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1  
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,

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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 Law Revision and Information; amending ss. 916.301,  
37 916.3012, 916.302, 916.3025, 916.303, 916.304, 918.16,  
38 921.137, 941.38, 944.602, 945.025, 945.12, 945.42,  
39 947.185, 984.19, 985.14, 985.145, 985.18, 985.19,  
40 985.195, and 985.61, F.S.; clarifying in s. 921.137,  
41 F.S., that the terms "intellectual disability" or  
42 "intellectually disabled" are interchangeable with and  
43 have the same meaning as the terms "mental  
44 retardation," or "retardation" and "mentally  
45 retarded," as defined before the effective date of the  
46 act; substituting the term "intellectual disability"  
47 for the term "mental retardation"; expressing  
48 legislative intent; providing 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~~

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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.

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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

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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~~

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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~~

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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.

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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



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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,

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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,

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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.

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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

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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~~

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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

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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

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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, 2013.

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~~ 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



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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.—

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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

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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;

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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

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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

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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,

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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.~~

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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.



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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:

711 409.908 Reimbursement of Medicaid providers.—Subject to  
712 specific appropriations, the agency shall reimburse Medicaid  
713 providers, in accordance with state and federal law, according  
714 to methodologies set forth in the rules of the agency and in  
715 policy manuals and handbooks incorporated by reference therein.  
716 These methodologies may include fee schedules, reimbursement  
717 methods based on cost reporting, negotiated fees, competitive  
718 bidding pursuant to s. 287.057, and other mechanisms the agency  
719 considers efficient and effective for purchasing services or  
720 goods on behalf of recipients. If a provider is reimbursed based  
721 on cost reporting and submits a cost report late and that cost  
722 report would have been used to set a lower reimbursement rate  
723 for a rate semester, then the provider's rate for that semester  
724 shall be retroactively calculated using the new cost report, and  
725 full payment at the recalculated rate shall be effected

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726 retroactively. Medicare-granted extensions for filing cost  
727 reports, if applicable, shall also apply to Medicaid cost  
728 reports. Payment for Medicaid compensable services made on  
729 behalf of Medicaid eligible persons is subject to the  
730 availability of moneys and any limitations or directions  
731 provided for in the General Appropriations Act or chapter 216.  
732 Further, nothing in this section shall be construed to prevent  
733 or limit the agency from adjusting fees, reimbursement rates,  
734 lengths of stay, number of visits, or number of services, or  
735 making any other adjustments necessary to comply with the  
736 availability of moneys and any limitations or directions  
737 provided for in the General Appropriations Act, provided the  
738 adjustment is consistent with legislative intent.

739 (8) A provider of home-based or community-based services  
740 rendered pursuant to a federally approved waiver shall be  
741 reimbursed based on an established or negotiated rate for each  
742 service. These rates shall be established according to an  
743 analysis of the expenditure history and prospective budget  
744 developed by each contract provider participating in the waiver  
745 program, or under any other methodology adopted by the agency  
746 and approved by the Federal Government in accordance with the  
747 waiver. Privately owned and operated community-based residential  
748 facilities which meet agency requirements and which formerly  
749 received Medicaid reimbursement for the optional intermediate  
750 care facility for the intellectually disabled ~~mentally retarded~~  
751 service may participate in the developmental services waiver as  
752 part of a home-and-community-based continuum of care for  
753 Medicaid recipients who receive waiver services.

754 Section 15. Subsection (16) of section 413.20, Florida

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755 Statutes, is amended to read:

756 413.20 Definitions.—As used in this part, the term:

757 (16) "Person who has a significant disability" means an  
758 individual who has a disability that is a severe physical or  
759 mental impairment that seriously limits one or more functional  
760 capacities, such as mobility, communication, self-care, self-  
761 direction, interpersonal skills, work tolerance, or work skills,  
762 in terms of an employment outcome; whose vocational  
763 rehabilitation may be expected to require multiple vocational  
764 rehabilitation services over an extended period of time; and who  
765 has one or more physical or mental disabilities resulting from  
766 amputation, arthritis, autism, blindness, burn injury, cancer,  
767 cerebral palsy, cystic fibrosis, deafness, head injury, heart  
768 disease, hemiplegia, hemophilia, respiratory or pulmonary  
769 dysfunction, intellectual disability ~~mental retardation~~, mental  
770 illness, multiple sclerosis, muscular dystrophy, musculoskeletal  
771 disorder, neurological disorder, including stroke and epilepsy,  
772 paraplegia, quadriplegia, or other spinal cord condition,  
773 sickle-cell anemia, specific learning disability, end-stage  
774 renal disease, or another disability or a combination of  
775 disabilities that is determined, after an assessment for  
776 determining eligibility and vocational rehabilitation needs, to  
777 cause comparable substantial functional limitation.

778 Section 16. Paragraph (a) of subsection (6) of section  
779 440.49, Florida Statutes, is amended to read:

780 440.49 Limitation of liability for subsequent injury  
781 through Special Disability Trust Fund.—

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

783 (a) Reimbursement is not allowed under this section unless

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784 it is established that the employer knew of the preexisting  
785 permanent physical impairment prior to the occurrence of the  
786 subsequent injury or occupational disease, and ~~that~~ the  
787 permanent physical impairment is one of the following:  
788       1. Epilepsy.  
789       2. Diabetes.  
790       3. Cardiac disease.  
791       4. Amputation of foot, leg, arm, or hand.  
792       5. Total loss of sight of one or both eyes or a partial  
793 loss of corrected vision of more than 75 percent bilaterally.  
794       6. Residual disability from poliomyelitis.  
795       7. Cerebral palsy.  
796       8. Multiple sclerosis.  
797       9. Parkinson's disease.  
798       10. Meniscectomy.  
799       11. Patellectomy.  
800       12. Ruptured cruciate ligament.  
801       13. Hemophilia.  
802       14. Chronic osteomyelitis.  
803       15. Surgical or spontaneous fusion of a major weight-  
804 bearing joint.  
805       16. Hyperinsulinism.  
806       17. Muscular dystrophy.  
807       18. Thrombophlebitis.  
808       19. Herniated intervertebral disk.  
809       20. Surgical removal of an intervertebral disk or spinal  
810 fusion.  
811       21. One or more back injuries or a disease process of the  
812 back resulting in disability over a total of 120 or more days,

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813 if substantiated by a doctor's opinion that there was a  
814 preexisting impairment to the claimant's back.

815 22. Total deafness.

816 23. Intellectual disability if ~~Mental retardation, provided~~  
817 the employee's intelligence quotient is such that she or he  
818 falls within the lowest 2 percentile of the general population.  
819 However, ~~it shall not be necessary for the employer~~ does not  
820 need to know the employee's actual intelligence quotient or  
821 actual relative ranking in relation to the intelligence quotient  
822 of the general population.

823 24. Any permanent physical condition that ~~which~~, prior to  
824 the industrial accident or occupational disease, constitutes a  
825 20 percent ~~20 percent~~ impairment of a member or of the body as a  
826 whole.

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

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

837 Section 17. Paragraph (g) of subsection (1) of section  
838 499.0054, Florida Statutes, is amended to read:

839 499.0054 Advertising and labeling of drugs, devices, and  
840 cosmetics; exemptions.-

841 (1) It is a violation of the Florida Drug and Cosmetic Act

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842 to perform or cause the performance of any of the following  
843 acts:

844 (g) The advertising of any drug or device represented to  
845 have any effect in any of the following conditions, disorders,  
846 diseases, or processes:

- 847 1. Blood disorders.
- 848 2. Bone or joint diseases.
- 849 3. Kidney diseases or disorders.
- 850 4. Cancer.
- 851 5. Diabetes.
- 852 6. Gall bladder diseases or disorders.
- 853 7. Heart and vascular diseases.
- 854 8. High blood pressure.
- 855 9. Diseases or disorders of the ear or auditory apparatus,  
856 including hearing loss or deafness.
- 857 10. Mental disease or intellectual disability ~~mental~~  
858 ~~retardation~~.
- 859 11. Paralysis.
- 860 12. Prostate gland disorders.
- 861 13. Conditions of the scalp affecting hair loss.
- 862 14. Baldness.
- 863 15. Endocrine disorders.
- 864 16. Sexual impotence.
- 865 17. Tumors.
- 866 18. Venereal diseases.
- 867 19. Varicose ulcers.
- 868 20. Breast enlargement.
- 869 21. Purifying blood.
- 870 22. Metabolic disorders.

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871 23. Immune system disorders or conditions affecting the  
872 immune system.

