

By Senator Altman

24-00645-11

20111104

1                   A bill to be entitled  
2           An act relating to intellectual disabilities; amending  
3           s. 39.502, F.S.; substituting the Arc of Florida for  
4           the Association for Retarded Citizens for purposes of  
5           certain proceedings relating to children; amending ss.  
6           40.013, 86.041, 92.53, 92.54, and 92.55, F.S.;  
7           substituting the term "intellectual disability" for  
8           the term "mental retardation"; amending s. 320.10,  
9           F.S.; substituting the Arc of Florida for the  
10          Association for Retarded Citizens; amending ss.  
11          383.14, 393.063, 393.11, and 394.455, F.S.;  
12          substituting the term "intellectual disability" for  
13          the term "mental retardation"; clarifying in s.  
14          393.063, that the meaning of the terms "intellectual  
15          disability" or "intellectually disabled" is the same  
16          as the meaning of the terms "mental retardation,"  
17          "retarded," and "mentally retarded" for purposes of  
18          matters relating to the criminal laws and court rules;  
19          amending s. 400.960, F.S.; revising definitions  
20          relating to intermediate care facilities for the  
21          developmentally disabled to delete unused terms;  
22          amending s. 408.032, F.S.; conforming a cross-  
23          reference; amending s. 409.908, F.S.; substituting the  
24          term "intellectually disabled" for the term "mentally  
25          retarded"; amending ss. 413.20, 440.49, and 499.0054,  
26          F.S.; substituting the term "intellectual disability"  
27          for the term "mental retardation"; amending s.  
28          514.072, F.S.; conforming a cross-reference and  
29          deleting obsolete provisions; amending ss. 627.6041,

24-00645-11

20111104

30 627.6615, 641.31, 650.05, 765.204, 849.04, 914.16,  
31 914.17, 916.105, and 916.106, F.S.; substituting the  
32 term "intellectual disability" for the term "mental  
33 retardation"; amending s. 916.107, F.S.; substituting  
34 the term "intellectual disability" for the term  
35 "retardation"; providing a directive to the Division  
36 of Statutory Revision; amending ss. 916.301, 916.3012,  
37 916.302, 916.3025, 916.303, 916.304, 918.16, 921.137,  
38 941.38, 944.602, 945.025, 945.12, 945.42, 947.185,  
39 984.19, 985.14, 985.145, 985.18, 985.19, 985.195, and  
40 985.61, F.S.; clarifying in s. 921.137, F.S., that the  
41 terms "intellectual disability" or "intellectually  
42 disabled" are interchangeable with and have the same  
43 meaning as the terms "mental retardation," or  
44 "retardation" and "mentally retarded," as defined  
45 before the effective date of the act; substituting the  
46 term "intellectual disability" for the term "mental  
47 retardation"; expressing legislative intent; providing  
48 an effective date.

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

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

54 39.502 Notice, process, and service.—

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

24-00645-11

20111104

59 ~~Retarded Citizens~~, or other appropriate mental health or  
60 developmental disability advocacy groups and encouraged to seek  
61 such services.

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

64 40.013 Persons disqualified or excused from jury service.—

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

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

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

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

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

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

24-00645-11

20111104

88

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

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

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

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

112 (2) The motion may be filed by:

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

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

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

24-00645-11

20111104

117 (d) The prosecuting attorney or the defendant, or the  
118 defendant's counsel.

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

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

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

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

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

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

24-00645-11

20111104

146 ~~retardation~~ and in interpreting the answers of the child or  
147 person ~~with mental retardation~~ throughout proceedings conducted  
148 under this section.

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

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

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

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

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

24-00645-11

20111104

175 ~~is~~ a victim or witness be taken outside of the courtroom and  
176 shown by means of closed circuit television.

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

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

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

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

24-00645-11

20111104

204 Section 6. Section 92.55, Florida Statutes, is amended to  
205 read:

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

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

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

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

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

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

229 (a) The age of the child, the nature of the offense or act,  
230 the relationship of the child to the parties in the case or to  
231 the defendant in a criminal action, the degree of emotional  
232 trauma that will result to the child as a consequence of the



24-00645-11

20111104

233 defendant's presence, and any other fact that the court deems  
234 relevant; or

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

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

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

259 320.10 Exemptions.—

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

261 (a) Any motor vehicle or mobile home owned by, and operated

24-00645-11

20111104

262 exclusively for the personal use of, any member of the United  
263 States Armed Forces who is not a resident of this state and who  
264 is stationed in the state while in compliance with military or  
265 naval orders;

266 (b) Any motor vehicle owned or operated exclusively by the  
267 Federal Government;

268 (c) Any motor vehicle owned and operated exclusively for  
269 the benefit of the Boys' Clubs of America, the National Audubon  
270 Society, the National Children's Cardiac Hospital, any humane  
271 society, any nationally chartered veterans' organization that  
272 maintains a state headquarters in this state, the Children's  
273 Bible Mission, the Boy Scouts of America, the Girl Scouts of  
274 America, the Salvation Army, the American National Red Cross,  
275 the United Service Organization, any local member unit of the  
276 National Urban League which provides free services to municipal  
277 and county residents who are in need of such services, the Young  
278 Men's Christian Association, the Young Men's Hebrew Association,  
279 the Camp Fire Girls' Council, the Young Women's Christian  
280 Association, the Young Women's Hebrew Association, any local  
281 member unit of the Arc of Florida ~~Association for Retarded~~  
282 ~~Citizens~~, the Children's Home Society of Florida, or the  
283 Goodwill Industries. A not-for-profit organization named in this  
284 paragraph and its local affiliate organizations is ~~shall be~~  
285 eligible for the exemption if it ~~for so long as each~~ maintains  
286 current articles of incorporation on file with the Department of  
287 State and qualifies as a not-for-profit organization under s.  
288 212.08;

289 (d) Any motor vehicle owned and operated by a church,  
290 temple, or synagogue for exclusive use as a community service

24-00645-11

20111104

291 van or to transport passengers without compensation to religious  
292 services or for religious education;

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

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

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

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

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

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

308 Section 8. Paragraph (d) of subsection (3) of section  
309 383.14, Florida Statutes, is amended to read:

310 383.14 Screening for metabolic disorders, other hereditary  
311 and congenital disorders, and environmental risk factors.—

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

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

24-00645-11

20111104

320 exempt from the provisions of s. 119.07(1).

321

322 All provisions of this subsection must be coordinated with the  
323 provisions and plans established under this chapter, chapter  
324 411, and Pub. L. No. 99-457.

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

328 393.063 Definitions.—For the purposes of this chapter, the  
329 term:

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

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

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

24-00645-11

20111104

349        (23)~~(22)~~ "Personal care services" means individual  
350 assistance with or supervision of essential activities of daily  
351 living for self-care, including ambulation, bathing, dressing,  
352 eating, grooming, and toileting, and other similar services that  
353 are incidental to the care furnished and essential to the  
354 health, safety, and welfare of the client if ~~when there is~~ no  
355 one else is available to perform those services.

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

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

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

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

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

24-00645-11

20111104

378        (29)~~(28)~~ "Residential habilitation center" means a  
379 community residential facility licensed under this chapter which  
380 provides habilitation services. The capacity of such a facility  
381 may shall not be fewer than nine residents. After October 1,  
382 1989, new residential habilitation centers may not be licensed  
383 and the licensed capacity for any existing residential  
384 habilitation center may not be increased.

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

390        (31)~~(30)~~ "Restraint" means a physical device, method, or  
391 drug used to control dangerous behavior.

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

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

403        (c) Restraint does not include physical devices, such as  
404 orthopedically prescribed appliances, surgical dressings and  
405 bandages, supportive body bands, or other physical holding ~~when~~  
406 necessary for routine physical examinations and tests; for

24-00645-11

20111104

407 purposes of orthopedic, surgical, or other similar medical  
408 treatment; ~~when used~~ to provide support for the achievement of  
409 functional body position or proper balance; or ~~when used~~ to  
410 protect a person from falling out of bed.

