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CHAPTER 2013-162

## Committee Substitute for Senate Bill No. 142

An act relating to intellectual disabilities; amending s. 39.502, F.S.; substituting the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children; amending ss. 40.013, 86.041, 92.53, 92.54, and 92.55, F.S.; substituting the term “intellectual disability” for the term “mental retardation”; amending s. 320.10, F.S.; substituting the Arc of Florida for the Association for Retarded Citizens; amending ss. 383.14, 393.063, 393.11, and 394.455, F.S.; substituting the term “intellectual disability” for the term “mental retardation”; clarifying in s. 393.063, that the meaning of the terms “intellectual disability” or “intellectually disabled” is the same as the meaning of the terms “mental retardation,” “retarded,” and “mentally retarded” for purposes of matters relating to the criminal laws and court rules; amending s. 400.960, F.S.; revising definitions relating to intermediate care facilities for the developmentally disabled to delete unused terms; amending s. 408.032, F.S.; conforming a cross-reference; amending s. 409.908, F.S.; substituting the term “intellectually disabled” for the term “mentally retarded”; amending ss. 413.20, 440.49, and 499.0054, F.S.; substituting the term “intellectual disability” for the term “mental retardation”; amending s. 514.072, F.S.; conforming a cross-reference and deleting obsolete provisions; amending ss. 627.6041, 627.6615, 641.31, 650.05, 765.204, 849.04, 914.16, 914.17, 916.105, and 916.106, F.S.; substituting the term “intellectual disability” for the term “mental retardation”; amending s. 916.107, F.S.; substituting the term “intellectual disability” for the term “retardation”; providing a directive to the Division of Law Revision and Information; amending ss. 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 918.16, 921.137, 941.38, 944.602, 945.025, 945.12, 945.42, 947.185, 984.19, 985.14, 985.145, 985.18, 985.19, 985.195, and 985.61, F.S.; clarifying in s. 921.137, F.S., that the terms “intellectual disability” or “intellectually disabled” are interchangeable with and have the same meaning as the terms “mental retardation,” or “retardation” and “mentally retarded,” as defined before the effective date of the act; substituting the term “intellectual disability” for the term “mental retardation”; expressing legislative intent; providing an effective date.

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

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

39.502 Notice, process, and service.—

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

Association for Retarded Citizens, or other appropriate mental health or developmental disability advocacy groups and encouraged to seek such services.

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

40.013 Persons disqualified or excused from jury service.—

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

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

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

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

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

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

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

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

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

(1) On motion and hearing in camera and a finding that there is a substantial likelihood that a victim or witness who is under the age of 16 or who has an intellectual disability ~~is a person with mental retardation~~ as defined in s. 393.063 would suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness ~~the child or person with mental retardation~~ is required to testify in open court, or that such victim or witness ~~is otherwise~~ unavailable as defined in s. 90.804(1), the trial court may order the videotaping of the testimony of the victim or witness

in a case, whether civil or criminal in nature, in which videotaped testimony is to be used ~~utilized~~ at trial in lieu of trial testimony in open court.

(2) The motion may be filed by:

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

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

(c) Any party in a civil proceeding; or

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

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

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

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

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

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

(5) Any party, or the court on its own motion, may request the aid of an interpreter, as provided in s. 90.606, to aid the parties in formulating methods of questioning the child or person who has the intellectual disability with mental retardation ~~and in interpreting the answers of the child or person during with mental retardation throughout proceedings conducted under this section.~~

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

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

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

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

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that a victim or witness under the age of 16 or who has an intellectual disability ~~the child or person with mental retardation~~ will suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness ~~the child or person with mental retardation~~ is required to testify in open court, or ~~that such victim or witness~~ is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of ~~the a child under the age of 16 or person with mental retardation who is a~~ a victim or witness be taken outside of the courtroom and shown by means of closed circuit television.

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

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

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

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

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

92.55 Judicial or other proceedings involving victim or witness under the age of 16 or person who has an intellectual disability ~~with mental~~

retardation; special protections; use of registered service or therapy animals.

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

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

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

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

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

(a) The age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant's presence, and any other fact that the court deems relevant; or

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

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

(4) The court may set any other conditions it finds just and appropriate ~~when on the taking the~~ of testimony ~~of~~ by a child, including the use of a service or therapy animal that has been evaluated and registered according to national standards, in any proceeding involving a sexual offense. When deciding whether to permit a child to testify with the assistance of a registered service or therapy animal, the court shall ~~consider take into consideration~~ the age of the child, the interests of the child, the rights of the parties to the litigation, and any other relevant factor that would facilitate the testimony by the child.

