

1 facilities for developmentally disabled
2 persons; amending s. 916.105, F.S.; providing
3 that the policy of the state is that the use of
4 restraint and seclusion on clients is justified
5 only as an emergency safety measure in response
6 to imminent danger; amending s. 916.106, F.S.;
7 defining the terms "restraint" and "seclusion"
8 for purposes of ch. 916, F.S., relating to
9 mentally deficient and mentally ill defendants;
10 amending s. 916.107, F.S.; requiring each
11 facility serving forensic patients who are
12 persons with mental illness or persons with
13 developmental disabilities to use restraint and
14 seclusion only when necessary; amending s.
15 916.1093, F.S.; authorizing the department to
16 adopt rules pertaining to the use of restraint
17 or seclusion; amending ss. 408.036, 744.704,
18 943.0585, and 943.059, F.S.; conforming
19 cross-references; reenacting s. 393.067(15),
20 F.S., relating to persons with developmental
21 disabilities, to incorporate the amendments
22 made to s. 393.13, F.S., in a reference
23 thereto; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsections (38) through (47) of section
28 393.063, Florida Statutes, are amended to read:
29 393.063 Definitions.--For the purposes of this
30 chapter:
31

1 (38)(a) "Restraint" means a physical device, method,
2 or drug used to control behavior. A physical restraint is any
3 manual method or physical or mechanical device, material, or
4 equipment attached or adjacent to the individual's body so
5 that he or she cannot easily remove the restraint and which
6 restricts freedom of movement or normal access to one's body.

7 (b) A drug used as a restraint is a medication used to
8 control the person's behavior or to restrict his or her
9 freedom of movement. Physically holding a person during a
10 procedure to forcibly administer psychotropic medication is a
11 physical restraint.

12 (c) Restraint does not include physical devices, such
13 as orthopedically prescribed appliances, surgical dressings
14 and bandages, supportive body bands, or other physical holding
15 when necessary for routine physical examinations and tests;
16 for purposes of orthopedic, surgical, or other similar medical
17 treatment; when used to provide support for the achievement of
18 functional body position or proper balance; or when used to
19 protect a person from falling out of bed.

20 ~~(39)(38)~~ "Retardation" means significantly subaverage
21 general intellectual functioning existing concurrently with
22 deficits in adaptive behavior and manifested during the period
23 from conception to age 18. "Significantly subaverage general
24 intellectual functioning," for the purpose of this definition,
25 means performance which is two or more standard deviations
26 from the mean score on a standardized intelligence test
27 specified in the rules of the agency. "Adaptive behavior," for
28 the purpose of this definition, means the effectiveness or
29 degree with which an individual meets the standards of
30 personal independence and social responsibility expected of
31 his or her age, cultural group, and community.

1 (40) "Seclusion" means the physical segregation of a
2 person in any fashion or the involuntary isolation of a person
3 in a room or area from which the person is prevented from
4 leaving. The prevention may be by physical barrier or by a
5 staff member who is acting in a manner, or who is physically
6 situated, so as to prevent the person from leaving the room or
7 area. For purposes of this chapter, the term does not mean
8 isolation due to a person's medical condition or symptoms.

9 ~~(41)~~~~(39)~~ "Severe self-injurious behavior" means any
10 chronic behavior that results in injury to the person's own
11 body, which includes, but is not limited to, self-hitting,
12 head banging, self-biting, scratching, and the ingestion of
13 harmful or potentially harmful nutritive or nonnutritive
14 substances.

15 ~~(42)~~~~(40)~~ "Specialized therapies" means those
16 treatments or activities prescribed by and provided by an
17 appropriately trained, licensed, or certified professional or
18 staff person and may include, but are not limited to, physical
19 therapy, speech therapy, respiratory therapy, occupational
20 therapy, behavior therapy, physical management services, and
21 related specialized equipment and supplies.

22 ~~(43)~~~~(41)~~ "Spina bifida" means, for purposes of this
23 chapter, a person with a medical diagnosis of spina bifida
24 cystica or myelomeningocele.

25 ~~(44)~~~~(42)~~ "Support coordinator" means a person who is
26 designated by the agency to assist individuals and families in
27 identifying their capacities, needs, and resources, as well as
28 finding and gaining access to necessary supports and services;
29 coordinating the delivery of supports and services; advocating
30 on behalf of the individual and family; maintaining relevant
31 records; and monitoring and evaluating the delivery of

1 supports and services to determine the extent to which they
2 meet the needs and expectations identified by the individual,
3 family, and others who participated in the development of the
4 support plan.

5 ~~(45)~~~~(43)~~ "Supported employee" means a person who
6 requires and receives supported employment services in order
7 to maintain community-based employment.

8 ~~(46)~~~~(44)~~ "Supported employment" means employment
9 located or provided in a normal employment setting which
10 provides at least 20 hours employment per week in an
11 integrated work setting, with earnings paid on a commensurate
12 wage basis, and for which continued support is needed for job
13 maintenance.