873 24. Extension of life expectancy.

874 25. Stress and tension.

875 26. Brain stimulation or performance.

876 27. The body's natural defense mechanisms.

877 28. Blood flow.

878 29. Depression.

879 30. Human immunodeficiency virus or acquired immune  
880 deficiency syndrome or related disorders or conditions.

881 Section 18. Section 514.072, Florida Statutes, is amended  
882 to read:

883 514.072 Certification of swimming instructors for people  
884 who have developmental disabilities ~~required.~~—Any person working  
885 at a swimming pool who holds himself or herself out as a  
886 swimming instructor specializing in training people who have  
887 developmental disabilities, as defined in s. 393.063(9), may be  
888 certified by the Dan Marino Foundation, Inc., in addition to  
889 being certified under s. 514.071. The Dan Marino Foundation,  
890 Inc., must develop certification requirements and a training  
891 curriculum for swimming instructors for people who have  
892 developmental disabilities ~~and must submit the certification~~  
893 ~~requirements to the Department of Health for review by January~~  
894 ~~1, 2007. A person certified under s. 514.071 before July 1,~~  
895 ~~2007, must meet the additional certification requirements of~~  
896 ~~this section before January 1, 2008. A person certified under s.~~  
897 ~~514.071 on or after July 1, 2007, must meet the additional~~  
898 ~~certification requirements of this section within 6 months after~~  
899 ~~receiving certification under s. 514.071.~~

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900 Section 19. Section 627.6041, Florida Statutes, is amended  
901 to read:

902 627.6041 ~~Handicapped~~ Children with disabilities;  
903 continuation of coverage.—

904 (1) A hospital or medical expense insurance policy or  
905 health care services plan contract that is delivered or issued  
906 for delivery in this state and that provides that coverage of a  
907 dependent child terminates ~~will terminate~~ upon attainment of the  
908 limiting age for dependent children specified in the policy or  
909 contract must ~~shall~~ also provide in substance that attainment of  
910 the limiting age does not terminate the coverage of the child  
911 while the child continues to be both:

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

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

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

923 Section 20. Section 627.6615, Florida Statutes, is amended  
924 to read:

925 627.6615 ~~Handicapped~~ Children with disabilities;  
926 continuation of coverage under group policy.—

927 (1) A group health insurance policy or health care services  
928 plan contract that is delivered or issued for delivery in this



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929 state and that provides that coverage of a dependent child of an  
930 employee or other member of the covered group terminates ~~will~~  
931 ~~terminate~~ upon attainment of the limiting age for dependent  
932 children specified in the policy or contract must ~~shall~~ also  
933 provide in substance that attainment of the limiting age does  
934 not terminate the coverage of the child while the child  
935 continues to be both:

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

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

941 (2) If a claim is denied under a policy or contract for the  
942 stated reason that the child has attained the limiting age for  
943 dependent children specified in the policy or contract, the  
944 notice of denial must state that the certificateholder or  
945 subscriber has the burden of establishing that the child  
946 continues to meet the criteria specified in subsection  
947 ~~subsections~~ (1) ~~and~~ (2).

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

950 641.31 Health maintenance contracts.—

951 (29) If a health maintenance contract provides that  
952 coverage of a dependent child of the subscriber terminates ~~will~~  
953 ~~terminate~~ upon attainment of the limiting age for dependent  
954 children which is specified in the contract, the contract must  
955 also provide in substance that attainment of the limiting age  
956 does not terminate the coverage of the child while the child  
957 continues to be both:

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958 (a) Incapable of self-sustaining employment by reason of an  
959 intellectual ~~mental retardation~~ or physical disability.  
960 ~~handicap, and~~

961 (b) Chiefly dependent upon the employee or member for  
962 support and maintenance.

963  
964 If the claim is denied under a contract for the stated reason  
965 that the child has attained the limiting age for dependent  
966 children specified in the contract, the notice or denial must  
967 state that the subscriber has the burden of establishing that  
968 the child continues to meet the criteria specified in this  
969 subsection ~~paragraphs (a) and (b)~~.

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

972 650.05 Plans for coverage of employees of political  
973 subdivisions.-

974 (4) ~~(a)~~ Notwithstanding any other provision of this chapter,  
975 effective January 1, 1972, all state political subdivisions  
976 receiving financial aid which ~~that~~ provide social security  
977 coverage for their employees pursuant to ~~the provisions of this~~  
978 chapter and the ~~provisions of the~~ various retirement systems as  
979 authorized by law shall, in addition to other purposes, use  
980 ~~utilize~~ all grants-in-aid and other revenue received from the  
981 state to pay the employer's share of social security cost.

982 ~~(b)~~ The grants-in-aid and other revenue ~~referred to in~~  
983 ~~paragraph (a)~~ specifically include, but are not limited to,  
984 minimum foundation program grants to public school districts and  
985 community colleges; gasoline, motor fuel, cigarette, racing, and  
986 insurance premium taxes distributed to political subdivisions;

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987 and amounts specifically appropriated as grants-in-aid for  
988 mental health, intellectual disabilities ~~mental retardation~~, and  
989 mosquito control programs.

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

992 765.204 Capacity of principal; procedure.—

993 (1) A principal is presumed to be capable of making health  
994 care decisions for herself or himself unless she or he is  
995 determined to be incapacitated. Incapacity may not be inferred  
996 from the person's voluntary or involuntary hospitalization for  
997 mental illness or from her or his intellectual disability ~~mental~~  
998 ~~retardation~~.

999 Section 24. Section 849.04, Florida Statutes, is amended to  
1000 read:

1001 849.04 Permitting minors and persons under guardianship to  
1002 gamble. ~~Whoever being~~ The proprietor, owner, or keeper of any E.  
1003 O., keno or pool table, or billiard table, wheel of fortune, or  
1004 other game of chance, kept for the purpose of betting, who  
1005 willfully and knowingly allows a ~~any~~ minor or ~~any~~ person who is  
1006 mentally incompetent or under guardianship to play at such game  
1007 or to bet on such game of chance; or whoever aids or abets or  
1008 otherwise encourages such playing or betting of any money or  
1009 other valuable thing upon the result of such game of chance by a  
1010 ~~any~~ minor or ~~any~~ person who is mentally incompetent or under  
1011 guardianship, commits ~~shall be guilty of~~ a felony of the third  
1012 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
1013 775.084. For the purpose of this section, the term ~~a~~ "person who  
1014 is mentally incompetent ~~person~~" means a person ~~is one~~ who  
1015 because of mental illness, intellectual disability ~~mental~~

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1016 ~~retardation~~, senility, excessive use of drugs or alcohol, or  
1017 other mental incapacity is incapable of ~~either~~ managing his or  
1018 her property or caring for himself or herself or both.

1019 Section 25. Section 914.16, Florida Statutes, is amended to  
1020 read:

1021 914.16 Child abuse and sexual abuse of victims under age 16  
1022 or who have an intellectual disability ~~persons with mental~~  
1023 ~~retardation~~; limits on interviews.—The chief judge of each  
1024 judicial circuit, after consultation with the state attorney and  
1025 the public defender for the judicial circuit, the appropriate  
1026 chief law enforcement officer, and any other person deemed  
1027 appropriate by the chief judge, shall ~~provide by~~ order  
1028 reasonable limits on the number of interviews which ~~that~~ a  
1029 victim of a violation of s. 794.011, s. 800.04, s. 827.03, or s.  
1030 847.0135(5) who is under 16 years of age or a victim of a  
1031 violation of s. 794.011, s. 800.02, s. 800.03, or s. 825.102 who  
1032 has an intellectual disability ~~is a person with mental~~  
1033 ~~retardation~~ as defined in s. 393.063 must submit to for law  
1034 enforcement or discovery purposes. ~~The order shall,~~ To the  
1035 extent possible, the order must protect the victim from the  
1036 psychological damage of repeated interrogations while preserving  
1037 the rights of the public, the victim, and the person charged  
1038 with the violation.