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

320.10 Exemptions.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(22)~~(21) “Intermediate care facility for the developmentally disabled” or “ICF/DD” means a residential facility licensed and certified under ~~pursuant~~ to part VIII of chapter 400.

~~(23)~~(22) “Medical/dental services” means medically necessary services that ~~which~~ are provided or ordered for a client by a person licensed under

chapter 458, chapter 459, or chapter 466. Such services may include, but are not limited to, prescription drugs, specialized therapies, nursing supervision, hospitalization, dietary services, prosthetic devices, surgery, specialized equipment and supplies, adaptive equipment, and other services as required to prevent or alleviate a medical or dental condition.

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

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

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

~~(27)~~(26) “Resident” means a any person who has a with developmental disability and resides ~~disabilities residing~~ at a residential facility, whether or not such person is a client of the agency.

~~(28)~~(27) “Residential facility” means a facility providing room and board and personal care for persons who have ~~with~~ developmental disabilities.

~~(29)~~(28) “Residential habilitation” means supervision and training with the acquisition, retention, or improvement in skills related to activities of daily living, such as personal hygiene skills, homemaking skills, and the social and adaptive skills necessary to enable the individual to reside in the community.

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

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

~~(32)~~(31) “Restraint” means a physical device, method, or drug used to control dangerous behavior.



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

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

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

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

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

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

For purposes of the application of the criminal laws and procedural rules of this state to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty, the terms "intellectual disability" or "intellectually disabled" are interchangeable with and have the same meaning as the terms "mental retardation" or "retardation" and "mentally retarded" as defined in this section before July 1, 2013.

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

## 393.11 Involuntary admission to residential services.—

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

## (2) PETITION.—

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

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

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

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

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

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

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

## (3) NOTICE.—

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

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

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

(4) AGENCY PARTICIPATION.—

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

(5) EXAMINING COMMITTEE.—

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

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

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

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

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

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

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

3. The purpose to be served by residential care;

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

5. The appropriate care, habilitation, and treatment.

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

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

(6) COUNSEL; GUARDIAN AD LITEM.—

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

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

(7) HEARING.—

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

(8) ORDER.—

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

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

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

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

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

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

(10) COMPETENCY.—

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

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

(12) APPEAL.—

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

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

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

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

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

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

~~(3) “Autism” has the same meaning as in s. 393.063.~~

~~(4) “Cerebral palsy” has the same meaning as in s. 393.063.~~

~~(3)(5)~~ “Client” means any person determined by the Agency for Persons with Disabilities to be eligible for developmental services.

~~(4)(6)~~ “Developmentally disabled” ~~“developmental disability”~~ has the same meaning as “developmental disability” as ~~that term is defined in s. 393.063.~~

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

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

~~(9) “Prader-Willi syndrome” has the same meaning as in s. 393.063.~~

~~(7)(10)(a)~~ “Restraint” means a physical device, method, or drug used to control behavior.

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

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

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

~~(11) “Retardation” has the same meaning as in s. 393.063.~~

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

(13) ~~“Spina bifida” has the same meaning as in s. 393.063.~~

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

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

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

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

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider’s rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

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

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

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

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

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

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

(6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

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



1. Epilepsy.
2. Diabetes.
3. Cardiac disease.
4. Amputation of foot, leg, arm, or hand.
5. Total loss of sight of one or both eyes or a partial loss of corrected vision of more than 75 percent bilaterally.
6. Residual disability from poliomyelitis.
7. Cerebral palsy.
8. Multiple sclerosis.
9. Parkinson's disease.
10. Meniscectomy.
11. Patellectomy.
12. Ruptured cruciate ligament.
13. Hemophilia.
14. Chronic osteomyelitis.
15. Surgical or spontaneous fusion of a major weight-bearing joint.
16. Hyperinsulinism.
17. Muscular dystrophy.
18. Thrombophlebitis.
19. Herniated intervertebral disk.
20. Surgical removal of an intervertebral disk or spinal fusion.
21. One or more back injuries or a disease process of the back resulting in disability over a total of 120 or more days, if substantiated by a doctor's opinion that there was a preexisting impairment to the claimant's back.
22. Total deafness.
23. Intellectual disability if Mental retardation, provided the employee's intelligence quotient is such that she or he falls within the lowest 2 percentile of the general population. However, it shall not be necessary for the employer does not need to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population.

