

By the Committee on Children, Families, and Elder Affairs; and  
Senator Altman

586-03224-12

2012460c1

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,

586-03224-12

2012460c1

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~~

586-03224-12

2012460c1

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.

586-03224-12

2012460c1

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 the ~~of~~ testimony of a victim or witness  
97 under age 16 or who has an intellectual disability ~~person with~~  
98 ~~mental 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

586-03224-12

2012460c1

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~~

586-03224-12

2012460c1

146 ~~retardation~~ and in interpreting the answers of the child or  
147 person during ~~with mental retardation throughout~~ proceedings  
148 conducted 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~~

586-03224-12

2012460c1

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 must ~~shall~~ be provided by any  
201 appropriate 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.

586-03224-12

2012460c1

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

206 92.55 Judicial or other proceedings involving victim or  
207 witness under the age of 16 or person who has an intellectual  
208 disability ~~with mental retardation~~; special protections; use of  
209 registered service or therapy animals.—

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

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

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

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

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

230 (a) The age of the child, the nature of the offense or act,  
231 the relationship of the child to the parties in the case or to  
232 the defendant in a criminal action, the degree of emotional



586-03224-12

2012460c1

233 trauma that will result to the child as a consequence of the  
234 defendant's presence, and any other fact that the court deems  
235 relevant; or

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

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

258 (4) The court may set any other conditions it finds just  
259 and appropriate when ~~on the~~ taking the ~~of~~ testimony of ~~by~~ a  
260 child, including the use of a service or therapy animal that has  
261 been evaluated and registered according to national standards,

586-03224-12

2012460c1

262 in any proceeding involving a sexual offense. When deciding  
263 whether to permit a child to testify with the assistance of a  
264 registered service or therapy animal, the court shall consider  
265 ~~take into consideration~~ the age of the child, the interests of  
266 the child, the rights of the parties to the litigation, and any  
267 other relevant factor that would facilitate the testimony by the  
268 child.

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

271 320.10 Exemptions.—

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

273 (a) Any motor vehicle or mobile home owned by, and operated  
274 exclusively for the personal use of, any member of the United  
275 States Armed Forces who is not a resident of this state and who  
276 is stationed in the state while in compliance with military or  
277 naval orders;

278 (b) Any motor vehicle owned or operated exclusively by the  
279 Federal Government;

280 (c) Any motor vehicle owned and operated exclusively for  
281 the benefit of the Boys' Clubs of America, the National Audubon  
282 Society, the National Children's Cardiac Hospital, any humane  
283 society, any nationally chartered veterans' organization that  
284 maintains a state headquarters in this state, the Children's  
285 Bible Mission, the Boy Scouts of America, the Girl Scouts of  
286 America, the Salvation Army, the American National Red Cross,  
287 the United Service Organization, any local member unit of the  
288 National Urban League which provides free services to municipal  
289 and county residents who are in need of such services, the Young  
290 Men's Christian Association, the Young Men's Hebrew Association,

586-03224-12

2012460c1

291 the Camp Fire Girls' Council, the Young Women's Christian  
292 Association, the Young Women's Hebrew Association, any local  
293 member unit of the Arc of Florida ~~Association for Retarded~~  
294 ~~Citizens~~, the Children's Home Society of Florida, or the  
295 Goodwill Industries. A not-for-profit organization named in this  
296 paragraph and its local affiliate organizations is ~~shall be~~  
297 eligible for the exemption if it ~~for so long as each~~ maintains  
298 current articles of incorporation on file with the Department of  
299 State and qualifies as a not-for-profit organization under s.  
300 212.08;

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

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

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

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

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

313 (i) Any vehicle used by any of the various search and  
314 rescue units of the several counties for exclusive use as a  
315 search and rescue vehicle; or ~~and~~

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

586-03224-12

2012460c1

320 Section 8. Paragraph (d) of subsection (3) of section  
321 383.14, Florida Statutes, is amended to read:

322 383.14 Screening for metabolic disorders, other hereditary  
323 and congenital disorders, and environmental risk factors.—

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

327 (d) Maintain a confidential registry of cases, including  
328 information of importance for the purpose of followup services  
329 to prevent intellectual disabilities ~~mental retardation~~, to  
330 correct or ameliorate physical disabilities ~~handicaps~~, and for  
331 epidemiologic studies, if indicated. Such registry shall be  
332 exempt from the provisions of s. 119.07(1).

333  
334 All provisions of this subsection must be coordinated with the  
335 provisions and plans established under this chapter, chapter  
336 411, and Pub. L. No. 99-457.

337 Section 9. Subsection (9) and subsections (21) through (32)  
338 of section 393.063, Florida Statutes, are reordered and amended  
339 to read:

340 393.063 Definitions.—For the purposes of this chapter, the  
341 term:

342 (9) "Developmental disability" means a disorder or syndrome  
343 that is attributable to intellectual disability ~~retardation~~,  
344 cerebral palsy, autism, spina bifida, or Prader-Willi syndrome;  
345 that manifests before the age of 18; and that constitutes a  
346 substantial handicap that can reasonably be expected to continue  
347 indefinitely.

348 (22) ~~(21)~~ "Intermediate care facility for the

586-03224-12

2012460c1

349 developmentally disabled" or "ICF/DD" means a residential  
350 facility licensed and certified under ~~pursuant to~~ part VIII of  
351 chapter 400.

352 ~~(23)~~(22) "Medical/dental services" means medically  
353 necessary services that ~~which~~ are provided or ordered for a  
354 client by a person licensed under chapter 458, chapter 459, or  
355 chapter 466. Such services may include, but are not limited to,  
356 prescription drugs, specialized therapies, nursing supervision,  
357 hospitalization, dietary services, prosthetic devices, surgery,  
358 specialized equipment and supplies, adaptive equipment, and  
359 other services as required to prevent or alleviate a medical or  
360 dental condition.

361 ~~(24)~~(23) "Personal care services" means individual  
362 assistance with or supervision of essential activities of daily  
363 living for self-care, including ambulation, bathing, dressing,  
364 eating, grooming, and toileting, and other similar services that  
365 are incidental to the care furnished and essential to the  
366 health, safety, and welfare of the client if ~~when there is~~ no  
367 one else is available to perform those services.

368 ~~(25)~~(24) "Prader-Willi syndrome" means an inherited  
369 condition typified by neonatal hypotonia with failure to thrive,  
370 hyperphagia or an excessive drive to eat which leads to obesity  
371 usually at 18 to 36 months of age, mild to moderate intellectual  
372 disability ~~mental retardation~~, hypogonadism, short stature, mild  
373 facial dysmorphism, and a characteristic neurobehavior.

374 ~~(26)~~(25) "Relative" means an individual who is connected by  
375 affinity or consanguinity to the client and who is 18 years of  
376 age or older.

377 ~~(27)~~(26) "Resident" means a any person who has a with

586-03224-12

2012460c1

378 developmental disability and resides ~~disabilities residing~~ at a  
379 residential facility, whether or not such person is a client of  
380 the agency.

381 ~~(28)-(27)~~ "Residential facility" means a facility providing  
382 room and board and personal care for persons who have ~~with~~  
383 developmental disabilities.

384 ~~(29)-(28)~~ "Residential habilitation" means supervision and  
385 training with the acquisition, retention, or improvement in  
386 skills related to activities of daily living, such as personal  
387 hygiene skills, homemaking skills, and the social and adaptive  
388 skills necessary to enable the individual to reside in the  
389 community.

390 ~~(30)-(29)~~ "Residential habilitation center" means a  
391 community residential facility licensed under this chapter which  
392 provides habilitation services. The capacity of such a facility  
393 may shall not be fewer than nine residents. After October 1,  
394 1989, new residential habilitation centers may not be licensed  
395 and the licensed capacity for any existing residential  
396 habilitation center may not be increased.

397 ~~(31)-(30)~~ "Respite service" means appropriate, short-term,  
398 temporary care that is provided to a person who has a ~~with~~  
399 developmental disability in order ~~disabilities~~ to meet the  
400 planned or emergency needs of the person or the family or other  
401 direct service provider.

402 ~~(32)-(31)~~ "Restraint" means a physical device, method, or  
403 drug used to control dangerous behavior.

404 (a) A physical restraint is any manual method or physical  
405 or mechanical device, material, or equipment attached or  
406 adjacent to an ~~the~~ individual's body so that he or she cannot

586-03224-12

2012460c1

407 easily remove the restraint and which restricts freedom of  
408 movement or normal access to one's body.

409 (b) A drug used as a restraint is a medication used to  
410 control the person's behavior or to restrict his or her freedom  
411 of movement and is not a standard treatment for the person's  
412 medical or psychiatric condition. Physically holding a person  
413 during a procedure to forcibly administer psychotropic  
414 medication is a physical restraint.

415 (c) Restraint does not include physical devices, such as  
416 orthopedically prescribed appliances, surgical dressings and  
417 bandages, supportive body bands, or other physical holding ~~when~~  
418 necessary for routine physical examinations and tests; for  
419 purposes of orthopedic, surgical, or other similar medical  
420 treatment; ~~when used~~ to provide support for the achievement of  
421 functional body position or proper balance; or ~~when used~~ to  
422 protect a person from falling out of bed.

423 ~~(21)(32)~~ "Intellectual disability" ~~"Retardation"~~ means  
424 significantly subaverage general intellectual functioning  
425 existing concurrently with deficits in adaptive behavior which  
426 ~~that~~ manifests before the age of 18 and can reasonably be  
427 expected to continue indefinitely. For the purposes of this  
428 definition, the term:

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

433 (b) "Significantly subaverage general intellectual  
434 functioning," for the purpose of this definition, means  
435 performance that ~~which~~ is two or more standard deviations from

586-03224-12

2012460c1

436 the mean score on a standardized intelligence test specified in  
437 the rules of the agency. ~~"Adaptive behavior," for the purpose of~~  
438 ~~this definition, means the effectiveness or degree with which an~~  
439 ~~individual meets the standards of personal independence and~~  
440 ~~social responsibility expected of his or her age, cultural~~  
441 ~~group, and community.~~

442  
443 For purposes of the application of the criminal laws and  
444 procedural rules of this state to matters relating to pretrial,  
445 trial, sentencing, and any matters relating to the imposition  
446 and execution of the death penalty, the terms "intellectual  
447 disability" or "intellectually disabled" are interchangeable  
448 with and have the same meaning as the terms "mental retardation"  
449 or "retardation" and "mentally retarded" as defined in this  
450 section before July 1, 2012.