1039 Section 26. Section 914.17, Florida Statutes, is amended to  
1040 read:

1041 914.17 Appointment of advocate for victims or witnesses who  
1042 are minors or intellectually disabled ~~persons with mental~~  
1043 ~~retardation~~.—

1044 (1) A guardian ad litem or other advocate shall be

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1045 appointed by the court to represent a minor in any criminal  
1046 proceeding if the minor is a victim of or witness to child abuse  
1047 or neglect, ~~or if the minor is a victim of a sexual offense,~~ or  
1048 a witness to a sexual offense committed against another minor.  
1049 The court may appoint a guardian ad litem or other advocate in  
1050 any other criminal proceeding in which a minor is involved as  
1051 ~~either~~ a victim or a witness. The guardian ad litem or other  
1052 advocate shall have full access to all evidence and reports  
1053 introduced during the proceedings, may interview witnesses, may  
1054 make recommendations to the court, shall be noticed and have the  
1055 right to appear on behalf of the minor at all proceedings, and  
1056 may request additional examinations by medical doctors,  
1057 psychiatrists, or psychologists. ~~It is the duty of~~ The guardian  
1058 ad litem or other advocate shall ~~to perform the following~~  
1059 ~~services:~~

1060 (a) ~~To~~ Explain, in language understandable to the minor,  
1061 all legal proceedings in which the minor is ~~shall be~~ involved;

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

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

1068 (2) An advocate shall be appointed by the court to  
1069 represent a person who has an intellectual disability ~~with~~  
1070 ~~mental retardation~~ as defined in s. 393.063 in any criminal  
1071 proceeding if the person ~~with mental retardation~~ is a victim of  
1072 or witness to abuse or neglect, ~~or if the person with mental~~  
1073 ~~retardation is~~ a victim of a sexual offense, or a witness to a

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1074 sexual offense committed against a minor or person who has an  
1075 intellectual disability ~~with mental retardation~~. The court may  
1076 appoint an advocate in any other criminal proceeding in which  
1077 such a person ~~with mental retardation~~ is involved as ~~either~~ a  
1078 victim or a witness. The advocate shall have full access to all  
1079 evidence and reports introduced during the proceedings, may  
1080 interview witnesses, may make recommendations to the court,  
1081 shall be noticed and have the right to appear on behalf of the  
1082 person ~~with mental retardation~~ at all proceedings, and may  
1083 request additional examinations by medical doctors,  
1084 psychiatrists, or psychologists. ~~It is the duty of~~ The advocate  
1085 shall to perform the following services:

1086 (a) ~~To~~ Explain, in language understandable to the person  
1087 ~~with mental retardation~~, all legal proceedings in which the  
1088 person is ~~shall be~~ involved;

1089 (b) ~~To~~ Act, as a friend of the court, to advise the judge,  
1090 whenever appropriate, of the person's ~~person with mental~~  
1091 ~~retardation's~~ ability to understand and cooperate with any court  
1092 proceedings; and

1093 (c) ~~To~~ Assist the person ~~with mental retardation~~ and the  
1094 person's family in coping with the emotional effects of the  
1095 crime and subsequent criminal proceedings in which the person  
1096 ~~with mental retardation~~ is involved.

1097 (3) Any person participating in a judicial proceeding as a  
1098 guardian ad litem or other advocate is ~~shall be~~ presumed prima  
1099 facie to be acting in good faith and in so doing is ~~shall be~~  
1100 immune from any liability, civil or criminal, which ~~that~~  
1101 ~~otherwise~~ might be incurred or imposed.

1102 Section 27. Subsections (1), (2), and (3) of section

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1103 916.105, Florida Statutes, are amended to read:

1104 916.105 Legislative intent.—

1105 (1) It is the intent of the Legislature that the Department  
1106 of Children and Family Services and the Agency for Persons with  
1107 Disabilities, as appropriate, establish, locate, and maintain  
1108 separate and secure forensic facilities and programs for the  
1109 treatment or training of defendants who have been charged with a  
1110 felony and who have been found to be incompetent to proceed due  
1111 to their mental illness, intellectual disability ~~mental~~  
1112 ~~retardation~~, or autism, or who have been acquitted of a felony  
1113 by reason of insanity, and who, while still under the  
1114 jurisdiction of the committing court, are committed to the  
1115 department or agency under ~~the provisions of~~ this chapter. Such  
1116 facilities must ~~shall~~ be sufficient to accommodate the number of  
1117 defendants committed under the conditions noted above. Except  
1118 for those defendants found by the department or agency to be  
1119 appropriate for treatment or training in a civil facility or  
1120 program pursuant to subsection (3), forensic facilities must  
1121 ~~shall~~ be designed and administered so that ingress and egress,  
1122 together with other requirements of this chapter, may be  
1123 strictly controlled by staff responsible for security in order  
1124 to protect the defendant, facility personnel, other clients, and  
1125 citizens in adjacent communities.

1126 (2) It is the intent of the Legislature that treatment or  
1127 training programs for defendants who are found to have mental  
1128 illness, intellectual disability ~~mental retardation~~, or autism  
1129 and are involuntarily committed to the department or agency, and  
1130 who are still under the jurisdiction of the committing court, be  
1131 provided in a manner, subject to security requirements and other

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1132 mandates of this chapter, which ensures ~~as to ensure~~ the rights  
1133 of the defendants as provided in this chapter.

1134 (3) It is the intent of the Legislature that evaluation and  
1135 services to defendants who have mental illness, intellectual  
1136 disability ~~mental retardation~~, or autism be provided in  
1137 community settings, in community residential facilities, or in  
1138 civil facilities, whenever this is a feasible alternative to  
1139 treatment or training in a state forensic facility.

1140 Section 28. Subsections (1), (10), (11), (12), and (17) of  
1141 section 916.106, Florida Statutes, are amended, and subsections  
1142 (13) through (15) of that section are reordered and amended, to  
1143 read:

1144 916.106 Definitions.—For the purposes of this chapter, the  
1145 term:

1146 (1) "Agency" means the Agency for Persons with  
1147 Disabilities. The agency is responsible for training forensic  
1148 clients who are developmentally disabled due to intellectual  
1149 disability ~~mental retardation~~ or autism and have been determined  
1150 incompetent to proceed.

1151 (10) "Forensic facility" means a separate and secure  
1152 facility established within the department or agency to serve  
1153 forensic clients. A separate and secure facility means a  
1154 security-grade building for the purpose of separately housing  
1155 persons who have mental illness from persons who have  
1156 intellectual disabilities ~~with retardation~~ or autism and  
1157 separately housing persons who have been involuntarily committed  
1158 pursuant to this chapter from nonforensic residents.

1159 (11) "Incompetent to proceed" means unable to proceed at  
1160 any material stage of a criminal proceeding, which includes the



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1161 ~~shall include~~ trial of the case, pretrial hearings involving  
1162 questions of fact on which the defendant might be expected to  
1163 testify, entry of a plea, proceedings for violation of probation  
1164 or violation of community control, sentencing, and hearings on  
1165 issues regarding a defendant's failure to comply with court  
1166 orders or conditions or other matters in which the mental  
1167 competence of the defendant is necessary for a just resolution  
1168 of the issues being considered.

1169 (12) "Institutional security personnel" means the staff of  
1170 forensic facilities who meet or exceed the requirements of s.  
1171 943.13 and who are responsible for providing security,  
1172 protecting clients and personnel, enforcing rules, preventing  
1173 and investigating unauthorized activities, and safeguarding the  
1174 interests of residents ~~citizens~~ in the surrounding communities.

1175 ~~(14)-(13)~~ "Mental illness" means an impairment of the  
1176 emotional processes that exercise conscious control of one's  
1177 actions, or of the ability to perceive or understand reality,  
1178 which impairment substantially interferes with the ~~a~~ defendant's  
1179 ability to meet the ordinary demands of living. For the purposes  
1180 of this chapter, the term does not apply to defendants who have  
1181 only an intellectual disability ~~with only mental retardation~~ or  
1182 autism and does not include intoxication or conditions  
1183 manifested only by antisocial behavior or substance abuse  
1184 impairment.

1185 ~~(15)-(14)~~ "Restraint" means a physical device, method, or  
1186 drug used to control dangerous behavior.

1187 (a) A physical restraint is any manual method or physical  
1188 or mechanical device, material, or equipment attached or  
1189 adjacent to a person's body so that he or she cannot easily

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1190 remove the restraint and that restricts freedom of movement or  
1191 normal access to one's body.

1192 (b) A drug used as a restraint is a medication used to  
1193 control the person's behavior or to restrict his or her freedom  
1194 of movement and not part of the standard treatment regimen of  
1195 the person with a diagnosed mental illness who is a client of  
1196 the department. Physically holding a person during a procedure  
1197 to forcibly administer psychotropic medication is a physical  
1198 restraint.