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

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

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

430  
431 For purposes of the application of the criminal laws and  
432 procedural rules of this state to matters relating to pretrial,  
433 trial, sentencing, and any matters relating to the imposition  
434 and execution of the death penalty, the terms "intellectual  
435 disability" or "intellectually disabled" are interchangeable

24-00645-11

20111104

436 with and have the same meaning as the terms "mental retardation"  
437 or "retardation" and "mentally retarded" as defined in s.  
438 393.063 before July 1, 2011.

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

446 393.11 Involuntary admission to residential services.—

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

459 (2) PETITION.—

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

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

464 2. State the name, age, county of residence, and present



24-00645-11

20111104

465 address of the person who has an intellectual disability ~~with~~  
466 ~~mental retardation~~ or autism;

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

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

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

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

481 (3) NOTICE.—

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

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

24-00645-11

20111104

494 of the hearing on the petition.

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

500 (4) AGENCY PARTICIPATION.—

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

507 (5) EXAMINING COMMITTEE.—

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

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

24-00645-11

20111104

523 1. The degree of the person's intellectual disability  
524 ~~mental retardation~~ and whether, using diagnostic capabilities  
525 established by the agency, the person is eligible for agency  
526 services;

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

529 a. Lacks sufficient capacity to give express and informed  
530 consent to a voluntary application for services pursuant to s.  
531 393.065;

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

537 c. Is likely to physically injure others if allowed to  
538 remain at liberty.

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

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

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

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

550 (g) Members of the examining committee shall receive a  
551 reasonable fee to be determined by the court. The fees shall ~~are~~

24-00645-11

20111104

552 ~~to~~ be paid from the general revenue fund of the county in which  
553 the person who has the intellectual disability ~~with mental~~  
554 ~~retardation~~ resided when the petition was filed.

555 (6) COUNSEL; GUARDIAN AD LITEM.—

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

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

574 (7) HEARING.—

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

24-00645-11

20111104

581 (8) ORDER.—

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

584 1. The person is intellectually disabled ~~mentally retarded~~  
585 or autistic;

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

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

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

598 b. Is likely to physically injure others if allowed to  
599 remain at liberty.

600 (10) COMPETENCY.—

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

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

24-00645-11

20111104

610 intellectual disability ~~with mental retardation~~ or autism for  
611 purposes of determining whether the person is competent to  
612 proceed in a criminal trial shall be determined in accordance  
613 with chapter 916.

614 (12) APPEAL.—

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

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

622 394.455 Definitions.—As used in this part, unless the  
623 context clearly requires otherwise, the term:

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

633 Section 12. Subsections (3) through (13) of section  
634 400.960, Florida Statutes, are amended to read:

635 400.960 Definitions.—As used in this part, the term:

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

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

638 (3) ~~(5)~~ "Client" means any person determined by the Agency

24-00645-11

20111104

639 for Persons with Disabilities to be eligible for developmental  
640 services.

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

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

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

654 ~~(9)~~ ~~"Prader-Willi syndrome" has the same meaning as in s.~~  
655 ~~393.063.~~

656 ~~(7)-(10)(a)~~ "Restraint" means a physical device, method, or  
657 drug used to control behavior.

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

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

24-00645-11

20111104

668 (c) Restraint does not include physical devices, such as  
669 orthopedically prescribed appliances, surgical dressings and  
670 bandages, supportive body bands, or other physical holding ~~when~~  
671 necessary for routine physical examinations and tests; for  
672 purposes of orthopedic, surgical, or other similar medical  
673 treatment; ~~when used~~ to provide support for the achievement of  
674 functional body position or proper balance; or ~~when used~~ to  
675 protect a person from falling out of bed.

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

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

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

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

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

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



24-00645-11

20111104

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

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

714 Section 15. Subsection (16) of section 413.20, Florida  
715 Statutes, is amended to read:

716 413.20 Definitions.—As used in this part, the term:

717 (16) "Person who has a significant disability" means an  
718 individual who has a disability that is a severe physical or  
719 mental impairment that seriously limits one or more functional  
720 capacities, such as mobility, communication, self-care, self-  
721 direction, interpersonal skills, work tolerance, or work skills,  
722 in terms of an employment outcome; whose vocational  
723 rehabilitation may be expected to require multiple vocational  
724 rehabilitation services over an extended period of time; and who  
725 has one or more physical or mental disabilities resulting from

24-00645-11

20111104

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

738 Section 16. Paragraph (a) of subsection (6) of section  
 739 440.49, Florida Statutes, is amended to read:

740 440.49 Limitation of liability for subsequent injury  
 741 through Special Disability Trust Fund.—

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

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

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

24-00645-11

20111104

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

24-00645-11

20111104

784 ~~prior to~~ the industrial accident or occupational disease,  
785 constitutes a 20 percent ~~20-percent~~ impairment of a member or of  
786 the body as a whole.

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

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

797 Section 17. Paragraph (g) of subsection (1) of section  
798 499.0054, Florida Statutes, is amended to read:

799 499.0054 Advertising and labeling of drugs, devices, and  
800 cosmetics; exemptions.—

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

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

- 807 1. Blood disorders.
- 808 2. Bone or joint diseases.
- 809 3. Kidney diseases or disorders.
- 810 4. Cancer.
- 811 5. Diabetes.
- 812 6. Gall bladder diseases or disorders.

24-00645-11

20111104

- 813           7. Heart and vascular diseases.
- 814           8. High blood pressure.
- 815           9. Diseases or disorders of the ear or auditory apparatus,  
816 including hearing loss or deafness.
- 817           10. Mental disease or intellectual disability ~~mental~~  
818 ~~retardation~~.
- 819           11. Paralysis.
- 820           12. Prostate gland disorders.
- 821           13. Conditions of the scalp affecting hair loss.
- 822           14. Baldness.
- 823           15. Endocrine disorders.
- 824           16. Sexual impotence.
- 825           17. Tumors.
- 826           18. Venereal diseases.
- 827           19. Varicose ulcers.
- 828           20. Breast enlargement.
- 829           21. Purifying blood.
- 830           22. Metabolic disorders.
- 831           23. Immune system disorders or conditions affecting the  
832 immune system.
- 833           24. Extension of life expectancy.
- 834           25. Stress and tension.
- 835           26. Brain stimulation or performance.
- 836           27. The body's natural defense mechanisms.
- 837           28. Blood flow.
- 838           29. Depression.
- 839           30. Human immunodeficiency virus or acquired immune  
840 deficiency syndrome or related disorders or conditions.
- 841           Section 18. Section 514.072, Florida Statutes, is amended

24-00645-11

20111104

842 to read:

843       514.072 Certification of swimming instructors for people  
844 who have developmental disabilities ~~required.~~—Any person working  
845 at a swimming pool who holds himself or herself out as a  
846 swimming instructor specializing in training people who have  
847 developmental disabilities, as defined in s. 393.063(10), may be  
848 certified by the Dan Marino Foundation, Inc., in addition to  
849 being certified under s. 514.071. The Dan Marino Foundation,  
850 Inc., must develop certification requirements and a training  
851 curriculum for swimming instructors for people who have  
852 developmental disabilities ~~and must submit the certification~~  
853 ~~requirements to the Department of Health for review by January~~  
854 ~~1, 2007. A person certified under s. 514.071 before July 1,~~  
855 ~~2007, must meet the additional certification requirements of~~  
856 ~~this section before January 1, 2008.~~ A person certified under s.  
857 514.071 ~~on or after July 1, 2007,~~ must meet the additional  
858 certification requirements of this section within 6 months after  
859 receiving certification under s. 514.071.

860       Section 19. Section 627.6041, Florida Statutes, is amended  
861 to read:

862       627.6041 ~~Handicapped~~ Children with disabilities;  
863 continuation of coverage.—

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

24-00645-11

20111104\_\_

871 while the child continues to be both:

872 (a)~~(1)~~ Incapable of self-sustaining employment by reason of  
873 an intellectual ~~mental retardation~~ or physical disability.

874 ~~handicap; and~~

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

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

883 Section 20. Section 627.6615, Florida Statutes, is amended  
884 to read:

885 627.6615 ~~Handicapped~~ Children with disabilities;  
886 continuation of coverage under group policy.—

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

896 (a)~~(1)~~ Incapable of self-sustaining employment by reason of  
897 an intellectual ~~mental retardation~~ or physical disability.