451 Section 10. Subsection (1), paragraphs (c) and (d) of  
452 subsection (2), paragraphs (b) through (d) of subsection (3),  
453 paragraph (b) of subsection (4), paragraphs (b), (e), (f), and  
454 (g) of subsection (5), subsection (6), paragraph (d) of  
455 subsection (7), paragraph (b) of subsection (8), subsection  
456 (10), and paragraph (b) of subsection (12) of section 393.11,  
457 Florida Statutes, are amended to read:

458 393.11 Involuntary admission to residential services.—

459 (1) JURISDICTION.—If ~~When~~ a person has an intellectual  
460 disability ~~is mentally retarded~~ and requires involuntary  
461 admission to residential services provided by the agency, the  
462 circuit court of the county in which the person resides has  
463 ~~shall have~~ jurisdiction to conduct a hearing and enter an order  
464 involuntarily admitting the person in order for ~~that~~ the person



586-03224-12

2012460c1

465 to ~~may~~ receive the care, treatment, habilitation, and  
466 rehabilitation that ~~which~~ the person needs. For the purpose of  
467 identifying intellectual disability ~~mental retardation~~,  
468 diagnostic capability shall be established by the agency. Except  
469 as otherwise specified, the proceedings under this section are  
470 ~~shall be~~ governed by the Florida Rules of Civil Procedure.

471 (2) PETITION.—

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

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

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

479 3. Allege that the commission believes that the person  
480 needs involuntary residential services and specify the factual  
481 information on which the belief is based;

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

487 5. State which residential setting is the least restrictive  
488 and most appropriate alternative and specify the factual  
489 information on which the belief is based.

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

493 (3) NOTICE.—

586-03224-12

2012460c1

494 (b) ~~If Whenever~~ a motion or petition has been filed  
495 pursuant to s. 916.303 to dismiss criminal charges against a  
496 defendant who has an intellectual disability ~~with retardation~~ or  
497 autism, and a petition is filed to involuntarily admit the  
498 defendant to residential services under this section, the notice  
499 of the filing of the petition must ~~shall~~ also be given to the  
500 defendant's attorney, the state attorney of the circuit from  
501 which the defendant was committed, and the agency.

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

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

512 (4) AGENCY PARTICIPATION.—

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

519 (5) EXAMINING COMMITTEE.—

520 (b) The court shall appoint at least ~~no fewer than~~ three  
521 disinterested experts who have demonstrated to the court an  
522 expertise in the diagnosis, evaluation, and treatment of persons

586-03224-12

2012460c1

523 who have intellectual disabilities ~~with mental retardation~~. The  
524 committee must include at least one licensed and qualified  
525 physician, one licensed and qualified psychologist, and one  
526 qualified professional who, at with a minimum, has ~~of~~ a masters  
527 degree in social work, special education, or vocational  
528 rehabilitation counseling, to examine the person and to testify  
529 at the hearing on the involuntary admission to residential  
530 services.

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

535 1. The degree of the person's intellectual disability  
536 ~~mental retardation~~ and whether, using diagnostic capabilities  
537 established by the agency, the person is eligible for agency  
538 services;

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

541 a. Lacks sufficient capacity to give express and informed  
542 consent to a voluntary application for services pursuant to s.  
543 393.065;

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

549 c. Is likely to physically injure others if allowed to  
550 remain at liberty.

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

586-03224-12

2012460c1

552 4. A recommendation on the type of residential placement  
553 which would be the most appropriate and least restrictive for  
554 the person; and

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

556 (f) The committee shall file the report with the court at  
557 least ~~not less than~~ 10 working days before the date of the  
558 hearing. The report must ~~shall~~ be served on the petitioner, the  
559 person who has the intellectual disability ~~with mental~~  
560 ~~retardation~~, the person's attorney at the time the report is  
561 filed with the court, and the agency.

562 (g) Members of the examining committee shall receive a  
563 reasonable fee to be determined by the court. The fees shall ~~are~~  
564 ~~to~~ be paid from the general revenue fund of the county in which  
565 the person who has the intellectual disability ~~with mental~~  
566 ~~retardation~~ resided when the petition was filed.

567 (6) COUNSEL; GUARDIAN AD LITEM.—

568 (a) The person who has the intellectual disability ~~must~~  
569 ~~with mental retardation~~ shall be represented by counsel at all  
570 stages of the judicial proceeding. If ~~In the event~~ the person is  
571 indigent and cannot afford counsel, the court shall appoint a  
572 public defender at least ~~not less than~~ 20 working days before  
573 the scheduled hearing. The person's counsel shall have full  
574 access to the records of the service provider and the agency. In  
575 all cases, the attorney shall represent the rights and legal  
576 interests of the person ~~with mental retardation~~, regardless of  
577 who initiates ~~may initiate~~ the proceedings or pays ~~pay~~ the  
578 attorney's fee.

579 (b) If the attorney, during the course of his or her  
580 representation, reasonably believes that the person who has the

586-03224-12

2012460c1

581 intellectual disability ~~with mental retardation~~ cannot  
582 adequately act in his or her own interest, the attorney may seek  
583 the appointment of a guardian ad litem. A prior finding of  
584 incompetency is not required before a guardian ad litem is  
585 appointed pursuant to this section.

586 (7) HEARING.—

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

593 (8) ORDER.—

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

596 1. The person is intellectually disabled ~~mentally retarded~~  
597 or autistic;

598 2. Placement in a residential setting is the least  
599 restrictive and most appropriate alternative to meet the  
600 person's needs; and

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

603 a. Lacks sufficient capacity to give express and informed  
604 consent to a voluntary application for services pursuant to s.  
605 393.065 and lacks basic survival and self-care skills to such a  
606 degree that close supervision and habilitation in a residential  
607 setting is necessary and, if not provided, would result in a  
608 real and present threat of substantial harm to the person's  
609 well-being; or

586-03224-12

2012460c1

610 b. Is likely to physically injure others if allowed to  
611 remain at liberty.

612 (10) COMPETENCY.—

613 (a) The issue of competency is ~~shall be~~ separate and  
614 distinct from a determination of the appropriateness of  
615 involuntary admission to residential services due to  
616 intellectual disability ~~for a condition of mental retardation~~.

617 (b) The issue of the competency of a person who has an  
618 intellectual disability ~~with mental retardation~~ for purposes of  
619 assigning guardianship shall be determined in a separate  
620 proceeding according to the procedures and requirements of  
621 chapter 744. The issue of the competency of a person who has an  
622 intellectual disability ~~with mental retardation~~ or autism for  
623 purposes of determining whether the person is competent to  
624 proceed in a criminal trial shall be determined in accordance  
625 with chapter 916.

626 (12) APPEAL.—

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

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

634 394.455 Definitions.—As used in this part, unless the  
635 context clearly requires otherwise, the term:

636 (18) "Mental illness" means an impairment of the mental or  
637 emotional processes that exercise conscious control of one's  
638 actions or of the ability to perceive or understand reality,

586-03224-12

2012460c1

639 which impairment substantially interferes with the a person's  
640 ability to meet the ordinary demands of living, ~~regardless of~~  
641 ~~etiology~~. For the purposes of this part, the term does not  
642 include a ~~retardation or~~ developmental disability as defined in  
643 chapter 393, intoxication, or conditions manifested only by  
644 antisocial behavior or substance abuse impairment.

645 Section 12. Subsections (3) through (13) of section  
646 400.960, Florida Statutes, are amended to read:

647 400.960 Definitions.—As used in this part, the term:

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

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

650 (3)~~(5)~~ "Client" means any person determined by the Agency  
651 for Persons with Disabilities to be eligible for developmental  
652 services.

653 (4)~~(6)~~ "Developmentally disabled" ~~"developmental~~  
654 ~~disability"~~ has the same meaning as "developmental disability"  
655 as that term is defined in s. 393.063.

656 (5)~~(7)~~ "Direct service provider" means a person 18 years of  
657 age or older who has direct contact with individuals who have  
658 ~~with~~ developmental disabilities and who is unrelated to such ~~the~~  
659 individuals ~~with developmental disabilities~~.

660 (6)~~(8)~~ "Intermediate care facility for the developmentally  
661 disabled" means a residential facility licensed and certified in  
662 accordance with state law, and certified by the Federal  
663 Government, pursuant to the Social Security Act, as a provider  
664 of Medicaid services to persons who have ~~with~~ developmental  
665 disabilities.

666 ~~(9) "Prader-Willi syndrome" has the same meaning as in s.~~  
667 ~~393.063.~~

586-03224-12

2012460c1

668        (7)~~(10)~~~~(a)~~ "Restraint" means a physical device, method, or  
669 drug used to control behavior.

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

675        (b) A drug used as a restraint is a medication used to  
676 control the person's behavior or to restrict his or her freedom  
677 of movement. Physically holding a person during a procedure to  
678 forcibly administer psychotropic medication is a physical  
679 restraint.

680        (c) Restraint does not include physical devices, such as  
681 orthopedically prescribed appliances, surgical dressings and  
682 bandages, supportive body bands, or other physical holding ~~when~~  
683 necessary for routine physical examinations and tests; for  
684 purposes of orthopedic, surgical, or other similar medical  
685 treatment; ~~when used~~ to provide support for the achievement of  
686 functional body position or proper balance; or ~~when used~~ to  
687 protect a person from falling out of bed.

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

689        (8)~~(12)~~ "Seclusion" means the physical segregation of a  
690 person in any fashion or the involuntary isolation of a person  
691 in a room or area from which the person is prevented from  
692 leaving. The prevention may be by physical barrier or by a staff  
693 member who is acting in a manner, or who is physically situated,  
694 so as to prevent the person from leaving the room or area. For  
695 purposes of this part, the term does not mean isolation due to a  
696 person's medical condition or symptoms.



586-03224-12

2012460c1

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

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

700 408.032 Definitions relating to Health Facility and  
701 Services Development Act.—As used in ss. 408.031-408.045, the  
702 term:

703 (12) "Intermediate care facility for the developmentally  
704 disabled" means a residential facility licensed under part VIII  
705 of chapter 400 ~~chapter 393 and certified by the Federal~~  
706 ~~Government pursuant to the Social Security Act as a provider of~~  
707 ~~Medicaid services to persons who are mentally retarded or who~~  
708 ~~have a related condition.~~

709 Section 14. Subsection (8) of section 409.908, Florida  
710 Statutes, is amended to read:

711 (8) A provider of home-based or community-based services  
712 rendered pursuant to a federally approved waiver shall be  
713 reimbursed based on an established or negotiated rate for each  
714 service. These rates shall be established according to an  
715 analysis of the expenditure history and prospective budget  
716 developed by each contract provider participating in the waiver  
717 program, or under any other methodology adopted by the agency  
718 and approved by the Federal Government in accordance with the  
719 waiver. Privately owned and operated community-based residential  
720 facilities which meet agency requirements and which formerly  
721 received Medicaid reimbursement for the optional intermediate  
722 care facility for the intellectually disabled ~~mentally retarded~~  
723 service may participate in the developmental services waiver as  
724 part of a home-and-community-based continuum of care for  
725 Medicaid recipients who receive waiver services.

