

113 facility; amending s. 393.135, F.S., relating to sexual
114 misconduct; revising definitions, terminology,
115 applicability, and reporting requirements; clarifying
116 provisions making sexual misconduct a second-degree
117 felony; amending s. 393.15, F.S.; establishing the
118 Community Resources Development Loan Program to provide
119 loans to foster homes, group homes, and supported
120 employment programs; providing legislative intent;
121 providing eligibility requirements; providing authorized
122 uses of loan funds; requiring that the agency adopt rules
123 governing the loan program; providing requirements for
124 repaying loans; requiring certain programs to submit an
125 annual statement containing specified information to the
126 agency; amending s. 393.17, F.S.; authorizing the agency
127 to establish by rule certification programs for providers
128 of client services; requiring that the agency establish a
129 certification program for behavior analysts; requiring
130 that the program be reviewed and validated; creating s.
131 393.18, F.S.; providing for a comprehensive transitional
132 education program for persons who have severe or moderate
133 maladaptive behaviors; specifying the types of treatment
134 and education centers providing services under the
135 program; providing requirements for licensure; requiring
136 individual education plans for persons receiving services;
137 limiting the number of persons who may receive services in
138 such a program; amending s. 393.501, F.S.; revising the
139 agency's rulemaking authority; providing requirements for
140 rules governing alternative living centers and independent

141 living education centers; providing an exemption from
142 zoning requirements under certain circumstances; amending
143 s. 393.506, F.S.; revising provisions permitting the
144 administration of medication by certain unlicensed staff
145 to persons with developmental disabilities; authorizing
146 certain direct care providers to supervise the self-
147 administration of or administer specified medications
148 under certain circumstances; requiring unlicensed direct
149 care providers to complete a training course; requiring an
150 annual assessment of competency; providing rulemaking
151 authority to the Agency for Health Care Administration;
152 requiring the informed consent of the client; providing a
153 definition; creating s. 393.507, F.S.; authorizing the
154 agency to establish a citizen support organization and
155 provide criteria therefor; providing legislative findings;
156 requiring governance by a board of directors; providing
157 for membership, terms, grounds for removal, and per diem
158 and travel expenses; authorizing the use of certain agency
159 property, facilities, and services by the organization;
160 requiring an operational contract with the agency;
161 specifying contents of the contract; requiring moneys of
162 the organization to be held in a separate account;
163 requiring an annual audit; providing for purpose of the
164 organization; authorizing the appropriation of funds to be
165 used by the organization; amending s. 397.405, F.S.;
166 clarifying an exemption from licensure provided to certain
167 facilities licensed under ch. 393, F.S.; amending s.
168 400.419, F.S.; requiring that a list of facilities subject

169 to sanctions or fines be disseminated to the agency;
170 amending s. 400.960, F.S.; revising definitions for
171 purpose of part XI of ch. 400, F.S., relating to
172 intermediate care facilities for persons with
173 developmental disabilities; amending ss. 400.963 and
174 400.964, F.S.; conforming terminology; amending s.
175 400.967, F.S. relating to rules and classification
176 deficiencies; conforming provisions to the transfer of
177 duties from the Department of Children and Family Services
178 to the agency; amending ss. 402.115, 402.17, 402.181,
179 402.20, 402.22, and 402.33, F.S.; including the Agency for
180 Persons with Disabilities within provisions governing the
181 sharing of information, claims for the care and
182 maintenance of facility residents, county contracts
183 authorized for certain services and facilities, education
184 programs for students who reside in state facilities, and
185 fees for services; amending s. 409.908, F.S.; revising a
186 reference; deleting obsolete language; amending s.
187 409.9127, F.S.; conforming reference to changes made by
188 the act; amending ss. 411.224 and 411.232, F.S.;
189 conforming provisions to the transfer of duties from the
190 Developmental Disabilities Program Office within the
191 Department of Children and Family Services to the Agency
192 for Persons with Disabilities; correcting a reference;
193 amending ss. 415.102, 415.1035, 415.1055, and 415.107,
194 F.S.; conforming terminology; including the Agency for
195 Persons with Disabilities within provisions providing
196 requirements that a facility inform residents of certain

197 rights, notification requirements for administrative
198 entities, and requirements for maintaining the
199 confidentiality of reports and records; amending s.
200 419.001, F.S., relating to site selection of community
201 residential homes; revising definitions; conforming
202 terminology; amending s. 435.03, F.S., relating to
203 screening standards; conforming terminology and a cross-
204 reference; amending ss. 490.014 and 491.014, F.S.;
205 deleting references to the developmental services program
206 to conform to changes made by the act; amending s.
207 916.105, F.S.; revising legislative intent; amending s.
208 916.106, F.S.; revising definitions; amending s. 916.107,
209 F.S.; revising provisions relating to rights of forensic
210 clients; amending s. 916.1075, F.S.; revising definitions;
211 revising provisions relating to sexual misconduct between
212 an employee and a forensic client; amending s. 916.1081,
213 F.S.; providing a penalty for a forensic client who
214 escapes or attempts to escape from a civil or forensic
215 facility; amending s. 916.1085, F.S.; revising language
216 relating to the unlawful introduction or removal of
217 certain items; conforming a reference; amending ss.
218 916.1091 and 916.1093 F.S.; conforming language to changes
219 made by the act; amending ss. 916.111 and 916.115, F.S.;
220 revising language relating to the training and appointment
221 of mental health experts; amending ss. 916.12 and
222 916.3012, F.S.; revising provisions relating to the
223 determination of the mental competence of a defendant in
224 certain proceedings; amending ss. 916.13, 916.15, 916.16,

225 | and 916.17, F.S.; revising provisions relating to
226 | involuntary commitment of a defendant adjudicated
227 | incompetent or not guilty by reason of insanity,
228 | jurisdiction of the committing court, and conditional
229 | release; amending s. 916.301, F.S.; revising provisions
230 | relating to court-ordered evaluations of persons with
231 | mental retardation or autism; amending s. 916.302, F.S.;
232 | revising provisions relating to involuntary commitment of
233 | a defendant determined incompetent to proceed; amending s.
234 | 916.3025, F.S.; revising provisions relating to
235 | jurisdiction of the committing court; amending s. 916.303,
236 | F.S.; revising provisions relating to determination of
237 | incompetency due to mental retardation or autism; amending
238 | s. 916.304, F.S.; revising provisions relating to
239 | conditional release; amending s. 921.137, F.S.; revising
240 | provisions relating to the imposition of the death
241 | sentence upon a defendant with mental retardation;
242 | amending s. 944.602, F.S.; requiring the agency to be
243 | notified before the release of an inmate with mental
244 | retardation; amending s. 945.025, F.S.; providing for
245 | cooperation between the Department of Children and Family
246 | Services and the agency for the delivery of services to
247 | certain persons under the custody or supervision of the
248 | department; deleting obsolete language; amending s.
249 | 947.185, F.S.; providing for application for certain
250 | services from the agency as a condition of parole for
251 | inmates with mental retardation; amending ss. 985.223 and
252 | 985.224, F.S.; conforming references to changes made by

253 the act; amending s. 1003.58, F.S.; including facilities
 254 operated by the Agency for Persons with Disabilities
 255 within provisions governing the residential care of
 256 students; amending ss. 17.61, 39.001, 287.057, 381.0072,
 257 400.464, 408.036, 943.0585, 943.059, and 984.22, F.S.;
 258 conforming references to changes made by the act; creating
 259 s. 394.4592, F.S., relating to seclusion and restraint in
 260 behavioral health care; providing legislative findings;
 261 providing for applicability; requiring collection of
 262 certain data; providing definitions; requiring facilities
 263 to conduct assessments of individuals to be admitted to
 264 the facility and providing criteria therefor; specifying
 265 requirements for the use of restraint and seclusion;
 266 providing for development of debriefing procedures after
 267 imposition of restraint and seclusion; providing
 268 requirements for facility licensing and certification;
 269 providing an effective date.

270
 271 Be It Enacted by the Legislature of the State of Florida:

272
 273 Section 1. Subsection (1) of section 20.197, Florida
 274 Statutes, is amended to read:

275 20.197 Agency for Persons with Disabilities.--There is
 276 created the Agency for Persons with Disabilities, housed within
 277 the Department of Children and Family Services for
 278 administrative purposes only. The agency shall be a separate
 279 budget entity not subject to control, supervision, or direction
 280 by the Department of Children and Family Services in any manner,

281 including, but not limited to, personnel, purchasing,
 282 transactions involving real or personal property, and budgetary
 283 matters.

284 (1) The director of the agency shall be the agency head
 285 for all purposes and shall be appointed by the Governor, subject
 286 to confirmation by the Senate, and shall serve at the pleasure
 287 of the Governor. The director shall administer the affairs of
 288 the agency and establish administrative units as needed and may,
 289 within available resources, employ assistants, professional
 290 staff, and other employees as necessary to discharge the powers
 291 and duties of the agency.

292 Section 2. Paragraphs (a) and (h) of subsection (2) of
 293 section 39.202, Florida Statutes, are amended to read:

294 39.202 Confidentiality of reports and records in cases of
 295 child abuse or neglect.--

296 (2) Except as provided in subsection (4), access to such
 297 records, excluding the name of the reporter which shall be
 298 released only as provided in subsection (5), shall be granted
 299 only to the following persons, officials, and agencies:

300 (a) Employees, authorized agents, or contract providers of
 301 the department, the Department of Health, the Agency for Persons
 302 with Disabilities, or county agencies responsible for carrying
 303 out:

- 304 1. Child or adult protective investigations;
- 305 2. Ongoing child or adult protective services;
- 306 3. Healthy Start services; ~~or~~
- 307 4. Licensure or approval of adoptive homes, foster homes,
 308 or child care facilities, facilities licensed under chapter 393,

309 or family day care homes or informal child care providers who
 310 receive subsidized child care funding, or other homes used to
 311 provide for the care and welfare of children; or-

312 5. Services for victims of domestic violence when provided
 313 by certified domestic violence centers working at the
 314 department's request as case consultants or with shared clients.
 315

316 Also, employees or agents of the Department of Juvenile Justice
 317 responsible for the provision of services to children, pursuant
 318 to chapters 984 and 985.

319 (h) Any appropriate official of the department or the
 320 Agency for Persons with Disabilities responsible for:

321 1. Administration or supervision of the department's
 322 program for the prevention, investigation, or treatment of child
 323 abuse, abandonment, or neglect, or abuse, neglect, or
 324 exploitation of a vulnerable adult, when carrying out his or her
 325 official function;

326 2. Taking appropriate administrative action concerning a
 327 department or agency ~~an employee of the department~~ alleged to
 328 have perpetrated child abuse, abandonment, or neglect, or abuse,
 329 neglect, or exploitation of a vulnerable adult; or

330 3. Employing and continuing employment of personnel of the
 331 department or agency.

332 Section 3. Subsection (15) of section 39.502, Florida
 333 Statutes, is amended to read:

334 39.502 Notice, process, and service.--

335 (15) A party who is identified as a person with mental
 336 illness or with a developmental disability must be informed by

337 the court of the availability of advocacy services through the
 338 department, the Agency for Persons with Disabilities, the
 339 Association for Retarded Citizens, or other appropriate mental
 340 health or developmental disability advocacy groups and
 341 encouraged to seek such services.

342 Section 4. Subsection (1) of section 287.155, Florida
 343 Statutes, is amended to read:

344 287.155 Motor vehicles; purchase by Division of
 345 Universities, Department of Children and Family Services, Agency
 346 for Persons with Disabilities, Department of Health, Department
 347 of Juvenile Justice, and Department of Corrections.--

348 (1) The Division of Universities of the Department of
 349 Education, the Department of Children and Family Services, the
 350 Agency for Persons with Disabilities, the Department of Health,
 351 the Department of Juvenile Justice, and the Department of
 352 Corrections are hereby authorized, subject to the approval of
 353 the Department of Management Services, to purchase automobiles,
 354 trucks, tractors, and other automotive equipment for the use of
 355 institutions under the management of the Division of
 356 Universities, the Department of Children and Family Services,
 357 the Agency for Persons with Disabilities, the Department of
 358 Health, and the Department of Corrections, and for the use of
 359 residential facilities managed or contracted by the Department
 360 of Juvenile Justice.

361 Section 5. Subsection (5) of section 383.14, Florida
 362 Statutes, is amended to read:

363 383.14 Screening for metabolic disorders, other hereditary
 364 and congenital disorders, and environmental risk factors.--

365 (5) ADVISORY COUNCIL.--There is established a Genetics and
 366 Newborn Screening Advisory Council made up of 15 members
 367 appointed by the Secretary of Health. The council shall be
 368 composed of two consumer members, three practicing
 369 pediatricians, at least one of whom must be a pediatric
 370 hematologist, one representative from each of the four medical
 371 schools in the state, the Secretary of Health or his or her
 372 designee, one representative from the Department of Health
 373 representing Children's Medical Services, one representative
 374 from the Florida Hospital Association, one individual with
 375 experience in newborn screening programs, one individual
 376 representing audiologists, and one representative from the
 377 Agency for Persons with Disabilities ~~Developmental Disabilities~~
 378 ~~Program Office of the Department of Children and Family~~
 379 ~~Services~~. All appointments shall be for a term of 4 years. The
 380 chairperson of the council shall be elected from the membership
 381 of the council and shall serve for a period of 2 years. The
 382 council shall meet at least semiannually or upon the call of the
 383 chairperson. The council may establish ad hoc or temporary
 384 technical advisory groups to assist the council with specific
 385 topics which come before the council. Council members shall
 386 serve without pay. Pursuant to the provisions of s. 112.061, the
 387 council members are entitled to be reimbursed for per diem and
 388 travel expenses. It is the purpose of the council to advise the
 389 department about:

390 (a) Conditions for which testing should be included under
 391 the screening program and the genetics program.

392 (b) Procedures for collection and transmission of

393 specimens and recording of results.

394 (c) Methods whereby screening programs and genetics
 395 services for children now provided or proposed to be offered in
 396 the state may be more effectively evaluated, coordinated, and
 397 consolidated.

398 Section 6. Section 393.061, Florida Statutes, is repealed.

399 Section 7. Section 393.062, Florida Statutes, is amended
 400 to read:

401 393.062 Legislative findings and declaration of
 402 intent.--The Legislature finds and declares that existing state
 403 programs for the treatment of individuals with developmental
 404 disabilities ~~who are developmentally disabled~~, which often
 405 unnecessarily place clients in institutions, are unreasonably
 406 costly, are ineffective in bringing the individual client to his
 407 or her maximum potential, and are in fact debilitating to many a
 408 ~~great majority of~~ clients. A redirection in state treatment
 409 programs for individuals with developmental disabilities ~~who are~~
 410 ~~developmentally disabled~~ is necessary if any significant
 411 amelioration of the problems faced by such individuals is ever
 412 to take place. Such redirection should place primary emphasis on
 413 programs that ~~have the potential to~~ prevent or reduce the
 414 severity of developmental disabilities. Further, the Legislature
 415 declares that greatest priority shall be given to the
 416 development and implementation of community-based ~~residential~~
 417 ~~placements, services, and treatment programs for individuals who~~
 418 ~~are developmentally disabled~~ which will enable ~~such~~ individuals
 419 with a developmental disability to achieve their greatest
 420 potential for independent and productive living, ~~which will~~

421 enable them to live in their own homes or in residences located
422 in their own communities, and ~~which will~~ permit them to be
423 diverted or removed from unnecessary institutional placements.
424 This goal ~~The Legislature finds that the eligibility criteria~~
425 ~~for intermediate care facilities for the developmentally~~
426 ~~disabled which are specified in the Medicaid state plan in~~
427 ~~effect on the effective date of this act are essential to the~~
428 ~~system of residential services. The Legislature declares that~~
429 ~~the goal of this act, to improve the quality of life of all~~
430 ~~developmentally disabled persons~~ with developmental disabilities
431 by the development and implementation of community-based
432 residential placements, services, and treatment, cannot be met
433 without ensuring the availability of community residential
434 opportunities for ~~developmentally disabled persons~~ with
435 developmental disabilities in the residential areas of this
436 state. The Legislature, therefore, declares that all persons
437 with developmental disabilities who live in licensed community
438 homes shall have a family living environment comparable to other
439 Floridians. The Legislature intends that such residences shall
440 be considered and treated as a functional equivalent of a family
441 unit and not as an institution, business, or boarding home. The
442 Legislature declares that, in developing community-based
443 programs and services for individuals with developmental
444 disabilities ~~who are developmentally disabled~~, private
445 businesses, not-for-profit corporations, units of local
446 government, and other organizations capable of providing needed
447 services to clients in a cost-efficient manner shall be given
448 preference in lieu of operation of programs directly by state

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449 agencies. Finally, it is the intent of the Legislature that all
450 caretakers unrelated to individuals with developmental
451 disabilities receiving care shall be of good moral character.

452 Section 8. Section 393.063, Florida Statutes, is amended
453 to read:

454 393.063 Definitions.--For the purposes of this chapter,
455 the term:

456 (1) "Agency" means the Agency for Persons with
457 Disabilities established in s. 20.197.

458 (2) "Autism" means a disorder, as defined in the current
459 edition of the Diagnostic and Statistical Manual of the American
460 Psychiatric Association, that causes pervasive impairment in
461 social interaction, communication, and range of interests and
462 activities. While these characteristics occur on a spectrum, the
463 term "autism" refers only to the most severe disorder on this
464 spectrum as defined in the Diagnostic and Statistical Manual of
465 the American Psychiatric Association. ~~a pervasive,~~
466 ~~neurologically based developmental disability of extended~~
467 ~~duration which causes severe learning, communication, and~~
468 ~~behavior disorders with age of onset during infancy or~~
469 ~~childhood. Individuals with autism exhibit impairment in~~
470 ~~reciprocal social interaction, impairment in verbal and~~
471 ~~nonverbal communication and imaginative ability, and a markedly~~
472 ~~restricted repertoire of activities and interests.~~

473 (3) "Cerebral palsy" means a group of disabling symptoms
474 of extended duration which results from damage to the developing
475 brain that may occur before, during, or after birth and that
476 results in the loss or impairment of control over voluntary

477 muscles. For the purposes of this definition, cerebral palsy
478 does not include those symptoms or impairments resulting solely
479 from a stroke.

480 (4) "Client" means any person determined eligible by the
481 agency for services under this chapter.

482 (5) "Client advocate" means a friend or relative of the
483 client, or of the client's immediate family, who advocates for
484 the best interests of the client in any proceedings under this
485 chapter in which the client or his or her family has the right
486 or duty to participate.

487 (6) "Comprehensive assessment" means the process used to
488 determine eligibility for services under this chapter.

489 (7) "Comprehensive transitional education program" means
490 the program established in s. 393.18. ~~a group of jointly~~
491 ~~operating centers or units, the collective purpose of which is~~
492 ~~to provide a sequential series of educational care, training,~~
493 ~~treatment, habilitation, and rehabilitation services to persons~~
494 ~~who have developmental disabilities and who have severe or~~
495 ~~moderate maladaptive behaviors. However, nothing in this~~
496 ~~subsection shall require such programs to provide services only~~
497 ~~to persons with developmental disabilities. All such services~~
498 ~~shall be temporary in nature and delivered in a structured~~
499 ~~residential setting with the primary goal of incorporating the~~
500 ~~normalization principle to establish permanent residence for~~
501 ~~persons with maladaptive behaviors in facilities not associated~~
502 ~~with the comprehensive transitional education program. The staff~~
503 ~~shall include psychologists and teachers who shall be available~~
504 ~~to provide services in each component center or unit of the~~

505 ~~program. The psychologists shall be individuals who are licensed~~
506 ~~in this state and certified as behavior analysts in this state,~~
507 ~~or individuals who are certified as behavior analysts pursuant~~
508 ~~to s. 393.17.~~

509 ~~(a) Comprehensive transitional education programs shall~~
510 ~~include a minimum of two component centers or units, one of~~
511 ~~which shall be either an intensive treatment and educational~~
512 ~~center or a transitional training and educational center, which~~
513 ~~provide services to persons with maladaptive behaviors in the~~
514 ~~following sequential order:~~

515 ~~1. Intensive treatment and educational center. This~~
516 ~~component is a self contained residential unit providing~~
517 ~~intensive psychological and educational programming for persons~~
518 ~~with severe maladaptive behaviors, whose behaviors preclude~~
519 ~~placement in a less restrictive environment due to the threat of~~
520 ~~danger or injury to themselves or others.~~

521 ~~2. Transitional training and educational center. This~~
522 ~~component is a residential unit for persons with moderate~~
523 ~~maladaptive behaviors, providing concentrated psychological and~~
524 ~~educational programming emphasizing a transition toward a less~~
525 ~~restrictive environment.~~

526 ~~3. Community transition residence. This component is a~~
527 ~~residential center providing educational programs and such~~
528 ~~support services, training, and care as are needed to assist~~
529 ~~persons with maladaptive behaviors to avoid regression to more~~
530 ~~restrictive environments while preparing them for more~~
531 ~~independent living. Continuous shift staff shall be required for~~
532 ~~this component.~~

533 ~~4. Alternative living center. This component is a~~
534 ~~residential unit providing an educational and family living~~
535 ~~environment for persons with maladaptive behaviors, in a~~
536 ~~moderately unrestricted setting. Residential staff shall be~~
537 ~~required for this component.~~

538 ~~5. Independent living education center. This component is~~
539 ~~a facility providing a family living environment for persons~~
540 ~~with maladaptive behaviors, in a largely unrestricted setting~~
541 ~~which includes education and monitoring appropriate to support~~
542 ~~the development of independent living skills.~~

543 ~~(b) Centers or units that are components of a~~
544 ~~comprehensive transitional education program are subject to the~~
545 ~~license issued to the comprehensive transitional education~~
546 ~~program and may be located on either single or multiple sites.~~

547 ~~(c) Comprehensive transitional education programs shall~~
548 ~~develop individual education plans for each person with~~
549 ~~maladaptive behaviors who receives services therein. Such~~
550 ~~individual education plans shall be developed in accordance with~~
551 ~~the criteria specified in 20 U.S.C. ss. 401 et seq., and 34~~
552 ~~C.F.R. part 300.~~

553 ~~(d) In no instance shall the total number of persons with~~
554 ~~maladaptive behaviors being provided services in a comprehensive~~
555 ~~transitional education program exceed 120.~~

556 ~~(e) This subsection shall authorize licensure for~~
557 ~~comprehensive transitional education programs which by July 1,~~
558 ~~1989:~~

559 ~~1. Are in actual operation; or~~

560 ~~2. Own a fee simple interest in real property for which a~~

561 ~~county or city government has approved zoning allowing for the~~
562 ~~placement of the facilities described in this subsection, and~~
563 ~~have registered an intent with the department to operate a~~
564 ~~comprehensive transitional education program. However, nothing~~
565 ~~shall prohibit the assignment by such a registrant to another~~
566 ~~entity at a different site within the state, so long as there is~~
567 ~~compliance with all criteria of the comprehensive transitional~~
568 ~~education program and local zoning requirements and provided~~
569 ~~that each residential facility within the component centers or~~
570 ~~units of the program authorized under this subparagraph shall~~
571 ~~not exceed a capacity of 15 persons.~~

572 ~~(8) "Day habilitation facility" means any nonresidential~~
573 ~~facility which provides day habilitation services.~~

574 ~~(9) "Day habilitation service" means assistance with the~~
575 ~~acquisition, retention, or improvement in self help,~~
576 ~~socialization, and adaptive skills which takes place in a~~
577 ~~nonresidential setting, separate from the home or facility in~~
578 ~~which the individual resides. Day habilitation services shall~~
579 ~~focus on enabling the individual to attain or maintain his or~~
580 ~~her maximum functional level and shall be coordinated with any~~
581 ~~physical, occupational, or speech therapies listed in the plan~~
582 ~~of care.~~

583 ~~(8)-(10)~~ (8) "Developmental disability" means a disorder or
584 syndrome that is attributable to mental retardation, cerebral
585 palsy, autism, spina bifida, or Prader-Willi syndrome and that
586 constitutes a substantial handicap that can reasonably be
587 expected to continue indefinitely.

588 ~~(9)-(11)~~ (9) "Developmental disabilities institution" means a

589 state-owned and state-operated facility, formerly known as a
590 "Sunland Center," providing for the care, habilitation, and
591 rehabilitation of clients with developmental disabilities.

592 (10)~~(12)~~ "Direct care ~~service~~ provider," also known as
593 "caregiver" in chapters 39 and 415 or "caretaker" in provisions
594 relating to employment security checks, means a person 18 years
595 of age or older who has direct contact with individuals with
596 developmental disabilities, or has access to a client's living
597 areas or to a client's funds or personal property, and is not a
598 relative of such individuals.

599 ~~(13)~~ "Domicile" means the place where a client legally
600 resides, which place is his or her permanent home. Domicile may
601 be established as provided in s. 222.17. Domicile may not be
602 established in Florida by a minor who has no parent domiciled in
603 Florida, or by a minor who has no legal guardian domiciled in
604 Florida, or by any alien not classified as a resident alien.

605 ~~(14)~~ "Enclave" means a work station in public or private
606 business or industry where a small group of persons with
607 developmental disabilities is employed and receives training and
608 support services or follow along services among nonhandicapped
609 workers.

610 ~~(15)~~ "Epilepsy" means a chronic brain disorder of various
611 causes which is characterized by recurrent seizures due to
612 excessive discharge of cerebral neurons. When found concurrently
613 with retardation, autism, or cerebral palsy, epilepsy is
614 considered a secondary disability for which the client is
615 eligible to receive services to ameliorate this condition
616 pursuant to this chapter.

617 (11)~~(16)~~ "Express and informed consent" means consent
 618 voluntarily given in writing with sufficient knowledge and
 619 comprehension of the subject matter involved to enable the
 620 person giving consent to make an understanding and enlightened
 621 decision without any element of force, fraud, deceit, duress, or
 622 other form of constraint or coercion.

623 (12)~~(17)~~ "Family care program" means the program
 624 established in s. 393.068.

625 ~~(18) "Follow along services" means those support services
 626 provided to persons with developmental disabilities in all
 627 supported employment programs and may include, but are not
 628 limited to, family support, assistance in meeting transportation
 629 and medical needs, employer intervention, performance
 630 evaluation, advocacy, replacement, retraining or promotional
 631 assistance, or other similar support services.~~

632 (13)~~(19)~~ "Foster care facility" means a residential
 633 facility licensed under this chapter which provides a family
 634 living environment including supervision and care necessary to
 635 meet the physical, emotional, and social needs of its residents.
 636 The capacity of such a facility shall not be more than three
 637 residents.

638 (14)~~(20)~~ "Group home facility" means a residential
 639 facility which provides a family living environment including
 640 supervision and care necessary to meet the physical, emotional,
 641 and social needs of its residents. The capacity of such a
 642 facility shall be at least 4 but not more than 15 residents. For
 643 the purposes of this chapter, group home facilities shall not be
 644 considered commercial enterprises.

645 ~~(15)-(21)~~ "Guardian advocate" means a person appointed by a
 646 written order of the court to represent a person with
 647 developmental disabilities under s. 393.12.

648 ~~(16)-(22)~~ "Habilitation" means the process by which a
 649 client is assisted to acquire and maintain those life skills
 650 which enable the client to cope more effectively with the
 651 demands of his or her condition and environment and to raise the
 652 level of his or her physical, mental, and social efficiency. It
 653 includes, but is not limited to, programs of formal structured
 654 education and treatment.

655 ~~(17)-(23)~~ "High-risk child" means, for the purposes of this
 656 chapter, a child from 3 ~~birth~~ to 5 years of age with one or more
 657 of the following characteristics:

658 (a) A developmental delay in cognition, language, or
 659 physical development.

660 (b) A child surviving a catastrophic infectious or
 661 traumatic illness known to be associated with developmental
 662 delay, when funds are specifically appropriated.

663 (c) A child with a parent or guardian with developmental
 664 disabilities who requires assistance in meeting the child's
 665 developmental needs.

666 (d) A child who has a physical or genetic anomaly
 667 associated with developmental disability.

668 ~~(18)-(24)~~ "Intermediate care facility for persons with
 669 developmental disabilities ~~the developmentally disabled~~" or
 670 "ICF/DD" means the same as the term is defined under a
 671 ~~residential facility licensed and certified pursuant to part XI~~
 672 of chapter 400.

673 ~~(25) "Job coach" means a person who provides employment~~
 674 ~~related training at a worksite to individuals with developmental~~
 675 ~~disabilities.~~

676 (19)~~(26)~~ "Medical/dental services" means medically
 677 necessary those services which are provided or ordered for a
 678 client by a person licensed under ~~pursuant to the provisions of~~
 679 chapter 458, chapter 459, or chapter 466. Such services may
 680 include, but are not limited to, prescription drugs, specialized
 681 therapies, nursing supervision, hospitalization, dietary
 682 services, prosthetic devices, surgery, specialized equipment and
 683 supplies, adaptive equipment, and other services as required to
 684 prevent or alleviate a medical or dental condition.

685 (20) "Mental retardation" means significantly subaverage
 686 general intellectual functioning existing concurrently with
 687 deficits in adaptive behavior and manifested during the period
 688 from conception to 18 years of age. "Significantly subaverage
 689 general intellectual functioning," for the purpose of this
 690 subsection, means performance which is two or more standard
 691 deviations from the mean score on a standardized intelligence
 692 test specified in the rules of the agency. "Adaptive behavior,"
 693 for the purpose of this subsection, means the effectiveness or
 694 degree to which an individual meets the standards of personal
 695 independence and social responsibility expected of his or her
 696 age, cultural group, and community.

697 ~~(27) "Mobile work crew" means a group of workers employed~~
 698 ~~by an agency that provides services outside the agency, usually~~
 699 ~~under service contracts.~~

700 ~~(28) "Normalization principle" means the principle of~~

701 ~~letting the client obtain an existence as close to the normal as~~
 702 ~~possible, making available to the client patterns and conditions~~
 703 ~~of everyday life which are as close as possible to the norm and~~
 704 ~~patterns of the mainstream of society.~~

705 (21)~~(29)~~ "Personal services" include, but are not limited
 706 to, such services as: individual assistance with or supervision
 707 of essential activities of daily living for self-care, including
 708 ambulation, bathing, dressing, eating, grooming, and toileting,
 709 and other similar services that the agency may define by rule.
 710 "Personal services" shall not be construed to mean the provision
 711 of medical, nursing, dental, or mental health services by the
 712 staff of a facility, except as provided in this chapter. In
 713 addition, an emergency response device installed in the
 714 apartment or living area of a resident shall not be classified
 715 as a personal service.

716 (22)~~(30)~~ "Prader-Willi syndrome" means an inherited
 717 condition typified by neonatal hypotonia with failure to thrive,
 718 hyperphagia or an excessive drive to eat which leads to obesity
 719 usually at 18 to 36 months of age, mild to moderate retardation,
 720 hypogonadism, short stature, mild facial dysmorphism, and a
 721 characteristic neurobehavior.

722 (23) "Self-determination" means an individual's freedom to
 723 exercise the same rights as all other citizens and to have the
 724 authority to exercise control over the funds needed for his or
 725 her own support, including the opportunity to reprioritize these
 726 funds when necessary, the responsibility for the wise use of
 727 public funds, and the right to speak and advocate for himself or
 728 herself in order to gain independence and ensure that an

729 individual with a developmental disability is treated equally.

730 ~~(24)(31)~~ "Reassessment" means a process which periodically
 731 develops, through annual review and revision of a client's
 732 family or individual support plan, a knowledgeable statement of
 733 current needs and past development for each client.

734 ~~(25)(32)~~ "Relative" means an individual who is connected
 735 by affinity or consanguinity to the client and who is 18 years
 736 of age or more.

737 ~~(26)(33)~~ "Resident" means any person with developmental
 738 disabilities ~~who is developmentally disabled~~ residing at a
 739 residential facility in the state, whether or not such person is
 740 a client of the agency.

741 ~~(27)(34)~~ "Residential facility" means a facility providing
 742 room and board and personal care for persons with developmental
 743 disabilities.

744 ~~(28)(35)~~ "Residential habilitation" means supervision and
 745 training that assists ~~assistance provided~~ with the acquisition,
 746 retention, or improvement in skills related to the activities of
 747 daily living, such as personal hygiene skills, homemaking skills
 748 ~~grooming and cleanliness, bedmaking and household chores, eating~~
 749 ~~and the preparation of food~~, and the social and adaptive skills
 750 necessary to enable the individual to reside in the community ~~a~~
 751 ~~noninstitutional setting~~.

752 ~~(29)(36)~~ "Residential habilitation center" means a
 753 community residential facility that provides residential
 754 habilitation. The capacity of such a facility shall not be fewer
 755 than nine residents. After October 1, 1989, no new residential
 756 habilitation centers shall be licensed and the licensed capacity

757 shall not be increased for any existing residential habilitation
758 center.

759 (30)~~(37)~~ "Respite service" means appropriate, short-term,
760 temporary care that is provided to a person with developmental
761 disabilities to meet the planned or emergency needs of the
762 person or the family or other direct care ~~service~~ provider.

763 ~~(38) "Retardation" means significantly subaverage general~~
764 ~~intellectual functioning existing concurrently with deficits in~~
765 ~~adaptive behavior and manifested during the period from~~
766 ~~conception to age 18. "Significantly subaverage general~~
767 ~~intellectual functioning," for the purpose of this definition,~~
768 ~~means performance which is two or more standard deviations from~~
769 ~~the mean score on a standardized intelligence test specified in~~
770 ~~the rules of the agency. "Adaptive behavior," for the purpose of~~
771 ~~this definition, means the effectiveness or degree with which an~~
772 ~~individual meets the standards of personal independence and~~
773 ~~social responsibility expected of his or her age, cultural~~
774 ~~group, and community.~~

775 ~~(39) "Severe self-injurious behavior" means any chronic~~
776 ~~behavior that results in injury to the person's own body, which~~
777 ~~includes, but is not limited to, self-hitting, head banging,~~
778 ~~self biting, scratching, and the ingestion of harmful or~~
779 ~~potentially harmful nutritive or nonnutritive substances.~~

780 (31)~~(40)~~ "Specialized therapies" means those treatments or
781 activities prescribed by and provided by an appropriately
782 trained, licensed, or certified professional or staff person and
783 may include, but are not limited to, physical therapy, speech
784 therapy, respiratory therapy, occupational therapy, behavior

785 therapy, physical management services, and related specialized
786 equipment and supplies.

787 (32)~~(41)~~ "Spina bifida" means, for purposes of this
788 chapter, a person with a medical diagnosis of spina bifida
789 cystica or myelomeningocele.

790 (33)~~(42)~~ "Support coordinator" means a person who is
791 designated by the agency to assist individuals and families in
792 identifying their capacities, needs, and resources, as well as
793 finding and gaining access to necessary supports and services;
794 coordinating the delivery of supports and services; advocating
795 on behalf of the individual and family; maintaining relevant
796 records; and monitoring and evaluating the delivery of supports
797 and services to determine the extent to which they meet the
798 needs and expectations identified by the individual, family, and
799 others who participated in the development of the support plan.

800 (34)~~(43)~~ "Supported employee" means a person who requires
801 and receives supported employment services in order to maintain
802 community-based employment.

803 (35)~~(44)~~ "Supported employment" means employment located
804 or provided in a normal employment setting which provides at
805 least 20 hours employment per week in an integrated work
806 setting, with earnings paid on a commensurate wage basis, and
807 for which continued support is needed for job maintenance.

808 (36)~~(45)~~ "Supported living" means a category of
809 individually determined services designed and coordinated in
810 such a manner as to provide assistance to adult clients who
811 require ongoing supports to live as independently as possible in
812 their own homes, to be integrated into the community, and to

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813 participate in community life to the fullest extent possible.

814 ~~(37)(46)~~ "Training" means a planned approach to assisting
 815 a client to attain or maintain his or her maximum potential and
 816 includes services ranging from sensory stimulation to
 817 instruction in skills for independent living and employment.

818 ~~(38)(47)~~ "Treatment" means the prevention, amelioration,
 819 or cure of a client's physical and mental disabilities or
 820 illnesses.

821 Section 9. Subsections (1), (2), and (4) of section
 822 393.064, Florida Statutes, are amended to read:

823 393.064 Prevention.--

824 (1) The agency shall give priority to the development,
 825 planning, and implementation of programs which have the
 826 potential to prevent, correct, cure, or reduce the severity of
 827 developmental disabilities. The agency shall direct an
 828 interagency and interprogram effort for the continued
 829 development of a prevention plan and program. The agency shall
 830 identify, through demonstration projects, through program
 831 evaluation, and through monitoring of programs and projects
 832 conducted outside of the agency, any medical, social, economic,
 833 or educational methods, techniques, or procedures that have the
 834 potential to effectively ameliorate, correct, or cure
 835 developmental disabilities. The agency ~~program~~ shall determine
 836 the costs and benefits that would be associated with such
 837 prevention efforts and shall implement, or recommend the
 838 implementation of, those methods, techniques, or procedures
 839 which are found likely to be cost-beneficial.

840 (2) Prevention services provided by the agency shall

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841 ~~developmental services program~~ include services to high-risk and
842 ~~developmentally disabled~~ children from 3 birth to 5 years of age
843 with developmental disabilities, and their families, to meet the
844 intent of chapter 411. Except for services for children from
845 birth to 3 years of age which ~~Such services shall include~~
846 ~~individual evaluations or assessments necessary to diagnose a~~
847 ~~developmental disability or high risk condition and to determine~~
848 ~~appropriate individual family and support services, unless~~
849 ~~evaluations or assessments~~ are the responsibility of the
850 Division of Children's Medical Services within the Department of
851 Health Prevention and Intervention for children ages birth to 3
852 years eligible for services under this chapter or part H of the
853 Individuals with Disabilities Education Act, such services and
854 may include:

855 (a) Individual evaluations or assessments necessary to
856 diagnose a developmental disability or high-risk condition and
857 to determine appropriate individual family and support services.

858 (b)-(a) Early intervention services, including
859 developmental training and specialized therapies. ~~Early~~
860 ~~intervention services, which are the responsibility of the~~
861 ~~Division of Children's Medical Services Prevention and~~
862 ~~Intervention for children ages birth to 3 years who are eligible~~
863 ~~for services under this chapter or under part H of the~~
864 ~~Individuals with Disabilities Education Act, shall not be~~
865 ~~provided through the developmental services program unless~~
866 ~~funding is specifically appropriated to the developmental~~
867 ~~services program for this purpose.~~

868 (c)-(b) Support services, such as respite care, parent

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869 education and training, parent-to-parent counseling, homemaker
870 services, and other services which allow families to maintain
871 and provide quality care to children in their homes. ~~The~~
872 ~~Division of Children's Medical Services Prevention and~~
873 ~~Intervention is responsible for the provision of services to~~
874 ~~children from birth to 3 years who are eligible for services~~
875 ~~under this chapter.~~

876 (4) There is created at the developmental disabilities
877 ~~services~~ institution in Gainesville a research and education
878 unit. Such unit shall be named the Raymond C. Philips Research
879 and Education Unit. The functions of such unit shall include:

880 (a) Research into the etiology of developmental
881 disabilities.

882 (b) Ensuring that new knowledge is rapidly disseminated
883 throughout the ~~developmental services program of the agency.~~

884 (c) Diagnosis of unusual conditions and syndromes
885 associated with developmental disabilities in clients identified
886 throughout ~~the~~ developmental disabilities ~~services~~ programs.

887 (d) Evaluation of families of clients with developmental
888 disabilities of genetic origin in order to provide them with
889 genetic counseling aimed at preventing the recurrence of the
890 disorder in other family members.

891 (e) Ensuring that health professionals in the
892 developmental disabilities ~~services~~ institution at Gainesville
893 have access to information systems that will allow them to
894 remain updated on newer knowledge and maintain their
895 postgraduate education standards.

896 (f) Enhancing staff training for professionals throughout

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897 the agency in the areas of genetics and developmental
898 disabilities.

899 Section 10. Section 393.0641, Florida Statutes, is amended
900 to read:

901 393.0641 Program for the prevention and treatment of
902 severe self-injurious behavior.--

903 (1) Contingent upon specific appropriations, there is
904 created a diagnostic, treatment, training, and research program
905 for clients exhibiting severe self-injurious behavior. For the
906 purposes of this section "severe self-injurious behavior" means
907 any chronic behavior that results in injury to the person's own
908 body, which includes, but is not limited to, self-hitting, head
909 banging, self-biting, scratching, and the ingestion of harmful
910 or potentially harmful nutritive or nonnutritive substances.

911 (2) The ~~This~~ program shall:

912 (a) Serve as a resource center for information, training,
913 and program development.

914 (b) Research the diagnosis and treatment of severe self-
915 injurious behavior, and related disorders, and develop methods
916 of prevention and treatment of self-injurious behavior.

917 (c) Identify individuals in critical need.

918 (d) Develop treatment programs which are meaningful to
919 individuals with developmental disabilities, in critical need,
920 while safeguarding and respecting the legal and human rights of
921 the individuals.

922 (e) Disseminate research findings on the prevention and
923 treatment of severe self-injurious behavior.

924 (f) Collect data on the type, severity, incidence, and

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925 demographics of individuals with severe self-injurious behavior,
 926 and disseminate the data.

