

By Senator Smith

14-989A-04

1 A bill to be entitled
2 An act relating to involuntary mental health
3 treatment of mentally ill inmates; amending s.
4 945.41, F.S.; deleting a provision requiring
5 the Department of Corrections to contract with
6 the Department of Children and Family Services
7 for mental health services; providing
8 legislative intent with respect to the
9 involuntary administration of psychotropic
10 medications to a mentally ill inmate who
11 refuses treatment and poses a threat to others;
12 amending s. 945.42, F.S.; defining the term
13 "administrative panel"; redefining the term
14 "mental health treatment facility"; amending s.
15 945.48, F.S.; revising the period during which
16 involuntary mental health treatment may be
17 provided; requiring an administrative panel
18 rather than the circuit court to determine
19 whether to continue involuntary mental health
20 treatment of an inmate in an emergency or
21 nonemergency situation; extending the period
22 for providing involuntary mental health
23 treatment in a nonemergency situation;
24 specifying circumstances under which an
25 administrative panel may issue an order
26 authorizing the continuation of involuntary
27 mental health treatment; requiring the
28 Department of Corrections to adopt procedures
29 for conducting hearings of the administrative
30 panel; specifying conditions that the
31 administrative panel must consider in

1 determining whether to order involuntary mental
2 health treatment for an inmate; deleting
3 requirements that an inmate be provided with a
4 copy of the petition for involuntary mental
5 health treatment and an attorney; amending s.
6 945.49, F.S.; deleting a requirement that the
7 Department of Children and Family Services
8 cooperate in adopting rules for administering
9 the Corrections Mental Health Act; providing an
10 effective date.

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

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14 Section 1. Section 945.41, Florida Statutes, is
15 amended to read:

16 945.41 Legislative intent of ss. 945.40-945.49.--It is
17 the intent of the Legislature that mentally ill inmates in the
18 custody of the Department of Corrections receive evaluation
19 and appropriate treatment for their mental illness through a
20 continuum of services. It is further the intent of the
21 Legislature that:

22 (1) Inmates in the custody of the department who have
23 mental illnesses that require hospitalization and intensive
24 psychiatric inpatient treatment or care receive appropriate
25 treatment or care in Department of Corrections mental health
26 treatment facilities designated for that purpose. ~~The~~
27 ~~department shall contract with the Department of Children and~~
28 ~~Family Services for the provision of mental health services in~~
29 ~~any departmental mental health treatment facility.~~ The
30 Department of Corrections shall provide mental health services
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1 to inmates committed to it and may contract with any persons
2 or agencies qualified to provide such services.

3 (2) Mental health treatment facilities be secure and
4 adequately equipped and staffed for the provision of mental
5 health services and that, to the extent possible, such
6 services be provided in the least restrictive manner
7 consistent with optimum improvement of the inmate's condition.

8 (3) Inmates who are transferred to any facility for
9 the purpose of mental health treatment be given consideration
10 for parole and be eligible for release by reason of gain-time
11 allowances as provided in s. 944.291 and release by expiration
12 of sentence, consistent with guidelines established for that
13 purpose by the department.

14 (4) Any inmate sentenced as a youthful offender, or
15 designated as a youthful offender by the department pursuant
16 to chapter 958, who is transferred pursuant to this act to a
17 mental health treatment facility be separated from other
18 inmates, if necessary, as determined by the warden of the
19 treatment facility. In no case shall any youthful offender be
20 placed at the Florida State Prison or the Union Correctional
21 Institution for mental health treatment.

22 (5) The department may designate a mental health
23 treatment facility for adult and youthful female offenders or
24 may contract with other appropriate agencies for such
25 services.

26 (6) Any inmate who is mentally ill, whose mental
27 impairment poses a risk of harm to self or others, and who
28 refuses treatment with psychotropic medications deemed
29 necessary and appropriate by an administrative panel, be
30 administered such treatment involuntarily.