586-03224-12

2012460c1

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

728 413.20 Definitions.—As used in this part, the term:

729 (16) "Person who has a significant disability" means an  
730 individual who has a disability that is a severe physical or  
731 mental impairment that seriously limits one or more functional  
732 capacities, such as mobility, communication, self-care, self-  
733 direction, interpersonal skills, work tolerance, or work skills,  
734 in terms of an employment outcome; whose vocational  
735 rehabilitation may be expected to require multiple vocational  
736 rehabilitation services over an extended period of time; and who  
737 has one or more physical or mental disabilities resulting from  
738 amputation, arthritis, autism, blindness, burn injury, cancer,  
739 cerebral palsy, cystic fibrosis, deafness, head injury, heart  
740 disease, hemiplegia, hemophilia, respiratory or pulmonary  
741 dysfunction, intellectual disability ~~mental retardation~~, mental  
742 illness, multiple sclerosis, muscular dystrophy, musculoskeletal  
743 disorder, neurological disorder, including stroke and epilepsy,  
744 paraplegia, quadriplegia, or other spinal cord condition,  
745 sickle-cell anemia, specific learning disability, end-stage  
746 renal disease, or another disability or a combination of  
747 disabilities that is determined, after an assessment for  
748 determining eligibility and vocational rehabilitation needs, to  
749 cause comparable substantial functional limitation.

750 Section 16. Paragraph (a) of subsection (6) of section  
751 440.49, Florida Statutes, is amended to read:

752 440.49 Limitation of liability for subsequent injury  
753 through Special Disability Trust Fund.—

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

586-03224-12

2012460c1

755 (a) Reimbursement is not allowed under this section unless  
756 it is established that the employer knew of the preexisting  
757 permanent physical impairment prior to the occurrence of the  
758 subsequent injury or occupational disease, and ~~that~~ the  
759 permanent physical impairment is one of the following:

- 760 1. Epilepsy.
- 761 2. Diabetes.
- 762 3. Cardiac disease.
- 763 4. Amputation of foot, leg, arm, or hand.
- 764 5. Total loss of sight of one or both eyes or a partial  
765 loss of corrected vision of more than 75 percent bilaterally.
- 766 6. Residual disability from poliomyelitis.
- 767 7. Cerebral palsy.
- 768 8. Multiple sclerosis.
- 769 9. Parkinson's disease.
- 770 10. Meniscectomy.
- 771 11. Patellectomy.
- 772 12. Ruptured cruciate ligament.
- 773 13. Hemophilia.
- 774 14. Chronic osteomyelitis.
- 775 15. Surgical or spontaneous fusion of a major weight-  
776 bearing joint.
- 777 16. Hyperinsulinism.
- 778 17. Muscular dystrophy.
- 779 18. Thrombophlebitis.
- 780 19. Herniated intervertebral disk.
- 781 20. Surgical removal of an intervertebral disk or spinal  
782 fusion.
- 783 21. One or more back injuries or a disease process of the

586-03224-12

2012460c1

784 back resulting in disability over a total of 120 or more days,  
785 if substantiated by a doctor's opinion that there was a  
786 preexisting impairment to the claimant's back.

787 22. Total deafness.

788 23. Intellectual disability if ~~Mental retardation, provided~~  
789 the employee's intelligence quotient is such that she or he  
790 falls within the lowest 2 percentile of the general population.  
791 However, ~~it shall not be necessary for the employer~~ does not  
792 need to know the employee's actual intelligence quotient or  
793 actual relative ranking in relation to the intelligence quotient  
794 of the general population.

795 24. Any permanent physical condition that ~~which~~, prior to  
796 the industrial accident or occupational disease, constitutes a  
797 20 percent ~~20-percent~~ impairment of a member or of the body as a  
798 whole.

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

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

809 Section 17. Paragraph (g) of subsection (1) of section  
810 499.0054, Florida Statutes, is amended to read:

811 499.0054 Advertising and labeling of drugs, devices, and  
812 cosmetics; exemptions.-

586-03224-12

2012460c1

813 (1) It is a violation of the Florida Drug and Cosmetic Act  
814 to perform or cause the performance of any of the following  
815 acts:

816 (g) The advertising of any drug or device represented to  
817 have any effect in any of the following conditions, disorders,  
818 diseases, or processes:

- 819 1. Blood disorders.
- 820 2. Bone or joint diseases.
- 821 3. Kidney diseases or disorders.
- 822 4. Cancer.
- 823 5. Diabetes.
- 824 6. Gall bladder diseases or disorders.
- 825 7. Heart and vascular diseases.
- 826 8. High blood pressure.
- 827 9. Diseases or disorders of the ear or auditory apparatus,  
828 including hearing loss or deafness.
- 829 10. Mental disease or intellectual disability ~~mental~~  
830 ~~retardation~~.
- 831 11. Paralysis.
- 832 12. Prostate gland disorders.
- 833 13. Conditions of the scalp affecting hair loss.
- 834 14. Baldness.
- 835 15. Endocrine disorders.
- 836 16. Sexual impotence.
- 837 17. Tumors.
- 838 18. Venereal diseases.
- 839 19. Varicose ulcers.
- 840 20. Breast enlargement.
- 841 21. Purifying blood.

586-03224-12

2012460c1

- 842           22. Metabolic disorders.
- 843           23. Immune system disorders or conditions affecting the
- 844 immune system.
- 845           24. Extension of life expectancy.
- 846           25. Stress and tension.
- 847           26. Brain stimulation or performance.
- 848           27. The body's natural defense mechanisms.
- 849           28. Blood flow.
- 850           29. Depression.
- 851           30. Human immunodeficiency virus or acquired immune
- 852 deficiency syndrome or related disorders or conditions.

853           Section 18. Section 514.072, Florida Statutes, is amended

854 to read:

855           514.072 Certification of swimming instructors for people

856 who have developmental disabilities ~~required.~~—Any person working

857 at a swimming pool who holds himself or herself out as a

858 swimming instructor specializing in training people who have

859 developmental disabilities, as defined in s. 393.063(10), may be

860 certified by the Dan Marino Foundation, Inc., in addition to

861 being certified under s. 514.071. The Dan Marino Foundation,

862 Inc., must develop certification requirements and a training

863 curriculum for swimming instructors for people who have

864 developmental disabilities ~~and must submit the certification~~

865 ~~requirements to the Department of Health for review by January~~

866 ~~1, 2007. A person certified under s. 514.071 before July 1,~~

867 ~~2007, must meet the additional certification requirements of~~

868 ~~this section before January 1, 2008.~~ A person certified under s.

869 514.071 ~~on or after July 1, 2007,~~ must meet the additional

870 certification requirements of this section within 6 months after

586-03224-12

2012460c1

871 receiving certification under s. 514.071.

872 Section 19. Section 627.6041, Florida Statutes, is amended  
873 to read:

874 627.6041 ~~Handicapped~~ Children with disabilities;  
875 continuation of coverage.—

876 (1) A hospital or medical expense insurance policy or  
877 health care services plan contract that is delivered or issued  
878 for delivery in this state and that provides that coverage of a  
879 dependent child terminates ~~will terminate~~ upon attainment of the  
880 limiting age for dependent children specified in the policy or  
881 contract must ~~shall~~ also provide in substance that attainment of  
882 the limiting age does not terminate the coverage of the child  
883 while the child continues to be both:

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

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

889 (2) If a claim is denied under a policy or contract for the  
890 stated reason that the child has attained the limiting age for  
891 dependent children specified in the policy or contract, the  
892 notice of denial must state that the policyholder has the burden  
893 of establishing that the child continues to meet the criteria  
894 specified in subsection ~~subsections~~ (1) and ~~(2)~~.

895 Section 20. Section 627.6615, Florida Statutes, is amended  
896 to read:

897 627.6615 ~~Handicapped~~ Children with disabilities;  
898 continuation of coverage under group policy.—

899 (1) A group health insurance policy or health care services

586-03224-12

2012460c1

900 plan contract that is delivered or issued for delivery in this  
901 state and that provides that coverage of a dependent child of an  
902 employee or other member of the covered group terminates ~~will~~  
903 ~~terminate~~ upon attainment of the limiting age for dependent  
904 children specified in the policy or contract must ~~shall~~ also  
905 provide in substance that attainment of the limiting age does  
906 not terminate the coverage of the child while the child  
907 continues to be both:

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

911 (b) ~~(2)~~ Chiefly dependent upon the employee or member for  
912 support and maintenance.

913 (2) If a claim is denied under a policy or contract for the  
914 stated reason that the child has attained the limiting age for  
915 dependent children specified in the policy or contract, the  
916 notice of denial must state that the certificateholder or  
917 subscriber has the burden of establishing that the child  
918 continues to meet the criteria specified in subsection  
919 ~~subsections (1) and (2).~~

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

922 641.31 Health maintenance contracts.—

923 (29) If a health maintenance contract provides that  
924 coverage of a dependent child of the subscriber terminates ~~will~~  
925 ~~terminate~~ upon attainment of the limiting age for dependent  
926 children which is specified in the contract, the contract must  
927 also provide in substance that attainment of the limiting age  
928 does not terminate the coverage of the child while the child



586-03224-12

2012460c1

929 continues to be both:

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

932 ~~handicap, and~~

933 (b) Chiefly dependent upon the employee or member for  
934 support and maintenance.

935

936 If the claim is denied under a contract for the stated reason  
937 that the child has attained the limiting age for dependent  
938 children specified in the contract, the notice or denial must  
939 state that the subscriber has the burden of establishing that  
940 the child continues to meet the criteria specified in this  
941 subsection ~~paragraphs (a) and (b)~~.

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

944 650.05 Plans for coverage of employees of political  
945 subdivisions.—

946 (4) ~~(a)~~ Notwithstanding any other provision of this chapter,  
947 effective January 1, 1972, all state political subdivisions  
948 receiving financial aid which ~~that~~ provide social security  
949 coverage for their employees pursuant to ~~the provisions of~~ this  
950 chapter and the ~~provisions of the~~ various retirement systems as  
951 authorized by law shall, in addition to other purposes, use  
952 ~~utilize~~ all grants-in-aid and other revenue received from the  
953 state to pay the employer's share of social security cost.

954 ~~(b)~~ The grants-in-aid and other revenue ~~referred to in~~  
955 ~~paragraph (a)~~ specifically include, but are not limited to,  
956 minimum foundation program grants to public school districts and  
957 community colleges; gasoline, motor fuel, cigarette, racing, and

586-03224-12

2012460c1

958 insurance premium taxes distributed to political subdivisions;  
959 and amounts specifically appropriated as grants-in-aid for  
960 mental health, intellectual disabilities ~~mental retardation~~, and  
961 mosquito control programs.

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

964 765.204 Capacity of principal; procedure.—

965 (1) A principal is presumed to be capable of making health  
966 care decisions for herself or himself unless she or he is  
967 determined to be incapacitated. Incapacity may not be inferred  
968 from the person's voluntary or involuntary hospitalization for  
969 mental illness or from her or his intellectual disability ~~mental~~  
970 ~~retardation~~.

