

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Storms, Chair
Senator Rich, Vice Chair

MEETING DATE: Thursday, February 9, 2012

TIME: 1:15 —3:15 p.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Rich, Vice Chair; Senators Detert, Dockery, Gibson, and Latvala

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1 | SB 1382 Bennett (Compare CS/CS/H 1077) | Service Animals; Revising designation and duties of a service animal; providing rights of an individual with a disability accompanied by a service animal or a person who trains or raises service animals with regard to public or housing accommodations under certain conditions; providing penalties, etc. CF 02/09/2012 Fav/CS BC | Fav/CS Yeas 5 Nays 0 |
| 2 | SB 460 Altman (Similar H 991, Compare CS/S 1516) | Intellectual Disabilities; Substituting the Arc of Florida for the Association for Retarded Citizens for purposes of certain proceedings relating to children; substituting the term "intellectual disability" for the term "mental retardation"; clarifying in s. 393.063, F.S., 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; revising definitions relating to intermediate care facilities for the developmentally disabled to delete unused terms, etc. CF 02/09/2012 Fav/CS CJ BC | Fav/CS Yeas 5 Nays 0 |
| 3 | CS/SB 554 Education Pre-K - 12 / Ring (Similar H 589) | Disability Awareness; Requiring each district school board to provide disability history and awareness instruction in all K-12 public schools; requiring the Department of Education to assist in creating the curriculum for the instruction; providing for individual presenters who have disabilities to provide the instruction; requiring the Department of Education to establish a disability history and awareness advisory council; requiring the department to act as the fiscal agent for all financial transactions required by the council; providing responsibilities of the council, etc. ED 01/09/2012 Fav/CS CF 01/25/2012 Temporarily Postponed CF 02/09/2012 Fav/CS BC | Fav/CS Yeas 4 Nays 1 |

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Thursday, February 9, 2012, 1:15 —3:15 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 4 | SB 144 Flores (Similar H 1467) | Seclusion and Restraint on Students With Disabilities in Public Schools; Requiring that manual physical restraint be used only in an emergency when there is an imminent risk of serious injury or death to the student or others; providing restrictions on the use of manual physical restraint; prohibiting the use of manual physical restraint by school personnel who are not certified to use district-approved methods for applying restraint techniques; requiring that each school medically evaluate a student after the student is manually physically restrained; prohibiting school personnel from placing a student in seclusion; providing requirements for the use of time-out; requiring that a school district report its training and certification procedures to the Department of Education, etc. | Temporarily Postponed |
| | | ED 01/30/2012 Favorable CF 02/09/2012 BC | |
| 5 | CS/SB 964 Criminal Justice / Benacquisto (Similar CS/H 437, Compare H 215, S 436) | Protection of Minors; Citing this act as the "Protect Our Children Act"; requiring a person convicted of a second or subsequent violation of a specified video voyeurism provision to register as a sexual offender if the victim of the violation was a minor; providing that if more than one child is involved in a violation of provisions prohibiting sexual performance by a child, a separate offense may be charged for each child; requiring a person convicted of a video voyeurism violation to register as a sexual offender if the victim of the violation was a minor; revising the definition of the term "place and time when a person has a reasonable expectation of privacy" to include the interior of a residential dwelling; increasing the classification of specified video voyeurism offenses involving minors; ranking a violation of s. 810.145(8)(b), F.S., above its default value for purposes of the offense severity ranking chart of the Criminal Punishment Code, etc. | Fav/CS Yeas 6 Nays 0 |
| | | CJ 01/25/2012 Fav/CS CF 02/09/2012 Fav/CS BC | |
| 6 | Other Related Meeting Materials | | |

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1382

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bennett

SUBJECT: Service Animals

DATE: February 9, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Preston | Farmer | CF | Fav/CS |
| 2. | | | BC | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill makes changes to the law relating to the rights of an individual with a disability and the use of a service animal including the following:

- Cites the act as the “Dawson and David Caras Act;”
- Removes provisions relating to service animals from s. 413.08, F.S.; and
- Creates s. 413.083, F.S., relating to the use of a service animal. The newly created section:
 - Creates definitions for the terms "individual requiring assistance", "owner", and "service animal" relating to the use of service animals;
 - Extends the use of service animals to a person with a psychological or neurological disability;
 - Provides that an individual with a disability or a person who trains service animals and is a student at a public or private school in this state has the right to be accompanied by a service animal;
 - Provides that if federal law, rule or agency requires a public accommodation to provide care, food, or a special location for an animal to relieve itself, that public accommodation must do so;
 - Prohibits a person, firm or corporation, from denying or interfering with the renting, leasing, or purchasing of housing accommodations for an individual who requires assistance or for a service animal trainer. Penalties are imposed for a violation of this prohibition;
 - Provides that an individual with a service animal is entitled to full and equal advantages, facilities and privileges in all housing accommodations;

- Provides that a trainer of service animals has the same rights, privileges and liabilities as an individual requiring assistance as it relates to a service animal; and
- Creates a new second-degree misdemeanor for any person who knowingly and fraudulently misrepresents himself or herself as a service animal owner or trainer.

This bill amends s. 413.08 and creates s. 413.083 of the Florida Statutes:

II. Present Situation:

Background

The first systematic use of companion animals to assist individuals with disabilities was the training of dogs to assist people who are blind and visually impaired. The first guide dog in the United States was trained in 1929 at The Seeing Eye, Inc., in Morristown, New Jersey.¹ For many years The Seeing Eye was the only training school for guide dogs in this country, which is why it is not uncommon to hear guide dogs called "seeing eye dogs." Since the 1960's, the practice of using companion animals to increase the physical mobility and personal independence of individuals with disabilities has become more widespread.²

While guide dogs for the blind are the most commonly identified companions for people with disabilities, a number of other training programs have been initiated. In 1975, Canine Companions for Independence (CCI) pioneered the concept of the service dog, a highly trained canine able to provide specialized services to assist people with disabilities.³ CCI classifies specific types of service dogs by function:

- Service dogs perform tasks such as operating light switches, retrieving items, pulling wheelchairs, and opening doors;
- Hearing dogs assist people who are deaf or hearing impaired by alerting them to sounds such as telephone rings, crying infants, alarms, and people calling them by name;
- Facility dogs work with a professional in a visitation, education or healthcare setting; and
- Skilled companion dogs enhance independence for children and adults with physical, cognitive and developmental disabilities.

More recently, there has been an increase in the use of what is being termed, "psychiatric service dogs" that are trained to work or perform tasks for the benefit of an individual disabled by mental illness. Psychiatric service dogs are being used with individuals diagnosed with major depression, bipolar disorder, schizophrenia, panic disorder, social anxiety disorder, agoraphobia, obsessive compulsive disorder and post-traumatic stress disorder. They are also finding their way into homes with autistic children.^{4,5}

¹The Seeing Eye, Inc. Retrieved February 2, 2012, from www.seeingeye.org.

² Kelly Henderson, *No Dogs Allowed?*, *Federal Policies On Access For Service Animals*. Animal Welfare Information Center Newsletter, Summer 1996, <http://www.nal.usda.gov/awic/newsletters/v7n2/7n2hende.htm>.

³ Canine Companions for Independence. Retrieved February 2, 2012, from www.caninecompanions.org

⁴ The Psychiatric Dog Service Society defines a psychiatric service dog as dog that is individually trained to do work or perform tasks for the benefit of an individual disabled by severe mental illness. The society recommends that disabled individuals train their own dogs under the guidance of a 'regular' professional dog trainer in private sessions. Retrieved February 3, 2012, from <http://www.psychdog.org/brochures/consumer.pdf>.

While dogs are by far the most common type of service animal, a wide variety of animals including cats, pot bellied pigs, capuchin monkeys, miniature horses, and birds are now being trained to assist individuals with disabilities. In 1979, Helping Hands, Monkey Helpers for the Disabled, trained and placed the first capuchin monkey as a helper and a companion to an individual who was paralyzed. From its inception, the organization's mission has been to provide assistance to people with the greatest needs: those individuals who have become quadriplegic as a result of an accident, injury, or disease.⁶

Social animals, those used to address animal-assisted therapy goals, are trained and used in a wide variety of settings including hospitals, nursing facilities, schools, and other institutions. While several national organizations provide structured training and certification programs for these animals, most are not recognized as "service animals" under federal law.⁷

Federal Law⁸

As the use of service animals became increasingly popular, individual states and the federal government enacted legislation providing access rights for these animals.⁹ While all fifty states have now passed some legislation related to service animal access, nonetheless, when federal legislation provides greater protection for individuals with disabilities, it preempts local and state laws and regulations.¹⁰ The major federal legislation addressing individuals with disabilities who have service animals includes:

⁵ Heeling Allies privately trains Mental Health Service Dogs, Emotional Support Dogs and Skilled Companion Dogs that enrich the lives of individuals living with psychological, neurological and developmental impairments such as, Post Traumatic Stress Disorder (PTSD), Depressive and Anxiety Disorders, Asperger's Syndrome, and Tourette Syndrome. Retrieved February 3, 2012, from <http://www.mentalhealthdogs.org/default.html>.

⁶ Helping Hands raises, trains, and places capuchin monkeys to be service animals: the monkeys are born at a closed colony at Southwick's Zoo in the Boston area; they are raised in volunteer foster homes until they move to the training center. The monkeys are educated at the Helping Hands Carvel Foundation Training Center in Boston where they are taught essential helping tasks, then matched by personality and needs to a particular recipient, and finally prepared for tasks specific to the needs of the selected recipient. Monkeys are placed in the home of the recipient during a special placement week that includes eight days of set-up and on-site training by the placement team. Each monkey is supported post-placement by a placement specialist (including life-long health and behavioral support) and training for new tasks, when needed. Monkeys are provided with lifetime medical care overseen and paid for by Helping Hands, including all necessary care for chronic illnesses and geriatric care, by a specially selected network of veterinary and human doctors. Finally, the monkeys are given all necessary respite and retirement care, if needed. Retrieved February 5, 2012, from www.monkeyhelpers.org.

⁷ The Delta Society, for example, has a Pet Partners program that trains volunteers and screens volunteers and their pets for visiting animal programs in hospitals, nursing homes, rehabilitation centers, schools and other facilities. The Pet Partners program was established in 1990 to ensure that "both ends of the leash," people as well as animals, were well-prepared to participate in animal-assisted activity and animal-assisted therapy programs. Retrieved February 3, 2012, from <http://www.deltasociety.org/Page.aspx?pid=259>.

⁸ In addition to the Fair Housing Act and the Americans with Disabilities Act, the Air Carrier Access Act of 1986 (ACAA) was the first Federal legislation to directly address public access rights of people with disabilities who have service animals. The ACAA regulations provide one of the most specific statements of federal policy regarding accommodation of service animals. The act requires air carriers to permit service animals to accompany people with disabilities on flights. (14 CFR 382.55 (a) (16).

⁹ Kelly Henderson, *No Dogs Allowed?, Federal Policies On Access For Service Animals*. Animal Welfare Information Center Newsletter, Summer 1996, <http://www.nal.usda.gov/awic/newsletters/v7n2/7n2hende.htm>.

¹⁰ U.S. Department of Justice, Civil Rights Division, Disability Rights Section. *Commonly Asked Questions About Service Animals in Places of Business*, Retrieved February 2, 2012, from <http://www.ada.gov/qasrvc.htm>.

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act defines an individual with a disability as someone who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The ADA provides that persons with disabilities shall not be discriminated against when applying for a job, and that public services and transportation shall accommodate such individuals.¹¹

The ADA provides that an individual with a disability is permitted to bring his or her service animal to publicly and privately owned businesses that serve the public such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.¹²

Effective March 15, 2011, the federal Department of Justice (DOJ) offered definitions relating to nondiscrimination on the basis of disability by public accommodations and in commercial facilities. According to DOJ's definitions, a service animal is "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. . ." "Other species of animals are specifically excluded from the definition of service animals. According to DOJ, the "provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."¹³

Fair Housing Act

The Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. Its coverage includes private housing, housing that receives federal financial assistance, and state and local government housing. It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence.¹⁴

The U.S. Department of Housing and Urban Development investigates complaints of violations against the Fair Housing Act, including discrimination in housing.¹⁵ If someone is convicted of violating the Fair Housing Act he or she may be required to do the following:

- Compensate the victim for actual damages, including humiliation, pain and suffering;
- Provide injunctive or other equitable relief;
- Pay the federal government a civil penalty to vindicate the public interest;¹⁶ and
- Pay reasonable attorney's fees and costs.¹⁷

¹¹ 42 U.S.C. 12101, et. seq.

¹² *Id.*

¹³ 28 C.F.R. s. 36.104.

¹⁴ 42 U.S.C. s. 3601, et. seq.

¹⁵ U.S. Department of Housing and Urban Development. Housing. Retrieved February 2, 2012, from http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/enforcement.

¹⁶ The maximum penalties are \$16,000 for a first violation and \$65,000 for a third violation within seven years.

Florida Law

In 2005, the Florida Legislature significantly amended the law related to service animals to more closely mirror the provisions of the federal Americans with Disabilities Act of 1990. Specifically, the legislation amended definitions and changed the manner in which state and local governments and public accommodation facilities must provide access to service animals that accompany individuals with disabilities.¹⁸

Raising and Training Service Animals

While the earliest formal training of guide dogs in the United States dates back 65 years, widespread training has only occurred during the last three decades. There are no universally accepted methods for training or certifying assistance dogs. However, Assistance Dogs International (ADI) has developed minimum training standards for its member organizations to follow. In addition to the training requirements, ADI has developed a Code of Standards and Ethics for its members and is creating minimum requirements for assistance dog partners and assistance dog trainers.¹⁹

Likewise, service animal trainers are not "certified" and may be independent or affiliated with a service animal training school. In addition, individuals with disabilities sometimes train their own service animals. Although service animals are defined in the ADA, there are no criteria requiring identification or certification of a service animal. Public entities are prohibited from requiring certification of a service animal for the purpose of access.²⁰

The largest of service animal training organizations, CCI has five training centers across the United States, including one in Orlando, Florida.²¹ Other groups operate training facilities either nationally or regionally. Policies vary by organization although many facilities prepare dogs to serve both mobility-impaired individuals and those with hearing impairments. Although there are no set training criteria, service dogs, guide dogs, and hearing dogs trained by assistance animal schools do go through a similar pattern of training, as described below:²²

- Puppies are given to volunteer "puppy raisers" who will care for them until they are old enough to begin advanced training. During this phase, most puppies will be taken to obedience training to learn basic obedience commands. At the same time, they are socialized with other dogs and humans. Some puppy raisers take their puppies with them to school or work. The intent is to expose the dog to as many different experiences as possible so it will be well-mannered and not easily distracted by new sights, sounds, and smells. When in

¹⁷ U.S. Department of Housing and Urban Development. Housing. Retrieved February 2, 2012, from http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/enforcement

¹⁸ Chapter 2005-63, L.O.F.

¹⁹ Assistance Dogs International. Training Standards. Retrieved February 5, 2012, from <http://www.assistancedogsinternational.org/Standards/>.

²⁰ U.S. Department of Justice, Civil Rights Division, Disability Rights Section. *Commonly Asked Questions About Service Animals in Places of Business*, Retrieved February 2, 2012, from <http://www.ada.gov/qasrvc.htm>.

²¹ Canine Companions for Independence. Retrieved February 5, 2012, from <http://www.cci.org/site/c.cdKGIRNqEmG/b.4010989/k.C6DF/History.htm>.

²² Canine Companions for Independence. Retrieved February 5, 2012, from http://www.cci.org/site/c.cdKGIRNqEmG/b.4011115/k.65BA/Training_assistance_dogs.htm.

public, these puppies often wear capes identifying them as puppies in training. Some states allow puppies in training to have access to public accommodations including public transportation, but this varies by state.²³

- When puppies are 15-18 months of age they are returned to the training school to receive their assistance dog training. They are carefully evaluated to test their temperament and natural abilities. Dogs selected to continue in the training program spend additional time – typically 6-9 months – learning to perform specific tasks (e.g., guiding a person who is blind, responding to doorbells and telephones, fetching dropped items, pulling a wheelchair). Not every dog makes it through the training program, either because of temperament, health or physical problems.²⁴
- After a service dog completes its training program, it is matched with a human partner. Trainers attempt to match skills, physical size, and personality types of both the dog and human. Teams are then trained together for up to several weeks or longer, if needed, so they can bond and learn how to work with each other and develop proper public etiquette. During this phase the person also learns about caring for his or her dog, including veterinary care requirements, flea and tick control, grooming, and good nutrition. Once the trainer is satisfied the pair has sufficiently bonded and learned to work together, the team graduates. Some training organizations provide annual follow-up evaluations to ensure that no bad habits have developed and to correct any training deficiencies. At that time they also can retrain the dog or person if a person's functional abilities have changed.²⁵

While many federal laws grant access to a disabled person with their service animal, these laws do not apply to service animals in training or animals being fostered until they are old enough to begin training. Some states have implemented laws to bridge this gap in coverage to allow volunteers, who raise young animals for trainers or who are trainers, full access to places of public accommodation for the purposes of socializing and training. Some of these laws enacted by states, however, have provisions limited to only one type of animal or to animals being raised or trained by “certified” centers or trainers.²⁶

The Animal Behavior College offers courses for people interested in becoming a certified dog trainer. Courses include, but are not limited to, a basic study of canines, learning theory, training, obedience and safety.²⁷ Similar courses are also available for miniature horse trainers²⁸ and monkey trainers.²⁹

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Animal Legal and Historical Center. Michigan State College of Law, Table of State Assistance Animal Laws. Retrieved February 4, 2012, from <http://animallaw.info/articles/ddusassistanceanimaltable.htm>.

²⁷ Animal Behavior College. Retrieved February 5, 2012, from <http://www.animalbehaviorcollege.com/curriculum.asp>.

²⁸ The Guide Horse Foundation. Retrieved February 5, 2012, from <http://www.guidehorse.com/training.htm>.

²⁹ Helping Hands, Monkey Helpers for the Disabled. Retrieved February 5, 2012, from <http://www.monkeyhelpers.org/ourprograms/monkey-college/>.

III. Effect of Proposed Changes:

The bill makes a number of changes to law relating to the rights of an individual with a disability and the use of a service animal. Specifically, the bill:

- Cites the act as the “Dawson and David Caras Act;”
- Removes provisions relating to service animals from s. 413.08, F.S.; and
- Creates s. 413.083, F.S., relating to the use of a service animal. The newly created section:
 - Creates definitions for the terms "individual requiring assistance", "owner", and "service animal" relating to the use of service animals;
 - Extends the use of service animals to a person with a psychological or neurological disability;
 - Provides that an individual, with a disability or a person who trains service animals and is a student at a public or private school in this state, has the right to be accompanied by a service animal;
 - Provides that if federal law, rule or agency requires a public accommodation to provide care, food, or a special location for an animal to relieve itself, that public accommodation must do so;
 - Prohibits a person, firm or corporation, from deny or interfering with the renting, leasing, or purchasing of housing accommodations for an individual requiring assistance or a service animal trainer. A violation of this provision results in a noncriminal violation for the first offense. The offender may contest the citation or may, within 30 days after receiving the citation, elect to pay a civil penalty of \$50 plus court costs. A misdemeanor of the second degree is imposed for repeat offenders;
 - Provides that an individual with a service animal is entitled to full and equal advantages, facilities and privileges in all housing accommodations;
 - Provides that a trainer of service animals has the same rights, privileges and liabilities as an individual requiring assistance as it relates to a service animal; and
 - Creates a new second-degree misdemeanor for any person who knowingly and fraudulently misrepresents himself or herself as a service animal owner or trainer.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Children, Families, and Elder Affairs Committee on February 9, 2012:

The committee substitute is different from the original bill in that it:

- Cites the act as the “Dawson and David Caras Act;”
- Removes provisions relating to service animals from s. 413.08, F.S. and creates s. 413.083, F.S., relating to the use of a service animal. The newly created section:
 - Creates definitions for the terms "individual requiring assistance", "owner", and "service animal" relating to the use of service animals;
 - Provides that if federal law, rule or agency requires a public accommodation to provide care, food, or a special location for an animal to relieve itself, that public accommodation must do so;
 - Provides that a person, firm or corporation, may not deny or interfere with the renting, leasing, or purchasing of housing accommodations for an individual requiring assistance or a service animal trainer and provides penalties for violation;
 - Provides that a trainer of service animals has the same rights, privileges and liabilities as an individual requiring assistance as it relates to a service animal, but does not extend those rights, privileges, and liabilities to those who raise service animals;
 - Removes reference to “accredited school”, and

- Removes criteria that must be met in order for trainers to have access to housing accommodations.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

| | | |
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| Senate | . | House |
| Comm: RCS | . | |
| 02/10/2012 | . | |
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Dawson and David Caras Act."

Section 2. Section 413.08, Florida Statutes, is amended to read:

413.08 Rights of an individual with a disability; ~~use of a service animal~~; discrimination in public employment or housing accommodations; penalties.-



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13 (1) As used in this section ~~and s. 413.081~~, the term:
14 (a) "Housing accommodation" means any real property or
15 portion thereof which is used or occupied, or intended,
16 arranged, or designed to be used or occupied, as the home,
17 residence, or sleeping place of one or more persons, but does
18 not include any single-family residence, the occupants of which
19 rent, lease, or furnish for compensation not more than one room
20 therein.
21 (b) "Individual with a disability" means a person who is
22 deaf, hard of hearing, blind, visually impaired, or otherwise
23 physically disabled. As used in this paragraph, the term:
24 1. "Hard of hearing" means an individual who has suffered a
25 permanent hearing impairment that is severe enough to
26 necessitate the use of amplification devices to discriminate
27 speech sounds in verbal communication.
28 2. "Physically disabled" means any person who has a
29 physical impairment that substantially limits one or more major
30 life activities.
31 (c) "Public accommodation" means a common carrier,
32 airplane, motor vehicle, railroad train, motor bus, streetcar,
33 boat, or other public conveyance or mode of transportation;
34 hotel; lodging place; place of public accommodation, amusement,
35 or resort; and other places to which the general public is
36 invited, subject only to the conditions and limitations
37 established by law and applicable alike to all persons.
38 ~~(d) "Service animal" means an animal that is trained to~~
39 ~~perform tasks for an individual with a disability. The tasks may~~
40 ~~include, but are not limited to, guiding a person who is~~
41 ~~visually impaired or blind, alerting a person who is deaf or~~



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42 ~~hard of hearing, pulling a wheelchair, assisting with mobility~~
43 ~~or balance, alerting and protecting a person who is having a~~
44 ~~seizure, retrieving objects, or performing other special tasks.~~
45 ~~A service animal is not a pet.~~

46 (2) An individual with a disability is entitled to full and
47 equal accommodations, advantages, facilities, and privileges in
48 all public accommodations. This section does not require any
49 person, firm, business, or corporation, or any agent thereof, to
50 modify or provide any vehicle, premises, facility, or service to
51 a higher degree of accommodation than is required for a person
52 not so disabled.

53 ~~(3) An individual with a disability has the right to be~~
54 ~~accompanied by a service animal in all areas of a public~~
55 ~~accommodation that the public or customers are normally~~
56 ~~permitted to occupy.~~

57 ~~(a) Documentation that the service animal is trained is not~~
58 ~~a precondition for providing service to an individual~~
59 ~~accompanied by a service animal. A public accommodation may ask~~
60 ~~if an animal is a service animal or what tasks the animal has~~
61 ~~been trained to perform in order to determine the difference~~
62 ~~between a service animal and a pet.~~

63 ~~(b) A public accommodation may not impose a deposit or~~
64 ~~surcharge on an individual with a disability as a precondition~~
65 ~~to permitting a service animal to accompany the individual with~~
66 ~~a disability, even if a deposit is routinely required for pets.~~

67 ~~(c) An individual with a disability is liable for damage~~
68 ~~caused by a service animal if it is the regular policy and~~
69 ~~practice of the public accommodation to charge nondisabled~~
70 ~~persons for damages caused by their pets.~~



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71 ~~(d) The care or supervision of a service animal is the~~
72 ~~responsibility of the individual owner. A public accommodation~~
73 ~~is not required to provide care or food or a special location~~
74 ~~for the service animal or assistance with removing animal~~
75 ~~excrement.~~

76 ~~(e) A public accommodation may exclude or remove any animal~~
77 ~~from the premises, including a service animal, if the animal's~~
78 ~~behavior poses a direct threat to the health and safety of~~
79 ~~others. Allergies and fear of animals are not valid reasons for~~
80 ~~denying access or refusing service to an individual with a~~
81 ~~service animal. If a service animal is excluded or removed for~~
82 ~~being a direct threat to others, the public accommodation must~~
83 ~~provide the individual with a disability the option of~~
84 ~~continuing access to the public accommodation without having the~~
85 ~~service animal on the premises.~~

86 ~~(3)(4)~~ A Any person, firm, or corporation, or the agent of
87 any person, firm, or corporation, who denies or interferes with
88 admittance to, or enjoyment of, a public accommodation or
89 otherwise interferes with the rights of an individual with a
90 disability ~~or the trainer of a service animal while engaged in~~
91 ~~the training of such an animal pursuant to subsection (8),~~
92 commits a misdemeanor of the second degree, punishable as
93 provided in s. 775.082 or s. 775.083.