14 ~~(47)~~~~(45)~~ "Supported living" means a category of
15 individually determined services designed and coordinated in
16 such a manner as to provide assistance to adult clients who
17 require ongoing supports to live as independently as possible
18 in their own homes, to be integrated into the community, and
19 to participate in community life to the fullest extent
20 possible.

21 ~~(48)~~~~(46)~~ "Training" means a planned approach to
22 assisting a client to attain or maintain his or her maximum
23 potential and includes services ranging from sensory
24 stimulation to instruction in skills for independent living
25 and employment.

26 ~~(49)~~~~(47)~~ "Treatment" means the prevention,
27 amelioration, or cure of a client's physical and mental
28 disabilities or illnesses.

29 Section 2. Subsection (8) of section 393.067, Florida
30 Statutes, is amended to read:

31

1 393.067 Licensure of residential facilities and
2 comprehensive transitional education programs.--

3 (8) The agency shall adopt rules establishing minimum
4 standards for licensure of residential facilities and
5 comprehensive transitional education programs, including rules
6 requiring facilities and programs to train staff to detect and
7 prevent sexual abuse of residents and clients, minimum
8 standards of quality and adequacy of care, and uniform
9 firesafety standards established by the State Fire Marshal
10 which are appropriate to the size of the facility or of the
11 component centers or units of the program. Rules adopted under
12 this subsection must include provisions governing the use of
13 restraint and seclusion which are consistent with recognized
14 best practices and professional judgment; prohibit inherently
15 dangerous restraint or seclusion procedures; establish
16 limitations on the use and duration of restraint and
17 seclusion; establish measures to ensure the safety of program
18 participants and staff during an incident of restraint or
19 seclusion; establish procedures for staff to follow before,
20 during, and after incidents of restraint or seclusion;
21 establish professional qualifications of and training for
22 staff who may order or be engaged in the use of restraint or
23 seclusion; and establish mandatory reporting, data-collection,
24 and data-dissemination procedures and requirements. Rules
25 adopted under this subsection must require that each instance
26 of the use of restraint or seclusion be documented in the
27 facility's record of the client.

28 Section 3. Paragraph (d) of subsection (2) and
29 paragraph (i) of subsection (4) of section 393.13, Florida
30 Statutes, are amended, and paragraph (f) is added to
31 subsection (2) of that section, to read:

1 393.13 Personal treatment of persons who are
2 developmentally disabled.--

3 (2) LEGISLATIVE INTENT.--

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

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

11 2. To provide a mechanism for the identification,
12 evaluation, and treatment of persons with developmental
13 disabilities.

14 3. To divert those individuals from institutional
15 commitment who, by virtue of comprehensive assessment, can be
16 placed in less costly, more effective community environments
17 and programs.

18 4. To fund improvements in the program in accordance
19 with the availability of state resources and yearly priorities
20 determined by the Legislature.

21 5. To ensure that persons with developmental
22 disabilities receive treatment and habilitation which fosters
23 the developmental potential of the individual.

24 6. To provide programs for the proper habilitation and
25 treatment of persons with developmental disabilities which
26 shall include, but not be limited to, comprehensive
27 medical/dental care, education, recreation, specialized
28 therapies, training, social services, transportation,
29 guardianship, family care programs, day habilitation services,
30 and habilitative and rehabilitative services suited to the
31 needs of the individual regardless of age, degree of

1 disability, or handicapping condition. ~~A No~~ person with
2 developmental disabilities may not ~~shall~~ be deprived of these
3 enumerated services by reason of inability to pay.

4 7. To fully effectuate the normalization principle
5 through the establishment of community services for persons
6 with developmental disabilities as a viable and practical
7 alternative to institutional care at each stage of individual
8 life development. If care in a residential facility becomes
9 necessary, it shall be in the least restrictive setting.

10 (f) It is the policy of this state that the use of
11 restraint and seclusion on clients is justified only as an
12 emergency safety measure to be used in response to imminent
13 danger to the client or others. It is, therefore, the intent
14 of the Legislature to achieve an ongoing reduction in the use
15 of restraint and seclusion in programs and facilities serving
16 persons with developmental disabilities.

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

21 (i) Clients shall have the right to be free from the
22 unnecessary use of ~~physical, chemical, or mechanical~~ restraint
23 or seclusion. Restraints shall be employed only in emergencies
24 or to protect the client from imminent injury to himself or
25 herself or others. Restraints shall not be employed as
26 punishment, for the convenience of staff, or as a substitute
27 for a habilitative plan. Restraints shall impose the least
28 possible restrictions consistent with their purpose and shall
29 be removed when the emergency ends. Restraints shall not
30 cause physical injury to the client and shall be designed to
31 allow the greatest possible comfort.