971 Section 24. Section 849.04, Florida Statutes, is amended to  
972 read:

973 849.04 Permitting minors and persons under guardianship to  
974 gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.  
975 O., keno or pool table, or billiard table, wheel of fortune, or  
976 other game of chance, kept for the purpose of betting, who  
977 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is  
978 mentally incompetent or under guardianship to play at such game  
979 or to bet on such game of chance; or whoever aids or abets or  
980 otherwise encourages such playing or betting of any money or  
981 other valuable thing upon the result of such game of chance by a  
982 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under  
983 guardianship, commits ~~shall be guilty of~~ a felony of the third  
984 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
985 775.084. For the purpose of this section, the term a "person who  
986 is mentally incompetent person" means a person ~~is one~~ who

586-03224-12

2012460c1

987 because of mental illness, intellectual disability ~~mental~~  
988 ~~retardation~~, senility, excessive use of drugs or alcohol, or  
989 other mental incapacity is incapable of ~~either~~ managing his or  
990 her property or caring for himself or herself or both.

991 Section 25. Section 914.16, Florida Statutes, is amended to  
992 read:

993 914.16 Child abuse and sexual abuse of victims under age 16  
994 or who have an intellectual disability ~~persons with mental~~  
995 ~~retardation~~; limits on interviews.—The chief judge of each  
996 judicial circuit, after consultation with the state attorney and  
997 the public defender for the judicial circuit, the appropriate  
998 chief law enforcement officer, and any other person deemed  
999 appropriate by the chief judge, shall ~~provide by~~ order  
1000 reasonable limits on the number of interviews which ~~that~~ a  
1001 victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s.  
1002 847.0135(5) who is under 16 years of age or a victim of a  
1003 violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who  
1004 has an intellectual disability ~~is a person with mental~~  
1005 ~~retardation~~ as defined in s. 393.063 must submit to for law  
1006 enforcement or discovery purposes. ~~The order shall,~~ To the  
1007 extent possible, the order must protect the victim from the  
1008 psychological damage of repeated interrogations while preserving  
1009 the rights of the public, the victim, and the person charged  
1010 with the violation.

1011 Section 26. Section 914.17, Florida Statutes, is amended to  
1012 read:

1013 914.17 Appointment of advocate for victims or witnesses who  
1014 are minors or intellectually disabled ~~persons with mental~~  
1015 ~~retardation~~.—

586-03224-12

2012460c1

1016 (1) A guardian ad litem or other advocate shall be  
1017 appointed by the court to represent a minor in any criminal  
1018 proceeding if the minor is a victim of or witness to child abuse  
1019 or neglect, ~~or if the minor is a victim of a sexual offense,~~ or  
1020 a witness to a sexual offense committed against another minor.  
1021 The court may appoint a guardian ad litem or other advocate in  
1022 any other criminal proceeding in which a minor is involved as  
1023 ~~either~~ a victim or a witness. The guardian ad litem or other  
1024 advocate shall have full access to all evidence and reports  
1025 introduced during the proceedings, may interview witnesses, may  
1026 make recommendations to the court, shall be noticed and have the  
1027 right to appear on behalf of the minor at all proceedings, and  
1028 may request additional examinations by medical doctors,  
1029 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian  
1030 ad litem or other advocate shall ~~to perform the following~~  
1031 ~~services:~~

1032 (a) ~~To~~ Explain, in language understandable to the minor,  
1033 all legal proceedings in which the minor is ~~shall be~~ involved;

1034 (b) ~~To~~ Act, as a friend of the court, to advise the judge,  
1035 whenever appropriate, of the minor's ability to understand and  
1036 cooperate with any court proceeding; and

1037 (c) ~~To~~ Assist the minor and the minor's family in coping  
1038 with the emotional effects of the crime and subsequent criminal  
1039 proceedings in which the minor is involved.

1040 (2) An advocate shall be appointed by the court to  
1041 represent a person who has an intellectual disability ~~with~~  
1042 ~~mental retardation~~ as defined in s. 393.063 in any criminal  
1043 proceeding if the person ~~with mental retardation~~ is a victim of  
1044 or witness to abuse or neglect, ~~or if the person with mental~~

586-03224-12

2012460c1

1045 ~~retardation is~~ a victim of a sexual offense, or a witness to a  
1046 sexual offense committed against a minor or person who has an  
1047 intellectual disability ~~with mental retardation~~. The court may  
1048 appoint an advocate in any other criminal proceeding in which  
1049 such a person ~~with mental retardation~~ is involved as either a  
1050 victim or a witness. The advocate shall have full access to all  
1051 evidence and reports introduced during the proceedings, may  
1052 interview witnesses, may make recommendations to the court,  
1053 shall be noticed and have the right to appear on behalf of the  
1054 person ~~with mental retardation~~ at all proceedings, and may  
1055 request additional examinations by medical doctors,  
1056 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate  
1057 shall ~~to perform the following services:~~

1058 (a) ~~To~~ Explain, in language understandable to the person  
1059 ~~with mental retardation~~, all legal proceedings in which the  
1060 person is ~~shall be~~ involved;

1061 (b) ~~To~~ Act, as a friend of the court, to advise the judge,  
1062 whenever appropriate, of the person's ~~person with mental~~  
1063 ~~retardation's~~ ability to understand and cooperate with any court  
1064 proceedings; and

1065 (c) ~~To~~ Assist the person ~~with mental retardation~~ and the  
1066 person's family in coping with the emotional effects of the  
1067 crime and subsequent criminal proceedings in which the person  
1068 ~~with mental retardation~~ is involved.

1069 (3) Any person participating in a judicial proceeding as a  
1070 guardian ad litem or other advocate is ~~shall be~~ presumed prima  
1071 facie to be acting in good faith and in so doing is ~~shall be~~  
1072 immune from any liability, civil or criminal, which ~~that~~  
1073 ~~otherwise~~ might be incurred or imposed.

586-03224-12

2012460c1

1074 Section 27. Subsections (1), (2), and (3) of section  
1075 916.105, Florida Statutes, are amended to read:

1076 916.105 Legislative intent.—

1077 (1) It is the intent of the Legislature that the Department  
1078 of Children and Family Services and the Agency for Persons with  
1079 Disabilities, as appropriate, establish, locate, and maintain  
1080 separate and secure forensic facilities and programs for the  
1081 treatment or training of defendants who have been charged with a  
1082 felony and who have been found to be incompetent to proceed due  
1083 to their mental illness, intellectual disability ~~mental~~  
1084 ~~retardation~~, or autism, or who have been acquitted of a felony  
1085 by reason of insanity, and who, while still under the  
1086 jurisdiction of the committing court, are committed to the  
1087 department or agency under ~~the provisions of~~ this chapter. Such  
1088 facilities must ~~shall~~ be sufficient to accommodate the number of  
1089 defendants committed under the conditions noted above. Except  
1090 for those defendants found by the department or agency to be  
1091 appropriate for treatment or training in a civil facility or  
1092 program pursuant to subsection (3), forensic facilities must  
1093 ~~shall~~ be designed and administered so that ingress and egress,  
1094 together with other requirements of this chapter, may be  
1095 strictly controlled by staff responsible for security in order  
1096 to protect the defendant, facility personnel, other clients, and  
1097 citizens in adjacent communities.

1098 (2) It is the intent of the Legislature that treatment or  
1099 training programs for defendants who are found to have mental  
1100 illness, intellectual disability ~~mental retardation~~, or autism  
1101 and are involuntarily committed to the department or agency, and  
1102 who are still under the jurisdiction of the committing court, be

586-03224-12

2012460c1

1103 provided in a manner, subject to security requirements and other  
1104 mandates of this chapter, which ensures ~~as to ensure~~ the rights  
1105 of the defendants as provided in this chapter.

1106 (3) It is the intent of the Legislature that evaluation and  
1107 services to defendants who have mental illness, intellectual  
1108 disability ~~mental retardation~~, or autism be provided in  
1109 community settings, in community residential facilities, or in  
1110 civil facilities, whenever this is a feasible alternative to  
1111 treatment or training in a state forensic facility.

1112 Section 28. Subsections (1), (10), (11), (12), and (17) of  
1113 section 916.106, Florida Statutes, are amended, and subsections  
1114 (13) through (15) of that section are reordered and amended, to  
1115 read:

1116 916.106 Definitions.—For the purposes of this chapter, the  
1117 term:

1118 (1) "Agency" means the Agency for Persons with  
1119 Disabilities. The agency is responsible for training forensic  
1120 clients who are developmentally disabled due to intellectual  
1121 disability ~~mental retardation~~ or autism and have been determined  
1122 incompetent to proceed.

1123 (10) "Forensic facility" means a separate and secure  
1124 facility established within the department or agency to serve  
1125 forensic clients. A separate and secure facility means a  
1126 security-grade building for the purpose of separately housing  
1127 persons who have mental illness from persons who have  
1128 intellectual disabilities ~~with retardation~~ or autism and  
1129 separately housing persons who have been involuntarily committed  
1130 pursuant to this chapter from nonforensic residents.

1131 (11) "Incompetent to proceed" means unable to proceed at

586-03224-12

2012460c1

1132 any material stage of a criminal proceeding, which includes the  
1133 ~~shall include~~ trial of the case, pretrial hearings involving  
1134 questions of fact on which the defendant might be expected to  
1135 testify, entry of a plea, proceedings for violation of probation  
1136 or violation of community control, sentencing, and hearings on  
1137 issues regarding a defendant's failure to comply with court  
1138 orders or conditions or other matters in which the mental  
1139 competence of the defendant is necessary for a just resolution  
1140 of the issues being considered.

1141 (12) "Institutional security personnel" means the staff of  
1142 forensic facilities who meet or exceed the requirements of s.  
1143 943.13 and who are responsible for providing security,  
1144 protecting clients and personnel, enforcing rules, preventing  
1145 and investigating unauthorized activities, and safeguarding the  
1146 interests of residents ~~citizens~~ in the surrounding communities.

1147 ~~(14)-(13)~~ "Mental illness" means an impairment of the  
1148 emotional processes that exercise conscious control of one's  
1149 actions, or of the ability to perceive or understand reality,  
1150 which impairment substantially interferes with the a defendant's  
1151 ability to meet the ordinary demands of living. For the purposes  
1152 of this chapter, the term does not apply to defendants who have  
1153 only an intellectual disability ~~with only mental retardation~~ or  
1154 autism and does not include intoxication or conditions  
1155 manifested only by antisocial behavior or substance abuse  
1156 impairment.

1157 ~~(15)-(14)~~ "Restraint" means a physical device, method, or  
1158 drug used to control dangerous behavior.

1159 (a) A physical restraint is any manual method or physical  
1160 or mechanical device, material, or equipment attached or



586-03224-12

2012460c1

1161 adjacent to a person's body so that he or she cannot easily  
1162 remove the restraint and that restricts freedom of movement or  
1163 normal access to one's body.