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

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

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

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

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

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

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

1. Blood disorders.
2. Bone or joint diseases.
3. Kidney diseases or disorders.
4. Cancer.
5. Diabetes.
6. Gall bladder diseases or disorders.
7. Heart and vascular diseases.
8. High blood pressure.
9. Diseases or disorders of the ear or auditory apparatus, including hearing loss or deafness.
10. Mental disease or intellectual disability ~~mental retardation~~.
11. Paralysis.
12. Prostate gland disorders.
13. Conditions of the scalp affecting hair loss.

14. Baldness.
15. Endocrine disorders.
16. Sexual impotence.
17. Tumors.
18. Venereal diseases.
19. Varicose ulcers.
20. Breast enlargement.
21. Purifying blood.
22. Metabolic disorders.
23. Immune system disorders or conditions affecting the immune system.
24. Extension of life expectancy.
25. Stress and tension.
26. Brain stimulation or performance.
27. The body's natural defense mechanisms.
28. Blood flow.
29. Depression.
30. Human immunodeficiency virus or acquired immune deficiency syndrome or related disorders or conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

641.31 Health maintenance contracts.—

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

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

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

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

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

650.05 Plans for coverage of employees of political subdivisions.—

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

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

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

765.204 Capacity of principal; procedure.—

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

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

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

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

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

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

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

(1) A guardian ad litem or other advocate shall be appointed by the court to represent a minor in any criminal proceeding if the minor is a victim of or witness to child abuse or neglect, ~~or if the minor is a victim of a sexual offense,~~ or a witness to a sexual offense committed against another minor. The court

may appoint a guardian ad litem or other advocate in any other criminal proceeding in which a minor is involved as either a victim or a witness. The guardian ad litem or other advocate shall have full access to all evidence and reports introduced during the proceedings, may interview witnesses, may make recommendations to the court, shall be noticed and have the right to appear on behalf of the minor at all proceedings, and may request additional examinations by medical doctors, psychiatrists, or psychologists. ~~It is the duty of The guardian ad litem or other advocate~~ shall ~~to perform the following services:~~

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

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

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

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

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

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

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

(3) Any person participating in a judicial proceeding as a guardian ad litem or other advocate ~~is~~ shall be presumed prima facie to be acting in good

faith and in so doing is ~~shall~~ be immune from any liability, civil or criminal, which ~~that~~ otherwise might be incurred or imposed.

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

916.105 Legislative intent.—

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

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

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

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

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

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



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

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

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

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

~~(15)(14)~~ (14) “Restraint” means a physical device, method, or drug used to control dangerous behavior.

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

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

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical

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

(13)(15) “Intellectual disability” ~~“Retardation”~~ has the same meaning as in s. 393.063.

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

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

916.107 Rights of forensic clients.—

(1) RIGHT TO INDIVIDUAL DIGNITY.—

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

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

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

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not

given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client or others.

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

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

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

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

hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

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

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

916.301 Appointment of experts.—

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

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

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

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

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

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

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

916.3012 Mental competence to proceed.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) ADMISSION TO A FACILITY.—

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

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

(3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

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

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

916.3025 Jurisdiction of committing court.—

(1) The committing court shall retain jurisdiction in the case of any defendant found to be incompetent to proceed due to intellectual disability ~~retardation~~ or autism and ordered into a forensic facility designated by the agency for defendants who have intellectual disabilities ~~mental retardation~~ or autism. A defendant may not be released except by the order of the committing court. An administrative hearing examiner does not have

jurisdiction to determine issues of continuing commitment or release of any defendant involuntarily committed pursuant to this chapter.

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

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

(1) The charges against any defendant found to be incompetent to proceed due to intellectual disability ~~retardation~~ or autism shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed 2 years, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges may be refiled by the state if the defendant is declared competent to proceed in the future.

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

(3) If the defendant is considered to need involuntary residential services for reasons described in subsection (2) and, further, there is a substantial likelihood that the defendant will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate, the agency, the state attorney, or the defendant's counsel may request the committing court to continue the defendant's placement in a secure facility pursuant to this part. Any placement so continued ~~under this subsection~~ must be reviewed by the court at least annually at a hearing. The annual review and hearing must ~~shall~~ determine whether the defendant continues to meet the criteria described in this subsection and, if so, whether the defendant still requires involuntary placement in a secure facility and whether the defendant is receiving adequate care, treatment, habilitation, and rehabilitation, including psychotropic medication and behavioral programming. Notice of the annual review and review hearing shall be given to the state attorney and the defendant's attorney. ~~In no instance may~~ A defendant's placement in a secure facility may not ~~may~~ exceed the maximum sentence for the crime for which the defendant was charged.