898 ~~handicap; and~~

899 (b)~~(2)~~ Chiefly dependent upon the employee or member for

24-00645-11

20111104

900 support and maintenance.

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

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

910 641.31 Health maintenance contracts.—

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

918 (a) Incapable of self-sustaining employment by reason of an  
919 intellectual ~~mental retardation~~ or physical disability.

920 ~~handicap, and~~

921 (b) Chiefly dependent upon the employee or member for  
922 support and maintenance.

923  
924 If the claim is denied under a contract for the stated reason  
925 that the child has attained the limiting age for dependent  
926 children specified in the contract, the notice or denial must  
927 state that the subscriber has the burden of establishing that  
928 the child continues to meet the criteria specified in this



24-00645-11

20111104

929 subsection ~~paragraphs (a) and (b).~~

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

932 650.05 Plans for coverage of employees of political  
933 subdivisions.—

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

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

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

952 765.204 Capacity of principal; procedure.—

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

24-00645-11

20111104\_\_

958 ~~retardation.~~

959 Section 24. Section 849.04, Florida Statutes, is amended to  
960 read:

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

979 Section 25. Section 914.16, Florida Statutes, is amended to  
980 read:

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

24-00645-11

20111104

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

999 Section 26. Section 914.17, Florida Statutes, is amended to  
1000 read:

1001 914.17 Appointment of advocate for victims or witnesses who  
1002 are minors or intellectually disabled ~~persons with mental~~  
1003 ~~retardation.~~-

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

24-00645-11

20111104

1016 may request additional examinations by medical doctors,  
1017 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian  
1018 ad litem or other advocate shall ~~to perform the following~~  
1019 ~~services:~~

1020 (a) ~~To~~ Explain, in language understandable to the minor,  
1021 all legal proceedings in which the minor is ~~shall be~~ involved;

1022 (b) ~~To~~ Act, as a friend of the court, to advise the judge,  
1023 whenever appropriate, of the minor's ability to understand and  
1024 cooperate with any court proceeding; and

1025 (c) ~~To~~ Assist the minor and the minor's family in coping  
1026 with the emotional effects of the crime and subsequent criminal  
1027 proceedings in which the minor is involved.

1028 (2) An advocate shall be appointed by the court to  
1029 represent a person who has an intellectual disability ~~with~~  
1030 ~~mental retardation~~ as defined in s. 393.063 in any criminal  
1031 proceeding if the person ~~with mental retardation~~ is a victim of  
1032 or witness to abuse or neglect, ~~or if the person with mental~~  
1033 ~~retardation is~~ a victim of a sexual offense, or a witness to a  
1034 sexual offense committed against a minor or person who has an  
1035 intellectual disability ~~with mental retardation~~. The court may  
1036 appoint an advocate in any other criminal proceeding in which  
1037 such a person ~~with mental retardation~~ is involved as ~~either~~ a  
1038 victim or a witness. The advocate shall have full access to all  
1039 evidence and reports introduced during the proceedings, may  
1040 interview witnesses, may make recommendations to the court,  
1041 shall be noticed and have the right to appear on behalf of the  
1042 person ~~with mental retardation~~ at all proceedings, and may  
1043 request additional examinations by medical doctors,  
1044 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate

24-00645-11

20111104

1045 ~~shall to perform the following services:~~

1046 (a) ~~To~~ Explain, in language understandable to the person  
1047 ~~with mental retardation~~, all legal proceedings in which the  
1048 person is ~~shall be~~ involved;

1049 (b) ~~To~~ Act, as a friend of the court, to advise the judge,  
1050 whenever appropriate, of the person's ~~person with mental~~  
1051 ~~retardation's~~ ability to understand and cooperate with any court  
1052 proceedings; and

1053 (c) To assist the person ~~with mental retardation~~ and the  
1054 person's family in coping with the emotional effects of the  
1055 crime and subsequent criminal proceedings in which the person  
1056 ~~with mental retardation~~ is involved.

1057 (3) Any person participating in a judicial proceeding as a  
1058 guardian ad litem or other advocate is ~~shall be~~ presumed prima  
1059 facie to be acting in good faith and in so doing is ~~shall be~~  
1060 immune from any liability, civil or criminal, which ~~that~~  
1061 ~~otherwise~~ might be incurred or imposed.

1062 Section 27. Subsections (1), (2), and (3) of section  
1063 916.105, Florida Statutes, are amended to read:

1064 916.105 Legislative intent.—

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

24-00645-11

20111104

1074 jurisdiction of the committing court, are committed to the  
1075 department or agency under ~~the provisions of~~ this chapter. Such  
1076 facilities must ~~shall~~ be sufficient to accommodate the number of  
1077 defendants committed under the conditions noted above. Except  
1078 for those defendants found by the department or agency to be  
1079 appropriate for treatment or training in a civil facility or  
1080 program pursuant to subsection (3), forensic facilities must  
1081 ~~shall~~ be designed and administered so that ingress and egress,  
1082 together with other requirements of this chapter, may be  
1083 strictly controlled by staff responsible for security in order  
1084 to protect the defendant, facility personnel, other clients, and  
1085 citizens in adjacent communities.

1086 (2) It is the intent of the Legislature that treatment or  
1087 training programs for defendants who are found to have mental  
1088 illness, intellectual disability ~~mental retardation~~, or autism  
1089 and are involuntarily committed to the department or agency, and  
1090 who are still under the jurisdiction of the committing court, be  
1091 provided in a manner, subject to security requirements and other  
1092 mandates of this chapter, which ensures ~~as to ensure~~ the rights  
1093 of the defendants as provided in this chapter.

1094 (3) It is the intent of the Legislature that evaluation and  
1095 services to defendants who have mental illness, intellectual  
1096 disability ~~mental retardation~~, or autism be provided in  
1097 community settings, in community residential facilities, or in  
1098 civil facilities, whenever this is a feasible alternative to  
1099 treatment or training in a state forensic facility.

1100 Section 28. Subsections (10) through (17) of section  
1101 916.106, Florida Statutes, are reordered and amended to read:

1102 916.106 Definitions.—For the purposes of this chapter, the

24-00645-11

20111104

1103 term:

1104 (10) "Forensic facility" means a separate and secure  
1105 facility established within the department or agency to serve  
1106 forensic clients. A separate and secure facility means a  
1107 security-grade building for the purpose of separately housing  
1108 persons who have mental illness from persons who have  
1109 intellectual disabilities ~~with retardation~~ or autism and  
1110 separately housing persons who have been involuntarily committed  
1111 pursuant to this chapter from nonforensic residents.

1112 (11) "Incompetent to proceed" means unable to proceed at  
1113 any material stage of a criminal proceeding, which includes  
1114 ~~shall include~~ trial of the case, pretrial hearings involving  
1115 questions of fact on which the defendant might be expected to  
1116 testify, entry of a plea, proceedings for violation of probation  
1117 or violation of community control, sentencing, and hearings on  
1118 issues regarding a defendant's failure to comply with court  
1119 orders or conditions or other matters in which the mental  
1120 competence of the defendant is necessary for a just resolution  
1121 of the issues being considered.

1122 (12) "Institutional security personnel" means the staff of  
1123 forensic facilities who meet or exceed the requirements of s.  
1124 943.13 and who are responsible for providing security,  
1125 protecting clients and personnel, enforcing rules, preventing  
1126 and investigating unauthorized activities, and safeguarding the  
1127 interests of residents ~~citizens~~ in the surrounding communities.

1128 (14) ~~(13)~~ "Mental illness" means an impairment of the  
1129 emotional processes that exercise conscious control of one's  
1130 actions, or of the ability to perceive or understand reality,  
1131 which impairment substantially interferes with the ~~a~~ defendant's

24-00645-11

20111104

1132 ability to meet the ordinary demands of living. For the purposes  
 1133 of this chapter, the term does not apply to defendants who have  
 1134 only an intellectual disability ~~with only mental retardation~~ or  
 1135 autism and does not include intoxication or conditions  
 1136 manifested only by antisocial behavior or substance abuse  
 1137 impairment.