927 (3)~~(2)~~ ~~The~~ This program shall adhere to the provisions of
 928 s. 393.13.

929 (4)~~(3)~~ The agency may contract for the provision of any
 930 portion or all of the services required by the program.

931 (5)~~(4)~~ The agency has ~~the~~ authority to license this
 932 program and shall adopt rules to implement the program.

933 Section 11. Subsection (1) of section 393.065, Florida
 934 Statutes, is amended to read:

935 393.065 Application and eligibility determination.--

936 (1) Application for services shall be made in writing to
 937 the agency, in the service area ~~district~~ in which the applicant
 938 resides. Employees of the agency ~~agency's developmental services~~
 939 ~~program~~ shall review each applicant for eligibility within 45
 940 days after the date the application is signed for children under
 941 6 years of age and within 60 days after the date the application
 942 is signed for all other applicants. When necessary to
 943 definitively identify individual conditions or needs, the agency
 944 shall provide a comprehensive assessment. Only individuals whose
 945 domicile is in Florida are eligible for services. Information
 946 accumulated by other agencies, including professional reports
 947 and collateral data, shall be considered in this process when
 948 available.

949 Section 12. Section 393.0651, Florida Statutes, is amended
 950 to read:

951 393.0651 Family or individual support plan.--The agency
 952 shall provide directly or contract for the development of a an

953 ~~appropriate~~ family support plan for children ages birth to 18
 954 years of age and an individual support plan for each client. The
 955 ~~parent or guardian of the client or~~, if competent, or the parent
 956 or guardian of the client, or, when appropriate, the client
 957 advocate, shall be consulted in the development of the plan and
 958 shall receive a copy of the plan. Each plan shall include the
 959 most appropriate, least restrictive, and most cost-beneficial
 960 environment for accomplishment of the objectives for client
 961 progress and a specification of all services authorized. The
 962 plan shall include provisions for the most appropriate level of
 963 care for the client. Within the specification of needs and
 964 services for each client, if ~~when~~ residential care is necessary,
 965 the agency shall move toward placement of clients in residential
 966 facilities based within the client's community. The ultimate
 967 goal of each plan, whenever possible, shall be to enable the
 968 client to live a dignified life in the least restrictive
 969 setting, be that in the home or in the community. For children
 970 under 6 years of age, the family support plan shall be developed
 971 within the 45-day application period as specified in s.
 972 393.065(1); for all applicants 6 years of age or older, the
 973 family or individual support plan shall be developed within the
 974 60-day period as specified in that subsection.

975 (1) The agency shall develop and specify by rule the core
 976 components of support plans ~~to be used by each district~~.

977 (2) ~~(a)~~ The family or individual support plan shall be
 978 integrated with the individual education plan (IEP) for all
 979 clients who are public school students entitled to a free
 980 appropriate public education under the Individuals with

981 Disabilities Education Act, I.D.E.A., as amended. The family or
 982 individual support plan and IEP shall be implemented to maximize
 983 the attainment of educational and habilitation goals.

984 (a) If the IEP for a student enrolled in a public school
 985 program indicates placement in a public or private residential
 986 program is necessary to provide special education and related
 987 services to a client, the local education agency shall provide
 988 for the costs of that service in accordance with the
 989 requirements of the Individuals with Disabilities Education Act,
 990 I.D.E.A., as amended. This shall not preclude local education
 991 agencies and the agency from sharing the residential service
 992 costs of students who are clients and require residential
 993 placement. ~~Under no circumstances shall clients entitled to a
 994 public education or their parents be assessed a fee by the
 995 agency under s. 402.33 for placement in a residential program.~~

996 (b) For clients who are entering or exiting the school
 997 system, an interdepartmental staffing team composed of
 998 representatives of the agency and the local school system shall
 999 develop a written transitional living and training plan with the
 1000 participation of the client or with the parent or guardian of
 1001 the client, or the client advocate, as appropriate.

1002 (3) Each family or individual support plan shall be
 1003 facilitated through case management designed solely to advance
 1004 the individual needs of the client.

1005 (4) In the development of the family or individual support
 1006 plan, a client advocate may be appointed by the support planning
 1007 team for a client who is a minor or for a client who is not
 1008 capable of express and informed consent when:

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- 1009 (a) The parent or guardian cannot be identified;
- 1010 (b) The whereabouts of the parent or guardian cannot be
1011 discovered; or
- 1012 (c) The state is the only legal representative of the
1013 client.
- 1014
- 1015 Such appointment shall not be construed to extend the powers of
1016 the client advocate to include any of those powers delegated by
1017 law to a legal guardian.
- 1018 (5) The agency shall place a client in the most
1019 appropriate and least restrictive, and cost-beneficial,
1020 residential facility according to his or her individual
1021 habilitation plan. ~~The parent or guardian of~~ The client ~~or~~, if
1022 competent, or the parent or guardian of the client, or, when
1023 appropriate, the client advocate, and the administrator of the
1024 residential facility to which placement is proposed shall be
1025 consulted in determining the appropriate placement for the
1026 client. Considerations for placement shall be made in the
1027 following order:
- 1028 (a) Client's own home or the home of a family member or
1029 direct care ~~service~~ provider.
- 1030 (b) Foster care facility.
- 1031 (c) Group home facility.
- 1032 (d) Intermediate care facility ~~for the developmentally~~
1033 ~~disabled~~.
- 1034 (e) Other facilities licensed by the agency which offer
1035 special programs for people with developmental disabilities.
- 1036 (f) Developmental disabilities ~~services~~ institution.

1037 (6) In developing a client's annual family or individual
 1038 support plan, the individual or family with the assistance of
 1039 the support planning team shall identify measurable objectives
 1040 for client progress and shall specify a time period expected for
 1041 achievement of each objective.

1042 ~~(7) The individual, family, and support coordinator shall~~
 1043 ~~review progress in achieving the objectives specified in Each~~
 1044 ~~client's family or individual support plan~~ shall be reviewed and
 1045 revised, ~~and shall revise the plan~~ annually, following
 1046 consultation with the client, if competent, or with the parent
 1047 or guardian of the client, or, when appropriate, the client
 1048 advocate. The agency shall annually report in writing to the
 1049 client, if competent, or to the parent or guardian of the
 1050 client, or to the client advocate, when appropriate, with
 1051 respect to the client's habilitative and medical progress.

1052 (8) Any client, or any parent of a minor client, or
 1053 guardian, authorized guardian advocate, or client advocate for a
 1054 client, who is substantially affected by the client's initial
 1055 family or individual support plan, or the annual review thereof,
 1056 shall have the right to file a notice to challenge the decision
 1057 pursuant to ss. 120.569 and 120.57. Notice of such right to
 1058 appeal shall be included in all support plans provided by the
 1059 agency.

1060 Section 13. Section 393.0654, Florida Statutes, is created
 1061 to read:

1062 393.0654 Direct care providers; private sector
 1063 services.--It is not a violation of s. 112.313(7) for a direct
 1064 care provider who is employed by the agency to own, operate, or

1065 work in a private facility that is a service provider under
 1066 contract with the agency if:

1067 (1) The direct care provider does not have any role in the
 1068 placement recommendations of the agency or the decisionmaking
 1069 process of the client regarding placement.

1070 (2) The employment of the direct care provider with the
 1071 agency does not compromise the ability of the client to make a
 1072 voluntary choice among private providers for services.

1073 (3) The outside employment of a direct care provider does
 1074 not create a conflict with the public duties of the direct care
 1075 provider and does not impede the full and faithful discharge of
 1076 his or her duties as assigned by the agency.

1077 (4) The private provider discloses the dual employment or
 1078 ownership status to the agency and all clients within the care
 1079 of the private provider. The disclosure shall be given to the
 1080 agency, the client, and the guardian or guardian advocate of the
 1081 client, if appropriate.

1082 Section 14. Subsections (1) and (4) of section 393.0655,
 1083 Florida Statutes, are amended to read:

1084 393.0655 Screening of direct care ~~service~~ providers.--

1085 (1) MINIMUM STANDARDS.--The agency shall require level 2
 1086 employment screening pursuant to chapter 435 for direct care
 1087 ~~service~~ providers who are unrelated to their clients, including
 1088 support coordinators, and managers and supervisors of
 1089 residential facilities or comprehensive transitional education
 1090 programs licensed under this chapter ~~s. 393.067~~ and any other
 1091 person, including volunteers, who provide care or services, who
 1092 have access to a client's living areas, or who have access to a

1093 client's funds or personal property. Background screening shall
 1094 include employment history checks as provided in s. 435.03(1)
 1095 and local criminal records checks through local law enforcement
 1096 agencies.

1097 (a) A volunteer who assists on an intermittent basis for
 1098 less than 40 hours per month does not have to be screened if the
 1099 volunteer is under the direct and constant supervision of
 1100 persons who meet the screening requirements of this section.

1101 (b) Licensed physicians, nurses, or other professionals
 1102 licensed and regulated by the Department of Health are not
 1103 subject to background screening pursuant to this section if they
 1104 are providing a service that is within their scope of licensed
 1105 practice.

1106 (c) A person selected by the family or the individual with
 1107 developmental disabilities and paid by the family or the
 1108 individual to provide supports or services is not required to
 1109 have a background screening under this section.

1110 (d) Persons residing with the direct care ~~services~~
 1111 provider, including family members, are subject to background
 1112 screening; however, such persons who are 12 to 18 years of age
 1113 shall be screened for delinquency records only.

1114 (4) NONCOMPLIANCE WITH STANDARDS; REMEDIES; DENIAL OR
 1115 TERMINATION OF EMPLOYMENT ~~EXCLUSION FROM OWNING, OPERATING, OR~~
 1116 ~~BEING EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL~~
 1117 ~~FACILITY; HEARINGS PROVIDED.--~~

1118 (a) The agency shall deny, suspend, terminate, or revoke a
 1119 license or, certification, ~~rate agreement, purchase order, or~~
 1120 ~~contract~~, or pursue other remedies provided in s. 393.0673, s.

1121 393.0675, or s. 393.0678 in addition to or in lieu of denial,
 1122 suspension, termination, or revocation for failure to comply
 1123 with this section.

1124 (b) When the agency has reasonable cause to believe that
 1125 grounds for denial or termination of employment exist, it shall
 1126 notify, in writing, the employer and the person ~~direct service~~
 1127 ~~provider~~ affected, stating the specific record which indicates
 1128 noncompliance with the standards in this section.

1129 (c) The procedures established for hearing under chapter
 1130 120 shall be available to the employer and the person affected
 1131 ~~direct service provider~~ in order to present evidence relating
 1132 either to the accuracy of the basis of exclusion or to the
 1133 denial of an exemption from disqualification.

1134 (d) Refusal on the part of an employer to dismiss a
 1135 manager, supervisor, or direct care ~~service~~ provider who has
 1136 been found to be in noncompliance with standards of this section
 1137 shall result in automatic denial, termination, or revocation of
 1138 the license or, certification, ~~rate agreement, purchase order,~~
 1139 ~~or contract~~, in addition to any other remedies pursued by the
 1140 agency.

1141 Section 15. Section 393.0657, Florida Statutes, is amended
 1142 to read:

1143 393.0657 Persons not required to be refingerprinted or
 1144 rescreened.--Persons who have undergone any portion of the
 1145 background screening required under s. 393.0655 within the last
 1146 12 months shall not be required to repeat such screening in
 1147 order to comply with that portion of the screening requirements.
 1148 The persons shall be responsible for providing documentation of

1149 the screening. The person shall be required to undergo screening
 1150 for any remaining background screening requirements that have
 1151 never been conducted or have not been completed within the last
 1152 12 months. Any provision of law to the contrary notwithstanding,
 1153 ~~human resource personnel who have been fingerprinted or screened~~
 1154 ~~pursuant to chapters 393, 394, 397, 402, and 409, and teachers~~
 1155 ~~who have been fingerprinted pursuant to chapter 1012, who have~~
 1156 ~~not been unemployed for more than 90 days thereafter, and who~~
 1157 ~~under the penalty of perjury attest to the completion of such~~
 1158 ~~fingerprinting or screening and to compliance with the~~
 1159 ~~provisions of this section and the standards for good moral~~
 1160 ~~character as contained in such provisions as ss. 110.1127(3),~~
 1161 ~~393.0655(1), 394.457(6), 397.451, 402.305(2), and 409.175(6),~~
 1162 ~~shall not be required to be refingerprinted or rescreened in~~
 1163 ~~order to comply with any direct service provider screening or~~
 1164 ~~fingerprinting requirements.~~

1165 Section 16. Subsections (1), (2), (3), (5), and (8) of
 1166 section 393.066, Florida Statutes, are amended to read:

1167 393.066 Community services and treatment ~~for persons who~~
 1168 ~~are developmentally disabled.--~~

1169 (1) The agency shall plan, develop, organize, and
 1170 implement its programs of services and treatment for persons
 1171 with developmental disabilities ~~who are developmentally disabled~~
 1172 to allow clients to live as independently as possible in their
 1173 own homes or communities and to achieve productive lives as
 1174 close to normal as possible. All elements of community-based
 1175 services shall be made available, and eligibility for these
 1176 services shall be consistent across the state. ~~In addition, all~~

1177 ~~purchased services shall be approved by the agency.~~

1178 (2) All services needed shall be purchased instead of
 1179 provided directly by the agency, when such arrangement is more
 1180 cost-efficient than having those services provided directly. All
 1181 purchased services must be approved by the agency.

1182 (3) Community-based services that are medically necessary
 1183 to prevent institutionalization shall, to the extent of
 1184 available resources, include:

1185 (a) Day habilitation services, including developmental
 1186 training services.

1187 (b) Family care services.

1188 (c) Guardian advocate referral services.

1189 (d) Medical/dental services, except that medical services
 1190 shall not be provided to clients with spina bifida except as
 1191 specifically appropriated by the Legislature.

1192 (e) Parent training.

1193 (f) Recreation.

1194 (g) Residential facility services.

1195 (h) Respite services.

1196 (i) Social services.

1197 (j) Specialized therapies.

1198 (k) Supported employment, ~~including enclave, job coach,~~
 1199 ~~mobile work crew, and follow along services.~~

1200 (l) Supported living.

1201 (m) Training, including behavioral analysis services
 1202 programming.

1203 (n) Transportation.

1204 (o) Other habilitative and rehabilitative services as

1205 needed.

1206 (5) In order to improve the potential for utilization of
 1207 more cost-effective, community-based residential facilities, the
 1208 agency shall promote the statewide development of day
 1209 habilitation services for clients who live with a direct care
 1210 ~~service~~ provider in a community-based residential facility and
 1211 who do not require 24-hour-a-day care in a hospital or other
 1212 health care institution, but who may, in the absence of day
 1213 habilitation services, require admission to a developmental
 1214 disabilities institution. Each day service facility shall
 1215 provide a protective physical environment for clients, ensure
 1216 that direct care ~~service~~ providers meet minimum screening
 1217 standards as required in s. 393.0655, make available to all day
 1218 habilitation service participants at least one meal on each day
 1219 of operation, provide facilities to enable participants to
 1220 obtain needed rest while attending the program, as appropriate,
 1221 and provide social and educational activities designed to
 1222 stimulate interest and provide socialization skills.

1223 (8) The agency is authorized to ~~may~~ adopt rules pursuant
 1224 to ss. 120.536(1) and 120.54 governing the availability and
 1225 purchase of services that are ~~to ensure compliance with federal~~
 1226 ~~laws or regulations that apply to services~~ provided pursuant to
 1227 this section.

1228 Section 17. Section 393.067, Florida Statutes, is amended
 1229 to read:

1230 393.067 Facility licensure of residential facilities and
 1231 ~~comprehensive transitional education programs.--~~

1232 (1) The agency shall provide through its licensing

1233 authority and by rule license application procedures, ~~a system~~
 1234 ~~of provider qualifications,~~ facility and client care standards,
 1235 staff training requirements ~~criteria for meeting standards,~~ and
 1236 requirements for monitoring foster care facilities, group home
 1237 ~~for residential facilities,~~ residential habilitation centers,
 1238 and comprehensive transitional education programs serving agency
 1239 clients. Receipt of a license under this chapter shall not
 1240 create a property right in the recipient. A license issued under
 1241 this chapter is a public trust and a privilege, and is not an
 1242 entitlement. This privilege must guide the finder of fact or
 1243 trier of law at any administrative proceeding or court action
 1244 initiated by the agency.

1245 (2) The agency shall conduct annual inspections and
 1246 reviews of ~~residential facilities and comprehensive transitional~~
 1247 ~~education programs~~ licensed under this section annually.

1248 (3) An application for a license under this section ~~for a~~
 1249 ~~residential facility or a comprehensive transitional education~~
 1250 ~~program~~ shall be made to the agency on a form furnished by it
 1251 and shall be accompanied by the appropriate license fee.

1252 (4) The application shall be under oath and shall contain
 1253 the following:

1254 (a) The name and address of the applicant, if an applicant
 1255 is an individual; if the applicant is a firm, partnership, or
 1256 association, the name and address of each member thereof; if the
 1257 applicant is a corporation, its name and address and the name
 1258 and address of each director and each officer thereof; and the
 1259 name by which the facility or program is to be known.

1260 (b) The location of the facility or program for which a

1261 license is sought.

1262 (c) The name of the person or persons under whose
 1263 management or supervision the facility or program will be
 1264 conducted.

1265 (d) The number and type of residents or clients for which
 1266 maintenance, care, education, or treatment is to be provided by
 1267 the facility or program.

1268 (e) The number and location of the component centers or
 1269 units which will compose the comprehensive transitional
 1270 education program.

1271 (f) A description of the types of services and treatment
 1272 to be provided by the facility or program.

1273 (g) Information relating to the number, experience, and
 1274 training of the employees of the facility or program.

1275 (h) Certification that the staff of the facility or
 1276 program will receive training to detect and prevent sexual abuse
 1277 of residents and clients.

1278 (i) Such other information as the agency determines is
 1279 necessary to carry out the provisions of this chapter.

1280 ~~(5) The applicant shall submit evidence which establishes~~
 1281 ~~the good moral character of the manager or supervisor of the~~
 1282 ~~facility or program and the direct service providers in the~~
 1283 ~~facility or program and its component centers or units. A~~
 1284 ~~license may be issued if all the screening materials have been~~
 1285 ~~timely submitted; however, a license may not be issued or~~
 1286 ~~renewed if any of the direct service providers have failed the~~
 1287 ~~screening required by s. 393.0655.~~

1288 ~~(a)1. A licensed residential facility or comprehensive~~

1289 ~~transitional education program which applies for renewal of its~~
 1290 ~~license shall submit to the agency a list of direct service~~
 1291 ~~providers who have worked on a continuous basis at the applicant~~
 1292 ~~facility or program since submitting fingerprints to the agency~~
 1293 ~~or the Department of Children and Family Services, identifying~~
 1294 ~~those direct service providers for whom a written assurance of~~
 1295 ~~compliance was provided by the agency or department and~~
 1296 ~~identifying those direct service providers who have recently~~
 1297 ~~begun working at the facility or program and are awaiting the~~
 1298 ~~results of the required fingerprint check along with the date of~~
 1299 ~~the submission of those fingerprints for processing. The agency~~
 1300 ~~shall by rule determine the frequency of requests to the~~
 1301 ~~Department of Law Enforcement to run state criminal records~~
 1302 ~~checks for such direct service providers except for those direct~~
 1303 ~~service providers awaiting the results of initial fingerprint~~
 1304 ~~checks for employment at the applicant facility or program. The~~
 1305 ~~agency shall review the records of the direct service providers~~
 1306 ~~at the applicant facility or program with respect to the crimes~~
 1307 ~~specified in s. 393.0655 and shall notify the facility or~~
 1308 ~~program of its findings. When disposition information is missing~~
 1309 ~~on a criminal record, it is the responsibility of the person~~
 1310 ~~being screened, upon request of the agency, to obtain and supply~~
 1311 ~~within 30 days the missing disposition information to the~~
 1312 ~~agency. Failure to supply the missing information within 30 days~~
 1313 ~~or to show reasonable efforts to obtain such information shall~~
 1314 ~~result in automatic disqualification.~~

1315 ~~2. The applicant shall sign an affidavit under penalty of~~
 1316 ~~perjury stating that all new direct service providers have been~~

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1317 ~~fingerprinted and that the facility's or program's remaining~~
1318 ~~direct service providers have worked at the applicant facility~~
1319 ~~or program on a continuous basis since being initially screened~~
1320 ~~at that facility or program or have a written assurance of~~
1321 ~~compliance from the agency or department.~~

1322 (5)(b) As a prerequisite for issuance of an the initial
1323 license or for renewal of an existing license, the applicant,
1324 manager, supervisor, and all direct care staff must submit to
1325 background screening as required under s. 393.0655. A license
1326 may not be issued or renewed if the applicant and any of the
1327 managers, supervisors, or direct care providers of the facility
1328 or program have failed the background screening required under
1329 s. 393.0655. The agency shall determine by rule the frequency of
1330 background screening. The applicant shall submit with each
1331 application for an initial license or for renewal of an existing
1332 license a signed affidavit under penalty of perjury stating that
1333 the applicant is in compliance with all background screening
1334 requirements. ~~to a residential facility or comprehensive~~
1335 ~~transitional education program.~~

1336 ~~1. The applicant shall submit to the agency a complete set~~
1337 ~~of fingerprints, taken by an authorized law enforcement agency~~
1338 ~~or an employee of the agency who is trained to take~~
1339 ~~fingerprints, for the manager, supervisor, or direct service~~
1340 ~~providers of the facility or program;~~

1341 ~~2. The agency shall submit the fingerprints to the~~
1342 ~~Department of Law Enforcement for state processing and for~~
1343 ~~federal processing by the Federal Bureau of Investigation; and~~

1344 ~~3. The agency shall review the record of the manager or~~

1345 ~~supervisor with respect to the crimes specified in s.~~
 1346 ~~393.0655(1) and shall notify the applicant of its findings. When~~
 1347 ~~disposition information is missing on a criminal record, it is~~
 1348 ~~the responsibility of the manager or supervisor, upon request of~~
 1349 ~~the agency, to obtain and supply within 30 days the missing~~
 1350 ~~disposition information to the agency. Failure to supply the~~
 1351 ~~missing information within 30 days or to show reasonable efforts~~
 1352 ~~to obtain such information shall result in automatic~~
 1353 ~~disqualification.~~

1354 ~~(c) The agency or a residential facility or comprehensive~~
 1355 ~~transitional education program may not use the criminal records~~
 1356 ~~or juvenile records of a person obtained under this subsection~~
 1357 ~~for any purpose other than determining if that person meets the~~
 1358 ~~minimum standards for good moral character for a manager or~~
 1359 ~~supervisor of, or direct service provider in, such a facility or~~
 1360 ~~program. The criminal records or juvenile records obtained by~~
 1361 ~~the agency or a residential facility or comprehensive~~
 1362 ~~transitional education program for determining the moral~~
 1363 ~~character of a manager, supervisor, or direct service provider~~
 1364 ~~are exempt from s. 119.07(1).~~

1365 ~~(6) Each applicant for licensure as an intermediate care~~
 1366 ~~facility for the developmentally disabled must comply with the~~
 1367 ~~following requirements:~~

1368 ~~(a) Upon receipt of a completed, signed, and dated~~
 1369 ~~application, the agency shall require background screening, in~~
 1370 ~~accordance with the level 2 standards for screening set forth in~~
 1371 ~~chapter 435, of the managing employee, or other similarly titled~~
 1372 ~~individual who is responsible for the daily operation of the~~

1373 ~~facility, and of the financial officer, or other similarly~~
1374 ~~titled individual who is responsible for the financial operation~~
1375 ~~of the center, including billings for resident care and~~
1376 ~~services. The applicant must comply with the procedures for~~
1377 ~~level 2 background screening as set forth in chapter 435, as~~
1378 ~~well as the requirements of s. 435.03(3).~~

1379 ~~(b) The agency may require background screening of any~~
1380 ~~other individual who is an applicant if the agency has probable~~
1381 ~~cause to believe that he or she has been convicted of a crime or~~
1382 ~~has committed any other offense prohibited under the level 2~~
1383 ~~standards for screening set forth in chapter 435.~~

1384 ~~(c) Proof of compliance with the level 2 background~~
1385 ~~screening requirements of chapter 435 which has been submitted~~
1386 ~~within the previous 5 years in compliance with any other health~~
1387 ~~care licensure requirements of this state is acceptable in~~
1388 ~~fulfillment of the requirements of paragraph (a).~~

1389 ~~(d) A provisional license may be granted to an applicant~~
1390 ~~when each individual required by this section to undergo~~
1391 ~~background screening has met the standards for the Department of~~
1392 ~~Law Enforcement background check, but the agency has not yet~~
1393 ~~received background screening results from the Federal Bureau of~~
1394 ~~Investigation, or a request for a disqualification exemption has~~
1395 ~~been submitted to the agency as set forth in chapter 435, but a~~
1396 ~~response has not yet been issued. A standard license may be~~
1397 ~~granted to the applicant upon the agency's receipt of a report~~
1398 ~~of the results of the Federal Bureau of Investigation background~~
1399 ~~screening for each individual required by this section to~~
1400 ~~undergo background screening which confirms that all standards~~

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1401 ~~have been met, or upon the granting of a disqualification~~
1402 ~~exemption by the agency as set forth in chapter 435. Any other~~
1403 ~~person who is required to undergo level 2 background screening~~
1404 ~~may serve in his or her capacity pending the agency's receipt of~~
1405 ~~the report from the Federal Bureau of Investigation. However,~~
1406 ~~the person may not continue to serve if the report indicates any~~
1407 ~~violation of background screening standards and a~~
1408 ~~disqualification exemption has not been requested of and granted~~
1409 ~~by the agency as set forth in chapter 435.~~

1410 ~~(e) Each applicant must submit to the agency, with its~~
1411 ~~application, a description and explanation of any exclusions,~~
1412 ~~permanent suspensions, or terminations of the applicant from the~~
1413 ~~Medicare or Medicaid programs. Proof of compliance with the~~
1414 ~~requirements for disclosure of ownership and control interests~~
1415 ~~under the Medicaid or Medicare programs shall be accepted in~~
1416 ~~lieu of this submission.~~

1417 ~~(f) Each applicant must submit to the agency a description~~
1418 ~~and explanation of any conviction of an offense prohibited under~~
1419 ~~the level 2 standards of chapter 435 by a member of the board of~~
1420 ~~directors of the applicant, its officers, or any individual~~
1421 ~~owning 5 percent or more of the applicant. This requirement does~~
1422 ~~not apply to a director of a not for profit corporation or~~
1423 ~~organization if the director serves solely in a voluntary~~
1424 ~~capacity for the corporation or organization, does not regularly~~
1425 ~~take part in the day to day operational decisions of the~~
1426 ~~corporation or organization, receives no remuneration for his or~~
1427 ~~her services on the corporation or organization's board of~~
1428 ~~directors, and has no financial interest and has no family~~

1429 ~~members with a financial interest in the corporation or~~
1430 ~~organization, provided that the director and the not-for-profit~~
1431 ~~corporation or organization include in the application a~~
1432 ~~statement affirming that the director's relationship to the~~
1433 ~~corporation satisfies the requirements of this paragraph.~~

1434 ~~(g) A license may not be granted to an applicant if the~~
1435 ~~applicant or managing employee has been found guilty of,~~
1436 ~~regardless of adjudication, or has entered a plea of nolo~~
1437 ~~contendere or guilty to, any offense prohibited under the level~~
1438 ~~2 standards for screening set forth in chapter 435, unless an~~
1439 ~~exemption from disqualification has been granted by the agency~~
1440 ~~as set forth in chapter 435.~~

1441 ~~(h) The agency may deny or revoke licensure if the~~
1442 ~~applicant:~~

1443 ~~1. Has falsely represented a material fact in the~~
1444 ~~application required by paragraph (e) or paragraph (f), or has~~
1445 ~~omitted any material fact from the application required by~~
1446 ~~paragraph (e) or paragraph (f); or~~

1447 ~~2. Has had prior action taken against the applicant under~~
1448 ~~the Medicaid or Medicare program as set forth in paragraph (e).~~

1449 ~~(i) An application for license renewal must contain the~~
1450 ~~information required under paragraphs (e) and (f).~~

1451 ~~(6)(7)~~ The applicant shall furnish satisfactory proof of
1452 financial ability to operate and conduct the facility or program
1453 in accordance with the requirements of this chapter and all
1454 rules promulgated hereunder.

1455 ~~(7)(8)~~ The agency shall adopt rules establishing minimum
1456 standards for licensure of residential facilities and

1457 ~~comprehensive transitional education~~ programs licensed under
 1458 this section, including rules requiring facilities and programs
 1459 to train staff to detect and prevent sexual abuse of residents
 1460 and clients, minimum standards of quality and adequacy of care,
 1461 and uniform firesafety standards established by the State Fire
 1462 Marshal which are appropriate to the size of the facility or of
 1463 the component centers or units of the program.

1464 ~~(8)(9) The agency and the Agency for Health Care~~
 1465 ~~Administration~~, after consultation with the Department of
 1466 Community Affairs, shall adopt rules pursuant to ss. 120.536(1)
 1467 and 120.54 for foster care residential facilities, group home
 1468 facilities, and residential habilitation centers which establish
 1469 ~~under the respective regulatory jurisdiction of each~~
 1470 ~~establishing~~ minimum standards for the preparation and annual
 1471 update of a comprehensive emergency management plan. At a
 1472 minimum, the rules must provide for plan components that address
 1473 emergency evacuation transportation; adequate sheltering
 1474 arrangements; postdisaster activities, including emergency
 1475 power, food, and water; postdisaster transportation; supplies;
 1476 staffing; emergency equipment; individual identification of
 1477 residents and transfer of records; and responding to family
 1478 inquiries. The comprehensive emergency management plan for all
 1479 comprehensive transitional education programs and for homes
 1480 serving individuals who have complex medical conditions is
 1481 subject to review and approval by the local emergency management
 1482 agency. During its review, the local emergency management agency
 1483 shall ensure that the agency and the Department of Community
 1484 Affairs following agencies, at a minimum, are given the

1485 opportunity to review the plan: ~~the Agency for Health Care~~
 1486 ~~Administration, the Agency for Persons with Disabilities, and~~
 1487 ~~the Department of Community Affairs.~~ Also, appropriate volunteer
 1488 organizations must be given the opportunity to review the plan.
 1489 The local emergency management agency shall complete its review
 1490 within 60 days and either approve the plan or advise the
 1491 facility of necessary revisions.

1492 (9) ~~(10)~~ The agency may conduct unannounced inspections to
 1493 determine compliance by foster care residential facilities,
 1494 group home facilities, residential habilitation centers, and
 1495 comprehensive transitional education programs with the
 1496 applicable provisions of this chapter and the rules adopted
 1497 pursuant hereto, including the rules adopted for training staff
 1498 of a facility or a program to detect and prevent sexual abuse of
 1499 residents and clients. The facility or program shall make copies
 1500 of inspection reports available to the public upon request.

1501 ~~(11) An alternative living center and an independent~~
 1502 ~~living education center, as defined in s. 393.063, shall be~~
 1503 ~~subject to the provisions of s. 419.001, except that such~~
 1504 ~~centers shall be exempt from the 1,000 foot radius requirement~~
 1505 ~~of s. 419.001(2) if:~~

1506 ~~(a) Such centers are located on a site zoned in a manner~~
 1507 ~~so that all the component centers of a comprehensive transition~~
 1508 ~~education center may be located thereon; or~~

1509 ~~(b) There are no more than three such centers within said~~
 1510 ~~radius of 1,000 feet.~~

1511 (10) ~~(12)~~ Each residential facility or comprehensive
 1512 ~~transitional education program licensed under this section by~~

1513 ~~the agency~~ shall forward annually to the agency a true and
 1514 accurate sworn statement of its costs of providing care to
 1515 clients funded by the agency.

1516 (11)~~(13)~~ The agency may audit the records of any
 1517 residential facility or ~~comprehensive transitional education~~
 1518 program that it has reason to believe may not be in full
 1519 compliance with the provisions of this section; provided that,
 1520 any financial audit of such facility or program shall be limited
 1521 to the records of clients funded by the agency.

1522 (12)~~(14)~~ The agency shall establish, for the purpose of
 1523 control of licensure costs, a uniform management information
 1524 system and a uniform reporting system with uniform definitions
 1525 and reporting categories.

1526 (13)~~(15)~~ Facilities and programs licensed under ~~pursuant~~
 1527 to this section shall adhere to all rights specified in s.
 1528 393.13, including those enumerated in s. 393.13(4).

1529 (14)~~(16)~~ An ~~No~~ unlicensed ~~residential~~ facility or
 1530 ~~comprehensive transitional education~~ program may not ~~shall~~
 1531 receive state funds. A license for the operation of a facility
 1532 or program shall not be renewed if the licensee has any
 1533 outstanding fines assessed pursuant to this chapter wherein
 1534 final adjudication of such fines has been entered.

1535 (15)~~(17)~~ The agency shall not be required to contract with
 1536 new facilities licensed after October 1, 1989, pursuant to this
 1537 chapter. Pursuant to chapter 287, the agency shall continue to
 1538 contract within available resources for residential services
 1539 with facilities licensed prior to October 1, 1989, if such
 1540 facilities comply with the provisions of this chapter and all

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1541 other applicable laws and regulations.

1542 Section 18. Subsections (1) and (2) of section 393.0673,
 1543 Florida Statutes, are amended, and subsection (5) is added to
 1544 that section, to read:

1545 393.0673 Denial, suspension, revocation of license;
 1546 moratorium on admissions; administrative fines; procedures.--

1547 (1) The agency may deny, revoke, or suspend a license or
 1548 impose an administrative fine, not to exceed \$1,000 per
 1549 violation per day, for a violation of any provision of s.
 1550 393.0655 or s. 393.067 or adopted rules ~~adopted pursuant~~
 1551 ~~thereto~~. All hearings shall be held within the county in which
 1552 the licensee or applicant operates or applies for a license to
 1553 operate a facility as defined herein.

1554 (2) The agency, as a part of any final order issued by it
 1555 pursuant to ~~under~~ the provisions of this chapter, may impose
 1556 such fine as it deems proper, except that such fine may not
 1557 exceed \$1,000 for each violation. Each day a violation of this
 1558 chapter occurs constitutes a separate violation and is subject
 1559 to a separate fine, but in no event may the aggregate amount of
 1560 any fine exceed \$10,000. ~~Fines paid by any facility licensee~~
 1561 ~~under the provisions of this subsection shall be deposited in~~
 1562 ~~the Resident Protection Trust Fund and expended as provided in~~
 1563 ~~s. 400.063.~~

1564 (5) The agency shall establish by rule criteria for
 1565 evaluating the severity of violations and for determining the
 1566 amount of fines imposed.

1567 Section 19. Subsection (1) of section 393.0674, Florida
 1568 Statutes, is amended to read:

1569 393.0674 Penalties.--

1570 (1) It is a misdemeanor of the first degree, punishable as
 1571 provided in s. 775.082 or s. 775.083, for any person willfully,
 1572 knowingly, or intentionally to:

1573 (a) Fail, by false statement, misrepresentation,
 1574 impersonation, or other fraudulent means, to disclose in any
 1575 application for voluntary or paid employment a material fact
 1576 used in making a determination as to such person's
 1577 qualifications to be a direct care ~~service~~ provider;

1578 (b) Provide or attempt to provide supports or services
 1579 with direct care ~~service~~ providers who are not in compliance
 1580 ~~noncompliance~~ with the background screening requirements set
 1581 forth ~~minimum standards for good moral character as contained in~~
 1582 this chapter; or

1583 (c) Use information from the criminal records or central
 1584 abuse hotline obtained under s. 393.0655, s. 393.066, or s.
 1585 393.067 for any purpose other than screening that person for
 1586 employment as specified in those sections or release such
 1587 information to any other person for any purpose other than
 1588 screening for employment as specified in those sections.

1589 Section 20. Subsection (3) of section 393.0675, Florida
 1590 Statutes, is amended to read:

1591 393.0675 Injunctive proceedings authorized.--

1592 (3) The agency may institute proceedings for an injunction
 1593 in a court of competent jurisdiction to terminate the operation
 1594 of a provider of supports or services if such provider has
 1595 willfully and knowingly refused to comply with the screening
 1596 requirement for direct care ~~service~~ providers or has refused to

1597 terminate direct care ~~service~~ providers found not to be in
 1598 compliance with such ~~the~~ requirements ~~for good moral character.~~

1599 Section 21. Subsection (1) of section 393.0678, Florida
 1600 Statutes, is amended to read:

1601 393.0678 Receivership proceedings.--

1602 (1) The agency may petition a court of competent
 1603 jurisdiction for the appointment of a receiver for ~~an~~
 1604 ~~intermediate care facility for the developmentally disabled,~~ a
 1605 residential habilitation center, or a group home facility owned
 1606 and operated by a corporation or partnership when any of the
 1607 following conditions exist:

1608 (a) Any person is operating a facility without a license
 1609 and refuses to make application for a license as required by s.
 1610 393.067 ~~or, in the case of an intermediate care facility for the~~
 1611 ~~developmentally disabled, as required by ss. 393.067 and~~
 1612 ~~400.062.~~

1613 (b) The licensee is closing the facility or has informed
 1614 the department that it intends to close the facility; and
 1615 adequate arrangements have not been made for relocation of the
 1616 residents within 7 days, exclusive of weekends and holidays, of
 1617 the closing of the facility.

1618 (c) The agency determines that conditions exist in the
 1619 facility which present an imminent danger to the health, safety,
 1620 or welfare of the residents of the facility or which present a
 1621 substantial probability that death or serious physical harm
 1622 would result therefrom. Whenever possible, the agency shall
 1623 facilitate the continued operation of the program.

1624 (d) The licensee cannot meet its financial obligations to

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1625 provide food, shelter, care, and utilities. Evidence such as the
 1626 issuance of bad checks or the accumulation of delinquent bills
 1627 for such items as personnel salaries, food, drugs, or utilities
 1628 constitutes prima facie evidence that the ownership of the
 1629 facility lacks the financial ability to operate the home in
 1630 accordance with the requirements of this chapter and all rules
 1631 promulgated thereunder.

1632 Section 22. Subsection (1), paragraphs (o) and (p) of
 1633 subsection (2), and subsection (3) of section 393.068, Florida
 1634 Statutes, are amended to read:

1635 393.068 Family care program.--

1636 (1) The family care program is established for the purpose
 1637 of providing services and support to families and individuals
 1638 with developmental disabilities in order to maintain the
 1639 individual in the home environment and avoid costly out-of-home
 1640 residential placement. Services and support available to
 1641 families and individuals with developmental disabilities shall
 1642 emphasize community living and self-determination and enable
 1643 individuals with developmental disabilities to enjoy typical
 1644 lifestyles. One way to accomplish this is to recognize that
 1645 families are the greatest resource available to individuals who
 1646 have developmental disabilities and must be supported in their
 1647 role as primary caregivers ~~care-givers~~.

1648 (2) Services and support authorized under this program
 1649 shall, to the extent of available resources, include the
 1650 services listed under s. 393.066 and, in addition, shall
 1651 include, but not be limited to:

1652 ~~(o) Supported employment.~~

1653 (o)~~(p)~~ Other support services as identified by the family
 1654 or individual.

1655 (3) When it is determined by the agency to be more cost-
 1656 effective and in the best interest of the client to maintain
 1657 such client in the home of a direct care ~~service~~ provider, the
 1658 parent or guardian of the client or, if competent, the client
 1659 may enroll the client in the family care program. The direct
 1660 care ~~service~~ provider of a client enrolled in the family care
 1661 program shall be reimbursed according to a rate schedule set by
 1662 the agency. ~~In-home subsidies cited in paragraph (2)(d) shall be~~
 1663 ~~provided according to s. 393.0695 and are not subject to any~~
 1664 ~~other payment method or rate schedule provided for in this~~
 1665 ~~section.~~

1666 Section 23. Subsection (3) of section 393.0695, Florida
 1667 Statutes, is amended to read:

1668 393.0695 Provision of in-home subsidies.--

1669 (3) In-home subsidies must be based on an individual
 1670 determination of need and must not exceed maximum amounts set by
 1671 the agency and reassessed by the agency quarterly ~~annually~~.

1672 Section 24. Subsection (2) of section 393.075, Florida
 1673 Statutes, is amended to read:

1674 393.075 General liability coverage.--

1675 (2) The Division of Risk Management of the Department of
 1676 Financial Services shall provide coverage through the agency to
 1677 any person who owns or operates a foster care facility or group
 1678 home facility solely for the agency, who cares for children
 1679 placed by ~~developmental services staff of~~ the agency, and who is
 1680 licensed pursuant to s. 393.067 to provide such supervision and

1681 care in his or her place of residence. The coverage shall be
 1682 provided from the general liability account of the State Risk
 1683 Management Trust Fund. The coverage is limited to general
 1684 liability claims arising from the provision of supervision and
 1685 care of children in a foster care facility or group home
 1686 facility pursuant to an agreement with the agency and pursuant
 1687 to guidelines established through policy, rule, or statute.
 1688 Coverage shall be subject to the limits provided in ss. 284.38
 1689 and 284.385, and the exclusions set forth therein, together with
 1690 other exclusions as may be set forth in the certificate of
 1691 coverage issued by the trust fund. A person covered under the
 1692 general liability account pursuant to this subsection shall
 1693 immediately notify the Division of Risk Management of the
 1694 Department of Financial Services of any potential or actual
 1695 claim.