1 1. Any instance of restraint must be documented in the
2 facility's record of the client. ~~Mechanical supports used in~~
3 ~~normative situations to achieve proper body position and~~
4 ~~balance shall not be considered restraints, but shall be~~
5 ~~prescriptively designed and applied under the supervision of a~~
6 ~~qualified professional with concern for principles of good~~
7 ~~body alignment, circulation, and allowance for change of~~
8 ~~position.~~

9 2. ~~Totally enclosed cribs and barred enclosures shall~~
10 ~~be considered restraints.~~

11 2.3. Daily reports on the employment of restraint and
12 seclusion ~~physical, chemical, or mechanical restraints~~ by
13 those specialists authorized in the use of them ~~such~~
14 ~~restraints~~ shall be made to the appropriate chief
15 administrator of the facility, and a monthly summary of such
16 reports shall be relayed to the service area district
17 ~~administrator~~ and the Florida local advocacy council. The
18 reports shall summarize all ~~such~~ cases of restraint and
19 seclusion ~~restraints~~, the type used, the duration of usage,
20 and the reasons therefor. ~~Districts shall submit districtwide~~
21 ~~quarterly reports of these summaries to the state~~
22 ~~Developmental Disabilities Program Office.~~

23 3.4. The agency shall post a copy of the rules adopted
24 under this section in each living unit of residential
25 facilities. A copy of the rules adopted under this section
26 shall be given to all staff members of licensed facilities and
27 made a part of all preservice and inservice training programs.

28 Section 4. Section 394.453, Florida Statutes, is
29 amended to read:

30 394.453 Legislative intent.--It is the intent of the
31 Legislature to authorize and direct the Department of Children

1 and Family Services to evaluate, research, plan, and recommend
2 to the Governor and the Legislature programs designed to
3 reduce the occurrence, severity, duration, and disabling
4 aspects of mental, emotional, and behavioral disorders. It is
5 the intent of the Legislature that treatment programs for such
6 disorders shall include, but not be limited to, comprehensive
7 health, social, educational, and rehabilitative services to
8 persons requiring intensive short-term and continued treatment
9 in order to encourage them to assume responsibility for their
10 treatment and recovery. It is intended that such persons be
11 provided with emergency service and temporary detention for
12 evaluation when required; that they be admitted to treatment
13 facilities on a voluntary basis when extended or continuing
14 care is needed and unavailable in the community; that
15 involuntary placement be provided only when expert evaluation
16 determines that it is necessary; that any involuntary
17 treatment or examination be accomplished in a setting which is
18 clinically appropriate and most likely to facilitate the
19 person's return to the community as soon as possible; and that
20 individual dignity and human rights be guaranteed to all
21 persons who are admitted to mental health facilities or who
22 are being held under s. 394.463. It is the further intent of
23 the Legislature that the least restrictive means of
24 intervention be employed based on the individual needs of each
25 person, within the scope of available services. It is the
26 policy of this state that the use of restraint and seclusion
27 on clients is justified only as an emergency safety measure to
28 be used in response to imminent danger to the client or
29 others. It is, therefore, the intent of the Legislature to
30 achieve an ongoing reduction in the use of restraint and
31

1 seclusion in programs and facilities serving persons with
2 mental illness.

3 Section 5. Present subsections (28) through (33) of
4 section 394.455, Florida Statutes, are redesignated as
5 subsections (30) through (35), respectively, and new
6 subsections (28) and (29) are added to that section, to read:

7 394.455 Definitions.--As used in this part, unless the
8 context clearly requires otherwise, the term:

9 (28)(a) "Restraint" means a physical device, method,
10 or drug used to control behavior. A physical restraint is any
11 manual method or physical or mechanical device, material, or
12 equipment attached or adjacent to the individual's body so
13 that he or she cannot easily remove the restraint and which
14 restricts freedom of movement or normal access to one's body.

15 (b) A drug used as a restraint is a medication used to
16 control the person's behavior or to restrict his or her
17 freedom of movement. Physically holding a person during a
18 procedure to forcibly administer psychotropic medication is a
19 physical restraint.

20 (c) Restraint does not include physical devices, such
21 as orthopedically prescribed appliances, surgical dressings
22 and bandages, supportive body bands, or other physical holding
23 when necessary for routine physical examinations and tests; or
24 for purposes of orthopedic, surgical, or other similar medical
25 treatment; when used to provide support for the achievement of
26 functional body position or proper balance; or when used to
27 protect a person from falling out of bed.

28 (29) "Seclusion" means the physical segregation of a
29 person in any fashion or involuntary isolation of a person in
30 a room or area from which the person is prevented from
31 leaving. The prevention may be by physical barrier or by a

1 staff member who is acting in a manner, or who is physically
2 situated, so as to prevent the person from leaving the room or
3 area. For purposes of this chapter, the term does not mean
4 isolation due to a person's medical condition or symptoms.

