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HB 7137, Engrossed 1

2008 Legislature

1 A bill to be entitled
2 An act relating to the Department of Corrections; amending
3 s. 921.187, F.S.; deleting certain provisions limiting
4 circumstances under which an offender may be placed in
5 community control; amending s. 943.16, F.S.; eliminating
6 provisions requiring that a law enforcement officer
7 reimburse the employing agency for wages and benefits paid
8 by the employing agency if the officer terminates
9 employment before the end of a 2-year commitment period;
10 eliminating wages and benefits from the costs that
11 employing agencies may recover; eliminating the definition
12 of the term "academy training period"; amending s.
13 944.1905, F.S.; authorizing the department to assign
14 certain young adult offenders to a facility for youthful
15 offenders until the offender reaches a specified age;
16 deleting provisions requiring that certain young adult
17 offenders be housed and provided certain services
18 separately from older offenders; amending s. 944.47, F.S.;
19 providing that a cellular telephone or other portable
20 communication device that is introduced inside the secure
21 perimeter of a state correctional institution without
22 prior authorization is contraband; prohibiting an inmate
23 or other person upon the grounds of the institution from
24 possessing such contraband without authorization;
25 providing a definition; providing criminal penalties;
26 amending s. 948.01, F.S.; deleting the requirement that a
27 court using a specified alternative to a sentence of
28 incarceration require the Department of Corrections to

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29 provide certain notifications; amending s. 948.10, F.S.;

30 deleting a requirement that community control programs and

31 manuals be developed in consultation with the Florida

32 Conference of Circuit Court Judges and the State Courts

33 Administrator; deleting the prohibition on sentencing

34 offenders convicted of certain forcible felonies to

35 community control; deleting requirements for the

36 department in developing and implementing community

37 control programs, resource directories, and training

38 programs; deleting a requirement for the Florida Court

39 Education Council and the State Courts Administrator to

40 coordinate certain resources for judges pertaining to

41 community control; eliminating provisions governing review

42 and notice by the department of offenders ineligible for

43 community control and requiring the department to develop

44 a caseload equalization strategy; conforming provisions to

45 deletion of the prohibition on sentencing offenders

46 convicted of certain forcible felonies to community

47 control; amending s. 958.04, F.S.; authorizing the court

48 to sentence a person as a youthful offender if the

49 offender is younger than 21 years of age at the time

50 sentence is imposed; requiring the Department of

51 Corrections to adopt by rule criteria to define successful

52 participation in the youthful offender program; amending

53 s. 958.11, F.S.; removing the specific designation of

54 youthful offender facilities for housing female offenders;

55 revising requirements for the department with respect to

56 assigning or transferring youthful offenders; removing

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57 | references to the Assistant Secretary for Youthful
58 | Offenders; amending s. 958.12, F.S.; removing the
59 | requirement for a youthful offender to be visited by a
60 | probation and parole officer before release; removing the
61 | requirement for the department to develop community
62 | partnerships with the Department of Labor and Employment
63 | Security and the Department of Children and Family
64 | Services and including private agencies as possible
65 | partners in such partnerships; amending s. 945.41, F.S.;
66 | eliminating a requirement that the Department of
67 | Corrections contract with the Department of Children and
68 | Family Services to provide certain mental health services;
69 | authorizing the Department of Corrections to contract with
70 | other entities or persons to provide mental health
71 | services to inmates; amending s. 945.42, F.S.; revising
72 | definitions and defining the term "crisis stabilization
73 | care"; amending s. 945.43, F.S.; revising the procedures
74 | for placing an inmate in a mental health treatment
75 | facility; authorizing the court to waive the presence of
76 | the inmate at the hearing on the inmate's placement;
77 | amending s. 945.44, F.S.; providing for the emergency
78 | placement of an inmate in a mental health treatment
79 | facility; amending s. 945.45, F.S.; revising the
80 | provisions governing the continued placement of an inmate
81 | in a mental health treatment facility; authorizing an
82 | administrative law judge to appoint a private pro bono
83 | attorney to represent an inmate in continued placement
84 | hearings; providing that the administrative law judge may