1696 Section 25. Subsection (1), paragraph (a) of subsection
 1697 (2), paragraph (b) of subsection (3), subsections (4), (5), and
 1698 (6), paragraphs (a), (c), and (d) of subsection (7), paragraphs
 1699 (d) and (e) of subsection (8), paragraph (b) of subsection (10),
 1700 paragraph (b) of subsection (12), and subsection (13) of section
 1701 393.11, Florida Statutes, are amended to read:

1702 393.11 Involuntary admission to residential services.--

1703 (1) JURISDICTION.--When a person who has been determined
 1704 eligible for services by the agency is mentally retarded or
 1705 autistic and requires involuntary admission to residential
 1706 services provided by the agency, the circuit court of the county
 1707 in which the person resides shall have jurisdiction to conduct a
 1708 hearing and enter an order involuntarily admitting the person in

1709 order that the person may receive the care, treatment,
 1710 habilitation, and rehabilitation which the person needs. For the
 1711 purpose of identifying mental retardation or autism, diagnostic
 1712 capability shall be established by the agency. The involuntary
 1713 commitment of a person with mental retardation or autism who is
 1714 charged with a felony offense shall be determined in accordance
 1715 with s. 916.302. ~~Except as otherwise specified, the proceedings~~
 1716 ~~under this section shall be governed by the Florida Rules of~~
 1717 ~~Civil Procedure.~~

1718 (2) PETITION.--

1719 (a) A petition for involuntary admission to residential
 1720 services may be executed by a petitioning commission. ~~For~~
 1721 ~~proposed involuntary admission to residential services arising~~
 1722 ~~out of chapter 916, the petition may be filed by a petitioning~~
 1723 ~~commission, the agency, the state attorney of the circuit from~~
 1724 ~~which the defendant was committed, or the defendant's attorney.~~

1725 (3) NOTICE.--

1726 (b) Whenever a motion or petition has been filed pursuant
 1727 to s. 916.303(2) to dismiss criminal charges against a defendant
 1728 with mental retardation or autism, and a petition is filed to
 1729 involuntarily admit the defendant to residential services under
 1730 this section, the notice of the filing of the petition shall
 1731 also be given to the defendant's attorney and to the state
 1732 attorney of the circuit from which the defendant was committed.

1733 (4) AGENCY DEVELOPMENTAL SERVICES PARTICIPATION.--

1734 (a) Upon receiving the petition, the court shall
 1735 immediately order ~~the developmental services program of the~~
 1736 agency to examine the person being considered for involuntary

1737 admission to residential services.

1738 (b) Following examination, the agency shall file ~~After the~~
 1739 ~~developmental services program examines the person,~~ a written
 1740 report ~~shall be filed~~ with the court not less than 10 working
 1741 days before the date of the hearing. The report shall be served
 1742 on the petitioner, the person with mental retardation or autism,
 1743 and the person's attorney at the time the report is filed with
 1744 the court.

1745 (c) The report shall contain the findings of the agency's
 1746 ~~developmental services program~~ evaluation and any
 1747 recommendations deemed appropriate.

1748 (5) EXAMINING COMMITTEE.--

1749 (a) Upon receiving the petition, the court shall
 1750 immediately appoint an examining committee to examine the person
 1751 being considered for involuntary admission to residential
 1752 services ~~of the developmental services program of the agency.~~

1753 (b) The court shall appoint no fewer than three
 1754 disinterested experts who have demonstrated to the court an
 1755 expertise in the diagnosis, evaluation, and treatment of persons
 1756 with mental retardation or autism. The committee shall include
 1757 at least one licensed and qualified physician, one licensed and
 1758 qualified psychologist, and one qualified professional with a
 1759 minimum of a masters degree in social work, special education,
 1760 or vocational rehabilitation counseling, to examine the person
 1761 and to testify at the hearing on the involuntary admission to
 1762 residential services.

1763 (c) Counsel for the person who is being considered for
 1764 involuntary admission to residential services and counsel for

1765 the petition commission shall have the right to challenge the
 1766 qualifications of those appointed to the examining committee.

1767 (d) Members of the committee shall not be employees of the
 1768 agency or be associated with each other in practice or in
 1769 employer-employee relationships. Members of the committee shall
 1770 not have served as members of the petitioning commission.

1771 Members of the committee shall not be employees of the members
 1772 of the petitioning commission or be associated in practice with
 1773 members of the commission.

1774 (e) The committee shall prepare a written report for the
 1775 court. The report shall explicitly document the extent that the
 1776 person meets the criteria for involuntary admission. The report,
 1777 and expert testimony, shall include, but not be limited to:

1778 1. The degree of the person's mental retardation or
 1779 autism;

1780 2. Whether, because of the person's degree of mental
 1781 retardation or autism, the person:

1782 a. Lacks sufficient capacity to give express and informed
 1783 consent to a voluntary application for services pursuant to s.
 1784 393.065;

1785 b. Lacks basic survival and self-care skills to such a
 1786 degree that close supervision and habilitation in a residential
 1787 setting is necessary and if not provided would result in a real
 1788 and present threat of substantial harm to the person's well-
 1789 being; or

1790 c. Is likely to physically injure others if allowed to
 1791 remain at liberty.

1792 3. The purpose to be served by residential care;

1793 4. A recommendation on the type of residential placement
 1794 which would be the most appropriate and least restrictive for
 1795 the person; and

1796 5. The appropriate care, habilitation, and treatment.

1797 (f) The committee shall file the report with the court not
 1798 less than 10 working days before the date of the hearing. The
 1799 report shall be served on the petitioner, the person with mental
 1800 retardation or autism, and the person's attorney at the time the
 1801 report is filed with the court.

1802 (g) Members of the examining committee shall receive a
 1803 reasonable fee to be determined by the court. The fees are to be
 1804 paid from the general revenue fund of the county in which the
 1805 person with mental retardation or autism resided when the
 1806 petition was filed.

1807 (h) The agency shall develop and prescribe by rule one or
 1808 more standard forms to be used as a guide for members of the
 1809 examining committee.

1810 (6) COUNSEL; GUARDIAN AD LITEM.--

1811 (a) The person with mental retardation or autism shall be
 1812 represented by counsel at all stages of the judicial proceeding.
 1813 In the event the person is indigent and cannot afford counsel,
 1814 the court shall appoint a public defender not less than 20
 1815 working days before the scheduled hearing. The person's counsel
 1816 shall have full access to the records of the service provider
 1817 and the agency. In all cases, the attorney shall represent the
 1818 rights and legal interests of the person with mental retardation
 1819 or autism, regardless of who may initiate the proceedings or pay
 1820 the attorney's fee.

1821 (b) If the attorney, during the course of his or her
 1822 representation, reasonably believes that the person with mental
 1823 retardation or autism cannot adequately act in his or her own
 1824 interest, the attorney may seek the appointment of a guardian ad
 1825 litem. A prior finding of incompetency is not required before a
 1826 guardian ad litem is appointed pursuant to this section.

1827 (7) HEARING.--

1828 (a) The hearing for involuntary admission shall be
 1829 conducted, and the order shall be entered, in the county in
 1830 which the petition is filed ~~person is residing or be as~~
 1831 ~~convenient to the person as may be consistent with orderly~~
 1832 ~~procedure~~. The hearing shall be conducted in a physical setting
 1833 not likely to be injurious to the person's condition.

1834 (c) The court may appoint a general or special magistrate
 1835 to preside. Except as otherwise specified, the magistrate's
 1836 proceeding shall be governed by the ~~rule 1.490,~~ Florida Rules of
 1837 Civil Procedure.

1838 (d) The person with mental retardation or autism shall be
 1839 physically present throughout the entire proceeding. If the
 1840 person's attorney believes that the person's presence at the
 1841 hearing is not in the person's best interest, the person's
 1842 presence may be waived once the court has seen the person and
 1843 the hearing has commenced.

1844 (8) ORDER.--

1845 (d) If an order of involuntary admission to residential
 1846 services provided by ~~the developmental services program of the~~
 1847 agency is entered by the court, a copy of the written order
 1848 shall be served upon the person, the person's counsel, the

1849 agency, and the state attorney and the person's defense counsel,
 1850 if applicable. The order of involuntary admission sent to the
 1851 agency shall also be accompanied by a copy of the examining
 1852 committee's report and other reports contained in the court
 1853 file.

1854 (e) Upon receiving the order, the agency shall, within 45
 1855 days, provide the court with a copy of the person's family or
 1856 individual support plan and copies of all examinations and
 1857 evaluations, outlining the treatment and rehabilitative
 1858 programs. The agency shall document that the person has been
 1859 placed in the most appropriate, least restrictive and cost-
 1860 beneficial residential setting ~~facility~~. A copy of the family or
 1861 individual support plan and other examinations and evaluations
 1862 shall be served upon the person and the person's counsel at the
 1863 same time the documents are filed with the court.

1864 (10) COMPETENCY.--

1865 (b) The issue of the competency of a person with mental
 1866 retardation or autism for the purposes of assigning guardianship
 1867 shall be determined in a separate proceeding according to the
 1868 procedures and requirements of chapter 744 ~~and the Florida~~
 1869 ~~Probate Rules~~. The issue of the competency of a person with
 1870 mental retardation or autism for purposes of determining whether
 1871 the person is competent to proceed in a criminal trial shall be
 1872 determined in accordance with chapter 916.

1873 (12) APPEAL.--

1874 (b) The filing of an appeal by the person with mental
 1875 retardation or autism shall stay admission of the person into
 1876 residential care. The stay shall remain in effect during the

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1877 | pendency of all review proceedings in Florida courts until a
 1878 | mandate issues.

1879 | (13) HABEAS CORPUS.--At any time and without notice, any
 1880 | person involuntarily admitted into residential care ~~to the~~
 1881 | ~~developmental services program of the agency~~, or the person's
 1882 | parent or legal guardian in his or her behalf, is entitled to
 1883 | file a petition for a writ of habeas corpus to question the
 1884 | cause, legality, and appropriateness of the person's involuntary
 1885 | admission. Each person, or the person's parent or legal
 1886 | guardian, shall receive specific written notice of the right to
 1887 | petition for a writ of habeas corpus at the time of his or her
 1888 | involuntary placement.

1889 | Section 26. Section 393.122, Florida Statutes, is amended
 1890 | to read:

1891 | 393.122 Applications for continued residential services.--

1892 | (1) If a client is discharged from residential services
 1893 | under the provisions of s. 393.115 ~~this section~~, application for
 1894 | needed services shall be encouraged.

1895 | (2) No client receiving services from the state ~~department~~
 1896 | as of July 1, 1977, shall be denied continued services due to
 1897 | any change in eligibility requirements by chapter 77-335, Laws
 1898 | of Florida.

1899 | Section 27. Paragraph (a) of subsection (1) of section
 1900 | 393.125, Florida Statutes, is amended to read:

1901 | 393.125 Hearing rights.--

1902 | (1) REVIEW OF AGENCY DECISIONS.--

1903 | (a) Any developmental disabilities services applicant or
 1904 | client, or his or her parent, guardian, guardian advocate, or

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1905 authorized representative, whose substantial interests have been
 1906 ~~who has any substantial interest~~ determined by the agency, has
 1907 the right to request an administrative hearing pursuant to ss.
 1908 120.569 and 120.57. An entity or person who is a paid service
 1909 provider for the applicant or client may not act as an
 1910 authorized representative for the applicant or client.

1911 Section 28. Subsection (1), paragraphs (b) and (d) of
 1912 subsection (2), paragraphs (c), (g), (h), (i), (j), and (k) of
 1913 subsection (4), and subsection (7) of section 393.13, Florida
 1914 Statutes, are amended to read:

1915 393.13 ~~Personal~~ Treatment of persons with developmental
 1916 disabilities ~~who are developmentally disabled.--~~

1917 (1) SHORT TITLE.--This act shall be known as "The Bill of
 1918 Rights of Persons with Developmental Disabilities ~~who are~~
 1919 ~~Developmentally Disabled.~~"

1920 (2) LEGISLATIVE INTENT.--

1921 (b) The Legislature further finds and declares that the
 1922 design and delivery of treatment and services to persons with
 1923 developmental disabilities ~~who are developmentally disabled~~
 1924 should be directed by the principles of self-determination
 1925 ~~normalization~~ and therefore should:

1926 1. Abate the use of large institutions.

1927 2. Continue the development of community-based services
 1928 that ~~which~~ provide reasonable alternatives to
 1929 institutionalization in settings that are least restrictive to
 1930 the client and that provide opportunities for inclusion in the
 1931 community.

1932 3. Provide training and education that ~~to individuals who~~

1933 ~~are developmentally disabled which~~ will maximize their potential
 1934 to lead independent and productive lives and which will afford
 1935 opportunities for outward mobility from institutions.

1936 4. Reduce the use of sheltered workshops and other
 1937 noncompetitive employment day activities and promote
 1938 opportunities for gainful employment for persons with
 1939 developmental disabilities who choose to seek such employment.

1940 (d) It is the intent of the Legislature:

1941 1. To articulate the existing legal and human rights of
 1942 persons with developmental disabilities ~~who are developmentally~~
 1943 ~~disabled~~ so that they may be exercised and protected. Persons
 1944 with developmental disabilities shall have all the rights
 1945 enjoyed by citizens of the state and the United States.

1946 2. To provide a mechanism for the identification,
 1947 evaluation, and treatment of persons with developmental
 1948 disabilities.

1949 3. To divert those individuals from institutional
 1950 commitment who, by virtue of comprehensive assessment, can be
 1951 placed in less costly, more effective community environments and
 1952 programs.

1953 4. To fund improvements in the program in accordance with
 1954 the availability of state resources and yearly priorities
 1955 determined by the Legislature.

1956 5. To ensure that persons with developmental disabilities
 1957 receive treatment and habilitation which fosters the
 1958 developmental potential of the individual.

1959 6. To provide programs for the proper habilitation and
 1960 treatment of persons with developmental disabilities which shall

1961 include, but not be limited to, comprehensive medical/dental
 1962 care, education, recreation, specialized therapies, training,
 1963 social services, transportation, guardianship, family care
 1964 programs, day habilitation services, and habilitative and
 1965 rehabilitative services suited to the needs of the individual
 1966 regardless of age, degree of disability, or handicapping
 1967 condition. No person with developmental disabilities shall be
 1968 deprived of these enumerated services by reason of inability to
 1969 pay.

1970 7. To fully effectuate the principles of self-
 1971 determination ~~normalization principle~~ through the establishment
 1972 of community services for persons with developmental
 1973 disabilities as a viable and practical alternative to
 1974 institutional care at each stage of individual life development
 1975 and to promote opportunities for community inclusion. If care in
 1976 a residential facility becomes necessary, it shall be in the
 1977 least restrictive setting.

1978 (4) CLIENT RIGHTS.--For purposes of this subsection, the
 1979 term "client," as defined in s. 393.063, shall also include any
 1980 person served in a facility licensed pursuant to s. 393.067.

1981 (c) Each client shall receive prompt and appropriate
 1982 medical treatment and care for physical and mental ailments and
 1983 for the prevention of any illness or disability. Medical
 1984 treatment shall be consistent with the accepted standards of
 1985 medical practice in the community.

1986 1. Medication shall be administered only at the written
 1987 order of a physician. Medication shall not be used as
 1988 punishment, for the convenience of staff, as a substitute for

1989 implementation of an individual or family support plan or
 1990 behavior analysis services ~~modification programming~~, or in
 1991 unnecessary or excessive quantities.

1992 2. Daily notation of medication received by each client in
 1993 a residential facility shall be kept in the client's record.

1994 3. Periodically, but no less frequently than every 6
 1995 months, the drug regimen of each client in a residential
 1996 facility shall be reviewed by the attending physician or other
 1997 appropriate monitoring body, consistent with appropriate
 1998 standards of medical practice. All prescriptions shall have a
 1999 termination date.

2000 4. When pharmacy services are provided at any residential
 2001 facility, such services shall be directed or supervised by a
 2002 professionally competent pharmacist licensed according to the
 2003 provisions of chapter 465.

2004 5. Pharmacy services shall be delivered in accordance with
 2005 the provisions of chapter 465.

2006 6. Prior to instituting a plan of experimental medical
 2007 treatment or carrying out any necessary surgical procedure,
 2008 express and informed consent shall be obtained from the client,
 2009 if competent, or the client's parent or legal guardian.
 2010 Information upon which the client shall make necessary treatment
 2011 and surgery decisions shall include, but not be limited to:

- 2012 a. The nature and consequences of such procedures.
- 2013 b. The risks, benefits, and purposes of such procedures.
- 2014 c. Alternate procedures available.

2015 7. When the parent or legal guardian of the client is
 2016 unknown or unlocatable and the physician is unwilling to perform

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2017 surgery based solely on the client's consent, a court of
2018 competent jurisdiction shall hold a hearing to determine the
2019 appropriateness of the surgical procedure. The client shall be
2020 physically present, unless the client's medical condition
2021 precludes such presence, represented by counsel, and provided
2022 the right and opportunity to be confronted with, and to cross-
2023 examine, all witnesses alleging the appropriateness of such
2024 procedure. In such proceedings, the burden of proof by clear and
2025 convincing evidence shall be on the party alleging the
2026 appropriateness of such procedures. The express and informed
2027 consent of a person described in subparagraph 6. may be
2028 withdrawn at any time, with or without cause, prior to treatment
2029 or surgery.

2030 8. The absence of express and informed consent
2031 notwithstanding, a licensed and qualified physician may render
2032 emergency medical care or treatment to any client who has been
2033 injured or who is suffering from an acute illness, disease, or
2034 condition if, within a reasonable degree of medical certainty,
2035 delay in initiation of emergency medical care or treatment would
2036 endanger the health of the client.

2037 (g) No client shall be subjected to a treatment program to
2038 eliminate problematic ~~bizarre~~ or unusual behaviors without first
2039 being examined by a physician who in his or her best judgment
2040 determines that such behaviors are not organically caused.

2041 1. Treatment programs involving the use of noxious or
2042 painful stimuli shall be prohibited.

2043 ~~2.~~ All alleged violations of this paragraph shall be
2044 reported immediately to the chief administrative officer of the

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2045 facility and ~~or the district administrator,~~ the agency head, ~~and~~
2046 ~~the Florida local advocacy council.~~ A thorough investigation of
2047 each incident shall be conducted and a written report of the
2048 finding and results of such investigation shall be submitted to
2049 the chief administrative officer of the facility ~~or the district~~
2050 ~~administrator~~ and to the agency head within 24 hours of the
2051 occurrence or discovery of the incident.

2052 ~~2.3-~~ The agency shall adopt by rule a system for the
2053 oversight of behavioral programs. Such system shall establish
2054 guidelines and procedures governing the design, approval,
2055 implementation, and monitoring of all behavioral programs
2056 involving clients. The system shall ensure statewide and local
2057 review by committees of professionals certified as behavior
2058 analysts pursuant to s. 393.17. No behavioral program shall be
2059 implemented unless reviewed according to the rules established
2060 by the agency under this section. ~~Nothing stated in this section~~
2061 ~~shall prohibit the review of programs by the Florida statewide~~
2062 ~~or local advocacy councils.~~

2063 ~~(h) Each client engaged in work programs which require~~
2064 ~~compliance with federal wage and hour laws shall be provided~~
2065 ~~with minimum wage protection and fair compensation for labor in~~
2066 ~~accordance with the federal wage per hour regulations.~~

2067 ~~(h)-(i)~~ Clients shall have the right to be free from
2068 unnecessary physical, chemical, ~~or~~ mechanical restraint, or
2069 seclusion. Restraints shall be employed only in emergencies or
2070 to protect the client from imminent injury to himself or herself
2071 or others. Restraints shall not be employed as punishment, for
2072 the convenience of staff, or as a substitute for a habilitative

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2073 plan. Restraints shall impose the least possible restrictions
2074 consistent with their purpose and shall be removed when the
2075 emergency ends. Restraints shall not cause physical injury to
2076 the client and shall be designed to allow the greatest possible
2077 comfort.

2078 1. Mechanical supports used in normative situations to
2079 achieve proper body position and balance shall not be considered
2080 restraints, but shall be prescriptively designed and applied
2081 under the supervision of a qualified professional with concern
2082 for principles of good body alignment, circulation, and
2083 allowance for change of position.

2084 2. Totally enclosed cribs and barred enclosures shall be
2085 considered restraints.

2086 3. Daily reports on the employment of physical, chemical,
2087 or mechanical restraints by those specialists authorized in the
2088 use of such restraints shall be made to the ~~appropriate chief~~
2089 administrator of the facility, and a monthly compilation summary
2090 of such reports shall be relayed to the agency's local area
2091 office ~~district administrator and the Florida local advocacy~~
2092 ~~council~~. The monthly reports shall summarize all such cases of
2093 restraints, the type used, the duration of usage, and the
2094 reasons therefor. The area offices shall submit monthly
2095 summaries of these reports to the agency's central office.
2096 ~~Districts shall submit districtwide quarterly reports of these~~
2097 ~~summaries to the state Developmental Disabilities Program~~
2098 ~~Office.~~

2099 4. The agency shall adopt by rule standards and procedures
2100 relating to the use of restraints and seclusion ~~post a copy of~~

2101 ~~the rules adopted under this section in each living unit of~~
 2102 ~~residential facilities.~~ A copy of the rules adopted under this
 2103 paragraph section shall be given to all staff members of
 2104 licensed facilities and programs licensed under this chapter and
 2105 made a part of all staff preservice and inservice training
 2106 programs.

2107 (i)~~(j)~~¹. Each client shall have a central record which
 2108 shall be established by the agency at the time an individual is
 2109 determined eligible for services and maintained by the client's
 2110 support coordinator and which contains information pertaining to
 2111 admission, diagnosis and treatment history, present condition,
 2112 and such other information as may be required. The central
 2113 record shall remain the property of the agency. ~~The record shall~~
 2114 ~~include data pertaining to admission and such other information~~
 2115 ~~as may be required under rules of the agency.~~

2116 1.2. Unless waived by the client, if competent, or the
 2117 client's parent or legal guardian if the client is incompetent,
 2118 the client's central record shall be confidential and exempt
 2119 from the provisions of s. 119.07(1), and no part of it shall be
 2120 released except:

2121 a. The record may be released to physicians, attorneys,
 2122 and government agencies having need of the record to aid the
 2123 client, as designated by the client, if competent, or the
 2124 client's parent or legal guardian, if the client is incompetent.

2125 b. The record shall be produced in response to a subpoena
 2126 or released to persons authorized by order of court, excluding
 2127 matters privileged by other provisions of law.

2128 c. The record or any part thereof may be disclosed to a

2129 | qualified researcher, a staff member of the facility where the
 2130 | client resides, or an employee of the agency when the
 2131 | administrator of the facility or the director of the agency
 2132 | deems it necessary for the treatment of the client, maintenance
 2133 | of adequate records, compilation of treatment data, or
 2134 | evaluation of programs.

2135 | d. Information from the records may be used for
 2136 | statistical and research purposes if the information is
 2137 | abstracted in such a way to protect the identity of individuals.

2138 | ~~3. All central records for each client in residential~~
 2139 | ~~facilities shall be kept on uniform forms distributed by the~~
 2140 | ~~agency. The central record shall accurately summarize each~~
 2141 | ~~client's history and present condition.~~

2142 | ~~2.4.~~ The client, if competent, or the client's parent or
 2143 | legal guardian if the client is incompetent, shall be supplied
 2144 | with a copy of the client's central record upon request.

2145 | (j) ~~(k)~~ Each client residing in a residential facility or
 2146 | who is eligible to vote in public elections according to the
 2147 | laws of the state shall have the right to vote. Facilities
 2148 | operators shall arrange the means to exercise the client's right
 2149 | to vote.

2150 | (7) RESIDENT GOVERNMENT.--Each residential facility
 2151 | providing services to clients who are desirous and capable of
 2152 | participating shall initiate and develop a program of resident
 2153 | government to hear the views and represent the interests of all
 2154 | clients served by the facility. The resident government shall be
 2155 | composed of residents elected by other residents and, staff
 2156 | advisers skilled in the administration of community

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2157 | organizations, and, at the option of the residential government,
 2158 | representatives of advocacy groups for persons with
 2159 | developmental disabilities from the community ~~a representative~~
 2160 | ~~of the Florida local advocacy council. The resident government~~
 2161 | ~~shall work closely with the Florida local advocacy council and~~
 2162 | ~~the district administrator to promote the interests and welfare~~
 2163 | ~~of all residents in the facility.~~

2164 | Section 29. Section 393.135, Florida Statutes, is amended
 2165 | to read:

2166 | 393.135 Sexual misconduct prohibited; reporting required;
 2167 | penalties.--

2168 | (1) As used in this section, the term:

2169 | (a) "Covered person" means ~~"Employee" includes~~ any paid
 2170 | staff member, volunteer, or intern of the agency, ~~or the~~
 2171 | ~~department;~~ any person under contract with the agency, ~~or the~~
 2172 | ~~department;~~ and any person providing care or support to a client
 2173 | on behalf of the agency ~~department~~ or its providers.

2174 | (b) "Sexual activity" means:

2175 | 1. Fondling the genital area, groin, inner thighs,
 2176 | buttocks, or breasts of a person.

2177 | 2. The oral, anal, or vaginal penetration by or union with
 2178 | the sexual organ of another or the anal or vaginal penetration
 2179 | of another by any other object.

2180 | 3. Intentionally touching in a lewd or lascivious manner
 2181 | the breasts, genitals, the genital area, or buttocks, or the
 2182 | clothing covering them, of a person, or forcing or enticing a
 2183 | person to touch the perpetrator.

2184 | 4. Intentionally masturbating in the presence of another

2185 person.

2186 5. Intentionally exposing the genitals in a lewd or
 2187 lascivious manner in the presence of another person.

2188 6. Intentionally committing any other sexual act that does
 2189 not involve actual physical or sexual contact with the victim,
 2190 including, but not limited to, sadomasochistic abuse, sexual
 2191 bestiality, or the simulation of any act involving sexual
 2192 activity in the presence of a victim.

2193 (c) "Sexual misconduct" means any sexual activity between
 2194 a covered person ~~an employee~~ and a client to whom the covered
 2195 person renders services, care, or support on behalf of the
 2196 agency or its providers, or between the covered person and
 2197 another client who lives in the same home as the client to whom
 2198 the covered person is rendering the services, care, or support,
 2199 regardless of the consent of the client. The term does not
 2200 include an act done for a bona fide medical purpose or an
 2201 internal search conducted in the lawful performance of duty by
 2202 an employee.

2203 (2) A covered person ~~An employee~~ who engages in sexual
 2204 misconduct with an individual with a developmental disability
 2205 who:

2206 ~~(a) Is in the custody of the department;~~

2207 (a)(b) Resides in a residential facility, including any
 2208 comprehensive transitional education program, developmental
 2209 disabilities ~~services~~ institution, foster care facility, group
 2210 home facility, intermediate care facility for persons with
 2211 developmental disabilities ~~the developmentally disabled~~, or
 2212 residential habilitation center; or

2213 (b) ~~(e)~~ Is eligible to receive ~~Receives~~ services from the
 2214 agency under this chapter ~~a family care program,~~
 2215
 2216 commits a felony of the second degree, punishable as provided in
 2217 s. 775.082, s. 775.083, or s. 775.084. A covered person ~~An~~
 2218 ~~employee~~ may be found guilty of violating this subsection
 2219 without having committed the crime of sexual battery.

2220 (3) The consent of the client to sexual activity is not a
 2221 defense to prosecution under this section.

2222 (4) This section does not apply to a covered person ~~an~~
 2223 ~~employee~~ who:

2224 ~~(a)~~ is legally married to the client, ~~or~~
 2225 ~~(b)~~ ~~Has no reason to believe that the person with whom the~~
 2226 ~~employee engaged in sexual misconduct is a client receiving~~
 2227 ~~services as described in subsection (2).~~

2228 (5) A covered person ~~An employee~~ who witnesses sexual
 2229 misconduct, or who otherwise knows or has reasonable cause to
 2230 suspect that a covered person has engaged in sexual misconduct,
 2231 shall immediately report the incident to the ~~department's~~
 2232 central abuse hotline of the Department of Children and Family
 2233 Services and to the appropriate local law enforcement agency.
 2234 Such employee shall also prepare, date, and sign an independent
 2235 report that specifically describes the nature of the sexual
 2236 misconduct, the location and time of the incident, and the
 2237 persons involved. The employee shall deliver the report to the
 2238 supervisor or program director, who is responsible for providing
 2239 copies to the agency's local office and the agency's
 2240 ~~department's~~ inspector general. ~~The inspector general shall~~

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2241 ~~immediately conduct an appropriate administrative investigation,~~
 2242 ~~and, if there is probable cause to believe that sexual~~
 2243 ~~misconduct has occurred, the inspector general shall notify the~~
 2244 ~~state attorney in the circuit in which the incident occurred.~~

2245 (6) (a) Any person who is required to make a report under
 2246 this section and who knowingly or willfully fails to do so, or
 2247 who knowingly or willfully prevents another person from doing
 2248 so, commits a misdemeanor of the first degree, punishable as
 2249 provided in s. 775.082 or s. 775.083.

2250 (b) Any person who knowingly or willfully submits
 2251 inaccurate, incomplete, or untruthful information with respect
 2252 to a report required under this section commits a misdemeanor of
 2253 the first degree, punishable as provided in s. 775.082 or s.
 2254 775.083.

2255 (c) Any person who knowingly or willfully coerces or
 2256 threatens any other person with the intent to alter testimony or
 2257 a written report regarding an incident of sexual misconduct
 2258 commits a felony of the third degree, punishable as provided in
 2259 s. 775.082, s. 775.083, or s. 775.084.

2260 (7) The provisions and penalties set forth in this section
 2261 are in addition to any other civil, administrative, or criminal
 2262 action provided by law which may be applied against a covered
 2263 person ~~an employee~~.

2264 Section 30. Section 393.15, Florida Statutes, is amended
 2265 to read:

2266 393.15 Legislative intent; Community Resources Development
 2267 Loan Program Trust Fund.--

2268 (1) The Legislature finds and declares that the

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2269 development of community-based treatment facilities for persons
 2270 with developmental disabilities ~~who are developmentally disabled~~
 2271 is desirable and recommended and should be encouraged and
 2272 fostered by the state. The Legislature further recognizes that
 2273 the development of such facilities is financially difficult for
 2274 private individuals, due to initial expenditures required to
 2275 adapt existing structures to the special needs of persons with
 2276 developmental disabilities ~~who are developmentally disabled~~ who
 2277 may be served in community-based foster care, group home,
 2278 developmental training, and supported employment programs.
 2279 Therefore, ~~it is the intent of the Legislature~~ intends that the
 2280 agency by this act to develop and implement a loan program trust
 2281 fund to provide support and encouragement in the establishment
 2282 of community-based foster care, group home, developmental
 2283 training, and supported employment programs for persons with
 2284 developmental disabilities ~~who are developmentally disabled~~.

2285 ~~(2) As used in this section, a foster care, group home,~~
 2286 ~~developmental training, or supported employment program may not~~
 2287 ~~be a for-profit corporation, but may be a nonprofit corporation,~~
 2288 ~~partnership, or sole proprietorship.~~

2289 (2) ~~(3)~~ There is created a Community Resources Development
 2290 Loan Program in Trust Fund in the State Treasury to be used by
 2291 the agency for the purpose of granting loans to eligible
 2292 programs for the initial costs of development of the programs.
 2293 In order to be eligible, a foster home, group home,
 2294 developmental training program, or supported employment program
 2295 must:

2296 (a) Serve persons with developmental disabilities.

2297 (b) Be a nonprofit corporation, a partnership, or a sole
 2298 proprietorship.

2299 (c) Be Loans shall be made only to those facilities which
 2300 are in compliance with the zoning regulations of the local
 2301 community.

2302 (3) Loans may be made to pay for the costs of development,
 2303 may include structural modification, the purchase of equipment
 2304 and fire and safety devices, preoperational staff training, and
 2305 the purchase of insurance. Such costs shall not include the
 2306 actual construction of a facility nor be in lieu of payment for
 2307 maintenance, client services, or care provided.

2308 (4) The agency may grant to an eligible program a lump-sum
 2309 loan in one payment not to exceed the cost ~~to the program~~ of
 2310 providing 2 months' services, care, or maintenance to each
 2311 person with developmental disabilities ~~who is developmentally~~
 2312 ~~disabled~~ to be placed in the program by the agency, or the
 2313 actual cost of firesafety renovations to a facility required by
 2314 the state, whichever is greater. ~~Loans granted to programs shall~~
 2315 ~~not be in lieu of payment for maintenance, services, or care~~
 2316 ~~provided, but shall stand separate and distinct.~~

2317 (5) The agency shall adopt rules, as provided in chapter
 2318 120, to determine the criteria standards under which a program
 2319 shall be eligible to receive a loan ~~as provided in this section~~
 2320 and the methodology ~~criteria~~ for the equitable allocation of
 2321 loan ~~trust~~ funds when eligible applications exceed the funds
 2322 available.

2323 (6) ~~(5)~~ Any loan granted by the agency under this section
 2324 shall be repaid by the program within 5 years and the amount

2325 paid shall be deposited in the agency's Administrative Trust
 2326 Fund. Money repaid shall be used to fund new loans. A program
 2327 that operates as a nonprofit corporation meeting the
 2328 requirements of s. 501(c)(3) of the Internal Revenue Code, and
 2329 that seeks forgiveness of its loan shall submit to the agency an
 2330 annual a statement setting forth the service it has provided
 2331 during the year together with such other information as the
 2332 agency by rule shall require, and, upon approval of each such
 2333 annual statement, the agency may ~~shall~~ forgive up to 20 percent
 2334 of the principal of any such loan ~~granted after June 30, 1975.~~

2335 (7) ~~(6)~~ If any program that has received a loan under this
 2336 section ceases to accept, or provide care, services, or
 2337 maintenance to persons placed in the program by the department,
 2338 or if such program files papers of bankruptcy, at that point in
 2339 time the loan shall become an interest-bearing loan at the rate
 2340 of 5 percent per annum on the entire amount of the initial loan
 2341 which shall be repaid within a 1-year period from the date on
 2342 which the program ceases to provide care, services, or
 2343 maintenance, or files papers in bankruptcy, and the amount of
 2344 the loan due plus interest shall constitute a lien in favor of
 2345 the state against all real and personal property of the program.
 2346 The lien shall be perfected by the appropriate officer of the
 2347 agency by executing and acknowledging a statement of the name of
 2348 the program and the amount due on the loan and a copy of the
 2349 promissory note, which shall be recorded by the agency with the
 2350 clerk of the circuit court in the county wherein the program is
 2351 located. If the program has filed a petition for bankruptcy, the
 2352 agency shall file and enforce the lien in the bankruptcy

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2353 proceedings. Otherwise, the lien shall be enforced in the manner
2354 provided in s. 85.011. All funds received by the agency from the
2355 enforcement of the lien shall be deposited in the agency's
2356 Administrative Community Resources Development Trust Fund and
2357 used to fund new loans.

2358 Section 31. Section 393.17, Florida Statutes, is amended
2359 to read:

2360 393.17 Certification Behavioral programs; certification of
2361 behavior analysts.--

2362 (1) The agency may establish by rule pursuant to ss.
2363 120.536(1) and 120.54 certification programs in order to ensure
2364 that only qualified employees and service providers provide
2365 client services. Such rules shall include criteria for scope of
2366 practice, qualifications for certification, including training
2367 and testing requirements, continuing education requirements for
2368 ongoing certification, standards of performance, and
2369 decertification procedures to be used to determine when an
2370 individual no longer meets the qualifications for certification
2371 or performance standards and to implement the decertification of
2372 an employee or service provider.

2373 (2) As provided in subsection (1), the agency shall
2374 establish a certification program for behavior analysts and may
2375 recognize the certification of behavior analysts awarded by a
2376 nonprofit corporation that adheres to the national standards for
2377 professional credentialing boards and whose mission is to meet
2378 the professional credentialing needs identified by behavior
2379 analysts, state governments, and consumers of behavior analysis
2380 services and whose work has the support of the Association for

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2381 ~~Behavior Analysis International~~. The certification program
 2382 recognized by the agency must undergo regular psychometric
 2383 review and validation, pursuant to a job analysis survey of the
 2384 profession and standards established by content experts in the
 2385 field.

2386 Section 32. Section 393.18, Florida Statutes, is created
 2387 to read:

2388 393.18 Comprehensive transitional education program.--A
 2389 comprehensive transitional education program is a group of
 2390 jointly operating centers or units, the collective purpose of
 2391 which is to provide a sequential series of educational care,
 2392 training, treatment, habilitation, and rehabilitation services
 2393 to persons with developmental disabilities and severe or
 2394 moderate maladaptive behaviors. However, nothing in this section
 2395 shall require such programs to provide services only to persons
 2396 with developmental disabilities. All such services shall be
 2397 temporary in nature and delivered in a structured residential
 2398 setting with the primary goal of incorporating the principle of
 2399 self-determination in establishing permanent residence for
 2400 persons with maladaptive behaviors in facilities not associated
 2401 with the comprehensive transitional education program. The staff
 2402 shall include psychologists and teachers who shall be available
 2403 to provide services in each component center or unit of the
 2404 program. The psychologists shall be individuals who are licensed
 2405 in this state and certified as behavior analysts in this state
 2406 or who are certified as behavior analysts pursuant to s. 393.17.

2407 (1) Comprehensive transitional education programs shall
 2408 include a minimum of two component centers or units, one of

2409 which shall be either an intensive treatment and educational
 2410 center or a transitional training and educational center, which
 2411 provide services to persons with maladaptive behaviors in the
 2412 following sequential order:

2413 (a) Intensive treatment and education center.--This
 2414 component is a self-contained residential unit that provides
 2415 intensive psychological and educational programming for persons
 2416 with severe maladaptive behaviors whose behaviors preclude
 2417 placement in a less restrictive environment due to the threat of
 2418 danger or injury to themselves or others.

2419 (b) Transitional training and education center.--This
 2420 component is a residential unit for persons with moderate
 2421 maladaptive behaviors that provides concentrated psychological
 2422 and educational programming emphasizing a transition toward a
 2423 less restrictive environment.

2424 (c) Community transition residence.--This component is a
 2425 residential center that provides educational programs and the
 2426 support services, training, and care needed to assist persons
 2427 with maladaptive behaviors to avoid regression to more
 2428 restrictive environments while preparing them for more
 2429 independent living. Continuous-shift staff shall be required for
 2430 this component.

2431 (d) Alternative living center.--This component is a
 2432 residential unit that provides an educational and family living
 2433 environment for persons with maladaptive behaviors in a
 2434 moderately unrestricted setting. Residential staff shall be
 2435 required for this component.

2436 (e) Independent living education center.--This component

2437 is a facility that provides a family living environment for
 2438 persons with maladaptive behaviors in a largely unrestricted
 2439 setting which includes education and monitoring appropriate to
 2440 support the development of independent living skills.

2441 (2) Components of a comprehensive transitional education
 2442 program are subject to the license issued under s. 393.067 to a
 2443 comprehensive transitional education program and may be located
 2444 on either single or multiple sites.

2445 (3) A comprehensive transitional education program shall
 2446 develop individual education plans for each person with
 2447 maladaptive behaviors who receives services therein. Such
 2448 individual education plans shall be developed in accordance with
 2449 the criteria specified in 20 U.S.C. ss. 401 et seq., and 34
 2450 C.F.R. part 300.

2451 (4) The total number of persons with maladaptive behaviors
 2452 who are provided services in a comprehensive transitional
 2453 education program shall not exceed 120 residents.

2454 Section 33. Section 393.501, Florida Statutes, is amended
 2455 to read:

2456 393.501 Rulemaking.--

2457 (1) The agency ~~may shall~~ adopt rules pursuant to ss.
 2458 120.536(1) and 120.54 to carry out its statutory duties the
 2459 ~~provisions of this chapter.~~

2460 (2) Such rules shall address the number of facilities on a
 2461 single ~~lot parcel~~ or on adjacent lots parcels of land, ~~and in~~
 2462 ~~addition, for ICF/MR, the rate and location of facility~~
 2463 ~~development and level of care.~~ In adopting such rules, an
 2464 alternative living center and an independent living education

2465 center, as described in s. 393.18, shall be subject to the
 2466 provisions of s. 419.001, except that such centers shall be
 2467 exempt from the 1,000-foot-radius requirement of s. 419.001(2)
 2468 if:

2469 (a) The centers are located on a site zoned in a manner
 2470 that permits all the components of a comprehensive transition
 2471 education center to be located on the site; or

2472 (b) There are no more than three such centers within a
 2473 radius of 1,000 feet.