94 ~~(4)(5)~~ It is the policy of this state that an individual
95 with a disability be employed in the service of the state or
96 political subdivisions of the state, in the public schools, and
97 in all other employment supported in whole or in part by public
98 funds, and an employer may not refuse employment to such a
99 person on the basis of the disability alone, unless it is shown



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100 that the particular disability prevents the satisfactory
101 performance of the work involved.

102 (5)~~(6)~~ An individual with a disability is entitled to rent,
103 lease, or purchase, as other members of the general public, any
104 housing accommodations offered for rent, lease, or other
105 compensation in this state, subject to the conditions and
106 limitations established by law and applicable alike to all
107 persons.

108 ~~(a)~~ This section does not require any person renting,
109 leasing, or otherwise providing real property for compensation
110 to modify her or his property in any way or provide a higher
111 degree of care for an individual with a disability than for a
112 person who is not disabled.

113 ~~(b) An individual with a disability who has a service
114 animal or who obtains a service animal is entitled to full and
115 equal access to all housing accommodations provided for in this
116 section, and such a person may not be required to pay extra
117 compensation for the service animal. However, such a person is
118 liable for any damage done to the premises or to another person
119 on the premises by such an animal. A housing accommodation may
120 request proof of compliance with vaccination requirements.~~

121 (6)~~(7)~~ An employer covered under subsection (4) ~~(5)~~ who
122 discriminates against an individual with a disability in
123 employment, unless it is shown that the particular disability
124 prevents the satisfactory performance of the work involved, or
125 any person, firm, or corporation, or the agent of any person,
126 firm, or corporation, providing housing accommodations as
127 provided in subsection (5) ~~(6)~~ who discriminates against an
128 individual with a disability, commits a misdemeanor of the



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129 second degree, punishable as provided in s. 775.082 or s.
130 775.083.

131 ~~(8) Any trainer of a service animal, while engaged in the~~
132 ~~training of such an animal, has the same rights and privileges~~
133 ~~with respect to access to public facilities and the same~~
134 ~~liability for damage as is provided for those persons described~~
135 ~~in subsection (3) accompanied by service animals.~~

136 Section 3. Section 413.083, Florida Statutes, is created to
137 read:

138 413.083 Use of a service animal; penalties.-

139 (1) As used in this section and s. 413.081, the term:

140 (a) "Individual requiring assistance" means any person who
141 is deaf, hard of hearing as defined in s. 413.08(1)(b)1., blind,
142 visually impaired, or physically disabled as defined in s.
143 413.08(1)(b)2. or who has a psychological or neurological
144 disability.

145 (b) "Owner" means a person who owns a service animal or who
146 is authorized by the owner to use a service animal.

147 (c) "Service animal" means any domesticated animal that is
148 individually trained to do work or perform tasks for the benefit
149 of an individual with a disability, including a physical,
150 sensory, psychiatric, intellectual, or other mental disability.
151 The work or tasks performed by a service animal must be directly
152 related to the handler's disability. Examples of work or tasks
153 include, but are not limited to, assisting individuals who are
154 blind or have low vision with navigation and other tasks,
155 alerting individuals who are deaf or hard of hearing to the
156 presence of people or sounds, providing nonviolent protection or
157 rescue work, pulling a wheelchair, assisting an individual



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158 during a seizure, alerting individuals to the presence of
159 allergens, retrieving items such as medicine or the telephone,
160 providing physical support and assistance with balance and
161 stability to individuals with mobility disabilities, and helping
162 individuals with psychiatric or neurological disabilities by
163 preventing or interrupting impulsive or destructive behaviors.
164 The crime deterrent effects of an animal's presence and the
165 provision of emotional support, well-being, comfort, or
166 companionship do not constitute work or tasks for the purposes
167 of this paragraph.

168 (2) An individual requiring assistance has the right to be
169 accompanied by a service animal in all areas of a public
170 accommodation that the public or customers are normally
171 permitted to occupy. If an individual requiring assistance or an
172 individual who trains service animals is a student at a private
173 or public school in the state, that individual has the right to
174 be accompanied by a service animal, subject to the conditions
175 established under this section.

176 (a) Documentation that the service animal is trained is not
177 a precondition for providing service to an individual
178 accompanied by a service animal. A public accommodation may ask
179 if an animal is a service animal or what tasks the animal has
180 been trained to perform in order to determine the difference
181 between a service animal and a pet.

182 (b) A public accommodation may not impose a deposit or
183 surcharge on an individual requiring assistance as a
184 precondition to permitting a service animal to accompany the
185 individual requiring assistance, even if a deposit is routinely
186 required for pets.



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187 (c) An individual with a disability is liable for damage
188 caused by a service animal if it is the regular policy and
189 practice of the public accommodation to charge nondisabled
190 persons for damages caused by their pets.

191 (d) The care or supervision of a service animal is the
192 responsibility of the owner. A public accommodation is not
193 required to provide care, food, or a special location for the
194 service animal or assistance with removing animal excrement
195 unless required by any federal agency, federal law, or federal
196 regulation. In such an instance, if a public accommodation has a
197 secured area, the public accommodation must provide a special
198 location for the service animal to relieve itself within that
199 secured area.

200 (e) A public accommodation may exclude or remove any animal
201 from the premises, including a service animal, if the animal
202 fails to remain under the control of the handler or if the
203 animal displays inappropriate behavior, including, but not
204 limited to, growling, excessive barking, or biting, or poses a
205 direct threat to the health and safety of others. Allergies and
206 fear of animals are not valid reasons for denying access or
207 refusing service to an individual accompanied by a service
208 animal. If a service animal is excluded or removed for being a
209 direct threat to others, the public accommodation must provide
210 the individual requiring assistance the option of continuing
211 access to the public accommodation without having the service
212 animal on the premises.

213 (3) A person, firm, or corporation, or the agent of any
214 person, firm, or corporation, who denies or interferes with
215 admittance to, or enjoyment of, a public accommodation,



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216 interferes with the renting, leasing, or purchasing of housing
217 accommodations, or otherwise interferes with the rights of an
218 individual requiring assistance while accompanied by a service
219 animal or the trainer of a service animal while engaged in the
220 training of such an animal pursuant to subsection (5):

221 (a) For a first offense, commits a noncriminal violation
222 punishable as provided in s. 775.083. The offender may contest
223 the citation or may, within 30 days after receiving the
224 citation, elect to pay a civil penalty of \$50 plus court costs.

225 (b) For a second or subsequent offense, commits a
226 misdemeanor of the second degree, punishable as provided in s.
227 775.082 or s. 775.083.

228 (4) An individual requiring assistance who is accompanied
229 by a service animal is entitled to full and equal advantages,
230 facilities, and privileges in all housing accommodations and is
231 entitled to rent, lease, or purchase, as are other members of
232 the general public, any housing accommodation offered for rent,
233 lease, or other compensation in this state, subject to the
234 conditions and limitations established by law and applicable
235 alike to all persons.

236 (a) This section does not require any person renting,
237 leasing, or otherwise providing real property for compensation
238 to modify her or his property in any way or provide a higher
239 degree of care for an individual requiring assistance than for a
240 person who does not have a disability.

241 (b) An individual requiring assistance who has a service
242 animal or an individual who is the trainer of a service animal
243 is entitled to full and equal access to all housing
244 accommodations provided for in this section, and that individual



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245 is not required to pay extra compensation for the service
246 animal. However, the individual is liable for any damage done to
247 the premises or to another individual on the premises by the
248 service animal. A housing accommodation may request proof of
249 compliance with vaccination requirements.

250 (5) A person who trains a service animal, while engaged in
251 the training of such an animal, has the same rights and
252 privileges with respect to access to public facilities and
253 housing accommodations and the same liability for damage as is
254 provided for a person described in subsection (2) who is
255 accompanied by a service animal.

256 (6) A person who knowingly and fraudulently represents
257 herself or himself, through her or his conduct or verbal or
258 written notice, as the owner or trainer of a service animal
259 commits a misdemeanor of the second degree, punishable as
260 provided in s. 775.082 or s. 775.083.

261 Section 4. Subsection (3) of section 252.355, Florida
262 Statutes, is amended to read:

263 252.355 Registry of persons with special needs; notice.-

264 (3) A person with special needs must be allowed to bring
265 his or her service animal into a special needs shelter in
266 accordance with s. 413.083 ~~413.08~~.

267 Section 5. This act shall take effect July 1, 2012.

268
269 ===== T I T L E A M E N D M E N T =====

270 And the title is amended as follows:

271 Delete everything before the enacting clause
272 and insert:

273 A bill to be entitled



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274 An act relating to service animals; providing a short
275 title; amending s. 413.08, F.S.; removing provisions
276 related to service animals; creating s. 413.083, F.S.;
277 providing definitions; specifying rights of an
278 individual accompanied by a service animal; providing
279 that documentation that a service animal is trained is
280 not a precondition for providing certain services to
281 an individual accompanied by a service animal;
282 authorizing a public accommodation to make certain
283 inquiries regarding the animal; providing restrictions
284 for a public accommodation imposing a deposit or
285 surcharge; providing for liability of an individual
286 accompanied by or the trainer of a service animal
287 under certain circumstances; providing responsibility
288 for care and supervision of a service animal;
289 providing conditions for exclusion or removal of a
290 service animal from a public accommodation; providing
291 penalties for denying or interfering with admittance
292 to or enjoyment of a public accommodation; specifying
293 rights to housing accommodations for an individual
294 accompanied by a service animal; providing
295 limitations; providing rights of housing to the owner
296 or trainer of a service animal; providing a penalty
297 for misrepresentation as an owner or trainer; amending
298 s. 252.355, F.S.; conforming a cross-reference;
299 providing an effective date.

By Senator Bennett

21-01254-12

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1 A bill to be entitled
 2 An act relating to service animals; amending s.
 3 413.08, F.S.; revising and providing definitions;
 4 revising designation and duties of a service animal;
 5 providing rights of an individual with a disability
 6 accompanied by a service animal or a person who trains
 7 or raises service animals with regard to public or
 8 housing accommodations under certain conditions;
 9 providing penalties; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 413.08, Florida Statutes, is amended to
 14 read:

15 413.08 Rights of an individual with a disability; use of a
 16 service animal; discrimination in public employment or housing
 17 accommodations; penalties.—

18 (1) As used in this section and s. 413.081, the term:

19 (a) "Housing accommodation" means any real property or
 20 portion thereof which is used or occupied, or intended,
 21 arranged, or designed to be used or occupied, as the home,
 22 residence, or sleeping place of one or more persons, but does
 23 not include any single-family residence, the occupants of which
 24 rent, lease, or furnish for compensation not more than one room
 25 therein.

26 (b) "Individual with a disability" means a person who is
 27 deaf, hard of hearing, blind, visually impaired, or otherwise
 28 physically disabled. As used in this paragraph, the term:

29 1. "Hard of hearing" means an individual who has suffered a

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30 permanent hearing impairment that is severe enough to
 31 necessitate the use of amplification devices to discriminate
 32 speech sounds in verbal communication.

33 2. "Physically disabled" means any person who has a
 34 physical impairment that substantially limits one or more major
 35 life activities.

36 (c) "Owner" means a person who owns a service animal or who
 37 is authorized by the owner to use a service animal.

38 (d) ~~(e)~~ "Public accommodation" means a common carrier,
 39 airplane, motor vehicle, railroad train, motor bus, streetcar,
 40 boat, or other public conveyance or mode of transportation;
 41 hotel; lodging place; place of public accommodation, amusement,
 42 or resort; and other places to which the general public is
 43 invited, subject only to the conditions and limitations
 44 established by law and applicable alike to all persons.

45 (e) ~~(d)~~ "Service animal" means a dog ~~an animal~~ that is
 46 trained to perform tasks for an individual with a disability.
 47 The tasks may include, but are not limited to, guiding a person
 48 who is visually impaired, has low vision, or is blind, alerting
 49 a person who is deaf or hard of hearing, pulling a wheelchair,
 50 assisting with mobility or balance, alerting and protecting a
 51 person who is having a seizure, retrieving objects, helping a
 52 person with a psychiatric or neurological disability by
 53 preventing or interrupting impulsive or destructive behaviors,
 54 or performing other specialized ~~special~~ tasks. A service animal
 55 is not a pet.

56 (2) An individual with a disability is entitled to full and
 57 equal accommodations, advantages, facilities, and privileges in
 58 all public accommodations. This section does not require any

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 59 person, firm, business, or corporation, or any agent thereof, to
 60 modify or provide any vehicle, premises, facility, or service to
 61 a higher degree of accommodation than is required for a person
 62 not so disabled. If an individual with a disability or a person
 63 who trains or raises service animals is a student at a private
 64 or public school in the state, that person has the right to be
 65 accompanied by a service animal subject to the conditions
 66 established under this section.

67 (3) An individual with a disability has the right to be
 68 accompanied by a service animal in all areas of a public
 69 accommodation that the public or customers are normally
 70 permitted to occupy.

71 (a) Documentation that the service animal is trained is not
 72 a precondition for providing service to an individual
 73 accompanied by a service animal. A public accommodation may ask
 74 if an animal is a service animal or what tasks the animal has
 75 been trained to perform in order to determine the difference
 76 between a service animal and a pet.

77 (b) A public accommodation may not impose a deposit or
 78 surcharge on an individual with a disability as a precondition
 79 to permitting a service animal to accompany the individual with
 80 a disability, even if a deposit is routinely required for pets.

81 (c) An individual with a disability is liable for damage
 82 caused by a service animal if it is the regular policy and
 83 practice of the public accommodation to charge nondisabled
 84 persons for damages caused by their pets.

85 (d) The care or supervision of a service animal is the
 86 responsibility of the individual owner. A public accommodation
 87 is not required to provide care or food or a special location

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 88 for the service animal or assistance with removing animal
 89 excrement.

90 (e) A public accommodation may exclude or remove any animal
 91 from the premises, including a service animal, if the animal's
 92 behavior poses a direct threat to the health and safety of
 93 others. Allergies and fear of animals are not valid reasons for
 94 denying access or refusing service to an individual with a
 95 service animal. If a service animal is excluded or removed for
 96 being a direct threat to others, the public accommodation must
 97 provide the individual with a disability the option of
 98 continuing access to the public accommodation without having the
 99 service animal on the premises.

100 (4) Any person, firm, or corporation, or the agent of any
 101 person, firm, or corporation, who denies or interferes with
 102 admittance to, or enjoyment of, a public accommodation;
 103 interferes with the renting, leasing, or purchasing of housing
 104 accommodations; or otherwise interferes with the rights of an
 105 individual with a disability or the trainer or raiser of a
 106 service animal while engaged in the training or raising of such
 107 an animal pursuant to subsection (8), commits a misdemeanor of
 108 the second degree, punishable as provided in s. 775.082 or s.
 109 775.083.

110 (5) It is the policy of this state that an individual with
 111 a disability be employed in the service of the state or
 112 political subdivisions of the state, in the public schools, and
 113 in all other employment supported in whole or in part by public
 114 funds, and an employer may not refuse employment to such a
 115 person on the basis of the disability alone, unless it is shown
 116 that the particular disability prevents the satisfactory

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117 performance of the work involved.

118 (6) An individual with a disability who is accompanied by a
 119 service animal is entitled to full and equal advantages,
 120 facilities, and privileges in all housing accommodations and is
 121 entitled to rent, lease, or purchase, as other members of the
 122 general public, any housing accommodations offered for rent,
 123 lease, or other compensation in this state, subject to the
 124 conditions and limitations established by law and applicable
 125 alike to all persons.

126 (a) This section does not require any person renting,
 127 leasing, or otherwise providing real property for compensation
 128 to modify her or his property in any way or provide a higher
 129 degree of care for an individual with a disability than for a
 130 person who is not disabled.

131 (b) An individual with a disability who has a service
 132 animal, ~~or~~ who obtains a service animal, or who is the trainer
 133 of or raises a service animal for an accredited school is
 134 entitled to full and equal access to all housing accommodations
 135 provided for in this section, and such a person may not be
 136 required to pay extra compensation for the service animal.
 137 However, such a person is liable for any damage done to the
 138 premises or to another person on the premises by such an animal.
 139 A housing accommodation may request proof of compliance with
 140 vaccination requirements.

141 (7) An employer covered under subsection (5) who
 142 discriminates against an individual with a disability in
 143 employment, unless it is shown that the particular disability
 144 prevents the satisfactory performance of the work involved, or
 145 any person, firm, or corporation, or the agent of any person,

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146 firm, or corporation, providing housing accommodations as
 147 provided in subsection (6) who discriminates against an
 148 individual with a disability, commits a misdemeanor of the
 149 second degree, punishable as provided in s. 775.082 or s.
 150 775.083.

151 (8) Any person who trains or raises ~~trainer of~~ a service
 152 animal, while engaged in the training or raising of such an
 153 animal, has the same rights and privileges with respect to
 154 access to public and housing accommodations ~~facilities~~ and the
 155 same liability for damage as is provided for a person ~~those~~
 156 ~~persons~~ described in subsection (3) or subsection (6) who is
 157 accompanied by a service animal, so long as: ~~animals.~~

158 (a) The service animal is being held on a leash and is
 159 under the control of the person training the service animal for
 160 an accredited school for service animals.

161 (b) The person has on her or his person and available for
 162 inspection credentials from the accredited school for which the
 163 service animal is being trained or raised.

164 (c) The service animal is wearing a collar, leash, or other
 165 appropriate apparel that identifies the dog with the accredited
 166 school for which the service animal is being trained or raised.

167 (9) A person who knowingly and fraudulently represents
 168 herself or himself, through her or his conduct or verbal or
 169 written notice, as the owner or trainer of a service animal
 170 commits a misdemeanor of the second degree, punishable as
 171 provided in s. 775.082 or s. 775.083.

172 Section 2. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Banking and Insurance
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Criminal Justice
Military Affairs, Space, and Domestic Security

SENATOR MICHAEL S. "MIKE" BENNETT

President Pro Tempore
21st District

January 23, 2012

The Honorable Rhonda Storms
Chair, Children, Families & Elder Affairs Committee
520 Knott Building
404 S. Monroe St.
Tallahassee, FL 32399

RECEIVED

JAN 23 2012

Senate Committee
Children and Families

Dear Chair Storms:

I am requesting that you place S1382, relating to service animals, on your committee agenda for the week of January 30 or as soon as possible thereafter.

If you have any questions, please let me know. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Bennett".

Michael S. "Mike" Bennett
/cre

Cc: Staff Director: Renai Farmer
Administrative Assistant: Lynn Wells

REPLY TO:

- Wildewood Professional Park, Suite 90, 3653 Cortez Road West, Bradenton, Florida 34210 (941) 727-6349
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5078

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS

MICHAEL S. "MIKE" BENNETT

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/12
Meeting Date

Topic Service Animals Bill Bill Number SB 1382
(if applicable)

Name Carol Christopherson Ann McDonald Amendment Barcode _____
(if applicable)

Job Title Disabled/President Florida Service Dogs Inc. 904 704 9591

Address Self 4275 Sharkbark Dr. E. Phone 800 549 2600

Jax FL 32210
City State Zip

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/12
Meeting Date

Topic Service Animal Bill Bill Number SB 1382
(if applicable)

Name Carol Christopherson Amendment Barcode _____
(if applicable)

Job Title Disabled/President Florida Service Dogs Inc

Address 14897 Yellow Water Lane Phone 800-549-2600

Jax FL 322
City State Zip

Speaking: For Against Information

Representing Self disabled persons + Florida Service Dogs Inc

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/2012

Meeting Date

Topic Service Animals Bill Number SB 1382 (if applicable)

Name Dana Farmer Amendment Barcode 497356 (if applicable)

Job Title ~~Disability Rights Florida~~ Disability Rights Florida Dir. Legislative & Public Affairs

Address 2728 Centerview Dr., Ste. 102 Phone 850.488.9071

Street

Tallahassee

FL

32301

E-mail

dana.f@disabilityrightsflorida.org

Speaking: For Against Information

Representing Disability Rights FLORIDA

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 460

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Altman

SUBJECT: Intellectual Disabilities

DATE: February 9, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Daniell | Farmer | CF | Fav/CS |
| 2. | | | CJ | |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|----------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill substitutes the term “intellectual disability” for “mental retardation” throughout the Florida Statutes. The bill specifies that as the new terminology is applied in the pretrial, trial, sentencing, and death penalty areas of the criminal law, the terms “intellectual disability” or “intellectually disabled” are interchangeable with the terms “mental retardation” or “retardation” and “mentally retarded” as previously defined.

The bill also substitutes “the Arc of Florida” for “the Association for Retarded Citizens” to reflect the correct name of the organization.

This bill amends the following sections of the Florida Statutes: 39.502, 40.013, 86.041, 92.53, 92.54, 92.55, 320.10, 383.14, 393.063, 393.11, 394.455, 400.960, 408.032, 409.908, 413.20, 440.49, 499.0054, 514.072, 627.6041, 627.6615, 641.31, 650.05, 765.204, 849.04, 914.16, 914.17, 916.105, 916.106, 916.107, 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.

II. Present Situation:

Mental Retardation

Mental retardation is a condition or syndrome defined by a collection of symptoms, traits, and characteristics. According to the American Association on Mental Retardation (AAMR), mental retardation is “a disability that occurs before age 18. It is characterized by significant limitations in intellectual functioning and adaptive behavior as expressed in conceptual, social and practical adaptive skills.”¹ Studies have shown that mental retardation affects around 1 to 3 percent of the population.²

Mental retardation has been defined and renamed many times. For example, in 1910, three levels of mental retardation were identified: idiot, imbecile, and moron.³ Additionally, feeble-mindedness and mental deficiency were used as labels for mental retardation during the late 19th and early 20th century.⁴ Under the most current Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), the term mental retardation means a significantly subaverage intellectual functioning, such as an IQ of approximately 70 or below, and concurrent deficits of impairment in present adaptive functioning⁵ in at least two of the following areas:

- Communication.
- Selfcare.
- Home living.
- Social or interpersonal skills.
- Use of community resources.
- Self-direction.
- Functional academic skills.
- Work.
- Leisure.
- Health.
- Safety.⁶

The Arc of the United States, an organization that advocates for and serves people with intellectual and developmental disabilities, changed its name in 1992⁷ to reflect contemporary

¹ The Arc, *Q&A* (revised Oct. 2004), www.thearc.org/NetCommunity/Document.Doc?&id=143 (last visited Feb. 1, 2012).

² *Id.*

³ Fred J. Biasini, *et al.*, Dep’t of Psychology, University of Alabama at Birmingham, *Mental Retardation: A Symptom and a Syndrome*, available at <http://www.ibis-birthdefects.org/start/mentalSyndrome.htm> (last visited Feb. 1, 2012).

⁴ *Id.*

⁵ According to the DSM-IV, adaptive functioning relates to the person’s effectiveness in meeting the standards expected for his or her age by his or her cultural group. DSM-5 Development, American Psychiatric Ass’n, *A 00 Intellectual Developmental Disorder, DSM-IV, Mental Retardation*, available at <http://www.dsm5.org/ProposedRevision/Pages/proposedrevision.aspx?rid=384#> (last visited Feb. 1, 2012).

⁶ *Id.*

⁷ Prior to becoming The Arc of the United States, the organization was called the Association for Retarded Citizens of the United States. The Arc, *History of Name Changes*, <http://www.thearc.org/page.aspx?pid=2344> (last visited Feb. 1, 2012). In 2007, the Association for Retarded Citizens of Florida, Inc., adopted the fictitious name The Arc of Florida, and the organization officially changed its name in 2010. The Arc of Florida, *About the Arc, History*,

sensibilities. The Arc notes:

The Arc's mission statement does not use the term "mental retardation." . . . The term "mental retardation" was offensive to many people, so we changed our language.

The term "mental retardation" offers special protections in key areas of federal and state policy, including death penalty prosecutions and SSI administrative processes. . . People still need to use the term "mental retardation" to be eligible for some services in a few states, but in no case does having the label guarantee that supports will be available.

The Arc does not encourage states, officials, families or individuals to use or promote the term "mental retardation." The general public, including families, individuals, funders, administrators, and public policymakers at local, state and federal levels, are not necessarily aware that the term "mental retardation" is offensive and outdated.⁸

Other organizations in the United States, such as United Cerebral Palsy, take similar positions on use of this term.⁹ Additionally, in 2010, the State of Washington enacted legislation amending its statutes to make the change to "intellectual disability."¹⁰

The American Psychiatric Association (APA), the organization that publishes the DSM, has undertaken a complete revision of the DSM-IV, which was originally published in 1994.¹¹ The APA has proposed renaming "mental retardation" as "intellectual disability" in order to be consistent with current practice.¹² In addition, the APA proposes changing the diagnostic criteria associated with intellectual disability.¹³ The new criteria will be released in May 2013.¹⁴

Current Statutory Definitions

Section 921.137, F.S., which prohibits the imposition of the death penalty on a mentally-retarded defendant, states:

http://arcflorida.org/index.php?option=com_content&view=category&layout=blog&id=5&Itemid=2 (last visited Feb. 1, 2012).