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85 | waive the presence of the inmate at the hearing under
86 | certain conditions; amending s. 945.46, F.S.; authorizing
87 | the warden to initiate procedures for the involuntary
88 | examination of an inmate who has a mental illness and
89 | meets certain criteria; amending s. 945.47, F.S.;
90 | providing for the transfer of an inmate who is no longer
91 | in need of mental health treatment; deleting certain
92 | provisions governing involuntary placement; requiring that
93 | a summary of the inmate's treatment be provided to the
94 | Parole Commission and the Department of Children and
95 | Family Services upon request; amending s. 945.48, F.S.;
96 | revising the procedure for the involuntary mental health
97 | treatment of an inmate; providing for the warden of the
98 | institution containing the mental health treatment
99 | facility to petition the circuit court for an order
100 | authorizing involuntary treatment; providing requirements
101 | for the hearing on involuntary treatment; limiting the
102 | period that an order authorizing involuntary treatment is
103 | effective; providing a procedure for emergency treatment;
104 | amending s. 945.49, F.S.; deleting a provision requiring
105 | that training provided to correctional officers employed
106 | by a mental health treatment facility be in accordance
107 | with the requirements of the Criminal Justice Standards
108 | and Training Commission; deleting a requirement that a
109 | specified number of administrative law judges be assigned
110 | to conduct hearings on continued placement of inmates;
111 | requiring that inmates receiving mental health treatment

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112 be subject to the same standards applied to other inmates
 113 in the department; providing an effective date.

114

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

116

117 Section 1. Subsections (2), (3), and (4) of section
 118 921.187, Florida Statutes, are amended to read:

119 921.187 Disposition and sentencing; alternatives;
 120 restitution.--

121 ~~(2) An offender may not be placed in community control if:~~

122 ~~(a) Convicted of or adjudication is withheld for a~~
 123 ~~forcible felony as defined in s. 776.08; and~~

124 ~~(b) Previously convicted of or adjudication was withheld~~
 125 ~~for a forcible felony as defined in s. 776.08.~~

126

127 ~~Nothing in this subsection prohibits placement of certain~~
 128 ~~inmates on community control pursuant to s. 947.1747. For~~
 129 ~~purposes of this subsection, a forcible felony does not include~~
 130 ~~manslaughter or burglary.~~

131 (2)~~(3)~~ In addition to any other penalty provided by law
 132 for an offense enumerated in s. 775.0877(1) (a) - (n), if the
 133 offender is convicted of criminal transmission of HIV pursuant
 134 to s. 775.0877, the court may sentence the offender to criminal
 135 quarantine community control as described in s. 948.001.

136 (3)~~(4)~~ The court shall require an offender to make
 137 restitution under s. 775.089, unless the court finds clear and
 138 compelling reasons not to order such restitution. If the court
 139 does not order restitution, or orders restitution of only a

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140 portion of the damages, as provided in s. 775.089, the court
 141 shall state the reasons on the record in detail. An order
 142 requiring an offender to make restitution to a victim under s.
 143 775.089 does not remove or diminish the requirement that the
 144 court order payment to the Crimes Compensation Trust Fund under
 145 chapter 960.

146 Section 2. Section 943.16, Florida Statutes, is amended to
 147 read:

148 943.16 Payment of tuition or officer certification
 149 examination fee by employing agency; reimbursement of tuition,
 150 other course expenses, wages, and benefits.--

151 (1) An employing agency is authorized to pay any costs of
 152 tuition of a trainee in attendance at an approved basic recruit
 153 training program.

154 (2)~~(a)~~ A trainee who attends such approved training
 155 program at the expense of an employing agency must remain in the
 156 employment or appointment of such employing agency for a period
 157 of not less than 2 years after graduation from the basic recruit
 158 training program. If employment or appointment is terminated on
 159 the trainee's own initiative within 2 years, he or she shall
 160 reimburse the employing agency for the full cost of his or her
 161 tuition and, other course expenses, ~~and additional amounts as~~
 162 ~~provided in paragraph (b).~~

163 ~~(b) In addition to reimbursement for the full cost of~~
 164 ~~tuition and other course expenses, a trainee terminating~~
 165 ~~employment as provided in paragraph (a) shall reimburse the~~
 166 ~~employing agency for the trainee's wages and benefits paid by~~

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167 ~~the employing agency during the academy training period~~
168 ~~according to the following schedule:~~