2474 Section 34. Section 393.506, Florida Statutes, is amended
 2475 to read:

2476 393.506 Administration of medication.--

2477 (1) Notwithstanding the provisions of part I of chapter
 2478 464, ~~the Nurse Practice Act, unlicensed~~ direct care providers
 2479 who are not otherwise licensed to administer prescription
 2480 medications may supervise the self-administration of or services
 2481 staff providing services to persons with developmental
 2482 disabilities may administer oral, transdermal, ophthalmic, otic,
 2483 rectal, inhaled, or topical prescription medications to agency
 2484 clients as provided in this section and agency rule.

2485 ~~(a) For day programs, as defined in s. 393.063, the~~
 2486 ~~director of the facility or program shall designate in writing~~
 2487 ~~unlicensed direct care services staff who are eligible to be~~
 2488 ~~trained to assist in the administration of or to administer~~
 2489 ~~medication.~~

2490 ~~(b) For intermediate care facilities for the~~
 2491 ~~developmentally disabled licensed pursuant to part XI of chapter~~
 2492 ~~400, unlicensed staff designated by the director may provide~~

2493 ~~medication assistance under the general supervision of a~~
 2494 ~~registered nurse licensed pursuant to chapter 464.~~

2495 (2) In order to supervise the self-administration of or
 2496 administer medications as provided in subsection (1), unlicensed
 2497 direct care providers must satisfactorily complete a medication-
 2498 administration training course that meets curriculum
 2499 requirements specified in agency rule and have been determined
 2500 by a registered nurse licensed under chapter 464 to be competent
 2501 to supervise the self-administration of or administer
 2502 medications to agency clients in a safe and sanitary manner.
 2503 Competency must be assessed and validated at least annually in
 2504 an onsite client setting, and a registered nurse licensed under
 2505 chapter 464 must observe the direct care provider correctly
 2506 administer medication to a client. Standards and procedures for
 2507 the safe supervision of self-administration and administration
 2508 of medication shall be established by agency rule. Each
 2509 ~~facility, institution, or program must include in its policies~~
 2510 ~~and procedures a plan for training designated staff to ensure~~
 2511 ~~the safe handling, storage, and administration of prescription~~
 2512 ~~medication. These policies and procedures must be approved by~~
 2513 ~~the agency before unlicensed direct care services staff assist~~
 2514 ~~with medication.~~

2515 (3) Unlicensed direct care providers may only supervise or
 2516 administer medications to agency clients who have been informed
 2517 of and have consented to the supervision of self-administration
 2518 or the administration of medication by an unlicensed person.
 2519 Such informed consent shall be based on a description of the
 2520 medication routes and procedures that the direct care provider

2521 is authorized to supervise or administer and verification that
 2522 only those providers that have received appropriate training and
 2523 have been validated as competent may provide this assistance.

2524 For the purpose of this section, the term "medication routes"
 2525 means the method by which a medication is administered. The
 2526 ~~policies and procedures must include, at a minimum, the~~
 2527 ~~following provisions:~~

2528 ~~(a) An expressed and informed consent for each client.~~

2529 ~~(b) The director of the facility, program, or provider~~
 2530 ~~must maintain a copy of the written prescription, and that~~
 2531 ~~prescription must include the name of the medication, the dosage~~
 2532 ~~and administration schedule, the reason for the prescription,~~
 2533 ~~and the termination date.~~

2534 ~~(c) Each prescribed medication shall be kept in its~~
 2535 ~~original container and in a secure location.~~

2536 ~~(4) The training required in this section shall be~~
 2537 ~~conducted by a registered nurse or a physician licensed pursuant~~
 2538 ~~to chapter 458 or chapter 459.~~

2539 Section 35. Section 393.507, Florida Statutes, is created
 2540 to read:

2541 393.507 Citizen support organization.--The Legislature
 2542 recognizes that many persons with disabilities and their
 2543 families are often isolated and have few opportunities to meet
 2544 and interact with similarly situated persons and families in an
 2545 informal, supportive, and congenial atmosphere. The Legislature
 2546 also finds that the opportunity for exposure to a wide range of
 2547 organizations, experts, state agency partners, exhibits, and
 2548 providers with information about disability resources is often

2549 limited as well. Such exposure provides informational and
 2550 educational opportunities that help educate and empower persons
 2551 with disabilities and their families and encourages self-help
 2552 and independence, self-advocacy, and participation and promotion
 2553 of events and activities which directly affect the interests and
 2554 needs of persons with disabilities. The Legislature finds,
 2555 therefore, that it is in the public interest to facilitate such
 2556 networking through the establishment of a citizen support
 2557 organization dedicated to promoting and providing such
 2558 opportunities.

2559 (1) The agency may establish a citizen support
 2560 organization that is:

2561 (a) A not for profit corporation, as defined in s.
 2562 501(c)(6) of the Internal Revenue Code of 1986, as amended, that
 2563 is incorporated under the provisions of chapter 617 and on file
 2564 with the Department of State. The not for profit corporation
 2565 shall provide the agency with copies of the organization's
 2566 federal Internal Revenue Service Application for Recognition of
 2567 Exemption Form 1023, federal Internal Revenue Service Return of
 2568 Organization Exempt from Income Tax Form 990, and a current
 2569 certificate of status obtained from the Department of State
 2570 under s. 617.0128 certifying that the organization is duly
 2571 incorporated under the law of this state.

2572 (b) Organized and operated to conduct programs and
 2573 activities; raise funds; request and receive grants, gifts, and
 2574 bequests of money; acquire, receive, hold, invest, and
 2575 administer, in its own name, securities, funds, or other
 2576 property, real or personal; exercise all other corporate powers

2577 specified in chapter 617; and make expenditures to or for the
2578 direct or indirect benefit of the agency and the populations the
2579 agency serves.

2580 (c) Operating under articles of incorporation and bylaws,
2581 and any amendments thereto, approved by the agency, consistent
2582 with the goals of this section, and in the best interest of the
2583 state, as determined by the agency.

2584 (d) Not considered an agency for the purposes of chapters
2585 120, 216, and 287; ss. 255.21, 255.25, and 255.254, relating to
2586 leasing of buildings; ss. 283.33 and 283.35, relating to bids
2587 for printing; s. 215.31, relating to the deposit of state funds;
2588 and parts I, II, and IV-VIII of chapter 112, relating to public
2589 employment. However, before the citizen support organization may
2590 enter into a contract or agreement without competitive bidding,
2591 the organization shall file a statement of the conditions and
2592 circumstances with the inspector general of the agency
2593 justifying such contract or agreement.

2594 (2) The citizen support organization shall be governed by
2595 a board of directors, managed by an executive director, and
2596 staffed by employees and volunteers as are deemed necessary and
2597 appropriate to administer the purposes of the organization. The
2598 executive director shall serve at the pleasure of the board.

2599 (a) The director of the agency, or his or her designee,
2600 shall be the president of the board.

2601 (b) In addition to the board president, the board of
2602 directors shall consist of a minimum of six members appointed by
2603 the president. The board members may be selected from a list of
2604 nominees submitted by the executive director of the

2605 organization. Priority for consideration shall be given to
 2606 individuals who have an interest in service to persons with
 2607 disabilities and who:

2608 1. Have skills in foundation work or other fundraising
 2609 activities, financial consulting, investment banking, or other
 2610 related experience; or

2611 2. Have experience in policymaking or management-level
 2612 positions related to persons with disabilities or have otherwise
 2613 distinguished themselves in the field of business, industry, or
 2614 disability services.

2615 3. Are persons with disabilities or their family members
 2616 who have a strong interest and experience in promoting active
 2617 participation in disability issues.

2618 (c) An employee or a board member may not receive a
 2619 commission, fee, or financial benefit in connection with any
 2620 activity carried out by the citizen support organization or be a
 2621 business associate or close relative of any individual, firm, or
 2622 organization in a position to receive a commission, fee, or
 2623 financial benefit in connection with any activity carried out by
 2624 the organization.

2625 (d) The executive director or the board may remove any
 2626 member for cause and vacancies shall be filled as they occur.
 2627 The term "for cause" includes, but is not limited to,
 2628 malfeasance, misfeasance, neglect of duty, incompetence, or
 2629 permanent inability to perform official duties or for pleading
 2630 nolo contendere to, or being found guilty of, a crime.

2631 (e) A board member's term shall be 4 years. No board
 2632 member may serve more than two full consecutive terms.

2633 (f) Board members shall not receive compensation, but are
 2634 entitled to reimbursement for per diem and travel expenses in
 2635 accordance with s. 112.061.

2636 (3) The agency may authorize the citizen support
 2637 organization to use the fixed property, facilities, and
 2638 administrative and operational support services of the agency,
 2639 subject to the provisions of this section. Such use must be
 2640 directly in keeping with the approved purposes of the citizen
 2641 support organization and may not be made at times or places that
 2642 would unreasonably interfere with the operation of the agency or
 2643 the general public's use of agency facilities for established
 2644 purposes. For the purposes of this subsection, the term
 2645 "administrative and operational support services" includes
 2646 personnel, purchasing, information technology support, legal
 2647 support, and office space and utilities.

2648 (4) The citizen support organization shall operate under
 2649 written contract with the agency. The contract must provide for:

2650 (a) Oversight by the agency.

2651 (b) Submission of an annual budget for approval by the
 2652 agency in a format specified by the agency.

2653 (c) The release and conditions of the expenditure of any
 2654 state revenues.

2655 (d) The conditions which the citizen-support organization
 2656 must comply with in order to use the property, facilities, or
 2657 administrative and operational services of the agency, which
 2658 must include arrangement for the appropriate reimbursement for
 2659 colocation costs, office space, and other operating expenses.

2660 The agency may in its discretion provide such services at no
 2661 cost to the organization.

2662 (e) Assurance that the citizen support organization will
 2663 provide equal employment opportunities to all persons regardless
 2664 of race, religion, sex, age, disability, or national origin and
 2665 will not expend any funds, regardless of the source, to purchase
 2666 membership in, or goods and services from, any organization that
 2667 discriminates on the basis of race, religion, sex, age,
 2668 disability, or national origin.

2669 (f) The reversion to the agency of moneys and property
 2670 held in trust by the citizen support organization if the
 2671 organization is no longer approved to operate for the agency.

2672 (g) Requiring the fiscal year of the citizen support
 2673 organization to begin July 1 of each year and end June 30 of the
 2674 following year.

2675 (h) Requiring the provision of quarterly reports to the
 2676 agency on current activities, unaudited financial statements of
 2677 the sources and uses of public and private funds, and an annual
 2678 report, all of which shall be published on the organization's
 2679 website. The annual report shall provide:

2680 1. A summary of its assets and liabilities annually at the
 2681 end of its most recent fiscal year. The audited report required
 2682 by s. 215.981(2) shall meet this requirement.

2683 2. A report on the organization's activities,
 2684 accomplishments, and progress towards meeting the organization's
 2685 goals and objectives as set forth in this section.

2686 3. Provide other measures of accountability as requested
 2687 by the agency, including:

2688 a. The disclosure of material provisions of the contract
 2689 and the distinction between the agency and the citizen support
 2690 organization to donors of gifts, contributions, or bequests, as
 2691 well as on all promotional and fundraising publications.

2692 b. The terms of any other activity that the agency may
 2693 contract with the organization to perform. Notwithstanding
 2694 chapter 287, the agency may use a sole source contract with the
 2695 organization to perform activities that are consistent with the
 2696 purposes for which the citizen support organization was created
 2697 as specified in this section.

2698 (5) Moneys of the citizen support organization shall be
 2699 held in a separate depository account, outside of the State
 2700 Treasury, in the name of the citizen support organization and
 2701 subject to the provisions of the contract with the agency. Such
 2702 moneys may include private donations, income derived from
 2703 fundraising activities, educational and training fees, and
 2704 grants applied for and received by the organization. The
 2705 organization shall separately account for public funds and
 2706 private funds deposited into the corporation's depository
 2707 account. The organization is prohibited from giving, either
 2708 directly or indirectly, any gift to a political committee or
 2709 committee of continuous existence as defined in s. 106.011.

2710 (6) The citizen support organization shall provide for an
 2711 annual financial audit in accordance with s. 215.981. The annual
 2712 audit shall be presented to the agency and the Auditor General.
 2713 The Auditor General shall have the authority to require and
 2714 receive from the corporation or from its independent auditor any

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2715 detail or supplemental data relating to the operation of the
2716 organization.

2717 (7) The purpose or activities of the citizen support
2718 organization shall be to encourage, support, and assist persons
2719 with developmental disabilities and their families to directly
2720 communicate and collaborate with each other, advocacy and
2721 service organizations, experts, state agency partners,
2722 caregivers, and service providers in order to gain knowledge and
2723 skills, exchange information on resources and activities,
2724 provide mutual support, and encourage active participation in
2725 and contribution to events and efforts related to developmental
2726 disability issues. Such activities shall include, but are not
2727 limited to:

2728 (a) Holding an annual convention for persons with
2729 developmental disabilities and their families and caregivers.
2730 The conventions shall be centrally located and, subject to the
2731 availability of resources, may provide stipends based on
2732 financial need to cover the travel and lodging costs of
2733 participants.

2734 (b) Providing seminars and training to individuals, family
2735 members, organizations, providers, and other interested persons
2736 on issues relevant to caregiving, coalition building, disability
2737 policy, and other disability issues and concerns. Such training,
2738 if approved by the agency, may be used to meet continuing
2739 education requirements for direct care providers and other
2740 service providers, and revenues raised from such training may be
2741 used to fund the programs and expenses of the citizen support
2742 organization.

2743 (c) Providing promotional support and general information
2744 to advance better public understanding and appreciation of
2745 persons with developmental disabilities.

2746 (d) Identifying, initiating, coordinating, or implementing
2747 events and programs designed to foster and facilitate increased
2748 interaction and participation by persons with developmental
2749 disabilities and their families and caretakers.

2750 (e) Facilitating mentoring and peer support activities
2751 that encourage and support collaboration and participation.

2752 (f) Encouraging and assisting existing organizations,
2753 associations, and programs to support networking and
2754 participation activities.

2755 (g) Maintaining a website that provides networking
2756 information and links to organizational and community resources.

2757 (h) Recognizing outstanding achievements in and
2758 contributions to participation in developmental disability
2759 activities. The agency is authorized to properly recognize and
2760 honor a private donor by placing a plaque or other appropriate
2761 designation noting the contribution to project or program
2762 facilities or by naming project or program facilities after the
2763 person or organization that provided matching funds.

2764 (8) The Legislature may annually appropriate funds to be
2765 used in conjunction with private donations and fundraising
2766 revenues to support the programs or projects of the citizen
2767 support organization initiated pursuant to this section. In
2768 addition, the organization may receive funds from state agencies
2769 at such times and in such amounts as may be appropriated by the
2770 Legislature or through contracts with state agencies that

2771 achieve the purposes of this section. The organization shall
 2772 make recommendations for state funding to the agency and the
 2773 agency may include requests for funding in the agency's
 2774 legislative budget request, as the director deems appropriate.

2775 Section 36. Subsection (9) of section 397.405, Florida
 2776 Statutes, is amended to read:

2777 397.405 Exemptions from licensure.--The following are
 2778 exempt from the licensing provisions of this chapter:

2779 (9) Facilities licensed under chapter 393 which s. 393.063
 2780 ~~that~~, in addition to providing services to persons with
 2781 developmental disabilities ~~who are developmentally disabled as~~
 2782 ~~defined therein~~, also provide services to persons
 2783 developmentally at risk as a consequence of exposure to alcohol
 2784 or other legal or illegal drugs while in utero.

2785
 2786 The exemptions from licensure in this section do not apply to
 2787 any service provider that receives an appropriation, grant, or
 2788 contract from the state to operate as a service provider as
 2789 defined in this chapter or to any substance abuse program
 2790 regulated pursuant to s. 397.406. Furthermore, this chapter may
 2791 not be construed to limit the practice of a physician licensed
 2792 under chapter 458 or chapter 459, a psychologist licensed under
 2793 chapter 490, or a psychotherapist licensed under chapter 491 who
 2794 provides substance abuse treatment, so long as the physician,
 2795 psychologist, or psychotherapist does not represent to the
 2796 public that he or she is a licensed service provider and does
 2797 not provide services to clients pursuant to part V of this
 2798 chapter. Failure to comply with any requirement necessary to

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2799 maintain an exempt status under this section is a misdemeanor of
 2800 the first degree, punishable as provided in s. 775.082 or s.
 2801 775.083.

2802 Section 37. Subsection (13) of section 400.419, Florida
 2803 Statutes, is amended to read:

2804 400.419 Violations; imposition of administrative fines;
 2805 grounds.--

2806 (13) The agency shall develop and disseminate an annual
 2807 list of all facilities sanctioned or fined \$5,000 or more for
 2808 violations of state standards, the number and class of
 2809 violations involved, the penalties imposed, and the current
 2810 status of cases. The list shall be disseminated, at no charge,
 2811 to the Department of Elderly Affairs, the Department of Health,
 2812 the Department of Children and Family Services, the Agency for
 2813 Persons with Disabilities, the area agencies on aging, the
 2814 Florida Statewide Advocacy Council, and the state and local
 2815 ombudsman councils. The Department of Children and Family
 2816 Services shall disseminate the list to service providers under
 2817 contract to the department who are responsible for referring
 2818 persons to a facility for residency. The agency may charge a fee
 2819 commensurate with the cost of printing and postage to other
 2820 interested parties requesting a copy of this list.

2821 Section 38. Section 400.960, Florida Statutes, is amended
 2822 to read:

2823 400.960 Definitions.--As used in this part, the term:

2824 ~~(1) "Active treatment" means the provision of services by~~
 2825 ~~an interdisciplinary team which are necessary to maximize a~~

2826 ~~client's individual independence or prevent regression or loss~~
 2827 ~~of functional status.~~

2828 (1)~~(2)~~ "Agency" means the Agency for Health Care
 2829 Administration.

2830 (2)~~(3)~~ "Autism" means a pervasive, neurologically based
 2831 developmental disability of extended duration which causes
 2832 severe learning, communication, and behavior disorders with age
 2833 of onset during infancy or childhood. Individuals with autism
 2834 exhibit impairment in reciprocal social interaction, impairment
 2835 in verbal and nonverbal communication and imaginative ability,
 2836 and a markedly restricted repertoire of activities and
 2837 interests.

2838 (3)~~(4)~~ "Cerebral palsy" means a group of disabling
 2839 symptoms of extended duration which results from damage to the
 2840 developing brain occurring before, during, or after birth and
 2841 resulting in the loss or impairment of control over voluntary
 2842 muscles. The term does not include those symptoms or impairments
 2843 resulting solely from a stroke.

2844 (4)~~(5)~~ "Client" means any person determined by the agency
 2845 ~~department~~ to be eligible for ~~developmental~~ services.

2846 ~~(6) "Client advocate" means a friend or relative of the~~
 2847 ~~client, or of the client's immediate family, who advocates for~~
 2848 ~~the best interests of the client in any proceedings under this~~
 2849 ~~part in which the client or his or her family has the right or~~
 2850 ~~duty to participate.~~

2851 ~~(7) "Department" means the Department of Children and~~
 2852 ~~Family Services.~~

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2853 (5)~~(8)~~ "Developmental disability" means a disorder or
2854 syndrome that is attributable to retardation, cerebral palsy,
2855 autism, spina bifida, or Prader-Willi syndrome and that
2856 constitutes a substantial handicap that can reasonably be
2857 expected to continue indefinitely.

2858 (6)~~(9)~~ "Direct care ~~service~~ provider" means a person 18
2859 years of age or older who has direct contact with individuals
2860 with developmental disabilities and who is unrelated to the
2861 individuals with developmental disabilities.

2862 ~~(10) "Epilepsy" means a chronic brain disorder of various~~
2863 ~~causes which is characterized by recurrent seizures due to~~
2864 ~~excessive discharge of cerebral neurons. When found concurrently~~
2865 ~~with retardation, autism, or cerebral palsy, epilepsy is~~
2866 ~~considered a secondary disability for which the client is~~
2867 ~~eligible to receive services to ameliorate this condition~~
2868 ~~according to the provisions of this part.~~

2869 ~~(11) "Guardian advocate" means a person appointed by the~~
2870 ~~circuit court to represent a person with developmental~~
2871 ~~disabilities in any proceedings brought pursuant to s. 393.12,~~
2872 ~~and is distinct from a guardian advocate for mentally ill~~
2873 ~~persons under chapter 394.~~

2874 (7)~~(12)~~ "Intermediate care facility for persons with
2875 developmental disabilities ~~the developmentally disabled" means a~~
2876 residential facility licensed and certified in accordance with
2877 state law, and certified by the Federal Government, pursuant to
2878 the Social Security Act, as a provider of Medicaid services to
2879 persons with developmental disabilities ~~who are developmentally~~
2880 ~~disabled.~~

2881 (8) ~~(13)~~ "Prader-Willi syndrome" means an inherited
 2882 condition typified by neonatal hypotonia with failure to thrive,
 2883 hyperphagia, or an excessive drive to eat which leads to
 2884 obesity, usually at 18 to 36 months of age, mild to moderate
 2885 retardation, hypogonadism, short stature, mild facial
 2886 dysmorphism, and a characteristic neurobehavior.

2887 (9) ~~(14)~~ "Retardation" means significantly subaverage
 2888 general intellectual functioning existing concurrently with
 2889 deficits in adaptive behavior and manifested during the period
 2890 from conception to age 18. "Significantly subaverage general
 2891 intellectual functioning," for the purpose of this definition,
 2892 means performance that is two or more standard deviations from
 2893 the mean score on a standardized intelligence test specified in
 2894 rules of the department. "Deficits in adaptive behavior," for
 2895 the purpose of this definition, means deficits in the
 2896 effectiveness or degree with which an individual meets the
 2897 standards of personal independence and social responsibility
 2898 expected of his or her age, cultural group, and community.

2899 (10) ~~(15)~~ "Spina bifida" means a medical diagnosis of spina
 2900 bifida cystica or myelomeningocele.

2901 Section 39. Subsection (3) of section 400.963, Florida
 2902 Statutes, is amended to read:

2903 400.963 Injunctive proceedings.--The Agency for Health
 2904 Care Administration may seek a temporary or permanent injunction
 2905 to:

2906 (3) Terminate the operation of a provider of supports or
 2907 services who has willfully and knowingly refused to comply with
 2908 the screening requirement for direct care ~~service~~ providers or

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2909 | has refused to terminate direct care ~~service~~ providers found not
 2910 | to be in compliance with the requirements for good moral
 2911 | character.

2912 | Section 40. Subsection (1) of section 400.964, Florida
 2913 | Statutes, is amended to read:

2914 | 400.964 Personnel screening requirement.--

2915 | (1) The agency shall require level 2 background screening
 2916 | as provided in chapter 435 for all employees or prospective
 2917 | employees of facilities licensed under this part who are
 2918 | expected to be, or whose responsibilities are such that they
 2919 | would be considered to be, a direct care ~~service~~ provider.

2920 | Section 41. Subsection (2) of section 400.967, Florida
 2921 | Statutes, is amended to read:

2922 | 400.967 Rules and classification of deficiencies.--

2923 | (2) Pursuant to the intention of the Legislature, the
 2924 | agency, in consultation with the Agency for Persons with
 2925 | Disabilities ~~Department of Children and Family Services~~ and the
 2926 | Department of Elderly Affairs, shall adopt and enforce rules to
 2927 | administer this part, which shall include reasonable and fair
 2928 | criteria governing:

2929 | (a) The location and construction of the facility;
 2930 | including fire and life safety, plumbing, heating, cooling,
 2931 | lighting, ventilation, and other housing conditions that will
 2932 | ensure the health, safety, and comfort of residents. The agency
 2933 | shall establish standards for facilities and equipment to
 2934 | increase the extent to which new facilities and a new wing or
 2935 | floor added to an existing facility after July 1, 2000, are
 2936 | structurally capable of serving as shelters only for residents,

2937 | staff, and families of residents and staff, and equipped to be
 2938 | self-supporting during and immediately following disasters. The
 2939 | ~~Agency for Health Care Administration shall work with facilities~~
 2940 | ~~licensed under this part and report to the Governor and the~~
 2941 | ~~Legislature by April 1, 2000, its recommendations for cost-~~
 2942 | ~~effective renovation standards to be applied to existing~~
 2943 | ~~facilities. In making such rules, the agency shall be guided by~~
 2944 | ~~criteria recommended by nationally recognized, reputable~~
 2945 | ~~professional groups and associations having knowledge concerning~~
 2946 | ~~such subject matters.~~ The agency shall update or revise such
 2947 | criteria as the need arises. All facilities must comply with
 2948 | those lifesafety code requirements and building code standards
 2949 | applicable at the time of approval of their construction plans.
 2950 | The agency may require alterations to a building if it
 2951 | determines that an existing condition constitutes a distinct
 2952 | hazard to life, health, or safety. The agency shall adopt fair
 2953 | and reasonable rules setting forth conditions under which
 2954 | existing facilities undergoing additions, alterations,
 2955 | conversions, renovations, or repairs are required to comply with
 2956 | the most recent updated or revised standards.

2957 | (b) The number and qualifications of all personnel,
 2958 | including management, ~~medical~~ nursing, and other personnel,
 2959 | having responsibility for any part of the care given to
 2960 | residents.

2961 | (c) All sanitary conditions within the facility and its
 2962 | surroundings, including water supply, sewage disposal, food
 2963 | handling, and general hygiene, which will ensure the health and
 2964 | comfort of residents.

2965 (d) The equipment essential to the health and welfare of
 2966 the residents.

2967 (e) A uniform accounting system.

2968 (f) The care, treatment, and maintenance of residents and
 2969 measurement of the quality and adequacy thereof.

2970 (g) The preparation and annual update of a comprehensive
 2971 emergency management plan. The agency shall adopt rules
 2972 establishing minimum criteria for the plan after consultation
 2973 with the Department of Community Affairs. At a minimum, the
 2974 rules must provide for plan components that address emergency
 2975 evacuation transportation; adequate sheltering arrangements;
 2976 postdisaster activities, including emergency power, food, and
 2977 water; postdisaster transportation; supplies; staffing;
 2978 emergency equipment; individual identification of residents and
 2979 transfer of records; and responding to family inquiries. The
 2980 comprehensive emergency management plan is subject to review and
 2981 approval by the local emergency management agency. During its
 2982 review, the local emergency management agency shall ensure that
 2983 the following agencies, at a minimum, are given the opportunity
 2984 to review the plan: the Department of Elderly Affairs, the
 2985 Agency for Persons with Disabilities ~~Department of Children and~~
 2986 ~~Family Services~~, the Agency for Health Care Administration, and
 2987 the Department of Community Affairs. Also, appropriate volunteer
 2988 organizations must be given the opportunity to review the plan.
 2989 The local emergency management agency shall complete its review
 2990 within 60 days and either approve the plan or advise the
 2991 facility of necessary revisions.

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2992 (h) Each licensee shall post its license in a prominent
 2993 place that is in clear and unobstructed public view at or near
 2994 the place where residents are being admitted to the facility.

2995 Section 42. Section 402.115, Florida Statutes, is amended
 2996 to read:

2997 402.115 Sharing confidential or exempt
 2998 information.--Notwithstanding any other provision of law to the
 2999 contrary, the Department of Health, ~~and~~ the Department of
 3000 Children and Family Services, and the Agency for Persons with
 3001 Disabilities may share confidential information or information
 3002 exempt from disclosure under chapter 119 on any individual who
 3003 is or has been the subject of a program within the jurisdiction
 3004 of each agency. Information so exchanged remains confidential or
 3005 exempt as provided by law.

3006 Section 43. Section 402.17, Florida Statutes, is amended
 3007 to read:

3008 402.17 Claims for care and maintenance; trust
 3009 property.--The Department of Children and Family Services and
 3010 the Agency for Persons with Disabilities shall protect the
 3011 financial interest of the state with respect to claims which the
 3012 state may have for the care and maintenance of clients of the
 3013 department or agency. The department or the agency shall, as
 3014 trustee, hold in trust and administer money ~~of clients~~ and
 3015 property designated for the personal benefit of clients. The
 3016 department or the agency shall act as trustee of clients' money
 3017 and property entrusted to it in accordance with the usual
 3018 fiduciary standards applicable generally to trustees, and shall
 3019 act to protect both the short-term and long-term interests of

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3020 the clients for whose benefit it is holding such money and
 3021 property.

3022 (1) CLAIMS FOR CARE AND MAINTENANCE.--

3023 (a) The department or the agency shall perform the
 3024 following acts:

3025 1. Receive and supervise the collection of sums due the
 3026 state.

3027 2. Bring any court action necessary to collect any claim
 3028 the state may have against any client, former client, guardian
 3029 of any client or former client, executor or administrator of the
 3030 client's estate, or any person against whom any client or former
 3031 client may have a claim.

3032 3. Obtain a copy of any inventory or appraisal of the
 3033 client's property filed with any court.

3034 4. Obtain from the department's Economic Self-Sufficiency
 3035 Services Program Office a financial status report on any client
 3036 or former client, including the ability of third parties
 3037 responsible for such client to pay all or part of the cost of
 3038 the client's care and maintenance.

3039 5. Petition the court for appointment of a guardian or
 3040 administrator for an otherwise unrepresented client or former
 3041 client should the financial status report or other information
 3042 indicate the need for such action. The cost of any such action
 3043 shall be charged against the assets or estate of the client.

3044 6. Represent the interest of the state in any litigation
 3045 in which a client or former client is a party.

3046 7. File claims with any person, firm, or corporation or
 3047 with any federal, state, county, district, or municipal agency
 3048 on behalf of an unrepresented client.

3049 8. Represent the state in the settlement of the estates of
 3050 deceased clients or in the settlement of estates in which a
 3051 client or a former client against whom the state may have a
 3052 claim has a financial interest.

3053 9. Establish procedures by rule for the use of amounts
 3054 held in trust for the client to pay for the cost of care and
 3055 maintenance, if such amounts would otherwise cause the client to
 3056 become ineligible for services which are in the client's best
 3057 interests.

3058 (b) The department or the agency ~~of Children and Family~~
 3059 ~~Services~~ may charge off accounts if it certifies that the
 3060 accounts are uncollectible after diligent efforts have been made
 3061 to collect them. If the department certifies an account to the
 3062 Department of Financial Services, setting forth the
 3063 circumstances upon which it predicates the uncollectibility, and
 3064 if, pursuant to s. 17.04, the Department of Financial Services
 3065 concurs, the account shall be charged off.

3066 (2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE OR
 3067 BENEFIT OF ANY CLIENT.--The department or the agency shall
 3068 perform the following acts:

3069 (a) Accept and administer in trust, as a trustee having a
 3070 fiduciary responsibility to a client ~~of the department~~, any
 3071 money or other property received for personal use or benefit of
 3072 that client. In the case of children in the legal custody of the
 3073 department, following the termination of the parental rights as

3074 ~~to that client,~~ until the child ~~such client~~ leaves the legal
 3075 custody of the department due to ~~the client's~~ adoption or
 3076 attaining ~~because the client attains~~ the age of 18 or, in the
 3077 case of children who are otherwise in the custody of the
 3078 department, the court having jurisdiction over such child ~~client~~
 3079 shall have jurisdiction, upon application of the department or
 3080 other interested party, to review or approve any extraordinary
 3081 action of the department acting as trustee as to the child's
 3082 ~~client's~~ money or other property. When directed by a court of
 3083 competent jurisdiction, the department may further hold money or
 3084 property of a child ~~person under the age of 18~~ who has been in
 3085 the care, custody, or control of the department and who is the
 3086 subject of a court proceeding during the pendency of that
 3087 proceeding.

3088 (b) Deposit the money in banks qualified as state
 3089 depositories, or in any bank, credit union, or savings and loan
 3090 association authorized to do business in this state, provided
 3091 moneys so deposited or held by such institutions are fully
 3092 insured by a federal depository or share insurance program, or
 3093 an approved state depository or share insurance program, and ~~are~~
 3094 available on demand.

3095 (c) Withdraw the money and use it to meet current needs of
 3096 clients. For purposes of this paragraph, "current needs"
 3097 includes payment of fees assessed under s. 402.33. The amount of
 3098 money withdrawn ~~by the department to meet current needs of a~~
 3099 ~~client~~ shall take into account the need of the department or the
 3100 agency, as the trustee of a client's money and property, to
 3101 provide for the long-term needs of a client, including, but not

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3102 limited to, ensuring that ~~to provide for the need of~~ a client
 3103 under the age of 18 will ~~to~~ have sufficient financial resources
 3104 available to be able to function as an adult upon attaining
 3105 ~~reaching~~ the age of 18, meeting ~~or to meet~~ the special needs of
 3106 a client who has a disability and whose special needs cannot
 3107 otherwise be met by any form of public assistance or family
 3108 resources, or maintaining ~~to maintain~~ the client's eligibility
 3109 for public assistance, including medical assistance, under state
 3110 or federal law.

3111 (d) As trustee, invest in the manner authorized by law for
 3112 fiduciaries money not used for current needs of clients. Such
 3113 investments may include, but shall not be limited to,
 3114 investments in savings share accounts of any credit union
 3115 chartered under the laws of the United States and doing business
 3116 in this state, and savings share accounts of any credit union
 3117 chartered under the laws of this state, provided the credit
 3118 union is insured under the federal share insurance program or an
 3119 approved state share insurance program.

3120 (3) DEPOSIT OF FUNDS RECEIVED.--Funds received by the
 3121 Department of Children and Family Services in accordance with s.
 3122 402.33 shall be deposited into a trust fund for the operation of
 3123 the department.

3124 (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the death
 3125 of any client affected by the provisions of this section, any
 3126 unclaimed money held in trust by the department, the agency, or
 3127 ~~by~~ the Chief Financial Officer for the client ~~him or her~~ shall
 3128 be applied first to the payment of any unpaid claim of the state
 3129 against the client, and any balance remaining unclaimed for a

3130 period of 1 year shall escheat to the state as unclaimed funds
 3131 held by fiduciaries.

3132 (5) LEGAL REPRESENTATION.--To the extent that the budget
 3133 will permit, the Department of Legal Affairs shall furnish the
 3134 legal services to carry out the provisions of this section. Upon
 3135 the request of the department or the agency ~~of Children and~~
 3136 ~~Family Services~~, the various state and county attorneys shall
 3137 assist in litigation within their jurisdiction. The ~~Such~~
 3138 department or the agency may retain legal counsel for necessary
 3139 legal services which cannot be furnished by the Department of
 3140 Legal Affairs and the various state and county attorneys.

3141 (6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.--

3142 (a) The department or the agency ~~of Children and Family~~
 3143 ~~Services~~ may deposit any funds of clients in its possession in
 3144 any bank in the state or may invest or reinvest such funds in
 3145 bonds or obligations of the United States for the payment of
 3146 which the full faith and credit of the United States is pledged.
 3147 For purposes of deposit only, the funds of any client may be
 3148 mingled with the funds of any other clients.

3149 (b) The interest or increment accruing on such funds shall
 3150 be the property of the clients and shall be used or conserved
 3151 for the personal use or benefit of the individual client, in
 3152 accordance with the department's or the agency's fiduciary
 3153 responsibility as a trustee for the money and property of the
 3154 client ~~held by the department~~. Such interest shall not accrue to
 3155 the general welfare of all clients. Whenever any proposed action
 3156 of the department or the agency, acting in its own interest, may
 3157 conflict with the department's or the agency's ~~obligation as a~~

3158 ~~trustee with a~~ fiduciary responsibility to the client, the
 3159 department or the agency shall promptly present the matter to a
 3160 court of competent jurisdiction for the court's determination as
 3161 to what action the department or the agency may take. The
 3162 department and the agency shall establish ~~rules governing~~
 3163 reasonable fees by rule for the cost of administering such
 3164 accounts and for establishing the minimum balance eligible to
 3165 earn interest.

3166 (7) DISPOSITION OF MONEY AND PROPERTY OF CLIENTS UPON
 3167 ATTAINING AGE 18 OR DISCHARGE FROM CARE, CUSTODY, CONTROL, OR
 3168 SERVICES OF THE DEPARTMENT.--

3169 (a) Whenever a client of the department for whom the
 3170 department is holding money or property as a trustee attains the
 3171 age of 18, and thereby will no longer be in the legal custody of
 3172 the department, the department shall promptly disburse such
 3173 money and property ~~of the client the department has held as a~~
 3174 ~~trustee~~ to that client, or as that client directs, as soon as
 3175 practicable ~~once the client attains the age of 18.~~

3176 (b) Whenever a client of the department over the age of 18
 3177 for whom the department is holding money or property as a
 3178 trustee no longer requires the care, custody, control, or
 3179 services of the department, the department shall promptly
 3180 disburse such money and property ~~of the client the department~~
 3181 ~~has held as a trustee~~ to that client, or as that client or a
 3182 court directs, as soon as practicable.

3183 (c) When a client under the age of 18 who has been in the
 3184 legal custody, care, or control of the department and for whom
 3185 the department is holding money or property as a trustee attains

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3186 the age of 18 and has a physical or mental disability, or is
 3187 otherwise incapacitated or incompetent to handle that client's
 3188 own financial affairs, the department shall apply for a court
 3189 order from a court of competent jurisdiction to establish a
 3190 trust on behalf of that client. Where there is no willing
 3191 relative of the client acceptable to the court available to
 3192 serve as trustee of such proposed trust, the court may enter an
 3193 order authorizing the department to serve as trustee of a
 3194 separate trust under such terms and conditions as the court
 3195 determines appropriate to the circumstances.

3196 (d) When a client under the age of 18 who has been in the
 3197 legal custody, care, or control of the department and for whom
 3198 the department is holding money or property as a trustee leaves
 3199 the care, custody, and control of the department due to adoption
 3200 or placement of the client with a relative, or as otherwise
 3201 directed by a court of competent jurisdiction, the department
 3202 shall notify that court of the existence of such ~~the~~ money and
 3203 property ~~in the possession of the department~~ either prior to, or
 3204 promptly after, receiving knowledge of the change of custody,
 3205 care, or control. The department shall apply for an order from
 3206 the court exercising jurisdiction over the client to direct the
 3207 disposition of the money and property belonging to that client.
 3208 The court order may establish a trust in which the money and
 3209 property of the client will be deposited, appoint a guardian of
 3210 a property as to the money or property of the client, or direct
 3211 the creation of a Uniform Transfers Gifts ~~to~~ Minors Act account
 3212 on behalf of that client, ~~as the court finds appropriate and~~

3213 | under the terms and conditions the court determines appropriate
 3214 | to the circumstances.

3215 | Section 44. Section 402.181, Florida Statutes, is amended
 3216 | to read:

3217 | 402.181 State Institutions Claims Program.--

3218 | (1) There is created a State Institutions Claims Program,
 3219 | for the purpose of making restitution for property damages and
 3220 | direct medical expenses for injuries caused by shelter children
 3221 | or foster children, or escapees, inmates, or patients of state
 3222 | institutions under the Department of Children and Family
 3223 | Services, the Department of Health, the Department of Juvenile
 3224 | Justice, ~~or~~ the Department of Corrections, or the Agency for
 3225 | Persons with Disabilities.

3226 | (2) Claims for restitution may be filed with the
 3227 | Department of Legal Affairs at its office in accordance with
 3228 | regulations prescribed by the Department of Legal Affairs. The
 3229 | Department of Legal Affairs shall have full power and authority
 3230 | to hear, investigate, and determine all questions in respect to
 3231 | such claims and is authorized, within the limits of current
 3232 | appropriations, to pay individual claims up to \$1,000 or, with
 3233 | respect to children in foster care and their families,
 3234 | individual claims up to \$1,500. Claims in excess of these
 3235 | amounts shall continue to require legislative approval.

3236 | (3) (a) The Department of Legal Affairs shall make or cause
 3237 | to be made such investigations as it considers necessary in
 3238 | respect to such claims. Hearings shall be held in accordance
 3239 | with chapter 120.

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3240 (b) The Department of Legal Affairs shall work with the
 3241 Department of Children and Family Services, the Department of
 3242 Health, the Department of Juvenile Justice, ~~and~~ the Department
 3243 of Corrections, and the Agency for Persons with Disabilities to
 3244 streamline the process of investigations, hearings, and
 3245 determinations with respect to claims under this section, to
 3246 ensure that eligible claimants receive restitution within a
 3247 reasonable time.

3248 Section 45. Section 402.20, Florida Statutes, is amended
 3249 to read:

3250 402.20 County contracts authorized for services and
 3251 facilities for in mental health and developmental disabilities
 3252 ~~retardation areas.~~--The boards of county commissioners are
 3253 authorized to provide monetary grants and facilities, and to
 3254 enter into renewable contracts, for services and facilities, for
 3255 a period not to exceed 2 years, with public and private
 3256 hospitals, clinics, and laboratories; other state agencies,
 3257 departments, or divisions; the state colleges and universities;
 3258 the community colleges; private colleges and universities;
 3259 counties; municipalities; towns; townships; and any other
 3260 governmental unit or nonprofit organization which provides
 3261 needed facilities for persons with mental illness or
 3262 developmental disabilities ~~the mentally ill or retarded~~. These
 3263 services are hereby declared to be for a public and county
 3264 purpose. The county commissioners may make periodic inspections
 3265 to assure that the services or facilities provided under this
 3266 chapter meet the standards of the Department of Children and
 3267 Family Services and the Agency for Persons with Disabilities.