1138 ~~(15)-(14)~~ "Restraint" means a physical device, method, or  
 1139 drug used to control dangerous behavior.

1140 (a) A physical restraint is any manual method or physical  
 1141 or mechanical device, material, or equipment attached or  
 1142 adjacent to a person's body so that he or she cannot easily  
 1143 remove the restraint and that restricts freedom of movement or  
 1144 normal access to one's body.

1145 (b) A drug used as a restraint is a medication used to  
 1146 control the person's behavior or to restrict his or her freedom  
 1147 of movement and not part of the standard treatment regimen of  
 1148 the person with a diagnosed mental illness who is a client of  
 1149 the department. Physically holding a person during a procedure  
 1150 to forcibly administer psychotropic medication is a physical  
 1151 restraint.

1152 (c) Restraint does not include physical devices, such as  
 1153 orthopedically prescribed appliances, surgical dressings and  
 1154 bandages, supportive body bands, or other physical holding ~~when~~  
 1155 necessary for routine physical examinations and tests; for  
 1156 purposes of orthopedic, surgical, or other similar medical  
 1157 treatment; ~~when used~~ to provide support for the achievement of  
 1158 functional body position or proper balance; or ~~when used~~ to  
 1159 protect a person from falling out of bed.

1160 ~~(13)-(15)~~ "Intellectual disability" ~~"Retardation"~~ has the



24-00645-11

20111104

1161 same meaning as in s. 393.063.

1162 (16) "Seclusion" means the physical segregation of a person  
1163 in any fashion or the involuntary isolation of a person in a  
1164 room or area from which the person is prevented from leaving.  
1165 The prevention may be by physical barrier or by a staff member  
1166 who is acting in a manner, or who is physically situated, so as  
1167 to prevent the person from leaving the room or area. For  
1168 purposes of this chapter, the term does not mean isolation due  
1169 to a person's medical condition or symptoms, the confinement in  
1170 a forensic facility to a bedroom or area during normal hours of  
1171 sleep when there is not an active order for seclusion, or during  
1172 an emergency such as a riot or hostage situation when clients  
1173 may be temporarily placed in their rooms for their own safety.

1174 (17) "Social service professional" means a person whose  
1175 minimum qualifications include a bachelor's degree and at least  
1176 2 years of social work, clinical practice, special education,  
1177 habilitation, or equivalent experience working directly with  
1178 persons who have intellectual disabilities ~~with retardation~~,  
1179 autism, or other developmental disabilities.

1180 Section 29. Paragraph (a) of subsection (1) and paragraph  
1181 (a) of subsection (3) of section 916.107, Florida Statutes, are  
1182 amended to read:

1183 916.107 Rights of forensic clients.—

1184 (1) RIGHT TO INDIVIDUAL DIGNITY.—

1185 (a) The policy of the state is that the individual dignity  
1186 of the client shall be respected at all times and upon all  
1187 occasions, including any occasion when the forensic client is  
1188 detained, transported, or treated. Clients with mental illness,  
1189 intellectual disability ~~retardation~~, or autism and who are

24-00645-11

20111104

1190 charged with committing felonies shall receive appropriate  
1191 treatment or training. In a criminal case involving a client who  
1192 has been adjudicated incompetent to proceed or not guilty by  
1193 reason of insanity, a jail may be used as an emergency facility  
1194 for up to 15 days following the date the department or agency  
1195 receives a completed copy of the court commitment order  
1196 containing all documentation required by the applicable Florida  
1197 Rules of Criminal Procedure. For a forensic client who is held  
1198 in a jail awaiting admission to a facility of the department or  
1199 agency, evaluation and treatment or training may be provided in  
1200 the jail by the local community mental health provider for  
1201 mental health services, by the developmental disabilities  
1202 program for persons with intellectual disability ~~retardation~~ or  
1203 autism, the client's physician or psychologist, or any other  
1204 appropriate program until the client is transferred to a civil  
1205 or forensic facility.

1206 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

1207 (a) A forensic client shall be asked to give express and  
1208 informed written consent for treatment. If a client refuses such  
1209 treatment as is deemed necessary and essential by the client's  
1210 multidisciplinary treatment team for the appropriate care of the  
1211 client, such treatment may be provided under the following  
1212 circumstances:

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

24-00645-11

20111104

1219 administrator or designee of the civil or forensic facility  
1220 shall, within 48 hours, excluding weekends and legal holidays,  
1221 petition the committing court or the circuit court serving the  
1222 county in which the facility is located, at the option of the  
1223 facility administrator or designee, for an order authorizing the  
1224 continued treatment of the client. In the interim, the need for  
1225 treatment shall be reviewed every 48 hours and may be continued  
1226 without the consent of the client upon the continued written  
1227 order of a physician who has determined that the emergency  
1228 situation continues to present a danger to the safety of the  
1229 client or others.

1230         2. In a situation other than an emergency situation, the  
1231 administrator or designee of the facility shall petition the  
1232 court for an order authorizing necessary and essential treatment  
1233 for the client. The order shall allow such treatment for a  
1234 period not to exceed 90 days following the date of the entry of  
1235 the order. Unless the court is notified in writing that the  
1236 client has provided express and informed consent in writing or  
1237 that the client has been discharged by the committing court, the  
1238 administrator or designee shall, before ~~prior to~~ the expiration  
1239 of the initial 90-day order, petition the court for an order  
1240 authorizing the continuation of treatment for another 90-day  
1241 period. This procedure shall be repeated until the client  
1242 provides consent or is discharged by the committing court.

1243         3. At the hearing on the issue of whether the court should  
1244 enter an order authorizing treatment for which a client was  
1245 unable to or refused to give express and informed consent, the  
1246 court shall determine by clear and convincing evidence that the  
1247 client has mental illness, intellectual disability ~~retardation~~,

24-00645-11

20111104

1248 or autism, that the treatment not consented to is essential to  
1249 the care of the client, and that the treatment not consented to  
1250 is not experimental and does not present an unreasonable risk of  
1251 serious, hazardous, or irreversible side effects. In arriving at  
1252 the substitute judgment decision, the court must consider at  
1253 least the following factors:

- 1254 a. The client's expressed preference regarding treatment;
- 1255 b. The probability of adverse side effects;
- 1256 c. The prognosis without treatment; and
- 1257 d. The prognosis with treatment.

1258  
1259 The hearing shall be as convenient to the client as may be  
1260 consistent with orderly procedure and shall be conducted in  
1261 physical settings not likely to be injurious to the client's  
1262 condition. The court may appoint a general or special magistrate  
1263 to preside at the hearing. The client or the client's guardian,  
1264 and the representative, shall be provided with a copy of the  
1265 petition and the date, time, and location of the hearing. The  
1266 client has the right to have an attorney represent him or her at  
1267 the hearing, and, if the client is indigent, the court shall  
1268 appoint the office of the public defender to represent the  
1269 client at the hearing. The client may testify or not, as he or  
1270 she chooses, and has the right to cross-examine witnesses and  
1271 may present his or her own witnesses.

1272 Section 30. The Division of Statutory Revision is requested  
1273 to rename part III of chapter 916, Florida Statutes, consisting  
1274 of ss. 916.301-916.304, as "Forensic Services for Persons who  
1275 are Intellectually Disabled or Autistic."

1276 Section 31. Subsections (1) and (2) of section 916.301,

24-00645-11

20111104

1277 Florida Statutes, are amended to read:

1278 916.301 Appointment of experts.-

1279 (1) All evaluations ordered by the court under this part  
1280 must be conducted by qualified experts who have expertise in  
1281 evaluating persons who have an intellectual disability ~~with~~  
1282 ~~retardation~~ or autism. The agency shall maintain and provide the  
1283 courts annually with a list of available ~~retardation and autism~~  
1284 professionals who are appropriately licensed and qualified to  
1285 perform evaluations of defendants alleged to be incompetent to  
1286 proceed due to intellectual disability ~~retardation~~ or autism.  
1287 The courts may use professionals from this list when appointing  
1288 experts and ordering evaluations under this part.