1199 (c) Restraint does not include physical devices, such as  
1200 orthopedically prescribed appliances, surgical dressings and  
1201 bandages, supportive body bands, or other physical holding ~~when~~  
1202 necessary for routine physical examinations and tests; for  
1203 purposes of orthopedic, surgical, or other similar medical  
1204 treatment; ~~when used~~ to provide support for the achievement of  
1205 functional body position or proper balance; or ~~when used~~ to  
1206 protect a person from falling out of bed.

1207 ~~(13)~~ ~~(15)~~ "Intellectual disability" ~~"Retardation"~~ has the  
1208 same meaning as in s. 393.063.

1209 (17) "Social service professional" means a person whose  
1210 minimum qualifications include a bachelor's degree and at least  
1211 2 years of social work, clinical practice, special education,  
1212 habilitation, or equivalent experience working directly with  
1213 persons who have intellectual disabilities ~~with retardation~~,  
1214 autism, or other developmental disabilities.

1215 Section 29. Paragraph (a) of subsection (1) and paragraph  
1216 (a) of subsection (3) of section 916.107, Florida Statutes, are  
1217 amended to read:

1218 916.107 Rights of forensic clients.—

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1219 (1) RIGHT TO INDIVIDUAL DIGNITY.—

1220 (a) The policy of the state is that the individual dignity  
1221 of the client shall be respected at all times and upon all  
1222 occasions, including any occasion when the forensic client is  
1223 detained, transported, or treated. Clients with mental illness,  
1224 intellectual disability ~~retardation~~, or autism and who are  
1225 charged with committing felonies shall receive appropriate  
1226 treatment or training. In a criminal case involving a client who  
1227 has been adjudicated incompetent to proceed or not guilty by  
1228 reason of insanity, a jail may be used as an emergency facility  
1229 for up to 15 days following the date the department or agency  
1230 receives a completed copy of the court commitment order  
1231 containing all documentation required by the applicable Florida  
1232 Rules of Criminal Procedure. For a forensic client who is held  
1233 in a jail awaiting admission to a facility of the department or  
1234 agency, evaluation and treatment or training may be provided in  
1235 the jail by the local community mental health provider for  
1236 mental health services, by the developmental disabilities  
1237 program for persons with intellectual disability ~~retardation~~ or  
1238 autism, the client's physician or psychologist, or any other  
1239 appropriate program until the client is transferred to a civil  
1240 or forensic facility.

1241 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

1242 (a) A forensic client shall be asked to give express and  
1243 informed written consent for treatment. If a client refuses such  
1244 treatment as is deemed necessary and essential by the client's  
1245 multidisciplinary treatment team for the appropriate care of the  
1246 client, such treatment may be provided under the following  
1247 circumstances:

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1248           1. In an emergency situation in which there is immediate  
1249 danger to the safety of the client or others, such treatment may  
1250 be provided upon the written order of a physician for a period  
1251 not to exceed 48 hours, excluding weekends and legal holidays.  
1252 If, after the 48-hour period, the client has not given express  
1253 and informed consent to the treatment initially refused, the  
1254 administrator or designee of the civil or forensic facility  
1255 shall, within 48 hours, excluding weekends and legal holidays,  
1256 petition the committing court or the circuit court serving the  
1257 county in which the facility is located, at the option of the  
1258 facility administrator or designee, for an order authorizing the  
1259 continued treatment of the client. In the interim, the need for  
1260 treatment shall be reviewed every 48 hours and may be continued  
1261 without the consent of the client upon the continued written  
1262 order of a physician who has determined that the emergency  
1263 situation continues to present a danger to the safety of the  
1264 client or others.

1265           2. In a situation other than an emergency situation, the  
1266 administrator or designee of the facility shall petition the  
1267 court for an order authorizing necessary and essential treatment  
1268 for the client. The order shall allow such treatment for a  
1269 period not to exceed 90 days following the date of the entry of  
1270 the order. Unless the court is notified in writing that the  
1271 client has provided express and informed consent in writing or  
1272 that the client has been discharged by the committing court, the  
1273 administrator or designee shall, before ~~prior to~~ the expiration  
1274 of the initial 90-day order, petition the court for an order  
1275 authorizing the continuation of treatment for another 90-day  
1276 period. This procedure shall be repeated until the client

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1277 provides consent or is discharged by the committing court.

1278         3. At the hearing on the issue of whether the court should  
1279 enter an order authorizing treatment for which a client was  
1280 unable to or refused to give express and informed consent, the  
1281 court shall determine by clear and convincing evidence that the  
1282 client has mental illness, intellectual disability ~~retardation~~,  
1283 or autism, that the treatment not consented to is essential to  
1284 the care of the client, and that the treatment not consented to  
1285 is not experimental and does not present an unreasonable risk of  
1286 serious, hazardous, or irreversible side effects. In arriving at  
1287 the substitute judgment decision, the court must consider at  
1288 least the following factors:

- 1289             a. The client's expressed preference regarding treatment;  
1290             b. The probability of adverse side effects;  
1291             c. The prognosis without treatment; and  
1292             d. The prognosis with treatment.

1293  
1294 The hearing shall be as convenient to the client as may be  
1295 consistent with orderly procedure and shall be conducted in  
1296 physical settings not likely to be injurious to the client's  
1297 condition. The court may appoint a general or special magistrate  
1298 to preside at the hearing. The client or the client's guardian,  
1299 and the representative, shall be provided with a copy of the  
1300 petition and the date, time, and location of the hearing. The  
1301 client has the right to have an attorney represent him or her at  
1302 the hearing, and, if the client is indigent, the court shall  
1303 appoint the office of the public defender to represent the  
1304 client at the hearing. The client may testify or not, as he or  
1305 she chooses, and has the right to cross-examine witnesses and

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1306 may present his or her own witnesses.

1307       Section 30. The Division of Law Revision and Information is  
1308 requested to rename part III of chapter 916, Florida Statutes,  
1309 consisting of ss. 916.301-916.304, as "Forensic Services for  
1310 Persons who are Intellectually Disabled or Autistic."

1311       Section 31. Subsections (1) and (2) of section 916.301,  
1312 Florida Statutes, are amended to read:

1313       916.301 Appointment of experts.—

1314       (1) All evaluations ordered by the court under this part  
1315 must be conducted by qualified experts who have expertise in  
1316 evaluating persons who have an intellectual disability with  
1317 ~~retardation~~ or autism. The agency shall maintain and provide the  
1318 courts annually with a list of available ~~retardation and autism~~  
1319 professionals who are appropriately licensed and qualified to  
1320 perform evaluations of defendants alleged to be incompetent to  
1321 proceed due to intellectual disability ~~retardation~~ or autism.  
1322 The courts may use professionals from this list when appointing  
1323 experts and ordering evaluations under this part.

1324       (2) If a defendant's suspected mental condition is  
1325 intellectual disability ~~retardation~~ or autism, the court shall  
1326 appoint the following:

1327       (a) At least one, or at the request of any party, two  
1328 experts to evaluate whether the defendant meets the definition  
1329 of intellectual disability ~~retardation~~ or autism and, if so,  
1330 whether the defendant is competent to proceed; and

1331       (b) A psychologist selected by the agency who is licensed  
1332 or authorized by law to practice in this state, with experience  
1333 in evaluating persons suspected of having an intellectual  
1334 disability ~~retardation~~ or autism, and a social service

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1335 professional, with experience in working with persons who have  
1336 an intellectual disability ~~with retardation~~ or autism.

1337 1. The psychologist shall evaluate whether the defendant  
1338 meets the definition of intellectual disability ~~retardation~~ or  
1339 autism and, if so, whether the defendant is incompetent to  
1340 proceed due to intellectual disability ~~retardation~~ or autism.

1341 2. The social service professional shall provide a social  
1342 and developmental history of the defendant.

1343 Section 32. Subsections (1), (2), and (4) of section  
1344 916.3012, Florida Statutes, are amended to read:

1345 916.3012 Mental competence to proceed.—

1346 (1) A defendant whose suspected mental condition is  
1347 intellectual disability ~~retardation~~ or autism is incompetent to  
1348 proceed within the meaning of this chapter if the defendant does  
1349 not have sufficient present ability to consult with the  
1350 defendant's lawyer with a reasonable degree of rational  
1351 understanding or if the defendant has no rational, as well as  
1352 factual, understanding of the proceedings against the defendant.

1353 (2) Experts in intellectual disability ~~retardation~~ or  
1354 autism appointed pursuant to s. 916.301 shall first consider  
1355 whether the defendant meets the definition of intellectual  
1356 disability ~~retardation~~ or autism and, if so, consider the  
1357 factors related to the issue of whether the defendant meets the  
1358 criteria for competence to proceed as described in subsection  
1359 (1).