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

## 916.304 Conditional release.—

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

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

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

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

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

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

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

(2) ~~If When~~ the victim of a sex offense is testifying concerning that offense in any civil or criminal trial, the court shall clear the courtroom of all persons upon the request of the victim, regardless of the victim's age or mental capacity, except that parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and, at the request of



the victim, victim or witness advocates designated by the state attorney may remain in the courtroom.

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

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

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

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

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

(4) After a defendant who has given notice of his or her intention to raise intellectual disability ~~mental retardation~~ as a bar to the death sentence is convicted of a capital felony and an advisory jury has returned a recommended sentence of death, the defendant may file a motion to determine whether the defendant is intellectually disabled ~~has mental retardation~~. Upon receipt of the motion, the court shall appoint two experts in the field of intellectual disabilities ~~mental retardation~~ who shall evaluate the defendant and report their findings to the court and all interested parties prior to the final sentencing hearing. Notwithstanding s. 921.141 or s. 921.142, the final sentencing hearing shall be held without a jury. At the final sentencing hearing, the court shall consider the findings of the court-appointed experts and consider the findings of any other expert which is offered by the state or the defense on the issue of whether the defendant has an intellectual disability ~~mental retardation~~. If the court finds, by clear and convincing evidence, that the defendant has an intellectual disability ~~mental retardation~~ as defined in subsection (1), the court may not impose a sentence

of death and shall enter a written order that sets forth with specificity the findings in support of the determination.

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

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

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

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

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

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

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

(2) For the purpose of this section:

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

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

944.602 Agency notification before release of intellectually disabled ~~mentally retarded~~ inmates.—Before the release by parole, release by reason

of gain-time allowances provided for in s. 944.291, or expiration of sentence of any inmate who has been diagnosed as having an intellectual disability mentally retarded as defined in s. 393.063, the Department of Corrections shall notify the Agency for Persons with Disabilities in order that sufficient time be allowed to notify the inmate or the inmate's representative, in writing, at least 7 days before ~~prior to~~ the inmate's release, of available community services.

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

945.025 Jurisdiction of department.—

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

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

945.12 Transfers for rehabilitative treatment.—

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

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

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

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

s. 393.063 chapter 393, simple intoxication, or conditions manifested only by antisocial behavior or substance abuse addiction. However, an individual who is ~~mentally retarded or~~ developmentally disabled may also have a mental illness.

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

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

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

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

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

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

985.14 Intake and case management system.—

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

(a) An individualized, multidisciplinary assessment process that identifies the priority needs of each individual child for rehabilitation and treatment and identifies any needs of the child's parents or guardians for services that would enhance their ability to provide adequate support, guidance, and supervision for the child. The ~~This~~ process begins ~~shall begin~~ with the detention risk assessment instrument and decision, includes ~~shall include~~ the intake preliminary screening and comprehensive assessment for substance abuse treatment services, mental health services, intellectual disability ~~retardation~~ services, literacy services, and other educational and treatment services as components, additional assessment of the child's treatment needs, and classification regarding the child's risks to the

community. The completed multidisciplinary assessment process must shall result in the predisposition report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

985.19 Incompetency in juvenile delinquency cases.—

(1) If, at any time prior to or during a delinquency case, the court has reason to believe that the child named in the petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion

of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.

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

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

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

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

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

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

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

(4) A child who is determined to have mental illness, intellectual disability ~~mental retardation~~, or autism, who has been adjudicated

incompetent to proceed, and who meets the criteria set forth in subsection (3), must be committed to the Department of Children and Family Services and receive treatment or training in a secure facility or program that is the least restrictive alternative consistent with public safety. Any placement of a child to a secure residential program must be separate from adult forensic programs. If the child attains competency, ~~then~~ custody, case management, and supervision of the child shall ~~will~~ be transferred to the department in order to continue delinquency proceedings; however, the court retains authority to order the Department of Children and Family Services to provide continued treatment or training to maintain competency.

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

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

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

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

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

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

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

985.195 Transfer to other treatment services.—Any child committed to the department may be transferred to intellectual disability ~~retardation~~,



mental health, or substance abuse treatment facilities for diagnosis and evaluation pursuant to chapter 393, chapter 394, or chapter 397, as ~~whichever~~ is applicable, for up to a period not to exceed 90 days.

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

985.61 Early delinquency intervention program; criteria.—

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

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

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

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

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.