1164 (b) A drug used as a restraint is a medication used to  
1165 control the person's behavior or to restrict his or her freedom  
1166 of movement and not part of the standard treatment regimen of  
1167 the person with a diagnosed mental illness who is a client of  
1168 the department. Physically holding a person during a procedure  
1169 to forcibly administer psychotropic medication is a physical  
1170 restraint.

1171 (c) Restraint does not include physical devices, such as  
1172 orthopedically prescribed appliances, surgical dressings and  
1173 bandages, supportive body bands, or other physical holding ~~when~~  
1174 necessary for routine physical examinations and tests; for  
1175 purposes of orthopedic, surgical, or other similar medical  
1176 treatment; ~~when used~~ to provide support for the achievement of  
1177 functional body position or proper balance; or ~~when used~~ to  
1178 protect a person from falling out of bed.

1179 ~~(13)-(15)~~ "Intellectual disability" ~~"Retardation"~~ has the  
1180 same meaning as in s. 393.063.

1181 (17) "Social service professional" means a person whose  
1182 minimum qualifications include a bachelor's degree and at least  
1183 2 years of social work, clinical practice, special education,  
1184 habilitation, or equivalent experience working directly with  
1185 persons who have intellectual disabilities ~~with retardation~~,  
1186 autism, or other developmental disabilities.

1187 Section 29. Paragraph (a) of subsection (1) and paragraph  
1188 (a) of subsection (3) of section 916.107, Florida Statutes, are  
1189 amended to read:

586-03224-12

2012460c1

1190 916.107 Rights of forensic clients.—

1191 (1) RIGHT TO INDIVIDUAL DIGNITY.—

1192 (a) The policy of the state is that the individual dignity  
1193 of the client shall be respected at all times and upon all  
1194 occasions, including any occasion when the forensic client is  
1195 detained, transported, or treated. Clients with mental illness,  
1196 intellectual disability ~~retardation~~, or autism and who are  
1197 charged with committing felonies shall receive appropriate  
1198 treatment or training. In a criminal case involving a client who  
1199 has been adjudicated incompetent to proceed or not guilty by  
1200 reason of insanity, a jail may be used as an emergency facility  
1201 for up to 15 days following the date the department or agency  
1202 receives a completed copy of the court commitment order  
1203 containing all documentation required by the applicable Florida  
1204 Rules of Criminal Procedure. For a forensic client who is held  
1205 in a jail awaiting admission to a facility of the department or  
1206 agency, evaluation and treatment or training may be provided in  
1207 the jail by the local community mental health provider for  
1208 mental health services, by the developmental disabilities  
1209 program for persons with intellectual disability ~~retardation~~ or  
1210 autism, the client's physician or psychologist, or any other  
1211 appropriate program until the client is transferred to a civil  
1212 or forensic facility.

1213 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

1214 (a) A forensic client shall be asked to give express and  
1215 informed written consent for treatment. If a client refuses such  
1216 treatment as is deemed necessary and essential by the client's  
1217 multidisciplinary treatment team for the appropriate care of the  
1218 client, such treatment may be provided under the following

586-03224-12

2012460c1

1219 circumstances:

1220       1. In an emergency situation in which there is immediate  
1221 danger to the safety of the client or others, such treatment may  
1222 be provided upon the written order of a physician for a period  
1223 not to exceed 48 hours, excluding weekends and legal holidays.  
1224 If, after the 48-hour period, the client has not given express  
1225 and informed consent to the treatment initially refused, the  
1226 administrator or designee of the civil or forensic facility  
1227 shall, within 48 hours, excluding weekends and legal holidays,  
1228 petition the committing court or the circuit court serving the  
1229 county in which the facility is located, at the option of the  
1230 facility administrator or designee, for an order authorizing the  
1231 continued treatment of the client. In the interim, the need for  
1232 treatment shall be reviewed every 48 hours and may be continued  
1233 without the consent of the client upon the continued written  
1234 order of a physician who has determined that the emergency  
1235 situation continues to present a danger to the safety of the  
1236 client or others.

1237       2. In a situation other than an emergency situation, the  
1238 administrator or designee of the facility shall petition the  
1239 court for an order authorizing necessary and essential treatment  
1240 for the client. The order shall allow such treatment for a  
1241 period not to exceed 90 days following the date of the entry of  
1242 the order. Unless the court is notified in writing that the  
1243 client has provided express and informed consent in writing or  
1244 that the client has been discharged by the committing court, the  
1245 administrator or designee shall, before ~~prior to~~ the expiration  
1246 of the initial 90-day order, petition the court for an order  
1247 authorizing the continuation of treatment for another 90-day

586-03224-12

2012460c1

1248 period. This procedure shall be repeated until the client  
1249 provides consent or is discharged by the committing court.

1250 3. At the hearing on the issue of whether the court should  
1251 enter an order authorizing treatment for which a client was  
1252 unable to or refused to give express and informed consent, the  
1253 court shall determine by clear and convincing evidence that the  
1254 client has mental illness, intellectual disability ~~retardation~~,  
1255 or autism, that the treatment not consented to is essential to  
1256 the care of the client, and that the treatment not consented to  
1257 is not experimental and does not present an unreasonable risk of  
1258 serious, hazardous, or irreversible side effects. In arriving at  
1259 the substitute judgment decision, the court must consider at  
1260 least the following factors:

- 1261 a. The client's expressed preference regarding treatment;
- 1262 b. The probability of adverse side effects;
- 1263 c. The prognosis without treatment; and
- 1264 d. The prognosis with treatment.

1265  
1266 The hearing shall be as convenient to the client as may be  
1267 consistent with orderly procedure and shall be conducted in  
1268 physical settings not likely to be injurious to the client's  
1269 condition. The court may appoint a general or special magistrate  
1270 to preside at the hearing. The client or the client's guardian,  
1271 and the representative, shall be provided with a copy of the  
1272 petition and the date, time, and location of the hearing. The  
1273 client has the right to have an attorney represent him or her at  
1274 the hearing, and, if the client is indigent, the court shall  
1275 appoint the office of the public defender to represent the  
1276 client at the hearing. The client may testify or not, as he or

586-03224-12

2012460c1

1277 she chooses, and has the right to cross-examine witnesses and  
1278 may present his or her own witnesses.

1279 Section 30. The Division of Statutory Revision is requested  
1280 to rename part III of chapter 916, Florida Statutes, consisting  
1281 of ss. 916.301-916.304, as "Forensic Services for Persons who  
1282 are Intellectually Disabled or Autistic."

1283 Section 31. Subsections (1) and (2) of section 916.301,  
1284 Florida Statutes, are amended to read:

1285 916.301 Appointment of experts.—

1286 (1) All evaluations ordered by the court under this part  
1287 must be conducted by qualified experts who have expertise in  
1288 evaluating persons who have an intellectual disability ~~with~~  
1289 ~~retardation~~ or autism. The agency shall maintain and provide the  
1290 courts annually with a list of available ~~retardation and autism~~  
1291 professionals who are appropriately licensed and qualified to  
1292 perform evaluations of defendants alleged to be incompetent to  
1293 proceed due to intellectual disability ~~retardation~~ or autism.  
1294 The courts may use professionals from this list when appointing  
1295 experts and ordering evaluations under this part.

1296 (2) If a defendant's suspected mental condition is  
1297 intellectual disability ~~retardation~~ or autism, the court shall  
1298 appoint the following:

1299 (a) At least one, or at the request of any party, two  
1300 experts to evaluate whether the defendant meets the definition  
1301 of intellectual disability ~~retardation~~ or autism and, if so,  
1302 whether the defendant is competent to proceed; and

1303 (b) A psychologist selected by the agency who is licensed  
1304 or authorized by law to practice in this state, with experience  
1305 in evaluating persons suspected of having an intellectual

586-03224-12

2012460c1

1306 disability ~~retardation~~ or autism, and a social service  
1307 professional, with experience in working with persons who have  
1308 an intellectual disability ~~with retardation~~ or autism.

1309 1. The psychologist shall evaluate whether the defendant  
1310 meets the definition of intellectual disability ~~retardation~~ or  
1311 autism and, if so, whether the defendant is incompetent to  
1312 proceed due to intellectual disability ~~retardation~~ or autism.

1313 2. The social service professional shall provide a social  
1314 and developmental history of the defendant.

1315 Section 32. Subsections (1), (2), and (4) of section  
1316 916.3012, Florida Statutes, are amended to read:

1317 916.3012 Mental competence to proceed.—

1318 (1) A defendant whose suspected mental condition is  
1319 intellectual disability ~~retardation~~ or autism is incompetent to  
1320 proceed within the meaning of this chapter if the defendant does  
1321 not have sufficient present ability to consult with the  
1322 defendant's lawyer with a reasonable degree of rational  
1323 understanding or if the defendant has no rational, as well as  
1324 factual, understanding of the proceedings against the defendant.

1325 (2) Experts in intellectual disability ~~retardation~~ or  
1326 autism appointed pursuant to s. 916.301 shall first consider  
1327 whether the defendant meets the definition of intellectual  
1328 disability ~~retardation~~ or autism and, if so, consider the  
1329 factors related to the issue of whether the defendant meets the  
1330 criteria for competence to proceed as described in subsection  
1331 (1).

1332 (4) If the experts ~~should~~ find that the defendant is  
1333 incompetent to proceed, the experts shall report on any  
1334 recommended training for the defendant to attain competence to

586-03224-12

2012460c1

1335 proceed. In considering the issues relating to training, the  
1336 examining experts shall specifically report on:

1337 (a) The intellectual disability ~~retardation~~ or autism  
1338 causing the incompetence;

1339 (b) The training appropriate for the intellectual  
1340 disability ~~retardation~~ or autism of the defendant and an  
1341 explanation of each of the possible training alternatives in  
1342 order of choices;

1343 (c) The availability of acceptable training and, if  
1344 training is available in the community, the expert shall so  
1345 state in the report; and

1346 (d) The likelihood of the defendant's attaining competence  
1347 under the training recommended, an assessment of the probable  
1348 duration of the training required to restore competence, and the  
1349 probability that the defendant will attain competence to proceed  
1350 in the foreseeable future.

1351 Section 33. Subsection (1), paragraphs (a) and (b) of  
1352 subsection (2), and paragraph (a) of subsection (3) of section  
1353 916.302, Florida Statutes, are amended to read:

1354 916.302 Involuntary commitment of defendant determined to  
1355 be incompetent to proceed.—

1356 (1) CRITERIA.—Every defendant who is charged with a felony  
1357 and who is adjudicated incompetent to proceed due to  
1358 intellectual disability ~~retardation~~ or autism may be  
1359 involuntarily committed for training upon a finding by the court  
1360 of clear and convincing evidence that:

1361 (a) The defendant has an intellectual disability  
1362 ~~retardation~~ or autism;

1363 (b) There is a substantial likelihood that in the near

586-03224-12

2012460c1

1364 future the defendant will inflict serious bodily harm on himself  
1365 or herself or another person, as evidenced by recent behavior  
1366 causing, attempting, or threatening such harm;

1367 (c) All available, less restrictive alternatives, including  
1368 services provided in community residential facilities or other  
1369 community settings, which would offer an opportunity for  
1370 improvement of the condition have been judged to be  
1371 inappropriate; and

1372 (d) There is a substantial probability that the  
1373 intellectual disability ~~retardation~~ or autism causing the  
1374 defendant's incompetence will respond to training and the  
1375 defendant will regain competency to proceed in the reasonably  
1376 foreseeable future.