169 ~~1. For a trainee terminating employment within 6 months of~~
170 ~~graduation from the basic recruit training program, the full~~
171 ~~amount of wages and benefits paid during the academy training~~
172 ~~period.~~

173 ~~2. For a trainee terminating employment within 6 months~~
174 ~~and 1 day to 12 months of graduation from the basic recruit~~
175 ~~training program, an amount equal to three fourths of the full~~
176 ~~amount of wages and benefits paid during the academy training~~
177 ~~period.~~

178 ~~3. For a trainee terminating employment within 12 months~~
179 ~~and 1 day to 18 months of graduation from the basic recruit~~
180 ~~training program, an amount equal to one half of the full amount~~
181 ~~of wages and benefits paid during the academy training period.~~

182 ~~4. For a trainee terminating employment within 18 months~~
183 ~~and 1 day to 24 months of graduation from the basic recruit~~
184 ~~training program, an amount equal to one fourth of the full~~
185 ~~amount of wages and benefits paid during the academy training~~
186 ~~period.~~

187 (3) An employing agency is authorized to pay the required
188 fee for an applicant to take the officer certification
189 examination on one occasion.

190 (4) An employing agency may institute a civil action to
191 collect such cost of tuition and, other course expenses, ~~wages,~~
192 ~~and benefits~~ as provided in this section if it is not
193 reimbursed, provided that the employing agency gave written
194 notification to the trainee of the 2-year employment commitment

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195 during the employment screening process. The trainee shall
 196 return signed acknowledgment of receipt of such notification.

197 (5) For purposes of this section, ~~"academy training~~
 198 ~~period"~~ means the period of time that a trainee is attending an
 199 approved basic recruit training program in a law enforcement or
 200 correctional officer academy class for purposes of obtaining
 201 certification pursuant to this chapter, until the date of
 202 ~~graduation from such class.~~ the term "other course expenses"
 203 includes the cost of meals.

204 (6) This section does not apply to trainees who terminate
 205 employment with the employing agency and resign their
 206 certification upon termination in order to obtain employment for
 207 which certification under this chapter is not required. Further,
 208 this section does not apply to trainees attending auxiliary
 209 officer training.

210 (7) Notwithstanding the provisions of this section, an
 211 employing agency may waive a trainee's requirement of
 212 reimbursement in part or in full when the trainee terminates
 213 employment due to hardship or extenuating circumstances.

214 Section 3. Subsection (5) of section 944.1905, Florida
 215 Statutes, is amended to read:

216 944.1905 Initial inmate classification; inmate
 217 reclassification.--The Department of Corrections shall classify
 218 inmates pursuant to an objective classification scheme. The
 219 initial inmate classification questionnaire and the inmate
 220 reclassification questionnaire must cover both aggravating and
 221 mitigating factors.

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222 (5) (a) Notwithstanding any other provision of this section
 223 or chapter 958, the department shall assign to facilities
 224 housing youthful offenders ~~specific correctional facilities~~ all
 225 inmates who are less than 18 years of age and who are ~~not~~
 226 ~~eligible for~~ and have not been assigned to a facility for
 227 youthful offenders under the provisions of chapter 958. Such an
 228 inmate shall be assigned to a facility for youthful offenders
 229 until the inmate is 18 years of age; however, the department may
 230 assign the inmate to a facility for youthful offenders until the
 231 inmate reaches an age not to exceed 21 years if the department
 232 determines that the continued assignment is in the best
 233 interests of the inmate and the assignment does not pose an
 234 unreasonable risk to other inmates in the facility. ~~Any such~~
 235 ~~inmate who is less than 18 years of age shall be housed in a~~
 236 ~~dormitory that is separate from inmates who are 18 years of age~~
 237 ~~or older. Furthermore, the department shall provide any food~~
 238 ~~service, education, and recreation for such inmate separately~~
 239 ~~from inmates who are 18 years of age or older.~~

240 ~~(b) Notwithstanding the requirements of s. 958.11, any~~
 241 ~~inmate who is less than 18 years of age, who was 15 years of age~~
 242 ~~or younger at the time of his or her offense, and who has no~~
 243 ~~prior juvenile adjudication must be placed in a facility for~~
 244 ~~youthful offenders until the inmate is 18 years of age. At the~~
 245 ~~discretion of the department, such an inmate may be placed in a~~
 246 ~~facility for youthful offenders until the inmate is 21 years of~~
 247 ~~age.~~

248 (b) (e) Any inmate who is assigned to a facility under
 249 paragraph (a) is subject to the provisions of s. 958.11

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250 regarding facility assignments, and ~~or paragraph (b)~~ shall be
 251 removed and reassigned to the general inmate population if his
 252 or her behavior threatens the safety of other inmates or
 253 correctional staff.