3268 Section 46. Subsections (1) through (6) of section 402.22,
 3269 Florida Statutes, are amended to read:

3270 402.22 Education program for students who reside in
 3271 residential care facilities operated by the Department of
 3272 Children and Family Services and the Agency for Persons with
 3273 Disabilities.--

3274 (1) (a) The Legislature recognizes that the Department of
 3275 Children and Family Services and the Agency for Persons with
 3276 Disabilities have under their ~~has under its~~ residential care
 3277 students with critical problems of physical impairment,
 3278 emotional disturbance, mental impairment, and learning
 3279 impairment.

3280 (b) The Legislature recognizes the vital role of education
 3281 in the rehabilitation of such students. It is the intent of the
 3282 Legislature that all such students benefit from educational
 3283 services and receive such services.

3284 (c) It is the intent of the Legislature that educational
 3285 services be coordinated with appropriate and existing diagnostic
 3286 and evaluative, social, followup, and other therapeutic services
 3287 of the department and the agency ~~of Children and Family Services~~
 3288 so that the effect of the total rehabilitation process is
 3289 maximized.

3290 (d) It is the intent of the Legislature that, as
 3291 educational programs for students in residential care facilities
 3292 are implemented by the district school board, educational
 3293 personnel in ~~the Department of Children and Family Services~~
 3294 residential care facilities who meet the qualifications for

3295 employees of the district school board be employed by the
 3296 district school board.

3297 (2) District school boards shall establish educational
 3298 programs for all students ages 5 through 18 under the
 3299 residential care of the Department of Children and Family
 3300 Services and the Agency for Persons with Disabilities and may
 3301 provide for students below age 3 as provided for in s.
 3302 1003.21(1)(e). Funding of such programs shall be pursuant to s.
 3303 1011.62.

3304 (3) Notwithstanding any provisions of chapters 39, 393,
 3305 394, and 397 to the contrary, the services of the Department of
 3306 Children and Family Services and the Agency for Persons with
 3307 Disabilities and those of the Department of Education and
 3308 district school boards shall be mutually supportive and
 3309 complementary of each other. The education programs provided by
 3310 the district school board shall meet the standards prescribed by
 3311 the State Board of Education and the district school board.
 3312 Decisions regarding the design and delivery of Department of
 3313 Children and Family Services or agency treatment or habilitative
 3314 services shall be made by interdisciplinary teams of
 3315 professional and paraprofessional staff of which appropriate
 3316 district school system administrative and instructional
 3317 personnel shall be invited to be participating members. The
 3318 requirements for maintenance of confidentiality as prescribed in
 3319 chapters 39, 393, 394, and 397 shall be applied to information
 3320 used by such interdisciplinary teams, and such information shall
 3321 be exempt from the provisions of ss. 119.07(1) and 286.011.

3322 (4) Students age 18 and under who are under the
 3323 residential care of the Department of Children and Family
 3324 Services or the Agency for Persons with Disabilities and who
 3325 receive an education program shall be calculated as full-time
 3326 equivalent student membership in the appropriate cost factor as
 3327 provided for in s. 1011.62(1)(c). Residential care facilities ~~of~~
 3328 ~~the Department of Children and Family Services~~ shall include,
 3329 but not be limited to, developmental disabilities ~~services~~
 3330 institutions and state mental health facilities. All students
 3331 shall receive their education program from the district school
 3332 system, and funding shall be allocated through the Florida
 3333 Education Finance Program for the district school system.

3334 (5) Instructional and special educational services which
 3335 are provided to ~~mental health and retardation~~ clients with
 3336 mental illness or developmental disabilities of ~~in~~ the
 3337 Department of Children and Family Services or the Agency for
 3338 Persons with Disabilities residential care facilities by local
 3339 school districts shall not be less than 180 days or 900 hours;
 3340 however, the 900 hours may be distributed over a 12-month
 3341 period, unless otherwise stated in rules developed by the State
 3342 Board of Education, with the concurrence of the department or
 3343 the agency, and adopted ~~of Children and Family Services~~
 3344 ~~promulgated~~ pursuant to subsection (6).

3345 (6) The State Board of Education, ~~and~~ the Department of
 3346 Children and Family Services, and the Agency for Persons with
 3347 Disabilities shall have ~~the~~ authority to adopt ~~promulgate~~ rules
 3348 which shall assist in the orderly transfer of the instruction of
 3349 students from department or agency ~~of Children and Family~~

3350 ~~Services~~ residential care facilities to the district school
 3351 system or to the public education agency and which shall assist
 3352 in implementing the specific intent as stated in this act.

3353 Section 47. Subsections (1) and (2) of section 402.33,
 3354 Florida Statutes, are amended to read:

3355 402.33 Department authority to charge fees for services
 3356 provided.--

3357 (1) As used in this section, the term:

3358 (a) "Benefit payments" means cash payments from
 3359 retirement, survivors, or disability insurance or from
 3360 supplemental security income programs, and includes, but is not
 3361 limited to, payments from social security, railroad retirement,
 3362 and the United States Department of Veterans Affairs.

3363 (b) "Client" means any natural person receiving services
 3364 provided by the department, including supervision, care, and
 3365 maintenance, but not as a licensee subject to regulation by the
 3366 department for purposes of licensure.

3367 (c) "Department" means the Department of Children and
 3368 Family Services, ~~and~~ the Department of Health, or the Agency for
 3369 Persons with Disabilities.

3370 (d) "Fee collections" means all fees collected by the
 3371 department for services provided to clients.

3372 (e) "Representative payee" means an individual or entity
 3373 which acts on behalf of a client as the receiver of any or all
 3374 benefits owing to the client.

3375 (f) "Responsible party" means any person legally
 3376 responsible for the financial support of the client and may
 3377 include a minor client's natural or adoptive parent, a client's

3378 spouse, and an estate or trust established for the financial
 3379 support of a client, but not a payor of third-party benefits.

3380 (g) "State and federal aid" means cash assistance or cash
 3381 equivalent benefits based on an individual's proof of financial
 3382 need, including, but not limited to, temporary cash assistance
 3383 and food stamps.

3384 (h) "Third-party benefits" means moneys received by or
 3385 owing to a client or responsible party because of the client's
 3386 need for or receipt of services such as those provided by the
 3387 department. Such benefits include, but are not limited to,
 3388 benefits from insurers, Medicare, and workers' compensation.

3389 (2) The department, in accordance with rules established
 3390 by it, shall either charge, assess, or collect, or cause to be
 3391 charged, assessed, or collected, fees for any service it
 3392 provides to its clients either directly or through its agencies
 3393 or contractors, except for:

3394 (a) Diagnosis and evaluation procedures necessary to
 3395 determine the client's eligibility and need for services
 3396 provided by the department;

3397 (b) Customary and routine information and referral
 3398 services;

3399 (c) Educational services provided in lieu of public
 3400 education;

3401 (d) Specific services exempted by law from fee assessment;

3402 (e) Emergency shelter or emergency detention care and
 3403 custody prior to a detention hearing under chapter 39;

3404 (f) Specific classes or types of services provided in
 3405 programs funded by grants, donations, or contracts that prohibit
 3406 charging fees;

3407 (g) Developmental disability services provided under
 3408 chapter 393 to any person who is determined to be eligible for
 3409 such services ~~by the department~~ and whose earned income falls
 3410 below the federal Health and Human Services Poverty Guidelines,
 3411 unless such fees are collected from third-party benefits and
 3412 benefit payments; or

3413 (h) Any type of service for which the department
 3414 determines that the net estimated revenue from such fees after
 3415 deducting any loss of funds from federal grants occasioned by
 3416 such fees will be less than the estimated cost to charge and
 3417 collect such fees.

3418
 3419 Fees, other than third-party benefits and benefit payments, may
 3420 not be charged for services provided to indigents whose only
 3421 sources of income are from state and federal aid. In addition,
 3422 fees may not be charged parents of a minor client for services
 3423 requested by the minor without parental consent or for services
 3424 provided a minor client who has been permanently committed to
 3425 the care and custody of the department with parental rights
 3426 permanently severed. However, lack of parental consent does not
 3427 preclude the charging of fees established under chapter 39. ~~The~~
 3428 ~~department may not require~~ A client who is receiving wages which
 3429 are below the minimum wage under the federal Fair Labor
 3430 Standards Act shall not be required to pay fees from such wages.
 3431 Voluntary payments for services must be encouraged.

3432 Section 48. Paragraphs (r) and (s) of subsection (3) of
 3433 section 408.036, Florida Statutes, are amended to read:

3434 408.036 Projects subject to review; exemptions.--

3435 (3) EXEMPTIONS.--Upon request, the following projects are
 3436 subject to exemption from the provisions of subsection (1):

3437 (r) For beds in state mental health treatment facilities
 3438 operated under s. 394.455(30) and state mental health forensic
 3439 facilities operated under s. 916.106 (10) ~~(8)~~.

3440 (s) For beds in state developmental disabilities ~~services~~
 3441 institutions as defined in s. 393.063.

3442 Section 49. Paragraph (a) of subsection (2) and subsection
 3443 (8) of section 409.908, Florida Statutes, are amended to read:

3444 409.908 Reimbursement of Medicaid providers.--Subject to
 3445 specific appropriations, the agency shall reimburse Medicaid
 3446 providers, in accordance with state and federal law, according
 3447 to methodologies set forth in the rules of the agency and in
 3448 policy manuals and handbooks incorporated by reference therein.
 3449 These methodologies may include fee schedules, reimbursement
 3450 methods based on cost reporting, negotiated fees, competitive
 3451 bidding pursuant to s. 287.057, and other mechanisms the agency
 3452 considers efficient and effective for purchasing services or
 3453 goods on behalf of recipients. If a provider is reimbursed based
 3454 on cost reporting and submits a cost report late and that cost
 3455 report would have been used to set a lower reimbursement rate
 3456 for a rate semester, then the provider's rate for that semester
 3457 shall be retroactively calculated using the new cost report, and
 3458 full payment at the recalculated rate shall be effected
 3459 retroactively. Medicare-granted extensions for filing cost

3460 reports, if applicable, shall also apply to Medicaid cost
 3461 reports. Payment for Medicaid compensable services made on
 3462 behalf of Medicaid eligible persons is subject to the
 3463 availability of moneys and any limitations or directions
 3464 provided for in the General Appropriations Act or chapter 216.
 3465 Further, nothing in this section shall be construed to prevent
 3466 or limit the agency from adjusting fees, reimbursement rates,
 3467 lengths of stay, number of visits, or number of services, or
 3468 making any other adjustments necessary to comply with the
 3469 availability of moneys and any limitations or directions
 3470 provided for in the General Appropriations Act, provided the
 3471 adjustment is consistent with legislative intent.

3472 (2) (a) 1. Reimbursement to nursing homes licensed under
 3473 part II of chapter 400 and state-owned-and-operated intermediate
 3474 care facilities for the persons with developmental disabilities
 3475 ~~developmentally disabled~~ licensed under part XI of chapter 400
 3476 ~~chapter 393~~ must be made prospectively.

3477 2. Unless otherwise limited or directed in the General
 3478 Appropriations Act, reimbursement to hospitals licensed under
 3479 part I of chapter 395 for the provision of swing-bed nursing
 3480 home services must be made on the basis of the average statewide
 3481 nursing home payment, and reimbursement to a hospital licensed
 3482 under part I of chapter 395 for the provision of skilled nursing
 3483 services must be made on the basis of the average nursing home
 3484 payment for those services in the county in which the hospital
 3485 is located. When a hospital is located in a county that does not
 3486 have any community nursing homes, reimbursement shall ~~must~~ be
 3487 determined by averaging the nursing home payments, in counties

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3488 that surround the county in which the hospital is located.
3489 Reimbursement to hospitals, including Medicaid payment of
3490 Medicare copayments, for skilled nursing services shall be
3491 limited to 30 days, unless a prior authorization has been
3492 obtained from the agency. Medicaid reimbursement may be extended
3493 by the agency beyond 30 days, and approval must be based upon
3494 verification by the patient's physician that the patient
3495 requires short-term rehabilitative and recuperative services
3496 only, in which case an extension of no more than 15 days may be
3497 approved. Reimbursement to a hospital licensed under part I of
3498 chapter 395 for the temporary provision of skilled nursing
3499 services to nursing home residents who have been displaced as
3500 the result of a natural disaster or other emergency may not
3501 exceed the average county nursing home payment for those
3502 services in the county in which the hospital is located and is
3503 limited to the period of time which the agency considers
3504 necessary for continued placement of the nursing home residents
3505 in the hospital.

3506 (8) A provider of home-based or community-based services
3507 rendered pursuant to a federally approved waiver shall be
3508 reimbursed based on an established or negotiated rate for each
3509 service. These rates shall be established according to an
3510 analysis of the expenditure history and prospective budget
3511 developed by each contract provider participating in the waiver
3512 program, or under any other methodology adopted by the agency
3513 and approved by the Federal Government in accordance with the
3514 waiver. ~~Effective July 1, 1996,~~ Privately owned and operated
3515 community-based residential facilities which meet agency

3516 requirements and which formerly received Medicaid reimbursement
 3517 for the optional intermediate care facility for the mentally
 3518 retarded service may participate in the developmental services
 3519 waiver as part of a home-and-community-based continuum of care
 3520 for Medicaid recipients who receive waiver services.

3521 Section 50. Subsection (3) of section 409.9127, Florida
 3522 Statutes, is amended to read:

3523 409.9127 Preauthorization and concurrent utilization
 3524 review; conflict-of-interest standards.--

3525 (3) The agency shall help the Agency for Persons with
 3526 Disabilities ~~Department of Children and Family Services~~ meet the
 3527 requirements of s. 393.065(4). Only admissions approved pursuant
 3528 to such assessments are eligible for reimbursement under this
 3529 chapter.

3530 Section 51. Paragraph (c) of subsection (2) and subsection
 3531 (5) of section 411.224, Florida Statutes, are amended to read:

3532 411.224 Family support planning process.--The Legislature
 3533 establishes a family support planning process to be used by the
 3534 Department of Children and Family Services as the service
 3535 planning process for targeted individuals, children, and
 3536 families under its purview.

3537 (2) To the extent possible within existing resources, the
 3538 following populations must be included in the family support
 3539 planning process:

3540 (c) Children from age 3 ~~birth~~ through age 5 who are served
 3541 by the Agency for Persons with Disabilities ~~Developmental~~
 3542 ~~Disabilities Program Office of the Department of Children and~~
 3543 ~~Family Services.~~

3544 (5) There must be only a single-family support plan to
 3545 address the problems of the various family members unless the
 3546 family requests that an individual family support plan be
 3547 developed for different members of that family. The family
 3548 support plan must replace individual habilitation plans for
 3549 children from 3 ~~birth~~ through 5 years old who are served by the
 3550 Agency for Persons with Disabilities ~~Developmental Disabilities~~
 3551 ~~Program Office of the Department of Children and Family~~
 3552 ~~Services. To the extent possible, the family support plan must~~
 3553 ~~replace other case planning forms used by the Department of~~
 3554 ~~Children and Family Services.~~

3555 Section 52. Subsection (4) of section 411.232, Florida
 3556 Statutes, is amended to read:

3557 411.232 Children's Early Investment Program.--

3558 (4) RULES FOR IMPLEMENTATION.--The Department of Health
 3559 ~~and Rehabilitative Services~~ shall adopt rules necessary to
 3560 implement this section.

3561 Section 53. Subsection (8) of section 415.102, Florida
 3562 Statutes, is amended to read:

3563 415.102 Definitions of terms used in ss. 415.101-
 3564 415.113.--As used in ss. 415.101-415.113, the term:

3565 (8) "Facility" means any location providing day or
 3566 residential care or treatment for vulnerable adults. The term
 3567 "facility" may include, but is not limited to, any hospital,
 3568 state institution, nursing home, assisted living facility, adult
 3569 family-care home, adult day care center, residential facility
 3570 licensed under chapter 393 ~~group home~~, or mental health
 3571 treatment center.

3572 Section 54. Section 415.1035, Florida Statutes, is amended
 3573 to read:

3574 415.1035 Facility's duty to inform residents of their
 3575 right to report abusive, neglectful, or exploitive
 3576 practices.--The department shall work cooperatively with the
 3577 Agency for Health Care Administration, the Agency for Persons
 3578 with Disabilities, and the Department of Elderly Affairs to
 3579 ensure that every facility that serves vulnerable adults informs
 3580 residents of their right to report abusive, neglectful, or
 3581 exploitive practices. Each facility must establish appropriate
 3582 policies and procedures to facilitate such reporting.

3583 Section 55. Subsections (1) and (10) of section 415.1055,
 3584 Florida Statutes, are amended to read:

3585 415.1055 Notification to administrative entities.--

3586 (1) Upon receipt of a report that alleges that an employee
 3587 or agent of the department, the Agency for Persons with
 3588 Disabilities, or the Department of Elderly Affairs, acting in an
 3589 official capacity, has committed an act of abuse, neglect, or
 3590 exploitation, the department shall notify the state attorney in
 3591 whose circuit the abuse, neglect, or exploitation occurred. This
 3592 notification may be oral or written.

3593 (10) When a report has been received and the department
 3594 has reason to believe that a vulnerable adult resident of a
 3595 facility licensed by the Agency for Health Care Administration
 3596 or the Agency for Persons with Disabilities has been the victim
 3597 of abuse, neglect, or exploitation, the department shall provide
 3598 a copy of its investigation to the agency. If the investigation
 3599 determines that a health professional licensed or certified

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3600 under the Department of Health may have abused, neglected, or
 3601 exploited a vulnerable adult, the department shall also provide
 3602 a copy to the Department of Health.

3603 Section 56. Paragraphs (a) and (h) of subsection (3) of
 3604 section 415.107, Florida Statutes, are amended to read:

3605 415.107 Confidentiality of reports and records.--

3606 (3) Access to all records, excluding the name of the
 3607 reporter which shall be released only as provided in subsection
 3608 (6), shall be granted only to the following persons, officials,
 3609 and agencies:

3610 (a) Employees or agents of the department, the Agency for
 3611 Persons with Disabilities, ~~of~~ the Agency for Health Care
 3612 Administration, or ~~of~~ the Department of Elderly Affairs who are
 3613 responsible for carrying out protective investigations, ongoing
 3614 protective services, or licensure or approval of nursing homes,
 3615 assisted living facilities, adult day care centers, adult
 3616 family-care homes, home care for the elderly, hospices,
 3617 residential facilities licensed under chapter 393, or other
 3618 facilities used for the placement of vulnerable adults.

3619 (h) Any appropriate official of the department, the Agency
 3620 for Persons with Disabilities, ~~of~~ the Agency for Health Care
 3621 Administration, or ~~of~~ the Department of Elderly Affairs who is
 3622 responsible for:

3623 1. Administration or supervision of the programs for the
 3624 prevention, investigation, or treatment of abuse, neglect, or
 3625 exploitation of vulnerable adults when carrying out an official
 3626 function; or

3627 2. Taking appropriate administrative action concerning an
 3628 employee alleged to have perpetrated abuse, neglect, or
 3629 exploitation of a vulnerable adult in an institution.

3630 Section 57. Subsections (1), (2), (3), and (6) of section
 3631 419.001, Florida Statutes, are amended to read:

3632 419.001 Site selection of community residential homes.--

3633 (1) For the purposes of this section, the term following
 3634 ~~definitions shall apply:~~

3635 (a) "Community residential home" means a dwelling unit
 3636 licensed to provide ~~serve clients of the Department of Children~~
 3637 ~~and Family Services, which provides~~ a living environment for 7
 3638 to 14 unrelated residents who operate as the functional
 3639 equivalent of a family, including such supervision and care by
 3640 supportive staff as may be necessary to meet the physical,
 3641 emotional, and social needs of the residents.

3642 (b) "Department" or "agency" means the Department of
 3643 Children and Family Services, the Agency for Health Care
 3644 Administration, or the Agency for Persons with Disabilities.

3645 (c) "Local government" means a county as set forth in
 3646 chapter 7 or a municipality incorporated under the provisions of
 3647 chapter 165.

3648 (d) "Resident" means any of the following: a frail elder
 3649 as defined in s. 400.618; a ~~physically disabled or handicapped~~
 3650 person with a physical or mental impairment as described as
 3651 ~~defined in s. 760.22(7)(a); a developmentally disabled person~~
 3652 with a developmental disability as defined in s. 393.063; a
 3653 nondangerous person with mental illness ~~mentally ill person as~~

3654 defined in s. 394.455~~(18)~~; or a child as defined in s.
 3655 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).

3656 (e) "Sponsoring agency" means an agency or unit of
 3657 government, a profit or nonprofit agency, or any other person or
 3658 organization which intends to establish or operate a community
 3659 residential home.

3660 (2) Homes of six or fewer residents which otherwise meet
 3661 the definition of a community residential home shall be deemed a
 3662 single-family unit and a noncommercial, residential use for the
 3663 purpose of local laws and ordinances. Homes of six or fewer
 3664 residents which otherwise meet the definition of a community
 3665 residential home shall be allowed in single-family or
 3666 multifamily zoning without approval by the local government,
 3667 provided that such homes shall not be located within a radius of
 3668 1,000 feet of another existing such home with six or fewer
 3669 residents. Such homes with six or fewer residents shall not be
 3670 required to comply with the notification provisions of this
 3671 section; provided, however, that the sponsoring agency or the
 3672 department notifies the local government at the time of home
 3673 occupancy that the home is licensed by the department or the
 3674 agency.

3675 (3)(a) When a site for a community residential home has
 3676 been selected by a sponsoring agency in an area zoned for
 3677 multifamily, the sponsoring agency shall notify the chief
 3678 executive officer of the local government in writing and include
 3679 in such notice the specific address of the site, the residential
 3680 licensing category, the number of residents, and the community
 3681 support requirements of the program. Such notice shall also

3682 contain a statement from the district administrator of the
 3683 department indicating the need for and the licensing status of
 3684 the proposed community residential home and specifying how the
 3685 home meets applicable licensing criteria for the safe care and
 3686 supervision of the clients in the home. The department and the
 3687 agency ~~district administrator~~ shall also provide to the local
 3688 government the most recently published data compiled that
 3689 identifies all community residential homes in the department
 3690 ~~district~~ in which the proposed site is to be located. The local
 3691 government shall review the notification of the sponsoring
 3692 agency in accordance with the zoning ordinance of the
 3693 jurisdiction.

3694 (b) Pursuant to such review, the local government may:

3695 1. Determine that the siting of the community residential
 3696 home is in accordance with local zoning and approve the siting.
 3697 If the siting is approved, the sponsoring agency may establish
 3698 the home at the site selected.

3699 2. Fail to respond within 60 days. If the local government
 3700 fails to respond within such time, the sponsoring agency may
 3701 establish the home at the site selected.

3702 3. Deny the siting of the home.

3703 (c) The local government shall not deny the siting of a
 3704 community residential home unless the local government
 3705 establishes that the siting of the home at the site selected:

3706 1. Does not otherwise conform to existing zoning
 3707 regulations applicable to other multifamily uses in the area.

3708 2. Does not meet applicable licensing criteria established
 3709 and determined by the department or the agency, including

3710 requirements that the home be located to assure the safe care
 3711 and supervision of all clients in the home.

3712 3. Would result in such a concentration of community
 3713 residential homes in the area in proximity to the site selected,
 3714 or would result in a combination of such homes with other
 3715 residences in the community, such that the nature and character
 3716 of the area would be substantially altered. A home that is
 3717 located within a radius of 1,200 feet of another existing
 3718 community residential home in a multifamily zone shall be an
 3719 overconcentration of such homes that substantially alters the
 3720 nature and character of the area. A home that is located within
 3721 a radius of 500 feet of an area of single-family zoning
 3722 substantially alters the nature and character of the area.

3723 (6) The department or the agency shall not issue a license
 3724 to a sponsoring agency for operation of a community residential
 3725 home if the sponsoring agency does not notify the local
 3726 government of its intention to establish a program, as required
 3727 by subsection (3). A license issued without compliance with the
 3728 provisions of this section shall be considered null and void,
 3729 and continued operation of the home may be enjoined.

3730 Section 58. Paragraph (a) of subsection (3) of section
 3731 435.03, Florida Statutes, is amended to read:

3732 435.03 Level 1 screening standards.--

3733 (3) Standards must also ensure that the person:

3734 (a) For employees and employers licensed or registered
 3735 pursuant to chapter 400, and for employees and employers of
 3736 developmental disabilities ~~services~~ institutions as defined in
 3737 s. 393.18 ~~393.063~~, intermediate care facilities for persons with

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3738 developmental disabilities ~~the developmentally disabled~~ as
 3739 defined in s. 400.960 ~~393.063~~, and mental health treatment
 3740 facilities as defined in s. 394.455, meets the requirements of
 3741 this chapter.

3742 Section 59. Paragraph (a) of subsection (2) of section
 3743 490.014, Florida Statutes, is amended to read:

3744 490.014 Exemptions.--

3745 (2) No person shall be required to be licensed or
 3746 provisionally licensed under this chapter who:

3747 (a) Is a salaried employee of a government agency;
 3748 ~~developmental services program~~, mental health, alcohol, or drug
 3749 abuse facility operating pursuant to chapter 393, chapter 394,
 3750 or chapter 397; subsidized child care program, subsidized child
 3751 care case management program, or child care resource and
 3752 referral program operating pursuant to chapter 402; child-
 3753 placing or child-caring agency licensed pursuant to chapter 409;
 3754 domestic violence center certified pursuant to chapter 39;
 3755 accredited academic institution; or research institution, if
 3756 such employee is performing duties for which he or she was
 3757 trained and hired solely within the confines of such agency,
 3758 facility, or institution, so long as the employee is not held
 3759 out to the public as a psychologist pursuant to s.
 3760 490.012(1)(a).

3761 Section 60. Paragraph (a) of subsection (4) of section
 3762 491.014, Florida Statutes, is amended to read:

3763 491.014 Exemptions.--

3764 (4) No person shall be required to be licensed,
 3765 provisionally licensed, registered, or certified under this
 3766 chapter who:

3767 (a) Is a salaried employee of a government agency;
 3768 ~~developmental services program,~~ mental health, alcohol, or drug
 3769 abuse facility operating pursuant to chapter 393, chapter 394,
 3770 or chapter 397; subsidized child care program, subsidized child
 3771 care case management program, or child care resource and
 3772 referral program operating pursuant to chapter 402; child-
 3773 placing or child-caring agency licensed pursuant to chapter 409;
 3774 domestic violence center certified pursuant to chapter 39;
 3775 accredited academic institution; or research institution, if
 3776 such employee is performing duties for which he or she was
 3777 trained and hired solely within the confines of such agency,
 3778 facility, or institution, so long as the employee is not held
 3779 out to the public as a clinical social worker, mental health
 3780 counselor, or marriage and family therapist.

3781 Section 61. Section 916.105, Florida Statutes, is amended
 3782 to read:

3783 916.105 Legislative intent.--

3784 (1) It is the intent of the Legislature that the
 3785 Department of Children and Family Services and the Agency for
 3786 Persons With Disabilities, as appropriate, establish, locate,
 3787 and maintain separate and secure forensic facilities and
 3788 programs for the treatment or training of defendants who have
 3789 been ~~are~~ charged with a felony and who have been found to be
 3790 incompetent to proceed due to their mental illness, mental
 3791 retardation, or autism, or who have been acquitted of a felony

3792 ~~felonies~~ by reason of insanity, and who, while still under the
 3793 jurisdiction of the committing court, are committed to the
 3794 department or agency under the provisions of this chapter. Such
 3795 ~~The separate, secure~~ facilities shall be sufficient to
 3796 accommodate the number of defendants committed under the
 3797 conditions noted above. Except for those defendants found by
 3798 the department or agency to be appropriate for treatment or
 3799 training in a civil ~~treatment~~ facility or program pursuant to
 3800 subsection (3), forensic. ~~Such secure~~ facilities shall be
 3801 designed and administered so that ingress and egress, together
 3802 with other requirements of this chapter, may be strictly
 3803 controlled by staff responsible for security in order to protect
 3804 the defendant, facility personnel, other clients, and citizens
 3805 in adjacent communities.

3806 (2) It is further the intent of the Legislature that
 3807 treatment or training programs for defendants who are found to
 3808 be mentally ill, retarded, or autistic and are involuntarily
 3809 committed to the department or the agency, and who are still
 3810 under the jurisdiction of the committing court, be provided in
 3811 ~~such~~ a manner, subject to security requirements and other
 3812 mandates of this chapter, as to ensure the rights of the
 3813 defendants as provided in this chapter.

3814 (3) It is also the intent of the Legislature that
 3815 evaluation and services to defendants who are mentally ill,
 3816 retarded, or autistic be provided in community settings, in
 3817 community residential facilities, or in civil, ~~nonforensic~~
 3818 facilities, whenever this is a feasible alternative to treatment
 3819 or training in a state forensic facility.

3820 Section 62. Section 916.106, Florida Statutes, is amended
 3821 to read:

3822 916.106 Definitions.--For the purposes of this chapter:

3823 (1) "Agency" means the Agency for Persons With
 3824 Disabilities. The agency is responsible for the training of
 3825 forensic clients with developmental disabilities due to mental
 3826 retardation or autism and have been determined incompetent to
 3827 proceed.

3828 (2) "Autism" means a pervasive, neurologically based
 3829 developmental disability of extended duration which causes
 3830 severe learning, communication, and behavior disorders, with the
 3831 age of onset of autism occurring during infancy or childhood.
 3832 Individuals with autism exhibit impairment in reciprocal social
 3833 interaction, impairment in verbal and nonverbal communication
 3834 and imaginative ability, and a markedly restricted repertoire of
 3835 activities and interests.

3836 (3)~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb,
 3837 gun, or other device capable of emitting chloroacetophenone
 3838 (CN), chlorobenzalmalonitrile (CS) or any derivatives thereof
 3839 in any form, or any other agent with lacrimatory properties, and
 3840 shall include products such as that commonly known as "mace."

3841 (4)~~(3)~~ "Civil facility" means:

3842 (a) A mental health facility established within the
 3843 department or by contract with the department to serve
 3844 individuals committed pursuant to chapter 394 and those
 3845 defendants committed pursuant to this chapter who do not require
 3846 the security provided in a forensic facility; or

3847 (b) An intermediate care facility for persons with
 3848 developmental disabilities, foster care facility, group home
 3849 facility, or supported living setting, as defined in s. 393.063,
 3850 designated by the agency to serve those defendants who do not
 3851 require the security provided in a forensic facility.

3852 ~~(5)-(4)~~ "Court" means the circuit court.

3853 (6) "Defendant" means an adult or juvenile prosecuted as
 3854 an adult who has been arraigned and charged with a felony
 3855 offense under the laws of this state.

3856 ~~(7)-(5)~~ "Department" means the Department of Children and
 3857 Family Services. The department is responsible for treatment of
 3858 forensic clients who have been determined incompetent to proceed
 3859 due to mental illness or who have been acquitted of a felony by
 3860 reason of insanity.

3861 ~~(8)-(6)~~ "Express and informed consent" or "consent" means
 3862 consent given voluntarily in writing after a conscientious and
 3863 sufficient explanation and disclosure of the purpose of the
 3864 proposed treatment, the common side effects of the treatment, if
 3865 any, the expected duration of the treatment, and any alternative
 3866 treatment available.

3867 ~~(9)-(7)~~ "Forensic client" or "client" means any defendant
 3868 who has been ~~is mentally ill, retarded, or autistic and who is~~
 3869 committed to the department or the agency pursuant to ss.
 3870 916.13, 916.15, or 916.302. ~~this chapter and:~~

3871 ~~(a) Who has been determined to need treatment for a mental~~
 3872 ~~illness or training for retardation or autism;~~

3873 ~~(b) Who has been found incompetent to proceed on a felony~~
 3874 ~~offense or has been acquitted of a felony offense by reason of~~
 3875 ~~insanity;~~

3876 ~~(c) Who has been determined by the department to:~~

3877 ~~1. Be dangerous to himself or herself or others; or~~

3878 ~~2. Present a clear and present potential to escape; and~~

3879 ~~(d) Who is an adult or a juvenile prosecuted as an adult.~~

3880 (10)(8) "Forensic facility" means a separate and secure
 3881 facility established within the department or the agency to
 3882 serve forensic clients. A Such separate and secure facility
 3883 means facilities shall be security-grade buildings separately
 3884 housing persons who are mentally ill from persons who are
 3885 mentally retarded or autistic, and persons who have been
 3886 involuntarily committed pursuant to this chapter from
 3887 nonforensic residents. located on grounds distinct in location
 3888 from other facilities for persons who are mentally ill. The
 3889 Florida State Hospital shall not be required to maintain
 3890 separate facilities for mentally ill, retarded, or autistic
 3891 defendants who are found incompetent to proceed or who are
 3892 acquitted of a criminal offense by reason of insanity.

3893 (11)(9) "Incompetent to proceed" means unable to proceed
 3894 at any material stage of a criminal proceeding, which shall
 3895 include trial of the case, pretrial hearings involving questions
 3896 of fact on which the defendant might be expected to testify,
 3897 entry of a plea, proceedings for violation of probation or
 3898 violation of community control, sentencing, and hearings on
 3899 issues regarding a defendant's failure to comply with court
 3900 orders or conditions or other matters in which the mental

3901 competence of the defendant is necessary for a just resolution
 3902 of the issues being considered.

3903 (12)~~(10)~~ "Institutional security personnel" means
 3904 employees of forensic facilities ~~staff members~~ who meet or
 3905 exceed the requirements of s. 943.13 and who are responsible for
 3906 providing security, the ~~for~~ protection of clients and personnel,
 3907 ~~for~~ the enforcement of rules, the ~~for~~ prevention and
 3908 investigation of unauthorized activities, and the ~~for~~
 3909 safeguarding the interests of citizens in the surrounding
 3910 communities.

3911 (13)~~(11)~~ "Mental illness" means an impairment of the
 3912 emotional processes that exercise conscious control of one's
 3913 actions, or of the ability to perceive or understand reality,
 3914 which impairment substantially interferes with a defendant's
 3915 ability to meet the ordinary demands of living. For the purposes
 3916 of this chapter, the term does not apply to defendants who are
 3917 solely retarded or autistic, and does not include intoxication
 3918 or conditions manifested only by antisocial behavior or
 3919 substance abuse impairment.

3920 (14)~~(12)~~ "Retardation" means significantly subaverage
 3921 general intellectual functioning existing concurrently with
 3922 deficits in adaptive behavior and manifested during the period
 3923 from conception to age 18. "Significantly subaverage general
 3924 intellectual functioning," for the purpose of this definition,
 3925 means performance which is two or more standard deviations from
 3926 the mean score on a standardized intelligence test specified in
 3927 the rules of the agency ~~department~~. "Adaptive behavior," for the
 3928 purpose of this definition, means the effectiveness or degree

3929 with which an individual meets the standards of personal
 3930 independence and social responsibility expected of the
 3931 individual's age, cultural group, and community.

3932 ~~(15)(13)~~ "Social service professional," ~~for the purposes~~
 3933 ~~of part III,~~ means a person whose minimum qualifications include
 3934 a bachelor's degree and at least 2 years of social work,
 3935 clinical practice, special education, habilitation, or
 3936 equivalent experience working directly with persons with
 3937 retardation, autism, or other developmental disabilities.

3938 Section 63. Section 916.107, Florida Statutes, is amended
 3939 to read:

3940 916.107 Rights of forensic clients.--

3941 (1) RIGHT TO INDIVIDUAL DIGNITY.--

3942 (a) The policy of the state is that the individual dignity
 3943 of the client shall be respected at all times and upon all
 3944 occasions, including any occasion when the forensic client is
 3945 detained, transported, or treated. Clients ~~Defendants~~ who are
 3946 mentally ill, retarded, or autistic and who are charged with
 3947 committing felonies shall receive appropriate treatment or
 3948 training. In a criminal case involving a client ~~defendant~~ who
 3949 has been adjudicated incompetent to proceed or not guilty by
 3950 reason of insanity, a jail may be used as an emergency facility
 3951 for up to 15 days from the date the department or the agency
 3952 receives a completed copy of the court commitment order
 3953 containing all the documentation required by the applicable
 3954 ~~Rules 3.212 and 3.217,~~ Florida Rules of Criminal Procedure. For
 3955 a forensic client ~~defendant who is mentally ill, retarded, or~~
 3956 ~~autistic,~~ who is held in a jail awaiting admission to a

3957 department or agency facility, ~~and who has been adjudicated~~
 3958 ~~incompetent to proceed or not guilty by reason of insanity,~~
 3959 evaluation and treatment or training may ~~shall~~ be provided in
 3960 the jail by the local community mental health provider ~~public~~
 3961 ~~receiving facility~~ for mental health services or by the
 3962 developmental disabilities ~~services~~ program for persons with
 3963 retardation or autism, the client's physician or psychologist,
 3964 or any other appropriate program until the client is transferred
 3965 to a civil or forensic facility ~~the custody of the department.~~

3966 (b) Forensic clients ~~Mentally ill, retarded, or autistic~~
 3967 ~~defendants who are committed to the department pursuant to this~~
 3968 ~~chapter~~ and who are initially placed in, or subsequently
 3969 transferred to, a civil facility as described in part I of
 3970 chapter 394 or to a residential facility as described in chapter
 3971 393 shall have the same rights as other persons committed to
 3972 these facilities for as long as they remain there.

3973 (2) RIGHT TO TREATMENT.--

3974 (a) The policy of the state is that neither the department
 3975 nor the agency shall ~~not~~ deny treatment or training to any
 3976 client and that no services shall be delayed ~~at a facility~~
 3977 because the forensic client is indigent pursuant to s. 27.52 and
 3978 presently unable to pay. However, every reasonable effort to
 3979 collect appropriate reimbursement for the cost of providing
 3980 services to clients able to pay for the services, including
 3981 reimbursement from insurance or other third-party payments,
 3982 shall be made by facilities providing services pursuant to this
 3983 chapter and in accordance with the provisions of s. 402.33.

3984 (b) Each client shall be given, at the time of admission
 3985 and at regular intervals thereafter, a physical examination,
 3986 which shall include screening for communicable disease by a
 3987 health practitioner authorized by law to give such screenings
 3988 and examinations.

3989 (c) Every client ~~committed pursuant to this act~~ shall be
 3990 afforded the opportunity to participate in activities designed
 3991 to enhance self-image and the beneficial effects of other
 3992 treatments or training, as determined by the facility.

3993 (d) Not more than 30 days after admission, each client
 3994 shall have and receive, in writing, an individualized treatment
 3995 or training plan which the client has had an opportunity to
 3996 assist in preparing.

3997 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--

3998 (a) A forensic client ~~committed to the department pursuant~~
 3999 ~~to this act~~ shall be asked to give express and informed written
 4000 consent for treatment. If a client ~~in a forensic facility~~
 4001 refuses such treatment as is deemed necessary and essential by
 4002 the client's multidisciplinary treatment team ~~at the forensic~~
 4003 ~~facility~~ for the appropriate care of the client ~~and the safety~~
 4004 ~~of the client or others~~, such treatment may be provided under
 4005 the following circumstances:

- 4006 1. In an emergency situation in which there is immediate
 4007 danger to the safety of the client or others, such treatment may
 4008 be provided upon the written order of a physician for a period
 4009 not to exceed 48 hours, excluding weekends and legal holidays.
 4010 If, after the 48-hour period, the client has not given express
 4011 and informed consent to the treatment initially refused, the

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4012 administrator or designee of the civil or forensic facility
 4013 shall, within 48 hours, excluding weekends and legal holidays,
 4014 petition the committing court or the circuit court serving the
 4015 county in which the facility is located, at the option of the
 4016 facility administrator or designee, for an order authorizing the
 4017 continued treatment of the client. In the interim, the need for
 4018 treatment shall be reviewed every 48 hours and may be continued
 4019 without the consent of the client upon the continued written
 4020 order of a physician who has determined that the emergency
 4021 situation continues to present a danger to the safety of the
 4022 client or others.

4023 2. In a situation other than an emergency situation, the
 4024 administrator or designee of the ~~forensic~~ facility shall
 4025 petition the court for an order authorizing necessary and
 4026 essential ~~the~~ treatment for ~~to~~ the client. The order shall allow
 4027 such treatment for a period not to exceed 90 days from the date
 4028 of the entry of the order. Unless the court is notified in
 4029 writing that the client has provided express and informed
 4030 consent in writing or that the client has been discharged by the
 4031 committing court, the administrator or designee shall, prior to
 4032 the expiration of the initial 90-day order, petition the court
 4033 for an order authorizing the continuation of treatment for
 4034 another 90-day period. This procedure shall be repeated until
 4035 the client provides consent or is discharged by the committing
 4036 court.

4037 3. At the hearing on the issue of whether the court should
 4038 enter an order authorizing treatment for which a client was
 4039 unable ~~has refused~~ to give express and informed consent, the

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4040 court shall determine by clear and convincing evidence that the
4041 client is mentally ill, retarded, or autistic ~~as defined in this~~
4042 ~~chapter~~, that the treatment not consented to is essential to the
4043 care of the client, and that the treatment not consented to is
4044 not experimental and does not present an unreasonable risk of
4045 serious, hazardous, or irreversible side effects. In arriving at
4046 the substitute judgment decision, the court must consider at
4047 least the following factors:

- 4048 a. The client's expressed preference regarding treatment;
4049 b. The probability of adverse side effects;
4050 c. The prognosis without treatment; and
4051 d. The prognosis with treatment.