⁸ The Arc, *supra* note 1.

⁹ See United Cerebral Palsy, *Legislative Agenda for the 112th Congress*, <http://www.ucp.org/public-policy/legislative-agenda> (last visited Feb. 1, 2012); American Ass'n on Intellectual and Developmental Disabilities, *Definition of Intellectual Disability*, http://www.aaid.org/content_100.cfm?navID=21 (last visited Feb. 1, 2012).

¹⁰ See Revised Code of Washington 44.04.280.

¹¹ See United Cerebral Palsy, *Legislative Agenda for the 112th Congress*, <http://www.ucp.org/public-policy/legislative-agenda> (last visited Feb. 1, 2012); American Ass'n on Intellectual and Developmental Disabilities, *Definition of Intellectual Disability*, http://www.aaid.org/content_100.cfm?navID=21 (last visited Feb. 1, 2012).

¹² DSM-5 Development, American Psychiatric Ass'n, *A 00 Intellectual Developmental Disorder, Proposed Revision*, <http://www.dsm5.org/ProposedRevision/Pages/proposedrevision.aspx?rid=384> (last visited Feb. 1, 2012).

¹³ *Id.*

¹⁴ DSM-5 Development, American Psychiatric Ass'n, *Timeline*, <http://www.dsm5.org/about/Pages/Timeline.aspx> (last visited Feb. 1, 2012).

“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.

The definition used in the death penalty statute is taken from the definition of “retardation” in ch. 393, F.S., the area of law relating to developmental disabilities, which defines retardation as:

[S]ignificantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that manifests before the age of 18 and can reasonably be expected to continue indefinitely. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance 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.¹⁵

The statutory definition of developmental disability indicates that it *is* attributable to mental retardation, among other conditions. Section 393.063(9), F.S., defines “developmental disability” as:

[A] disorder or syndrome that is attributable to 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.

Individuals with developmental disabilities may be eligible for a variety of home and community based services through the Agency for Persons with Disabilities and other state and federal entities.

The term “intellectual disability” is not currently defined in the Florida statutes, although the term is defined in Rule 6A-6.03011(1) of the Florida Administrative Code. The Rule states:

An intellectual disability is defined as significantly below average general intellectual and adaptive functioning manifested during the developmental period,

¹⁵ Section 393.063(32), F.S.

with significant delays in academic skills. Developmental period refers to birth to 18 years of age.

III. Effect of Proposed Changes:

This bill substitutes the term “intellectual disability” for “mental retardation” throughout the Florida Statutes. Specifically, the term “intellectual disability” is being used in statutes pertaining to:

- Persons disqualified or excused from jury service (s. 40.013, F.S.);
- Actions by executors, administrators, trustees, etc. (s. 86.041, F.S.);
- Certain judicial or other proceedings involving victims or witnesses under the age of 16 or person with mental retardation (ss. 92.53, 92.54, and 92.55, F.S.);
- Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors (s. 383.14, F.S.);
- Developmental Disabilities (ss. 393.063 and 393.11, F.S.);
- Mental Health (s. 394.455, F.S.);
- Intermediate Care Facilities for Developmentally Disabled Persons (s. 400.960, F.S.);
- Medicaid (s. 409.908, F.S.)
- Vocational Rehabilitation (s. 413.20, F.S.);
- Special Disability Trust Fund (s. 440.49, F.S.);
- Advertising and labeling of drugs, devices, and cosmetics; exemptions (s. 499.0054, F.S.);
- Insurance (ss. 627.6041, 627.6615, 641.31, and 650.05, F.S.);
- Health Care Surrogates (s. 765.204, F.S.);
- Gambling (s. 849.04, F.S.);
- Criminal proceedings relating to victims under age 16 or persons with mental retardation (ss. 914.16, 914.17, and 918.16, F.S.)
- Mentally Deficient and Mentally Ill Defendants (ss. 916.105, 916.106, 916.107, 916.301, 916.3012, 916.302, 916.3025, 916.303, and 916.304, F.S.);
- Prohibition on imposition of the death sentence upon a defendant with mental retardation (s. 921.137, F.S.);
- Extradition of persons alleged to be of unsound mind (s. 941.38, F.S.);
- Department of Corrections and State Correctional Institution (ss. 944.602, 945.025, 945.12, and 945.42, F.S.);
- Application for mental retardation services as condition of parole (s. 947.185, F.S.);
- Children and Families in Need of Services (s. 984.19, F.S.);
- Juvenile Justice; Interstate Compact on Juveniles (ss. 985.14, 985.145, 985.18, 985.19, 985.195, and 985.61, F.S.).

The bill does not make substantive changes to any of the statutes so revised.

The bill also amends ss. 39.502 and 320.10, F.S., by replacing the name “the Association for Retarded Citizens” with “the Arc of Florida” to reflect the current name of the organization.

Because the American Psychiatric Association has not yet released the DSM-5, formally adopting the term “intellectual disability” rather than “mental retardation,” and because use of

the term “intellectual disability” has not yet become universal, the bill includes legislative intent in order to avoid any potential confusion which might arise as the new term is applied. Specifically:

- The changes made by the bill are not intended to expand or contract the scope of the Florida Statutes; and
- The bill may not be construed to change the application of any provision of the Florida Statutes to any person.

Additionally, the bill clarifies that as the new terminology is applied in the pretrial, trial, sentencing, and death penalty areas of the criminal law, it has the same meaning and is interchangeable with the terms “mental retardation,” “retardation,” and “mentally retarded.”¹⁶

Finally, the bill amends s. 408.032, F.S., to provide that an “intermediate care facility for the developmentally disabled” means a residential facility licensed under part VIII of ch. 400, F.S., rather than under ch. 393, F.S.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Corrections (DOC or department), the bill will require revisions to be made to the department’s procedures, health services bulletins, and

¹⁶ See sections 9 and 38 of the bill.

Offender Based Information System codes because they reference the standardized professional terminology and diagnostic codes set forth in the DSM-IV.¹⁷ The department did not provide an estimate for what these revisions may cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 9, 2012:

The committee substitute reinstates the words “prior to” (instead of “before”) to s. 440.49, F.S.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁷ Tommy Maggitas, Dep’t of Corrections, *SB 460- Intellectual Disabilities* (Jan. 10, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).



110072

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/10/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment

Delete lines 754 - 808
and insert:

(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.



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- 13 3. Cardiac disease.
- 14 4. Amputation of foot, leg, arm, or hand.
- 15 5. Total loss of sight of one or both eyes or a partial
- 16 loss of corrected vision of more than 75 percent bilaterally.
- 17 6. Residual disability from poliomyelitis.
- 18 7. Cerebral palsy.
- 19 8. Multiple sclerosis.
- 20 9. Parkinson's disease.
- 21 10. Meniscectomy.
- 22 11. Patellectomy.
- 23 12. Ruptured cruciate ligament.
- 24 13. Hemophilia.
- 25 14. Chronic osteomyelitis.
- 26 15. Surgical or spontaneous fusion of a major weight-
- 27 bearing joint.
- 28 16. Hyperinsulinism.
- 29 17. Muscular dystrophy.
- 30 18. Thrombophlebitis.
- 31 19. Herniated intervertebral disk.
- 32 20. Surgical removal of an intervertebral disk or spinal
- 33 fusion.
- 34 21. One or more back injuries or a disease process of the
- 35 back resulting in disability over a total of 120 or more days,
- 36 if substantiated by a doctor's opinion that there was a
- 37 preexisting impairment to the claimant's back.
- 38 22. Total deafness.
- 39 23. Intellectual disability if ~~Mental retardation, provided~~
- 40 the employee's intelligence quotient is such that she or he
- 41 falls within the lowest 2 percentile of the general population.



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42 However, ~~it shall not be necessary for~~ the employer does not
43 need to know the employee's actual intelligence quotient or
44 actual relative ranking in relation to the intelligence quotient
45 of the general population.

46 24. Any permanent physical condition that ~~which~~, prior to
47 the industrial accident or occupational disease, constitutes a
48 20 percent ~~20 percent~~ impairment of a member or of the body as a
49 whole.

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

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

60

By Senator Altman

24-00003-12

2012460__

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

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

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

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

54 39.502 Notice, process, and service.—

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

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

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

64 40.013 Persons disqualified or excused from jury service.—

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

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

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

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

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

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

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88
89 For the purpose of this section, a "mental incompetent" is one
90 who, because of mental illness, intellectual disability ~~mental~~
91 ~~retardation~~, senility, excessive use of drugs or alcohol, or
92 other mental incapacity, is incapable of ~~either~~ managing his or
93 her property or caring for himself or herself, or both.

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

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

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

112 (2) The motion may be filed by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

271 320.10 Exemptions.—

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

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

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

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

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

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

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

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

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

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

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

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

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 320 Section 8. Paragraph (d) of subsection (3) of section
 321 383.14, Florida Statutes, is amended to read:
 322 383.14 Screening for metabolic disorders, other hereditary
 323 and congenital disorders, and environmental risk factors.—

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

327 (d) Maintain a confidential registry of cases, including
 328 information of importance for the purpose of followup services
 329 to prevent intellectual disabilities ~~mental retardation~~, to
 330 correct or ameliorate physical disabilities ~~handicaps~~, and for
 331 epidemiologic studies, if indicated. Such registry shall be
 332 exempt from the provisions of s. 119.07(1).
 333

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

458 393.11 Involuntary admission to residential services.—

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

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

(2) PETITION.—

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

- 473 1. State the name, age, and present address of the
 474 commissioners and their relationship to the person who has an
 475 intellectual disability ~~with mental retardation~~ or autism;
 476 2. State the name, age, county of residence, and present
 477 address of the person who has an intellectual disability with
 478 ~~mental retardation~~ or autism;
 479 3. Allege that the commission believes that the person
 480 needs involuntary residential services and specify the factual
 481 information on which the belief is based;
 482 4. Allege that the person lacks sufficient capacity to give
 483 express and informed consent to a voluntary application for
 484 services and lacks the basic survival and self-care skills to
 485 provide for the person's well-being or is likely to physically
 486 injure others if allowed to remain at liberty; and
 487 5. State which residential setting is the least restrictive
 488 and most appropriate alternative and specify the factual
 489 information on which the belief is based.
- 490 (d) The petition must shall be filed in the circuit court
 491 of the county in which the person who has the intellectual
 492 disability with mental retardation or autism resides.

(3) NOTICE.—

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

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

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

(4) AGENCY PARTICIPATION.—

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

(5) EXAMINING COMMITTEE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

567 (6) COUNSEL; GUARDIAN AD LITEM.—

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

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

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

(7) HEARING.—

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

(8) ORDER.—

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

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

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

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

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

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

(10) COMPETENCY.—

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

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

(12) APPEAL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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697 ~~(13) "Spina bifida" has the same meaning as in s. 393.063.~~
 698 Section 13. Subsection (12) of section 408.032, Florida
 699 Statutes, is amended to read:
 700 408.032 Definitions relating to Health Facility and
 701 Services Development Act.—As used in ss. 408.031-408.045, the
 702 term:
 703 (12) "Intermediate care facility for the developmentally
 704 disabled" means a residential facility licensed under part VIII
 705 of chapter 400 ~~chapter 393 and certified by the Federal~~
 706 ~~Government pursuant to the Social Security Act as a provider of~~
 707 ~~Medicaid services to persons who are mentally retarded or who~~
 708 ~~have a related condition.~~
 709 Section 14. Subsection (8) of section 409.908, Florida
 710 Statutes, is amended to read:
 711 (8) A provider of home-based or community-based services
 712 rendered pursuant to a federally approved waiver shall be
 713 reimbursed based on an established or negotiated rate for each
 714 service. These rates shall be established according to an
 715 analysis of the expenditure history and prospective budget
 716 developed by each contract provider participating in the waiver
 717 program, or under any other methodology adopted by the agency
 718 and approved by the Federal Government in accordance with the
 719 waiver. Privately owned and operated community-based residential
 720 facilities which meet agency requirements and which formerly
 721 received Medicaid reimbursement for the optional intermediate
 722 care facility for the intellectually disabled ~~mentally retarded~~
 723 service may participate in the developmental services waiver as
 724 part of a home-and-community-based continuum of care for
 725 Medicaid recipients who receive waiver services.

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726 Section 15. Subsection (16) of section 413.20, Florida
 727 Statutes, is amended to read:
 728 413.20 Definitions.—As used in this part, the term:
 729 (16) "Person who has a significant disability" means an
 730 individual who has a disability that is a severe physical or
 731 mental impairment that seriously limits one or more functional
 732 capacities, such as mobility, communication, self-care, self-
 733 direction, interpersonal skills, work tolerance, or work skills,
 734 in terms of an employment outcome; whose vocational
 735 rehabilitation may be expected to require multiple vocational
 736 rehabilitation services over an extended period of time; and who
 737 has one or more physical or mental disabilities resulting from
 738 amputation, arthritis, autism, blindness, burn injury, cancer,
 739 cerebral palsy, cystic fibrosis, deafness, head injury, heart
 740 disease, hemiplegia, hemophilia, respiratory or pulmonary
 741 dysfunction, intellectual disability ~~mental retardation~~, mental
 742 illness, multiple sclerosis, muscular dystrophy, musculoskeletal
 743 disorder, neurological disorder, including stroke and epilepsy,
 744 paraplegia, quadriplegia, or other spinal cord condition,
 745 sickle-cell anemia, specific learning disability, end-stage
 746 renal disease, or another disability or a combination of
 747 disabilities that is determined, after an assessment for
 748 determining eligibility and vocational rehabilitation needs, to
 749 cause comparable substantial functional limitation.
 750 Section 16. Paragraph (a) of subsection (6) of section
 751 440.49, Florida Statutes, is amended to read:
 752 440.49 Limitation of liability for subsequent injury
 753 through Special Disability Trust Fund.—
 754 (6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

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

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

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

787 22. Total deafness.

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

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

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

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

809 Section 17. Paragraph (g) of subsection (1) of section
 810 499.0054, Florida Statutes, is amended to read:
 811 499.0054 Advertising and labeling of drugs, devices, and
 812 cosmetics; exemptions.-

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

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

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

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- 842 22. Metabolic disorders.
- 843 23. Immune system disorders or conditions affecting the
844 immune system.
- 845 24. Extension of life expectancy.
- 846 25. Stress and tension.
- 847 26. Brain stimulation or performance.
- 848 27. The body's natural defense mechanisms.
- 849 28. Blood flow.
- 850 29. Depression.
- 851 30. Human immunodeficiency virus or acquired immune
852 deficiency syndrome or related disorders or conditions.
- 853 Section 18. Section 514.072, Florida Statutes, is amended
854 to read:
- 855 514.072 Certification of swimming instructors for people
856 who have developmental disabilities ~~required~~.—Any person working
857 at a swimming pool who holds himself or herself out as a
858 swimming instructor specializing in training people who have
859 developmental disabilities, as defined in s. 393.063(10), may be
860 certified by the Dan Marino Foundation, Inc., in addition to
861 being certified under s. 514.071. The Dan Marino Foundation,
862 Inc., must develop certification requirements and a training
863 curriculum for swimming instructors for people who have
864 developmental disabilities ~~and must submit the certification~~
865 ~~requirements to the Department of Health for review by January~~
866 ~~1, 2007. A person certified under s. 514.071 before July 1,~~
867 ~~2007, must meet the additional certification requirements of~~
868 ~~this section before January 1, 2008.~~ A person certified under s.
869 514.071 ~~on or after July 1, 2007,~~ must meet the additional
870 certification requirements of this section within 6 months after

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871 receiving certification under s. 514.071.

872 Section 19. Section 627.6041, Florida Statutes, is amended

873 to read:

874 627.6041 ~~Handicapped~~ Children with disabilities;

875 continuation of coverage.-

876 (1) A hospital or medical expense insurance policy or

877 health care services plan contract that is delivered or issued

878 for delivery in this state and that provides that coverage of a

879 dependent child terminates ~~will terminate~~ upon attainment of the

880 limiting age for dependent children specified in the policy or

881 contract must ~~shall~~ also provide in substance that attainment of

882 the limiting age does not terminate the coverage of the child

883 while the child continues to be both:

884 (a)(1) Incapable of self-sustaining employment by reason of

885 an intellectual ~~mental retardation~~ or physical disability.

886 ~~handicap~~; and

887 (b)(2) Chiefly dependent upon the policyholder or

888 subscriber for support and maintenance.

889 (2) If a claim is denied under a policy or contract for the

890 stated reason that the child has attained the limiting age for

891 dependent children specified in the policy or contract, the

892 notice of denial must state that the policyholder has the burden

893 of establishing that the child continues to meet the criteria

894 specified in subsection ~~subsections~~ (1) and ~~(2)~~.

895 Section 20. Section 627.6615, Florida Statutes, is amended

896 to read:

897 627.6615 ~~Handicapped~~ Children with disabilities;

898 continuation of coverage under group policy.-

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

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900 plan contract that is delivered or issued for delivery in this

901 state and that provides that coverage of a dependent child of an

902 employee or other member of the covered group terminates ~~will~~

903 ~~terminate~~ upon attainment of the limiting age for dependent

904 children specified in the policy or contract must ~~shall~~ also

905 provide in substance that attainment of the limiting age does

906 not terminate the coverage of the child while the child

907 continues to be both:

908 (a)(1) Incapable of self-sustaining employment by reason of

909 an intellectual ~~mental retardation~~ or physical disability.

910 ~~handicap~~; and

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

912 support and maintenance.

913 (2) If a claim is denied under a policy or contract for the

914 stated reason that the child has attained the limiting age for

915 dependent children specified in the policy or contract, the

916 notice of denial must state that the certificateholder or

917 subscriber has the burden of establishing that the child

918 continues to meet the criteria specified in subsection

919 ~~subsections~~ (1) and ~~(2)~~.

920 Section 21. Subsection (29) of section 641.31, Florida

921 Statutes, is amended to read:

922 641.31 Health maintenance contracts.-

923 (29) If a health maintenance contract provides that

924 coverage of a dependent child of the subscriber terminates ~~will~~

925 ~~terminate~~ upon attainment of the limiting age for dependent

926 children which is specified in the contract, the contract must

927 also provide in substance that attainment of the limiting age

928 does not terminate the coverage of the child while the child

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929 continues to be both:

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

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

935

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

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

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

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

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

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

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

964 765.204 Capacity of principal; procedure.-

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

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

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

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

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

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

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

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

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

1032 (a) ~~To~~ Explain, in language understandable to the minor,
1033 all legal proceedings in which the minor is ~~shall be~~ involved;
1034 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
1035 whenever appropriate, of the minor's ability to understand and
1036 cooperate with any court proceeding; and

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

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

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

- 1058 (a) ~~To~~ Explain, in language understandable to the person
 1059 ~~with mental retardation~~, all legal proceedings in which the
 1060 person is ~~shall be~~ involved;
- 1061 (b) ~~To~~ Act, as a friend of the court, to advise the judge,
 1062 whenever appropriate, of the person's ~~person with mental~~
 1063 ~~retardation's~~ ability to understand and cooperate with any court
 1064 proceedings; and
- 1065 (c) ~~To~~ Assist the person ~~with mental retardation~~ and the
 1066 person's family in coping with the emotional effects of the
 1067 crime and subsequent criminal proceedings in which the person
 1068 ~~with mental retardation~~ is involved.
- 1069 (3) Any person participating in a judicial proceeding as a
 1070 guardian ad litem or other advocate is ~~shall be~~ presumed prima
 1071 facie to be acting in good faith and in so doing is ~~shall be~~
 1072 immune from any liability, civil or criminal, which ~~that~~
 1073 ~~otherwise~~ might be incurred or imposed.

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1074 Section 27. Subsections (1), (2), and (3) of section
 1075 916.105, Florida Statutes, are amended to read:
 1076 916.105 Legislative intent.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1190 916.107 Rights of forensic clients.—

1191 (1) RIGHT TO INDIVIDUAL DIGNITY.—

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

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

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

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 1219 circumstances:

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

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

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

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

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

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

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

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

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

1285 916.301 Appointment of experts.—

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

1294 The courts may use professionals from this list when appointing
1295 experts and ordering evaluations under this part.

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

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

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

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

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

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

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

1317 916.3012 Mental competence to proceed.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1377 (2) ADMISSION TO A FACILITY.—

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

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

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

1396 (3) PLACEMENT OF DUALY DIAGNOSED DEFENDANTS.—

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

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

1406 916.3025 Jurisdiction of committing court.—

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

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

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

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

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

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

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

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

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

1467 916.304 Conditional release.—

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

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

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

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

1488
 1489 In its order of conditional release, the court shall specify the
 1490 conditions of release based upon the release plan and shall
 1491 direct the appropriate agencies or persons to submit periodic
 1492 reports to the courts regarding the defendant's compliance with
 1493 the conditions of the release and progress in training, with
 1494 copies to all parties.

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

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

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

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

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

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

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

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

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

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

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

1552 (4) After a defendant who has given notice of his or her
1553 intention to raise intellectual disability ~~mental retardation~~ as
1554 a bar to the death sentence is convicted of a capital felony and
1555 an advisory jury has returned a recommended sentence of death,
1556 the defendant may file a motion to determine whether the
1557 defendant is intellectually disabled ~~has mental retardation~~.
1558 Upon receipt of the motion, the court shall appoint two experts
1559 in the field of intellectual disabilities ~~mental retardation~~ who
1560 shall evaluate the defendant and report their findings to the
1561 court and all interested parties prior to the final sentencing
1562 hearing. Notwithstanding s. 921.141 or s. 921.142, the final
1563 sentencing hearing shall be held without a jury. At the final
1564 sentencing hearing, the court shall consider the findings of the
1565 court-appointed experts and consider the findings of any other
1566 expert which is offered by the state or the defense on the issue

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

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

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

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

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

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

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

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

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

1612 (2) For the purpose of this section:

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

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

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

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

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

1633 945.025 Jurisdiction of department.—

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

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

1651 945.12 Transfers for rehabilitative treatment.—

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

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

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

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

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

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

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

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

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

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

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

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

1703 985.14 Intake and case management system.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1820 985.19 Incompetency in juvenile delinquency cases.—

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

1827 (e) For incompetency evaluations related to intellectual

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

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

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

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

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

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

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

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

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2012460

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

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

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

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

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

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

Page 66 of 68

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

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

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

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

1936 985.61 Early delinquency intervention program; criteria.—

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

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

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

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security,
Chair
Budget - Subcommittee on Finance and Tax,
Vice Chair
Budget
Budget - Subcommittee on Higher Education
Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Higher Education
Reapportionment
Regulated Industries

SENATOR THAD ALTMAN

24th District

November 29, 2011

The Honorable Ronda Storms, Chair
Committee on Children, Families, and Elder Affairs
413 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Storms:

Senate Bill 460, relating to Intellectual Disabilities, has been referred to your committee for the first committee of reference.

I respectfully request SB 460 be placed on the Children, Families, and Elder Affairs committee agenda at your earliest convenience. Thank you for your consideration and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Thad Altman".

Thad Altman

TA/kj

cc: Renai Farmer, Staff Director
520 Knott Building

RECEIVED

NOV 29 2011

Senate Committee
Children and Families

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5053

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb. 9, 2012
Meeting Date

Topic Intellectual Disabilities

Bill Number SB 460
(if applicable)

Name Dixie Sanson

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address PO Box 98

Phone 321-777-8130

Cocoa FL 32923
City State Zip

E-mail dixiesanson@aol.com

Speaking: For Against Information

Representing The Arc of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/2012
Meeting Date

Topic Intellectual Disabilities

Bill Number 460
(if applicable)

Name Sylvia Smith

Amendment Barcode _____
(if applicable)

Job Title Director of Legislative & Public Affairs

Address 2728 Centerview Dr

Phone 488-9071

Tall FL 01
City State Zip

E-mail sylvias@disabilityrightsflorida.org

Speaking: For Against Information

Representing Disability Rights Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/12
Meeting Date

Topic Intellectual Disabilities

Bill Number SB 460
(if applicable)

Name Brett Bacot

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 101 W. Monroe St.

Phone ⁽⁸⁵⁰⁾ 681-4269

Tallahassee FL 32301
City State Zip

E-mail brettbacot@owlerwhite.com

Speaking: For Against Information

Representing Florida Developmental Disabilities Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/CS/SB 554

INTRODUCER: Children, Families, and Elder Affairs Committee, Education Pre-K - 12 Committee, Senators Ring and Fasano

SUBJECT: Disability Awareness in Public Schools

DATE: February 10, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|------------------------|-----------|---------------|
| 1. | <u>Carrouth</u> | <u>deMarsh-Mathues</u> | <u>ED</u> | Fav/CS |
| 2. | <u>Daniell</u> | <u>Farmer</u> | <u>CF</u> | Fav/CS |
| 3. | _____ | _____ | <u>BC</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

- | | | |
|---------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE.. | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires district school boards to provide disability history and awareness instruction in all K-12 public schools beginning with the 2013-2014 school year. The instruction must be integrated into the existing school curriculum and be augmented by individuals who have a disability and are approved by the school or school district and meet existing background screening requirements. The Department of Education (DOE or department) is tasked with assisting in the development of an appropriate disability curriculum to be used in the school districts.