5 Section 6. Paragraph (b) of subsection (5) of section
6 394.457, Florida Statutes, is amended to read:

7 394.457 Operation and administration.--

8 (5) RULES.--

9 (b) The department shall adopt rules necessary for the
10 implementation and administration of the provisions of this
11 part, and a program subject to the provisions of this part
12 shall not be permitted to operate unless rules designed to
13 ensure the protection of the health, safety, and welfare of
14 the patients treated through such program have been adopted.
15 Rules adopted under this subsection must include provisions
16 governing the use of restraint and seclusion which are
17 consistent with recognized best practices and professional
18 judgment; prohibit inherently dangerous restraint or seclusion
19 procedures; establish limitations on the use and duration of
20 restraint and seclusion; establish measures to ensure the
21 safety of program participants and staff during an incident of
22 restraint or seclusion; establish procedures for staff to
23 follow before, during, and after incidents of restraint or
24 seclusion; establish professional qualifications of and
25 training for staff who may order or be engaged in the use of
26 restraint or seclusion; and establish mandatory reporting,
27 data-collection, and data-dissemination procedures and
28 requirements. Rules adopted under this subsection must require
29 that each instance of the use of restraint or seclusion be
30 documented in the record of the patient.

1 Section 7. Paragraph (g) is added to subsection (1) of
2 section 394.879, Florida Statutes, to read:

3 394.879 Rules; enforcement.--

4 (1) The department, in consultation with the agency,
5 shall adopt rules pursuant to ss. 120.536(1) and 120.54 to
6 implement the provisions of this chapter, including, at a
7 minimum, rules providing standards to ensure that:

8 (g) The use of restraint and seclusion is consistent
9 with recognized best practices and professional judgment; that
10 inherently dangerous restraint or seclusion procedures are
11 prohibited; that limitations are established on the use and
12 duration of restraint and seclusion; that measures are
13 established to ensure the safety of program participants and
14 staff during an incident of restraint or seclusion; that
15 procedures are created for staff to follow before, during, and
16 after incidents of restraint or seclusion; that professional
17 qualifications and training are established for staff who may
18 order or be engaged in the use of restraint or seclusion; and
19 that mandatory reporting, data-collection, and
20 data-dissemination procedures and requirements are instituted.
21 Rules adopted under this section must require that any
22 instance of the use of restraint or seclusion shall be
23 documented in the record of the client.

24 Section 8. Present subsections (14) and (15) of
25 section 400.960, Florida Statutes, are redesignated as
26 subsections (15) and (17), respectively, and new subsections
27 (14) and (16) are added to that section, to read:

28 400.960 Definitions.--As used in this part, the term:

29 (14)(a) "Restraint" means a physical device, method,
30 or drug used to control behavior. A physical restraint is any
31 manual method or physical or mechanical device, material, or

1 equipment attached or adjacent to the individual's body so
2 that he or she cannot easily remove the restraint and which
3 restricts freedom of movement or normal access to one's body.

4 (b) A drug used as a restraint is a medication used to
5 control the person's behavior or to restrict his or her
6 freedom of movement. Physically holding a person during a
7 procedure to forcibly administer psychotropic medication is a
8 physical restraint.

9 (c) Restraint does not include physical devices, such
10 as orthopedically prescribed appliances, surgical dressings
11 and bandages, supportive body bands, or other physical holding
12 when necessary for routine physical examinations and tests;
13 for purposes of orthopedic, surgical, or other similar medical
14 treatment; when used to provide support for the achievement of
15 functional body position or proper balance; or when used to
16 protect a person from falling out of bed.

17 (16) "Seclusion" means the physical segregation of a
18 person in any fashion or the involuntary isolation of a person
19 in a room or area from which the person is prevented from
20 leaving. The prevention may be by physical barrier or by a
21 staff member who is acting in a manner, or who is physically
22 situated, so as to prevent the person from leaving the room or
23 area. For purposes of this part, the term does not mean
24 isolation due to a person's medical condition or symptoms.

25 Section 9. Subsection (2) of section 400.967, Florida
26 Statutes, is amended to read:

27 400.967 Rules and classification of deficiencies.--

28 (2) Pursuant to the intention of the Legislature, the
29 agency, in consultation with the Agency for Persons with
30 Disabilities ~~Department of Children and Family Services and~~
31 ~~the Department of Elderly Affairs~~, shall adopt and enforce

1 rules to administer this part, which shall include reasonable
2 and fair criteria governing:

3 (a) The location and construction of the facility;
4 including fire and life safety, plumbing, heating, cooling,
5 lighting, ventilation, and other housing conditions that will
6 ensure the health, safety, and comfort of residents. The
7 agency shall establish standards for facilities and equipment
8 to increase the extent to which new facilities and a new wing
9 or floor added to an existing facility after July 1, 2000, are
10 structurally capable of serving as shelters only for
11 residents, staff, and families of residents and staff, and
12 equipped to be self-supporting during and immediately
13 following disasters. The Agency for Health Care Administration
14 shall work with facilities licensed under this part and report
15 to the Governor and the Legislature by April 1, 2000, its
16 recommendations for cost-effective renovation standards to be
17 applied to existing facilities. In making such rules, the
18 agency shall be guided by criteria recommended by nationally
19 recognized, reputable professional groups and associations
20 having knowledge concerning such subject matters. The agency
21 shall update or revise such criteria as the need arises. All
22 facilities must comply with those lifesafety code requirements
23 and building code standards applicable at the time of approval
24 of their construction plans. The agency may require
25 alterations to a building if it determines that an existing
26 condition constitutes a distinct hazard to life, health, or
27 safety. The agency shall adopt fair and reasonable rules
28 setting forth conditions under which existing facilities
29 undergoing additions, alterations, conversions, renovations,
30 or repairs are required to comply with the most recent updated
31 or revised standards.