4052

4053 The hearing shall be as convenient to the client as may be
4054 consistent with orderly procedure and shall be conducted in
4055 physical settings not likely to be injurious to the client's
4056 condition. The court may appoint a general or special magistrate
4057 to preside at the hearing. The client or the client's guardian,
4058 and the representative, shall be provided with a copy of the
4059 petition and the date, time, and location of the hearing. The
4060 client has the right to have an attorney represent him or her at
4061 the hearing, and, if the client is indigent, the court shall
4062 appoint the office of the public defender to represent the
4063 client at the hearing. The client may testify or not, as he or
4064 she chooses, and has the right to cross-examine witnesses and
4065 may present his or her own witnesses.

4066 (b) In addition to the provisions of paragraph (a), in the
4067 case of surgical procedures requiring the use of a general

4068 anesthetic or electroconvulsive treatment or nonpsychiatric
 4069 medical procedures, and prior to performing the procedure,
 4070 written permission shall be obtained from the client, if the
 4071 client is legally competent, from the parent or guardian of a
 4072 minor client, or from the guardian of an incompetent client. The
 4073 administrator or designee of the forensic facility or a
 4074 designated representative may, with the concurrence of the
 4075 client's attending physician, authorize emergency surgical or
 4076 nonpsychiatric medical treatment if such treatment is deemed
 4077 lifesaving or for a situation threatening serious bodily harm to
 4078 the client and permission of the client or the client's guardian
 4079 could not ~~cannot~~ be obtained prior to provision of the needed
 4080 treatment.

4081 (4) QUALITY OF TREATMENT.--Each forensic client ~~committed~~
 4082 ~~pursuant to this chapter~~ shall receive treatment or training
 4083 suited to the client's needs, which shall be administered
 4084 skillfully, safely, and humanely with full respect for the
 4085 client's dignity and personal integrity. Each client shall
 4086 receive such medical, vocational, social, educational, and
 4087 rehabilitative services as the client's condition requires to
 4088 bring about a return to court for disposition of charges or a
 4089 return to the community. In order to achieve this goal, the
 4090 department and the agency shall coordinate their services with
 4091 each other, the Department of Corrections, is directed to
 4092 ~~coordinate the services of the Mental Health Program Office and~~
 4093 ~~the Developmental Disabilities Program Office with all other~~
 4094 ~~programs of the department~~ and other appropriate state agencies.

4095 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--

4096 ~~(a)~~ Each forensic client ~~committed pursuant to the~~
4097 ~~provisions of this chapter~~ has the right to communicate freely
4098 and privately with persons outside the facility unless it is
4099 determined that such communication is likely to be harmful to
4100 the client or others. Clients shall have the right to contact
4101 and to receive communication from their attorneys at any
4102 reasonable time.

4103 ~~(a)(b)~~ Each forensic client ~~committed under the provisions~~
4104 ~~of this chapter~~ shall be allowed to receive, send, and mail
4105 sealed, unopened correspondence; and no client's incoming or
4106 outgoing correspondence shall be opened, delayed, held, or
4107 censored by the facility unless there is reason to believe that
4108 it contains items or substances which may be harmful to the
4109 client or others, in which case the administrator or designee
4110 may direct reasonable examination of such mail and may regulate
4111 the disposition of such items or substances. "Correspondence"
4112 shall not include parcels or packages. Forensic facilities are
4113 authorized to promulgate reasonable institutional policies to
4114 provide for the inspection of parcels or packages and for the
4115 removal of contraband items for health or security reasons prior
4116 to the contents being given to a client.

4117 ~~(b)(e)~~ If a client's right to communicate is restricted by
4118 the administrator, written notice of such restriction and the
4119 duration of the restriction shall be served on the client or his
4120 or her legal guardian or representatives, and such restriction
4121 shall be recorded on the client's clinical record with the
4122 reasons therefor. ~~The restriction of a client's right to~~
4123 ~~communicate shall be reviewed at least every 7 days.~~

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4124 ~~(c)-(d)~~ Each forensic facility shall establish reasonable
4125 institutional policies governing visitors, visiting hours, and
4126 the use of telephones by clients in the least restrictive manner
4127 possible.

4128 ~~(d)-(e)~~ Each forensic client ~~committed pursuant to this~~
4129 ~~chapter~~ shall have ready access to a telephone in order to
4130 report an alleged abuse. The facility or program staff shall
4131 orally and in writing inform each client of the procedure for
4132 reporting abuse and shall present the information in a language
4133 the client understands. A written copy of that procedure,
4134 including the telephone number of the central abuse hotline and
4135 reporting forms, shall be posted in plain view.

4136 ~~(e)-(f)~~ The department's or agency's forensic facilities
4137 shall develop policies providing a procedure for reporting
4138 abuse. Facility staff shall be required, as a condition of
4139 employment, to become familiar with the procedures for the
4140 reporting of abuse.

4141 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A
4142 forensic client's right to possession of clothing and personal
4143 effects shall be respected. The department or agency by rule, or
4144 the administrator of any forensic facility by written
4145 institutional policy, may declare certain items to be hazardous
4146 to the health or welfare of clients or others or to the
4147 operation of the facility. Such items may be restricted from
4148 introduction into the facility or may be restricted from being
4149 in a client's possession. The administrator or designee may take
4150 temporary custody of such effects when required for medical and

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4151 safety reasons. Custody of such personal effects shall be
4152 recorded in the client's clinical record.

4153 (7) VOTING IN PUBLIC ELECTIONS.--A forensic client
4154 ~~committed pursuant to this chapter~~ who is eligible to vote
4155 according to the laws of the state has the right to vote in the
4156 primary and general elections. The department and agency shall
4157 establish rules to enable clients to obtain voter registration
4158 forms, applications for absentee ballots, and absentee ballots.

4159 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record
4160 for each forensic client shall be maintained. The record shall
4161 include data pertaining to admission and such other information
4162 as may be required under rules of the department or the agency.
4163 Unless waived by express and informed consent of the client or
4164 the client's legal guardian or, if the client is deceased, by
4165 the client's personal representative or by that family member
4166 who stands next in line of intestate succession or except as
4167 otherwise provided in this subsection, the clinical record is
4168 confidential and exempt from the provisions of s. 119.07(1) and
4169 s. 24(a), Art. I of the State Constitution.

4170 (a) Such clinical record may be released:

4171 1. To such persons and agencies as are designated by the
4172 client or the client's legal guardian.

4173 2. To persons authorized by order of court and to the
4174 client's counsel when the records are needed by the counsel for
4175 adequate representation.

4176 3. To a qualified researcher, as defined by rule; a staff
4177 member of the facility; or an employee of the department or
4178 agency when the administrator of the facility, or secretary or

4179 director of the department or the agency deems it necessary for
 4180 treatment of the client, maintenance of adequate records,
 4181 compilation of treatment data, or evaluation of programs.

4182 4. For statistical and research purposes if the
 4183 information is abstracted in such a way as to protect the
 4184 identity of individuals.

4185 5. If a client receiving services ~~pursuant to this chapter~~
 4186 has declared an intention to harm other persons. ~~When such a~~
 4187 ~~declaration has been made~~, the administrator shall authorize the
 4188 release of sufficient information to provide adequate warning to
 4189 the person threatened with harm by the client, and to the
 4190 committing court, the state attorney, and the attorney
 4191 representing the client.

4192 6. To the parent or next of kin of a client ~~mentally ill,~~
 4193 ~~retarded, or autistic person~~ who is committed to, or is being
 4194 served by, a facility or program when such information is
 4195 limited to that person's service plan and current physical and
 4196 mental condition. Release of such information shall be in
 4197 accordance with the code of ethics of the profession involved
 4198 and must comply with all state and federal laws and regulations
 4199 pertaining to the release of personal health information.

4200 (b) Notwithstanding other provisions of this subsection,
 4201 the department or the agency may request or receive from or
 4202 provide to any of the following entities client information to
 4203 facilitate treatment, habilitation, rehabilitation, and
 4204 continuity of care of any forensic client:

4205 1. The Social Security Administration and the United
 4206 States Department of Veterans Affairs.†

4207 2. Law enforcement agencies, state attorneys, defense
4208 attorneys, and judges in regard to the client's status.+

4209 3. Jail personnel in the jail to which a client may be
4210 housed. ~~returned; and~~

4211 4. Community agencies and others expected to provide
4212 followup care to the client upon the client's return to the
4213 community.

4214 (c) The department or the agency may provide notice to any
4215 client's next of kin or first representative regarding any
4216 serious medical illness or the death of the client.

4217 (d)1. Any law enforcement agency, facility, or other
4218 governmental agency that receives information pursuant to this
4219 subsection shall maintain the confidentiality of such
4220 information except as otherwise provided herein.

4221 2. Any agency or private practitioner who acts in good
4222 faith in releasing information pursuant to this subsection is
4223 not subject to civil or criminal liability for such release.

4224 (9) HABEAS CORPUS.--

4225 (a) At any time, and without notice, a forensic client
4226 detained by a facility, or a relative, friend, guardian,
4227 representative, or attorney on behalf of such client, may
4228 petition for a writ of habeas corpus to question the cause and
4229 legality of such detention and request that the committing court
4230 issue a writ for release. Each client ~~committed pursuant to this~~
4231 ~~chapter~~ shall receive a written notice of the right to petition
4232 for a writ of habeas corpus.

4233 (b) A client or his or her legal guardian or
4234 representatives or attorney may file a petition in the circuit

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4235 court in the county where the client is committed alleging that
4236 the client is being unjustly denied a right or privilege granted
4237 herein or that a procedure authorized herein is being abused.
4238 Upon the filing of such a petition, the circuit court shall have
4239 the authority to conduct a judicial inquiry and to issue any
4240 appropriate order to correct an abuse of the provisions of this
4241 chapter.

4242 (10) TRANSPORTATION.--

4243 (a) The sheriff shall consult with the governing board of
4244 the county as to the most appropriate and cost-effective means
4245 of transportation for forensic clients in the custody of the
4246 department or the agency who have been committed for treatment
4247 or training. Such consultation shall include, but is not limited
4248 to, consideration of the cost to the county of transportation
4249 performed by sheriff's ~~department~~ personnel as opposed to
4250 transportation performed by other means and, if sheriff's
4251 ~~department~~ personnel are to be used for transportation, the
4252 effect such use will have, if any, on service delivery levels of
4253 the sheriff's road patrol. After such consultation with the
4254 governing board of the county, the sheriff shall determine the
4255 most appropriate and cost-effective means of transportation for
4256 forensic clients committed for treatment or training.

4257 (b) The governing board of each county is authorized to
4258 contract with private transport companies for the transportation
4259 of such clients to and from a facility.

4260 (c) Any company that transports a client pursuant to this
4261 section is considered an independent contractor and is solely
4262 liable for the safe and dignified transportation of the client.

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4263 Any transport company that contracts with the governing board of
 4264 a county for the transport of clients as provided for in this
 4265 section shall be insured and provide no less than \$100,000 in
 4266 liability insurance with respect to the transportation of the
 4267 clients.

4268 (d) Any company that contracts with a governing board of a
 4269 county to transport clients shall comply with the applicable
 4270 rules of the department or the agency to ensure the safety and
 4271 dignity of the clients.

4272 (11) LIABILITY FOR VIOLATIONS.--Any person who violates or
 4273 abuses any rights or privileges of a forensic client in the
 4274 custody of the department or agency provided under this chapter
 4275 shall be ~~by this act is~~ liable for damages as determined by law.
 4276 Any person who acts in good faith in complying with the
 4277 provisions of this chapter ~~act~~ is immune from civil or criminal
 4278 liability for his or her actions in connection with the
 4279 admission, diagnosis, treatment, training, or discharge of a
 4280 client to or from a facility. However, this subsection does not
 4281 relieve any person from liability if he or she is negligent.

4282 Section 64. Section 916.1075, Florida Statutes, is amended
 4283 to read:

4284 916.1075 Sexual misconduct prohibited; reporting required;
 4285 penalties.--

4286 (1) As used in this section, the term:

4287 (a) "Employee" includes any paid staff member, volunteer,
 4288 or intern of the department or the agency; any person under
 4289 contract with the department or the agency; and any person

4290 providing care or support to a forensic client on behalf of the
 4291 department, the agency, or their ~~its~~ providers.

4292 (b) "Sexual activity" means:

4293 1. Fondling the genital area, groin, inner thighs,
 4294 buttocks, or breasts of a person.

4295 2. The oral, anal, or vaginal penetration by or union with
 4296 the sexual organ of another or the anal or vaginal penetration
 4297 of another by any other object.

4298 3. Intentionally touching in a lewd or lascivious manner
 4299 the breasts, genitals, the genital area, or buttocks, or the
 4300 clothing covering them, of a person, or forcing or enticing a
 4301 person to touch the perpetrator.

4302 4. Intentionally masturbating in the presence of another
 4303 person.

4304 5. Intentionally exposing the genitals in a lewd or
 4305 lascivious manner in the presence of another person.

4306 6. Intentionally committing any other sexual act that does
 4307 not involve actual physical or sexual contact with the victim,
 4308 including, but not limited to, sadomasochistic abuse, sexual
 4309 bestiality, or the simulation of any act involving sexual
 4310 activity in the presence of a victim.

4311 (c) "Sexual misconduct" means any sexual activity between
 4312 an employee and a forensic client in the custody of the
 4313 department or the agency, regardless of the consent of the
 4314 client. The term does not include an act done for a bona fide
 4315 medical purpose or an internal search conducted in the lawful
 4316 performance of duty by an employee.

4317 (2) An employee who engages in sexual misconduct with a
 4318 forensic client who resides in a civil or forensic facility
 4319 commits a felony of the second degree, punishable as provided in
 4320 s. 775.082, s. 775.083, or s. 775.084. An employee may be found
 4321 guilty of violating this subsection without having committed the
 4322 crime of sexual battery.

4323 (3) The consent of a forensic ~~the~~ client to sexual
 4324 activity is not a defense to prosecution under this section.

4325 (4) This section does not apply to an employee who:

4326 ~~(a) is legally married to the client, or~~

4327 ~~(b) Has no reason to believe that the person with whom the~~
 4328 ~~employee engaged in sexual misconduct is a client receiving~~
 4329 ~~services as described in subsection (2).~~

4330 (5) An employee who witnesses sexual misconduct, or who
 4331 otherwise knows or has reasonable cause to suspect that a person
 4332 has engaged in sexual misconduct, shall immediately report the
 4333 incident to the department's central abuse hotline and to the
 4334 appropriate local law enforcement agency. Such employee shall
 4335 also prepare, date, and sign an independent report that
 4336 specifically describes the nature of the sexual misconduct, the
 4337 location and time of the incident, and the persons involved. For
 4338 allegations pertaining to forensic clients committed to the
 4339 agency, the employee shall deliver the report to the supervisor
 4340 or program director, who shall provide copies to the agency's ~~is~~
 4341 ~~responsible for providing copies to the department's~~ inspector
 4342 general. For allegations pertaining to forensic clients
 4343 committed to the department, the employees shall deliver the
 4344 report to the supervisor or program director, who shall be

4345 responsible for providing copies to the department's inspector
 4346 general. ~~The inspector general shall immediately conduct an~~
 4347 ~~appropriate administrative investigation, and, if there is~~
 4348 ~~probable cause to believe that sexual misconduct has occurred,~~
 4349 ~~the inspector general shall notify the state attorney in the~~
 4350 ~~circuit in which the incident occurred.~~

4351 (6) (a) Any person who is required to make a report under
 4352 this section and who knowingly or willfully fails to do so, or
 4353 who knowingly or willfully prevents another person from doing
 4354 so, commits a misdemeanor of the first degree, punishable as
 4355 provided in s. 775.082 or s. 775.083.

4356 (b) Any person who knowingly or willfully submits
 4357 inaccurate, incomplete, or untruthful information with respect
 4358 to a report required under this section commits a misdemeanor of
 4359 the first degree, punishable as provided in s. 775.082 or s.
 4360 775.083.

4361 (c) Any person who knowingly or willfully coerces or
 4362 threatens any other person with the intent to alter testimony or
 4363 a written report regarding an incident of sexual misconduct
 4364 commits a felony of the third degree, punishable as provided in
 4365 s. 775.082, s. 775.083, or s. 775.084.

4366 (7) The provisions and penalties set forth in this section
 4367 are in addition to any other civil, administrative, or criminal
 4368 action provided by law which may be applied against an employee.

4369 Section 65. Section 916.1081, Florida Statutes, is amended
 4370 to read:

4371 916.1081 Escape from program; penalty.--

4372 (1) A forensic client ~~A defendant~~ involuntarily committed
 4373 to the department or the agency, in the custody of the
 4374 department or agency ~~under the provisions of this chapter~~ who
 4375 escapes or attempts to escape from a civil or forensic facility
 4376 ~~or program~~ commits a felony of the second degree, punishable as
 4377 provided in s. 775.082, s. 775.083, or s. 775.084.

4378 (2) A forensic client involuntarily committed to the
 4379 department or the agency, in the custody of the Department of
 4380 Corrections who escapes or attempts to escape from a facility or
 4381 program commits a felony of the second degree, punishable as
 4382 provided in s. 944.40.

4383 Section 66. Section 916.1085, Florida Statutes, is amended
 4384 to read:

4385 916.1085 Introduction or removal of certain articles
 4386 unlawful; penalty.--

4387 (1) (a) Except as authorized by law or as specifically
 4388 authorized by the person in charge of a facility, it is unlawful
 4389 to introduce into or upon the grounds of any facility under the
 4390 supervision or control of the department, or to take or attempt
 4391 to take or send therefrom, any of the following articles, which
 4392 are hereby declared to be contraband for the purposes of this
 4393 section:

- 4394 1. Any intoxicating beverage or beverage which causes or
 4395 may cause an intoxicating effect;
- 4396 2. Any controlled substance as defined in chapter 893;
- 4397 3. Any firearm or deadly weapon; or
- 4398 4. Any other item as determined by the department, and as
 4399 designated by ~~departmental~~ rule or ~~by the administrator of any~~

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4400 ~~facility, and designated~~ by written institutional policies, to
 4401 be hazardous to the welfare of clients ~~patients~~ or the operation
 4402 of the facility.

4403 (b) It is unlawful to transmit to, attempt to transmit to,
 4404 or cause or attempt to cause to be transmitted to or received by
 4405 any client of any facility under the supervision or control of
 4406 the department or the agency any article or thing declared by
 4407 this section to be contraband, at any place which is outside of
 4408 the grounds of such facility, except as authorized by law or as
 4409 specifically authorized by the person in charge of such
 4410 facility.

4411 (2)(a) All individuals or vehicles entering upon the
 4412 grounds of any facility under the supervision or control of the
 4413 department may be subject to reasonable search and seizure of
 4414 any contraband materials introduced thereon, for purpose of
 4415 enforcement of this chapter.

4416 (b) These provisions shall be enforced by institutional
 4417 security personnel as defined in s. 916.106(12)~~(10)~~ or by a law
 4418 enforcement officer as defined in s. 943.10.

4419 (c) A person who violates any provision of subparagraph
 4420 (1)(a)2. or subparagraph (1)(a)3. commits a felony of the third
 4421 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 4422 775.084.

4423 Section 67. Section 916.1091, Florida Statutes, is amended
 4424 to read:

4425 916.1091 Duties, functions, and powers of institutional
 4426 security personnel.--In case of emergency, and when necessary to
 4427 provide protection and security to any client, to the personnel,

4428 equipment, buildings, or grounds of a department or agency
 4429 facility, or to citizens in the surrounding community,
 4430 institutional security personnel may, when authorized by the
 4431 administrator of the facility, or her or his designee when the
 4432 administrator is not present, use a chemical weapon against a
 4433 patient housed in a forensic facility. However, such weapon
 4434 shall be used only to the extent necessary to provide ~~such~~
 4435 protection and security. Under no circumstances shall any ~~such~~
 4436 officer carry a chemical weapon on her or his person except
 4437 during the period of the emergency for which its use was
 4438 authorized. All chemical weapons shall be placed in secure
 4439 storage when their use is not authorized as provided in this
 4440 section.

4441 Section 68. Section 916.1093, Florida Statutes, is amended
 4442 to read:

4443 916.1093 Operation and administration; rules.--

4444 (1) The department or the agency is authorized to enter
 4445 into contracts and do such things as may be necessary and
 4446 incidental to assure compliance with and to carry out the
 4447 provisions of this chapter in accordance with the stated
 4448 legislative intent.

4449 (2) The department or the agency has authority to adopt
 4450 rules pursuant to ss. 120.536(1) and 120.54 to implement the
 4451 provisions of this chapter.

4452 Section 69. Section 916.111, Florida Statutes, is amended
 4453 to read:

4454 916.111 Training of mental health experts.--The evaluation
 4455 of defendants for competency to proceed or for sanity at the

4456 time of the commission of the offense shall be conducted in such
 4457 a way as to ensure uniform application of the criteria
 4458 enumerated in the applicable rules of the ~~Rules 3.210 and 3.216,~~
 4459 Florida Rules of Criminal Procedure. The department shall
 4460 develop, and may contract with accredited institutions:

4461 (1) To provide:

4462 (a) A plan for training ~~community~~ mental health
 4463 professionals to perform forensic evaluations and to standardize
 4464 the criteria and procedures to be used in these evaluations;

4465 (b) Clinical protocols and procedures consistent with the
 4466 applicable rules of the ~~based upon the criteria of Rules 3.210~~
 4467 ~~and 3.216,~~ Florida Rules of Criminal Procedure; and

4468 (c) Training for ~~community~~ mental health professionals in
 4469 the application of these protocols and procedures in performing
 4470 forensic evaluations and providing reports to the courts; and

4471 (2) To compile and maintain the necessary information for
 4472 evaluating the success of this program, including the number of
 4473 persons trained, the cost of operating the program, and the
 4474 effect on the quality of forensic evaluations as measured by
 4475 appropriateness of admissions to state forensic facilities and
 4476 to community-based care programs.

4477 Section 70. Section 916.115, Florida Statutes, is amended
 4478 to read:

4479 916.115 Appointment of experts.--

4480 (1)(a) ~~Annually, the department shall provide the courts~~
 4481 ~~with a list of mental health professionals who have completed~~
 4482 ~~approved training as experts.~~

4483 ~~(b)~~ The court shall ~~may~~ appoint no more than three nor
 4484 fewer than two experts to determine ~~issues of~~ the mental
 4485 condition of a defendant in a criminal case, including ~~the~~
 4486 ~~issues of~~ competency to proceed, insanity, ~~and~~ involuntary
 4487 ~~hospitalization or placement,~~ and treatment. The panel of
 4488 experts ~~An expert~~ may evaluate the defendant in jail or in
 4489 another appropriate local facility, or in a Department of
 4490 Corrections facility.

4491 ~~(a)(e)~~ To the extent possible, an appointed expert shall
 4492 have completed forensic evaluator training approved by the
 4493 department and shall be either a psychiatrist, licensed
 4494 psychologist, or physician.

4495 **(b)** The department shall maintain and provide the courts
 4496 with a list of available mental health professionals who have
 4497 completed approved training as experts.

4498 **(2)** Experts ~~Expert witnesses~~ appointed by the court to
 4499 evaluate the mental condition of a defendant in a criminal case
 4500 shall be allowed reasonable fees for services rendered as
 4501 evaluators of competence or sanity and as witnesses, which shall
 4502 be paid in accordance with s. 29.004(6).

4503 **(a)1.** The court shall pay for any expert that it appoints
 4504 by court order, upon motion of counsel for the defendant or the
 4505 state or upon its own motion. If the defense or the state
 4506 retains an expert and waives the confidentiality of the expert's
 4507 report, the court may pay for no more than two additional
 4508 experts appointed by court order. If an expert appointed by the
 4509 court upon motion of counsel for the defendant specifically to
 4510 evaluate the competence of the defendant to proceed also

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4511 addresses in his or her evaluation issues related to sanity as
4512 an affirmative defense, the court shall pay only for that
4513 portion of the expert's fees relating to the evaluation on
4514 competency to proceed, and the balance of the fees shall be
4515 chargeable to the defense.

4516 2. Pursuant to s. 29.006, the office of the public
4517 defender shall pay for any expert retained by the office.

4518 3. Pursuant to s. 29.005, the office of the state attorney
4519 shall pay for any expert retained by the office. Notwithstanding
4520 subparagraph 1., the office of the state attorney shall pay for
4521 any expert whom the office retains and whom the office moves the
4522 court to appoint in order to ensure that the expert has access
4523 to the defendant.

4524 4. An expert retained by the defendant who is represented
4525 by private counsel appointed under s. 27.5303 shall be paid by
4526 the Justice Administrative Commission.

4527 5. An expert retained by a defendant who is indigent for
4528 costs as determined by the court and who is represented by
4529 private counsel, other than private counsel appointed under s.
4530 27.5303, on a fee or pro bono basis, or who is representing
4531 himself or herself, shall be paid by the Justice Administrative
4532 Commission from funds specifically appropriated for these
4533 expenses.

4534 (b) State employees shall be paid expenses pursuant to s.
4535 112.061.

4536 (c) The fees shall be taxed as costs in the case.

4537 (d) In order for an expert to be paid for the services
4538 rendered, the expert's report and testimony must explicitly

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4539 address each of the factors specified in s. 916.12 and follow
4540 the procedures set out in this chapter and in the Florida Rules
4541 of Criminal Procedure.

4542 Section 71. Section 916.12, Florida Statutes, is amended
4543 to read:

4544 916.12 Mental competence to proceed.--

4545 (1) A defendant is incompetent to proceed within the
4546 meaning of this chapter if the defendant does not have
4547 sufficient present ability to consult with her or his lawyer
4548 with a reasonable degree of rational understanding or if the
4549 defendant has no rational, as well as factual, understanding of
4550 the proceedings against her or him.

4551 (2) Mental health experts appointed pursuant to s. 916.115
4552 ~~An expert~~ shall first determine whether the defendant ~~person~~ is
4553 mentally ill and, if so, consider the factors related to the
4554 issue of whether the defendant meets the criteria for competence
4555 to proceed as described in subsection (1); ~~that is, whether the~~
4556 ~~defendant has sufficient present ability to consult with counsel~~
4557 ~~with a reasonable degree of rational understanding and whether~~
4558 ~~the defendant has a rational, as well as factual, understanding~~
4559 ~~of the pending proceedings.~~ A defendant must be evaluated by no
4560 fewer than two experts before the court commits the defendant or
4561 takes other action authorized by this chapter or the Florida
4562 Rules of Criminal Procedure, except if one expert finds that the
4563 defendant is incompetent to proceed and the parties stipulate to
4564 that finding, the court may commit the defendant or take other
4565 action authorized by this chapter or the rules without further
4566 evaluation or hearing, or the court may appoint no more than two

4567 additional experts to evaluate the defendant. Notwithstanding
 4568 any stipulation by the state and the defendant, the court may
 4569 require a hearing with testimony from the expert or experts
 4570 before ordering the commitment of a defendant.

4571 (3) In considering the issue of competence to proceed, an
 4572 examining expert shall first consider and specifically include
 4573 in his or her report the defendant's capacity to:

4574 (a) Appreciate the charges or allegations against the
 4575 defendant. †

4576 (b) Appreciate the range and nature of possible penalties,
 4577 if applicable, that may be imposed in the proceedings against
 4578 the defendant. †

4579 (c) Understand the adversarial nature of the legal
 4580 process. †

4581 (d) Disclose to counsel facts pertinent to the proceedings
 4582 at issue. †

4583 (e) Manifest appropriate courtroom behavior. † ~~and~~

4584 (f) Testify relevantly. †

4585 (g) ~~and include in his or her report~~ Any other factor
 4586 deemed relevant by the expert.

4587 (4) If an expert finds that the defendant is incompetent
 4588 to proceed, the expert shall report on any recommended treatment
 4589 for the defendant to attain competence to proceed. In
 4590 considering the issues relating to treatment, the examining
 4591 expert shall specifically report on:

4592 (a) The mental illness causing the incompetence. †

4593 (b) The treatment or treatments appropriate for the mental
 4594 illness of the defendant and an explanation of each of the
 4595 possible treatment alternatives in order of choices. +

4596 (c) The availability of acceptable treatment and, if
 4597 treatment is available in the community, the expert shall so
 4598 state in the report. + ~~and~~

4599 (d) The likelihood of the defendant's attaining competence
 4600 under the treatment recommended, an assessment of the probable
 4601 duration of the treatment required to restore competence, and
 4602 the probability that the defendant will attain competence to
 4603 proceed in the foreseeable future.

4604 (5) A defendant who, because of psychotropic medication,
 4605 is able to understand the nature of proceedings and assist in
 4606 the defendant's own defense shall not automatically be deemed
 4607 incompetent to proceed simply because the defendant's
 4608 satisfactory mental functioning is dependent upon such
 4609 medication. As used in this subsection, "psychotropic
 4610 medication" means any drug or compound used to treat mental or
 4611 emotional disorders affecting the mind, behavior, intellectual
 4612 functions, perception, moods, or emotions and includes
 4613 antipsychotic, antidepressant, antimanic, and antianxiety drugs.

4614 Section 72. Section 916.13, Florida Statutes, is amended
 4615 to read:

4616 916.13 Involuntary commitment of defendant adjudicated
 4617 incompetent.--

4618 (1) Every defendant who is charged with a felony and who
 4619 is adjudicated incompetent to proceed, ~~pursuant to the~~
 4620 ~~applicable Florida Rules of Criminal Procedure,~~ may be

4621 involuntarily committed for treatment upon a finding by the
 4622 court of clear and convincing evidence that:

4623 (a) The defendant is mentally ill and because of the
 4624 mental illness:

4625 1. The defendant is manifestly incapable of surviving
 4626 alone or with the help of willing and responsible family or
 4627 friends, including available alternative services, and, without
 4628 treatment, the defendant is likely to suffer from neglect or
 4629 refuse to care for herself or himself and such neglect or
 4630 refusal poses a real and present threat of substantial harm to
 4631 the defendant's well-being; or ~~and~~

4632 2. There is a substantial likelihood that in the near
 4633 future the defendant will inflict serious bodily harm on herself
 4634 or himself or another person, as evidenced by recent behavior
 4635 causing, attempting, or threatening such harm;

4636 (b) All available, less restrictive treatment
 4637 alternatives, including treatment in community residential
 4638 facilities or community inpatient or outpatient settings, which
 4639 would offer an opportunity for improvement of the defendant's
 4640 condition have been judged to be inappropriate; and

4641 (c) There is a substantial probability that the mental
 4642 illness causing the defendant's incompetence will respond to
 4643 treatment and the defendant will regain competency to proceed in
 4644 the reasonably foreseeable future.

4645 (2) A defendant who has been charged with a felony and who
 4646 has been adjudicated incompetent to proceed due to mental
 4647 illness, and who meets the criteria for involuntary commitment
 4648 to the department under the provisions of this chapter, may be

4649 committed to the department, and the department shall retain and
 4650 treat the defendant. No later than 6 months after the date of
 4651 admission and ~~or~~ at the end of any period of extended
 4652 commitment, or at any time the administrator or designee shall
 4653 have determined that the defendant has regained competency to
 4654 proceed or no longer meets the criteria for continued
 4655 commitment, the administrator or designee shall file a report
 4656 with the court pursuant to the applicable Florida Rules of
 4657 Criminal Procedure.

4658 Section 73. Section 916.15, Florida Statutes, is amended
 4659 to read:

4660 916.15 Involuntary commitment of defendant adjudicated not
 4661 guilty by reason of insanity.--

4662 (1) The determination of whether a defendant is not guilty
 4663 by reason of insanity shall be determined in accordance with the
 4664 Florida Rules of Criminal Procedure.

4665 (2)~~(1)~~ A defendant who is acquitted of criminal charges
 4666 because of a finding of not guilty by reason of insanity may be
 4667 involuntarily committed pursuant to such finding if the
 4668 defendant is mentally ill and, because of the illness, is
 4669 manifestly dangerous to himself or herself or others.

4670 (3)~~(2)~~ Every defendant acquitted of criminal charges by
 4671 reason of insanity and found to meet the criteria for
 4672 involuntary commitment may be committed and treated in
 4673 accordance with the provisions of this section and the
 4674 applicable Florida Rules of Criminal Procedure. The department
 4675 shall admit a defendant so adjudicated to an appropriate
 4676 facility or program for treatment and shall retain and treat

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4677 such defendant. No later than 6 months after the date of
4678 admission, prior to the end of any period of extended
4679 commitment, or at any time the administrator or designee shall
4680 have determined that the defendant no longer meets the criteria
4681 for continued commitment placement, the administrator or
4682 designee shall file a report with the court pursuant to the
4683 applicable Florida Rules of Criminal Procedure.

4684 ~~(4)(3)~~ In all proceedings under this section ~~subsection~~,
4685 both the defendant and the state shall have the right to a
4686 hearing before the committing court. Evidence at such hearing
4687 may be presented by the hospital administrator or the
4688 administrator's designee as well as by the state and the
4689 defendant. The defendant shall have the right to counsel at any
4690 such hearing. In the event that a defendant is determined to be
4691 indigent pursuant to s. 27.52, the public defender shall
4692 represent the defendant. The parties shall have access to the
4693 defendant's records at the treating facilities and may interview
4694 or depose personnel who have had contact with the defendant at
4695 the treating facilities.

4696 Section 74. Section 916.16, Florida Statutes, is amended
4697 to read:

4698 916.16 Jurisdiction of committing court.--

4699 (1) The committing court shall retain jurisdiction over ~~in~~
4700 ~~the case of~~ any defendant involuntarily committed due to a
4701 determination hospitalized as incompetent to proceed due to
4702 mental illness or because of a finding of not guilty by reason
4703 of insanity pursuant to this chapter. No such defendant may be
4704 released except by order of the committing court. An ~~The~~

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4705 administrative hearing examiner shall have no jurisdiction to
4706 determine issues of continuing commitment ~~hospitalization~~ or
4707 release of any defendant involuntarily committed ~~admitted~~
4708 pursuant to this chapter.

4709 (2) The committing court shall retain jurisdiction in the
4710 case of any defendant placed on conditional release pursuant to
4711 s. 916.17. No such defendant may be released from the conditions
4712 of release except by order of the committing court.

4713 Section 75. Section 916.17, Florida Statutes, is amended
4714 to read:

4715 916.17 Conditional release.--

4716 (1) ~~The committing court may order a conditional release~~
4717 ~~of any defendant who has been found to be incompetent to proceed~~
4718 ~~or not guilty by reason of insanity, based on an approved plan~~
4719 ~~for providing appropriate outpatient care and treatment. Except~~
4720 ~~for an inmate currently serving a prison sentence, the~~
4721 committing court may order a conditional release of any
4722 defendant in lieu of an involuntary commitment to a facility
4723 pursuant to s. 916.13 or s. 916.15, based upon an approved plan
4724 for providing appropriate outpatient care and treatment. Upon a
4725 recommendation that outpatient treatment of the defendant is
4726 appropriate, a written plan for outpatient treatment, including
4727 recommendations from qualified professionals, must be filed with
4728 the court, with copies to all parties. Such a plan may also be
4729 submitted by the defendant and filed with the court with copies
4730 to all parties. The plan shall include:

4731 (a) Special provisions for residential care or adequate
4732 supervision of the defendant.

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4733 (b) Provisions for outpatient mental health services.

4734 (c) If appropriate, recommendations for auxiliary services
4735 such as vocational training, educational services, or special
4736 medical care.

4737
4738 In its order of conditional release, the court shall specify the
4739 conditions of release based upon the release plan and shall
4740 direct the appropriate agencies or persons to submit periodic
4741 reports to the court regarding the defendant's compliance with
4742 the conditions of the release and progress in treatment, with
4743 copies to all parties.

4744 (2) Upon the filing of an affidavit or statement under
4745 oath by any person that the defendant has failed to comply with
4746 the conditions of release, that the defendant's condition has
4747 deteriorated to the point that inpatient care is required, or
4748 that the release conditions should be modified, the court shall
4749 hold a hearing within 7 days after receipt of the affidavit or
4750 statement under oath. After the hearing, the court may modify
4751 the release conditions. The court may also order that the
4752 defendant be returned to the department if it is found, after
4753 the appointment and report of experts, that the person meets the
4754 criteria for involuntary commitment under s. 916.13 or s. 916.15
4755 ~~treatment~~.

4756 (3) If at any time it is determined after a hearing that
4757 the defendant who has been conditionally released under
4758 subsection (1) no longer requires court-supervised followup
4759 care, the court shall terminate its jurisdiction in the cause
4760 and discharge the defendant.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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4761 Section 76. Section 916.301, Florida Statutes, is amended
 4762 to read:

4763 916.301 Appointment of experts.--

4764 (1) All evaluations ordered by the court under this part
 4765 must be conducted by qualified experts with experience in
 4766 evaluating persons with mental retardation or autism. The agency
 4767 ~~department~~ shall maintain and provide the courts ~~annually~~ with a
 4768 list of available mental retardation and autism professionals
 4769 who are appropriately licensed and qualified to perform
 4770 evaluations of defendants alleged to be incompetent to proceed
 4771 due to retardation or autism. The courts may use professionals
 4772 from this list when appointing experts and ordering evaluations
 4773 under this part ~~for defendants suspected of being retarded or~~
 4774 ~~autistic.~~

4775 (2) If a defendant's suspected mental condition is
 4776 retardation or autism, the court shall appoint a panel of
 4777 experts consisting of the following: ~~two experts, one of whom~~
 4778 ~~must be the developmental services program of the department,~~
 4779 ~~each of whom will evaluate whether the defendant meets the~~
 4780 ~~definition of retardation or autism and, if so, whether the~~
 4781 ~~defendant is competent to proceed.~~

4782 (a) ~~(3)~~ At least one or, at the request of any party, two
 4783 experts ~~the court may appoint one additional expert~~ to evaluate
 4784 ~~the defendant. The expert appointed by the court will evaluate~~
 4785 whether the defendant meets the definition of retardation or
 4786 autism and, if so, whether the defendant is competent to
 4787 proceed.

4788 (b) ~~(4)~~ An agency-selected ~~The developmental services~~
 4789 ~~program shall select a~~ psychologist who is licensed or
 4790 authorized by law to practice in this state, with experience in
 4791 evaluating persons suspected of having retardation or autism,
 4792 and a social service professional, with experience in working
 4793 with persons with retardation or autism ~~to evaluate the~~
 4794 ~~defendant.~~

4795 1. ~~(a)~~ The psychologist shall evaluate whether the
 4796 defendant meets the definition of retardation or autism and, if
 4797 so, whether the defendant is incompetent to proceed due to
 4798 retardation or autism.

4799 2. ~~(b)~~ The social service professional shall provide a
 4800 social and developmental history of the defendant.

4801 ~~(5)~~ ~~All evaluations ordered by the court must be from~~
 4802 ~~qualified experts with experience in evaluating persons with~~
 4803 ~~retardation or autism.~~

4804 (3) ~~(6)~~ The panel of experts may examine the defendant in
 4805 jail, in another appropriate local facility, in a Department of
 4806 Corrections facility, or on an outpatient basis.

4807 (4) ~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to
 4808 evaluate the mental condition of a defendant in a criminal case
 4809 shall be allowed reasonable fees for services rendered as
 4810 evaluators and as witnesses, which shall be paid in accordance
 4811 with s. 29.004(6) by the court. State employees shall be paid
 4812 expenses pursuant to s. 112.061. The fees shall be taxed as
 4813 costs in the case. In order for the experts to be paid for the
 4814 services rendered, the reports and testimony must explicitly

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4815 address each of the factors and follow the procedures set out in
 4816 this chapter and in the Florida Rules of Criminal Procedure.

4817 Section 77. Section 916.3012, Florida Statutes, is amended
 4818 to read:

4819 916.3012 Mental competence to proceed.--

4820 (1) A defendant whose suspected mental condition is
 4821 retardation or autism is incompetent to proceed within the
 4822 meaning of this chapter if the defendant does not have
 4823 sufficient present ability to consult with the defendant's
 4824 lawyer with a reasonable degree of rational understanding or if
 4825 the defendant has no rational, as well as factual, understanding
 4826 of the proceedings against the defendant.

4827 (2) The Experts in mental retardation or autism, appointed
 4828 pursuant to s. 916.301, shall first consider whether the
 4829 defendant meets the definition of retardation or autism and, if
 4830 so, consider the factors related to the issue of whether the
 4831 defendant meets the criteria for competence to proceed as
 4832 described in subsection (1); ~~that is, whether the defendant has~~
 4833 ~~sufficient present ability to consult with counsel with a~~
 4834 ~~reasonable degree of rational understanding and whether the~~
 4835 ~~defendant has a rational, as well as factual, understanding of~~
 4836 ~~the pending proceedings.~~

4837 (3) In considering the issue of competence to proceed, the
 4838 examining experts shall first consider and specifically include
 4839 in their report the defendant's capacity to:

4840 (a) Appreciate the charges or allegations against the
 4841 defendant;

4842 (b) Appreciate the range and nature of possible penalties,
 4843 if applicable, that may be imposed in the proceedings against
 4844 the defendant;

4845 (c) Understand the adversarial nature of the legal
 4846 process;

4847 (d) Disclose to counsel facts pertinent to the proceedings
 4848 at issue;

4849 (e) Manifest appropriate courtroom behavior; ~~and~~

4850 (f) Testify relevantly; and

4851 (g) ~~and include in their report~~ Any other factor deemed
 4852 relevant by the experts.