Under the bill, the Disability History and Awareness Advisory Council (council) is created within DOE. The council is tasked with submitting an annual report, providing input regarding the curriculum for disability history and awareness, and assisting schools in locating individuals to make presentations at schools.

This bill amends section 1003.4205, Florida Statutes.

II. Present Situation:

Disability History and Awareness

According to a U.S. Census Bureau report, one in five United States residents – about 54 million Americans – reported some level of disability in 2005.¹ Approximately 13 percent of children age 6 to 14 have a disability,² and as of 2008, 95 percent of students age 6 to 21 were taught in a general education classroom.³ According to the Museum of disABILITY History, students:

benefit from learning about the story of people with disabilities, including how they used to be viewed and treated, how conditions have changed over time and how individuals with disabilities are currently actively involved in self-advocacy and in their communities. Given the context of disability history, students will be equipped with the tools needed to engage in critical thinking and will be more likely to view individuals with disabilities as people deserving of dignity and respect just like everyone else.⁴

On this premise, disability advocates began a campaign to help create understanding and to celebrate the history of individuals with disabilities, and in 2006, West Virginia passed the first Disability History Week bill.⁵ Twenty-three other states, including Florida, have since passed similar legislation.⁶

In 2008, the Florida Legislature authorized each district school board to provide disability history and awareness instruction in all K-12 public schools during the first two weeks in October.⁷ During “Disability History and Awareness Weeks,” students may be provided with instruction to expand their knowledge, understanding, and awareness of individuals with disabilities and the history of disability and the disability rights movement. The instruction may be integrated into the existing school curriculum and may be taught by qualified school personnel or knowledgeable guest speakers.

The Bureau of Exceptional Education and Student Services, within the Department of Education (DOE or department), developed a resource guide to help school districts promote Disability History and Awareness Weeks.⁸ The guide includes:

- Promotional ideas to help schools promote disability history and awareness;

¹ Disabled World, *New Statistics 54.4 Million Americans with a Disability* (Dec. 20, 2008), <http://www.disabled-world.com/disability/statistics/us-disability-stats.php> (last visited Jan. 22, 2012).

² *Id.*

³ Nat’l Ctr. for Education Statistics, *Fast Facts*, <http://nces.ed.gov/fastfacts/display.asp?id=59> (last visited Jan. 22, 2012).

⁴ Museum of disABILITY History, *Disability History Week: Importance*, <http://disabilityhistoryweek.org/pages/importance/> (last visited Jan. 22, 2012).

⁵ Museum of disABILITY History, *Disability History Week: National Disability History Week Initiative*, <http://www.disabilityhistoryweek.org/blogs/read/9> (last visited Jan. 22, 2012).

⁶ Museum of disABILITY History, *Disability History Week: Legislation*, <http://www.disabilityhistoryweek.org/legislations/> (last visited Jan. 22, 2012).

⁷ Chapter 2008-156, s. 1, L.O.F., codified in s. 1003.4205, F.S.

⁸ Bureau of Exceptional Education and Student Services, Department of Education, *Disability History and Awareness: A Resource Guide* (2010), available at <http://www.fldoe.org/ese/pdf/DHA-Resource2010.pdf> (last visited Jan. 22, 2012).

- Flyers recognizing the contributions of various individuals with disabilities;
- Disability etiquette documents;
- Documents concerning “people first” language;
- A guide to differentiated instruction;
- A copy of “A Legislative History of Florida’s Exceptional Student Education Program”; and
- A list of websites that contain a variety of games, activities, and lesson plans that can be integrated into a curriculum for students.⁹

In 2010, the Commissioner of Education (commissioner) was directed to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education for instructional personnel.¹⁰ The commissioner was instructed to address:

- Early identification of, and intervention for, students who have autism spectrum disorder, Down syndrome, or other developmental disabilities;
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques;
- The use of available state and local resources;
- The use of positive behavioral supports to deescalate problem behaviors; and
- Appropriate use of manual physical restraint and seclusion techniques.¹¹

Governor’s Commission on Disabilities

The Governor’s Commission on Disabilities (commission) was designed, by Executive Order, to “advance public policy for Floridians with disabilities and to provide a forum for advocates representing Floridians with disabilities to develop and voice unified concerns and recommendations.”¹² The commission made recommendations for strategies to address barriers faced by persons with disabilities in education, employment, transportation, civil rights, health care, and access to technology.¹³

III. Effect of Proposed Changes:

Beginning with the 2013-2014 school year, the bill requires district school boards to provide disability history and awareness instruction in all K-12 public schools during the first two weeks in October. This instruction is currently an optional activity.

The Department of Education (DOE or department) is directed to assist in creating the curriculum for the disability history and awareness instruction. Beginning in the 2013-2014

⁹ *Id.* at 1.

¹⁰ Chapter 2010-224, s. 6, Laws of Fla., codified in s. 1012.582, F.S.

¹¹ Section 1012.582(1), F.S.

¹² Office of the Governor, State of Florida, *Executive Order Number 07-148* (July 26, 2007), and *Executive Order Number 08-193* (Sept. 11, 2008), available at <http://www.flgov.com/2007-executive-orders/> and <http://www.flgov.com/2008-executive-orders/> (last visited Jan. 22, 2012).

¹³ Governor’s Commission on Disabilities, *2009 Report* (June 2009) and *2010 Report* (July 2010), available at http://www.dms.myflorida.com/other_programs/governor_s_commission_on_disabilities and http://fodh.php.ufl.edu/files/2011/05/Report_Final_Edited2010-GovReport0902-10.pdf (last visited Jan. 22, 2012).

school year, the instruction must be integrated into the existing school curriculum. The bill requires that the instruction be augmented by presentations from individuals who have disabilities and who are approved by the school or school district. The school or school district must ensure that the individuals have met the appropriate background screening requirements under s. 1012.465, F.S.¹⁴

The bill provides that the Disability History and Awareness Advisory Council (council) is created within DOE. The council shall consist of 15 members, including the Commissioner of Education, a member of the House of Representatives, and a member of the Senate. Of the remaining members, six must be individuals younger than 30 years of age and six must be individuals older than 30 years of age. These individuals must apply to DOE in order to become members of the council. The bill provides that the Commissioner of Education, the Senate member, and the House of Representatives member are ex officio, nonvoting members.

The council's responsibilities include:

- Providing input to DOE regarding the curriculum for disability history and awareness;
- Assisting, upon request, schools or school districts in locating individuals who have disabilities to make presentations at schools; and
- Submitting an annual report to the Governor, the presiding officers of the Legislature, and the superintendent of each school district in the state. The report must be submitted by August 1, 2013, and each year thereafter, and must include recommendations and policy alternatives regarding the state of disability awareness in this state.

The council must meet at least four times a year and more often as needed.

The bill provides that DOE must provide a liaison to assist the council and shall act as the fiscal agent for all financial transactions required by the council.

The bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁴ Section 1012.465, F.S., relates to background screening for noninstructional school district employees and contractors who are permitted access on school grounds when students are present, who have direct contact with students, or who have access to or control of school funds. The bill does not prohibit instructional personnel who have a disability from providing this instruction. If they provide the instruction, they would be subject to the requirements in ss. 1012.32 and 1012.56, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be some costs associated with requiring the Department of Education (DOE or department) to assist in developing an appropriate disability curriculum to be used in the school districts. However, the costs may be mitigated if the DOE uses or adapts provisions in the existing resource guide, which includes curriculum topics required under the bill.

Additionally, there may be a cost associated to DOE for providing a liaison to assist the disability history and awareness advisory council.

The bill requires the council to meet at least four times per year and more often as needed. The department is required to act as the fiscal agent for the council; however, the bill does not specify a source of funding to support the council.

VI. Technical Deficiencies:

The bill creates the Disability History and Awareness Advisory Council (council), comprised of 15 members. Specifically, the bill requires that six of the council members be younger than 30 years of age and that six of the council members be older than 30 years of age. It appears that the intent of the bill is to include individuals with disabilities on the council; however, the bill does not require that these 12 council members have a disability. Presumably, the Department of Education (DOE) could appoint individuals who do not have disabilities as long as they apply to DOE.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Children, Families, and Elder Affairs on February 9, 2012:

The committee substitute:

- Specifies there are to be 15 members on the Disability History and Awareness Advisory Council (council), six of whom are to be younger than 30 years of age and six of whom are to be older than 30 years of age;
- Provides that the Commissioner of Education and the Senate and House of Representatives members of the council are ex officio, nonvoting members;
- Spells out the responsibilities of the council;
- Provides that the annual report is due by August 1, 2013, and each year thereafter, and specifies what must be included in the annual report;
- Requires that disability history and awareness instruction be augmented by presentations from individuals who have disabilities, who have been approved by the school or school district as presenters, and who meet appropriate background screening requirements; and
- Clarifies that district school boards must provide disability history and awareness instruction in all K-12 public schools beginning with the 2013-2014 school year.

CS by Education Pre-K – 12 on January 9, 2012:

The committee substitute:

- Requires the council membership to include the Florida Youth Council, in lieu of members appointed by the Commissioner of Education from different regions of the state;
- Requires the disability awareness council to meet at least four times each year; and
- Corrects a technical reference to the background screening requirements in the bill.

- B. **Amendments:**

None.



652984

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/10/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Children, Families, and Elder Affairs (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 1003.4205, Florida Statutes, is amended
to read:

1003.4205 Disability history and awareness instruction.—

(1) Beginning with the 2013-2014 school year, each district
school board shall ~~may~~ provide disability history and awareness
instruction in all K-12 public schools in the district during
the first 2 weeks in October each year. The district school
board shall designate these 2 weeks as "Disability History and



652984

13 Awareness Weeks.” The Department of Education shall assist in
14 creating the curriculum for the disability history and awareness
15 instruction that will be used in each school district.

16 (2) (a) During this 2-week period, students shall ~~may~~ be
17 provided intensive instruction to expand their knowledge,
18 understanding, and awareness of individuals who have ~~with~~
19 disabilities, the history of disability, and the disability
20 rights movement. Disability history must ~~may~~ include the events
21 and timelines of the development and evolution of services to,
22 and the civil rights of, individuals who have ~~with~~ disabilities.
23 Disability history must ~~may~~ also include the contributions of
24 specific individuals who have ~~with~~ disabilities, including the
25 contributions of acknowledged national leaders.

26 (b) Beginning with the 2013-2014 school year, the
27 instruction shall ~~may~~ be integrated into the existing school
28 curriculum in ways including, but not limited to, supplementing
29 lesson plans, holding school assemblies, or providing other
30 school-related activities. The instruction shall ~~may~~ be
31 augmented by presentations from individuals who have
32 disabilities, who have been approved by the school or school
33 district as presenters, and who the school or school district
34 has ensured meet appropriate background screening requirements
35 of s. 1012.465 to enter schools and interact with children
36 ~~delivered by qualified school personnel or by knowledgeable~~
37 ~~guest speakers, with a particular focus on including individuals~~
38 ~~with disabilities.~~

39 (c)1. There is created within the Department of Education
40 the Disability History and Awareness Advisory Council. The
41 council shall consist of the following 15 members:



652984

42 a. The Commissioner of Education or his or her designee.

43 b. A member of the House of Representatives, appointed by
44 the Speaker of the House of Representatives, or his or her
45 designee.

46 c. A member of the Senate, appointed by the President of
47 the Senate, or his or her designee.

48 d. Four members of the Florida Youth Council who are
49 selected by the Department of Education.

50 e. A member from Yes! of America United, Inc., who is
51 selected by the Department of Education.

52 f. A member of the public who is deaf/blind who is selected
53 by the Department of Education.

54 g. A member of the public who has mental disabilities and
55 is selected by the Department of Education.

56 h. A member of the public who has developmental
57 disabilities and is selected by the Department of Education.

58 i. Four persons from disability groups that are not
59 represented on the council who are selected by the Department of
60 Education.

61 2.a. Six members of the council must be younger than 30
62 years of age and six members of the council must be at least 30
63 years of age or older.

64 b. The Commissioner of Education, the member of the Senate,
65 and the member of the House of Representatives, or their
66 designees, are ex officio, nonvoting members of the council.

67 3. The department shall provide a liaison to assist the
68 council in its operation. The department shall act as the fiscal
69 agent for all financial transactions required by the council.

70 4. The responsibilities of the council shall be, but are



652984

71 not limited to:

72 a. Providing to the Department of Education input regarding
73 the curriculum for disability history and awareness;

74 b. Assisting, upon request, schools or school districts in
75 locating individuals who have disabilities to make presentations
76 at schools; and

77 c. Submitting an annual report to the Governor, the
78 President of the Senate, the Speaker of the House of
79 Representatives, and the superintendent of each school district
80 in this state by August 1, 2013, and each year thereafter. The
81 annual report must include, but is not limited to,
82 recommendations and policy alternatives regarding the state of
83 disability awareness in this state.

84 5. The council shall meet at least four times a year and
85 more often as needed.

86 (3) The goals of disability history and awareness
87 instruction include:

88 (a) Better treatment for individuals who have ~~with~~
89 disabilities, especially for youth in school, and increased
90 attention to preventing the bullying or harassment of students
91 who have ~~with~~ disabilities.

92 (b) Encouragement to individuals who have ~~with~~ disabilities
93 to develop increased self-esteem, resulting in more individuals
94 who have ~~with~~ disabilities gaining pride in being an individual
95 with a disability, obtaining postsecondary education, entering
96 the workforce, and contributing to their communities.

97 (c) Reaffirmation of the local, state, and federal
98 commitment to the full inclusion in society of, and the equal
99 opportunity for, all individuals who have ~~with~~ disabilities.



652984

100 Section 2. This act shall take effect upon becoming a law.

101

102 ===== T I T L E A M E N D M E N T =====

103 And the title is amended as follows:

104 Delete everything before the enacting clause
105 and insert:

106 A bill to be entitled
107 An act relating to disability awareness; amending s.
108 1003.4205, F.S.; requiring that each district school
109 board provide disability history and awareness
110 instruction in all K-12 public schools; requiring that
111 the Department of Education assist in creating the
112 curriculum for the disability history and awareness
113 instruction; providing for individual presenters who
114 have disabilities to augment the disability history
115 and awareness instruction; creating the Disability
116 History and Awareness Advisory Council within the
117 Department of Education; requiring that the Department
118 of Education select the membership of the council;
119 providing that the Commissioner of Education, the
120 member of the Senate, and the member of the House of
121 Representatives are ex officio, nonvoting members of
122 the council; requiring that the department provide a
123 liaison to assist the council; requiring that the
124 department act as the fiscal agent for all financial
125 transactions required by the council; providing
126 responsibilities of the council; providing meeting
127 times for the council; providing an effective date.



441154

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/10/2012 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Children, Families, and Elder Affairs (Latvala) recommended the following:

1 **Senate Amendment to Amendment (652984) (with title**
2 **amendment)**

3
4 Delete lines 48 - 66
5 and insert:

6 d. Six individuals who are younger than 30 years of age and
7 who must apply to the Department of Education to become members
8 of the council.

9 e. Six individuals who are 30 years of age or older and who
10 must apply to the Department of Education to become members of
11 the council.

12 2. The Commissioner of Education, the member of the Senate,



441154

13 and the member of the House of Representatives, or their
14 designees, are ex officio, nonvoting members of the council.

15
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 Delete lines 117 - 118

19 and insert:

20 Department of Education; providing for certain
21 individuals to apply to the department for membership
22 on the council;

By the Committee on Education Pre-K - 12; and Senators Ring and Fasano

581-01715-12

2012554c1

A bill to be entitled

An act relating to disability awareness; amending s. 1003.4205, F.S.; requiring each district school board to provide disability history and awareness instruction in all K-12 public schools; requiring the Department of Education to assist in creating the curriculum for the disability history and awareness instruction; providing for individual presenters who have disabilities to provide the disability history and awareness instruction; requiring the Department of Education to establish a disability history and awareness advisory council; providing membership of the council; requiring the department to provide a liaison to assist the council; requiring the department to act as the fiscal agent for all financial transactions required by the council; providing responsibilities of the council; providing meeting times for the council; providing an effective date.

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

Section 1. Section 1003.4205, Florida Statutes, is amended to read:

1003.4205 Disability history and awareness instruction.—

(1) Each district school board shall ~~may~~ provide disability history and awareness instruction in all K-12 public schools in the district during the first 2 weeks in October each year. The district school board shall designate these 2 weeks as

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

581-01715-12

2012554c1

“Disability History and Awareness Weeks.” The Department of Education shall assist in creating the curriculum for the disability history and awareness instruction that will be used in each school district.

(2) (a) During this 2-week period, students shall ~~may~~ be provided intensive instruction to expand their knowledge, understanding, and awareness of individuals who have ~~with~~ disabilities, the history of disability, and the disability rights movement. Disability history must ~~may~~ include the events and timelines of the development and evolution of services to, and the civil rights of, individuals who have ~~with~~ disabilities. Disability history must ~~may~~ also include the contributions of specific individuals who have ~~with~~ disabilities, including the contributions of acknowledged national leaders.

(b) Beginning with the 2013-2014 school year, the instruction shall ~~may~~ be integrated into the existing school curriculum in ways including, but not limited to, supplementing lesson plans, holding school assemblies, or providing other school-related activities. The instruction shall ~~may~~ be delivered by individual presenters who have disabilities and who have been approved by the Department of Education as presenters qualified school personnel or by knowledgeable guest speakers, ~~with a particular focus on including individuals with disabilities.~~

(c)1. The Department of Education shall establish a disability history and awareness advisory council. The council shall consist of the following members:

a. The Commissioner of Education or his or her designee.

b. The Florida Youth Council, a group of young people ages

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 15 to 17, and emerging young leaders ages 18 to 30, who live in
 60 this state and have disabilities or special health care needs.

61 c. A member of the House of Representatives, appointed by
 62 the Speaker of the House of Representatives, or his or her
 63 designee.

64 d. A member of the Senate, appointed by the President of
 65 the Senate, or his or her designee.

66 2. The department shall provide a liaison to assist the
 67 council in its operation. The department shall act as the fiscal
 68 agent for all financial transactions required by the council.

69 3. The responsibilities of the council shall be, but are
 70 not limited to:

71 a. Ensuring that each presenter has first-hand knowledge
 72 and experience pertaining to the challenges facing individuals
 73 who have disabilities;

74 b. Ensuring that members of the Florida Youth Council in
 75 this state continue to remain involved in leadership
 76 development, self-advocacy, peer mentoring, and other activities
 77 that will improve the quality of life for youth and emerging
 78 leaders who have disabilities;

79 c. Ensuring that each presenter meets the background
 80 screening requirements of s. 1012.465; and

81 d. Submitting an annual report to the Governor, the
 82 President of the Senate, the Speaker of the House of
 83 Representatives, and the superintendent of each school district
 84 in this state.

85 4. The council shall meet at least four times a year and
 86 more often as needed.

87 (3) The goals of disability history and awareness

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88 instruction include:

89 (a) Better treatment for individuals who have ~~with~~
 90 disabilities, especially for youth in school, and increased
 91 attention to preventing the bullying or harassment of students
 92 who have with disabilities.

93 (b) Encouragement to individuals who have ~~with~~ disabilities
 94 to develop increased self-esteem, resulting in more individuals
 95 who have with disabilities gaining pride in being an individual
 96 with a disability, obtaining postsecondary education, entering
 97 the workforce, and contributing to their communities.

98 (c) Reaffirmation of the local, state, and federal
 99 commitment to the full inclusion in society of, and the equal
 100 opportunity for, all individuals who have with disabilities.

101 Section 2. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Community Affairs
Higher Education

SENATOR JEREMY RING

32nd District

January 9, 2012

Honorable Senator Ronda Storms
413 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Storms,

I am writing to respectfully request your cooperation in placing Senate Bill 554, relating to Disability Awareness on the agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 32

cc: Renai Farmer, Staff Director

RECEIVED

JAN 10 2012

Senate Committee
Children and Families

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5094

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/12

Meeting Date

Topic Disability Awareness Bill Number CS 554
Name Brett Bacot Amendment Barcode _____
Job Title Lobbyist Phone 850-681-4269
Address 101 N. Monroe St. Phone 850-681-4269
Street Tallahassee FL 32301 E-mail brett.bacot@foxlawwhite.com
City State Zip

Speaking: For Against Information

Representing Florida Developmental Disabilities Council

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2012

Meeting Date

Topic Disability Awareness Bill Number 554
Name Sylvia Smith Amendment Barcode _____
Job Title Director of Legis. Affairs Phone 488-9071
Address 2728 Centerview Dr Phone 488-9071
Street Tall FL 01 E-mail Sylvia s@
City State Zip disabilityrightsflorida.org

Speaking: For Against Information

Representing Disability Rights Florida

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/12

Meeting Date

Topic Disability History/Awareness

Bill Number 554

Name Alex Brown

Amendment Barcode 441154 (if applicable) 632984 (if applicable)

Job Title Youth Advisor

Address 1332 N. Duval St

Phone (850) 980-4450

Street

Gallahassee, FL 32303

City

State

Zip

E-mail abrown@familycafe.net

Speaking: [X] For [] Against [] Information

Representing The Florida Youth Council

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 144

INTRODUCER: Senator Flores and others

SUBJECT: Seclusion and Restraint on Students with Disabilities

DATE: February 8, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|------------------------|-----------|--------------------|
| 1. | <u>Carrouth</u> | <u>deMarsh-Mathues</u> | <u>ED</u> | Favorable |
| 2. | <u>Daniell</u> | <u>Farmer</u> | <u>CF</u> | Pre-meeting |
| 3. | _____ | _____ | <u>BC</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill amends Florida law providing Legislative intent relating to the use, prevention, and reduction of seclusion and restraint on students with disabilities. Additionally, the bill prescribes the use of restraint and seclusion. Specifically, the bill:

- Requires parents be provided a copy of emergency procedures, including procedures on the use of manual physical restraint, at the beginning of each school year;
- Requires that a medical evaluation be completed by a physician, nurse, or other qualified medical professional as soon as possible after a student has been restrained;
- Requires the use of manual physical restraint be restricted to only those school personnel who are certified in district-approved techniques;
- Prohibits the use of manual physical restraint except when an imminent risk of serious injury or death exists;
- Prohibits certain manual physical restraint techniques;
- Requires school districts to train and certify individuals in the use of manual physical restraint, and offer refresher certification courses;
- Requires incident report documentation to be submitted each week that the school is in session to certain persons, as well as to the Advocacy Center for Persons with Disabilities, Inc.;
- Requires certain information to be made available to the public on the Department of Education’s website;
- Prohibits the use of seclusion; and
- Provides that time-out may only be used as part of a positive behavioral intervention plan and only when certain conditions are met.

This bill substantially amends section 1003.573, Florida Statutes.

II. Present Situation:

After reported incidences of restraint and seclusion techniques being used in schools throughout the country that resulted in injury or death to the student, the U.S. House of Representatives' Committee on Education and Labor requested a study from the Governmental Accountability Office (GAO) seeking verification of the reports.¹ Although the GAO report found that there were "hundreds of cases of alleged abuse and death" related to the use of restraints and seclusion, almost all of which involved children with disabilities, the GAO could not determine whether the allegations were widespread.² The GAO report did present four themes:

- Children with disabilities were sometimes restrained and secluded even when they did not appear to be physically aggressive and their parents did not give consent;
- Facedown or other restraints that block air to the lungs can be deadly;
- Teachers and staff in these cases were often not trained in the use of restraints and techniques; and
- Teachers and staff from these cases continue to be employed as educators.³

Currently, there are no federal laws that restrict the use of restraint and seclusion in public and private schools,⁴ and state laws are widely divergent. In 2009 and 2010, bills were introduced in the U.S. House of Representatives and Senate to regulate the use of restraint and seclusion in schools. The Keeping All Students Safe Act (Act) was proposed in the House of Representatives and would have created the first federal limitations on the use of restraint and seclusion in school.⁵ The Act would have established minimum standards that:

- Prohibited school personnel from managing any student by using any mechanical or chemical restraints, physical restraint or escort that restricts breathing, or aversive behavioral intervention that compromises student health and safety;
- Prohibited school personnel from using physical restraint or seclusion, unless such measures are required to eliminate an imminent danger of physical injury to the student or others;
- Required states to ensure that a sufficient number of school personnel received state-approved crisis intervention training and certification;
- Prohibited physical restraint or seclusion from being written into a student's individual education plan (IEP);⁶ and

¹ U.S. Gov't Accountability Office, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*, Report GAO-09-719T (May 19, 2009), available at <http://www.gao.gov/new.items/d09719t.pdf> (last visited Feb. 6, 2012).