1 (b) The number and qualifications of all personnel,
2 including management, medical nursing, and other personnel,
3 having responsibility for any part of the care given to
4 residents.

5 (c) All sanitary conditions within the facility and
6 its surroundings, including water supply, sewage disposal,
7 food handling, and general hygiene, which will ensure the
8 health and comfort of residents.

9 (d) The equipment essential to the health and welfare
10 of the residents.

11 (e) A uniform accounting system.

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

14 (g) The preparation and annual update of a
15 comprehensive emergency management plan. The agency shall
16 adopt rules establishing minimum criteria for the plan after
17 consultation with the Department of Community Affairs. At a
18 minimum, the rules must provide for plan components that
19 address emergency evacuation transportation; adequate
20 sheltering arrangements; postdisaster activities, including
21 emergency power, food, and water; postdisaster transportation;
22 supplies; staffing; emergency equipment; individual
23 identification of residents and transfer of records; and
24 responding to family inquiries. The comprehensive emergency
25 management plan is subject to review and approval by the local
26 emergency management agency. During its review, the local
27 emergency management agency shall ensure that the following
28 agencies, at a minimum, are given the opportunity to review
29 the plan: the Department of Elderly Affairs, the Department of
30 Children and Family Services, the Agency for Health Care
31 Administration, the Agency for Persons with Disabilities, and

1 | the Department of Community Affairs. Also, appropriate
2 | volunteer organizations must be given the opportunity to
3 | review the plan. The local emergency management agency shall
4 | complete its review within 60 days and either approve the plan
5 | or advise the facility of necessary revisions.

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

10 | (i) The use of restraint and seclusion. Such rules
11 | must be consistent with recognized best practices and
12 | professional judgment; prohibit inherently dangerous restraint
13 | or seclusion procedures; establish limitations on the use and
14 | duration of restraint and seclusion; establish measures to
15 | ensure the safety of program participants and staff during an
16 | incident of restraint or seclusion; create procedures for
17 | staff to follow before, during, and after incidents of
18 | restraint or seclusion; establish professional qualifications
19 | of and training for staff who may order or be engaged in the
20 | use of restraint or seclusion; and provide for mandatory
21 | reporting, data-collection, and data-dissemination procedures
22 | and requirements. Rules adopted under this section must
23 | require that any instance of the use of restraint or seclusion
24 | shall be documented in the facility's record of the client.

25 | Section 10. Subsection (4) is added to section
26 | 916.105, Florida Statutes, to read:

27 | 916.105 Legislative intent.--

28 | (4) It is the policy of this state that the use of
29 | restraint and seclusion on clients is justified only as an
30 | emergency safety measure to be used in response to imminent
31 | danger to the client or others. It is, therefore, the intent

1 of the Legislature to achieve an ongoing reduction in the use
2 of restraint and seclusion on persons who are committed to a
3 civil or forensic facility under this chapter.

4 Section 11. Subsections (12) and (13) of section
5 916.106, Florida Statutes, are amended to read:

6 916.106 Definitions.--For the purposes of this
7 chapter:

8 (12)(a) "Restraint" means a physical device, method,
9 or drug used to control behavior. A physical restraint is any
10 manual method or physical or mechanical device, material, or
11 equipment attached or adjacent to the individual's body so
12 that he or she cannot easily remove the restraint and which
13 restricts freedom of movement or normal access to one's body.

14 (b) A drug used as a restraint is a medication used to
15 control the person's behavior or to restrict his or her
16 freedom of movement. Physically holding a person during a
17 procedure to forcibly administer psychotropic medication is a
18 physical restraint.

19 (c) Restraint does not include physical devices, such
20 as orthopedically prescribed appliances, surgical dressings
21 and bandages, supportive body bands, or other physical holding
22 when necessary for routine physical examinations and tests;
23 for purposes of orthopedic, surgical, or other similar medical
24 treatment; when used to provide support for the achievement of
25 functional body position or proper balance; or when used to
26 protect a person from falling out of bed.

27 (13)(12) "Retardation" means significantly subaverage
28 general intellectual functioning existing concurrently with
29 deficits in adaptive behavior and manifested during the period
30 from conception to age 18. "Significantly subaverage general
31 intellectual functioning," for the purpose of this definition,

1 means performance which is two or more standard deviations
2 from the mean score on a standardized intelligence test
3 specified in the rules of the department. "Adaptive behavior,"
4 for the purpose of this definition, means the effectiveness or
5 degree with which an individual meets the standards of
6 personal independence and social responsibility expected of
7 the individual's age, cultural group, and community.