1377 (2) ADMISSION TO A FACILITY.—

1378 (a) A defendant who has been charged with a felony and who  
1379 is found to be incompetent to proceed due to intellectual  
1380 disability ~~retardation~~ or autism, and who meets the criteria for  
1381 involuntary commitment to the agency under ~~the provisions of~~  
1382 this chapter, shall be committed to the agency, and the agency  
1383 shall retain and provide appropriate training for the defendant.  
1384 Within ~~No later than~~ 6 months after the date of admission or at  
1385 the end of any period of extended commitment or at any time the  
1386 administrator or designee determines ~~shall have determined~~ that  
1387 the defendant has regained competency to proceed or no longer  
1388 meets the criteria for continued commitment, the administrator  
1389 or designee shall file a report with the court pursuant to this  
1390 chapter and the applicable Florida Rules of Criminal Procedure.

1391 (b) A defendant determined to be incompetent to proceed due  
1392 to intellectual disability ~~retardation~~ or autism may be ordered



586-03224-12

2012460c1

1393 by a circuit court into a forensic facility designated by the  
1394 agency for defendants who have an intellectual disability ~~mental~~  
1395 ~~retardation~~ or autism.

1396 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

1397 (a) If a defendant has both an intellectual disability  
1398 ~~mental retardation~~ or autism and ~~has~~ a mental illness,  
1399 evaluations must address which condition is primarily affecting  
1400 the defendant's competency to proceed. Referral of the defendant  
1401 should be made to a civil or forensic facility most appropriate  
1402 to address the symptoms that are the cause of the defendant's  
1403 incompetence.

1404 Section 34. Subsection (1) of section 916.3025, Florida  
1405 Statutes, is amended to read:

1406 916.3025 Jurisdiction of committing court.—

1407 (1) The committing court shall retain jurisdiction in the  
1408 case of any defendant found to be incompetent to proceed due to  
1409 intellectual disability ~~retardation~~ or autism and ordered into a  
1410 forensic facility designated by the agency for defendants who  
1411 have intellectual disabilities ~~mental retardation~~ or autism. A  
1412 defendant may not be released except by the order of the  
1413 committing court. An administrative hearing examiner does not  
1414 have jurisdiction to determine issues of continuing commitment  
1415 or release of any defendant involuntarily committed pursuant to  
1416 this chapter.

1417 Section 35. Section 916.303, Florida Statutes, is amended  
1418 to read:

1419 916.303 Determination of incompetency ~~due to retardation or~~  
1420 ~~autism~~; dismissal of charges.—

1421 (1) The charges against any defendant found to be

586-03224-12

2012460c1

1422 incompetent to proceed due to intellectual disability  
1423 ~~retardation~~ or autism shall be dismissed without prejudice to  
1424 the state if the defendant remains incompetent to proceed within  
1425 a reasonable time after such determination, not to exceed 2  
1426 years, unless the court in its order specifies its reasons for  
1427 believing that the defendant will become competent to proceed  
1428 within the foreseeable future and specifies the time within  
1429 which the defendant is expected to become competent to proceed.  
1430 The charges may be refiled by the state if the defendant is  
1431 declared competent to proceed in the future.

1432 (2) If the charges are dismissed and if the defendant is  
1433 considered to lack sufficient capacity to give express and  
1434 informed consent to a voluntary application for services and  
1435 lacks the basic survival and self-care skills to provide for his  
1436 or her well-being or is likely to physically injure himself or  
1437 herself or others if allowed to remain at liberty, the agency,  
1438 the state attorney, or the defendant's attorney shall apply to  
1439 the committing court to involuntarily admit the defendant to  
1440 residential services pursuant to s. 393.11.

1441 (3) If the defendant is considered to need involuntary  
1442 residential services for reasons described in subsection (2)  
1443 and, further, there is a substantial likelihood that the  
1444 defendant will injure another person or continues to present a  
1445 danger of escape, and all available less restrictive  
1446 alternatives, including services in community residential  
1447 facilities or other community settings, which would offer an  
1448 opportunity for improvement of the condition have been judged to  
1449 be inappropriate, the agency, the state attorney, or the  
1450 defendant's counsel may request the committing court to continue

586-03224-12

2012460c1

1451 the defendant's placement in a secure facility pursuant to this  
1452 part. Any placement so continued ~~under this subsection~~ must be  
1453 reviewed by the court at least annually at a hearing. The annual  
1454 review and hearing must ~~shall~~ determine whether the defendant  
1455 continues to meet the criteria described in this subsection and,  
1456 if so, whether the defendant still requires involuntary  
1457 placement in a secure facility and whether the defendant is  
1458 receiving adequate care, treatment, habilitation, and  
1459 rehabilitation, including psychotropic medication and behavioral  
1460 programming. Notice of the annual review and review hearing  
1461 shall be given to the state attorney and the defendant's  
1462 attorney. ~~In no instance may~~ A defendant's placement in a secure  
1463 facility may not exceed the maximum sentence for the crime for  
1464 which the defendant was charged.

1465 Section 36. Subsection (1) of section 916.304, Florida  
1466 Statutes, is amended to read:

1467 916.304 Conditional release.—

1468 (1) Except for an inmate currently serving a prison  
1469 sentence, the committing court may order a conditional release  
1470 of any defendant who has been found to be incompetent to proceed  
1471 due to intellectual disability ~~retardation~~ or autism, based on  
1472 an approved plan for providing community-based training. The  
1473 committing criminal court may order a conditional release of any  
1474 defendant to a civil facility in lieu of an involuntary  
1475 commitment to a forensic facility pursuant to s. 916.302. Upon a  
1476 recommendation that community-based training for the defendant  
1477 is appropriate, a written plan for community-based training,  
1478 including recommendations from qualified professionals, may be  
1479 filed with the court, with copies to all parties. Such a plan

586-03224-12

2012460c1

1480 may also be submitted by the defendant and filed with the court,  
1481 with copies to all parties. The plan must include:

1482 (a) Special provisions for residential care and adequate  
1483 supervision of the defendant, including recommended location of  
1484 placement.

1485 (b) Recommendations for auxiliary services such as  
1486 vocational training, psychological training, educational  
1487 services, leisure services, and special medical care.

1488

1489 In its order of conditional release, the court shall specify the  
1490 conditions of release based upon the release plan and shall  
1491 direct the appropriate agencies or persons to submit periodic  
1492 reports to the courts regarding the defendant's compliance with  
1493 the conditions of the release and progress in training, with  
1494 copies to all parties.

1495 Section 37. Section 918.16, Florida Statutes, is amended to  
1496 read:

1497 918.16 Sex offenses; testimony of person under age 16 or  
1498 who has an intellectual disability ~~person with mental~~  
1499 ~~retardation~~; testimony of victim; courtroom cleared;  
1500 exceptions.-

1501 (1) Except as provided in subsection (2), in the trial of  
1502 any case, civil or criminal, if ~~when~~ any person under the age of  
1503 16 or any person with an intellectual disability ~~mental~~  
1504 ~~retardation~~ as defined in s. 393.063 is testifying concerning  
1505 any sex offense, the court shall clear the courtroom of all  
1506 persons except parties to the cause and their immediate families  
1507 or guardians, attorneys and their secretaries, officers of the  
1508 court, jurors, newspaper reporters or broadcasters, court

586-03224-12

2012460c1

1509 reporters, and, at the request of the victim, victim or witness  
1510 advocates designated by the state attorney's office.

1511 (2) ~~If~~ ~~When~~ the victim of a sex offense is testifying  
1512 concerning that offense in any civil or criminal trial, the  
1513 court shall clear the courtroom of all persons upon the request  
1514 of the victim, regardless of the victim's age or mental  
1515 capacity, except that parties to the cause and their immediate  
1516 families or guardians, attorneys and their secretaries, officers  
1517 of the court, jurors, newspaper reporters or broadcasters, court  
1518 reporters, and, at the request of the victim, victim or witness  
1519 advocates designated by the state attorney may remain in the  
1520 courtroom.

1521 Section 38. Section 921.137, Florida Statutes, is amended  
1522 to read:

1523 921.137 Imposition of the death sentence upon an  
1524 intellectually disabled a defendant ~~with mental retardation~~  
1525 prohibited.-

1526 (1) As used in this section, the term "intellectually  
1527 disabled" or "intellectual disability" ~~"mental retardation"~~  
1528 means significantly subaverage general intellectual functioning  
1529 existing concurrently with deficits in adaptive behavior and  
1530 manifested during the period from conception to age 18. The term  
1531 "significantly subaverage general intellectual functioning," for  
1532 the purpose of this section, means performance that is two or  
1533 more standard deviations from the mean score on a standardized  
1534 intelligence test specified in the rules of the Agency for  
1535 Persons with Disabilities. The term "adaptive behavior," for the  
1536 purpose of this definition, means the effectiveness or degree  
1537 with which an individual meets the standards of personal

586-03224-12

2012460c1

1538 independence and social responsibility expected of his or her  
1539 age, cultural group, and community. The Agency for Persons with  
1540 Disabilities shall adopt rules to specify the standardized  
1541 intelligence tests as provided in this subsection.

1542 (2) A sentence of death may not be imposed upon a defendant  
1543 convicted of a capital felony if it is determined in accordance  
1544 with this section that the defendant is intellectually disabled  
1545 ~~has mental retardation~~.

1546 (3) A defendant charged with a capital felony who intends  
1547 to raise intellectual disability ~~mental retardation~~ as a bar to  
1548 the death sentence must give notice of such intention in  
1549 accordance with the rules of court governing notices of intent  
1550 to offer expert testimony regarding mental health mitigation  
1551 during the penalty phase of a capital trial.

1552 (4) After a defendant who has given notice of his or her  
1553 intention to raise intellectual disability ~~mental retardation~~ as  
1554 a bar to the death sentence is convicted of a capital felony and  
1555 an advisory jury has returned a recommended sentence of death,  
1556 the defendant may file a motion to determine whether the  
1557 defendant is intellectually disabled ~~has mental retardation~~.