254 Section 4. Paragraph (a) of subsection (1) and subsection
 255 (2) of section 944.47, Florida Statutes, are amended to read:

256 944.47 Introduction, removal, or possession of certain
 257 articles unlawful; penalty.--

258 (1)(a) Except through regular channels as authorized by
 259 the officer in charge of the correctional institution, it is
 260 unlawful to introduce into or upon the grounds of any state
 261 correctional institution, or to take or attempt to take or send
 262 or attempt to send therefrom, any of the following articles
 263 which are hereby declared to be contraband for the purposes of
 264 this section, to wit:

265 1. Any written or recorded communication or any currency
 266 or coin given or transmitted, or intended to be given or
 267 transmitted, to any inmate of any state correctional
 268 institution.

269 2. Any article of food or clothing given or transmitted,
 270 or intended to be given or transmitted, to any inmate of any
 271 state correctional institution.

272 3. Any intoxicating beverage or beverage which causes or
 273 may cause an intoxicating effect.

274 4. Any controlled substance as defined in s. 893.02(4) or
 275 any prescription or nonprescription drug having a hypnotic,
 276 stimulating, or depressing effect.

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277 5. Any firearm or weapon of any kind or any explosive
 278 substance.

279 6. Any cellular telephone or other portable communication
 280 device intentionally and unlawfully introduced inside the secure
 281 perimeter of any state correctional institution without prior
 282 authorization or consent from the officer in charge of such
 283 correctional institution. As used in this subparagraph, the term
 284 "portable communication device" means any device carried, worn,
 285 or stored which is designed or intended to receive or transmit
 286 verbal or written messages, access or store data, or connect
 287 electronically to the Internet or any other electronic device
 288 and which allows communications in any form. Such devices
 289 include, but are not limited to, portable two-way pagers, hand-
 290 held radios, cellular telephones, Blackberry-type devices,
 291 personal digital assistants or PDA's, laptop computers, or any
 292 components of these devices which are intended to be used to
 293 assemble such devices. The term also includes any new technology
 294 that is developed for similar purposes. Excluded from this
 295 definition is any device having communication capabilities which
 296 has been approved or issued by the department for investigative
 297 or institutional security purposes or for conducting other state
 298 business.

299 (2) A person who violates any provision of this section as
 300 it pertains to an article of contraband described in
 301 subparagraph (1)(a)1., ~~or~~ subparagraph (1)(a)2., or subparagraph
 302 (1)(a)6. commits ~~is guilty of~~ a felony of the third degree,
 303 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 304 In all other cases, a violation of a provision of this section

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305 constitutes a felony of the second degree, punishable as
 306 provided in s. 775.082, s. 775.083, or s. 775.084.

307 Section 5. Paragraph (c) of subsection (3) of section
 308 948.01, Florida Statutes, is amended to read:

309 948.01 When court may place defendant on probation or into
 310 community control.--

311 (3) If, after considering the provisions of subsection (2)
 312 and the offender's prior record or the seriousness of the
 313 offense, it appears to the court in the case of a felony
 314 disposition that probation is an unsuitable dispositional
 315 alternative to imprisonment, the court may place the offender in
 316 a community control program as provided in s. 948.10. Or, in a
 317 case of prior disposition of a felony commitment, upon motion of
 318 the offender or the department or upon its own motion, the court
 319 may, within the period of its retained jurisdiction following
 320 commitment, suspend the further execution of the disposition and
 321 place the offender in a community control program upon such
 322 terms as the court may require. The court may consult with a
 323 local offender advisory council pursuant to s. 948.90 with
 324 respect to the placement of an offender into community control.
 325 Not later than 3 working days before the hearing on the motion,
 326 the department shall forward to the court all relevant material
 327 on the offender's progress while in custody. If this sentencing
 328 alternative to incarceration is utilized, the court shall:

329 ~~(c) Require the department to provide notifications~~
 330 ~~pursuant to s. 948.10(7).~~

331 Section 6. Section 948.10, Florida Statutes, is amended to
 332 read:

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333 948.10 Community control programs.--

334 (1) The Department of Corrections shall develop and

335 administer a community control program. ~~Such community control~~

336 ~~program and required manuals shall be developed in consultation~~

337 ~~with the Florida Conference of Circuit Court Judges and the~~

338 ~~office of the State Courts Administrator.~~ This complementary

339 program shall be rigidly structured and designed to accommodate

340 offenders who, in the absence of such a program, would have been

341 incarcerated. The program shall focus on the provision of

342 sanctions and consequences which are commensurate with the

343 seriousness of the crime. The program shall offer the courts and

344 the Parole Commission an alternative, community-based method to

345 punish an offender in lieu of incarceration when the offender is

346 a member of one of the following target groups:

347 (a) Probation violators charged with technical violations

348 or misdemeanor violations.

349 (b) Parole violators charged with technical violations or

350 misdemeanor violations.

351 (c) Individuals found guilty of felonies, who, due to

352 their criminal backgrounds or the seriousness of the offenses,

353 would not be placed on regular probation.

354 ~~(2) An offender may not be placed in community control if:~~

355 ~~(a) Convicted of or adjudication withheld for a forcible~~

356 ~~felony as defined in s. 776.08, and~~

357 ~~(b) Previously convicted of or adjudication withheld for a~~

358 ~~forcible felony as defined in s. 776.08.~~

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360 ~~Nothing in this subsection prohibits placement of certain~~
 361 ~~inmates on community control pursuant to s. 947.1747. For the~~
 362 ~~purposes of this subsection, a forcible felony does not include~~
 363 ~~manslaughter or burglary.~~

364 (2)~~(3)~~ The department shall commit not less than 10
 365 percent of the parole and probation field staff and supporting
 366 resources to the operation of the community control program.
 367 Caseloads should be restricted to a maximum of 25 cases per
 368 officer in order to ensure an adequate level of staffing.
 369 Community control is an individualized program in which the
 370 offender is restricted to noninstitutional quarters or
 371 restricted to his or her own residence subject to an authorized
 372 level of limited freedom.

373 ~~(4) The department shall develop and implement procedures~~
 374 ~~to diagnose offenders during the prison intake process in order~~
 375 ~~to recommend to the sentencing courts, during the period of~~
 376 ~~retained jurisdiction, suitable candidates for placement in a~~
 377 ~~program of community control.~~

378 ~~(5) The Department of Corrections shall develop, or shall~~
 379 ~~contract for the development of, an implementation manual, a~~
 380 ~~resource directory, and training programs for implementing~~
 381 ~~community control programs.~~

382 ~~(a)1. The community control implementation manual shall~~
 383 ~~include, but shall not be limited to, an explanation of the~~
 384 ~~types of offenders who should be placed in community control~~
 385 ~~programs, procedures for diagnosing offenders, objectives and~~
 386 ~~goals of such placements, examples of alternative placements~~

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387 ~~based upon the experience of other states, and instruction in~~
 388 ~~developing an individualized program for each offender.~~
 389 ~~2. An offender's individualized program shall include~~
 390 ~~diagnosis of treatment needs in the areas of education,~~
 391 ~~substance abuse, and mental health, as well as community~~
 392 ~~sanction provisions, restitution and community service~~
 393 ~~provisions, rehabilitation objectives and programs, and a~~
 394 ~~schedule for periodic review and reevaluation of such~~
 395 ~~individualized programs. Individualized programs for offenders~~
 396 ~~who committed controlled substance violations shall include~~
 397 ~~provision for the conduct of random substance abuse testing~~
 398 ~~intermittently throughout the term of supervision, upon the~~
 399 ~~direction of the correctional probation officer as defined in s.~~
 400 ~~943.10(3).~~
 401 ~~(b) The community control resource directory shall~~
 402 ~~include, but shall not be limited to, for each circuit in the~~
 403 ~~state, an identification and description of community resources~~
 404 ~~that are available for the implementation of community control~~
 405 ~~programs, which resources include the following:~~
 406 ~~1. The name, address, phone, county location, capacity,~~
 407 ~~and cost.~~
 408 ~~2. Client eligibility and characteristics which prohibit~~
 409 ~~acceptance.~~
 410 ~~3. The objectives of the program.~~
 411 ~~4. The primary source of referrals.~~
 412 ~~5. The average length of stay.~~
 413 ~~6. The services offered.~~