8 (14) "Seclusion" means the physical segregation of a
9 person in any fashion or the involuntary isolation of a person
10 in a room or area from which the person is prevented from
11 leaving. The prevention may be by physical barrier or by a
12 staff member who is acting in a manner, or who is physically
13 situated, so as to prevent the person from leaving the room or
14 area. For purposes of this chapter, the term does not mean
15 isolation due to a person's medical condition or symptoms.

16 ~~(15)(13)~~ "Social service professional," for the
17 purposes of part III, means a person whose minimum
18 qualifications include a bachelor's degree and at least 2
19 years of social work, clinical practice, special education,
20 habilitation, or equivalent experience working directly with
21 persons with retardation, autism, or other developmental
22 disabilities.

23 Section 12. Subsection (4) of section 916.107, Florida
24 Statutes, is amended to read:

25 916.107 Rights of forensic clients.--

26 (4) QUALITY OF TREATMENT.--

27 (a) Each client committed pursuant to this chapter
28 shall receive treatment or training suited to the client's
29 needs, which shall be administered skillfully, safely, and
30 humanely with full respect for the client's dignity and
31 personal integrity. Each client shall receive such medical,

1 vocational, social, educational, and rehabilitative services
2 as the client's condition requires to bring about a return to
3 court for disposition of charges or a return to the community.
4 In order to achieve this goal, the department is directed to
5 coordinate the services of the Mental Health Program Office
6 and the Agency for Persons with Developmental Disabilities
7 ~~Program Office~~ with all other programs of the department and
8 other appropriate state agencies.

9 (b) Clients shall be free from the unnecessary use of
10 restraint and seclusion. Restraints shall be employed only in
11 emergencies or to protect the client or others from imminent
12 injury. Restraint or seclusion may not be employed as
13 punishment or for the convenience of staff. Any instance of
14 the use of restraint or seclusion must be documented in the
15 facility record of the client.

16 Section 13. Section 916.1093, Florida Statutes, is
17 amended to read:

18 916.1093 Operation and administration; rules.--

19 (1) The department may ~~is authorized to~~ enter into
20 contracts and do such things as may be necessary and
21 incidental to assure compliance with and to carry out the
22 provisions of this chapter in accordance with the stated
23 legislative intent.

24 (2) The department may ~~has authority to~~ adopt rules
25 pursuant to ss. 120.536(1) and 120.54 to implement the
26 provisions of this chapter. Rules adopted under this
27 subsection must include provisions governing the use of
28 restraint and seclusion which are consistent with recognized
29 best practices and professional judgment; prohibit inherently
30 dangerous restraint or seclusion procedures; establish
31 limitations on the use and duration of restraint and

1 seclusion; establish measures to ensure the safety of program
2 participants and staff during an incident of restraint or
3 seclusion; establish procedures for staff to follow before,
4 during, and after incidents of restraint or seclusion;
5 establish professional qualifications of and training for
6 staff who may order or be engaged in the use of restraint or
7 seclusion; and establish mandatory reporting, data-collection,
8 and data-dissemination procedures and requirements. Rules
9 adopted under this subsection must require that each instance
10 of the use of restraint or seclusion be documented in the
11 facility's record of the client.

12 Section 14. Paragraph (r) of subsection (3) of section
13 408.036, Florida Statutes, is amended to read:

14 408.036 Projects subject to review; exemptions.--

15 (3) EXEMPTIONS.--Upon request, the following projects
16 are subject to exemption from the provisions of subsection
17 (1):

18 (r) For beds in state mental health treatment
19 facilities operated under s. 394.455(32) ~~s. 394.455(30)~~ and
20 state mental health forensic facilities operated under s.
21 916.106(8).

22 Section 15. Subsection (7) of section 744.704, Florida
23 Statutes, is amended to read:

24 744.704 Powers and duties.--

25 (7) A public guardian shall not commit a ward to a
26 mental health treatment facility, as defined in s. 394.455(32)
27 ~~s. 394.455(30)~~, without an involuntary placement proceeding as
28 provided by law.