² *Id.* at Highlights of GAO-09-719T.

³ *Id.* at 7.

⁴ In contrast, the Children's Health Act of 2000 amended Title V of the Public Health Service Act to regulate the use of restraints and seclusions on residents of certain hospitals and health care facilities that receive federal funds, as well as on children in certain residential, non-medical, community-based facilities. *Id.* at 3.

⁵ H.R. 4247 (111th Congress, 2d Session) (2010), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4247rfs.txt.pdf (last visited Feb. 6, 2012).

⁶ An IEP is developed by parents and school personnel and often includes instructions related to the use of strategies to support the student, such as behavioral interventions like the use of seclusion and restraints. U.S. Gov't Accountability Office, *supra* note 1, at 3.

- Required schools to establish procedures to notify parents in a timely manner if physical restraint or seclusion is imposed on their child.⁷

The Act passed the House of Representatives but was never heard in the Senate Committee on Health, Education, Labor, and Pensions.⁸

As of December 2010, 23 states had adopted specific laws regulating the use of restraint and seclusion in schools and 10 other states had created policies or guidance materials to discuss how restraint and seclusion may be used.⁹

The Individuals with Disabilities Education Act (IDEA) is a federal law providing for the education of children with disabilities.¹⁰ The IDEA provides federal funds to help state and local education agencies meet their obligation to educate students with disabilities. To be eligible to receive these federal funds, states must comply with numerous requirements, including:

- States and school districts must make available a free appropriate public education to all children with disabilities;
- Each child receiving services must have an IEP spelling out the specific special education and related services to be provided to meet the child's needs; and
- "To the maximum extent appropriate," children with disabilities must be educated with children who are not disabled.¹¹

The IDEA provides that when the behavior of a child with a disability impedes the child's learning or the learning of others, the IEP team must consider "the use of positive behavioral interventions and supports, and other strategies, to address that behavior."¹² Nothing in the IDEA specifically addresses the use of seclusion and restraints; however, the federal Department of Education has noted that state law may address whether restraints may be used, and the "critical inquiry is whether the use of such restraints or techniques can be implemented consisted with the child's IEP and the requirement that the IEP Teams consider the use of positive behavioral interventions."¹³

Section 1003.573, F.S., establishes policies and procedures related to seclusion and restraint of students with disabilities in Florida. These policies and procedures include documentation and reporting, monitoring, school district responsibilities, and prohibited practices. Changes to the law were made in 2011¹⁴ to provide greater oversight of seclusion and restraint practices.¹⁵ These

⁷ H.R. 4247, *supra* note 5.

⁸ See Govtrack.us, *H.R. 4247: Keeping All Students Safe Act*, <http://www.govtrack.us/congress/bill.xpd?bill=h111-4247> (last visited Feb. 6, 2012).

⁹ Daniel Stewart, *How Do the States Regulate Restraint and Seclusion in Public Schools? A Survey of the Strengths and Weaknesses in State Laws*, 34 *HAMLIN L. REV.* 531, 535-36 (2011).

¹⁰ 20 U.S.C. s. 1400 et seq.

¹¹ Nancy Lee Jones and Jody Feder, Congressional Research Serv., *The Use of Seclusion and Restraint in Public Schools: The Legal Issues*, 4 (April 14, 2009), available at http://www.spannj.org/information/CRS_Report_on_Legal_Issues_in_Seclusion_&_Restraints.pdf (last visited Feb. 6, 2012).

¹² *Id.* at 5 (citing 20 U.S.C. s. 1414(d)(3)(B)).

¹³ *Id.* (quoting Letter to Anonymous, 50 IDELR 228 (OSEP Mar. 17, 2008)).

¹⁴ Chapter 2011-175, Laws of Fla.

changes included, in part:

- Reporting the age, ethnicity, grade, and disability of the student secluded or restrained;
- A description of the restraint, based on terms established by the Department of Education (DOE or department);
- Establishment of standards for documenting, reporting, and monitoring the use of seclusion and restraint;¹⁶
- More detailed incident reporting by the school districts;
- Training programs for personnel on the use of seclusion and restraint; and
- School district plans to reduce the use of seclusion and restraint, including the use of schoolwide positive behavior supports.¹⁷

School districts began reporting incidents of restraint and seclusion at the beginning of the 2010-2011 school year. Since the inception of the reporting system, there have been 10,323 incidents of restraint reported and 4,637 incidents of seclusion reported.¹⁸

Section 1003.573, F.S., does not provide a definition for “seclusion.” The department’s Technical Assistance Paper regarding the documentation, reporting, and monitoring requirements for the use of seclusion uses the definition of “seclusion” provided by the U.S. Department of Education’s Office of Civil Rights (OCR). The OCR defines seclusion as “the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a time-out, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purposes of calming.”¹⁹ Currently, OCR requires DOE to report all instances of seclusion and restraint for all students, not just those with disabilities.²⁰

III. Effect of Proposed Changes:

This bill amends s. 1003.573, F.S., relating to the use of restraint and seclusion on students with disabilities.

¹⁵ School districts are required to revise previously submitted policies and procedures regarding restraint and seclusion and submit them to the Department of Education (DOE or department) by January 31, 2012. The department is currently reviewing updated policies and procedures as they are received. E-mail correspondence from DOE to Senate professional staff of the Committee on Education Pre-K – 12 (Jan. 24, 2012) (on file with the Senate Committee on Education Pre-K – 12).

¹⁶ The department was required to provide standards for documenting, reporting, and monitoring to the school districts by October 1, 2011. These standards were disseminated at the Administrators’ Management Meeting in September 2011. Fla. Dep’t of Education, *2012 Agency Legislative Bill Analysis, SB 144* (Sept. 23, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁷ The department published a Technical Assistance Paper in 2011 to provide guidance regarding the use, documenting, reporting, and monitoring of restraint and seclusion with students with disabilities in school districts. *See* Fla. Dep’t of Education, *Technical Assistance Paper: Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities* (2011-165) (Oct. 14, 2011), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf> (last visited Feb. 6, 2012) [hereinafter *Technical Assistance Paper*].

¹⁸ Fla. Dep’t of Education, *supra* note 16.

¹⁹ *Technical Assistance Paper*, *supra* note 17, at 5.

²⁰ *Id.*

The bill provides that manual physical restraint may only be used when there is an imminent risk of serious injury or death²¹ to the student or others, and the restraint may only be used with the degree of force necessary to protect the student or others and for only the period of time necessary to eliminate the imminent risk of serious injury or death.

The bill defines “manual physical restraint” as the use of physical restraint techniques that involve physical force applied by a teacher or other staff member to restrict the movement of all or part of a student’s body.

The use of manual physical restraint is restricted to school personnel who are certified in district-approved techniques. School personnel who may have received training elsewhere must still be certified in the specific district-approved techniques and may not apply the techniques or procedures acquired elsewhere. According to the Department of Education (DOE or department), this may prohibit the use of physical restraint during an emergency situation by personnel who are not certified.²²

The bill provides a list of manual physical restraint techniques that are prohibited. For example:

- Prone and supine restraint.
- Pain inducement to obtain compliance.
- Bone locks.
- Hyperextension of joints.
- Peer restraint.
- Mechanical restraint.²³
- Pressure or weight on the chest, lungs, sternum, diaphragm, back, or abdomen, causing chest compression.
- Straddling or sitting on any part of the body or any maneuver that places pressure, weight, or leverage on the neck or throat, or any artery, or on the back of the student’s head or neck or that otherwise obstructs or restricts the circulation of blood or obstructs an airway.
- Any type of choking, including hand chokes, and any type of neck or head hold.
- Any technique that involves pushing anything on or into the student’s mouth, nose, eyes, or any part of the face or that involves covering the face or body with anything, including soft objects such as pillows or washcloths.
- Any maneuver that involves punching, hitting, poking, pinching, or shoving.
- Any type of mat or blanket restraint.
- Water or lemon sprays.

²¹ The bill defines “imminent risk of serious injury or death” as the impending risk of significant injury, such as a laceration, bone fracture, substantial hematoma, or other injury to internal organs, or death.

²² Fla. Dep’t of Education, *supra* note 16.

²³ “Mechanical restraint” is defined in the bill as the use of a physical device that restricts a student’s movement or restricts the normal function of a student’s body. The term includes the use of straps, belts, tie-downs, calming blankets, and chairs with straps. The term does not include medical protective equipment, restraints necessary for ongoing medical treatment in the educational setting, devices used to support functional body position or proper balance, or equipment used for safety during transportation.

The bill requires that the school²⁴ have any student who has been manually physically restrained be medically evaluated by a physician, nurse, or other qualified medical professional as soon as possible. The results of the medical evaluation must be included in the incident report that a school must file within 24 hours after a student is released from a restraint.

Under the bill, each school district must report its training and certification procedures to DOE. Training requirements for initial certification in the use of manual physical restraint include:

- Deescalation procedures.
- Information regarding the risks associated with manual physical restraint and procedures for assessing individual situations and students.
- The actual use of specific techniques that range from the least to most restrictive.
- Techniques for implementing manual physical restraint with multiple staff members working as a team.
- Techniques for assisting a student to reenter the instructional environment.
- Instruction in the district's documentation and reporting requirements.
- Procedures to identify and deal with possible medical emergencies that may arise during the use of manual physical restraint.
- Cardiopulmonary resuscitation (CPR).²⁵

The school districts must provide refresher certification training courses at least annually. The district must maintain a record that includes the name and position of the person certified, the date of the most recent certification, an indication of whether it was initial certification or refresher certification, and whether the individual successfully completed the certification.²⁶ Additionally, school district policies must address whether certain employees working in specific settings (such as school bus drivers, job coaches, cafeteria workers, etc.) must be certified in manual physical restraint techniques.

If a student is manually physically restrained more than twice during a school year, the school must review the student's functional behavioral assessment and positive behavioral intervention plan. The bill does not specify what is to be done after the school reviews these plans.

The use of seclusion is prohibited under the bill; however, school personnel may place a student in time-out, as long as the following conditions are met:

- The time-out is part of a positive behavioral intervention plan developed from a functional behavioral assessment and referenced in the student's individual education plan.
- There is documentation that the time-out was preceded by the use of other positive behavioral supports that were not effective.

²⁴ The bill does not specify whose responsibility it is at the school to ensure that a student is medically evaluated after being manually physically restrained.

²⁵ According to the department, CPR training is not a typical requirement for someone trained in physical restraint. Accordingly, school districts may incur expenses in order to implement CPR training. Fla. Dep't of Education, *supra* note 16.

²⁶ The bill does not require a competency test after the training and certification. Accordingly, it is unclear how it will be determined if the individual successfully completed the certification and achieved proficiency.

- The time-out takes place in a classroom or in another environment where class educational activities are taking place.
- The student is not physically prevented from leaving the time-out area.
- The student is observed on a constant basis by an adult for the duration of the time-out.
- The time-out area and process are free of any action that is likely to embarrass or humiliate the student.

The bill provides definitions for “seclusion”²⁷ and “time-out;”²⁸ however, the definitions provided for in the bill do not align to current definitions used by DOE, which are the definitions published by the OCR.²⁹

The bill also provides that time-out may not be used for a period that exceeds one minute for each year of a student’s age. According to DOE, some of the specified conditions may be difficult to adhere to, such as only using time-out for one minute for each year of the student’s age.³⁰

The bill requires each school district to provide a copy of its policies on all emergency procedures, including the use of manual physical restraints, to each student’s parent or guardian at the beginning of each school year. The parent or guardian must sign a form indicating he or she received and read the policies.

The bill requires that certain documentation be provided weekly (rather than monthly) to the principal, the district Exceptional Student Education director, and the department. The bill removes the option to provide this information electronically. Additionally, schools must send redacted copies of the same documentation weekly to the Advocacy Center for Persons with Disabilities. According to DOE, this provision may need clarification and additional resources may be needed for the more frequent submission of documents.³¹

The bill requires DOE to maintain, and update monthly, data of incidents of manual physical restraint and to make such information available to the public on the department’s website no later than January 31, 2013.

Under the bill, the content of a school district’s policies and procedures must include information on the allowable use of restraint; personnel authorized to use manual physical restraint; training procedures; analysis of trend data; and the ongoing reduction of the use of restraint.

²⁷ “Seclusion” means removing a student from an educational environment, involuntarily confining the student in a room or area, and preventing the student from leaving the room or area if achieved by locking the door or otherwise physically blocking the student’s way, threatening physical force or other consequences, or using physical force.

²⁸ “Time-out” means a procedure in which access to varied sources of reinforcement is removed or reduced for a particular time period contingent on a response. The opportunity to receive reinforcement is contingently removed for a specified time. Either a student is contingently removed from the reinforcing environment or the reinforcing environment is contingently removed for some stipulated duration. A time-out setting may not be locked and the exit may not be blocked. Physical force or threats may not be used to place a student in time-out.

²⁹ Fla. Dep’t of Education, *supra* note 16.

³⁰ *Id.*

³¹ *Id.*

Finally, the bill makes technical and conforming changes, provides Legislative intent, and provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill amends Florida law regarding the use of restraints and seclusion on students with disabilities. The use of seclusion and restraint in public schools has been subject to constitutional challenges primarily based on the Fourteenth Amendment's guarantee of due process. The due process clause prohibits the government from depriving an individual of his or her liberty without due process of law.³² In the public school setting, due process challenges to the use of seclusion and restraint have generally been rejected if such tactics are deemed to be reasonable, especially if the use constitutes a routine disciplinary technique.³³ However, an individual may have a cause of action under the due process clause if the seclusion or restraint is found to be unreasonable such that it "shocks the conscious."³⁴

Some plaintiffs have also claimed that the use of seclusion and restraint violates the Fourth Amendment's prohibition against unreasonable seizures.³⁵ As with due process claims, courts assess these claims using a reasonableness standard. For example, the court in *Couture v. Board of Education of the Albuquerque Public Schools*³⁶ found that the use of supervised time-outs for a student who engaged in disruptive and threatening behavior was reasonable, particularly in light of the fact that the use of time-outs was authorized by the student's individualized education plan.³⁷

Finally, although the Individuals with Disabilities Education Act (IDEA) does not specifically reference the use of restraints and seclusion, cases have been brought

³² See U.S. CONST. amend. XIV, s. 1; FLA. CONST. art. I, s. 9.

³³ Nancy Lee Jones and Jody Feder, *supra* note 11, at 2.

³⁴ *Id.* at 3.

³⁵ See U.S. CONST. amend. IV; FLA. CONST. art. I, s. 12.

³⁶ 535 F.3d 1243 (10th Cir. N.M. 2008).

³⁷ Nancy Lee Jones and Jody Feder, *supra* note 11, at 3.

alleging that the use of such techniques violates a student's right to a free appropriate public education.³⁸

This bill prohibits the use of seclusion and provides criteria that must be followed when using manual physical restraints and time-out. The intent of the bill is to "prevent, and achieve an ongoing reduction of, the use of manual physical restraint in the public schools." Accordingly, the provisions of this bill may survive a constitutional challenge; however, "the due process inquiry, and the reasonableness standard upon which it relies, are subjective and highly dependent on the facts in a given case, thus making it difficult to predict the outcome of a due process challenge to the use of seclusion and restraint in public schools."³⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires school personnel to be certified to use district-approved methods for the appropriate application of specific restraint techniques, and to take refresher certification training annually. The bill does not specify who is to pay for the training and certification. It appears that this cost will be borne by the school district; however, since this is not specifically spelled out in the bill, there may be a possibility that school personnel will be required to pay for the training and certification.

C. Government Sector Impact:

According to the Department of Education (DOE or department),

School districts would be required to provide refresher certification training courses in manual physical restraints at least annually to those individuals that have completed the initial training in manual physical restraints. To prevent use of manual physical restraint by non-certified personnel, the school district should offer the initial training course and refresher certification training to all applicable personnel. The cost of training implementation is indeterminate at this time.

The use of CPR has been added to the list of training requirements. School districts will incur costs associated with certifications and training in CPR classes.

Additionally, school districts will be required to have a student medically evaluated by a doctor, nurse, or other qualified medical professional as

³⁸ *Id.* at 5.

³⁹ *Id.* at 3.

soon as possible after the manual physical restraint⁴⁰ . . . The cost of the . . . medical examination is indeterminate at this time.⁴¹

The department also stated that technical assistance documents and resources will need to be amended to conform to the new statutory requirements.⁴²

VI. Technical Deficiencies:

On line 371 of the bill, it provides that a school must send a redacted copy of any incident report to the Advocacy Center for Persons with Disabilities, Inc., (Advocacy Center). It appears that the name of the Advocacy Center was changed a year ago and the entity is now known as Disability Rights Florida. The Legislature may wish to amend the bill to reflect the proper name of the Advocacy Center.

The bill specifically provides that mechanical restraints are a prohibited form of manual physical restraint techniques. Included in the definition of “mechanical restraints” are calming blankets. According to DOE, the intended purpose of a calming blanket is not to restrain a person and research indicates that some educators, therapists, and students have found this to be an effective calming method.⁴³

The bill provides that any pressure or weight on the chest causing chest compression is considered a manual physical restraint and is prohibited. The medical definition of cardiopulmonary resuscitation (CPR) involves chest compressions to make the heart pump and mouth-to-mouth ventilation to breath for the victim.⁴⁴ Because the definition of CPR includes pressure on the chest causing chest compressions, there may be a situation where school personnel refuses to conduct CPR for fear of repercussions for applying a prohibited manual physical restraint technique.

The bill provides that in order for school personnel to place a student in time-out, there must be documentation that the time-out was preceded by the use of other positive behavioral supports that were not effective (lines 225-227). The bill does not specify how many other techniques school personnel must try before placing a student in time-out,⁴⁵ nor does the bill provide how or where this documentation should occur.

Additionally, the bill provides that school personnel may place a student in time-out as long as the time-out area and process are free of any action that is likely to embarrass or

⁴⁰ The department stated that many schools do not have a school nurse on campus and the provisions of this bill may require the student to be transported to the office of a medical professional. If the parent or guardian of the student is unavailable to transport and accompany the student to the medical professional’s office, DOE assumes that the school or the school district will be required to do so. Fla. Dep’t of Education, *supra* note 16.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ MedicineNet.com, *Definition of cardiopulmonary resuscitation*, <http://www.medterms.com/script/main/art.asp?articlekey=2632> (last visited Feb. 6, 2012).

⁴⁵ It appears that in certain districts, the training provided to school personnel regarding restraints and seclusion includes a list of positive behavioral supports that school personnel should attempt prior to resorting to restraining or secluding the student. Conversation with Steve Moyer, parent (Feb. 7, 2012).

humiliate the student. This appears to be a subjective requirement; one in which the teacher could do everything properly but simply telling the student to go to time-out could embarrass the student.

Throughout the bill, the terms “school personnel” and “staff member” appear to be used interchangeably. Also, in the definition of “manual physical restraint” the term “teacher” is used. The Legislature may wish to amend the bill to use one term consistently in order to avoid confusion.

Finally, DOE suggested providing rulemaking authority to the department in order to address some of the issues presented in the bill.⁴⁶

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁴⁶ Fla. Dep’t of Education, *supra* note 16.



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LEGISLATIVE ACTION

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| Senate | . | House |
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| 02/10/2012 | . | |
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1003.573, Florida Statutes, is amended to read:

1003.573 Use, prevention, and reduction of seclusion and restraint on students with disabilities in public schools ~~Use of restraint and seclusion on students with disabilities.~~

(1) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Education.

(b) "Imminent risk of serious injury or death" means the



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13 impending risk of a significant injury, such as a laceration,
14 bone fracture, substantial hematoma, or other injury to internal
15 organs, or death.

16 (c) "Manual physical restraint" means the use of physical
17 restraint techniques that involve physical force applied by
18 school personnel to restrict the movement of all or part of a
19 student's body.

20 (d) "Mechanical restraint" means the use of a physical
21 device that restricts a student's movement or restricts the
22 normal function of a student's body. The term includes the use
23 of straps, belts, tie-downs, calming blankets, and chairs with
24 straps; however, the term does not include the use of:

25 1. Medical protective equipment;

26 2. Physical equipment or orthopedic appliances, surgical
27 dressings or bandages, or supportive body bands or other
28 restraints necessary for ongoing medical treatment in the
29 educational setting;

30 3. Devices used to support functional body position or
31 proper balance, or to prevent a person from falling out of a bed
32 or a wheelchair, except when such device is used for any purpose
33 other than supporting a body position or proper balance, such as
34 coercion, discipline, convenience, or retaliation, to prevent
35 imminent risk of serious injury or death of the student or
36 others, or for any other behavior-management reason; or

37 4. Equipment used for safety during transportation, such as
38 seatbelts or wheelchair tie-downs.

39 (e) "Medical protective equipment" means health-related
40 protective devices prescribed by a physician or dentist for use
41 as student protection in response to an existing medical



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42 condition.

43 (f) "Seclusion" means the involuntary confinement of a
44 student alone in a room or area from which the student is
45 prevented from leaving. The term does not include the use of
46 time-out.

47 (g) "Student" means a student with a disability.

48 (h) "Time-out" means a procedure in which access to varied
49 sources of reinforcement is removed or reduced for a particular
50 time period contingent on a response. The opportunity to receive
51 reinforcement is contingently removed for a specified time.
52 Either a student is contingently removed from the reinforcing
53 environment or the reinforcing environment is contingently
54 removed for some stipulated duration. A time-out setting may not
55 be locked and the exit may not be blocked. Physical force or
56 threats may not be used to place a student in time-out.

57 (2) LEGISLATIVE FINDINGS AND INTENT.—

58 (a) The Legislature finds that public schools have a
59 responsibility to ensure that each student is treated with
60 respect and dignity in a trauma-informed environment that
61 provides for the physical safety and security of students and
62 others.

63 (b) The Legislature finds that students, educators, and
64 families are concerned about the use of seclusion and restraint,
65 particularly when used on students in special education
66 programs. Seclusion and restraint refer to safety procedures in
67 which a student is isolated from others or physically held in
68 response to serious problem behavior that places the student or
69 others at risk of injury or harm. There is concern that these
70 procedures are prone to misapplication and abuse and place a



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71 student at an equal or greater risk than the risk of the
72 student's problem behavior. Particular concerns include:

73 1. Seclusion or restraint is inappropriately selected and
74 implemented as treatment or behavioral intervention rather than
75 as a safety procedure;

76 2. Seclusion or restraint is inappropriately used for
77 behaviors, such as noncompliance, threats, or disruption, which
78 do not place the student or others at risk of injury or harm;

79 3. Students, peers, or staff may be injured or physically
80 harmed during attempts to conduct seclusion or restraint;

81 4. Risk of injury or harm is increased because seclusion or
82 restraint is implemented by staff who are not adequately
83 trained;

84 5. The use of seclusion or restraint may inadvertently
85 result in reinforcing or strengthening the problem behavior; and

86 6. Seclusion or restraint is implemented independent of
87 comprehensive, function-based behavioral intervention plans.

88
89 Moreover, there are concerns about the inadequate
90 documentation of seclusion or restraint procedures, the failure
91 to notify parents when seclusion or restraint is applied, and
92 the failure to use data to analyze and address the cause of the
93 precipitating behavior.

94 (c) The Legislature finds that the majority of problem
95 behaviors that are currently used to justify seclusion or
96 restraint could be prevented with early identification and
97 intensive early intervention. The need for seclusion or
98 restraint is, in part, a result of insufficient investment in
99 prevention efforts. The Legislature further finds that the use



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100 of seclusion or restraint may produce trauma in students. For
101 such students, who are already experiencing trauma, the use may
102 cause retraumatization. Left unaddressed, the lasting effects of
103 childhood trauma place a heavy burden on individuals, families,
104 and communities. Research has shown that trauma significantly
105 increases the risk of mental health problems, difficulties with
106 social relationships and behavior, physical illness, and poor
107 school performance.

108 (d) The Legislature intends that students be free from the
109 abusive and unnecessary use of seclusion or restraint in the
110 public schools. The Legislature further intends to prevent, and
111 achieve an ongoing reduction of, the use of manual physical
112 restraint in the public schools and, specifically, to prohibit
113 the use of seclusion, prone and supine restraint, and mechanical
114 restraint on students. The Legislature also intends that manual
115 physical restraint be used only when an imminent risk of serious
116 injury or death exists; that manual physical restraint not be
117 employed as punishment, for the convenience of staff, or as a
118 substitute for a positive behavior-support plan; and that, when
119 used, persons applying manual physical restraint impose the
120 least possible restrictions and discontinue the restraint as
121 soon as the threat of imminent risk of serious injury or death
122 ceases.

123 (3) MANUAL PHYSICAL RESTRAINT.—Manual physical restraint
124 shall be used only in an emergency when there is an imminent
125 risk of serious injury or death to the student or others.

126 (a) Manual physical restraint shall be used only for the
127 period needed in order to eliminate the imminent risk of serious
128 injury or death to the student or others.



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129 (b) The degree of force applied during manual physical
130 restraint must be only that degree of force necessary to protect
131 the student or others from bodily injury.