1360 (4) If the experts ~~should~~ find that the defendant is  
1361 incompetent to proceed, the experts shall report on any  
1362 recommended training for the defendant to attain competence to  
1363 proceed. In considering the issues relating to training, the

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1364 examining experts shall specifically report on:

1365 (a) The intellectual disability ~~retardation~~ or autism  
1366 causing the incompetence;

1367 (b) The training appropriate for the intellectual  
1368 disability ~~retardation~~ or autism of the defendant and an  
1369 explanation of each of the possible training alternatives in  
1370 order of choices;

1371 (c) The availability of acceptable training and, if  
1372 training is available in the community, the expert shall so  
1373 state in the report; and

1374 (d) The likelihood of the defendant's attaining competence  
1375 under the training recommended, an assessment of the probable  
1376 duration of the training required to restore competence, and the  
1377 probability that the defendant will attain competence to proceed  
1378 in the foreseeable future.

1379 Section 33. Subsection (1), paragraphs (a) and (b) of  
1380 subsection (2), and paragraph (a) of subsection (3) of section  
1381 916.302, Florida Statutes, are amended to read:

1382 916.302 Involuntary commitment of defendant determined to  
1383 be incompetent to proceed.—

1384 (1) CRITERIA.—Every defendant who is charged with a felony  
1385 and who is adjudicated incompetent to proceed due to  
1386 intellectual disability ~~retardation~~ or autism may be  
1387 involuntarily committed for training upon a finding by the court  
1388 of clear and convincing evidence that:

1389 (a) The defendant has an intellectual disability  
1390 ~~retardation~~ or autism;

1391 (b) There is a substantial likelihood that in the near  
1392 future the defendant will inflict serious bodily harm on himself



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1393 or herself or another person, as evidenced by recent behavior  
1394 causing, attempting, or threatening such harm;

1395 (c) All available, less restrictive alternatives, including  
1396 services provided in community residential facilities or other  
1397 community settings, which would offer an opportunity for  
1398 improvement of the condition have been judged to be  
1399 inappropriate; and

1400 (d) There is a substantial probability that the  
1401 intellectual disability ~~retardation~~ or autism causing the  
1402 defendant's incompetence will respond to training and the  
1403 defendant will regain competency to proceed in the reasonably  
1404 foreseeable future.

1405 (2) ADMISSION TO A FACILITY.—

1406 (a) A defendant who has been charged with a felony and who  
1407 is found to be incompetent to proceed due to intellectual  
1408 disability ~~retardation~~ or autism, and who meets the criteria for  
1409 involuntary commitment to the agency under ~~the provisions of~~  
1410 this chapter, shall be committed to the agency, and the agency  
1411 shall retain and provide appropriate training for the defendant.  
1412 Within ~~No later than~~ 6 months after the date of admission or at  
1413 the end of any period of extended commitment or at any time the  
1414 administrator or designee determines ~~shall have determined~~ that  
1415 the defendant has regained competency to proceed or no longer  
1416 meets the criteria for continued commitment, the administrator  
1417 or designee shall file a report with the court pursuant to this  
1418 chapter and the applicable Florida Rules of Criminal Procedure.

1419 (b) A defendant determined to be incompetent to proceed due  
1420 to intellectual disability ~~retardation~~ or autism may be ordered  
1421 by a circuit court into a forensic facility designated by the

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1422 agency for defendants who have an intellectual disability ~~mental~~  
1423 ~~retardation~~ or autism.

1424 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

1425 (a) If a defendant has both an intellectual disability  
1426 ~~mental retardation~~ or autism and ~~has~~ a mental illness,  
1427 evaluations must address which condition is primarily affecting  
1428 the defendant's competency to proceed. Referral of the defendant  
1429 should be made to a civil or forensic facility most appropriate  
1430 to address the symptoms that are the cause of the defendant's  
1431 incompetence.

1432 Section 34. Subsection (1) of section 916.3025, Florida  
1433 Statutes, is amended to read:

1434 916.3025 Jurisdiction of committing court.—

1435 (1) The committing court shall retain jurisdiction in the  
1436 case of any defendant found to be incompetent to proceed due to  
1437 intellectual disability ~~retardation~~ or autism and ordered into a  
1438 forensic facility designated by the agency for defendants who  
1439 have intellectual disabilities ~~mental retardation~~ or autism. A  
1440 defendant may not be released except by the order of the  
1441 committing court. An administrative hearing examiner does not  
1442 have jurisdiction to determine issues of continuing commitment  
1443 or release of any defendant involuntarily committed pursuant to  
1444 this chapter.

1445 Section 35. Section 916.303, Florida Statutes, is amended  
1446 to read:

1447 916.303 Determination of incompetency ~~due to retardation or~~  
1448 ~~autism~~; dismissal of charges.—

1449 (1) The charges against any defendant found to be  
1450 incompetent to proceed due to intellectual disability

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1451 ~~retardation~~ or autism shall be dismissed without prejudice to  
1452 the state if the defendant remains incompetent to proceed within  
1453 a reasonable time after such determination, not to exceed 2  
1454 years, unless the court in its order specifies its reasons for  
1455 believing that the defendant will become competent to proceed  
1456 within the foreseeable future and specifies the time within  
1457 which the defendant is expected to become competent to proceed.  
1458 The charges may be refiled by the state if the defendant is  
1459 declared competent to proceed in the future.

1460 (2) If the charges are dismissed and if the defendant is  
1461 considered to lack sufficient capacity to give express and  
1462 informed consent to a voluntary application for services and  
1463 lacks the basic survival and self-care skills to provide for his  
1464 or her well-being or is likely to physically injure himself or  
1465 herself or others if allowed to remain at liberty, the agency,  
1466 the state attorney, or the defendant's attorney shall apply to  
1467 the committing court to involuntarily admit the defendant to  
1468 residential services pursuant to s. 393.11.

1469 (3) If the defendant is considered to need involuntary  
1470 residential services for reasons described in subsection (2)  
1471 and, further, there is a substantial likelihood that the  
1472 defendant will injure another person or continues to present a  
1473 danger of escape, and all available less restrictive  
1474 alternatives, including services in community residential  
1475 facilities or other community settings, which would offer an  
1476 opportunity for improvement of the condition have been judged to  
1477 be inappropriate, the agency, the state attorney, or the  
1478 defendant's counsel may request the committing court to continue  
1479 the defendant's placement in a secure facility pursuant to this

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1480 part. Any placement so continued ~~under this subsection~~ must be  
1481 reviewed by the court at least annually at a hearing. The annual  
1482 review and hearing must ~~shall~~ determine whether the defendant  
1483 continues to meet the criteria described in this subsection and,  
1484 if so, whether the defendant still requires involuntary  
1485 placement in a secure facility and whether the defendant is  
1486 receiving adequate care, treatment, habilitation, and  
1487 rehabilitation, including psychotropic medication and behavioral  
1488 programming. Notice of the annual review and review hearing  
1489 shall be given to the state attorney and the defendant's  
1490 attorney. ~~In no instance may~~ A defendant's placement in a secure  
1491 facility may not exceed the maximum sentence for the crime for  
1492 which the defendant was charged.

1493 Section 36. Subsection (1) of section 916.304, Florida  
1494 Statutes, is amended to read:

1495 916.304 Conditional release.—

1496 (1) Except for an inmate currently serving a prison  
1497 sentence, the committing court may order a conditional release  
1498 of any defendant who has been found to be incompetent to proceed  
1499 due to intellectual disability ~~retardation~~ or autism, based on  
1500 an approved plan for providing community-based training. The  
1501 committing criminal court may order a conditional release of any  
1502 defendant to a civil facility in lieu of an involuntary  
1503 commitment to a forensic facility pursuant to s. 916.302. Upon a  
1504 recommendation that community-based training for the defendant  
1505 is appropriate, a written plan for community-based training,  
1506 including recommendations from qualified professionals, may be  
1507 filed with the court, with copies to all parties. Such a plan  
1508 may also be submitted by the defendant and filed with the court,

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1509 with copies to all parties. The plan must include:

1510 (a) Special provisions for residential care and adequate  
1511 supervision of the defendant, including recommended location of  
1512 placement.

1513 (b) Recommendations for auxiliary services such as  
1514 vocational training, psychological training, educational  
1515 services, leisure services, and special medical care.

1516  
1517 In its order of conditional release, the court shall specify the  
1518 conditions of release based upon the release plan and shall  
1519 direct the appropriate agencies or persons to submit periodic  
1520 reports to the courts regarding the defendant's compliance with  
1521 the conditions of the release and progress in training, with  
1522 copies to all parties.