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

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414 ~~(c) Training programs shall be provided for correctional~~
 415 ~~field staff, local offender advisory councils, and others~~
 416 ~~responsible for the implementation of community control~~
 417 ~~programs.~~

418 ~~(6) The Florida Court Education Council and the office of~~
 419 ~~the State Courts Administrator shall coordinate the development~~
 420 ~~and implementation of a reference manual, directory, and~~
 421 ~~training programs for judges in relation to community control~~
 422 ~~disposition.~~

423 ~~(7) Upon written request, when an offender is placed on~~
 424 ~~community control, the department shall notify:~~

425 ~~(a) The original arresting law enforcement agency.~~

426 ~~(b) The sheriff or chief law enforcement officer of the~~
 427 ~~county in which the offender is to be placed.~~

428 ~~(c) The chief officer of any local law enforcement agency~~
 429 ~~within whose jurisdiction the offender is to be placed.~~

430 ~~(d) The victim of the offense, the victim's parent or~~
 431 ~~guardian if the victim is a minor, the lawful representative of~~
 432 ~~the victim or the victim's parent or guardian if the victim is a~~
 433 ~~minor, or the next of kin if the victim is a homicide victim.~~

434
 435 ~~Such notification shall include the name and street address of~~
 436 ~~the offender, the length of supervision, and the nature of the~~
 437 ~~offense. Update notification must be provided with respect to~~
 438 ~~violation of the terms or conditions of the placement.~~

439 ~~(8) If an offender is sentenced to community control by~~
 440 ~~the court and the offender is ineligible to be placed on~~

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441 ~~community control as provided in subsection (2), the department~~
442 ~~shall:~~

443 ~~(a) Review and verify whether an ineligible offender was~~
444 ~~placed on community control.~~

445 ~~(b) Within 30 days after receipt of the order, notify the~~
446 ~~sentencing judge, the state attorney, and the Attorney General~~
447 ~~that the offender was ineligible for placement on community~~
448 ~~control.~~

449 ~~(c) Provide a quarterly report to the chief judge and the~~
450 ~~state attorney of each circuit citing the number of ineligible~~
451 ~~offenders placed on community control within that circuit.~~

452 ~~(d) Provide an annual report to the Governor, the~~
453 ~~President of the Senate, the Speaker of the House of~~
454 ~~Representatives, and the Chief Justice of the Supreme Court on~~
455 ~~the placement of ineligible offenders on community control in~~
456 ~~order to assist in preparing judicial education programs or for~~
457 ~~any other purpose.~~

458 (3)~~(9)~~ Procedures governing violations of community
459 control shall be the same as those described in s. 948.06 with
460 respect to probation.

461 (4)~~(10)~~ Upon completion of the sanctions imposed in the
462 community control plan before the expiration of the term ordered
463 by the court, the department may petition the court to discharge
464 the offender from community control supervision or to return the
465 offender to a program of regular probation supervision. In
466 considering the petition, the court should recognize the limited
467 staff resources committed to the community control program, the

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468 purpose of the program, and the offender's successful compliance
 469 with the conditions set forth in the order of the court.

470 ~~(11) The Department of Corrections shall:~~

471 ~~(a) Develop and maintain a weighted statewide caseload~~
 472 ~~equalization strategy designed to ensure that high risk~~
 473 ~~offenders receive the highest level of supervision; and~~

474 ~~(b) Develop and implement a supervision risk assessment~~
 475 ~~instrument for the community control population which is similar~~
 476 ~~to the probation risk assessment instrument established by the~~
 477 ~~National Institute of Justice.~~

478 (5) ~~(12)~~ In its annual report to the Governor, the
 479 President of the Senate, and the Speaker of the House of
 480 Representatives under s. 20.315(5), the department shall include
 481 a detailed analysis of the community control program and the
 482 department's specific efforts to protect the public from
 483 offenders placed on community control. The analysis must
 484 include, but need not be limited to, specific information on the
 485 department's ability to meet minimum officer-to-offender contact
 486 standards, the number of crimes committed by offenders on
 487 community control, and the level of community supervision
 488 provided.