132 (c) Manual physical restraint shall be used only by school
133 personnel who are qualified and certified to use the district-
134 approved methods for the appropriate application of specific
135 restraint techniques. School personnel who have received
136 training that is not associated with their employment with the
137 school district, such as a former law enforcement officer who is
138 now a teacher, shall be certified in the specific district-
139 approved techniques and may not apply techniques or procedures
140 acquired elsewhere.

141 (d) School personnel may not manually physically restrain a
142 student except when an imminent risk of serious injury or death
143 to the student or others exists.

144 (e) School personnel may not use any of the following
145 manual physical restraint techniques on a student:

- 146 1. Prone and supine restraint.
- 147 2. Pain inducement to obtain compliance.
- 148 3. Bone locks.
- 149 4. Hyperextension of joints.
- 150 5. Peer restraint.
- 151 6. Mechanical restraint.
- 152 7. Pressure or weight on the chest, lungs, sternum,
153 diaphragm, back, or abdomen, causing chest compression. This
154 provision does not prohibit the use of cardiopulmonary
155 resuscitation.
- 156 8. Straddling or sitting on any part of the body or any
157 maneuver that places pressure, weight, or leverage on the neck



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158 or throat, on any artery, or on the back of the student's head
159 or neck or that otherwise obstructs or restricts the circulation
160 of blood or obstructs an airway.

161 9. Any type of choking, including hand chokes, and any type
162 of neck or head hold.

163 10. Any technique that involves pushing anything on or into
164 the student's mouth, nose, eyes, or any part of the face or that
165 involves covering the face or body with anything, including soft
166 objects such as pillows or washcloths.

167 11. Any maneuver that involves punching, hitting, poking,
168 pinching, or shoving.

169 12. Any type of mat or blanket restraint.

170 13. Water or lemon sprays.

171 (f) The school shall ensure that a student is medically
172 evaluated by a physician, nurse, or other qualified medical
173 professional as soon as possible after the student has been
174 manually physically restrained by school personnel.

175 (4) SECLUSION; TIME-OUT.—

176 (a) School personnel may not place a student in seclusion.

177 (b) School personnel may place a student in time-out if the
178 following conditions are met:

179 1. The time-out is part of a positive behavioral
180 intervention plan developed for that student from a functional
181 behavioral assessment and referenced in the student's individual
182 education plan.

183 2. There is documentation that the time-out was preceded by
184 the use of other positive behavioral supports that were not
185 effective.

186 3. The time-out takes place in a classroom or in another



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187 environment where class educational activities are taking place.

188 4. The student is not physically prevented from leaving the
189 time-out area.

190 5. The student is observed on a constant basis by an adult
191 for the duration of the time-out.

192 (c) Time-out may not be used for a period that exceeds 1
193 minute for each year of a student's age and time-out must end
194 immediately when the student is calm enough to return to his or
195 her seat.

196 (d) Time-out may not be used as a punishment or negative
197 consequence of a student's behavior.

198 (5) TRAINING AND CERTIFICATION.-

199 (a) Each school district shall report its training and
200 certification procedures to the department by publishing the
201 procedures in the district's special policies and procedures
202 manual.

203 (b) Training for initial certification in the use of manual
204 physical restraint must include:

205 1. Procedures for deescalating problem behaviors before the
206 problems increase to a level or intensity necessitating physical
207 intervention.

208 2. Information regarding the risks associated with manual
209 physical restraint and procedures for assessing individual
210 situations and students in order to determine if the use of
211 manual physical restraint is appropriate and sufficiently safe.

212 3. The actual use of specific techniques that range from
213 the least to most restrictive, with ample opportunity for
214 trainees to demonstrate proficiency in the use of such
215 techniques.



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216 4. Techniques for implementing manual physical restraint
217 with multiple school personnel working as a team.

218 5. Techniques for assisting a student to reenter the
219 instructional environment and again engage in learning.

220 6. Instruction in the district's documentation and
221 reporting requirements.

222 7. Procedures to identify and deal with possible medical
223 emergencies arising during the use of manual physical restraint.

224 8. Cardiopulmonary resuscitation.

225 (c) School districts shall provide refresher certification
226 training courses in manual physical restraint techniques at
227 least annually to all school personnel who have successfully
228 completed the initial certification program. The district must
229 identify those persons to be certified and maintain a record
230 that includes the name and position of the person certified, the
231 date of the most recent certification, an indication of whether
232 it was an initial certification or a refresher certification,
233 and whether the individual successfully completed the
234 certification and achieved proficiency.

235 (d) School district policies regarding the use of manual
236 physical restraint must address whether it is appropriate for an
237 employee working in specific settings, such as a school bus
238 driver, school bus aide, job coach, employment specialist, or
239 cafeteria worker, to be certified in manual physical restraint
240 techniques. In the case of school resource officers or others
241 who may be employed by other agencies when working in a school,
242 administrators shall review each agency's specific policies to
243 be aware of techniques that may be used.

244 (6) STUDENT-CENTERED FOLLOWUP.—If a student is manually



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245 physically restrained more than twice during a school year, the
246 school shall review the student's functional behavioral
247 assessment and positive behavioral intervention plan.

248 (7)(1) DOCUMENTATION AND REPORTING.—

249 (a) At the beginning of each school year, a school district
250 shall provide a copy of its policies on all emergency
251 procedures, including its policies on the use of manual physical
252 restraint, to each student's parent or guardian. The student's
253 parent or guardian must sign a form indicating that he or she
254 has read and received the district's policies, which the
255 student's school shall retain on file.

256 (b)(a) A school shall prepare an incident report within 24
257 hours after a student is released from a restraint ~~or seclusion~~.
258 If the student's release occurs on a day before the school
259 closes for the weekend, a holiday, or another reason, the
260 incident report must be completed by the end of the school day
261 on the day the school reopens.

262 (c)(b) The following must be included in the incident
263 report:

- 264 1. The name of the student restrained ~~or secluded~~.
- 265 2. The age, grade, ethnicity, and disability of the student
266 restrained ~~or secluded~~.
- 267 3. The date and time of the event and the duration of the
268 restraint ~~or seclusion~~.
- 269 4. The location at which the restraint ~~or seclusion~~
270 occurred.
- 271 5. A description of the type of restraint used in terms
272 established by the Department of Education.
- 273 6. The name of the person using or assisting in the



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274 restraint ~~or seclusion~~ of the student.

275 7. The name of any nonstudent who was present to witness
276 the restraint ~~or seclusion~~.

277 8. A description of the incident, including:

278 a. The context in which the restraint ~~or seclusion~~
279 occurred.

280 b. The student's behavior leading up to and precipitating
281 the decision to use manual ~~or~~ physical restraint ~~or seclusion~~,
282 including an indication as to why there was an imminent risk of
283 serious injury or death to the student or others.

284 c. The specific positive behavioral strategies used to
285 prevent and deescalate the behavior.

286 d. What occurred with the student immediately after the
287 termination of the restraint ~~or seclusion~~.

288 e. Any injuries, visible marks, or possible medical
289 emergencies that may have occurred during the restraint ~~or~~
290 ~~seclusion~~, documented according to district policies.

291 f. The results of the medical evaluation and a copy of any
292 report by the medical professionals conducting the evaluation,
293 if available. If the medical report is not available within 24
294 hours, the district must submit the medical report separately as
295 soon as it is available.

296 ~~g.f.~~ Evidence of steps taken to notify the student's parent
297 or guardian.

298 ~~(d)-(e)~~ A school shall notify the parent or guardian of a
299 student each time manual ~~or~~ physical restraint ~~or seclusion~~ is
300 used. Such notification must be in writing and provided before
301 the end of the school day on which the restraint ~~or seclusion~~
302 occurs. Reasonable efforts must also be taken to notify the



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303 parent or guardian by telephone or computer e-mail, or both, and
304 these efforts must be documented. The school shall obtain, and
305 keep in its records, the parent's or guardian's signed
306 acknowledgment that he or she was notified of his or her child's
307 restraint ~~or seclusion~~.

308 (e) ~~(d)~~ A school shall also provide the parent or guardian
309 with the completed incident report in writing by mail within 3
310 school days after a student was ~~manually or physically~~
311 restrained ~~or secluded~~. The school shall obtain, and keep in its
312 records, the parent's or guardian's signed acknowledgment that
313 he or she received a copy of the incident report.

314 (8) ~~(2)~~ MONITORING.—

315 (a) ~~Monitoring of~~ The use of manual ~~or~~ physical restraint
316 ~~or seclusion~~ on students shall be monitored ~~occur~~ at the
317 classroom, building, district, and state levels.

318 (b) Any documentation prepared by a school pursuant to ~~as~~
319 ~~required in~~ subsection (7) ~~(1)~~ shall be provided to the school
320 principal, the district director of Exceptional Student
321 Education, and the bureau chief of the Bureau of Exceptional
322 Education and Student Services ~~electronically~~ each week ~~month~~
323 that the school is in session.

324 (c) Four times during the school year, the school shall
325 send a redacted copy of any incident report and other
326 documentation prepared pursuant to subsection (7) to Disability
327 Rights Florida.

328 (d) ~~(e)~~ The department shall maintain aggregate data of
329 incidents of manual ~~or~~ physical restraint ~~and seclusion~~ and
330 disaggregate the data for analysis by county, school, student
331 exceptionality, and other variables, including the type and



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332 method of restraint ~~or seclusion~~ used. This information shall be
333 updated monthly and made available to the public through the
334 department's website no later than January 31, 2013.

335 (e)~~(d)~~ The department shall establish standards for
336 documenting, reporting, and monitoring the use of manual ~~or~~
337 physical restraint ~~or mechanical restraint, and occurrences of~~
338 ~~seclusion~~. These standards shall be provided to school districts
339 ~~by October 1, 2011.~~

340 (9)~~(3)~~ SCHOOL DISTRICT POLICIES AND PROCEDURES.—

341 (a) Each school district shall develop policies and
342 procedures that are consistent with this section and that govern
343 the following:

344 1. Allowable use of manual physical restraint on students.

345 2. Personnel authorized to use manual physical restraint.

346 3. Training procedures.

347 4.1. Incident-reporting procedures.

348 5.2. Data collection and monitoring, including when, where,
349 and why students are restrained ~~or secluded~~; the frequency of
350 occurrences of such restraint ~~or seclusion~~; and the ~~prone or~~
351 ~~mechanical~~ restraint that is most used.

352 6.3. Monitoring and reporting of data collected.

353 7.4. Training programs relating to manual ~~or~~ physical
354 restraint ~~and seclusion~~.

355 8.5. The district's plan for selecting personnel to be
356 trained.

357 9.6. The district's plan for reducing the use of restraint
358 ~~and seclusion~~ particularly in settings in which it occurs
359 frequently or with students who are restrained repeatedly, ~~and~~
360 ~~for reducing the use of prone restraint and mechanical~~



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361 ~~restraint~~. The plan must include a goal for reducing the use of
362 restraint ~~and seclusion~~ and must include activities, skills, and
363 resources needed to achieve that goal. Activities may include,
364 but are not limited to:

- 365 a. Additional training in positive behavioral support and
366 crisis management;
- 367 b. Parental involvement;
- 368 c. Data review;
- 369 d. Updates of students' functional behavioral analysis and
370 positive behavior intervention plans;
- 371 e. Additional student evaluations;
- 372 f. Debriefing with staff;
- 373 g. Use of schoolwide positive behavior support; and
- 374 h. Changes to the school environment.

375 10. Analysis of data to determine trends.

376 11. Ongoing reduction of the use of manual physical
377 restraint.

378 (b) Any revisions that a school district makes to its ~~to~~
379 ~~the district's~~ policies and procedures, which are ~~must be~~
380 prepared as part of the school district's ~~its~~ special policies
381 and procedures, must be filed with the bureau chief of the
382 Bureau of Exceptional Education and Student Services ~~no later~~
383 ~~than January 31, 2012.~~

384 ~~(4) PROHIBITED RESTRAINT. School personnel may not use a~~
385 ~~mechanical restraint or a manual or physical restraint that~~
386 ~~restricts a student's breathing.~~

387 ~~(5) SECLUSION. School personnel may not close, lock, or~~
388 ~~physically block a student in a room that is unlit and does not~~
389 ~~meet the rules of the State Fire Marshal for seclusion time-out~~



695260

390 ~~rooms.~~

391 Section 2. This act shall take effect July 1, 2012.

392

393

394 ===== T I T L E A M E N D M E N T =====

395 And the title is amended as follows:

396 Delete everything before the enacting clause

397 and insert:

398 A bill to be entitled

399 An act relating to ; providing an effective date.

400 An act relating to the use, prevention, and reduction

401 of seclusion and restraint on students with

402 disabilities in public schools; amending s. 1003.573,

403 F.S.; providing definitions; providing legislative

404 findings and intent; requiring that manual physical

405 restraint be used only in an emergency when there is

406 an imminent risk of serious injury or death to the

407 student or others; providing restrictions on the use

408 of manual physical restraint; prohibiting the use of

409 manual physical restraint by school personnel who are

410 not certified to use district-approved methods for

411 applying restraint techniques; prohibiting specified

412 techniques; requiring that each school medically

413 evaluate a student after the student is manually

414 physically restrained; prohibiting school personnel

415 from placing a student in seclusion; providing

416 requirements for the use of time-out; requiring that a

417 school district report its training and certification

418 procedures to the Department of Education; requiring



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419 that school personnel be trained and certified in the
420 use of manual physical restraint; requiring that a
421 school review a student's functional behavior
422 assessment and positive behavioral intervention plan
423 under certain circumstances; requiring that parents be
424 notified of a school district's policies regarding the
425 use of manual physical restraint; requiring that each
426 school send a redacted copy of any incident report or
427 other documentation to Disability Rights Florida;
428 requiring that the department make available on its
429 website data of incidents of manual physical restraint
430 by a specified date; requiring that each school
431 district develop policies and procedures addressing
432 the allowable use of manual physical restraint,
433 personnel authorized to use such restraint, training
434 procedures, analysis of data trends, and the reduction
435 of the use of manual physical restraint; requiring
436 that any revisions to a school district's policies and
437 procedures be filed with the bureau chief of the
438 Bureau of Exceptional Education and Student Services
439 by a specified date; providing an effective date.



158648

LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: FAV | . | |
| 02/10/2012 | . | |
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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

1 **Senate Amendment to Amendment (695260) (with title**
2 **amendment)**

3
4 Delete lines 123 - 125
5 and insert:

6 (3) MANUAL PHYSICAL RESTRAINT.—Manual physical restraint
7 shall be used only to protect the safety of students or
8 property, and may not be used for student discipline or for the
9 convenience of school district staff.

10
11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:



158648

13 Delete lines 404 - 407
14 and insert:
15 findings and intent; requiring that manual physical
16 restraint be used only to protect the safety of
17 students or property; providing restrictions on the
18 use



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LEGISLATIVE ACTION

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| Senate | . | House |
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The Committee on Children, Families, and Elder Affairs (Storms)
recommended the following:

Senate Amendment to Amendment (695260)

Delete lines 12 - 15.

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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: FAV | . | |
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The Committee on Children, Families, and Elder Affairs (Storms)
recommended the following:

Senate Amendment to Amendment (695260)

Delete lines 141 - 143.

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2
3

By Senator Flores

38-00163-12

2012144__

1 A bill to be entitled
 2 An act relating to the use, prevention, and reduction
 3 of seclusion and restraint on students with
 4 disabilities in public schools; amending s. 1003.573,
 5 F.S.; providing definitions; providing legislative
 6 findings and intent; requiring that manual physical
 7 restraint be used only in an emergency when there is
 8 an imminent risk of serious injury or death to the
 9 student or others; providing restrictions on the use
 10 of manual physical restraint; prohibiting the use of
 11 manual physical restraint by school personnel who are
 12 not certified to use district-approved methods for
 13 applying restraint techniques; prohibiting specified
 14 techniques; requiring that each school medically
 15 evaluate a student after the student is manually
 16 physically restrained; prohibiting school personnel
 17 from placing a student in seclusion; providing
 18 requirements for the use of time-out; requiring that a
 19 school district report its training and certification
 20 procedures to the Department of Education; requiring
 21 that school personnel be trained and certified in the
 22 use of manual physical restraint; requiring that a
 23 school review a student's functional behavior
 24 assessment and positive behavioral intervention plan
 25 under certain circumstances; requiring that parents be
 26 notified of a school district's policies regarding the
 27 use of manual physical restraint; requiring that each
 28 school send a redacted copy of any incident report or
 29 other documentation to the Advocacy Center for Persons

Page 1 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

38-00163-12

2012144__

30 with Disabilities, Inc.; requiring that the department
 31 make available on its website data of incidents of
 32 manual physical restraint by a specified date;
 33 requiring that each school district develop policies
 34 and procedures addressing the allowable use of manual
 35 physical restraint, personnel authorized to use such
 36 restraint, training procedures, analysis of data
 37 trends, and the reduction of the use of manual
 38 physical restraint; requiring that any revisions to a
 39 school district's policies and procedures be filed
 40 with the bureau chief of the Bureau of Exceptional
 41 Education and Student Services by a specified date;
 42 providing an effective date.
 43
 44 Be It Enacted by the Legislature of the State of Florida:
 45
 46 Section 1. Section 1003.573, Florida Statutes, is amended
 47 to read:
 48 1003.573 Use, prevention, and reduction of seclusion and
 49 restraint on students with disabilities in public schools ~~Use of~~
 50 ~~restraint and seclusion on students with disabilities.~~
 51 (1) DEFINITIONS.—As used in this section, the term:
 52 (a) "Department" means the Department of Education.
 53 (b) "Imminent risk of serious injury or death" means the
 54 impending risk of a significant injury, such as a laceration,
 55 bone fracture, substantial hematoma, or other injury to internal
 56 organs, or death.
 57 (c) "Manual physical restraint" means the use of physical
 58 restraint techniques that involve physical force applied by a

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59 teacher or other staff member to restrict the movement of all or
60 part of a student's body.

61 (d) "Mechanical restraint" means the use of a physical
62 device that restricts a student's movement or restricts the
63 normal function of a student's body. The term includes the use
64 of straps, belts, tie-downs, calming blankets, and chairs with
65 straps; however, the term does not include the use of:

66 1. Medical protective equipment;

67 2. Physical equipment or orthopedic appliances, surgical
68 dressings or bandages, or supportive body bands or other
69 restraints necessary for ongoing medical treatment in the
70 educational setting;

71 3. Devices used to support functional body position or
72 proper balance, or to prevent a person from falling out of a bed
73 or a wheelchair, except when such device is used for any purpose
74 other than supporting a body position or proper balance, such as
75 coercion, discipline, convenience, or retaliation, to prevent
76 imminent risk of serious injury or death of the student or
77 others, or for any other behavior-management reason; or

78 4. Equipment used for safety during transportation, such as
79 seatbelts or wheelchair tie-downs.

80 (e) "Medical protective equipment" means health-related
81 protective devices prescribed by a physician or dentist for use
82 as student protection in response to an existing medical
83 condition.

84 (f) "Seclusion" means removing a student from an
85 educational environment, involuntarily confining the student in
86 a room or area, and preventing the student from leaving the room
87 or area if achieved by locking the door or otherwise physically

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88 blocking the student's way, threatening physical force or other
89 consequences, or using physical force. The term does not include
90 the use of time-out.

91 (g) "Student" means a student with a disability.

92 (h) "Time-out" means a procedure in which access to varied
93 sources of reinforcement is removed or reduced for a particular
94 time period contingent on a response. The opportunity to receive
95 reinforcement is contingently removed for a specified time.
96 Either a student is contingently removed from the reinforcing
97 environment or the reinforcing environment is contingently
98 removed for some stipulated duration. A time-out setting may not
99 be locked and the exit may not be blocked. Physical force or
100 threats may not be used to place a student in time-out.

101 (2) LEGISLATIVE FINDINGS AND INTENT.—

102 (a) The Legislature finds that public schools have a
103 responsibility to ensure that each student is treated with
104 respect and dignity in a trauma-informed environment that
105 provides for the physical safety and security of students and
106 others.

107 (b) The Legislature finds that students, educators, and
108 families are concerned about the use of seclusion and restraint,
109 particularly when used on students in special education
110 programs. Seclusion and restraint refer to safety procedures in
111 which a student is isolated from others or physically held in
112 response to serious problem behavior that places the student or
113 others at risk of injury or harm. There is concern that these
114 procedures are prone to misapplication and abuse and place a
115 student at an equal or greater risk than the risk of the
116 student's problem behavior. Particular concerns include:

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117 1. Seclusion or restraint is inappropriately selected and
 118 implemented as treatment or behavioral intervention rather than
 119 as a safety procedure;

120 2. Seclusion or restraint is inappropriately used for
 121 behaviors, such as noncompliance, threats, or disruption, which
 122 do not place the student or others at risk of injury or harm;

123 3. Students, peers, or staff may be injured or physically
 124 harmed during attempts to conduct seclusion or restraint;

125 4. Risk of injury or harm is increased because seclusion or
 126 restraint is implemented by staff who are not adequately
 127 trained;

128 5. The use of seclusion or restraint may inadvertently
 129 result in reinforcing or strengthening the problem behavior; and

130 6. Seclusion or restraint is implemented independent of
 131 comprehensive, function-based behavioral intervention plans.

132 Moreover, there are concerns about the inadequate documentation
 133 of seclusion or restraint procedures, the failure to notify
 134 parents when seclusion or restraint is applied, and the failure
 135 to use data to analyze and address the cause of the
 136 precipitating behavior.

137 (c) The Legislature finds that the majority of problem
 138 behaviors that are currently used to justify seclusion or
 139 restraint could be prevented with early identification and
 140 intensive early intervention. The need for seclusion or
 141 restraint is, in part, a result of insufficient investment in
 142 prevention efforts. The Legislature further finds that the use
 143 of seclusion or restraint may produce trauma in students. For
 144 such students, who are already experiencing trauma, the use may
 145

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146 cause retraumatization. Left unaddressed, the lasting effects of
 147 childhood trauma place a heavy burden on individuals, families,
 148 and communities. Research has shown that trauma significantly
 149 increases the risk of mental health problems, difficulties with
 150 social relationships and behavior, physical illness, and poor
 151 school performance.

152 (d) The Legislature intends that students be free from the
 153 abusive and unnecessary use of seclusion or restraint in the
 154 public schools. The Legislature further intends to prevent, and
 155 achieve an ongoing reduction of, the use of manual physical
 156 restraint in the public schools and, specifically, to prohibit
 157 the use of seclusion, prone and supine restraint, and mechanical
 158 restraint on students. The Legislature also intends that manual
 159 physical restraint be used only when an imminent risk of serious
 160 injury or death exists; that manual physical restraint not be
 161 employed as punishment, for the convenience of staff, or as a
 162 substitute for a positive behavior-support plan; and that, when
 163 used, persons applying manual physical restraint impose the
 164 least possible restrictions and discontinue the restraint as
 165 soon as the threat of imminent risk of serious injury or death
 166 ceases.

167 (3) MANUAL PHYSICAL RESTRAINT.—Manual physical restraint
 168 shall be used only in an emergency when there is an imminent
 169 risk of serious injury or death to the student or others.

170 (a) Manual physical restraint shall be used only for the
 171 period needed in order to eliminate the imminent risk of serious
 172 injury or death to the student or others.

173 (b) The degree of force applied during manual physical
 174 restraint must be only that degree of force necessary to protect

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175 the student or others from bodily injury.

176 (c) Manual physical restraint shall be used only by school
 177 personnel who are qualified and certified to use the district-
 178 approved methods for the appropriate application of specific
 179 restraint techniques. School personnel who have received
 180 training that is not associated with their employment with the
 181 school district, such as a former law enforcement officer who is
 182 now a teacher, shall be certified in the specific district-
 183 approved techniques and may not apply techniques or procedures
 184 acquired elsewhere.

185 (d) School personnel may not manually physically restrain a
 186 student except when an imminent risk of serious injury or death
 187 to the student or others exists.

188 (e) School personnel may not use any of the following
 189 manual physical restraint techniques on a student:

- 190 1. Prone and supine restraint.
- 191 2. Pain inducement to obtain compliance.
- 192 3. Bone locks.
- 193 4. Hyperextension of joints.
- 194 5. Peer restraint.
- 195 6. Mechanical restraint.
- 196 7. Pressure or weight on the chest, lungs, sternum,
 197 diaphragm, back, or abdomen, causing chest compression.
- 198 8. Straddling or sitting on any part of the body or any
 199 maneuver that places pressure, weight, or leverage on the neck
 200 or throat, on any artery, or on the back of the student's head
 201 or neck or that otherwise obstructs or restricts the circulation
 202 of blood or obstructs an airway.
- 203 9. Any type of choking, including hand chokes, and any type

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204 of neck or head hold.

205 10. Any technique that involves pushing anything on or into
 206 the student's mouth, nose, eyes, or any part of the face or that
 207 involves covering the face or body with anything, including soft
 208 objects such as pillows or washcloths.

209 11. Any maneuver that involves punching, hitting, poking,
 210 pinching, or shoving.