1558 Upon receipt of the motion, the court shall appoint two experts  
1559 in the field of intellectual disabilities ~~mental retardation~~ who  
1560 shall evaluate the defendant and report their findings to the  
1561 court and all interested parties prior to the final sentencing  
1562 hearing. Notwithstanding s. 921.141 or s. 921.142, the final  
1563 sentencing hearing shall be held without a jury. At the final  
1564 sentencing hearing, the court shall consider the findings of the  
1565 court-appointed experts and consider the findings of any other  
1566 expert which is offered by the state or the defense on the issue

586-03224-12

2012460c1

1567 of whether the defendant has an intellectual disability ~~mental~~  
1568 ~~retardation~~. If the court finds, by clear and convincing  
1569 evidence, that the defendant has an intellectual disability  
1570 ~~mental retardation~~ as defined in subsection (1), the court may  
1571 not impose a sentence of death and shall enter a written order  
1572 that sets forth with specificity the findings in support of the  
1573 determination.

1574 (5) If a defendant waives his or her right to a recommended  
1575 sentence by an advisory jury following a plea of guilt or nolo  
1576 contendere to a capital felony and adjudication of guilt by the  
1577 court, or following a jury finding of guilt of a capital felony,  
1578 upon acceptance of the waiver by the court, a defendant who has  
1579 given notice as required in subsection (3) may file a motion for  
1580 a determination of intellectual disability ~~mental retardation~~.  
1581 Upon granting the motion, the court shall proceed as provided in  
1582 subsection (4).

1583 (6) If, following a recommendation by an advisory jury that  
1584 the defendant be sentenced to life imprisonment, the state  
1585 intends to request the court to order that the defendant be  
1586 sentenced to death, the state must inform the defendant of such  
1587 request if the defendant has notified the court of his or her  
1588 intent to raise intellectual disability ~~mental retardation~~ as a  
1589 bar to the death sentence. After receipt of the notice from the  
1590 state, the defendant may file a motion requesting a  
1591 determination by the court of whether the defendant is  
1592 intellectually disabled ~~has mental retardation~~. Upon granting  
1593 the motion, the court shall proceed as provided in subsection  
1594 (4).

1595 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~

586-03224-12

2012460c1

1596 ~~to s. 924.07,~~ a determination of intellectual disability ~~mental~~  
1597 ~~retardation~~ made under subsection (4).

1598 (8) This section does not apply to a defendant who was  
1599 sentenced to death before June 12, 2001 ~~prior to the effective~~  
1600 ~~date of this act.~~

1601 (9) For purposes of the application of the criminal laws  
1602 and procedural rules of this state to any matters relating to  
1603 the imposition and execution of the death penalty, the terms  
1604 "intellectual disability" or "intellectually disabled" are  
1605 interchangeable with and have the same meaning as the terms  
1606 "mental retardation" or "retardation" and "mentally retarded" as  
1607 those terms were defined before July 1, 2012.

1608 Section 39. Paragraph (b) of subsection (2) of section  
1609 941.38, Florida Statutes, is amended to read:

1610 941.38 Extradition of persons alleged to be of unsound  
1611 mind.—

1612 (2) For the purpose of this section:

1613 (b) A "mentally incompetent person" is one who because of  
1614 mental illness, intellectual disability ~~mental retardation~~,  
1615 senility, excessive use of drugs or alcohol, or other mental  
1616 incapacity is incapable of ~~either~~ managing his or her property  
1617 or caring for himself or herself or both.

1618 Section 40. Section 944.602, Florida Statutes, is amended  
1619 to read:

1620 944.602 Agency notification before release of  
1621 intellectually disabled ~~mentally retarded~~ inmates.—Before the  
1622 release by parole, release by reason of gain-time allowances  
1623 provided for in s. 944.291, or expiration of sentence of any  
1624 inmate who has been diagnosed as having an intellectual



586-03224-12

2012460c1

1625 disability ~~mentally retarded~~ as defined in s. 393.063, the  
1626 Department of Corrections shall notify the Agency for Persons  
1627 with Disabilities in order that sufficient time be allowed to  
1628 notify the inmate or the inmate's representative, in writing, at  
1629 least 7 days before ~~prior to~~ the inmate's release, of available  
1630 community services.

1631 Section 41. Subsection (2) of section 945.025, Florida  
1632 Statutes, is amended to read:

1633 945.025 Jurisdiction of department.—

1634 (2) In establishing, operating, and using ~~utilizing~~ these  
1635 facilities, the department shall attempt, whenever possible, to  
1636 avoid the placement of nondangerous offenders who have potential  
1637 for rehabilitation with repeat offenders or dangerous offenders.  
1638 Medical, mental, and psychological problems must ~~shall~~ be  
1639 diagnosed and treated whenever possible. The Department of  
1640 Children and Family Services and the Agency for Persons with  
1641 Disabilities shall cooperate to ensure the delivery of services  
1642 to persons under the custody or supervision of the department.  
1643 If ~~When it is the intent of the department~~ intends to transfer a  
1644 ~~mentally ill or retarded~~ prisoner who has a mental illness or  
1645 intellectual disability to the Department of Children and Family  
1646 Services or the Agency for Persons with Disabilities, an  
1647 involuntary commitment hearing shall be held in accordance with  
1648 ~~according to the provisions of~~ chapter 393 or chapter 394.

1649 Section 42. Subsection (5) of section 945.12, Florida  
1650 Statutes, is amended to read:

1651 945.12 Transfers for rehabilitative treatment.—

1652 (5) When the department plans to release an offender who is  
1653 a mentally ill or intellectually disabled ~~retarded offender~~, an

586-03224-12

2012460c1

1654 involuntary commitment hearing shall be held as soon as possible  
1655 before ~~prior to~~ his or her release in accordance with, ~~according~~  
1656 ~~to the provisions of~~ chapter 393 or chapter 394.

1657 Section 43. Subsection (9) of section 945.42, Florida  
1658 Statutes, is amended to read:

1659 945.42 Definitions; ss. 945.40-945.49.—As used in ss.  
1660 945.40-945.49, the following terms shall have the meanings  
1661 ascribed to them, unless the context shall clearly indicate  
1662 otherwise:

1663 (9) "Mentally ill" means an impairment of the mental or  
1664 emotional processes that, ~~of the ability to~~ exercise conscious  
1665 control of one's actions, ~~or of the ability to~~ perceive or  
1666 understand reality, which impairment substantially interferes  
1667 with the ~~a~~ person's ability to meet the ordinary demands of  
1668 living. However, ~~regardless of etiology, except that~~, for the  
1669 purposes of transferring ~~transfer of~~ an inmate to a mental  
1670 health treatment facility, the term does not include a  
1671 ~~retardation or~~ developmental disability as defined in s. 393.063  
1672 ~~chapter 393~~, simple intoxication, or conditions manifested only  
1673 by antisocial behavior or substance abuse addiction. However, an  
1674 individual who is ~~mentally retarded or~~ developmentally disabled  
1675 may also have a mental illness.

1676 Section 44. Section 947.185, Florida Statutes, is amended  
1677 to read:

1678 947.185 Application for intellectual disability ~~mental~~  
1679 ~~retardation~~ services as condition of parole.—The Parole  
1680 Commission may require as a condition of parole that any inmate  
1681 who has been diagnosed as having an intellectual disability  
1682 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,

586-03224-12

2012460c1

1683 apply for services from the Agency for Persons with  
1684 Disabilities.

1685 Section 45. Subsection (4) of section 984.19, Florida  
1686 Statutes, is amended to read:

1687 984.19 Medical screening and treatment of child;  
1688 examination of parent, guardian, or person requesting custody.-

1689 (4) A judge may order that a child alleged to be or  
1690 adjudicated a child in need of services be treated by a licensed  
1691 health care professional. The judge may also order such child to  
1692 receive mental health or intellectual disability ~~retardation~~  
1693 services from a psychiatrist, psychologist, or other appropriate  
1694 service provider. If it is necessary to place the child in a  
1695 residential facility for such services, ~~then~~ the procedures and  
1696 criteria established in s. 394.467 or chapter 393 shall be used,  
1697 as whichever is applicable. A child may be provided ~~mental~~  
1698 ~~health or retardation~~ services in emergency situations, pursuant  
1699 to the procedures and criteria contained in s. 394.463(1) or  
1700 chapter 393, as whichever is applicable.

1701 Section 46. Paragraph (a) of subsection (3) of section  
1702 985.14, Florida Statutes, is amended to read:

1703 985.14 Intake and case management system.-

1704 (3) The intake and case management system shall facilitate  
1705 consistency in the recommended placement of each child, and in  
1706 the assessment, classification, and placement process, with the  
1707 following purposes:

1708 (a) An individualized, multidisciplinary assessment process  
1709 that identifies the priority needs of each ~~individual~~  
1710 rehabilitation and treatment and identifies any needs of the  
1711 child's parents or guardians for services that would enhance

586-03224-12

2012460c1

1712 their ability to provide adequate support, guidance, and  
1713 supervision for the child. This process begins ~~shall begin~~ with  
1714 the detention risk assessment instrument and decision, includes  
1715 ~~shall include~~ the intake preliminary screening and comprehensive  
1716 assessment for substance abuse treatment services, mental health  
1717 services, intellectual disability ~~retardation~~ services, literacy  
1718 services, and other educational and treatment services as  
1719 components, additional assessment of the child's treatment  
1720 needs, and classification regarding the child's risks to the  
1721 community and, for a serious or habitual delinquent child,  
1722 includes ~~shall include~~ the assessment for placement in a serious  
1723 or habitual delinquent children program under s. 985.47. The  
1724 completed multidisciplinary assessment process must ~~shall~~ result  
1725 in the predisposition report.

1726 Section 47. Paragraph (g) of subsection (1) and subsection  
1727 (5) of section 985.145, Florida Statutes, are amended to read:

1728 985.145 Responsibilities of juvenile probation officer  
1729 during intake; screenings and assessments.—

1730 (1) The juvenile probation officer shall serve as the  
1731 primary case manager for the purpose of managing, coordinating,  
1732 and monitoring the services provided to the child. Each program  
1733 administrator within the Department of Children and Family  
1734 Services shall cooperate with the primary case manager in  
1735 carrying out the duties and responsibilities described in this  
1736 section. In addition to duties specified in other sections and  
1737 through departmental rules, the assigned juvenile probation  
1738 officer shall be responsible for the following:

1739 (g) *Comprehensive assessment.*—The juvenile probation  
1740 officer, pursuant to uniform procedures established by the

586-03224-12

2012460c1

1741 department and upon determining that the report, affidavit, or  
1742 complaint is complete, shall:

1743 1. Perform the preliminary screening and make referrals for  
1744 a comprehensive assessment regarding the child's need for  
1745 substance abuse treatment services, mental health services,  
1746 intellectual disability ~~retardation~~ services, literacy services,  
1747 or other educational or treatment services.

1748 2. If ~~When~~ indicated by the preliminary screening, provide  
1749 for a comprehensive assessment of the child and family for  
1750 substance abuse problems, using community-based licensed  
1751 programs with clinical expertise and experience in the  
1752 assessment of substance abuse problems.