1289 (2) If a defendant's suspected mental condition is  
1290 intellectual disability ~~retardation~~ or autism, the court shall  
1291 appoint the following:

1292 (a) At least one, or at the request of any party, two  
1293 experts to evaluate whether the defendant meets the definition  
1294 of intellectual disability ~~retardation~~ or autism and, if so,  
1295 whether the defendant is competent to proceed; and

1296 (b) A psychologist selected by the agency who is licensed  
1297 or authorized by law to practice in this state, with experience  
1298 in evaluating persons suspected of having an intellectual  
1299 disability ~~retardation~~ or autism, and a social service  
1300 professional, with experience in working with persons who have  
1301 an intellectual disability ~~with retardation~~ or autism.

1302 1. The psychologist shall evaluate whether the defendant  
1303 meets the definition of intellectual disability ~~retardation~~ or  
1304 autism and, if so, whether the defendant is incompetent to  
1305 proceed due to intellectual disability ~~retardation~~ or autism.

24-00645-11

20111104

1306 2. The social service professional shall provide a social  
1307 and developmental history of the defendant.

1308 Section 32. Subsections (1), (2), and (4) of section  
1309 916.3012, Florida Statutes, are amended to read:

1310 916.3012 Mental competence to proceed.—

1311 (1) A defendant whose suspected mental condition is  
1312 intellectual disability ~~retardation~~ or autism is incompetent to  
1313 proceed within the meaning of this chapter if the defendant does  
1314 not have sufficient present ability to consult with the  
1315 defendant's lawyer with a reasonable degree of rational  
1316 understanding or if the defendant has no rational, as well as  
1317 factual, understanding of the proceedings against the defendant.

1318 (2) Experts in intellectual disability ~~retardation~~ or  
1319 autism appointed pursuant to s. 916.301 shall first consider  
1320 whether the defendant meets the definition of intellectual  
1321 disability ~~retardation~~ or autism and, if so, consider the  
1322 factors related to the issue of whether the defendant meets the  
1323 criteria for competence to proceed as described in subsection  
1324 (1).

1325 (4) If the experts ~~should~~ find that the defendant is  
1326 incompetent to proceed, the experts shall report on any  
1327 recommended training for the defendant to attain competence to  
1328 proceed. In considering the issues relating to training, the  
1329 examining experts shall specifically report on:

1330 (a) The intellectual disability ~~retardation~~ or autism  
1331 causing the incompetence;

1332 (b) The training appropriate for the intellectual  
1333 disability ~~retardation~~ or autism of the defendant and an  
1334 explanation of each of the possible training alternatives in

24-00645-11

20111104

1335 order of choices;

1336 (c) The availability of acceptable training and, if  
1337 training is available in the community, the expert shall so  
1338 state in the report; and

1339 (d) The likelihood of the defendant's attaining competence  
1340 under the training recommended, an assessment of the probable  
1341 duration of the training required to restore competence, and the  
1342 probability that the defendant will attain competence to proceed  
1343 in the foreseeable future.

1344 Section 33. Subsection (1), paragraphs (a) and (b) of  
1345 subsection (2), and paragraph (a) of subsection (3) of section  
1346 916.302, Florida Statutes, are amended to read:

1347 916.302 Involuntary commitment of defendant determined to  
1348 be incompetent to proceed.—

1349 (1) CRITERIA.—Every defendant who is charged with a felony  
1350 and who is adjudicated incompetent to proceed due to  
1351 intellectual disability ~~retardation~~ or autism may be  
1352 involuntarily committed for training upon a finding by the court  
1353 of clear and convincing evidence that:

1354 (a) The defendant has an intellectual disability  
1355 ~~retardation~~ or autism;

1356 (b) There is a substantial likelihood that in the near  
1357 future the defendant will inflict serious bodily harm on himself  
1358 or herself or another person, as evidenced by recent behavior  
1359 causing, attempting, or threatening such harm;

1360 (c) All available, less restrictive alternatives, including  
1361 services provided in community residential facilities or other  
1362 community settings, which would offer an opportunity for  
1363 improvement of the condition have been judged to be

24-00645-11

20111104

1364 inappropriate; and

1365 (d) There is a substantial probability that the  
1366 intellectual disability ~~retardation~~ or autism causing the  
1367 defendant's incompetence will respond to training and the  
1368 defendant will regain competency to proceed in the reasonably  
1369 foreseeable future.

1370 (2) ADMISSION TO A FACILITY.—

1371 (a) A defendant who has been charged with a felony and who  
1372 is found to be incompetent to proceed due to intellectual  
1373 disability ~~retardation~~ or autism, and who meets the criteria for  
1374 involuntary commitment to the agency under ~~the provisions of~~  
1375 this chapter, shall be committed to the agency, and the agency  
1376 shall retain and provide appropriate training for the defendant.  
1377 Within ~~No later than~~ 6 months after the date of admission or at  
1378 the end of any period of extended commitment or at any time the  
1379 administrator or designee determines ~~shall have determined~~ that  
1380 the defendant has regained competency to proceed or no longer  
1381 meets the criteria for continued commitment, the administrator  
1382 or designee shall file a report with the court pursuant to this  
1383 chapter and the applicable Florida Rules of Criminal Procedure.

1384 (b) A defendant determined to be incompetent to proceed due  
1385 to intellectual disability ~~retardation~~ or autism may be ordered  
1386 by a circuit court into a forensic facility designated by the  
1387 agency for defendants who have an intellectual disability ~~mental~~  
1388 ~~retardation~~ or autism.

1389 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

1390 (a) If a defendant has both an intellectual disability  
1391 ~~mental retardation~~ or autism and ~~has~~ a mental illness,  
1392 evaluations must address which condition is primarily affecting



24-00645-11

20111104

1393 the defendant's competency to proceed. Referral of the defendant  
1394 should be made to a civil or forensic facility most appropriate  
1395 to address the symptoms that are the cause of the defendant's  
1396 incompetence.

1397 Section 34. Subsection (1) of section 916.3025, Florida  
1398 Statutes, is amended to read:

1399 916.3025 Jurisdiction of committing court.—

1400 (1) The committing court shall retain jurisdiction in the  
1401 case of any defendant found to be incompetent to proceed due to  
1402 intellectual disability ~~retardation~~ or autism and ordered into a  
1403 forensic facility designated by the agency for defendants who  
1404 have intellectual disabilities ~~mental retardation~~ or autism. A  
1405 defendant may not be released except by the order of the  
1406 committing court. An administrative hearing examiner does not  
1407 have jurisdiction to determine issues of continuing commitment  
1408 or release of any defendant involuntarily committed pursuant to  
1409 this chapter.

1410 Section 35. Section 916.303, Florida Statutes, is amended  
1411 to read:

1412 916.303 Determination of incompetency ~~due to retardation or~~  
1413 ~~autism~~; dismissal of charges.—

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

24-00645-11

20111104

1422 which the defendant is expected to become competent to proceed.  
1423 The charges may be refiled by the state if the defendant is  
1424 declared competent to proceed in the future.

1425 (2) If the charges are dismissed and if the defendant is  
1426 considered to lack sufficient capacity to give express and  
1427 informed consent to a voluntary application for services and  
1428 lacks the basic survival and self-care skills to provide for his  
1429 or her well-being or is likely to physically injure himself or  
1430 herself or others if allowed to remain at liberty, the agency,  
1431 the state attorney, or the defendant's attorney shall apply to  
1432 the committing court to involuntarily admit the defendant to  
1433 residential services pursuant to s. 393.11.

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

24-00645-11

20111104

1451 receiving adequate care, treatment, habilitation, and  
1452 rehabilitation, including psychotropic medication and behavioral  
1453 programming. Notice of the annual review and review hearing  
1454 shall be given to the state attorney and the defendant's  
1455 attorney. ~~In no instance may~~ A defendant's placement in a secure  
1456 facility may not exceed the maximum sentence for the crime for  
1457 which the defendant was charged.