211 12. Any type of mat or blanket restraint.

212 13. Water or lemon sprays.

213 (f) The school shall ensure that a student is medically
 214 evaluated by a physician, nurse, or other qualified medical
 215 professional as soon as possible after the student has been
 216 manually physically restrained by school personnel.

217 (4) SECLUSION; TIME-OUT.-

218 (a) School personnel may not place a student in seclusion.

219 (b) School personnel may place a student in time-out if the
 220 following conditions are met:

- 221 1. The time-out is part of a positive behavioral
 222 intervention plan developed for that student from a functional
 223 behavioral assessment and referenced in the student's individual
 224 education plan.
- 225 2. There is documentation that the time-out was preceded by
 226 the use of other positive behavioral supports that were not
 227 effective.
- 228 3. The time-out takes place in a classroom or in another
 229 environment where class educational activities are taking place.
- 230 4. The student is not physically prevented from leaving the
 231 time-out area.
- 232 5. The student is observed on a constant basis by an adult

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233 for the duration of the time-out.

234 6. The time-out area and process are free of any action
 235 that is likely to embarrass or humiliate the student.

236 (c) Time-out may not be used for a period that exceeds 1
 237 minute for each year of a student's age and time-out must end
 238 immediately when the student is calm enough to return to his or
 239 her seat.

240 (d) Time-out may not be used as a punishment or negative
 241 consequence of a student's behavior.

242 (5) TRAINING AND CERTIFICATION.-

243 (a) Each school district shall report its training and
 244 certification procedures to the department by publishing the
 245 procedures in the district's special policies and procedures
 246 manual.

247 (b) Training for initial certification in the use of manual
 248 physical restraint must include:

249 1. Procedures for deescalating problem behaviors before the
 250 problems increase to a level or intensity necessitating physical
 251 intervention.

252 2. Information regarding the risks associated with manual
 253 physical restraint and procedures for assessing individual
 254 situations and students in order to determine if the use of
 255 manual physical restraint is appropriate and sufficiently safe.

256 3. The actual use of specific techniques that range from
 257 the least to most restrictive, with ample opportunity for
 258 trainees to demonstrate proficiency in the use of such
 259 techniques.

260 4. Techniques for implementing manual physical restraint
 261 with multiple staff members working as a team.

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262 5. Techniques for assisting a student to reenter the
 263 instructional environment and again engage in learning.

264 6. Instruction in the district's documentation and
 265 reporting requirements.

266 7. Procedures to identify and deal with possible medical
 267 emergencies arising during the use of manual physical restraint.

268 8. Cardiopulmonary resuscitation.

269 (c) School districts shall provide refresher certification
 270 training courses in manual physical restraint techniques at
 271 least annually to all staff members who have successfully
 272 completed the initial certification program. The district must
 273 identify those persons to be certified and maintain a record
 274 that includes the name and position of the person certified, the
 275 date of the most recent certification, an indication of whether
 276 it was an initial certification or a refresher certification,
 277 and whether the individual successfully completed the
 278 certification and achieved proficiency.

279 (d) School district policies regarding the use of manual
 280 physical restraint must address whether it is appropriate for an
 281 employee working in specific settings, such as a school bus
 282 driver, school bus aide, job coach, employment specialist, or
 283 cafeteria worker, to be certified in manual physical restraint
 284 techniques. In the case of school resource officers or others
 285 who may be employed by other agencies when working in a school,
 286 administrators shall review each agency's specific policies to
 287 be aware of techniques that may be used.

288 (6) STUDENT-CENTERED FOLLOWUP.-If a student is manually
 289 physically restrained more than twice during a school year, the
 290 school shall review the student's functional behavioral

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291 assessment and positive behavioral intervention plan.

292 (7)(~~1~~) DOCUMENTATION AND REPORTING.—

293 (a) At the beginning of each school year, a school district
 294 shall provide a copy of its policies on all emergency
 295 procedures, including its policies on the use of manual physical
 296 restraint, to each student's parent or guardian. The student's
 297 parent or guardian must sign a form indicating that he or she
 298 has read and received the district's policies, which the
 299 student's school shall retain on file.

300 (b)(~~a~~) A school shall prepare an incident report within 24
 301 hours after a student is released from a restraint ~~or seclusion~~.
 302 If the student's release occurs on a day before the school
 303 closes for the weekend, a holiday, or another reason, the
 304 incident report must be completed by the end of the school day
 305 on the day the school reopens.

306 (c)(~~b~~) The following must be included in the incident
 307 report:

- 308 1. The name of the student restrained ~~or secluded~~.
- 309 2. The age, grade, ethnicity, and disability of the student
 310 restrained or secluded.
- 311 3. The date and time of the event and the duration of the
 312 restraint or seclusion.
- 313 4. The location at which the restraint ~~or seclusion~~
 314 occurred.
- 315 5. A description of the type of restraint used in terms
 316 established by the Department of Education.
- 317 6. The name of the person using or assisting in the
 318 restraint ~~or seclusion~~ of the student.
- 319 7. The name of any nonstudent who was present to witness

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320 the restraint ~~or seclusion~~.

321 8. A description of the incident, including:

322 a. The context in which the restraint ~~or seclusion~~
 323 occurred.

324 b. The student's behavior leading up to and precipitating
 325 the decision to use manual or physical restraint ~~or seclusion~~,
 326 including an indication as to why there was an imminent risk of
 327 serious injury or death to the student or others.

328 c. The specific positive behavioral strategies used to
 329 prevent and deescalate the behavior.

330 d. What occurred with the student immediately after the
 331 termination of the restraint ~~or seclusion~~.

332 e. Any injuries, visible marks, or possible medical
 333 emergencies that may have occurred during the restraint ~~or~~
 334 ~~seclusion~~, documented according to district policies.

335 f. The results of the medical evaluation and a copy of any
 336 report by the medical professionals conducting the evaluation,
 337 if available. If the medical report is not available within 24
 338 hours, the district must submit the medical report separately as
 339 soon as it is available.

340 g.~~f~~ Evidence of steps taken to notify the student's parent
 341 or guardian.

342 (d)(~~e~~) A school shall notify the parent or guardian of a
 343 student each time manual or physical restraint ~~or seclusion~~ is
 344 used. Such notification must be in writing and provided before
 345 the end of the school day on which the restraint ~~or seclusion~~
 346 occurs. Reasonable efforts must also be taken to notify the
 347 parent or guardian by telephone or computer e-mail, or both, and
 348 these efforts must be documented. The school shall obtain, and

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349 keep in its records, the parent's or guardian's signed
 350 acknowledgment that he or she was notified of his or her child's
 351 restraint ~~or seclusion~~.

352 ~~(e)(4)~~ A school shall also provide the parent or guardian
 353 with the completed incident report in writing by mail within 3
 354 school days after a student was manually or physically
 355 restrained ~~or secluded~~. The school shall obtain, and keep in its
 356 records, the parent's or guardian's signed acknowledgment that
 357 he or she received a copy of the incident report.

358 ~~(8)(2)~~ MONITORING.—

359 (a) ~~Monitoring of~~ The use of manual or physical restraint
 360 ~~or seclusion~~ on students shall be monitored ~~occur~~ at the
 361 classroom, building, district, and state levels.

362 (b) Any documentation prepared by a school pursuant to ~~as~~
 363 ~~required in~~ subsection (7) (1) shall be provided to the school
 364 principal, the district director of Exceptional Student
 365 Education, and the bureau chief of the Bureau of Exceptional
 366 Education and Student Services ~~electronically~~ each week ~~month~~
 367 that the school is in session.

368 (c) Each week that a school is in session, the school shall
 369 send a redacted copy of any incident report and other
 370 documentation prepared pursuant to subsection (7) to the
 371 Advocacy Center for Persons with Disabilities, Inc.

372 ~~(d)(e)~~ The department shall maintain aggregate data of
 373 incidents of manual or physical restraint ~~and seclusion~~ and
 374 disaggregate the data for analysis by county, school, student
 375 exceptionality, and other variables, including the type and
 376 method of restraint or seclusion used. This information shall be
 377 updated monthly and made available to the public through the

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378 department's website no later than January 31, 2013.

379 ~~(e)(4)~~ The department shall establish standards for
 380 documenting, reporting, and monitoring the use of manual or
 381 physical restraint or mechanical restraint, and occurrences of
 382 seclusion. These standards shall be provided to school districts
 383 ~~by October 1, 2011.~~

384 ~~(9)(3)~~ SCHOOL DISTRICT POLICIES AND PROCEDURES.—

385 (a) Each school district shall develop policies and
 386 procedures that are consistent with this section and that govern
 387 the following:

388 1. Allowable use of manual physical restraint on students.

389 2. Personnel authorized to use manual physical restraint.

390 3. Training procedures.

391 ~~4.1~~ Incident-reporting procedures.

392 ~~5.2~~ Data collection and monitoring, including when, where,
 393 and why students are restrained or secluded; the frequency of
 394 occurrences of such restraint or seclusion; and the prone or
 395 mechanical restraint that is most used.

396 ~~6.3~~ Monitoring and reporting of data collected.

397 ~~7.4~~ Training programs relating to manual or physical
 398 restraint and seclusion.

399 ~~8.5~~ The district's plan for selecting personnel to be
 400 trained.

401 ~~9.6~~ The district's plan for reducing the use of restraint
 402 and seclusion particularly in settings in which it occurs
 403 frequently or with students who are restrained repeatedly, and
 404 for reducing the use of prone restraint and mechanical
 405 restraint. The plan must include a goal for reducing the use of
 406 restraint and seclusion and must include activities, skills, and

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407 resources needed to achieve that goal. Activities may include,
408 but are not limited to:

- 409 a. Additional training in positive behavioral support and
410 crisis management;
411 b. Parental involvement;
412 c. Data review;
413 d. Updates of students' functional behavioral analysis and
414 positive behavior intervention plans;
415 e. Additional student evaluations;
416 f. Debriefing with staff;
417 g. Use of schoolwide positive behavior support; and
418 h. Changes to the school environment.

419 10. Analysis of data to determine trends.

420 11. Ongoing reduction of the use of manual physical
421 restraint.

422 (b) Any revisions that a school district makes to its ~~to~~
423 ~~the district's~~ policies and procedures, which are ~~must be~~
424 prepared as part of the school district's ~~its~~ special policies
425 and procedures, must be filed with the bureau chief of the
426 Bureau of Exceptional Education and Student Services ~~no later~~
427 ~~than January 31, 2012.~~

428 ~~(4) PROHIBITED RESTRAINT. School personnel may not use a~~
429 ~~mechanical restraint or a manual or physical restraint that~~
430 ~~restricts a student's breathing.~~

431 ~~(5) SECLUSION. School personnel may not close, lock, or~~
432 ~~physically block a student in a room that is unlit and does not~~
433 ~~meet the rules of the State Fire Marshal for seclusion time out~~
434 ~~rooms.~~

435 Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/2012

Meeting Date

Topic School Restraint & Seclusion

Bill Number 144 (if applicable)

Name Sylvia Smith

Amendment Barcode (if applicable)

Job Title Legislative & Public Affairs Director

Address 2728 Centenary Dr.

Phone 488-9071

Tallahassee, FL 32301

E-mail sylvias@disabilityrightsflorida.org

Speaking: [X] For [] Against [] Information

Representing Disability Rights Florida

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-9-12

Meeting Date

Topic Use of Seclusion and Restraint

Bill Number SB 144 (if applicable)

Name Dr. Steve Coleman

Amendment Barcode (if applicable)

Job Title Board Certified Behavior Analyst

Address 830 E. Park Ave.

Phone 904-635-7155

Tallahassee, FL 32301

E-mail drscole@aol.com

Speaking: [] For [] Against [] Information

Representing Florida Association for Behavior Analysis

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/12

Meeting Date

Topic Seclusion + Restraint

Bill Number SB 144
(if applicable)

Name Brett Bacot

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 101 N. Monroe St.

Phone 850-681-4269

Street

Tallahassee

FL

32301

City

State

Zip

E-mail brett.bacot@fwbwhite.com

Speaking: For Against Information

Representing Florida Developmental Disabilities Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/12

Meeting Date

Topic Restraints and Seclusion

Bill Number SB 144
(if applicable)

Name Mary-Lynn Cullen

Amendment Barcode _____
(if applicable)

Job Title Legislative Liaison

Address 1674 University Pkwy

Phone _____

Street

Sarasota

FL

34243

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Advocacy Institute for Children

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/2012
Meeting Date

Topic ESE Students / Restraint & Seclusion

Bill Number SB144
(if applicable)

Name Bob Cerra

Amendment Barcode _____
(if applicable)

Job Title Information Specialist

Address 206 South Monroe Street #104

Phone (850) 222-4428

City Tallahassee State FL Zip 32301

E-mail bobcerra@comcast.net

Speaking: For Against Information

Representing Coalition for the Education of Exceptional Students

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/CS/SB 964

INTRODUCER: Children, Families, and Elder Affairs Committee, Criminal Justice Committee, Senator Benacquisto and others

SUBJECT: Protection of Minors

DATE: February 9, 2012 **REVISED:** 2/10/12 _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-------------------|----------------|-----------|---------------|
| 1. | <u>Clodfelter</u> | <u>Cannon</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Farmer</u> | <u>Farmer</u> | <u>CF</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | <u>BC</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

- | | | |
|---------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE.. | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill creates the “Protect Our Children Act” relating to laws that prohibit video voyeurism and possession of child pornography.

With respect to video voyeurism, the bill:

- Specifies that the interior of a residential dwelling is a place where a person has a reasonable expectation of privacy.
- Increases the penalty for several video voyeurism offenses and adds these offenses to the qualifying offense list that requires an offender to be designated as a sexual predator or to register as a sexual offender. The increased penalty is also added to the qualifying offense list under s. 944.606, F.S., related to notification upon release of sexual offenders and s. 944.607, F.S., related to notification to the Florida Department of Law Enforcement (FDLE) of information on sexual offenders.

The bill also amends the child pornography statute to provide that if a prohibited item includes sexual conduct by a child, a separate offense may be charged for each child in the prohibited item.

This bill substantially amends sections 775.21, 810.145, 827.071, 921.0022, 943.0435, 944.606, and 944.607 of the Florida Statutes.

II. Present Situation:

Sexual Predators and Sexual Offenders

The distinction between a sexual predator and a sexual offender is based on the offense of conviction, the date the offense occurred or when sanctions were completed, and whether the person has previously been convicted of a sexual offense. Sexual predator status can only be conferred for offenses committed on or after October 1, 1993. Sexual offender status applies only if the person was released from the sanction for the designated offense on or after October 1, 1997. The list of designated offenses is not identical for sexual offenders and sexual predators, but commission of any of the following offenses would require registration as either a sexual offender or a sexual predator:

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.).
- Sexual battery under ch. 794.011, F.S. (except false accusation of another under s. 794.011(10), F.S.).
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.).
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.).
- Lewd or lascivious offenses upon or in the presence of a person under 16 (s. 800.04, F.S.).
- Lewd or lascivious offenses upon an elderly or disabled person (s. 825.1025, F.S.).
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.).
- Distribution of obscene materials to a minor (s. 847.0133, F.S.).
- Computer pornography (s. 847.0135, F.S.) (except traveling to meet a minor under s. 847.0135(4), F.S.).
- Transmission of child pornography by electronic device (s. 847.0137, F.S.).
- Transmission of material harmful to minors to a minor by electronic device (s. 847.0138, F.S.).
- Selling or buying of minors for child pornography (s. 847.0145, F.S.).
- Sexual misconduct by a DJJ employee with a juvenile offender (s. 985.701(1), F.S.).
- Violating a similar law of another jurisdiction.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.¹ During initial registration, a sexual predator or sexual offender who is not in the custody of the Florida Department of Corrections (DOC), the Department of Juvenile Justice

¹ The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.48, and 985.4815, F.S.

(DJJ), or a local jail is required to provide certain information including the “address of legal residence and address of any temporary residence, within the state or out of the state, including a rural route address and a post office box...” to the sheriff’s department within 48 hours of sentencing or of establishing a residence. The sheriff’s office provides this information to the FDLE for inclusion in the statewide database. The offender or predator must also register at a driver’s license office within 48 hours of the initial registration at the sheriff’s department.

Video Surveillance and Voyeurism

Video voyeurism is the unlawful use of an imaging device to surreptitiously observe another person. The practice is most often associated with a sexual motive, such as using a cell phone camera to take pictures beneath women’s skirts in a shopping area or installing hidden cameras in a changing area.

In 2004, the federal government passed the Video Voyeurism Prevention Act of 2004² in order to “protect the privacy of individuals from the surreptitious use of hidden surveillance equipment that captures an individual’s image.”³ The Act makes it a misdemeanor for a person to intentionally capture an image of a private area of another person without his or her consent under circumstances in which the other person has a reasonable expectation of privacy. All states have criminal statutes that address video voyeurism in some form.

Florida’s Video Voyeurism Statute

Florida law forbids video voyeurism if a person uses or installs an imaging device to secretly view, broadcast or record another person for “amusement, entertainment, sexual arousal, gratification, or profit,” or to degrade or abuse that person. The original s. 810.145, F.S., was enacted in 1984 and created misdemeanor video voyeurism offenses. The statute was amended in 2008 to elevate certain video voyeurism offenses committed against children to felonies.

An offender commits the misdemeanor offense of video voyeurism by:

- Intentionally using or installing an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy, for the offender’s own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.⁴
- Intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person as stated above, but for the amusement, entertainment, sexual arousal, gratification, or profit of another person.⁵
- Intentionally using an imaging device to secretly view, broadcast, or record under or through another person’s clothing in order to view that person’s body or undergarments, for the

² 18 U.S.C. s. 1801. The Act applies only within the special maritime and territorial jurisdiction of the United States, so does not conflict with state law.

³ Kristin M. Beasley, *Up-Skirt and Other Dirt: Why Cell Phone Cameras and Other Technologies Require a New Approach to Protecting Personal Privacy in Public Places*, 31 S. ILL. U. L.J. 69, 88 (2006) (quoting H.R. Rep. No. 08-504, at 5, as reprinted in 2004 U.S.C.C.A.N. 3292, 3294-95).

⁴ Section 810.145(2)(a), F.S.

⁵ Section 810.145(2)(b), F.S.

amusement, entertainment, sexual arousal, gratification, or profit of either the offender or another person.⁶

- Committing the offense of “video voyeurism dissemination”⁷ and “commercial video voyeurism dissemination”⁸ for distributing a video or image with knowledge or reason to believe that it was created as a result of video voyeurism.

A first-time violation of any of these provisions is a first-degree misdemeanor, punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000. If the offender has previously been convicted of or adjudicated delinquent for any violation of the section, the penalty is enhanced to a third-degree felony, punishable by imprisonment for up to five years and a fine of not more than \$5,000.

There are three felony video voyeurism offenses in addition to those that result from enhancement of the penalty for repeat misdemeanor video voyeurism. Conviction of these offenses requires additional elements of proof:

- Section 810.145(8)(a)1., F.S., applies when the offender was 18 years of age or older, the victim was under the age of 16, and the offender was responsible for the welfare of the victim. Persons who are responsible for a child’s welfare would include coaches, teachers, scout leaders, parents, guardians, babysitters, and those with similar relationships to the child.⁹
- Section 810.145(8)(a)2., F.S., applies when the offender was 18 years old or older, was employed at a public or private K-12 school or a voluntary pre-K program, and the victim was a student at the school or program.
- Section 810.145(8)(a)3., F.S., applies when the offender was 24 years of age or older and the victim was under the age of 16.

These offenses are third-degree felonies, which are punishable by imprisonment for up to five years and a fine of not more than \$5,000. If the offender has previously been convicted of or adjudicated delinquent for any form of video voyeurism, these offenses are second-degree felonies, punishable by imprisonment for up to 15 years and a fine of not more than \$10,000.

The statute includes exceptions to ensure that it does not criminalize legitimate law enforcement surveillance, or security surveillance devices if a notice is posted or if the device is clearly and immediately obvious. There is also an exception for Internet service providers who do not exercise control over user content.¹⁰

⁶ Section 810.145(2)(c), F.S.

⁷ Section 810.145(3), F.S.

⁸ Section 810.145(4), F.S.

⁹ See ss. 39.01(46) and 827.01, F.S.; *P.N. v. Dep’t of Health & Rehabilitative Servs.*, 562 So. 2d 810, 811 (Fla. 2d DCA 1990).

¹⁰ Section 810.145(5), F.S.

During Fiscal Year 2010-2011, six persons were convicted of misdemeanor video voyeurism¹¹ and three persons were placed on community supervision as the result of being convicted of felony video voyeurism.¹²

Possession or Intentional Viewing of Child Pornography

Section 827.071(5), F.S., prohibits a person from knowingly possessing, controlling, or intentionally viewing a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that he or she knows to include any sexual conduct by a child in whole or in part. A separate offense may be charged for each prohibited item that is possessed. Violation of the statute is a third degree felony ranked at Level 5 of the Criminal Punishment Code, punishable by up to five years in prison.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the “Protect Our Children Act.”

Section 2 amends s. 775.21(4), F.S., to include violation of s. 810.145(8), F.S., as a qualifying offense for purposes of designation as a sexual predator.

Section 3 amends s. 827.071(5), F.S., to provide that a separate offense may be charged for each child included in a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that shows sexual conduct by a child. This means, for example, that a person can be charged with two child pornography offenses if the person intentionally views a video that includes sexual conduct by two children. Previously, intentional viewing of a single video could only be charged as one offense no matter how many children are depicted in the video.

Section 4 amends s. 943.0435(1), F.S., to include violation of s. 810.145(8)(a), F.S., as an offense that requires registration as a sexual offender.

Section 5 amends two subsections in s. 810.145, F.S., the video voyeurism law:

- Section 810.145(1)(c), F.S., currently defines a “place and time when a person has a reasonable expectation of privacy” as:

“a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person’s undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.”

The bill amends this definition to specifically list the interior of a residential dwelling. Because the definition provides that it is not limited to the listed examples, specific inclusion of the “interior of a residential dwelling” should not change application of the law.

¹¹ Information from the Florida Department of Law Enforcement provided to committee staff by the Office of Economic & Demographic Research, e-mail dated November 30, 2011.

¹² Department of Corrections Analysis of Senate Bill 436.

- Section 810.145(8)(a), F.S., includes the three video voyeurism offenses that are elevated from a first degree misdemeanor to a third degree felony because of the relative ages of the offender and victim or the position of authority that the offender holds in regard to the victim. The bill raises these offenses to second degree felonies. This increases the maximum sentence from five years to fifteen years in prison, and increases the maximum fine from \$5,000 to \$10,000.

Section 6 amends s. 921.0022(3)(f), F.S., to rank the video voyeurism offenses raised to third degree felonies by Section 5 of the bill on the Offense Severity Ranking Chart for sentencing purposes. As unranked third degree felonies, these offenses were considered to be ranked at Level 1 and scored 4 sentencing points. As second degree felonies ranked at Level 6, they score 36 sentencing points. This greatly increases the chance that the offender will be sentenced to a term of imprisonment, particularly if he or she has prior convictions for any offense.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met December 14, 2011, and found the prison bed impact of this bill to be indeterminate because of the section of the bill that provides that each child in each photograph, image, etc. that is knowingly possessed, controlled, or intentionally viewed is a separate offense. The number of such offenses cannot be determined. Additionally, FDLE reports that expanding the number of persons who qualify as sexual offenders and sexual predators will require programming changes to the sexual offender/sexual predator database, which will cost \$28,625 in non-recurring dollars; however, FDLE states they can absorb these costs with current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/ by Children, Families, and Elder Affairs on February 9, 2012:
The Committee Substitute:

- Corrects a cross-reference; and
- Adds the increased penalty for several video voyeurism offenses to the qualifying offense lists under s. 944.606, F.S., related to notification upon release of sexual offenders and s. 944.607, F.S., related to notification to the Florida Department of Law Enforcement (FDLE) of information on sexual offenders.

CS by Criminal Justice on January 25, 2012:

Clarifies language regarding charging a separate offense for each child who is in a picture that includes sexual activity by a child.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

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| Senate | . | House |
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment

Delete lines 94 - 139
and insert:

a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.