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1 Section 2. Section 945.42, Florida Statutes, is
2 amended to read:

3 945.42 Definitions; ss. 945.40-945.49.--As used in ss.
4 945.40-945.49, the following terms shall have the meanings
5 ascribed to them, unless the context shall clearly indicate
6 otherwise:

7 (1) "Administrative panel" means a panel of at least
8 three health care professionals licensed in this state who
9 shall conduct hearings to determine whether involuntary
10 treatment with psychotropic medications is necessary and
11 appropriate for an inmate refusing such treatment. A member of
12 the panel may not be involved in the delivery or supervision
13 of mental health care and treatment to the inmate refusing
14 treatment with psychotropic medication. Each panel shall be
15 comprised of at least one psychiatrist licensed in this state
16 with the remaining members being physicians licensed under
17 chapter 458 or chapter 459. Members of the panel shall be
18 appointed by the Assistant Secretary for Health Services or
19 his or her designee.

20 ~~(2)(1)~~ "Court" means the circuit court.

21 ~~(3)(2)~~ "Department" means the Department of
22 Corrections.

23 ~~(4)(3)~~ "Director" means the Director for Mental Health
24 Services of the Department of Corrections or his or her
25 designee.

26 ~~(5)(4)~~ "In immediate need of care and treatment" means
27 that an inmate is apparently mentally ill and is not able to
28 be appropriately cared for in the institution where the inmate
29 is confined and that, without intervention, the alleged mental
30 illness poses an immediate, real, and present threat of
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1 substantial harm to the inmate's well-being or to the safety
2 of others.

3 (6)~~(5)~~ "In need of care and treatment" means that an
4 inmate has a mental illness for which inpatient services in a
5 mental health treatment facility are necessary, which mental
6 illness poses a real and present threat of substantial harm to
7 the inmate's well-being or to the safety of others.

8 (7)~~(6)~~ "Inmate" means any person committed to the
9 custody of the Department of Corrections.

10 (8)~~(7)~~ "Mental health treatment facility" means an
11 institution, facility, or unit within an institution of the
12 department which is designated by the Assistant Secretary of
13 Health Services ~~the Corrections Mental Health Institution and~~
14 ~~any other institution that the Assistant Secretary for Health~~
15 ~~Services of the department specifically designates by rule to~~
16 provide acute psychiatric care at the hospital level, in
17 contrast to less intensive levels of care such as outpatient
18 mental health care, transitional mental health care, or crisis
19 stabilization care.

20 (9)~~(8)~~ "Mentally ill" means an impairment of the
21 emotional processes, of the ability to exercise conscious
22 control of one's actions, or of the ability to perceive
23 reality or to understand, which impairment substantially
24 interferes with a person's ability to meet the ordinary
25 demands of living, regardless of etiology, except that, for
26 the purposes of transfer of an inmate to a mental health
27 treatment facility, the term does not include retardation or
28 developmental disability as defined in chapter 393, simple
29 intoxication, or conditions manifested only by antisocial
30 behavior or drug addiction.

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1 (10)~~(9)~~ "Psychiatrist" means a medical practitioner
2 licensed pursuant to chapter 458 or chapter 459 who has
3 primarily diagnosed and treated nervous and mental disorders
4 for a period of not less than 3 years inclusive of psychiatric
5 residency.

6 (11)~~(10)~~ "Psychologist" means a behavioral
7 practitioner who has an approved degree in psychology that is
8 primarily clinical in nature from a university or professional
9 graduate school that is state-authorized or accredited by an
10 accrediting agency approved by the United States Department of
11 Education and who is professionally certified by the
12 appropriate professional psychology association or is licensed
13 as a psychologist pursuant to chapter 490.

14 (12)~~(11)~~ "Secretary" means the Secretary of
15 Corrections.