1523 Section 37. Section 918.16, Florida Statutes, is amended to  
1524 read:

1525 918.16 Sex offenses; testimony of person under age 16 or  
1526 who has an intellectual disability ~~person with mental~~  
1527 ~~retardation~~; testimony of victim; courtroom cleared;  
1528 exceptions.—

1529 (1) Except as provided in subsection (2), in the trial of  
1530 any case, civil or criminal, if ~~when~~ any person under the age of  
1531 16 or any person with an intellectual disability ~~mental~~  
1532 ~~retardation~~ as defined in s. 393.063 is testifying concerning  
1533 any sex offense, the court shall clear the courtroom of all  
1534 persons except parties to the cause and their immediate families  
1535 or guardians, attorneys and their secretaries, officers of the  
1536 court, jurors, newspaper reporters or broadcasters, court  
1537 reporters, and, at the request of the victim, victim or witness

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1538 advocates designated by the state attorney's office.

1539 (2) ~~If~~ ~~When~~ the victim of a sex offense is testifying  
1540 concerning that offense in any civil or criminal trial, the  
1541 court shall clear the courtroom of all persons upon the request  
1542 of the victim, regardless of the victim's age or mental  
1543 capacity, except that parties to the cause and their immediate  
1544 families or guardians, attorneys and their secretaries, officers  
1545 of the court, jurors, newspaper reporters or broadcasters, court  
1546 reporters, and, at the request of the victim, victim or witness  
1547 advocates designated by the state attorney may remain in the  
1548 courtroom.

1549 Section 38. Section 921.137, Florida Statutes, is amended  
1550 to read:

1551 921.137 Imposition of the death sentence upon an  
1552 intellectually disabled a defendant ~~with mental retardation~~  
1553 prohibited.—

1554 (1) As used in this section, the term "intellectually  
1555 disabled" or "intellectual disability" ~~"mental retardation"~~  
1556 means significantly subaverage general intellectual functioning  
1557 existing concurrently with deficits in adaptive behavior and  
1558 manifested during the period from conception to age 18. The term  
1559 "significantly subaverage general intellectual functioning," for  
1560 the purpose of this section, means performance that is two or  
1561 more standard deviations from the mean score on a standardized  
1562 intelligence test specified in the rules of the Agency for  
1563 Persons with Disabilities. The term "adaptive behavior," for the  
1564 purpose of this definition, means the effectiveness or degree  
1565 with which an individual meets the standards of personal  
1566 independence and social responsibility expected of his or her

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1567 age, cultural group, and community. The Agency for Persons with  
1568 Disabilities shall adopt rules to specify the standardized  
1569 intelligence tests as provided in this subsection.

1570 (2) A sentence of death may not be imposed upon a defendant  
1571 convicted of a capital felony if it is determined in accordance  
1572 with this section that the defendant is intellectually disabled  
1573 ~~has mental retardation~~.

1574 (3) A defendant charged with a capital felony who intends  
1575 to raise intellectual disability ~~mental retardation~~ as a bar to  
1576 the death sentence must give notice of such intention in  
1577 accordance with the rules of court governing notices of intent  
1578 to offer expert testimony regarding mental health mitigation  
1579 during the penalty phase of a capital trial.

1580 (4) After a defendant who has given notice of his or her  
1581 intention to raise intellectual disability ~~mental retardation~~ as  
1582 a bar to the death sentence is convicted of a capital felony and  
1583 an advisory jury has returned a recommended sentence of death,  
1584 the defendant may file a motion to determine whether the  
1585 defendant is intellectually disabled ~~has mental retardation~~.  
1586 Upon receipt of the motion, the court shall appoint two experts  
1587 in the field of intellectual disabilities ~~mental retardation~~ who  
1588 shall evaluate the defendant and report their findings to the  
1589 court and all interested parties prior to the final sentencing  
1590 hearing. Notwithstanding s. 921.141 or s. 921.142, the final  
1591 sentencing hearing shall be held without a jury. At the final  
1592 sentencing hearing, the court shall consider the findings of the  
1593 court-appointed experts and consider the findings of any other  
1594 expert which is offered by the state or the defense on the issue  
1595 of whether the defendant has an intellectual disability ~~mental~~

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1596 ~~retardation~~. If the court finds, by clear and convincing  
1597 evidence, that the defendant has an intellectual disability  
1598 ~~mental retardation~~ as defined in subsection (1), the court may  
1599 not impose a sentence of death and shall enter a written order  
1600 that sets forth with specificity the findings in support of the  
1601 determination.

1602 (5) If a defendant waives his or her right to a recommended  
1603 sentence by an advisory jury following a plea of guilt or nolo  
1604 contendere to a capital felony and adjudication of guilt by the  
1605 court, or following a jury finding of guilt of a capital felony,  
1606 upon acceptance of the waiver by the court, a defendant who has  
1607 given notice as required in subsection (3) may file a motion for  
1608 a determination of intellectual disability ~~mental retardation~~.  
1609 Upon granting the motion, the court shall proceed as provided in  
1610 subsection (4).

1611 (6) If, following a recommendation by an advisory jury that  
1612 the defendant be sentenced to life imprisonment, the state  
1613 intends to request the court to order that the defendant be  
1614 sentenced to death, the state must inform the defendant of such  
1615 request if the defendant has notified the court of his or her  
1616 intent to raise intellectual disability ~~mental retardation~~ as a  
1617 bar to the death sentence. After receipt of the notice from the  
1618 state, the defendant may file a motion requesting a  
1619 determination by the court of whether the defendant is  
1620 intellectually disabled ~~has mental retardation~~. Upon granting  
1621 the motion, the court shall proceed as provided in subsection  
1622 (4).

1623 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~  
1624 ~~to s. 924.07~~, a determination of intellectual disability ~~mental~~



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1625 ~~retardation~~ made under subsection (4).

1626 (8) This section does not apply to a defendant who was  
1627 sentenced to death before June 12, 2001 ~~prior to the effective~~  
1628 ~~date of this act.~~

1629 (9) For purposes of the application of the criminal laws  
1630 and procedural rules of this state to any matters relating to  
1631 the imposition and execution of the death penalty, the terms  
1632 "intellectual disability" or "intellectually disabled" are  
1633 interchangeable with and have the same meaning as the terms  
1634 "mental retardation" or "retardation" and "mentally retarded" as  
1635 those terms were defined before July 1, 2013.

1636 Section 39. Paragraph (b) of subsection (2) of section  
1637 941.38, Florida Statutes, is amended to read:

1638 941.38 Extradition of persons alleged to be of unsound  
1639 mind.—

1640 (2) For the purpose of this section:

1641 (b) A "mentally incompetent person" is one who because of  
1642 mental illness, intellectual disability ~~mental retardation~~,  
1643 senility, excessive use of drugs or alcohol, or other mental  
1644 incapacity is incapable of ~~either~~ managing his or her property  
1645 or caring for himself or herself or both.

1646 Section 40. Section 944.602, Florida Statutes, is amended  
1647 to read:

1648 944.602 Agency notification before release of  
1649 intellectually disabled ~~mentally retarded~~ inmates.—Before the  
1650 release by parole, release by reason of gain-time allowances  
1651 provided for in s. 944.291, or expiration of sentence of any  
1652 inmate who has been diagnosed as having an intellectual  
1653 disability ~~mentally retarded~~ as defined in s. 393.063, the

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1654 Department of Corrections shall notify the Agency for Persons  
1655 with Disabilities in order that sufficient time be allowed to  
1656 notify the inmate or the inmate's representative, in writing, at  
1657 least 7 days before ~~prior to~~ the inmate's release, of available  
1658 community services.

1659 Section 41. Subsection (2) of section 945.025, Florida  
1660 Statutes, is amended to read:

1661 945.025 Jurisdiction of department.—

1662 (2) In establishing, operating, and using ~~utilizing~~ these  
1663 facilities, the department shall attempt, whenever possible, to  
1664 avoid the placement of nondangerous offenders who have potential  
1665 for rehabilitation with repeat offenders or dangerous offenders.  
1666 Medical, mental, and psychological problems must ~~shall~~ be  
1667 diagnosed and treated whenever possible. The Department of  
1668 Children and Family Services and the Agency for Persons with  
1669 Disabilities shall cooperate to ensure the delivery of services  
1670 to persons under the custody or supervision of the department.  
1671 If ~~When it is the intent of~~ the department intends to transfer a  
1672 mentally ill or retarded prisoner who has a mental illness or  
1673 intellectual disability to the Department of Children and Family  
1674 Services or the Agency for Persons with Disabilities, an  
1675 involuntary commitment hearing shall be held in accordance with  
1676 ~~according to the provisions of~~ chapter 393 or chapter 394.