1753 3. If ~~When~~ indicated by the preliminary screening, provide  
1754 for a comprehensive assessment of the child and family for  
1755 mental health problems, using community-based psychologists,  
1756 psychiatrists, or other licensed mental health professionals who  
1757 have clinical expertise and experience in the assessment of  
1758 mental health problems.

1759 (5) If the screening and assessment indicate that the  
1760 interests of the child and the public will be best served  
1761 ~~thereby~~, the juvenile probation officer, with the approval of  
1762 the state attorney, may refer the child for care, diagnostic,  
1763 and evaluation services; substance abuse treatment services;  
1764 mental health services; intellectual disability ~~retardation~~  
1765 services; a diversionary, arbitration, or mediation program;  
1766 community service work; or other programs or treatment services  
1767 voluntarily accepted by the child and the child's parents or  
1768 legal guardian. If ~~Whenever~~ a child volunteers to participate in  
1769 any work program under this chapter or volunteers to work in a

586-03224-12

2012460c1

1770 specified state, county, municipal, or community service  
1771 organization supervised work program or to work for the victim,  
1772 the child is ~~shall be~~ considered an employee of the state for  
1773 the purposes of liability. In determining the child's average  
1774 weekly wage, unless otherwise determined by a specific funding  
1775 program, all remuneration received from the employer is  
1776 considered a gratuity, and the child is not entitled to any  
1777 benefits otherwise payable under s. 440.15, regardless of  
1778 whether the child may be receiving wages and remuneration from  
1779 other employment with another employer and regardless of the  
1780 child's future wage-earning capacity.

1781 Section 48. Subsections (2) and (6) of section 985.18,  
1782 Florida Statutes, are amended to read:

1783 985.18 Medical, psychiatric, psychological, substance  
1784 abuse, and educational examination and treatment.—

1785 (2) If ~~Whenever~~ a child has been found to have committed a  
1786 delinquent act, or before such finding with the consent of any  
1787 parent or legal custodian of the child, the court may order the  
1788 child to be treated by a physician. The court may also order the  
1789 child to receive mental health, substance abuse, or intellectual  
1790 disability ~~retardation~~ services from a psychiatrist,  
1791 psychologist, or other appropriate service provider. If it is  
1792 necessary to place the child in a residential facility for such  
1793 services, the procedures and criteria established in chapter  
1794 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable,  
1795 must ~~shall~~ be used. After a child has been adjudicated  
1796 delinquent, if an educational needs assessment by the district  
1797 school board or the Department of Children and Family Services  
1798 has been ~~previously~~ conducted, the court shall order the report

586-03224-12

2012460c1

1799 ~~of such needs assessment~~ included in the child's court record in  
1800 lieu of a new assessment. For purposes of this section, an  
1801 educational needs assessment includes, but is not limited to,  
1802 reports of intelligence and achievement tests, screening for  
1803 learning and other disabilities ~~and other handicaps~~, and  
1804 screening for the need for alternative education.

1805 (6) A physician must ~~shall~~ be immediately notified by the  
1806 person taking the child into custody or the person having  
1807 custody if there are indications of physical injury or illness,  
1808 or the child shall be taken to the nearest available hospital  
1809 for emergency care. A child may be provided mental health,  
1810 substance abuse, or intellectual disability ~~retardation~~  
1811 ~~services~~, in emergency situations, pursuant to chapter 393,  
1812 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a  
1813 hearing, the court may order the custodial parent or parents,  
1814 guardian, or other custodian, if found able to do so, to  
1815 reimburse the county or state for the expense involved in such  
1816 emergency treatment or care.

1817 Section 49. Paragraph (e) of subsection (1), subsections  
1818 (2) through (4), and paragraph (a) of subsection (6) of section  
1819 985.19, Florida Statutes, are amended to read:

1820 985.19 Incompetency in juvenile delinquency cases.—

1821 (1) If, at any time prior to or during a delinquency case,  
1822 the court has reason to believe that the child named in the  
1823 petition may be incompetent to proceed with the hearing, the  
1824 court on its own motion may, or on the motion of the child's  
1825 attorney or state attorney must, stay all proceedings and order  
1826 an evaluation of the child's mental condition.

1827 (e) For incompetency evaluations related to intellectual

586-03224-12

2012460c1

1828 disability ~~mental-retardation~~ or autism, the court shall order  
1829 the Agency for Persons with Disabilities to examine the child to  
1830 determine if the child meets the definition of "intellectual  
1831 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,  
1832 whether the child is competent to proceed with delinquency  
1833 proceedings.

1834 (2) A child who is adjudicated incompetent to proceed, and  
1835 who has committed a delinquent act or violation of law, either  
1836 of which would be a felony if committed by an adult, must be  
1837 committed to the Department of Children and Family Services for  
1838 treatment or training. A child who has been adjudicated  
1839 incompetent to proceed because of age or immaturity, or for any  
1840 reason other than for mental illness, intellectual disability,  
1841 ~~or-retardation~~ or autism, must not be committed to the  
1842 department or to the Department of Children and Family Services  
1843 for restoration-of-competency treatment or training services.  
1844 For purposes of this section, a child who has committed a  
1845 delinquent act or violation of law, either of which would be a  
1846 misdemeanor if committed by an adult, may not be committed to  
1847 the department or to the Department of Children and Family  
1848 Services for restoration-of-competency treatment or training  
1849 services.

1850 (3) If the court finds that a child has mental illness,  
1851 intellectual disability ~~mental-retardation~~, or autism and  
1852 adjudicates the child incompetent to proceed, the court must  
1853 also determine whether the child meets the criteria for secure  
1854 placement. A child may be placed in a secure facility or program  
1855 if the court makes a finding by clear and convincing evidence  
1856 that:



586-03224-12

2012460c1

1857 (a) The child has mental illness, intellectual disability  
1858 ~~mental retardation~~, or autism and because of the mental illness,  
1859 intellectual disability ~~mental retardation~~, or autism:

1860 1. The child is manifestly incapable of surviving with the  
1861 help of willing and responsible family or friends, including  
1862 available alternative services, and without treatment or  
1863 training the child is likely to ~~either~~ suffer from neglect or  
1864 refuse to care for self, and such neglect or refusal poses a  
1865 real and present threat of substantial harm to the child's well-  
1866 being; or

1867 2. There is a substantial likelihood that in the near  
1868 future the child will inflict serious bodily harm on self or  
1869 others, as evidenced by recent behavior causing, attempting, or  
1870 threatening such harm; and

1871 (b) All available less restrictive alternatives, including  
1872 treatment or training in community residential facilities or  
1873 community settings which would offer an opportunity for  
1874 improvement of the child's condition, are inappropriate.

1875 (4) A child who is determined to have mental illness,  
1876 intellectual disability ~~mental retardation~~, or autism, who has  
1877 been adjudicated incompetent to proceed, and who meets the  
1878 criteria set forth in subsection (3), must be committed to the  
1879 Department of Children and Family Services and receive treatment  
1880 or training in a secure facility or program that is the least  
1881 restrictive alternative consistent with public safety. Any  
1882 placement of a child to a secure residential program must be  
1883 separate from adult forensic programs. If the child attains  
1884 competency, ~~then~~ custody, case management, and supervision of  
1885 the child shall ~~will~~ be transferred to the department in order

586-03224-12

2012460c1

1886 to continue delinquency proceedings; however, the court retains  
1887 authority to order the Department of Children and Family  
1888 Services to provide continued treatment or training to maintain  
1889 competency.

1890 (a) A child adjudicated incompetent due to intellectual  
1891 disability ~~mental retardation~~ or autism may be ordered into a  
1892 secure program or facility designated by the Department of  
1893 Children and Family Services for children who have intellectual  
1894 disabilities ~~with mental retardation~~ or autism.

1895 (b) A child adjudicated incompetent due to mental illness  
1896 may be ordered into a secure program or facility designated by  
1897 the Department of Children and Family Services for children  
1898 having mental illnesses.

1899 (c) If ~~Whenever~~ a child is placed in a secure residential  
1900 facility, the department shall ~~will~~ provide transportation to  
1901 the secure residential facility for admission and from the  
1902 secure residential facility upon discharge.

1903 (d) The purpose of the treatment or training is the  
1904 restoration of the child's competency to proceed.

1905 (e) The service provider must file a written report with  
1906 the court pursuant to the applicable Florida Rules of Juvenile  
1907 Procedure within ~~not later than~~ 6 months after the date of  
1908 commitment, or at the end of any period of extended treatment or  
1909 training, and at any time the Department of Children and Family  
1910 Services, through its service provider, determines the child has  
1911 attained competency or no longer meets the criteria for secure  
1912 placement, or at such shorter intervals as ordered by the court.  
1913 A copy of a written report evaluating the child's competency  
1914 must be filed by the provider with the court and with the state

586-03224-12

2012460c1

1915 attorney, the child's attorney, the department, and the  
1916 Department of Children and Family Services.

1917 (6) (a) If a child is determined to have mental illness,  
1918 intellectual disability ~~mental retardation~~, or autism and is  
1919 found to be incompetent to proceed but does not meet the  
1920 criteria set forth in subsection (3), the court shall commit the  
1921 child to the Department of Children and Family Services and  
1922 ~~shall~~ order the Department of Children and Family Services to  
1923 provide appropriate treatment and training in the community. The  
1924 purpose of the treatment or training is the restoration of the  
1925 child's competency to proceed.

1926 Section 50. Section 985.195, Florida Statutes, is amended  
1927 to read:

1928 985.195 Transfer to other treatment services.—Any child  
1929 committed to the department may be transferred to intellectual  
1930 disability ~~retardation~~, mental health, or substance abuse  
1931 treatment facilities for diagnosis and evaluation pursuant to  
1932 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~  
1933 applicable, for up to ~~a period not to exceed~~ 90 days.

1934 Section 51. Paragraph (b) of subsection (1) of section  
1935 985.61, Florida Statutes, is amended to read:

1936 985.61 Early delinquency intervention program; criteria.—

1937 (1) The Department of Juvenile Justice shall, contingent  
1938 upon specific appropriation and with the cooperation of local  
1939 law enforcement agencies, the judiciary, district school board  
1940 personnel, the office of the state attorney, the office of the  
1941 public defender, the Department of Children and Family Services,  
1942 and community service agencies that work with children,  
1943 establish an early delinquency intervention program, the

586-03224-12

2012460c1

1944 components of which shall include, but not be limited to:

1945 (b) Treatment modalities, including substance abuse  
1946 treatment services, mental health services, and ~~retardation~~  
1947 services for intellectual disabilities.

1948 Section 52. It is the intent of the Legislature that this  
1949 act not expand or contract the scope or application of any  
1950 provision of the Florida Statutes. This act may not be construed  
1951 to change the application of any provision of Florida Statutes  
1952 to any person.

1953 Section 53. This act shall take effect July 1, 2012.