1458 Section 36. Subsection (1) of section 916.304, Florida  
1459 Statutes, is amended to read:

1460 916.304 Conditional release.—

1461 (1) Except for an inmate currently serving a prison  
1462 sentence, the committing court may order a conditional release  
1463 of any defendant who has been found to be incompetent to proceed  
1464 due to intellectual disability ~~retardation~~ or autism, based on  
1465 an approved plan for providing community-based training. The  
1466 committing criminal court may order a conditional release of any  
1467 defendant to a civil facility in lieu of an involuntary  
1468 commitment to a forensic facility pursuant to s. 916.302. Upon a  
1469 recommendation that community-based training for the defendant  
1470 is appropriate, a written plan for community-based training,  
1471 including recommendations from qualified professionals, may be  
1472 filed with the court, with copies to all parties. Such a plan  
1473 may also be submitted by the defendant and filed with the court,  
1474 with copies to all parties. The plan must include:

1475 (a) Special provisions for residential care and adequate  
1476 supervision of the defendant, including recommended location of  
1477 placement.

1478 (b) Recommendations for auxiliary services such as  
1479 vocational training, psychological training, educational

24-00645-11

20111104

1480 services, leisure services, and special medical care.

1481  
1482 In its order of conditional release, the court shall specify the  
1483 conditions of release based upon the release plan and shall  
1484 direct the appropriate agencies or persons to submit periodic  
1485 reports to the courts regarding the defendant's compliance with  
1486 the conditions of the release and progress in training, with  
1487 copies to all parties.

1488 Section 37. Subsection (1) of section 918.16, Florida  
1489 Statutes, is amended to read:

1490 918.16 Sex offenses; testimony of person under age 16 or  
1491 person with mental retardation; testimony of victim; courtroom  
1492 cleared; exceptions.—

1493 (1) Except as provided in subsection (2), in the trial of  
1494 any case, civil or criminal, when any person under the age of 16  
1495 or any person with intellectual disability ~~mental retardation~~ as  
1496 defined in s. 393.063 is testifying concerning any sex offense,  
1497 the court shall clear the courtroom of all persons except  
1498 parties to the cause and their immediate families or guardians,  
1499 attorneys and their secretaries, officers of the court, jurors,  
1500 newspaper reporters or broadcasters, court reporters, and, at  
1501 the request of the victim, victim or witness advocates  
1502 designated by the state attorney's office.

1503 Section 38. Section 921.137, Florida Statutes, is amended  
1504 to read:

1505 921.137 Imposition of the death sentence upon an  
1506 intellectually disabled ~~a~~ defendant ~~with mental retardation~~  
1507 prohibited.—

1508 (1) As used in this section, the term "intellectually

24-00645-11

20111104

1509 disabled or intellectual disability ~~“mental retardation”~~  
1510 means significantly subaverage general intellectual functioning  
1511 existing concurrently with deficits in adaptive behavior and  
1512 manifested during the period from conception to age 18. The term  
1513 “significantly subaverage general intellectual functioning,” for  
1514 the purpose of this section, means performance that is two or  
1515 more standard deviations from the mean score on a standardized  
1516 intelligence test specified in the rules of the Agency for  
1517 Persons with Disabilities. The term “adaptive behavior,” for the  
1518 purpose of this definition, means the effectiveness or degree  
1519 with which an individual meets the standards of personal  
1520 independence and social responsibility expected of his or her  
1521 age, cultural group, and community. The Agency for Persons with  
1522 Disabilities shall adopt rules to specify the standardized  
1523 intelligence tests as provided in this subsection.

1524 (2) A sentence of death may not be imposed upon a defendant  
1525 convicted of a capital felony if it is determined in accordance  
1526 with this section that the defendant is intellectually disabled  
1527 ~~has mental retardation~~.

1528 (3) A defendant charged with a capital felony who intends  
1529 to raise intellectual disability ~~mental retardation~~ as a bar to  
1530 the death sentence must give notice of such intention in  
1531 accordance with the rules of court governing notices of intent  
1532 to offer expert testimony regarding mental health mitigation  
1533 during the penalty phase of a capital trial.

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

24-00645-11

20111104

1538 the defendant may file a motion to determine whether the  
1539 defendant is intellectually disabled ~~has mental retardation~~.  
1540 Upon receipt of the motion, the court shall appoint two experts  
1541 in the field of intellectual disabilities ~~mental retardation~~ who  
1542 shall evaluate the defendant and report their findings to the  
1543 court and all interested parties prior to the final sentencing  
1544 hearing. Notwithstanding s. 921.141 or s. 921.142, the final  
1545 sentencing hearing shall be held without a jury. At the final  
1546 sentencing hearing, the court shall consider the findings of the  
1547 court-appointed experts and consider the findings of any other  
1548 expert which is offered by the state or the defense on the issue  
1549 of whether the defendant has an intellectual disability ~~mental~~  
1550 ~~retardation~~. If the court finds, by clear and convincing  
1551 evidence, that the defendant has an intellectual disability  
1552 ~~mental retardation~~ as defined in subsection (1), the court may  
1553 not impose a sentence of death and shall enter a written order  
1554 that sets forth with specificity the findings in support of the  
1555 determination.

1556 (5) If a defendant waives his or her right to a recommended  
1557 sentence by an advisory jury following a plea of guilt or nolo  
1558 contendere to a capital felony and adjudication of guilt by the  
1559 court, or following a jury finding of guilt of a capital felony,  
1560 upon acceptance of the waiver by the court, a defendant who has  
1561 given notice as required in subsection (3) may file a motion for  
1562 a determination of intellectual disability ~~mental retardation~~.  
1563 Upon granting the motion, the court shall proceed as provided in  
1564 subsection (4).

1565 (6) If, following a recommendation by an advisory jury that  
1566 the defendant be sentenced to life imprisonment, the state

24-00645-11

20111104

1567 intends to request the court to order that the defendant be  
1568 sentenced to death, the state must inform the defendant of such  
1569 request if the defendant has notified the court of his or her  
1570 intent to raise intellectual disability ~~mental retardation~~ as a  
1571 bar to the death sentence. After receipt of the notice from the  
1572 state, the defendant may file a motion requesting a  
1573 determination by the court of whether the defendant is  
1574 intellectually disabled ~~has mental retardation~~. Upon granting  
1575 the motion, the court shall proceed as provided in subsection  
1576 (4).

1577 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~  
1578 ~~to s. 924.07~~, a determination of intellectual disability ~~mental~~  
1579 ~~retardation~~ made under subsection (4).

1580 (8) This section does not apply to a defendant who was  
1581 sentenced to death before June 12, 2001 ~~prior to the effective~~  
1582 ~~date of this act~~.

1583 (9) For purposes of the application of the criminal laws  
1584 and procedural rules of this state to any matters relating to  
1585 the imposition and execution of the death penalty, the terms  
1586 "intellectual disability" or "intellectually disabled" are  
1587 interchangeable with and have the same meaning as the terms  
1588 "mental retardation" or "retardation" and "mentally retarded" as  
1589 those terms were defined before July 1, 2011.

1590 Section 39. Paragraph (b) of subsection (2) of section  
1591 941.38, Florida Statutes, is amended to read:

1592 941.38 Extradition of persons alleged to be of unsound  
1593 mind.—

1594 (2) For the purpose of this section:

1595 (b) A "mentally incompetent person" is one who because of

24-00645-11

20111104

1596 mental illness, intellectual disability ~~mental retardation~~,  
1597 senility, excessive use of drugs or alcohol, or other mental  
1598 incapacity is incapable of ~~either~~ managing his or her property  
1599 or caring for himself or herself or both.

1600 Section 40. Section 944.602, Florida Statutes, is amended  
1601 to read:

1602 944.602 Agency notification before release of  
1603 intellectually disabled ~~mentally retarded~~ inmates.—Before the  
1604 release by parole, release by reason of gain-time allowances  
1605 provided for in s. 944.291, or expiration of sentence of any  
1606 inmate who has been diagnosed as having an intellectual  
1607 disability ~~mentally retarded~~ as defined in s. 393.063, the  
1608 Department of Corrections shall notify the Agency for Persons  
1609 with Disabilities in order that sufficient time be allowed to  
1610 notify the inmate or the inmate's representative, in writing, at  
1611 least 7 days before ~~prior to~~ the inmate's release, of available  
1612 community services.