1677 Section 42. Subsection (5) of section 945.12, Florida  
1678 Statutes, is amended to read:

1679 945.12 Transfers for rehabilitative treatment.—

1680 (5) When the department plans to release an offender who is  
1681 a mentally ill or intellectually disabled ~~retarded~~ offender, an  
1682 involuntary commitment hearing shall be held as soon as possible

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1683 before ~~prior to~~ his or her release in accordance with, ~~according~~  
1684 ~~to the provisions of~~ chapter 393 or chapter 394.

1685 Section 43. Subsection (9) of section 945.42, Florida  
1686 Statutes, is amended to read:

1687 945.42 Definitions; ss. 945.40-945.49.—As used in ss.  
1688 945.40-945.49, the following terms shall have the meanings  
1689 ascribed to them, unless the context shall clearly indicate  
1690 otherwise:

1691 (9) "Mentally ill" means an impairment of the mental or  
1692 emotional processes that, ~~of the ability to~~ exercise conscious  
1693 control of one's actions, ~~or of the ability to~~ perceive or  
1694 understand reality, which impairment substantially interferes  
1695 with the a person's ability to meet the ordinary demands of  
1696 living. ~~However, regardless of etiology, except that,~~ for the  
1697 purposes of transferring ~~transfer of~~ an inmate to a mental  
1698 health treatment facility, the term does not include a  
1699 ~~retardation or~~ developmental disability as defined in s. 393.063  
1700 ~~chapter 393,~~ simple intoxication, or conditions manifested only  
1701 by antisocial behavior or substance abuse addiction. However, an  
1702 individual who is ~~mentally retarded or~~ developmentally disabled  
1703 may also have a mental illness.

1704 Section 44. Section 947.185, Florida Statutes, is amended  
1705 to read:

1706 947.185 Application for intellectual disability ~~mental~~  
1707 ~~retardation~~ services as condition of parole.—The Parole  
1708 Commission may require as a condition of parole that any inmate  
1709 who has been diagnosed as having an intellectual disability  
1710 ~~mentally retarded~~ as defined in s. 393.063 shall, upon release,  
1711 apply for services from the Agency for Persons with

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1712 Disabilities.

1713 Section 45. Subsection (4) of section 984.19, Florida  
1714 Statutes, is amended to read:

1715 984.19 Medical screening and treatment of child;  
1716 examination of parent, guardian, or person requesting custody.—

1717 (4) A judge may order that a child alleged to be or  
1718 adjudicated a child in need of services be treated by a licensed  
1719 health care professional. The judge may also order such child to  
1720 receive mental health or intellectual disability ~~retardation~~  
1721 services from a psychiatrist, psychologist, or other appropriate  
1722 service provider. If it is necessary to place the child in a  
1723 residential facility for such services, ~~then~~ the procedures and  
1724 criteria established in s. 394.467 or chapter 393 shall be used,  
1725 as whichever is applicable. A child may be provided ~~mental~~  
1726 ~~health or retardation~~ services in emergency situations, pursuant  
1727 to the procedures and criteria contained in s. 394.463(1) or  
1728 chapter 393, as ~~whichever is~~ applicable.

1729 Section 46. Paragraph (a) of subsection (3) of section  
1730 985.14, Florida Statutes, is amended to read:

1731 985.14 Intake and case management system.—

1732 (3) The intake and case management system shall facilitate  
1733 consistency in the recommended placement of each child, and in  
1734 the assessment, classification, and placement process, with the  
1735 following purposes:

1736 (a) An individualized, multidisciplinary assessment process  
1737 that identifies the priority needs of each ~~individual~~ child for  
1738 rehabilitation and treatment and identifies any needs of the  
1739 child's parents or guardians for services that would enhance  
1740 their ability to provide adequate support, guidance, and

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1741 supervision for the child. The ~~This~~ process begins ~~shall begin~~  
1742 with the detention risk assessment instrument and decision,  
1743 includes ~~shall include~~ the intake preliminary screening and  
1744 comprehensive assessment for substance abuse treatment services,  
1745 mental health services, intellectual disability ~~retardation~~  
1746 services, literacy services, and other educational and treatment  
1747 services as components, additional assessment of the child's  
1748 treatment needs, and classification regarding the child's risks  
1749 to the community. The completed multidisciplinary assessment  
1750 process must ~~shall~~ result in the predisposition report.

1751 Section 47. Paragraph (g) of subsection (1) and subsection  
1752 (5) of section 985.145, Florida Statutes, are amended to read:

1753 985.145 Responsibilities of juvenile probation officer  
1754 during intake; screenings and assessments.—

1755 (1) The juvenile probation officer shall serve as the  
1756 primary case manager for the purpose of managing, coordinating,  
1757 and monitoring the services provided to the child. Each program  
1758 administrator within the Department of Children and Family  
1759 Services shall cooperate with the primary case manager in  
1760 carrying out the duties and responsibilities described in this  
1761 section. In addition to duties specified in other sections and  
1762 through departmental rules, the assigned juvenile probation  
1763 officer shall be responsible for the following:

1764 (g) *Comprehensive assessment.*—The juvenile probation  
1765 officer, pursuant to uniform procedures established by the  
1766 department and upon determining that the report, affidavit, or  
1767 complaint is complete, shall:

1768 1. Perform the preliminary screening and make referrals for  
1769 a comprehensive assessment regarding the child's need for

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1770 substance abuse treatment services, mental health services,  
1771 intellectual disability ~~retardation~~ services, literacy services,  
1772 or other educational or treatment services.

1773 2. If ~~When~~ indicated by the preliminary screening, provide  
1774 for a comprehensive assessment of the child and family for  
1775 substance abuse problems, using community-based licensed  
1776 programs with clinical expertise and experience in the  
1777 assessment of substance abuse problems.

1778 3. If ~~When~~ indicated by the preliminary screening, provide  
1779 for a comprehensive assessment of the child and family for  
1780 mental health problems, using community-based psychologists,  
1781 psychiatrists, or other licensed mental health professionals who  
1782 have clinical expertise and experience in the assessment of  
1783 mental health problems.

1784 (5) If the screening and assessment indicate that the  
1785 interests of the child and the public will be best served  
1786 ~~thereby~~, the juvenile probation officer, with the approval of  
1787 the state attorney, may refer the child for care, diagnostic,  
1788 and evaluation services; substance abuse treatment services;  
1789 mental health services; intellectual disability ~~retardation~~  
1790 services; a diversionary, arbitration, or mediation program;  
1791 community service work; or other programs or treatment services  
1792 voluntarily accepted by the child and the child's parents or  
1793 legal guardian. If ~~Whenever~~ a child volunteers to participate in  
1794 any work program under this chapter or volunteers to work in a  
1795 specified state, county, municipal, or community service  
1796 organization supervised work program or to work for the victim,  
1797 the child is ~~shall be~~ considered an employee of the state for  
1798 the purposes of liability. In determining the child's average

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1799 weekly wage, unless otherwise determined by a specific funding  
1800 program, all remuneration received from the employer is  
1801 considered a gratuity, and the child is not entitled to any  
1802 benefits otherwise payable under s. 440.15~~7~~, regardless of  
1803 whether the child may be receiving wages and remuneration from  
1804 other employment with another employer and regardless of the  
1805 child's future wage-earning capacity.

1806 Section 48. Subsections (2) and (6) of section 985.18,  
1807 Florida Statutes, are amended to read:

1808 985.18 Medical, psychiatric, psychological, substance  
1809 abuse, and educational examination and treatment.—

1810 (2) ~~If Whenever~~ a child has been found to have committed a  
1811 delinquent act, or before such finding with the consent of any  
1812 parent or legal custodian of the child, the court may order the  
1813 child to be treated by a physician. The court may also order the  
1814 child to receive mental health, substance abuse, or intellectual  
1815 disability ~~retardation~~ services from a psychiatrist,  
1816 psychologist, or other appropriate service provider. If it is  
1817 necessary to place the child in a residential facility for such  
1818 services, the procedures and criteria established in chapter  
1819 393, chapter 394, or chapter 397, as ~~whichever is~~ applicable,  
1820 must ~~shall~~ be used. After a child has been adjudicated  
1821 delinquent, if an educational needs assessment by the district  
1822 school board or the Department of Children and Family Services  
1823 has been ~~previously~~ conducted, the court shall order the report  
1824 ~~of such needs assessment~~ included in the child's court record in  
1825 lieu of a new assessment. For purposes of this section, an  
1826 educational needs assessment includes, but is not limited to,  
1827 reports of intelligence and achievement tests, screening for

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1828 learning and other disabilities ~~and other handicaps~~, and  
1829 screening for the need for alternative education.