29 Section 16. Paragraph (a) of subsection (4) of section
30 943.0585, Florida Statutes, is amended to read:

31

1 943.0585 Court-ordered expunction of criminal history
2 records.--The courts of this state have jurisdiction over
3 their own procedures, including the maintenance, expunction,
4 and correction of judicial records containing criminal history
5 information to the extent such procedures are not inconsistent
6 with the conditions, responsibilities, and duties established
7 by this section. Any court of competent jurisdiction may order
8 a criminal justice agency to expunge the criminal history
9 record of a minor or an adult who complies with the
10 requirements of this section. The court shall not order a
11 criminal justice agency to expunge a criminal history record
12 until the person seeking to expunge a criminal history record
13 has applied for and received a certificate of eligibility for
14 expunction pursuant to subsection (2). A criminal history
15 record that relates to a violation of s. 393.135, s. 394.4593,
16 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
17 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
18 s. 847.0145, s. 893.135, s. 916.1075, or a violation
19 enumerated in s. 907.041 may not be expunged, without regard
20 to whether adjudication was withheld, if the defendant was
21 found guilty of or pled guilty or nolo contendere to the
22 offense, or if the defendant, as a minor, was found to have
23 committed, or pled guilty or nolo contendere to committing,
24 the offense as a delinquent act. The court may only order
25 expunction of a criminal history record pertaining to one
26 arrest or one incident of alleged criminal activity, except as
27 provided in this section. The court may, at its sole
28 discretion, order the expunction of a criminal history record
29 pertaining to more than one arrest if the additional arrests
30 directly relate to the original arrest. If the court intends
31 to order the expunction of records pertaining to such

1 additional arrests, such intent must be specified in the
2 order. A criminal justice agency may not expunge any record
3 pertaining to such additional arrests if the order to expunge
4 does not articulate the intention of the court to expunge a
5 record pertaining to more than one arrest. This section does
6 not prevent the court from ordering the expunction of only a
7 portion of a criminal history record pertaining to one arrest
8 or one incident of alleged criminal activity. Notwithstanding
9 any law to the contrary, a criminal justice agency may comply
10 with laws, court orders, and official requests of other
11 jurisdictions relating to expunction, correction, or
12 confidential handling of criminal history records or
13 information derived therefrom. This section does not confer
14 any right to the expunction of any criminal history record,
15 and any request for expunction of a criminal history record
16 may be denied at the sole discretion of the court.

17 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
18 criminal history record of a minor or an adult which is
19 ordered expunged by a court of competent jurisdiction pursuant
20 to this section must be physically destroyed or obliterated by
21 any criminal justice agency having custody of such record;
22 except that any criminal history record in the custody of the
23 department must be retained in all cases. A criminal history
24 record ordered expunged that is retained by the department is
25 confidential and exempt from the provisions of s. 119.07(1)
26 and s. 24(a), Art. I of the State Constitution and not
27 available to any person or entity except upon order of a court
28 of competent jurisdiction. A criminal justice agency may
29 retain a notation indicating compliance with an order to
30 expunge.

31

1 (a) The person who is the subject of a criminal
2 history record that is expunged under this section or under
3 other provisions of law, including former s. 893.14, former s.
4 901.33, and former s. 943.058, may lawfully deny or fail to
5 acknowledge the arrests covered by the expunged record, except
6 when the subject of the record:

7 1. Is a candidate for employment with a criminal
8 justice agency;

9 2. Is a defendant in a criminal prosecution;

10 3. Concurrently or subsequently petitions for relief
11 under this section or s. 943.059;

12 4. Is a candidate for admission to The Florida Bar;

13 5. Is seeking to be employed or licensed by or to
14 contract with the Department of Children and Family Services
15 or the Department of Juvenile Justice or to be employed or
16 used by such contractor or licensee in a sensitive position
17 having direct contact with children, the developmentally
18 disabled, the aged, or the elderly as provided in s.
19 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
20 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
21 916.106(10) and (15)~~(13)~~, s. 985.407, or chapter 400; or

22 6. Is seeking to be employed or licensed by the
23 Department of Education, any district school board, any
24 university laboratory school, any charter school, any private
25 or parochial school, or any local governmental entity that
26 licenses child care facilities.

27 Section 17. Paragraph (a) of subsection (4) of section
28 943.059, Florida Statutes, is amended to read:

29 943.059 Court-ordered sealing of criminal history
30 records.--The courts of this state shall continue to have
31 jurisdiction over their own procedures, including the

1 maintenance, sealing, and correction of judicial records
2 containing criminal history information to the extent such
3 procedures are not inconsistent with the conditions,
4 responsibilities, and duties established by this section. Any
5 court of competent jurisdiction may order a criminal justice
6 agency to seal the criminal history record of a minor or an
7 adult who complies with the requirements of this section. The
8 court shall not order a criminal justice agency to seal a
9 criminal history record until the person seeking to seal a
10 criminal history record has applied for and received a
11 certificate of eligibility for sealing pursuant to subsection
12 (2). A criminal history record that relates to a violation of
13 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,
14 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,
15 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
16 916.1075, or a violation enumerated in s. 907.041 may not be
17 sealed, without regard to whether adjudication was withheld,
18 if the defendant was found guilty of or pled guilty or nolo
19 contendere to the offense, or if the defendant, as a minor,
20 was found to have committed or pled guilty or nolo contendere
21 to committing the offense as a delinquent act. The court may
22 only order sealing of a criminal history record pertaining to
23 one arrest or one incident of alleged criminal activity,
24 except as provided in this section. The court may, at its sole
25 discretion, order the sealing of a criminal history record
26 pertaining to more than one arrest if the additional arrests
27 directly relate to the original arrest. If the court intends
28 to order the sealing of records pertaining to such additional
29 arrests, such intent must be specified in the order. A
30 criminal justice agency may not seal any record pertaining to
31 such additional arrests if the order to seal does not