1613 Section 41. Subsection (2) of section 945.025, Florida  
1614 Statutes, is amended to read:

1615 945.025 Jurisdiction of department.—

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



24-00645-11

20111104

1625 ~~If~~ ~~When it is the intent of~~ the department intends to transfer a  
1626 ~~mentally ill or retarded~~ prisoner who has a mental illness or  
1627 intellectual disability to the Department of Children and Family  
1628 Services or the Agency for Persons with Disabilities, an  
1629 involuntary commitment hearing shall be held in accordance with  
1630 ~~according to the provisions of~~ chapter 393 or chapter 394.

1631 Section 42. Subsection (5) of section 945.12, Florida  
1632 Statutes, is amended to read:

1633 945.12 Transfers for rehabilitative treatment.—

1634 (5) When the department plans to release a mentally ill or  
1635 intellectually disabled ~~retarded~~ offender, an involuntary  
1636 commitment hearing shall be held as soon as possible before  
1637 ~~prior to his or her release in accordance with, according to the~~  
1638 ~~provisions of~~ chapter 393 or chapter 394.

1639 Section 43. Subsection (9) of section 945.42, Florida  
1640 Statutes, is amended to read:

1641 945.42 Definitions; ss. 945.40-945.49.—As used in ss.  
1642 945.40-945.49, the following terms shall have the meanings  
1643 ascribed to them, unless the context shall clearly indicate  
1644 otherwise:

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

24-00645-11

20111104

1654 393, simple intoxication, or conditions manifested only by  
1655 antisocial behavior or substance abuse addiction. However, an  
1656 individual who is ~~mentally retarded or~~ developmentally disabled  
1657 may also have a mental illness.

1658 Section 44. Section 947.185, Florida Statutes, is amended  
1659 to read:

1660 947.185 Application for intellectual disability ~~mental~~  
1661 ~~retardation~~ services as condition of parole.—The Parole  
1662 Commission may require as a condition of parole that any inmate  
1663 who has been diagnosed as having an intellectual disability  
1664 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,  
1665 apply for services from the Agency for Persons with  
1666 Disabilities.

1667 Section 45. Subsection (4) of section 984.19, Florida  
1668 Statutes, is amended to read:

1669 984.19 Medical screening and treatment of child;  
1670 examination of parent, guardian, or person requesting custody.—

1671 (4) A judge may order that a child alleged to be or  
1672 adjudicated a child in need of services be treated by a licensed  
1673 health care professional. The judge may also order such child to  
1674 receive mental health or intellectual disability ~~retardation~~  
1675 services from a psychiatrist, psychologist, or other appropriate  
1676 service provider. If it is necessary to place the child in a  
1677 residential facility for such services, ~~then~~ the procedures and  
1678 criteria established in s. 394.467 or chapter 393 shall be used,  
1679 as whichever is applicable. A child may be provided ~~mental~~  
1680 ~~health or retardation~~ services in emergency situations, pursuant  
1681 to the procedures and criteria contained in s. 394.463(1) or  
1682 chapter 393, as ~~whichever is~~ applicable.

24-00645-11

20111104

1683 Section 46. Paragraph (a) of subsection (3) of section  
1684 985.14, Florida Statutes, is amended to read:

1685 985.14 Intake and case management system.—

1686 (3) The intake and case management system shall facilitate  
1687 consistency in the recommended placement of each child, and in  
1688 the assessment, classification, and placement process, with the  
1689 following purposes:

1690 (a) An individualized, multidisciplinary assessment process  
1691 that identifies the priority needs of each ~~individual~~ child for  
1692 rehabilitation and treatment and identifies any needs of the  
1693 child's parents or guardians for services that would enhance  
1694 their ability to provide adequate support, guidance, and  
1695 supervision for the child. This process begins ~~shall begin~~ with  
1696 the detention risk assessment instrument and decision, includes  
1697 ~~shall include~~ the intake preliminary screening and comprehensive  
1698 assessment for substance abuse treatment services, mental health  
1699 services, intellectual disability ~~retardation~~ services, literacy  
1700 services, and other educational and treatment services as  
1701 components, additional assessment of the child's treatment  
1702 needs, and classification regarding the child's risks to the  
1703 community and, for a serious or habitual delinquent child,  
1704 includes ~~shall include the~~ assessment for placement in a serious  
1705 or habitual delinquent children program under s. 985.47. The  
1706 completed multidisciplinary assessment process must ~~shall~~ result  
1707 in the predisposition report.

1708 Section 47. Paragraph (g) of subsection (1) and subsection  
1709 (5) of section 985.145, Florida Statutes, are amended to read:

1710 985.145 Responsibilities of juvenile probation officer  
1711 during intake; screenings and assessments.—

24-00645-11

20111104

1712 (1) The juvenile probation officer shall serve as the  
1713 primary case manager for the purpose of managing, coordinating,  
1714 and monitoring the services provided to the child. Each program  
1715 administrator within the Department of Children and Family  
1716 Services shall cooperate with the primary case manager in  
1717 carrying out the duties and responsibilities described in this  
1718 section. In addition to duties specified in other sections and  
1719 through departmental rules, the assigned juvenile probation  
1720 officer shall be responsible for the following:

1721 (g) *Comprehensive assessment.*—The juvenile probation  
1722 officer, pursuant to uniform procedures established by the  
1723 department and upon determining that the report, affidavit, or  
1724 complaint is complete, shall:

1725 1. Perform the preliminary screening and make referrals for  
1726 a comprehensive assessment regarding the child's need for  
1727 substance abuse treatment services, mental health services,  
1728 intellectual disability ~~retardation~~ services, literacy services,  
1729 or other educational or treatment services.

1730 2. If ~~When~~ indicated by the preliminary screening, provide  
1731 for a comprehensive assessment of the child and family for  
1732 substance abuse problems, using community-based licensed  
1733 programs with clinical expertise and experience in the  
1734 assessment of substance abuse problems.

1735 3. If ~~When~~ indicated by the preliminary screening, provide  
1736 for a comprehensive assessment of the child and family for  
1737 mental health problems, using community-based psychologists,  
1738 psychiatrists, or other licensed mental health professionals who  
1739 have clinical expertise and experience in the assessment of  
1740 mental health problems.

24-00645-11

20111104

1741 (5) If the screening and assessment indicate that the  
1742 interests of the child and the public will be best served  
1743 ~~thereby~~, the juvenile probation officer, with the approval of  
1744 the state attorney, may refer the child for care, diagnostic,  
1745 and evaluation services; substance abuse treatment services;  
1746 mental health services; intellectual disability ~~retardation~~  
1747 services; a diversionary, arbitration, or mediation program;  
1748 community service work; or other programs or treatment services  
1749 voluntarily accepted by the child and the child's parents or  
1750 legal guardian. If ~~Whenever~~ a child volunteers to participate in  
1751 any work program under this chapter or volunteers to work in a  
1752 specified state, county, municipal, or community service  
1753 organization supervised work program or to work for the victim,  
1754 the child is ~~shall be~~ considered an employee of the state for  
1755 the purposes of liability. In determining the child's average  
1756 weekly wage, unless otherwise determined by a specific funding  
1757 program, all remuneration received from the employer is  
1758 considered a gratuity, and the child is not entitled to any  
1759 benefits otherwise payable under s. 440.15~~7~~ regardless of  
1760 whether the child may be receiving wages and remuneration from  
1761 other employment with another employer and regardless of the  
1762 child's future wage-earning capacity.