489 Section 7. Subsections (1) and (2) of section 958.04,
 490 Florida Statutes, are amended to read:

491 958.04 Judicial disposition of youthful offenders.--

492 (1) The court may sentence as a youthful offender any
 493 person:

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494 (a) Who is at least 18 years of age or who has been
 495 transferred for prosecution to the criminal division of the
 496 circuit court pursuant to chapter 985;

497 (b) Who is found guilty of or who has tendered, and the
 498 court has accepted, a plea of nolo contendere or guilty to a
 499 crime that ~~which~~ is, under the laws of this state, a felony if
 500 the offender is younger than 21 years of age at the time
 501 sentence is imposed ~~such crime was committed before the~~
 502 ~~defendant's 21st birthday~~; and

503 (c) Who has not previously been classified as a youthful
 504 offender under the provisions of this act; however, a ~~no~~ person
 505 who has been found guilty of a capital or life felony may not be
 506 sentenced as a youthful offender under this act.

507 (2) In lieu of other criminal penalties authorized by law
 508 and notwithstanding any imposition of consecutive sentences, the
 509 court shall dispose of the criminal case as follows:

510 (a) The court may place a youthful offender under
 511 supervision on probation or in a community control program, with
 512 or without an adjudication of guilt, under such conditions as
 513 the court may lawfully impose for a period of not more than 6
 514 years. Such period of supervision may ~~shall~~ not exceed the
 515 maximum sentence for the offense for which the youthful offender
 516 was found guilty.

517 (b) The court may impose a period of incarceration as a
 518 condition of probation or community control, which period of
 519 incarceration shall be served in ~~either~~ a county facility, a
 520 department probation and restitution center, or a community
 521 residential facility that ~~which~~ is owned and operated by any

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522 public or private entity providing such services. ~~A~~ ~~No~~ youthful
523 offender may not be required to serve a period of incarceration
524 in a community correctional center as defined in s. 944.026.
525 Admission to a department facility or center shall be contingent
526 upon the availability of bed space and shall take into account
527 the purpose and function of such facility or center. Placement
528 in such a facility or center may ~~shall~~ not exceed 364 days.

529 (c) The court may impose a split sentence whereby the
530 youthful offender is to be placed on probation or community
531 control upon completion of any specified period of
532 incarceration; however, if the incarceration period is to be
533 served in a department facility other than a probation and
534 restitution center or community residential facility, such
535 period shall be for not less than 1 year or more than 4 years.
536 The period of probation or community control shall commence
537 immediately upon the release of the youthful offender from
538 incarceration. The period of incarceration imposed or served and
539 the period of probation or community control, when added
540 together, may ~~shall~~ not exceed 6 years.

541 (d) The court may commit the youthful offender to the
542 custody of the department for a period of not more than 6 years,
543 provided that any such commitment may ~~shall~~ not exceed the
544 maximum sentence for the offense for which the youthful offender
545 has been convicted. Successful participation in the youthful
546 offender program by an offender who is sentenced as a youthful
547 offender by the court pursuant to this section, or is classified
548 as such by the department, may result in a recommendation to the
549 court, by the department, for a modification or early

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550 termination of probation, community control, or the sentence at
 551 any time prior to the scheduled expiration of such term. The
 552 department shall adopt rules defining criteria for successful
 553 participation in the youthful offender program which shall
 554 include program participation, academic and vocational training,
 555 and satisfactory adjustment. When a modification of the sentence
 556 results in the reduction of a term of incarceration, the court
 557 may impose a term of probation or community control which, when
 558 added to the term of incarceration, may ~~shall~~ not exceed the
 559 original sentence imposed.