1 articulate the intention of the court to seal records
2 pertaining to more than one arrest. This section does not
3 prevent the court from ordering the sealing of only a portion
4 of a criminal history record pertaining to one arrest or one
5 incident of alleged criminal activity. Notwithstanding any law
6 to the contrary, a criminal justice agency may comply with
7 laws, court orders, and official requests of other
8 jurisdictions relating to sealing, correction, or confidential
9 handling of criminal history records or information derived
10 therefrom. This section does not confer any right to the
11 sealing of any criminal history record, and any request for
12 sealing a criminal history record may be denied at the sole
13 discretion of the court.

14 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
15 criminal history record of a minor or an adult which is
16 ordered sealed by a court of competent jurisdiction pursuant
17 to this section is confidential and exempt from the provisions
18 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
19 and is available only to the person who is the subject of the
20 record, to the subject's attorney, to criminal justice
21 agencies for their respective criminal justice purposes, or to
22 those entities set forth in subparagraphs (a)1., 4., 5., and
23 6. for their respective licensing and employment purposes.

24 (a) The subject of a criminal history record sealed
25 under this section or under other provisions of law, including
26 former s. 893.14, former s. 901.33, and former s. 943.058, may
27 lawfully deny or fail to acknowledge the arrests covered by
28 the sealed record, except when the subject of the record:

- 29 1. Is a candidate for employment with a criminal
30 justice agency;
31 2. Is a defendant in a criminal prosecution;

1 3. Concurrently or subsequently petitions for relief
2 under this section or s. 943.0585;

3 4. Is a candidate for admission to The Florida Bar;

4 5. Is seeking to be employed or licensed by or to
5 contract with the Department of Children and Family Services
6 or the Department of Juvenile Justice or to be employed or
7 used by such contractor or licensee in a sensitive position
8 having direct contact with children, the developmentally
9 disabled, the aged, or the elderly as provided in s.
10 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
11 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
12 415.103, s. 916.106(10) and (15)~~(13)~~, s. 985.407, or chapter
13 400; or

14 6. Is seeking to be employed or licensed by the
15 Department of Education, any district school board, any
16 university laboratory school, any charter school, any private
17 or parochial school, or any local governmental entity that
18 licenses child care facilities.

19 (b) Subject to the exceptions in paragraph (a), a
20 person who has been granted a sealing under this section,
21 former s. 893.14, former s. 901.33, or former s. 943.058 may
22 not be held under any provision of law of this state to commit
23 perjury or to be otherwise liable for giving a false statement
24 by reason of such person's failure to recite or acknowledge a
25 sealed criminal history record.

26 (c) Information relating to the existence of a sealed
27 criminal record provided in accordance with the provisions of
28 paragraph (a) is confidential and exempt from the provisions
29 of s. 119.07(1) and s. 24(a), Art. I of the State
30 Constitution, except that the department shall disclose the
31 sealed criminal history record to the entities set forth in

1 | subparagraphs (a)1., 4., 5., and 6. for their respective
2 | licensing and employment purposes. It is unlawful for any
3 | employee of an entity set forth in subparagraph (a)1.,
4 | subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
5 | to disclose information relating to the existence of a sealed
6 | criminal history record of a person seeking employment or
7 | licensure with such entity or contractor, except to the person
8 | to whom the criminal history record relates or to persons
9 | having direct responsibility for employment or licensure
10 | decisions. Any person who violates the provisions of this
11 | paragraph commits a misdemeanor of the first degree,
12 | punishable as provided in s. 775.082 or s. 775.083.

13 | Section 18. For the purpose of incorporating the
14 | amendments made by this act to section 393.13, Florida
15 | Statutes, in a reference thereto, subsection (15) of section
16 | 393.067, Florida Statutes, is reenacted to read:

17 | 393.067 Licensure of residential facilities and
18 | comprehensive transitional education programs.--

19 | (15) Facilities and programs licensed pursuant to this
20 | section shall adhere to all rights specified in s. 393.13,
21 | including those enumerated in s. 393.13(4).

22 | Section 19. This act shall take effect July 1, 2006.

23 |
24 | *****

25 | SENATE SUMMARY

26 | Requiring the Agency for Persons with Disabilities to
27 | adopt rules establishing minimum standards for licensure
28 | of residential facilities and comprehensive transitional
29 | education programs. Declares that it is the policy of the
30 | state to achieve an ongoing reduction of the use of
31 | restraint and seclusion on persons with developmental
32 | disabilities or with mental illness who are served by
33 | programs and facilities operated, licensed, or monitored
34 | by the agency or the Department of Children and Family
35 | Services. (See bill for details.)