1763 Section 48. Subsections (2) and (6) of section 985.18,  
1764 Florida Statutes, are amended to read:

1765 985.18 Medical, psychiatric, psychological, substance  
1766 abuse, and educational examination and treatment.—

1767 (2) If ~~Whenever~~ a child has been found to have committed a  
1768 delinquent act, or before such finding with the consent of any  
1769 parent or legal custodian of the child, the court may order the

24-00645-11

20111104

1770 child to be treated by a physician. The court may also order the  
1771 child to receive mental health, substance abuse, or intellectual  
1772 disability ~~retardation~~ services from a psychiatrist,  
1773 psychologist, or other appropriate service provider. If it is  
1774 necessary to place the child in a residential facility for such  
1775 services, the procedures and criteria established in chapter  
1776 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable,  
1777 must ~~shall~~ be used. After a child has been adjudicated  
1778 delinquent, if an educational needs assessment by the district  
1779 school board or the Department of Children and Family Services  
1780 has been ~~previously~~ conducted, the court shall order the report  
1781 ~~of such needs assessment~~ included in the child's court record in  
1782 lieu of a new assessment. For purposes of this section, an  
1783 educational needs assessment includes, but is not limited to,  
1784 reports of intelligence and achievement tests, screening for  
1785 learning and other disabilities ~~and other handicaps~~, and  
1786 screening for the need for alternative education.

1787 (6) A physician must ~~shall~~ be immediately notified by the  
1788 person taking the child into custody or the person having  
1789 custody if there are indications of physical injury or illness,  
1790 or the child shall be taken to the nearest available hospital  
1791 for emergency care. A child may be provided mental health,  
1792 substance abuse, or intellectual disability ~~retardation~~  
1793 ~~services~~, in emergency situations, pursuant to chapter 393,  
1794 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a  
1795 hearing, the court may order the custodial parent or parents,  
1796 guardian, or other custodian, if found able to do so, to  
1797 reimburse the county or state for the expense involved in such  
1798 emergency treatment or care.

24-00645-11

20111104

1799 Section 49. Paragraph (e) of subsection (1), subsections  
1800 (2) through (4), and paragraph (a) of subsection (6) of section  
1801 985.19, Florida Statutes, are amended to read:

1802 985.19 Incompetency in juvenile delinquency cases.—

1803 (1) If, at any time prior to or during a delinquency case,  
1804 the court has reason to believe that the child named in the  
1805 petition may be incompetent to proceed with the hearing, the  
1806 court on its own motion may, or on the motion of the child's  
1807 attorney or state attorney must, stay all proceedings and order  
1808 an evaluation of the child's mental condition.

1809 (e) For incompetency evaluations related to intellectual  
1810 disability ~~mental retardation~~ or autism, the court shall order  
1811 the Agency for Persons with Disabilities to examine the child to  
1812 determine if the child meets the definition of "intellectual  
1813 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,  
1814 whether the child is competent to proceed with delinquency  
1815 proceedings.

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

24-00645-11

20111104

1828 misdemeanor if committed by an adult, may not be committed to  
1829 the department or to the Department of Children and Family  
1830 Services for restoration-of-competency treatment or training  
1831 services.

1832 (3) If the court finds that a child has mental illness,  
1833 intellectual disability ~~mental retardation~~, or autism and  
1834 adjudicates the child incompetent to proceed, the court must  
1835 also determine whether the child meets the criteria for secure  
1836 placement. A child may be placed in a secure facility or program  
1837 if the court makes a finding by clear and convincing evidence  
1838 that:

1839 (a) The child has mental illness, intellectual disability  
1840 ~~mental retardation~~, or autism and because of the mental illness,  
1841 intellectual disability ~~mental retardation~~, or autism:

1842 1. The child is manifestly incapable of surviving with the  
1843 help of willing and responsible family or friends, including  
1844 available alternative services, and without treatment or  
1845 training the child is likely to ~~either~~ suffer from neglect or  
1846 refuse to care for self, and such neglect or refusal poses a  
1847 real and present threat of substantial harm to the child's well-  
1848 being; or

1849 2. There is a substantial likelihood that in the near  
1850 future the child will inflict serious bodily harm on self or  
1851 others, as evidenced by recent behavior causing, attempting, or  
1852 threatening such harm; and

1853 (b) All available less restrictive alternatives, including  
1854 treatment or training in community residential facilities or  
1855 community settings which would offer an opportunity for  
1856 improvement of the child's condition, are inappropriate.



24-00645-11

20111104

1857 (4) A child who is determined to have mental illness,  
1858 intellectual disability ~~mental retardation~~, or autism, who has  
1859 been adjudicated incompetent to proceed, and who meets the  
1860 criteria set forth in subsection (3), must be committed to the  
1861 Department of Children and Family Services and receive treatment  
1862 or training in a secure facility or program that is the least  
1863 restrictive alternative consistent with public safety. Any  
1864 placement of a child to a secure residential program must be  
1865 separate from adult forensic programs. If the child attains  
1866 competency, ~~then~~ custody, case management, and supervision of  
1867 the child shall ~~will~~ be transferred to the department in order  
1868 to continue delinquency proceedings; however, the court retains  
1869 authority to order the Department of Children and Family  
1870 Services to provide continued treatment or training to maintain  
1871 competency.

1872 (a) A child adjudicated incompetent due to intellectual  
1873 disability ~~mental retardation~~ or autism may be ordered into a  
1874 secure program or facility designated by the Department of  
1875 Children and Family Services for children who have intellectual  
1876 disabilities ~~with mental retardation~~ or autism.

1877 (b) A child adjudicated incompetent due to mental illness  
1878 may be ordered into a secure program or facility designated by  
1879 the Department of Children and Family Services for children  
1880 having mental illnesses.

1881 (c) If ~~Whenever~~ a child is placed in a secure residential  
1882 facility, the department shall ~~will~~ provide transportation to  
1883 the secure residential facility for admission and from the  
1884 secure residential facility upon discharge.

1885 (d) The purpose of the treatment or training is the

24-00645-11

20111104

1886 restoration of the child's competency to proceed.

1887 (e) The service provider must file a written report with  
1888 the court pursuant to the applicable Florida Rules of Juvenile  
1889 Procedure within ~~not later than~~ 6 months after the date of  
1890 commitment, or at the end of any period of extended treatment or  
1891 training, and at any time the Department of Children and Family  
1892 Services, through its service provider, determines the child has  
1893 attained competency or no longer meets the criteria for secure  
1894 placement, or at such shorter intervals as ordered by the court.  
1895 A copy of a written report evaluating the child's competency  
1896 must be filed by the provider with the court and with the state  
1897 attorney, the child's attorney, the department, and the  
1898 Department of Children and Family Services.

1899 (6) (a) If a child is determined to have mental illness,  
1900 intellectual disability ~~mental retardation~~, or autism and is  
1901 found to be incompetent to proceed but does not meet the  
1902 criteria set forth in subsection (3), the court shall commit the  
1903 child to the Department of Children and Family Services and  
1904 ~~shall~~ order the Department of Children and Family Services to  
1905 provide appropriate treatment and training in the community. The  
1906 purpose of the treatment or training is the restoration of the  
1907 child's competency to proceed.

1908 Section 50. Section 985.195, Florida Statutes, is amended  
1909 to read:

1910 985.195 Transfer to other treatment services.—Any child  
1911 committed to the department may be transferred to intellectual  
1912 disability ~~retardation~~, mental health, or substance abuse  
1913 treatment facilities for diagnosis and evaluation pursuant to  
1914 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~

24-00645-11

20111104

1915 applicable, for up to a period ~~not to exceed~~ 90 days.

1916 Section 51. Paragraph (b) of subsection (1) of section  
1917 985.61, Florida Statutes, is amended to read:

1918 985.61 Early delinquency intervention program; criteria.—

1919 (1) The Department of Juvenile Justice shall, contingent  
1920 upon specific appropriation and with the cooperation of local  
1921 law enforcement agencies, the judiciary, district school board  
1922 personnel, the office of the state attorney, the office of the  
1923 public defender, the Department of Children and Family Services,  
1924 and community service agencies that work with children,  
1925 establish an early delinquency intervention program, the  
1926 components of which shall include, but not be limited to:

1927 (b) Treatment modalities, including substance abuse  
1928 treatment services, mental health services, and ~~retardation~~  
1929 services for intellectual disabilities.

1930 Section 52. It is the intent of the Legislature that this  
1931 act not expand or contract the scope or application of any  
1932 provision of the Florida Statutes. This act may not be construed  
1933 to change the application of any provision of the Florida  
1934 Statutes to any person.

1935 Section 53. This act shall take effect July 1, 2011.