16 (13)~~(12)~~ "Transitional mental health care" means a
17 level of care that is more intensive than outpatient care, but
18 less intensive than crisis stabilization care, and is
19 characterized by the provision of traditional mental health
20 treatments such as group and individual therapy, activity
21 therapy, recreational therapy, and chemotherapy, in the
22 context of a structured residential setting. Transitional
23 mental health care is indicated for a person with chronic or
24 residual symptomatology who does not require crisis
25 stabilization care or acute psychiatric care at the hospital
26 level, but whose impairments in functioning nevertheless
27 render him or her incapable of adjusting satisfactorily within
28 the general inmate population, even with the assistance of
29 outpatient care.

30 (14)~~(13)~~ "Warden" means the warden of a state
31 corrections facility or his or her designee.

1 Section 3. Subsection (2) of section 945.48, Florida
2 Statutes, is amended to read:

3 945.48 Rights of inmate provided treatment.--

4 (2) RIGHT TO EXPRESS AND INFORMED CONSENT.--Any inmate
5 provided psychiatric treatment within the department shall be
6 asked to give his or her express and informed written consent
7 for such treatment. "Express and informed written consent" or
8 "consent" means consent voluntarily given in writing after a
9 conscientious and sufficient explanation and disclosure of the
10 purpose of the proposed treatment; the common side effects of
11 the treatment, if any; the expected duration of the treatment;
12 and the alternative treatment available. The explanation
13 shall enable the inmate to make a knowing and willful decision
14 without any element of fraud, deceit, or duress or any other
15 form of constraint or coercion. Involuntary mental health
16 treatment of an inmate who refuses treatment that is deemed to
17 be necessary for the appropriate care of the inmate and the
18 safety of the inmate or others may be provided at an
19 institution authorized to do so by the Assistant Secretary for
20 Health Services under the following circumstances:

21 (a) In an emergency situation in which there is
22 immediate danger to the health and safety of the inmate or
23 others ~~other inmates~~, such treatment may be provided upon the
24 written order of a physician for a period not to exceed 72 ~~48~~
25 hours, excluding weekends and legal holidays. If, after the
26 72-hour ~~48-hour~~ period, the inmate has not given express and
27 informed consent to the treatment initially refused, the
28 warden shall, within 48 hours, excluding weekends and legal
29 holidays, contact the Assistant Secretary of Health Services
30 or his or her designee to convene an administrative panel for
31 a hearing to determine whether an order authorizing continued

1 treatment of the inmate should be issued ~~petition the circuit~~
2 ~~court serving the county in which the facility is located for~~
3 ~~an order authorizing the continued treatment of the inmate.~~ In
4 the interim, treatment may be continued upon the written order
5 of a physician who has determined that the emergency situation
6 continues to present a danger to the safety of the inmate or
7 others. If an inmate must be isolated for mental health
8 purposes, that decision must be reviewed within 72 hours by
9 medical staff different from that making the original
10 placement.

11 (b) In a situation other than an emergency situation,
12 the warden shall contact the Assistant Secretary of Health
13 Services or his or her designee to request that an
14 administrative panel be convened to conduct a hearing to
15 determine whether an order authorizing treatment of the inmate
16 should be issued ~~petition the court for an order authorizing~~
17 ~~the treatment of the inmate.~~ The order shall allow such
18 treatment for a period not to exceed 180 ~~90~~ days from the date
19 of the order. Unless the Assistant Secretary for Health
20 Services or his or her designee ~~court~~ is notified in writing
21 that the inmate has provided express and informed consent in
22 writing, ~~that the inmate has been transferred to another~~
23 ~~institution of the department,~~ or that the inmate is no longer
24 in need of treatment, the warden shall, prior to the
25 expiration of the initial 180-day ~~90-day~~ order, contact the
26 Assistant Secretary for Health Services to convene an
27 administrative panel ~~petition the court~~ for an order
28 authorizing the continuation of treatment for another 180-day
29 ~~90-day~~ period. This procedure shall be repeated until the
30 inmate provides consent or is no longer in need of treatment.