4853 (4) If the experts should find that the defendant is
 4854 incompetent to proceed, the experts shall report on any
 4855 recommended training for the defendant to attain competence to
 4856 proceed. In considering the issues relating to training, the
 4857 examining experts shall specifically report on:

4858 (a) The retardation or autism causing the incompetence;

4859 (b) The training appropriate for the retardation or autism
 4860 of the defendant and an explanation of each of the possible
 4861 training alternatives in order of choices;

4862 (c) The availability of acceptable training and, if
 4863 training is available in the community, the expert shall so
 4864 state in the report; and

4865 (d) The likelihood of the defendant's attaining competence
 4866 under the training recommended, an assessment of the probable
 4867 duration of the training required to restore competence, and the
 4868 probability that the defendant will attain competence to proceed
 4869 in the foreseeable future.

4870 Section 78. Section 916.302, Florida Statutes, is amended
 4871 to read:

4872 916.302 Involuntary commitment of defendant determined to
 4873 be incompetent to proceed ~~due to retardation or autism.~~--

4874 (1) CRITERIA.--Every defendant who is charged with a
 4875 felony and who is adjudicated found to be incompetent to proceed
 4876 due to mental retardation or autism, ~~pursuant to this chapter~~
 4877 ~~and the applicable Florida Rules of Criminal Procedure,~~ may be
 4878 involuntarily committed for training upon a finding by the court
 4879 of clear and convincing evidence that:

4880 (a) The defendant is retarded or autistic;

4881 (b) There is a substantial likelihood that in the near
 4882 future the defendant will inflict serious bodily harm on himself
 4883 or herself or another person, as evidenced by recent behavior
 4884 causing, attempting, or threatening such harm;

4885 (c) All available, less restrictive alternatives,
 4886 including services provided in community residential facilities
 4887 or other community settings, which would offer an opportunity
 4888 for improvement of the condition have been judged to be
 4889 inappropriate; and

4890 (d) There is a substantial probability that the
 4891 retardation or autism causing the defendant's incompetence will
 4892 respond to training and the defendant will regain competency to
 4893 proceed in the reasonably foreseeable future.

4894 (2) ADMISSION TO A FACILITY.--

4895 (a) A defendant who has been charged with a felony and who
 4896 is found to be incompetent to proceed due to mental retardation
 4897 or autism, and who meets the criteria for involuntary commitment

4898 to the agency ~~department~~ under the provisions of this chapter,
 4899 shall be committed to the agency ~~department~~, and the agency
 4900 ~~department~~ shall retain and provide appropriate training to
 4901 ~~serve~~ the defendant. No later than 6 months after the date of
 4902 admission or at the end of any period of extended commitment or
 4903 at any time the administrator or designee shall have determined
 4904 that the defendant has regained competency to proceed or no
 4905 longer meets the criteria for continued commitment, the
 4906 administrator or designee shall file a report with the court
 4907 pursuant to this chapter and the applicable Florida Rules of
 4908 Criminal Procedure.

4909 (b) A defendant determined to be incompetent to proceed
 4910 due to retardation or autism may be ordered by a circuit court
 4911 into a forensic ~~secure~~ facility designated by the agency
 4912 ~~department~~ for retarded or autistic defendants.

4913 (c) The agency ~~department~~ may transfer a defendant from a
 4914 designated forensic ~~secure~~ facility to another designated
 4915 forensic ~~secure~~ facility and must notify the court of the
 4916 transfer within 30 days after the transfer is completed.

4917 (d) The agency ~~department~~ may not transfer a defendant
 4918 from a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~
 4919 facility without first notifying the court, and all parties, 30
 4920 days before the proposed transfer. If the court objects to the
 4921 proposed transfer ~~to a nonsecure facility~~, it must send its
 4922 written objection to the agency ~~department~~. The agency
 4923 ~~department~~ may transfer the defendant unless it receives the
 4924 written objection from the court within 30 days after the
 4925 court's receipt of the notice of the proposed transfer.

4926 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.--
 4927 (a) If a defendant is both retarded or autistic and
 4928 mentally ill, evaluations must address which condition is
 4929 primarily affecting the defendant's competency to proceed.
 4930 Referral of the defendant should be made to a civil or forensic
 4931 ~~the facility or program~~ most appropriate to address the symptoms
 4932 which are the cause of the defendant's incompetence.
 4933 (b) Transfer from one civil or forensic facility ~~or~~
 4934 ~~program~~ to another civil or forensic facility ~~or program~~ may
 4935 occur when, in the department's and agency's judgment, it is in
 4936 the defendant's best treatment or training interests. The
 4937 department and agency shall submit an evaluation and
 4938 justification for the transfer to the court. The court may
 4939 consult with an outside expert if necessary. Transfer will
 4940 require an amended order from the committing court.
 4941 Section 79. Section 916.3025, Florida Statutes, is amended
 4942 to read:
 4943 916.3025 Jurisdiction of committing court.--
 4944 (1) The committing court shall retain jurisdiction in the
 4945 case of any defendant found to be incompetent to proceed due to
 4946 retardation or autism and ordered into a forensic secure
 4947 facility designated by the agency ~~department~~ for retarded or
 4948 autistic defendants. No defendant may be released except by the
 4949 order of the committing court. An administrative hearing
 4950 examiner shall have no jurisdiction to determine issues of
 4951 continuing commitment or release of any defendant involuntarily
 4952 committed pursuant to this chapter.

4953 (2) The committing court shall retain jurisdiction in the
 4954 case of any defendant placed on conditional release pursuant to
 4955 s. 916.304. No such defendant may be released from the
 4956 conditions of release except by order of the committing court.

4957 (3) The committing court shall consider a ~~the~~ petition to
 4958 involuntarily admit a defendant whose charges have been
 4959 dismissed to residential services provided by the agency
 4960 ~~department's developmental services program a person whose~~
 4961 ~~charges have been dismissed,~~ and, when applicable, to continue
 4962 secure placement of such person as provided in s. 916.303. The
 4963 committing court shall retain jurisdiction over such person so
 4964 long as he or she remains in secure placement or is on
 4965 conditional release as provided in s. 916.304. However, upon
 4966 request, the court may transfer the continuing jurisdiction to
 4967 the court in the circuit where the defendant resides if
 4968 different from where the original secure placement order was
 4969 issued. No person may be released from an order for secure
 4970 placement except by the order of the court.

4971 Section 80. Section 916.303, Florida Statutes, is amended
 4972 to read:

4973 916.303 Determination of incompetency due to mental
 4974 retardation or autism; dismissal of charges.--

4975 (1) Except for an inmate currently serving a prison
 4976 sentence, the charges against any defendant found to be
 4977 incompetent to proceed due to mental retardation or autism shall
 4978 be dismissed without prejudice to the state if the defendant
 4979 remains incompetent to proceed within a reasonable time after
 4980 such determination, not to exceed 2 years, unless the court in

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4981 its order specifies its reasons for believing that the defendant
 4982 will become competent to proceed within the foreseeable future
 4983 and specifies the time within which the defendant is expected to
 4984 become competent to proceed. The charges may be refiled by the
 4985 state ~~against the defendant are dismissed without prejudice to~~
 4986 ~~the state to refile the charges~~ should the defendant be declared
 4987 competent to proceed in the future.

4988 (2) ~~(a)~~ If the charges are dismissed and if the defendant
 4989 is considered to lack sufficient capacity to give express and
 4990 informed consent to a voluntary application for services and
 4991 lacks the basic survival and self-care skills to provide for his
 4992 or her well-being or is likely to physically injure himself or
 4993 herself or others if allowed to remain at liberty, the agency
 4994 ~~department~~, the state attorney, or the defendant's attorney
 4995 shall ~~may~~ apply to the committing court to involuntarily admit
 4996 the defendant to residential services pursuant to s. 393.11.

4997 (3) ~~(b)~~ If the defendant is considered to need involuntary
 4998 residential services for the reasons described in subsection (2)
 4999 ~~under s. 393.11~~ and, further, there is a substantial likelihood
 5000 that the defendant will injure another person or continues to
 5001 present a danger of escape, and all available less restrictive
 5002 alternatives, including services in community residential
 5003 facilities or other community settings, which would offer an
 5004 opportunity for improvement of the condition have been judged to
 5005 be inappropriate, then the agency ~~person or entity filing the~~
 5006 ~~petition under s. 393.11~~, the state attorney, or the defendant's
 5007 counsel may request, ~~the petitioning commission, or the~~
 5008 ~~department may also petition~~ the committing court to continue

5009 | the defendant's placement in a secure facility ~~or program~~
 5010 | pursuant to this part section. Any placement so continued
 5011 | ~~defendant involuntarily admitted~~ under this subsection must be
 5012 | ~~paragraph shall have his or her status~~ reviewed by the court at
 5013 | least annually at a hearing. The annual review and hearing shall
 5014 | determine whether the defendant continues to meet the criteria
 5015 | described in this subsection ~~for involuntary residential~~
 5016 | ~~services~~ and, if so, whether the defendant still requires
 5017 | involuntary placement in a secure facility or program ~~because~~
 5018 | ~~the court finds that the defendant is likely to physically~~
 5019 | ~~injure others as specified in s. 393.11~~ and whether the
 5020 | defendant is receiving adequate care, treatment, habilitation,
 5021 | and rehabilitation, including psychotropic medication and
 5022 | behavioral programming. Notice of the annual review and review
 5023 | hearing shall be given to the state attorney and to the
 5024 | defendant's attorney. In no instance may a defendant's placement
 5025 | in a secure facility or program exceed the maximum sentence for
 5026 | the crime for which the defendant was charged.

5027 | Section 81. Section 916.304, Florida Statutes, is amended
 5028 | to read:

5029 | 916.304 Conditional release.--

5030 | (1) Except for an inmate currently serving a prison
 5031 | sentence, the committing court may order a conditional release
 5032 | of any defendant who has been found to be incompetent to proceed
 5033 | due to mental retardation or autism, based on an approved plan
 5034 | for providing ~~continuing~~ community-based training. The
 5035 | committing criminal court may order a conditional release of any
 5036 | defendant to a civil facility in lieu of an involuntary

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5037 | commitment to a forensic facility pursuant to s. 916.302. Upon a
5038 | recommendation that community-based training for the defendant
5039 | is appropriate, a written plan for community-based training,
5040 | including recommendations from qualified professionals, may be
5041 | filed with the court, with copies to all parties. Such a plan
5042 | may also be submitted by the defendant and filed with the court,
5043 | with copies to all parties. The plan shall include:

5044 | (a) Special provisions for residential care and adequate
5045 | supervision of the defendant, including recommended location of
5046 | placement.

5047 | (b) Recommendations for auxiliary services such as
5048 | vocational training, psychological training, educational
5049 | services, leisure services, and special medical care.

5050

5051 | In its order of conditional release, the court shall specify the
5052 | conditions of release based upon the release plan and shall
5053 | direct the appropriate agencies or persons to submit periodic
5054 | reports to the courts regarding the defendant's compliance with
5055 | the conditions of the release and progress in training, with
5056 | copies to all parties.

5057 | (2) Upon the filing of an affidavit or statement under
5058 | oath by any person that the defendant has failed to comply with
5059 | the conditions of release, that the defendant's condition has
5060 | deteriorated, or that the release conditions should be modified,
5061 | the court shall hold a hearing within 7 days after receipt of
5062 | the affidavit or statement under oath. With notice to the court,
5063 | the agency may detain a defendant in a forensic facility until
5064 | the hearing occurs. After the hearing, the court may modify the

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5065 | release conditions. The court may also order that the defendant
 5066 | be placed into more appropriate programs for further training or
 5067 | may order the defendant to be committed ~~returned~~ to a forensic
 5068 | facility ~~involuntary residential services of the department~~ if
 5069 | it is found, after the appointment and report of experts, that
 5070 | the defendant meets the criteria for placement in a forensic
 5071 | facility ~~involuntary residential services~~.

5072 | (3) If at any time it is determined after a hearing that
 5073 | the defendant conditionally released under subsection (1) no
 5074 | longer requires court-supervised followup care, the court shall
 5075 | terminate its jurisdiction in the cause and discharge the
 5076 | defendant.

5077 | Section 82. Subsection (1) of section 921.137, Florida
 5078 | Statutes, is amended to read:

5079 | 921.137 Imposition of the death sentence upon a ~~mentally~~
 5080 | ~~retarded~~ defendant with mental retardation prohibited.--

5081 | (1) As used in this section, the term "mental retardation"
 5082 | means significantly subaverage general intellectual functioning
 5083 | existing concurrently with deficits in adaptive behavior and
 5084 | manifested during the period from conception to age 18. The term
 5085 | "significantly subaverage general intellectual functioning," for
 5086 | the purpose of this section, means performance that is two or
 5087 | more standard deviations from the mean score on a standardized
 5088 | intelligence test specified in the rules of the Agency for
 5089 | Persons with Disabilities ~~Department of Children and Family~~
 5090 | ~~Services~~. The term "adaptive behavior," for the purpose of this
 5091 | definition, means the effectiveness or degree with which an
 5092 | individual meets the standards of personal independence and

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5093 | social responsibility expected of his or her age, cultural
 5094 | group, and community. The Agency for Persons with Disabilities
 5095 | ~~Department of Children and Family Services~~ shall adopt rules to
 5096 | specify the standardized intelligence tests as provided in this
 5097 | subsection.

5098 | Section 83. Section 944.602, Florida Statutes, is amended
 5099 | to read:

5100 | 944.602 Notification of the Agency for Persons with
 5101 | Disabilities ~~Department of Children and Family Services~~ before
 5102 | release of inmates with mental retardation ~~mentally retarded~~
 5103 | ~~inmates~~.--Before the release by parole, release by reason of
 5104 | gain-time allowances provided for in s. 944.291, or expiration
 5105 | of sentence of any inmate who has been diagnosed as mentally
 5106 | retarded as defined in s. 393.063, the Department of Corrections
 5107 | shall notify the Agency for Persons with Disabilities ~~Department~~
 5108 | ~~of Children and Family Services~~ in order that sufficient time be
 5109 | allowed to notify the inmate or the inmate's representative, in
 5110 | writing, at least 7 days prior to the inmate's release, of
 5111 | available community services.

5112 | Section 84. Subsections (2) and (3) of section 945.025,
 5113 | Florida Statutes, are amended to read:

5114 | 945.025 Jurisdiction of department.--

5115 | (2) In establishing, operating, and utilizing these
 5116 | facilities, the department shall attempt, whenever possible, to
 5117 | avoid the placement of nondangerous offenders who have potential
 5118 | for rehabilitation with repeat offenders or dangerous offenders.
 5119 | Medical, mental, and psychological problems shall be diagnosed
 5120 | and treated whenever possible. The Department of Children and

5121 Family Services and the Agency for Persons with Disabilities
 5122 shall cooperate to ensure the delivery of services to persons
 5123 under the custody or supervision of the department. When it is
 5124 the intent of the department to transfer a mentally ill or
 5125 mentally retarded prisoner to the Department of Children and
 5126 Family Services or the Agency for Persons with Disabilities, an
 5127 involuntary commitment hearing shall be held according to the
 5128 provisions of chapter 393 or chapter 394.

5129 (3) There shall be other correctional facilities,
 5130 including detention facilities of varying levels of security,
 5131 work-release facilities, and community correctional facilities,
 5132 halfway houses, and other approved community residential and
 5133 nonresidential facilities and programs; however, no adult
 5134 correctional facility may be established by changing the use and
 5135 purpose of any mental health facility or mental health
 5136 institution under the jurisdiction of any state agency or
 5137 department without authorization in the General Appropriation
 5138 Act or other approval by the Legislature. ~~Any facility the~~
 5139 ~~purpose and use of which was changed subsequent to January 1,~~
 5140 ~~1975, shall be returned to its original use and purpose by July~~
 5141 ~~1, 1977. However, the G. Pierce Wood Memorial Hospital located~~
 5142 ~~at Arcadia, DeSoto County, may not be converted into a~~
 5143 ~~correctional facility as long as such hospital is in use as a~~
 5144 ~~state mental health hospital.~~ Any community residential facility
 5145 may be deemed a part of the state correctional system for
 5146 purposes of maintaining custody of offenders, and for this
 5147 purpose the department may contract for and purchase the
 5148 services of such facilities.

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5149 Section 85. Section 947.185, Florida Statutes, is amended
 5150 to read:

5151 947.185 Application for mental retardation services as
 5152 condition of parole.--The Parole Commission may require as a
 5153 condition of parole that any inmate who has been diagnosed as
 5154 mentally retarded as defined in s. 393.063 shall, upon release,
 5155 apply for mental retardation services from the Agency for
 5156 Persons with Disabilities ~~Department of Children and Family~~
 5157 ~~Services~~.

5158 Section 86. Section 985.223, Florida Statutes, is amended
 5159 to read:

5160 985.223 Incompetency in juvenile delinquency cases.--

5161 (1) If, at any time prior to or during a delinquency case,
 5162 the court has reason to believe that the child named in the
 5163 petition may be incompetent to proceed with the hearing, the
 5164 court on its own motion may, or on the motion of the child's
 5165 attorney or state attorney must, stay all proceedings and order
 5166 an evaluation of the child's mental condition.

5167 (a) Any motion questioning the child's competency to
 5168 proceed must be served upon the child's attorney, the state
 5169 attorney, the attorneys representing the Department of Juvenile
 5170 Justice, and the attorneys representing the Department of
 5171 Children and Family Services or the Agency for Persons with
 5172 Disabilities. Thereafter, any motion, notice of hearing, order,
 5173 or other legal pleading relating to the child's competency to
 5174 proceed with the hearing must be served upon the child's
 5175 attorney, the state attorney, the attorneys representing the
 5176 Department of Juvenile Justice, and the attorneys representing

5177 the Department of Children and Family Services or the Agency for
 5178 Persons with Disabilities.

5179 (b) All determinations of competency shall be made at a
 5180 hearing, with findings of fact based on an evaluation of the
 5181 child's mental condition made by not less than two nor more than
 5182 three experts appointed by the court. The basis for the
 5183 determination of incompetency must be specifically stated in the
 5184 evaluation. In addition, a recommendation as to whether
 5185 residential or nonresidential treatment or training is required
 5186 must be included in the evaluation. Experts appointed by the
 5187 court to determine the mental condition of a child shall be
 5188 allowed reasonable fees for services rendered. State employees
 5189 may be paid expenses pursuant to s. 112.061. The fees shall be
 5190 taxed as costs in the case.

5191 (c) All court orders determining incompetency must include
 5192 specific written findings by the court as to the nature of the
 5193 incompetency and whether the child requires secure or nonsecure
 5194 treatment or training environments.

5195 (d) For incompetency evaluations related to mental
 5196 illness, the Department of Children and Family Services shall
 5197 maintain and ~~annually~~ provide the courts with a list of
 5198 available mental health professionals who have completed a
 5199 training program approved by the Department of Children and
 5200 Family Services to perform the evaluations.

5201 (e) For incompetency evaluations related to mental
 5202 retardation or autism, the court shall order the Agency for
 5203 Persons with Disabilities ~~Developmental Disabilities Program~~
 5204 ~~Office within the Department of Children and Family Services~~ to

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5205 examine the child to determine if the child meets the definition
 5206 of "mental retardation" or "autism" in s. 393.063 and, if so,
 5207 whether the child is competent to proceed with delinquency
 5208 proceedings.

5209 (f) A child is competent to proceed if the child has
 5210 sufficient present ability to consult with counsel with a
 5211 reasonable degree of rational understanding and the child has a
 5212 rational and factual understanding of the present proceedings.
 5213 The report must address the child's capacity to:

- 5214 1. Appreciate the charges or allegations against the
 5215 child.
- 5216 2. Appreciate the range and nature of possible penalties
 5217 that may be imposed in the proceedings against the child, if
 5218 applicable.
- 5219 3. Understand the adversarial nature of the legal process.
- 5220 4. Disclose to counsel facts pertinent to the proceedings
 5221 at issue.
- 5222 5. Display appropriate courtroom behavior.
- 5223 6. Testify relevantly.

5224 (g) Immediately upon the filing of the court order finding
 5225 a child incompetent to proceed, the clerk of the court shall
 5226 notify the Department of Children and Family Services or the
 5227 Agency for Persons with Disabilities and fax or hand deliver ~~to~~
 5228 ~~the Department of Children and Family Services~~ a referral packet
 5229 which includes, at a minimum, the court order, the charging
 5230 documents, the petition, and the court-appointed evaluator's
 5231 reports.

5232 (h) After placement of the child in the appropriate
 5233 setting, the Department of Children and Family Services or the
 5234 Agency for Persons with Disabilities, as appropriate, must,
 5235 within 30 days after placement of ~~the Department of Children and~~
 5236 ~~Family Services~~ places the child, prepare and submit to the
 5237 court a treatment or training plan for the child's restoration
 5238 of competency. A copy of the ~~treatment~~ plan must be served upon
 5239 the child's attorney, the state attorney, and the attorneys
 5240 representing the Department of Juvenile Justice.

5241 (2) A child ~~who is mentally ill or retarded,~~ who is
 5242 adjudicated incompetent to proceed, and who has committed a
 5243 delinquent act or violation of law, either of which would be a
 5244 felony if committed by an adult, must be committed to the
 5245 Department of Children and Family Services for mental health
 5246 treatment or to the Agency for Persons with Disabilities for
 5247 training appropriate to a person with mental retardation or
 5248 autism. A child who has been adjudicated incompetent to proceed
 5249 because of age or immaturity, or for any reason other than for
 5250 mental illness, mental ~~or~~ retardation, or autism, must not be
 5251 committed to the department, ~~or to~~ the Department of Children
 5252 and Family Services, or the Agency for Persons with Disabilities
 5253 for restoration-of-competency treatment or training services.
 5254 For purposes of this section, a child who has committed a
 5255 delinquent act or violation of law, either of which would be a
 5256 misdemeanor if committed by an adult, may not be committed to
 5257 the department, ~~or to~~ the Department of Children and Family
 5258 Services, or the Agency for Persons with Disabilities for
 5259 restoration-of-competency treatment or training services.

5260 (3) If the court finds that a child is mentally ill,
 5261 mentally ~~or~~ retarded, or autistic and adjudicates the child
 5262 incompetent to proceed, the court must also determine whether
 5263 the child meets the criteria for secure placement. A child may
 5264 be placed in a secure facility or program if the court makes a
 5265 finding by clear and convincing evidence that:

5266 (a) The child is mentally ill and because of the mental
 5267 illness; or the child is mentally retarded or autistic and
 5268 because of the mental retardation or autism:

5269 1. The child is manifestly incapable of surviving with the
 5270 help of willing and responsible family or friends, including
 5271 available alternative services, and without treatment or
 5272 training the child is likely to either suffer from neglect or
 5273 refuse to care for self, and such neglect or refusal poses a
 5274 real and present threat of substantial harm to the child's well-
 5275 being; or

5276 2. There is a substantial likelihood that in the near
 5277 future the child will inflict serious bodily harm on self or
 5278 others, as evidenced by recent behavior causing, attempting, or
 5279 threatening such harm; and

5280 (b) All available less restrictive alternatives, including
 5281 treatment or training in community residential facilities or
 5282 community settings which would offer an opportunity for
 5283 improvement of the child's condition, are inappropriate.

5284 (4) A child who is determined to be mentally ill, mentally
 5285 ~~or~~ retarded, or autistic who has been adjudicated incompetent to
 5286 proceed, and who meets the criteria set forth in subsection (3),
 5287 must be committed to the Department of Children and Family

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5288 Services or the Agency for Persons with Disabilities, and
5289 receive treatment or training ~~the Department of Children and~~
5290 ~~Family Services must treat or train the child~~ in a secure
5291 facility or program which is the least restrictive alternative
5292 consistent with public safety. Any placement of a child to a
5293 secure residential program must be separate from adult forensic
5294 programs. If the child attains competency, then custody, case
5295 management, and supervision of the child will be transferred to
5296 the department in order to continue delinquency proceedings;
5297 however, the court retains authority to order the Department of
5298 Children and Family Services or the Agency for Persons with
5299 Disabilities to provide continued treatment or training to
5300 maintain competency.

5301 (a) A child adjudicated incompetent due to mental
5302 retardation or autism may be ordered into a secure program or
5303 facility designated by the Agency for Persons with Disabilities
5304 ~~Department of Children and Family Services~~ for mentally retarded
5305 or autistic children.

5306 (b) A child adjudicated incompetent due to mental illness
5307 may be ordered into a secure program or facility designated by
5308 the Department of Children and Family Services for mentally ill
5309 children.

5310 (c) Whenever a child is placed in a secure residential
5311 facility, the department will provide transportation to the
5312 secure residential facility for admission and from the secure
5313 residential facility upon discharge.

5314 (d) The purpose of the treatment or training is the
5315 restoration of the child's competency to proceed.

5316 (e) The service provider must file a written report with
 5317 the court pursuant to the applicable Florida Rules of Juvenile
 5318 Procedure not later than 6 months after the date of commitment,
 5319 or at the end of any period of extended treatment or training,
 5320 and at any time the Department of Children and Family Services
 5321 or the Agency for Persons with Disabilities, through its service
 5322 provider determines the child has attained competency or no
 5323 longer meets the criteria for secure placement, or at such
 5324 shorter intervals as ordered by the court. A copy of a written
 5325 report evaluating the child's competency must be filed by the
 5326 provider with the court and with the state attorney, the child's
 5327 attorney, the department, and the Department of Children and
 5328 Family Services or the Agency for Persons with Disabilities.

5329 (5) (a) If a child is determined to be incompetent to
 5330 proceed, the court shall retain jurisdiction of the child for up
 5331 to 2 years after the date of the order of incompetency, with
 5332 reviews at least every 6 months to determine competency.

5333 (b) Whenever the provider files a report with the court
 5334 informing the court that the child will never become competent
 5335 to proceed, the Department of Children and Family Services or
 5336 the Agency for Persons with Disabilities shall ~~will~~ develop a
 5337 discharge plan for the child prior to any hearing determining
 5338 whether the child will ever become competent to proceed and send
 5339 such. ~~The Department of Children and Family Services must send~~
 5340 ~~the proposed discharge~~ plan to the court, the state attorney,
 5341 the child's attorney, and the attorneys representing the
 5342 Department of Juvenile Justice. The provider shall ~~will~~ continue

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5343 to provide services to the child until the court issues the
5344 order finding the child will never become competent to proceed.

5345 (c) If the court determines at any time that the child
5346 will never become competent to proceed, the court may dismiss
5347 the delinquency petition. If, at the end of the 2-year period
5348 following the date of the order of incompetency, the child has
5349 not attained competency and there is no evidence that the child
5350 will attain competency within a year, the court must dismiss the
5351 delinquency petition. If appropriate, the court may order that
5352 proceedings under chapter 393 or chapter 394 be instituted. Such
5353 proceedings must be instituted not less than 60 days prior to
5354 the dismissal of the delinquency petition.

5355 (6) (a) If a child is determined to be mentally ill,
5356 mentally ~~or~~ retarded, or autistic and is found to be incompetent
5357 to proceed but does not meet the criteria set forth in
5358 subsection (3), the court shall commit the child to the
5359 Department of Children and Family Services or the Agency for
5360 Persons with Disabilities and shall order the respective agency
5361 ~~Department of Children and Family Services~~ to provide
5362 appropriate treatment and training in the community. The purpose
5363 of the treatment or training is the restoration of the child's
5364 competency to proceed.

5365 (b) All court-ordered treatment or training must be the
5366 least restrictive alternative that is consistent with public
5367 safety. Any placement by the Department of Children and Family
5368 Services or the Agency for Persons with Disabilities to a
5369 residential program must be separate from adult forensic
5370 programs.

5371 (c) If a child is ordered to receive competency
 5372 restoration services, the services shall be provided by the
 5373 Department of Children and Family Services or the Agency for
 5374 Persons with Disabilities. The department shall continue to
 5375 provide case management services to the child and receive notice
 5376 of the competency status of the child.

5377 (d) The service provider must file a written report with
 5378 the court pursuant to the applicable Florida Rules of Juvenile
 5379 Procedure, not later than 6 months after the date of commitment,
 5380 at the end of any period of extended treatment or training, and
 5381 at any time the service provider determines the child has
 5382 attained competency or will never attain competency, or at such
 5383 shorter intervals as ordered by the court. A copy of a written
 5384 report evaluating the child's competency must be filed by the
 5385 provider with the court, the state attorney, the child's
 5386 attorney, the Department of Children and Family Services or the
 5387 Agency for Persons with Disabilities, and the department.

5388 (7) The provisions of this section shall be implemented
 5389 only subject to specific appropriation.

5390 Section 87. Subsection (1) of section 985.224, Florida
 5391 Statutes, is amended to read:

5392 985.224 Medical, psychiatric, psychological, substance
 5393 abuse, and educational examination and treatment.--

5394 (1) After a detention petition or a petition for
 5395 delinquency has been filed, the court may order the child named
 5396 in the petition to be examined by a physician. The court may
 5397 also order the child to be evaluated by a psychiatrist or a
 5398 psychologist, by a district school board educational needs

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5399 assessment team, or, if a developmental disability is suspected
 5400 or alleged, by a ~~the~~ developmental disabilities diagnostic and
 5401 evaluation team ~~with~~ of the Agency for Persons with Disabilities
 5402 ~~Department of Children and Family Services~~. If it is necessary
 5403 to place a child in a residential facility for such evaluation,
 5404 the criteria and procedures established in chapter 393, chapter
 5405 394, or chapter 397, whichever is applicable, shall be used.

5406 Section 88. Section 1003.58, Florida Statutes, is amended
 5407 to read:

5408 1003.58 Students in residential care facilities.--Each
 5409 district school board shall provide educational programs
 5410 according to rules of the State Board of Education to students
 5411 who reside in residential care facilities operated by the
 5412 Department of Children and Family Services or the Agency for
 5413 Persons with Disabilities.

5414 (1) The district school board shall not be charged any
 5415 rent, maintenance, utilities, or overhead on such facilities.
 5416 Maintenance, repairs, and remodeling of existing facilities
 5417 shall be provided by the Department of Children and Family
 5418 Services or the Agency for Persons with Disabilities, as
 5419 appropriate.

5420 (2) If additional facilities are required, the district
 5421 school board and the Department of Children and Family Services
 5422 or the Agency for Persons with Disabilities, as appropriate,
 5423 shall agree on the appropriate site based on the instructional
 5424 needs of the students. When the most appropriate site for
 5425 instruction is on district school board property, a special
 5426 capital outlay request shall be made by the commissioner in

5427 accordance with s. 1013.60. When the most appropriate site is on
 5428 state property, state capital outlay funds shall be requested by
 5429 the department or the agency in accordance with chapter 216 of
 5430 ~~Children and Family Services as provided by s. 216.043 and shall~~
 5431 ~~be submitted as specified by s. 216.023.~~ Any instructional
 5432 facility to be built on state property shall have educational
 5433 specifications jointly developed by the school district and the
 5434 department or the agency of Children and Family Services and
 5435 approved by the Department of Education. The size of space and
 5436 occupant design capacity criteria as provided by state board
 5437 rules shall be used for remodeling or new construction whether
 5438 facilities are provided on state property or district school
 5439 board property. The planning of such additional facilities shall
 5440 incorporate current state Department of Children and Family
 5441 ~~Services~~ deinstitutionalization goals and plans.

5442 (3) The district school board shall have full and complete
 5443 authority in the matter of the assignment and placement of such
 5444 students in educational programs. The parent of an exceptional
 5445 student shall have the same due process rights as are provided
 5446 under s. 1003.57(5).

5447 (4) The district school board shall have a written
 5448 agreement with the Department of Children and Family Services
 5449 and the Agency for Persons with Disabilities outlining the
 5450 respective duties and responsibilities of each party.

5451
 5452 Notwithstanding the provisions herein, the educational program
 5453 at the Marianna Sunland Center in Jackson County shall be
 5454 operated by the Department of Education, either directly or

5455 through grants or contractual agreements with other public or
 5456 duly accredited educational agencies approved by the Department
 5457 of Education.

5458 Section 89. Paragraph (c) of subsection (3) of section
 5459 17.61, Florida Statutes, is amended to read:

5460 17.61 Chief Financial Officer; powers and duties in the
 5461 investment of certain funds.--

5462 (3)

5463 (c) Except as provided in this paragraph and except for
 5464 moneys described in paragraph (d), the following agencies shall
 5465 not invest trust fund moneys as provided in this section, but
 5466 shall retain such moneys in their respective trust funds for
 5467 investment, with interest appropriated to the General Revenue
 5468 Fund, pursuant to s. 17.57:

5469 1. The Agency for Health Care Administration, except for
 5470 the Tobacco Settlement Trust Fund.

5471 2. The Department of Children and Family Services, except
 5472 for:

5473 a. The Alcohol, Drug Abuse, and Mental Health Trust Fund.

5474 b. The Community Resources Development Loan Program ~~Trust~~
 5475 ~~Fund~~.

5476 c. The Refugee Assistance Trust Fund.

5477 d. The Social Services Block Grant Trust Fund.

5478 e. The Tobacco Settlement Trust Fund.

5479 f. The Working Capital Trust Fund.

5480 3. The Department of Community Affairs, only for the
 5481 Operating Trust Fund.

5482 4. The Department of Corrections.

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- 5483 5. The Department of Elderly Affairs, except for:
- 5484 a. The Federal Grants Trust Fund.
- 5485 b. The Tobacco Settlement Trust Fund.
- 5486 6. The Department of Health, except for:
- 5487 a. The Federal Grants Trust Fund.
- 5488 b. The Grants and Donations Trust Fund.
- 5489 c. The Maternal and Child Health Block Grant Trust Fund.
- 5490 d. The Tobacco Settlement Trust Fund.
- 5491 7. The Department of Highway Safety and Motor Vehicles,
- 5492 only for:
- 5493 a. The DUI Programs Coordination Trust Fund.
- 5494 b. The Security Deposits Trust Fund.
- 5495 8. The Department of Juvenile Justice.
- 5496 9. The Department of Law Enforcement.
- 5497 10. The Department of Legal Affairs.
- 5498 11. The Department of State, only for:
- 5499 a. The Grants and Donations Trust Fund.
- 5500 b. The Records Management Trust Fund.
- 5501 12. The Executive Office of the Governor, only for:
- 5502 a. The Economic Development Transportation Trust Fund.
- 5503 b. The Economic Development Trust Fund.
- 5504 13. The Florida Public Service Commission, only for the
- 5505 Florida Public Service Regulatory Trust Fund.
- 5506 14. The Justice Administrative Commission.
- 5507 15. The state courts system.
- 5508 Section 90. Paragraph (b) of subsection (7) of section
- 5509 39.001, Florida Statutes, is amended to read:

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5510 39.001 Purposes and intent; personnel standards and
5511 screening.--

5512 (7) PLAN FOR COMPREHENSIVE APPROACH.--

5513 (b) The development of the comprehensive state plan shall
5514 be accomplished in the following manner:

5515 1. The department shall establish an interprogram task
5516 force comprised of the Program Director for Family Safety, or a
5517 designee, a representative from the Child Care Services Program
5518 Office, a representative from the Family Safety Program Office,
5519 a representative from the Mental Health Program Office, a
5520 representative from the Substance Abuse Program Office, a
5521 representative from the Agency for Persons with Disabilities
5522 ~~Developmental Disabilities Program Office~~, and a representative
5523 from the Division of Children's Medical Services Prevention and
5524 Intervention of the Department of Health. Representatives of the
5525 Department of Law Enforcement and of the Department of Education
5526 shall serve as ex officio members of the interprogram task
5527 force. The interprogram task force shall be responsible for:

5528 a. Developing a plan of action for better coordination and
5529 integration of the goals, activities, and funding pertaining to
5530 the prevention of child abuse, abandonment, and neglect
5531 conducted by the department in order to maximize staff and
5532 resources at the state level. The plan of action shall be
5533 included in the state plan.

5534 b. Providing a basic format to be utilized by the
5535 districts in the preparation of local plans of action in order
5536 to provide for uniformity in the district plans and to provide
5537 for greater ease in compiling information for the state plan.

5538 c. Providing the districts with technical assistance in
 5539 the development of local plans of action, if requested.

5540 d. Examining the local plans to determine if all the
 5541 requirements of the local plans have been met and, if they have
 5542 not, informing the districts of the deficiencies and requesting
 5543 the additional information needed.

5544 e. Preparing the state plan for submission to the
 5545 Legislature and the Governor. Such preparation shall include the
 5546 collapsing of information obtained from the local plans, the
 5547 cooperative plans with the Department of Education, and the plan
 5548 of action for coordination and integration of departmental
 5549 activities into one comprehensive plan. The comprehensive plan
 5550 shall include a section reflecting general conditions and needs,
 5551 an analysis of variations based on population or geographic
 5552 areas, identified problems, and recommendations for change. In
 5553 essence, the plan shall provide an analysis and summary of each
 5554 element of the local plans to provide a statewide perspective.
 5555 The plan shall also include each separate local plan of action.

5556 f. Working with the specified state agency in fulfilling
 5557 the requirements of subparagraphs 2., 3., 4., and 5.

5558 2. The department, the Department of Education, and the
 5559 Department of Health shall work together in developing ways to
 5560 inform and instruct parents of school children and appropriate
 5561 district school personnel in all school districts in the
 5562 detection of child abuse, abandonment, and neglect and in the
 5563 proper action that should be taken in a suspected case of child
 5564 abuse, abandonment, or neglect, and in caring for a child's

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5565 needs after a report is made. The plan for accomplishing this
5566 end shall be included in the state plan.

5567 3. The department, the Department of Law Enforcement, and
5568 the Department of Health shall work together in developing ways
5569 to inform and instruct appropriate local law enforcement
5570 personnel in the detection of child abuse, abandonment, and
5571 neglect and in the proper action that should be taken in a
5572 suspected case of child abuse, abandonment, or neglect.

5573 4. Within existing appropriations, the department shall
5574 work with other appropriate public and private agencies to
5575 emphasize efforts to educate the general public about the
5576 problem of and ways to detect child abuse, abandonment, and
5577 neglect and in the proper action that should be taken in a
5578 suspected case of child abuse, abandonment, or neglect. The plan
5579 for accomplishing this end shall be included in the state plan.

5580 5. The department, the Department of Education, and the
5581 Department of Health shall work together on the enhancement or
5582 adaptation of curriculum materials to assist instructional
5583 personnel in providing instruction through a multidisciplinary
5584 approach on the identification, intervention, and prevention of
5585 child abuse, abandonment, and neglect. The curriculum materials
5586 shall be geared toward a sequential program of instruction at
5587 the four progressional levels, K-3, 4-6, 7-9, and 10-12.
5588 Strategies for encouraging all school districts to utilize the
5589 curriculum are to be included in the comprehensive state plan
5590 for the prevention of child abuse, abandonment, and neglect.

5591 6. Each district of the department shall develop a plan
5592 for its specific geographical area. The plan developed at the

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5593 district level shall be submitted to the interprogram task force
5594 for utilization in preparing the state plan. The district local
5595 plan of action shall be prepared with the involvement and
5596 assistance of the local agencies and organizations listed in
5597 paragraph (a), as well as representatives from those
5598 departmental district offices participating in the treatment and
5599 prevention of child abuse, abandonment, and neglect. In order to
5600 accomplish this, the district administrator in each district
5601 shall establish a task force on the prevention of child abuse,
5602 abandonment, and neglect. The district administrator shall
5603 appoint the members of the task force in accordance with the
5604 membership requirements of this section. In addition, the
5605 district administrator shall ensure that each subdistrict is
5606 represented on the task force; and, if the district does not
5607 have subdistricts, the district administrator shall ensure that
5608 both urban and rural areas are represented on the task force.
5609 The task force shall develop a written statement clearly
5610 identifying its operating procedures, purpose, overall
5611 responsibilities, and method of meeting responsibilities. The
5612 district plan of action to be prepared by the task force shall
5613 include, but shall not be limited to:

5614 a. Documentation of the magnitude of the problems of child
5615 abuse, including sexual abuse, physical abuse, and emotional
5616 abuse, and child abandonment and neglect in its geographical
5617 area.

5618 b. A description of programs currently serving abused,
5619 abandoned, and neglected children and their families and a
5620 description of programs for the prevention of child abuse,

5621 abandonment, and neglect, including information on the impact,
 5622 cost-effectiveness, and sources of funding of such programs.

5623 c. A continuum of programs and services necessary for a
 5624 comprehensive approach to the prevention of all types of child
 5625 abuse, abandonment, and neglect as well as a brief description
 5626 of such programs and services.

5627 d. A description, documentation, and priority ranking of
 5628 local needs related to child abuse, abandonment, and neglect
 5629 prevention based upon the continuum of programs and services.

5630 e. A plan for steps to be taken in meeting identified
 5631 needs, including the coordination and integration of services to
 5632 avoid unnecessary duplication and cost, and for alternative
 5633 funding strategies for meeting needs through the reallocation of
 5634 existing resources, utilization of volunteers, contracting with
 5635 local universities for services, and local government or private
 5636 agency funding.