13 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.
14 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
15 847.0145; or s. 985.701(1); or any similar offense committed in
16 this state which has been redesignated from a former statute
17 number to one of those listed in this sub-sub-subparagraph; and

18 (II) Has been released on or after October 1, 1997, from
19 the sanction imposed for any conviction of an offense described
20 in sub-sub-subparagraph (I). For purposes of sub-sub-
21 subparagraph (I), a sanction imposed in this state or in any
22 other jurisdiction includes, but is not limited to, a fine,
23 probation, community control, parole, conditional release,
24 control release, or incarceration in a state prison, federal
25 prison, private correctional facility, or local detention
26 facility;

27 b. Establishes or maintains a residence in this state and
28 who has not been designated as a sexual predator by a court of
29 this state but who has been designated as a sexual predator, as
30 a sexually violent predator, or by another sexual offender
31 designation in another state or jurisdiction and was, as a
32 result of such designation, subjected to registration or
33 community or public notification, or both, or would be if the
34 person were a resident of that state or jurisdiction, without
35 regard to whether the person otherwise meets the criteria for
36 registration as a sexual offender;

37 c. Establishes or maintains a residence in this state who
38 is in the custody or control of, or under the supervision of,
39 any other state or jurisdiction as a result of a conviction for
40 committing, or attempting, soliciting, or conspiring to commit,
41 any of the criminal offenses proscribed in the following



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42 statutes or similar offense in another jurisdiction: s. 787.01,
43 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
44 the defendant is not the victim's parent or guardian; s.
45 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
46 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s.
47 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
48 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense
49 committed in this state which has been redesignated from a
50 former statute number to one of those listed in this sub-
51 subparagraph; or



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LEGISLATIVE ACTION

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| Senate | . | House |
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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment (with title amendment)

Between lines 167 and 168
insert:

Section 5. Paragraph (b) of subsection (1) of section 944.606, Florida Statutes, is amended to read:

944.606 Sexual offenders; notification upon release.-

(1) As used in this section:

(b) "Sexual offender" means a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following



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13 statutes in this state or similar offenses in another
14 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where
15 the victim is a minor and the defendant is not the victim's
16 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
17 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8); s.
18 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
19 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s.
20 985.701(1); or any similar offense committed in this state which
21 has been redesignated from a former statute number to one of
22 those listed in this subsection, when the department has
23 received verified information regarding such conviction; an
24 offender's computerized criminal history record is not, in and
25 of itself, verified information.

26 Section 6. Paragraph (a) of subsection (1) of section
27 944.607, Florida Statutes, is amended to read:

28 944.607 Notification to Department of Law Enforcement of
29 information on sexual offenders.-

30 (1) As used in this section, the term:

31 (a) "Sexual offender" means a person who is in the custody
32 or control of, or under the supervision of, the department or is
33 in the custody of a private correctional facility:

34 1. On or after October 1, 1997, as a result of a conviction
35 for committing, or attempting, soliciting, or conspiring to
36 commit, any of the criminal offenses proscribed in the following
37 statutes in this state or similar offenses in another
38 jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c), where
39 the victim is a minor and the defendant is not the victim's
40 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
41 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8); s.



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42 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
43 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; or s.
44 985.701(1); or any similar offense committed in this state which
45 has been redesignated from a former statute number to one of
46 those listed in this paragraph; or

47 2. Who establishes or maintains a residence in this state
48 and who has not been designated as a sexual predator by a court
49 of this state but who has been designated as a sexual predator,
50 as a sexually violent predator, or by another sexual offender
51 designation in another state or jurisdiction and was, as a
52 result of such designation, subjected to registration or
53 community or public notification, or both, or would be if the
54 person were a resident of that state or jurisdiction, without
55 regard as to whether the person otherwise meets the criteria for
56 registration as a sexual offender.

57
58 ===== T I T L E A M E N D M E N T =====

59 And the title is amended as follows:

60
61 Delete line 14

62 and insert:

63
64 was a minor; amending ss. 944.607 and 944.607, F.S.;
65 redefining the term "sexual offender;" amending s.
66 810.145, F.S.; revising the

By the Committee on Criminal Justice; and Senator Benacquisto

591-02368-12

2012964c1

A bill to be entitled

An act relating to protection of minors; providing a short title; amending s. 775.21, F.S.; requiring a person convicted of a second or subsequent violation of a specified video voyeurism provision to register as a sexual offender if the victim of the violation was a minor; amending s. 827.071, F.S.; providing that if more than one child is involved in a violation of provisions prohibiting sexual performance by a child, a separate offense may be charged for each child; amending s. 943.0435, F.S.; requiring a person convicted of a video voyeurism violation to register as a sexual offender if the victim of the violation was a minor; amending s. 810.145, F.S.; revising the definition of the term "place and time when a person has a reasonable expectation of privacy" to include the interior of a residential dwelling; increasing the classification of specified video voyeurism offenses involving minors; amending s. 921.0022, F.S.; ranking a violation of s. 810.145(8)(b), F.S., above its default value for purposes of the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. This act may be cited as the "Protect Our Children Act."

Section 2. Paragraph (a) of subsection (4) of section

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775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor and the defendant is not the victim's parent or guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025(2)(b); s. 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a

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59 violation of a similar law of another jurisdiction;

60 2. The offender has not received a pardon for any felony or
61 similar law of another jurisdiction that is necessary for the
62 operation of this paragraph; and

63 3. A conviction of a felony or similar law of another
64 jurisdiction necessary to the operation of this paragraph has
65 not been set aside in any postconviction proceeding.

66 Section 3. Paragraph (a) of subsection (5) of section
67 827.071, Florida Statutes, is amended to read:

68 827.071 Sexual performance by a child; penalties.—

69 (5) (a) It is unlawful for any person to knowingly possess,
70 control, or intentionally view a photograph, motion picture,
71 exhibition, show, representation, image, data, computer
72 depiction, or other presentation which, in whole or in part, he
73 or she knows to include any sexual conduct by a child. The
74 possession, control, or intentional viewing of each such
75 photograph, motion picture, exhibition, show, image, data,
76 computer depiction, representation, or presentation is a
77 separate offense. If a photograph, motion picture, exhibition,
78 show, representation, image, data, computer depiction, or other
79 presentation includes sexual conduct by more than one child, a
80 separate offense may be charged for each such child in each such
81 photograph, motion picture, exhibition, show, representation,
82 image, data, computer depiction, or other presentation. A person
83 who violates this subsection commits a felony of the third
84 degree, punishable as provided in s. 775.082, s. 775.083, or s.
85 775.084.

86 Section 4. Paragraph (a) of subsection (1) of section
87 943.0435, Florida Statutes, is amended to read:

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88 943.0435 Sexual offenders required to register with the
89 department; penalty.—

90 (1) As used in this section, the term:

91 (a)1. "Sexual offender" means a person who meets the
92 criteria in sub-subparagraph a., sub-subparagraph b., sub-
93 subparagraph c., or sub-subparagraph d., as follows:

94 a. (I) Has been convicted of committing, or attempting,
95 soliciting, or conspiring to commit, any of the criminal
96 offenses proscribed in the following statutes in this state or
97 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
98 or s. 787.025(2)(c), where the victim is a minor and the
99 defendant is not the victim's parent or guardian; s. 794.011,
100 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
101 800.04; s. 810.145(8)(a); s. 825.1025; s. 827.071; s. 847.0133;
102 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;
103 s. 847.0145; or s. 985.701(1); or any similar offense committed
104 in this state which has been redesignated from a former statute
105 number to one of those listed in this sub-sub-subparagraph; and

106 (II) Has been released on or after October 1, 1997, from
107 the sanction imposed for any conviction of an offense described
108 in sub-sub-subparagraph (I). For purposes of sub-sub-
109 subparagraph (I), a sanction imposed in this state or in any
110 other jurisdiction includes, but is not limited to, a fine,
111 probation, community control, parole, conditional release,
112 control release, or incarceration in a state prison, federal
113 prison, private correctional facility, or local detention
114 facility;

115 b. Establishes or maintains a residence in this state and
116 who has not been designated as a sexual predator by a court of

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117 this state but who has been designated as a sexual predator, as
 118 a sexually violent predator, or by another sexual offender
 119 designation in another state or jurisdiction and was, as a
 120 result of such designation, subjected to registration or
 121 community or public notification, or both, or would be if the
 122 person were a resident of that state or jurisdiction, without
 123 regard to whether the person otherwise meets the criteria for
 124 registration as a sexual offender;

125 c. Establishes or maintains a residence in this state who
 126 is in the custody or control of, or under the supervision of,
 127 any other state or jurisdiction as a result of a conviction for
 128 committing, or attempting, soliciting, or conspiring to commit,
 129 any of the criminal offenses proscribed in the following
 130 statutes or similar offense in another jurisdiction: s. 787.01,
 131 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 132 the defendant is not the victim's parent or guardian; s.
 133 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 134 796.035; s. 800.04; s. 810.145(8)(a); s. 825.1025; s. 827.071;
 135 s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137;
 136 s. 847.0138; s. 847.0145; or s. 985.701(1); or any similar
 137 offense committed in this state which has been redesignated from
 138 a former statute number to one of those listed in this sub-
 139 subparagraph; or

140 d. On or after July 1, 2007, has been adjudicated
 141 delinquent for committing, or attempting, soliciting, or
 142 conspiring to commit, any of the criminal offenses proscribed in
 143 the following statutes in this state or similar offenses in
 144 another jurisdiction when the juvenile was 14 years of age or
 145 older at the time of the offense:

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146 (I) Section 794.011, excluding s. 794.011(10);

147 (II) Section 800.04(4)(b) where the victim is under 12
 148 years of age or where the court finds sexual activity by the use
 149 of force or coercion;

150 (III) Section 800.04(5)(c)1. where the court finds
 151 molestation involving unclothed genitals; or

152 (IV) Section 800.04(5)(d) where the court finds the use of
 153 force or coercion and unclothed genitals.

154 2. For all qualifying offenses listed in sub-subparagraph
 155 (1)(a)1.d., the court shall make a written finding of the age of
 156 the offender at the time of the offense.

157
 158 For each violation of a qualifying offense listed in this
 159 subsection, the court shall make a written finding of the age of
 160 the victim at the time of the offense. For a violation of s.
 161 800.04(4), the court shall additionally make a written finding
 162 indicating that the offense did or did not involve sexual
 163 activity and indicating that the offense did or did not involve
 164 force or coercion. For a violation of s. 800.04(5), the court
 165 shall additionally make a written finding that the offense did
 166 or did not involve unclothed genitals or genital area and that
 167 the offense did or did not involve the use of force or coercion.

168 Section 5. Paragraph (c) of subsection (1) and subsection
 169 (8) of section 810.145, Florida Statutes, are amended to read:

170 810.145 Video voyeurism.—

171 (1) As used in this section, the term:

172 (c) "Place and time when a person has a reasonable
 173 expectation of privacy" means a place and time when a reasonable
 174 person would believe that he or she could fully disrobe in

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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175 privacy, without being concerned that the person's undressing
 176 was being viewed, recorded, or broadcasted by another,
 177 including, but not limited to, the interior of a residential
 178 dwelling, bathroom, changing room, fitting room, dressing room,
 179 or tanning booth.

180 (8) (a) A person who is:

181 1. Eighteen years of age or older who is responsible for
 182 the welfare of a child younger than 16 years of age, regardless
 183 of whether the person knows or has reason to know the age of the
 184 child, and who commits an offense under this section against
 185 that child;

186 2. Eighteen years of age or older who is employed at a
 187 private school as defined in s. 1002.01; a school as defined in
 188 s. 1003.01; or a voluntary prekindergarten education program as
 189 described in s. 1002.53(3) (a), (b), or (c) and who commits an
 190 offense under this section against a student of the private
 191 school, school, or voluntary prekindergarten education program;
 192 or

193 3. Twenty-four years of age or older who commits an offense
 194 under this section against a child younger than 16 years of age,
 195 regardless of whether the person knows or has reason to know the
 196 age of the child

197
 198 commits a felony of the ~~second~~ third degree, punishable as
 199 provided in s. 775.082, s. 775.083, or s. 775.084.

200 (b) A person who violates this subsection and who has
 201 previously been convicted of or adjudicated delinquent for any
 202 violation of this section commits a felony of the second degree,
 203 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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204 Section 6. Paragraph (f) of subsection (3) of section
 205 921.0022, Florida Statutes, is amended to read:
 206 921.0022 Criminal Punishment Code; offense severity ranking
 207 chart.-

208 (3) OFFENSE SEVERITY RANKING CHART

209 (f) LEVEL 6

| Florida Statute | Felony Degree | Description |
|-----------------|---------------|----------------------------------------------------------------------------|
| 316.193(2) (b) | 3rd | Felony DUI, 4th or subsequent conviction. |
| 499.0051(3) | 2nd | Knowing forgery of pedigree papers. |
| 499.0051(4) | 2nd | Knowing purchase or receipt of prescription drug from unauthorized person. |
| 499.0051(5) | 2nd | Knowing sale or transfer of prescription drug to unauthorized person. |
| 775.0875(1) | 3rd | Taking firearm from law enforcement officer. |
| 784.021(1) (a) | 3rd | Aggravated assault; deadly weapon without intent to kill. |
| 784.021(1) (b) | 3rd | Aggravated assault; intent to commit felony. |

| | | | |
|-----|---------------|-----|-----------------------------------------------------------------------------|
| 217 | 591-02368-12 | | 2012964c1 |
| | 784.041 | 3rd | Felony battery; domestic battery by strangulation. |
| 218 | 784.048(3) | 3rd | Aggravated stalking; credible threat. |
| 219 | 784.048(5) | 3rd | Aggravated stalking of person under 16. |
| 220 | 784.07(2)(c) | 2nd | Aggravated assault on law enforcement officer. |
| 221 | 784.074(1)(b) | 2nd | Aggravated assault on sexually violent predators facility staff. |
| 222 | 784.08(2)(b) | 2nd | Aggravated assault on a person 65 years of age or older. |
| 223 | 784.081(2) | 2nd | Aggravated assault on specified official or employee. |
| 224 | 784.082(2) | 2nd | Aggravated assault by detained person on visitor or other detainee. |
| 225 | 784.083(2) | 2nd | Aggravated assault on code inspector. |
| 226 | 787.02(2) | 3rd | False imprisonment; restraining with purpose other than those in s. 787.01. |
| 227 | 790.115(2)(d) | 2nd | Discharging firearm or weapon on school |

| | | | |
|-----|---------------|-----|----------------------------------------------------------------------------------------------------------------------|
| | 591-02368-12 | | 2012964c1 |
| 228 | | | property. |
| | 790.161(2) | 2nd | Make, possess, or throw destructive device with intent to do bodily harm or damage property. |
| 229 | 790.164(1) | 2nd | False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property. |
| 230 | 790.19 | 2nd | Shooting or throwing deadly missiles into dwellings, vessels, or vehicles. |
| 231 | 794.011(8)(a) | 3rd | Solicitation of minor to participate in sexual activity by custodial adult. |
| 232 | 794.05(1) | 2nd | Unlawful sexual activity with specified minor. |
| 233 | 800.04(5)(d) | 3rd | Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years. |
| 234 | 800.04(6)(b) | 2nd | Lewd or lascivious conduct; offender 18 years of age or older. |
| 235 | 806.031(2) | 2nd | Arson resulting in great bodily harm to firefighter or any other person. |
| 236 | | | |

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 810.02 (3) (c) 2nd Burglary of occupied structure; unarmed;
 no assault or battery.

237 810.145 (8) (b) 2nd Video voyeurism; certain minor victims;
2nd or subsequent offense.

238 812.014 (2) (b) 1. 2nd Property stolen \$20,000 or more, but
 less than \$100,000, grand theft in 2nd
 degree.

239 812.014 (6) 2nd Theft; property stolen \$3,000 or more;
 coordination of others.

240 812.015 (9) (a) 2nd Retail theft; property stolen \$300 or
 more; second or subsequent conviction.

241 812.015 (9) (b) 2nd Retail theft; property stolen \$3,000 or
 more; coordination of others.

242 812.13 (2) (c) 2nd Robbery, no firearm or other weapon
 (strong-arm robbery).

243 817.034 (4) (a) 1. 1st Communications fraud, value greater than
 \$50,000.

244 817.4821 (5) 2nd Possess cloning paraphernalia with
 intent to create cloned cellular
 telephones.

245

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 825.102 (1) 3rd Abuse of an elderly person or disabled
 adult.

246 825.102 (3) (c) 3rd Neglect of an elderly person or disabled
 adult.

247 825.1025 (3) 3rd Lewd or lascivious molestation of an
 elderly person or disabled adult.

248 825.103 (2) (c) 3rd Exploiting an elderly person or disabled
 adult and property is valued at less
 than \$20,000.

249 827.03 (1) 3rd Abuse of a child.

250 827.03 (3) (c) 3rd Neglect of a child.

251 827.071 (2) & 2nd Use or induce a child in a sexual
 (3) performance, or promote or direct such
 performance.

252 836.05 2nd Threats; extortion.

253 836.10 2nd Written threats to kill or do bodily
 injury.

254 843.12 3rd Aids or assists person to escape.

255 847.011 3rd Distributing, offering to distribute, or

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 possessing with intent to distribute
 obscene materials depicting minors.
 256
 847.012 3rd Knowingly using a minor in the
 production of materials harmful to
 minors.
 257
 847.0135(2) 3rd Facilitates sexual conduct of or with a
 minor or the visual depiction of such
 conduct.
 258
 914.23 2nd Retaliation against a witness, victim,
 or informant, with bodily injury.
 259
 944.35(3)(a)2. 3rd Committing malicious battery upon or
 inflicting cruel or inhuman treatment on
 an inmate or offender on community
 supervision, resulting in great bodily
 harm.
 260
 944.40 2nd Escapes.
 261
 944.46 3rd Harboring, concealing, aiding escaped
 prisoners.
 262
 944.47(1)(a)5. 2nd Introduction of contraband (firearm,
 weapon, or explosive) into correctional
 facility.
 263

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 951.22(1) 3rd Intoxicating drug, firearm, or weapon
 introduced into county facility.
 264
 265 Section 7. This act shall take effect October 1, 2012.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, *Chair*
Budget - Subcommittee on General Government
Appropriations, *Vice Chair*
Budget
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Education Pre-K - 12
Governmental Oversight and Accountability
Reapportionment
Transportation

SENATOR LIZBETH BENACQUISTO

27th District

January 26, 2012

The Honorable Rhonda Storms
Senate Criminal Justice, Chair
413 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RECEIVED

JAN 26 2012

Senate Committee
Children and Families

RE: SB 964 – Protection of Minors

Dear Madam Chair:

Please allow this letter to serve as my respectful request to agenda SB 964, Relating to Protection of Minors, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 27

Cc: Renai Farmer

REPLY TO:

- 12165 West Forest Hill Boulevard, Suite 1B, Wellington, Florida 33414 (561) 753-2440
- 17595 South Tamiami Trail, Suite 200-9, Fort Myers, Florida 33908 (239) 433-6599
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5356

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/9/12
Meeting Date

Topic Protection of Minors Bill Number 964
(if applicable)

Name Jennifer Driitt Amendment Barcode _____
(if applicable)

Job Title Exec. Director

Address 1820 E. Park Avenue, Ste 100 Phone (850) 242-2000
Street

Tally 32301 E-mail jdriitt@fcav.org
City State Zip

Speaking: For Against Information

Representing Florida Council Against Sexual Violence

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

Alan Abramowitz

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-9-12
Meeting Date

Topic Comment to ^{Senator} Nunn Leib

Bill Number N/A
(if applicable)

Name ALAN ABRAMOWITZ

Amendment Barcode _____
(if applicable)

Job Title Executive Director GAL

Address 600 South Calhoun, Suite 274

Phone 850-241-3232

Tallahassee FL 32399
City State Zip

E-mail ALAN.ABRAMOWITZ@gal.fl.gov

Speaking: For Against Information

Representing GAL Program

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: SB 401
Caption: Children, Families, and Elder Affairs Committee

Case:

Type:
Judge:

Started: 2/9/2012 1:18:04 PM
Ends: 2/9/2012 2:26:16 PM **Length:** 01:08:13

1:18:18 PM Roll Call
1:18:39 PM Chair Storms opening remarks
1:18:49 PM SB 964, Protection of Minors (Senator Benacquisto)
1:19:25 PM SB 964, Protection of Minors (barcode 815428) by Senator Detert
1:19:45 PM SB 964, Protection of Minors (barcode 694934) by Senator Detert
1:20:26 PM Senator Detert remarks and question
1:21:45 PM Senator Benacquisto response
1:22:22 PM Chair Storms remarks
1:22:59 PM Senator Gibson remarks and question
1:23:20 PM Senator Benacquisto response
1:23:26 PM Senator Gibson question
1:23:59 PM Senator Benacquisto response
1:25:01 PM Senator Latvala question
1:25:19 PM Chair Storms remarks
1:25:54 PM Senator Latvala remarks and question
1:26:19 PM Senator Benacquisto response
1:27:04 PM Senator Latvala question
1:27:13 PM Senator Benacquisto response
1:27:47 PM Senator Latvala remarks
1:28:54 PM Senator Benacquisto response
1:29:13 PM Senator Latvala question
1:29:32 PM Senator Detert remarks
1:31:02 PM Chair Storms remarks
1:31:59 PM Senator Benacquisto closing remarks
1:32:53 PM Senator Rich remarks
1:33:16 PM SB 964, Protection of Minors vote
1:33:42 PM Alan Abramowitz, Guardian ad Litem Executive Director, remarks to Senator Rich
1:36:28 PM Senator Rich remarks
1:37:26 PM SB 1382, Service Animals by Senator Bennett (Cheryl Ennis, Senator Bennett's Legislative Assistant)
1:37:58 PM SB 1382, Service Animals (barcode 497356) by Senators Detert and Dockery
1:38:57 PM Senator Rich question
1:39:31 PM SB 1382, Service Animals (Public Testimony)
1:43:38 PM Chair Storms remarks
1:44:04 PM SB 1382, Service Animals (Public Testimony response)
1:46:58 PM Senator Latvala question
1:47:20 PM SB 1382, Service Animals (Public Testimony response)
1:47:35 PM Senator Dockery question
1:48:11 PM Chair Storms remarks
1:48:23 PM SB 1382, Service Animals (Public Testimony response)
1:48:50 PM SB 1382, Service Animals (Public Testimony continued)
1:49:09 PM Representative Kriseman remarks
1:51:33 PM Senator Dockery question
1:51:51 PM Representative Kriseman response
1:52:33 PM Senator Dockery question
1:52:35 PM Representative Kriseman response
1:54:33 PM SB 1382, Service Animals vote
1:54:49 PM Senator Latvala remarks
1:55:12 PM Chair Storms remarks
1:55:48 PM Senator Latvala remarks
1:55:57 PM Chair Storms remarks
1:56:20 PM SB 144, Seclusion and Restraint on Students with Disabilities in Public Schools by Senator Flores (Maria Chamorro, Senator Flores' Legislative Assistant)

1:57:22 PM SB 144, Seclusion and Restraint on Students with Disabilities in Public Schools (barcode 695260) by Senators Detert and Dockery

1:58:47 PM SB 144, handwritten amendment to the amendment by Senator Storms

2:01:01 PM SB 144, handwritten amendment to the amendment by Senator Storms

2:01:23 PM SB 144, handwritten amendment to the amendment by Senator Storms

2:01:47 PM Senator Latvala remarks

2:01:55 PM Chair Storms remarks

2:02:11 PM SB 144, Seclusion and Restraint on Students with Disabilities in Public Schools (Public Testimony)

2:04:16 PM Chair Storms remarks

2:04:57 PM SB 144, Seclusion and Restraint on Students with Disabilities in Public Schools (Public Testimony continued)

2:09:41 PM Senator Latvala remarks and question

2:10:36 PM Maria Chamorro, Senator Flores' Legislative Assistant response

2:11:00 PM Senator Latvala remarks

2:11:13 PM Senator Dockery question

2:11:26 PM Maria Chamorro, Senator Flores' Legislative Assistant response

2:11:52 PM Senator Dockery question

2:11:55 PM Maria Chamorro, Senator Flores' Legislative Assistant response

2:12:18 PM Senator Dockery remarks and question

2:12:31 PM Maria Chamorro, Senator Flores' Legislative Assistant response

2:12:43 PM Senator Latvala question

2:13:11 PM Maria Chamorro, Senator Flores' Legislative Assistant response

2:13:21 PM Senator Latvala motion to temporarily postpone SB 144

2:13:34 PM SB 460, Intellectual Disabilities by Senator Altman (Vijay Choksi, Senator Altman's Legislative Assistant)

2:14:21 PM SB 460, Intellectual Disabilities (barcode 110072) by Senators Detert and Dockery

2:15:00 PM SB 460, Intellectual Disabilities (Public Testimony)

2:15:35 PM SB 460, Intellectual Disabilities vote

2:15:59 PM CS/SB 554, Disability Awareness by Senator Ring (Joel Ramos, Senator Ring's Legislative Assistant)

2:16:52 PM CS/SB 554, Disability Awareness (barcode 652984) by Senator Latvala

2:18:03 PM CS/SB 554, Disability Awareness (Public Testimony)

2:18:47 PM CS/SB 554, Disability Awareness (late filed amendment to the strike all amendment barcode 441154) by Senator Latvala

2:19:54 PM Senator Rich question

2:20:23 PM Joel Ramos response

2:21:02 PM Senator Rich question

2:21:07 PM Joel Ramos response

2:21:26 PM Senator Rich remarks

2:22:15 PM Joel Ramos response

2:22:38 PM Senator Gibson question

2:23:18 PM Joel Ramos response

2:23:33 PM Chair Storms remarks

2:23:52 PM Senator Dockery remarks

2:25:45 PM CS/SB 554, Disability Awareness vote

2:26:13 PM Adjourn