1830 (6) A physician must ~~shall~~ be immediately notified by the  
1831 person taking the child into custody or the person having  
1832 custody if there are indications of physical injury or illness,  
1833 or the child shall be taken to the nearest available hospital  
1834 for emergency care. A child may be provided mental health,  
1835 substance abuse, or intellectual disability ~~retardation~~  
1836 ~~services~~, in emergency situations, pursuant to chapter 393,  
1837 chapter 394, or chapter 397, as ~~whichever is~~ applicable. After a  
1838 hearing, the court may order the custodial parent or parents,  
1839 guardian, or other custodian, if found able to do so, to  
1840 reimburse the county or state for the expense involved in such  
1841 emergency treatment or care.

1842 Section 49. Paragraph (e) of subsection (1), subsections  
1843 (2) through (4), and paragraph (a) of subsection (6) of section  
1844 985.19, Florida Statutes, are amended to read:

1845 985.19 Incompetency in juvenile delinquency cases.—

1846 (1) If, at any time prior to or during a delinquency case,  
1847 the court has reason to believe that the child named in the  
1848 petition may be incompetent to proceed with the hearing, the  
1849 court on its own motion may, or on the motion of the child's  
1850 attorney or state attorney must, stay all proceedings and order  
1851 an evaluation of the child's mental condition.

1852 (e) For incompetency evaluations related to intellectual  
1853 disability ~~mental retardation~~ or autism, the court shall order  
1854 the Agency for Persons with Disabilities to examine the child to  
1855 determine if the child meets the definition of "intellectual  
1856 disability" ~~"retardation"~~ or "autism" in s. 393.063 and, if so,



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1857 whether the child is competent to proceed with delinquency  
1858 proceedings.

1859 (2) A child who is adjudicated incompetent to proceed, and  
1860 who has committed a delinquent act or violation of law, either  
1861 of which would be a felony if committed by an adult, must be  
1862 committed to the Department of Children and Family Services for  
1863 treatment or training. A child who has been adjudicated  
1864 incompetent to proceed because of age or immaturity, or for any  
1865 reason other than for mental illness, intellectual disability,  
1866 ~~or retardation~~ or autism, must not be committed to the  
1867 department or to the Department of Children and Family Services  
1868 for restoration-of-competency treatment or training services.  
1869 For purposes of this section, a child who has committed a  
1870 delinquent act or violation of law, either of which would be a  
1871 misdemeanor if committed by an adult, may not be committed to  
1872 the department or to the Department of Children and Family  
1873 Services for restoration-of-competency treatment or training  
1874 services.

1875 (3) If the court finds that a child has mental illness,  
1876 intellectual disability ~~mental retardation~~, or autism and  
1877 adjudicates the child incompetent to proceed, the court must  
1878 also determine whether the child meets the criteria for secure  
1879 placement. A child may be placed in a secure facility or program  
1880 if the court makes a finding by clear and convincing evidence  
1881 that:

1882 (a) The child has mental illness, intellectual disability  
1883 ~~mental retardation~~, or autism and because of the mental illness,  
1884 intellectual disability ~~mental retardation~~, or autism:

1885 1. The child is manifestly incapable of surviving with the

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1886 help of willing and responsible family or friends, including  
1887 available alternative services, and without treatment or  
1888 training the child is likely to ~~either~~ suffer from neglect or  
1889 refuse to care for self, and such neglect or refusal poses a  
1890 real and present threat of substantial harm to the child's well-  
1891 being; or

1892 2. There is a substantial likelihood that in the near  
1893 future the child will inflict serious bodily harm on self or  
1894 others, as evidenced by recent behavior causing, attempting, or  
1895 threatening such harm; and

1896 (b) All available less restrictive alternatives, including  
1897 treatment or training in community residential facilities or  
1898 community settings which would offer an opportunity for  
1899 improvement of the child's condition, are inappropriate.

1900 (4) A child who is determined to have mental illness,  
1901 intellectual disability ~~mental retardation~~, or autism, who has  
1902 been adjudicated incompetent to proceed, and who meets the  
1903 criteria set forth in subsection (3), must be committed to the  
1904 Department of Children and Family Services and receive treatment  
1905 or training in a secure facility or program that is the least  
1906 restrictive alternative consistent with public safety. Any  
1907 placement of a child to a secure residential program must be  
1908 separate from adult forensic programs. If the child attains  
1909 competency, ~~then~~ custody, case management, and supervision of  
1910 the child shall ~~will~~ be transferred to the department in order  
1911 to continue delinquency proceedings; however, the court retains  
1912 authority to order the Department of Children and Family  
1913 Services to provide continued treatment or training to maintain  
1914 competency.

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1915 (a) A child adjudicated incompetent due to intellectual  
1916 disability ~~mental retardation~~ or autism may be ordered into a  
1917 secure program or facility designated by the Department of  
1918 Children and Family Services for children who have intellectual  
1919 disabilities ~~with mental retardation~~ or autism.

1920 (b) A child adjudicated incompetent due to mental illness  
1921 may be ordered into a secure program or facility designated by  
1922 the Department of Children and Family Services for children  
1923 having mental illnesses.

1924 (c) If ~~Whenever~~ a child is placed in a secure residential  
1925 facility, the department shall ~~will~~ provide transportation to  
1926 the secure residential facility for admission and from the  
1927 secure residential facility upon discharge.

1928 (d) The purpose of the treatment or training is the  
1929 restoration of the child's competency to proceed.

1930 (e) The service provider must file a written report with  
1931 the court pursuant to the applicable Florida Rules of Juvenile  
1932 Procedure within ~~not later than~~ 6 months after the date of  
1933 commitment, or at the end of any period of extended treatment or  
1934 training, and at any time the Department of Children and Family  
1935 Services, through its service provider, determines the child has  
1936 attained competency or no longer meets the criteria for secure  
1937 placement, or at such shorter intervals as ordered by the court.  
1938 A copy of a written report evaluating the child's competency  
1939 must be filed by the provider with the court and with the state  
1940 attorney, the child's attorney, the department, and the  
1941 Department of Children and Family Services.

1942 (6) (a) If a child is determined to have mental illness,  
1943 intellectual disability ~~mental retardation~~, or autism and is

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1944 found to be incompetent to proceed but does not meet the  
1945 criteria set forth in subsection (3), the court shall commit the  
1946 child to the Department of Children and Family Services and  
1947 ~~shall~~ order the Department of Children and Family Services to  
1948 provide appropriate treatment and training in the community. The  
1949 purpose of the treatment or training is the restoration of the  
1950 child's competency to proceed.

1951 Section 50. Section 985.195, Florida Statutes, is amended  
1952 to read:

1953 985.195 Transfer to other treatment services.—Any child  
1954 committed to the department may be transferred to intellectual  
1955 disability ~~retardation~~, mental health, or substance abuse  
1956 treatment facilities for diagnosis and evaluation pursuant to  
1957 chapter 393, chapter 394, or chapter 397, as ~~whichever is~~  
1958 applicable, for up to a period not to exceed 90 days.

1959 Section 51. Paragraph (b) of subsection (1) of section  
1960 985.61, Florida Statutes, is amended to read:

1961 985.61 Early delinquency intervention program; criteria.—

1962 (1) The Department of Juvenile Justice shall, contingent  
1963 upon specific appropriation and with the cooperation of local  
1964 law enforcement agencies, the judiciary, district school board  
1965 personnel, the office of the state attorney, the office of the  
1966 public defender, the Department of Children and Family Services,  
1967 and community service agencies that work with children,  
1968 establish an early delinquency intervention program, the  
1969 components of which shall include, but not be limited to:

1970 (b) Treatment modalities, including substance abuse  
1971 treatment services, mental health services, and ~~retardation~~  
1972 services for intellectual disabilities.

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1973           Section 52. It is the intent of the Legislature that this  
1974 act not expand or contract the scope or application of any  
1975 provision of the Florida Statutes. This act may not be construed  
1976 to change the application of any provision of Florida Statutes  
1977 to any person.

1978           Section 53. This act shall take effect July 1, 2013.