5637 f. A description of barriers to the accomplishment of a
 5638 comprehensive approach to the prevention of child abuse,
 5639 abandonment, and neglect.

5640 g. Recommendations for changes that can be accomplished
 5641 only at the state program level or by legislative action.

5642 Section 91. Paragraph (b) of subsection (14) of section
 5643 287.057, Florida Statutes, is amended to read:

5644 287.057 Procurement of commodities or contractual
 5645 services.--

5646 (14)

5647 (b) Notwithstanding paragraph (a), the Department of
 5648 Children and Family Services may enter into agreements, not to

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5649 exceed 20 years, with a private provider to finance, design, and
 5650 construct a forensic treatment facility, as defined in s.
 5651 916.106(10)~~(8)~~, of at least 200 beds and to operate all aspects
 5652 of daily operations within the forensic treatment facility. The
 5653 selected contractor is authorized to sponsor the issuance of
 5654 tax-exempt certificates of participation or other securities to
 5655 finance the project, and the state is authorized to enter into a
 5656 lease-purchase agreement for the forensic treatment facility.
 5657 This paragraph expires July 1, 2006.

5658 Section 92. Paragraph (a) of subsection (3) of section
 5659 381.0072, Florida Statutes, is amended to read:

5660 381.0072 Food service protection.--It shall be the duty of
 5661 the Department of Health to adopt and enforce sanitation rules
 5662 consistent with law to ensure the protection of the public from
 5663 food-borne illness. These rules shall provide the standards and
 5664 requirements for the storage, preparation, serving, or display
 5665 of food in food service establishments as defined in this
 5666 section and which are not permitted or licensed under chapter
 5667 500 or chapter 509.

5668 (3) LICENSES REQUIRED.--

5669 (a) Licenses; annual renewals.--Each food service
 5670 establishment regulated under this section shall obtain a
 5671 license from the department annually. Food service establishment
 5672 licenses shall expire annually and shall not be transferable
 5673 from one place or individual to another. However, those
 5674 facilities licensed by the department's Office of Licensure and
 5675 Certification, the Child Care Services Program Office, or the
 5676 Agency for Persons with Disabilities ~~Developmental Disabilities~~

5677 ~~Program Office~~ are exempt from this subsection. It shall be a
 5678 misdemeanor of the second degree, punishable as provided in s.
 5679 381.0061, s. 775.082, or s. 775.083, for such an establishment
 5680 to operate without this license. The department may refuse a
 5681 license, or a renewal thereof, to any establishment that is not
 5682 constructed or maintained in accordance with law and with the
 5683 rules of the department. Annual application for renewal shall
 5684 not be required.

5685 Section 93. Paragraph (b) of subsection (5) of section
 5686 400.464, Florida Statutes, is amended to read:

5687 400.464 Home health agencies to be licensed; expiration of
 5688 license; exemptions; unlawful acts; penalties.--

5689 (5) The following are exempt from the licensure
 5690 requirements of this part:

5691 (b) Home health services provided by a state agency,
 5692 either directly or through a contractor with:

5693 1. The Department of Elderly Affairs.

5694 2. The Department of Health, a community health center, or
 5695 a rural health network that furnishes home visits for the
 5696 purpose of providing environmental assessments, case management,
 5697 health education, personal care services, family planning, or
 5698 followup treatment, or for the purpose of monitoring and
 5699 tracking disease.

5700 3. Services provided to persons who have developmental
 5701 disabilities, as defined in s. 393.063.

5702 4. Companion and sitter organizations that were registered
 5703 under s. 400.509(1) on January 1, 1999, and were authorized to
 5704 provide personal services under s. 393.063 (21) ~~(33)~~ under a

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5705 developmental services provider certificate on January 1, 1999,
5706 may continue to provide such services to past, present, and
5707 future clients of the organization who need such services,
5708 notwithstanding the provisions of this act.

5709 5. The Department of Children and Family Services.

5710 Section 94. Paragraph (a) of subsection (4) of section
5711 943.0585, Florida Statutes, is amended to read:

5712 943.0585 Court-ordered expunction of criminal history
5713 records.--The courts of this state have jurisdiction over their
5714 own procedures, including the maintenance, expunction, and
5715 correction of judicial records containing criminal history
5716 information to the extent such procedures are not inconsistent
5717 with the conditions, responsibilities, and duties established by
5718 this section. Any court of competent jurisdiction may order a
5719 criminal justice agency to expunge the criminal history record
5720 of a minor or an adult who complies with the requirements of
5721 this section. The court shall not order a criminal justice
5722 agency to expunge a criminal history record until the person
5723 seeking to expunge a criminal history record has applied for and
5724 received a certificate of eligibility for expunction pursuant to
5725 subsection (2). A criminal history record that relates to a
5726 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
5727 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,
5728 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
5729 s. 916.1075, or a violation enumerated in s. 907.041 may not be
5730 expunged, without regard to whether adjudication was withheld,
5731 if the defendant was found guilty of or pled guilty or nolo
5732 contendere to the offense, or if the defendant, as a minor, was

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5733 found to have committed, or pled guilty or nolo contendere to
5734 committing, the offense as a delinquent act. The court may only
5735 order expunction of a criminal history record pertaining to one
5736 arrest or one incident of alleged criminal activity, except as
5737 provided in this section. The court may, at its sole discretion,
5738 order the expunction of a criminal history record pertaining to
5739 more than one arrest if the additional arrests directly relate
5740 to the original arrest. If the court intends to order the
5741 expunction of records pertaining to such additional arrests,
5742 such intent must be specified in the order. A criminal justice
5743 agency may not expunge any record pertaining to such additional
5744 arrests if the order to expunge does not articulate the
5745 intention of the court to expunge a record pertaining to more
5746 than one arrest. This section does not prevent the court from
5747 ordering the expunction of only a portion of a criminal history
5748 record pertaining to one arrest or one incident of alleged
5749 criminal activity. Notwithstanding any law to the contrary, a
5750 criminal justice agency may comply with laws, court orders, and
5751 official requests of other jurisdictions relating to expunction,
5752 correction, or confidential handling of criminal history records
5753 or information derived therefrom. This section does not confer
5754 any right to the expunction of any criminal history record, and
5755 any request for expunction of a criminal history record may be
5756 denied at the sole discretion of the court.

5757 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
5758 criminal history record of a minor or an adult which is ordered
5759 expunged by a court of competent jurisdiction pursuant to this
5760 section must be physically destroyed or obliterated by any

5761 criminal justice agency having custody of such record; except
 5762 that any criminal history record in the custody of the
 5763 department must be retained in all cases. A criminal history
 5764 record ordered expunged that is retained by the department is
 5765 confidential and exempt from the provisions of s. 119.07(1) and
 5766 s. 24(a), Art. I of the State Constitution and not available to
 5767 any person or entity except upon order of a court of competent
 5768 jurisdiction. A criminal justice agency may retain a notation
 5769 indicating compliance with an order to expunge.

5770 (a) The person who is the subject of a criminal history
 5771 record that is expunged under this section or under other
 5772 provisions of law, including former s. 893.14, former s. 901.33,
 5773 and former s. 943.058, may lawfully deny or fail to acknowledge
 5774 the arrests covered by the expunged record, except when the
 5775 subject of the record:

- 5776 1. Is a candidate for employment with a criminal justice
 5777 agency;
- 5778 2. Is a defendant in a criminal prosecution;
- 5779 3. Concurrently or subsequently petitions for relief under
 5780 this section or s. 943.059;
- 5781 4. Is a candidate for admission to The Florida Bar;
- 5782 5. Is seeking to be employed or licensed by or to contract
 5783 with the Department of Children and Family Services or the
 5784 Department of Juvenile Justice or to be employed or used by such
 5785 contractor or licensee in a sensitive position having direct
 5786 contact with children, persons with developmental disabilities
 5787 ~~the developmentally disabled~~, the aged, or the elderly as
 5788 provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s.

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5789 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
 5790 415.102(4), s. 916.106(12)~~(10)~~ and (15)~~(13)~~, s. 985.407, or
 5791 chapter 400; or

5792 6. Is seeking to be employed or licensed by the Department
 5793 of Education, any district school board, any university
 5794 laboratory school, any charter school, any private or parochial
 5795 school, or any local governmental entity that licenses child
 5796 care facilities.

5797 Section 95. Paragraph (a) of subsection (4) of section
 5798 943.059, Florida Statutes, is amended to read:

5799 943.059 Court-ordered sealing of criminal history
 5800 records.--The courts of this state shall continue to have
 5801 jurisdiction over their own procedures, including the
 5802 maintenance, sealing, and correction of judicial records
 5803 containing criminal history information to the extent such
 5804 procedures are not inconsistent with the conditions,
 5805 responsibilities, and duties established by this section. Any
 5806 court of competent jurisdiction may order a criminal justice
 5807 agency to seal the criminal history record of a minor or an
 5808 adult who complies with the requirements of this section. The
 5809 court shall not order a criminal justice agency to seal a
 5810 criminal history record until the person seeking to seal a
 5811 criminal history record has applied for and received a
 5812 certificate of eligibility for sealing pursuant to subsection
 5813 (2). A criminal history record that relates to a violation of s.
 5814 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 5815 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
 5816 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or

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5817 a violation enumerated in s. 907.041 may not be sealed, without
5818 regard to whether adjudication was withheld, if the defendant
5819 was found guilty of or pled guilty or nolo contendere to the
5820 offense, or if the defendant, as a minor, was found to have
5821 committed or pled guilty or nolo contendere to committing the
5822 offense as a delinquent act. The court may only order sealing of
5823 a criminal history record pertaining to one arrest or one
5824 incident of alleged criminal activity, except as provided in
5825 this section. The court may, at its sole discretion, order the
5826 sealing of a criminal history record pertaining to more than one
5827 arrest if the additional arrests directly relate to the original
5828 arrest. If the court intends to order the sealing of records
5829 pertaining to such additional arrests, such intent must be
5830 specified in the order. A criminal justice agency may not seal
5831 any record pertaining to such additional arrests if the order to
5832 seal does not articulate the intention of the court to seal
5833 records pertaining to more than one arrest. This section does
5834 not prevent the court from ordering the sealing of only a
5835 portion of a criminal history record pertaining to one arrest or
5836 one incident of alleged criminal activity. Notwithstanding any
5837 law to the contrary, a criminal justice agency may comply with
5838 laws, court orders, and official requests of other jurisdictions
5839 relating to sealing, correction, or confidential handling of
5840 criminal history records or information derived therefrom. This
5841 section does not confer any right to the sealing of any criminal
5842 history record, and any request for sealing a criminal history
5843 record may be denied at the sole discretion of the court.

5844 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 5845 history record of a minor or an adult which is ordered sealed by
 5846 a court of competent jurisdiction pursuant to this section is
 5847 confidential and exempt from the provisions of s. 119.07(1) and
 5848 s. 24(a), Art. I of the State Constitution and is available only
 5849 to the person who is the subject of the record, to the subject's
 5850 attorney, to criminal justice agencies for their respective
 5851 criminal justice purposes, or to those entities set forth in
 5852 subparagraphs (a)1., 4., 5., and 6. for their respective
 5853 licensing and employment purposes.

5854 (a) The subject of a criminal history record sealed under
 5855 this section or under other provisions of law, including former
 5856 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 5857 deny or fail to acknowledge the arrests covered by the sealed
 5858 record, except when the subject of the record:

- 5859 1. Is a candidate for employment with a criminal justice
 5860 agency;
- 5861 2. Is a defendant in a criminal prosecution;
- 5862 3. Concurrently or subsequently petitions for relief under
 5863 this section or s. 943.0585;
- 5864 4. Is a candidate for admission to The Florida Bar;
- 5865 5. Is seeking to be employed or licensed by or to contract
 5866 with the Department of Children and Family Services or the
 5867 Department of Juvenile Justice or to be employed or used by such
 5868 contractor or licensee in a sensitive position having direct
 5869 contact with children, persons with developmental disabilities
 5870 ~~the developmentally disabled~~, the aged, or the elderly as
 5871 provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s.

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5872 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
 5873 415.102(4), s. 415.103, s. 916.106~~(12)~~~~(10)~~ and ~~(15)~~~~(13)~~, s.
 5874 985.407, or chapter 400; or

5875 6. Is seeking to be employed or licensed by the Department
 5876 of Education, any district school board, any university
 5877 laboratory school, any charter school, any private or parochial
 5878 school, or any local governmental entity that licenses child
 5879 care facilities.

5880 Section 96. Subsection (4) of section 984.22, Florida
 5881 Statutes, is amended to read:

5882 984.22 Powers of disposition.--

5883 (4) All payments of fees made to the department pursuant
 5884 to this chapter, or child support payments made to the
 5885 department pursuant to subsection (3), shall be deposited in the
 5886 General Revenue Fund. In cases in which the child is placed in
 5887 foster care with the Department of Children and Family Services,
 5888 such child support payments shall be deposited in the Community
 5889 Resources Development Loan Program Trust Fund.

5890 Section 97. Section 394.4592, Florida Statutes, is created
 5891 to read:

5892 394.4592 Use of restraints or seclusion in behavioral
 5893 health care.--

5894 (1) LEGISLATIVE FINDINGS.--The Legislature finds and
 5895 declares that:

5896 (a) The use of restraint or seclusion in behavioral health
 5897 care poses inherent risks both physically and psychologically to
 5898 individuals subject to restraint or seclusion and staff who
 5899 utilize these interventions. Physical risks include serious

5900 injury or death, and psychological injuries include
 5901 retraumatization for individuals with histories of abuse.

5902 (b) Some state-operated and private facilities in the
 5903 state have almost eliminated the use of restraint and seclusion,
 5904 while other facilities serving similar individuals continue to
 5905 experience hundreds of episodes of restraint and seclusion each
 5906 year. Research has demonstrated that the key variable in
 5907 achieving meaningful reduction in the use of restraint and
 5908 seclusion is a firm commitment by the facility, the department,
 5909 the Agency for Persons with Disabilities, and the Agency for
 5910 Health Care Administration to the goal of reducing the use of
 5911 restraint and seclusion. It is therefore the policy of the state
 5912 to achieve an ongoing reduction in the use of restraint and
 5913 seclusion on individuals in facilities operated, certified,
 5914 licensed, or monitored by the department, the Agency for Persons
 5915 with Disabilities, and the Agency for Health Care
 5916 Administration, with the goal of reducing the use of restraint
 5917 and seclusion to the status of a rare event and reduce the
 5918 occurrence of behavioral emergencies that have prompted the use
 5919 of restraints or seclusion.

5920 (2) SCOPE.--This section shall apply to all facilities, as
 5921 well as residential and day treatment programs, operated,
 5922 certified, licensed, or monitored by the Department of Children
 5923 and Family Services, the Agency for Persons with Disabilities,
 5924 and the Agency for Health Care Administration that use
 5925 behavioral restraints or seclusion.

5926 (3) DATA COLLECTION; APPLICABILITY.--

5927 (a) This subsection shall apply to all facilities
5928 operated, certified, licensed, or monitored by the Department of
5929 Children and Family Services, the Agency for Persons with
5930 Disabilities, and the Agency for Health Care Administration that
5931 utilize seclusion or behavioral restraints as defined in this
5932 section, and shall include the North Florida Evaluation and
5933 Treatment Center (NFETC).

5934 (b) The department, the Agency for Persons with
5935 Disabilities, and the Agency for Health Care Administration
5936 shall establish a system of mandatory, consistent, timely, and
5937 publicly accessible data collection that documents the instances
5938 in which behavioral restraints or seclusion are used in
5939 facilities.

5940 (c) The data required under this section shall be compiled
5941 in a manner that allows for standard statistical comparison. The
5942 department, the Agency for Persons with Disabilities, and the
5943 Agency for Health Care Administration shall make this
5944 information publicly accessible on each agency's Internet
5945 website beginning July 1, 2006, and the information shall be
5946 updated monthly.

5947 (d) Data collected pursuant to this subsection shall
5948 include all of the following relating to each facility:

5949 1. The number of deaths that occur as a result of any form
5950 of behavioral control by any facility staff, while individuals
5951 are in behavioral restraint or seclusion, within 48 hours of
5952 release from behavioral restraint or seclusion, or when it is
5953 reasonable to assume that serious injury or death was

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5954 proximately related to the use of behavioral restraints or
5955 seclusion.

5956 2. The number of serious injuries sustained by individuals
5957 as a result of takedowns or any form of behavioral control by
5958 any facility staff, while individuals are in behavioral
5959 restraints or seclusion or when it is reasonable to assume that
5960 the serious injury was proximately related to the use of
5961 behavioral restraint or seclusion.

5962 3. The number of serious injuries sustained by staff that
5963 occur during the use of takedowns, behavioral control,
5964 behavioral restraints, or seclusion.

5965 4. The number of incidents when behavioral restraints were
5966 used and the kinds of restraints used.

5967 5. The number of incidents of seclusion.

5968 6. The duration of time spent per incident in seclusion.

5969 7. The duration of time spent per incident in behavioral
5970 restraints were used.

5971 8. The number of times an involuntary emergency medication
5972 was used to control behavior and whether or not in each case
5973 medication was used in combination with behavioral restraints or
5974 seclusion.

5975 9. The number of individuals who were subject to
5976 behavioral restraint or seclusion more than 10 times in a single
5977 month.

5978 10. The number of individuals who were subject to renewal
5979 of behavioral restraint or seclusion orders each month.

5980 (e) A facility shall report each serious injury or death
5981 of an individual occurring during or related to the use of

5982 behavioral restraints or seclusion. In addition to any other
 5983 statutory and regulatory requirements, this report shall be
 5984 submitted to the department, the Agency for Persons with
 5985 Disabilities, the Agency for Health Care Administration, and the
 5986 Advocacy Center for Persons with Disabilities, Inc., no later
 5987 than the close of the business day following the injury or
 5988 death. The report shall include the encrypted identifier of the
 5989 individual involved and the name, street address, telephone
 5990 number, and the name of a contact person at the facility.

5991 (4) DEFINITIONS.--For purposes of this section:

5992 (a) "Authorized physician" means any physician who has
 5993 been authorized by the administrator of the facility to order
 5994 medication restraint, mechanical restraint, physical restraint,
 5995 or seclusion, to examine individuals in such restraint or
 5996 seclusion, and to assess readiness for release and order release
 5997 from restraint or seclusion.

5998 (b) "Authorized staff person" means any physician,
 5999 physician's assistant, or psychiatric nurse who has been
 6000 authorized by the administrator of the facility to initiate or
 6001 renew mechanical restraint, physical restraint, or seclusion
 6002 pursuant and to assess readiness for release and order release
 6003 from restraint or seclusion.

6004 (c) "Behavioral restraint" means any mechanical, physical,
 6005 or medication restraint or containment.

6006 (d) "Containment" means a brief period of physical
 6007 restraint of a person for the purpose of effectively gaining
 6008 quick control of a person who is aggressive or agitated or who
 6009 is an imminent danger to himself or herself or others.

6010 (e) "Emergency" means the occurrence or serious threat of
6011 extreme violence, personal injury, or attempted suicide. An
6012 emergency shall include only situations in which there is a
6013 substantial risk or the occurrence of serious self-destructive
6014 behavior or serious physical assault. "Substantial risk" means
6015 the serious, imminent threat of bodily harm when there is the
6016 present ability to effect such harm. The term "emergency" does
6017 not include threats to property.

6018 (f) "Individual" means an individual receiving services in
6019 a community facility, as defined in s. 394.455(5), or a
6020 facility, as defined in s. 394.455(10). The term "individual" is
6021 synonymous with the term "client," "customer," "consumer,"
6022 "resident," "patient," or "person served."

6023 (g) "PRN" means "as needed" in Latin and may apply to the
6024 prescription and administration of psychotropic medication or
6025 use of behavioral restraint or seclusion.

6026 (h) "Restraint" means the use of mechanical restraint,
6027 physical restraint, and medication used to control behavior in
6028 an emergency or any involuntary as needed medication. Restraint
6029 also means the use of bodily physical restriction, mechanical
6030 devices, or a device that unreasonably limits freedom of
6031 movement. The term "restraint" does not include the use of
6032 physical devices, such as orthopedically prescribed appliances,
6033 surgical dressings and bandages, and supportive body bands, or
6034 other physical holding when necessary for routine physical
6035 examinations and tests or for orthopedic, surgical, and other
6036 similar medical treatment purposes or when used to provide

6037 support for the achievement of functional body position, proper
 6038 balance, or to protect an individual from falling out of bed.

6039 1. Medication restraint occurs when an individual is given
 6040 medication involuntarily for the purpose of immediate control of
 6041 the individual's behavior.

6042 2. Mechanical restraint occurs when a physical device is
 6043 used to restrict the movement of an individual or the movement
 6044 or normal function of a portion of his or her body.

6045 3. Physical restraint occurs when a manual method is used
 6046 to restrict an individual's freedom of movement or normal access
 6047 to his or her body.

6048 (i) "Seclusion" means an individual is involuntarily
 6049 confined in a room or an area of a room and is prevented from
 6050 leaving, or reasonably believes that he or she will be prevented
 6051 from leaving, by means that include, but are not limited to:

6052 1. Manually, mechanically, or electrically locked doors or
 6053 one-way doors that, when closed and unlocked, cannot be opened
 6054 from the inside.

6055 2. Physical intervention of staff.

6056 3. Coercive measures, such as the threat of restraint,
 6057 sanctions, or the loss of privileges that the individual would
 6058 otherwise have, used for the purpose of keeping the individual
 6059 from leaving the room.

6060 (j) "Staff" means any staff member, volunteer, or intern
 6061 of the department, the Agency for Persons with Disabilities, or
 6062 the Agency for Health Care Administration, any person under
 6063 contract with the department, the Agency for Persons with
 6064 Disabilities, or the Agency for Health Care Administration or

6065 working in any capacity in a facility operated, certified,
 6066 licensed, or monitored by the department, the Agency for Persons
 6067 with Disabilities, or the Agency for Health Care Administration
 6068 and any person providing care or support to an individual on
 6069 behalf of the department, the Agency for Persons with
 6070 Disabilities, or the Agency for Health Care Administration or
 6071 its providers, and any person assigned to provide security for a
 6072 facility.

6073 (5) INITIAL ASSESSMENT.--A facility shall conduct an
 6074 initial assessment of each individual upon admission to the
 6075 facility or as soon thereafter as possible. This assessment
 6076 shall include input from the individual and from someone whom he
 6077 or she desires to be present, such as a family member,
 6078 significant other, or authorized representative designated by
 6079 the individual, if the desired third party can be present at the
 6080 time of admission. This assessment shall also include, based on
 6081 the information available at the time of initial assessment, all
 6082 of the following:

6083 (a) An individual's preferences regarding de-escalation or
 6084 the use of seclusion or behavioral restraints, including any
 6085 advance directive or crisis plan that the individual may
 6086 present.

6087 (b) The use of a de-escalation preference form or personal
 6088 safety plan which allows an individual to identify early warning
 6089 signs, triggers, and precipitants of distress, stress, or
 6090 aggression and that cause an individual to escalate, as well as
 6091 techniques, methods, or tools that help the individual to
 6092 control his or her own behavior, including preferences relating

6093 to the gender of staff assigned to monitor an individual in
 6094 restraint, shall be mandatory in all facilities. This includes
 6095 both completion of the form and active, documented use in
 6096 treatment planning and de-escalation.

6097 (c) Documentation of any preexisting medical condition or
 6098 any physical disability or limitation that would place the
 6099 individual at greater risk during restraint or seclusion. These
 6100 conditions include, but are not limited to, obesity, cardiac
 6101 conditions, pregnancy, asthma or other respiratory conditions,
 6102 impaired gag reflex, back conditions, seizure disorders,
 6103 deafness, blindness, and hemophilia.

6104 (d) Any trauma history, including any history of sexual or
 6105 physical abuse that the individual feels is relevant.

6106
 6107 A reassessment of the individual based on the information
 6108 provided under this subsection shall be completed whenever there
 6109 is a significant change in an individual's physical or
 6110 psychological condition in conjunction with reassessments
 6111 required by federal or state law.

6112 (6) REQUIREMENTS FOR THE USE OF RESTRAINT AND SECLUSION.--

6113 (a) A facility described in paragraph (3) (a) may use
 6114 behavioral restraint or seclusion for emergencies only, and only
 6115 for the duration of the emergency.

6116 (b) A facility described in paragraph (3) (a) may not use
 6117 any of the following:

- 6118 1. A physical restraint or containment technique that
 6119 obstructs a person's respiratory airway or impairs the
 6120 individual's breathing or respiratory capacity, including

6121 techniques in which a staff member places pressure on an
6122 individual's back or places his or her body weight against the
6123 individual's torso or back. Use of such restraint shall result
6124 in immediate disciplinary suspension and investigation of staff
6125 who utilized these methods of restraints.

6126 2. A pillow, blanket, or other item covering the
6127 individual's face as part of a physical or mechanical restraint
6128 or containment process. Use of such restraint shall result in
6129 immediate disciplinary suspension and investigation of staff who
6130 used these methods of restraint.

6131 3. Physical or mechanical restraint or containment on an
6132 individual who has a known medical or physical condition when
6133 there is reason to believe that the use would endanger the
6134 individual's life or significantly exacerbate the individual's
6135 medical condition.

6136 4. Restraint in a prone position without a detailed
6137 physician's order specifically requiring the use of this
6138 position and explaining the medical justification for the order.

6139 5. Prone containment techniques whenever possible. An
6140 individual shall not be subject to prone containment unless a
6141 designated staff member, not involved in the restraint, observes
6142 the individual throughout and in no event shall prone
6143 containment last longer than 10 seconds as clocked by the
6144 designated staff person.

6145 6. Restraint or containment with any restraint devices
6146 that restrain an individual's hands behind his or her back.

6147 7. No "PRN" or "as required" authorization of behavioral
6148 restraint or seclusion may be written.

6149 (c) No individual shall simultaneously be subject to
 6150 mechanical restraints and seclusion as defined in this section.

6151 (d) Prior to the imposition of behavioral restraint or
 6152 seclusion, the following conditions must be met:

6153 1. Provision shall be made for appropriate attention to
 6154 the personal needs of the individual, including access to food
 6155 and drink, toileting facilities, and medical and hygiene needs,
 6156 by staff escort or otherwise, and for the individual's physical
 6157 and mental comfort.

6158 2. The physical environment shall be as conducive as
 6159 possible to facilitating early release, with attention to
 6160 calming the individual with sensory interventions. Any space
 6161 used for restraint or seclusion shall include a clock within
 6162 visual observation of the individual.

6163 3. Every effort shall be made to protect the individual's
 6164 privacy. Individuals shall not be placed in four-point
 6165 restraints in public view, and several individuals may not be
 6166 restrained together in one room.

6167 (e) An individual may be given medication restraint only
 6168 on the order of an authorized physician who has determined,
 6169 either while present at the time of the emergency to justify the
 6170 use of the restraint or after telephone consultation with an
 6171 authorized staff person who is present at the time at the site
 6172 of the emergency and who has personally examined the individual,
 6173 that such medication restraint is the least restrictive, most
 6174 appropriate alternative available.

6175 1. The order, along with a description of the specific
 6176 behaviors which make medication restraint the least restrictive,

6177 most appropriate alternative available and the expected results
6178 of the medication, shall be recorded in the individual's record
6179 when the order is issued. If the physician is not present to
6180 write the order, the physician must dictate this language when
6181 the order is issued to the authorized staff person. The order
6182 shall be signed when it is issued by such authorized physician
6183 if present at the time of the emergency or within 1 hour after
6184 the order is issued.

6185 2. An authorized physician shall conduct a face-to-face
6186 evaluation of the individual within 1 hour after the initiation
6187 of the restraint, if the restraint was authorized by telephone,
6188 and record in the individual's records the results of this
6189 evaluation and whether the expected results of the medication
6190 have been achieved.

6191 3. Staff shall monitor the individual carefully and record
6192 the effects of the medication restraint at least once every half
6193 hour in the individual's record.

6194 (f) The order authorizing an individual to be placed in
6195 behavioral restraint or seclusion shall be made by an authorized
6196 physician who is present when an emergency occurs. The order and
6197 the reasons for its issuance shall be recorded in writing and
6198 signed at the time of its issuance by such physician.

6199 1. The order shall authorize use of mechanical restraint,
6200 physical restraint, or seclusion for no more than 2 hours.

6201 2. If an authorized physician is not present when an
6202 emergency occurs to justify the use of mechanical restraint and
6203 physical restraint or seclusion occurs, an individual may be
6204 placed in mechanical restraint, physical restraint, or seclusion

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6205 at the initiation of an authorized staff person, subject to the
6206 following conditions and limitations:

6207 a. The order and the reasons for its issuance, with
6208 specific identification of the actual behaviors involved and not
6209 characterizations of the behavior, shall be recorded in writing
6210 and signed at the time of the incident by the authorized staff
6211 person.

6212 b. The order shall authorize use of mechanical restraint,
6213 physical restraint, or seclusion for no more than 2 hours and
6214 shall terminate whenever a release decision is made. The order
6215 shall include criteria for early release that are made known to
6216 the individual and that permit staff to make objective
6217 appraisals as to when an individual may be safely released.

6218 c. An authorized physician shall examine the individual
6219 within 1 hour of such initiation of mechanical restraint,
6220 physical restraint, or seclusion.

6221 (g) Subsequent renewals of mechanical restraint or
6222 seclusion may be made for up to a 1-hour period only if an
6223 authorized physician has examined the individual and ordered
6224 such renewal prior to the expiration of the preceding order,
6225 subject to the following conditions and limitations.

6226 1. A renewal order may only be issued if the individual is
6227 an adult or minor over 9 years of age and the physician
6228 determines that such restraint or seclusion is necessary to
6229 prevent the continuation or renewal of an emergency condition or
6230 conditions.

6231 2. Each renewal order shall be recorded in writing and
6232 signed by the physician only after a face-to-face examination of
6233 the individual in restraint or seclusion by the physician.

6234 3. Each renewed order shall authorize continued use of
6235 restraint or seclusion for no more than 1 hour from the time of
6236 expiration of the preceding order and shall terminate whenever a
6237 release decision is made.

6238 4. No order for continuation of mechanical restraint or
6239 seclusion beyond the initial order may be issued if the
6240 individual is a minor under 9 years of age and only one such
6241 order for continuation may be issued if the individual is a
6242 minor 9 through 17 years of age.

6243 (h) The limitations on the duration of restraint or
6244 seclusion are as follows:

6245 1. A minor under 9 years of age may not be placed in
6246 behavioral restraints. A minor under 9 years of age may not be
6247 placed in seclusion for more than 1 hour in any 24-hour period.

6248 2. No minor 9 through 17 years of age may be in behavioral
6249 restraint or seclusion for more than 2 hours in any 24-hour
6250 period.

6251 3. If an episode of mechanical restraint or seclusion has
6252 exceeded 3 hours and it is expected that a new order will be
6253 issued to extend the episode beyond 3 hours, prior to the third
6254 order extending the use of restraint or seclusion, the facility
6255 director and facility medical director shall be notified. The
6256 facility medical director shall inquire about the circumstances
6257 of the episode of restraint or seclusion, the efforts made to
6258 facilitate release, and the impediments to such release and help

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6259 to identify additional measures or resources that might be
6260 beneficial in facilitating release.

6261 (i) If an episode of mechanical restraint or seclusion has
6262 exceeded 6 hours and it is expected that a sixth order will be
6263 issued to extend the episode beyond 6 hours or if episodes of
6264 restraint or seclusion for an individual have exceeded 10 hours
6265 in the aggregate in any 48-hour period, the following shall
6266 occur:

6267 1. The individual shall receive a physical examination by
6268 an authorized physician.

6269 2. The facility director and facility medical director
6270 shall be notified.

6271 3. The episode shall be reported to the Secretary of
6272 Children and Family Services, the director of the Agency for
6273 Persons with Disabilities, and the Secretary of Health Care
6274 Administration or a designee by the next business day.

6275 (j) If an individual is released from restraint or
6276 seclusion prior to the expiration of an order and an emergency
6277 occurs prior to such order's expiration, but no later than 15
6278 minutes after release, the individual may be returned by an
6279 authorized staff person to restraint or seclusion without a new
6280 order until the time listed in the original order expires. Such
6281 return to restraint or seclusion shall be documented in the
6282 individual's record.

6283 (k) The individuals in mechanical restraint, physical
6284 restraint, or seclusion shall be monitored and assessed in the
6285 following manner:

6286 1. There shall be an authorized staff person with
6287 oversight responsibility during each episode of mechanical or
6288 physical restraint or seclusion.

6289 2. Whenever a individual is in physical or mechanical
6290 restraint or seclusion, a staff person shall be specifically
6291 assigned to monitor the individual one-on-one. The facility
6292 shall make every effort to ensure that the gender of the staff
6293 person matches the preference stated by the individual in the
6294 de-escalation preference form or personal safety plan identified
6295 in paragraph (5) (b). If this is not possible at the moment the
6296 individual is restrained or secluded, staff shall specifically
6297 document why it was not possible and continue to make active
6298 efforts to meet the individual's preference until the individual
6299 is released or a staff person of the appropriate gender can be
6300 found.

6301 3. The staff person conducting such monitoring may be
6302 immediately outside a space in which an individual is being
6303 secluded without mechanical restraint provided that the
6304 following conditions are met:

6305 a. The staff person must be in full view of the
6306 individual.

6307 b. The staff person must be able at all times to observe
6308 the individual and to have immediate physical access to the
6309 individual in order to be able to respond to any emergency
6310 situation.

6311 4. The staff person shall monitor an individual in
6312 mechanical or physical restraint by being situated so that the
6313 staff person is able to hear and be heard by the individual and

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6314 visually observe the individual at all times. It is not
6315 necessary for a staff person monitoring an individual in
6316 mechanical or physical restraint to be in full view of the
6317 individual, although if such visibility has been expressed as a
6318 preference by the individual, consideration shall be given to
6319 honoring that preference.

6320 5. Staff who monitor an individual in physical or
6321 mechanical restraint or seclusion shall continually assist and
6322 support the individual, including monitoring physical and
6323 psychological status and comfort, body alignment, and
6324 circulation, taking vital signs when indicated, and monitoring
6325 for readiness for release. Such monitoring activities shall be
6326 documented every 15 minutes.

6327 6. Staff who monitor an individual in restraint or
6328 seclusion shall continue appropriate interventions designed to
6329 calm the individual throughout the episode of restraint or
6330 seclusion and shall maintain a log of the individual's specific
6331 behavior with respect to the early release criteria established
6332 in the physician's order.

6333 (1) The procedure for monitoring an individual in
6334 mechanical or physical restraint or seclusion for readiness for
6335 release shall include the following factors:

6336 1. Staff conducting monitoring shall continually consider
6337 whether an individual in mechanical restraint, physical
6338 restraint, or seclusion appears ready to be released. If the
6339 staff person believes that the individual is ready to be
6340 released from such restraint or seclusion, he or she shall
6341 immediately notify an authorized physician or authorized staff

6342 person, who shall promptly assess the individual for readiness
6343 to be released. If the individual believes that he or she has
6344 met the release criteria, the individual can request an
6345 assessment by an authorized staff person.

6346 2. If an individual falls asleep while in mechanical
6347 restraint, staff conducting monitoring shall notify an
6348 authorized physician or authorized staff person, who shall
6349 release the individual from the restraint or seclusion.

6350 3. If, at any time during mechanical restraint, physical
6351 restraint, or seclusion, a person is briefly released from such
6352 restraint or seclusion to attend to personal needs, hygiene,
6353 eating, or other purpose, staff conducting monitoring shall
6354 consider the individual's readiness to be permanently released,
6355 rather than returned to the restraint or seclusion and notify an
6356 authorized staff person if the individual appears ready to be
6357 released.

6358 (m) An authorized staff person or authorized physician
6359 shall assess an individual in mechanical or physical restraint
6360 or seclusion for physical and psychological comfort, including
6361 vital signs, and readiness to be released at least every 15
6362 minutes and at any other time that it appears that the
6363 individual is ready to be released. Such assessments shall be
6364 documented in the record and include specific descriptions of
6365 the individual's behavior and the reasons for not releasing the
6366 individual from restraint.

6367 (n) An individual shall be released from mechanical
6368 restraint, physical restraint, or seclusion as soon as an
6369 authorized physician or authorized staff person determines after

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6370 examination of the individual or consultation with staff that
6371 such mechanical restraint, physical restraint, or seclusion is
6372 no longer needed to prevent the continuation or renewal of an
6373 emergency and, in no event, no later than the achievement of the
6374 early release criteria or the expiration of an initial or
6375 renewed order for such mechanical restraint or seclusion, unless
6376 such order is renewed.

6377 (7) DEBRIEFING PROCEDURES.--A facility shall develop
6378 procedures to ensure that debriefing activities occur after each
6379 episode of restraint or seclusion in order to determine what led
6380 to the incident, what might have prevented or curtailed it, and
6381 how to prevent future incidents.

6382 (a) As soon as possible, but no later than 24 hours
6383 following each episode of restraint or seclusion, supervisory
6384 staff and staff involved in the episode shall convene a
6385 debriefing. The debriefing shall, at a minimum, include the
6386 following:

6387 1. Identification of what led to the incident.

6388 2. Assessment of alternative interventions that may have
6389 avoided the use of restraint or seclusion.

6390 3. Determination of whether the individual's physical and
6391 psychological needs and right to privacy were appropriately
6392 addressed.

6393 4. Consideration of counseling or treatment for the
6394 individual involved and staff for any emotional or physical
6395 trauma that may have resulted from the incident.

6396 5. Consideration of whether the legally authorized
6397 representative, if any, family members, or others should be
6398 notified of or involved in debriefing activities.

6399 6. Consideration of whether other individuals and staff
6400 who may have witnessed or otherwise been affected by the
6401 incident should be involved in debriefing activities or offered
6402 counseling.

6403 7. Identification of any environmental precipitants of the
6404 restraint or seclusion episode.

6405 8. Identification of needed refinements in the
6406 individual's plan of care or the need for additional assessments
6407 to better understand the factors underlying the behavioral
6408 problem related to the incident.

6409 9. Consideration of whether additional supervision or
6410 training should be provided to staff involved in the incident.

6411 10. Consideration of whether the incident should be
6412 referred to senior administrative or clinical staff for review.

6413 (b) Within 24 hours after a individual's release from
6414 restraint or seclusion, the individual shall be asked to debrief
6415 and provide comment on the episode, including the circumstances
6416 leading to the episode, staff or individual actions that may
6417 have helped to prevent it, the type of restraint or seclusion
6418 used, and any physical or psychological effects he or she may be
6419 experiencing from the restraint or seclusion. Whenever possible
6420 and appropriate, the staff person providing the individual with
6421 the opportunity to comment shall not have been involved in the
6422 episode of restraint or seclusion. As part of the debriefing,
6423 the individual shall be offered the opportunity to provide

6424 comment in writing and to participate in care planning meetings
6425 aimed at reducing the likelihood of future incidents.

6426 (c) As indicated, a senior administrative review shall be
6427 conducted by the next business day following the identification
6428 of the episode and shall include, but not be limited to,
6429 assessment of the need for expert consultation, training,
6430 performance improvement activities, or change in policy. The
6431 facility director shall ensure that senior administrative and
6432 clinical staff and other appropriate staff conduct a review if
6433 any of the following apply:

6434 1. An individual or staff member experienced significant
6435 emotional or physical injury as a result of the episode. This
6436 may include witnesses to the incident as well.

6437 2. The episode of restraint or seclusion exceeded 4 hours
6438 or episodes of restraint or seclusion for an individual exceeded
6439 8 hours in the aggregate in any 48-hour period.

6440 3. An exception to the restrictions on mechanical
6441 restraint of minors has occurred.

6442 4. The episode appears to be part of a pattern warranting
6443 review.

6444 5. The episode is marked by unusual circumstances.

6445 6. The individual or staff involved in the episode
6446 requested such a review.

6447 (d) All debriefing activities shall be documented and
6448 included in the individual's record and shall be used in
6449 treatment planning, revision of the individual crisis prevention
6450 plan, and ongoing restraint and seclusion prevention efforts.

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6451 (8) FACILITY LICENSING AND CERTIFICATION REQUIREMENTS.--In
6452 addition to complying with all applicable standards in this
6453 section, a facility applying to be licensed by the department or
6454 the Agency for Health Care Administration shall include the
6455 following in its application for a license or renewal of a
6456 license:

6457 (a) The facility's plan to reduce and, wherever possible,
6458 eliminate restraint and seclusion.

6459 (b) A comprehensive statement of the facility's policies
6460 and procedures for the utilization and monitoring of restraint
6461 and seclusion, including a listing of all types of mechanical
6462 restraints used by the facility, a statistical analysis of the
6463 facility's actual use of such restraint and seclusion, and a
6464 certification by the facility of its ability and intent to
6465 comply with all applicable laws and rules regarding physical
6466 space, staff training, staff authorization, recordkeeping,
6467 monitoring, and other requirements for the use of restraint and
6468 seclusion.

6469 Section 98. This act shall take effect upon becoming a
6470 law.