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1 Treatment may be continued pending a hearing before an
2 administrative panel ~~after the filing of any petition.~~

3 (c) An order by the administrative panel authorizing
4 treatment shall be issued only after a hearing and only after
5 a finding by the administrative panel that the treatment
6 authorized is necessary for the appropriate care of the inmate
7 and the safety of the inmate or others.

8 (d)~~(c)~~ The department shall establish by rule
9 procedures for the conduct of hearings by the administrative
10 panel to determine need for treatment. Such procedures shall
11 ensure that an inmate is afforded appropriate due process.At
12 the hearing on the issue of whether the administrative panel
13 ~~court~~ should authorize treatment for which an inmate has
14 refused to give express and informed consent, the
15 administrative panel ~~court~~ shall determine by clear and
16 convincing evidence whether the inmate is mentally ill as
17 defined in this chapter; whether such treatment is medically
18 appropriate and essential for the safety of the inmate or
19 others. In determining whether such treatment is medically
20 appropriate for the inmate, the administrative panel shall
21 determine to the care of the inmate; and whether the treatment
22 is experimental or presents an unreasonable risk of serious,
23 hazardous, or irreversible side effects. In arriving at its
24 determination ~~the substitute judgment decision~~, the
25 administrative panel ~~court~~ must consider at least the
26 following:

- 27 1. The inmate's expressed preference regarding
28 treatment;
- 29 2. The probability of adverse side effects;
- 30 3. The prognosis for the inmate without treatment; and
- 31 4. The prognosis for the inmate with treatment.

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2 ~~The inmate and the inmate's representative shall be provided~~
3 ~~with a copy of the petition and the date, time, and location~~
4 ~~of the hearing. The inmate may have an attorney represent him~~
5 ~~or her at the hearing, and, if the inmate is indigent, the~~
6 ~~court shall appoint the office of the public defender to~~
7 ~~represent him or her at the hearing. The inmate may testify~~
8 ~~or not, as he or she chooses, may cross-examine witnesses~~
9 ~~testifying on behalf of the facility, and may present his or~~
10 ~~her own witnesses.~~

11 (e)~~(d)~~ In addition to the above provisions, when the
12 permission of the inmate cannot be obtained, the warden of a
13 mental health treatment facility, or his or her designated
14 representative, with the concurrence of the inmate's attending
15 physician, may authorize emergency surgical or nonpsychiatric
16 medical treatment if such treatment is deemed lifesaving or
17 there is a situation threatening serious bodily harm to the
18 inmate.

19 Section 4. Subsections (2) and (3) of section 945.49,
20 Florida Statutes, are amended to read:

21 945.49 Operation and administration.--

22 (2) ~~RULES.--The department, in cooperation with the~~
23 ~~Mental Health Program Office of the Department of Children and~~
24 ~~Family Services,~~ shall adopt rules necessary for
25 administration of ss. 945.40-945.49 in accordance with chapter
26 120.

27 (3) ORIENTATION AND TRAINING.--Correctional officers
28 assigned to ~~employed by~~ a mental health treatment facility
29 shall receive specialized training above and beyond that
30 required for basic certification pursuant to chapter 943. Such
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1 training shall be in accordance with requirements of the
2 Criminal Justice Standards and Training Commission.

3 Section 5. This act shall take effect July 1, 2004.

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6 SENATE SUMMARY

7 Revises various provisions of the Corrections Mental
8 Health Act. Deletes a requirement that the Department of
9 Corrections contract with the Department of Children and
10 Family Services for providing mental health services to
11 inmates. Provides for the involuntary administration of
12 mental health treatment to a mentally ill inmate who
13 refuses treatment and poses a threat to others. Revises
14 the time period during which involuntary mental health
15 treatment may be provided. Requires an administrative
16 panel rather than the circuit court to determine whether
17 to continue involuntary mental health treatment in
18 emergency and nonemergency situations. Requires the
19 Department of Corrections to adopt rules. Deletes a
20 requirement that an inmate be provided with a copy of the
21 petition for involuntary mental health treatment and an
22 attorney. (See bill for details.)
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