560 Section 8. Subsections (2), (4), (5), and (6) of section
 561 958.11, Florida Statutes, are amended to read:

562 958.11 Designation of institutions and programs for
 563 youthful offenders; assignment from youthful offender
 564 institutions and programs.--

565 (2) Youthful offender institutions and programs shall
 566 contain only those youthful offenders sentenced as such by a
 567 court or classified as such by the department, pursuant to the
 568 requirements of subsections (4) and (6), except that under
 569 special circumstances select adult offenders may be assigned to
 570 youthful offender institutions. Female youthful offenders of all
 571 ages may continue to be housed together at those institutions
 572 designated by department rule ~~Florida Correctional Institution~~
 573 ~~and Broward Correctional Institution~~ until such time as
 574 institutions for a female youthful offenders are offender
 575 ~~institution is~~ established or adapted to allow for separation by
 576 age and to accommodate all custody classifications.

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577 (4) The department ~~Office of the Assistant Secretary for~~
 578 ~~Youthful Offenders~~ shall continuously screen all institutions,
 579 facilities, and programs for any inmate who meets the
 580 eligibility requirements for youthful offender designation
 581 specified in s. 958.04(1)(a) and (c) whose age does not exceed
 582 24 years and whose total length of sentence does not exceed 10
 583 years, and the department may classify and assign as a youthful
 584 offender any inmate who meets the criteria of this subsection.

585 (5) The department ~~Population Movement and Control~~
 586 ~~Coordinator~~ shall coordinate all youthful offender assignments
 587 or transfers and shall ~~consult with the Office of the Assistant~~
 588 ~~Secretary for Youthful Offenders. The Office of the Assistant~~
 589 ~~Secretary for Youthful Offenders shall~~ review and maintain
 590 access to full and complete documentation and substantiation of
 591 all such assignments or transfers of youthful offenders to or
 592 from facilities in the state correctional system which are not
 593 designated for their care, custody, and control, except
 594 assignments or transfers made pursuant to paragraph (3)(c).

595 (6) The department may assign to a youthful offender
 596 facility any inmate, except a capital or life felon, whose age
 597 does not exceed 19 years but who does not otherwise meet the
 598 criteria of this section, if the department ~~Assistant Secretary~~
 599 ~~for Youthful Offenders~~ determines that such inmate's mental or
 600 physical vulnerability would substantially or materially
 601 jeopardize his or her safety in a nonyouthful offender facility.
 602 Assignments made under this subsection shall be included in the
 603 department's annual report.

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604 Section 9. Section 958.12, Florida Statutes, is amended to
 605 read:

606 958.12 Participation in certain activities required.--

607 (1) A youthful offender shall be required to participate
 608 in work assignments, and in career, academic, counseling, and
 609 other rehabilitative programs in accordance with this section,
 610 including, but not limited to:

611 (a) All youthful offenders may be required, as
 612 appropriate, to participate in:

- 613 1. Reception and orientation.
- 614 2. Evaluation, needs assessment, and classification.
- 615 3. Educational programs.
- 616 4. Career and job training.
- 617 5. Life and socialization skills training, including
- 618 anger/aggression control.
- 619 6. Prerelease orientation and planning.
- 620 7. Appropriate transition services.

621 (b) In addition to the requirements in paragraph (a), the
 622 department shall make available:

- 623 1. Religious services and counseling.
- 624 2. Social services.
- 625 3. Substance abuse treatment and counseling.
- 626 4. Psychological and psychiatric services.
- 627 5. Library services.
- 628 6. Medical and dental health care.
- 629 7. Athletic, recreational, and leisure time activities.
- 630 8. Mail and visiting privileges.

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632 Income derived by a youthful offender from participation in such
 633 activities may be used, in part, to defray a portion of the
 634 costs of his or her incarceration or supervision; to satisfy
 635 preexisting obligations; to pay fines, counseling fees, or other
 636 costs lawfully imposed; or to pay restitution to the victim of
 637 the crime for which the youthful offender has been convicted in
 638 an amount determined by the sentencing court. Any such income
 639 not used for such reasons or not used as provided in s. 946.513
 640 or s. 958.09 shall be placed in a bank account for use by the
 641 youthful offender upon his or her release.

642 (2) A comprehensive transition and postrelease plan shall
 643 be developed for the youthful offender by a team consisting of a
 644 transition assistance officer, a classification officer, an
 645 educational representative, a health services administrator, a
 646 probation and parole officer, and the youthful offender.

647 ~~(3) A youthful offender shall be visited by a probation
 648 and parole officer prior to the offender's release from
 649 incarceration in order to assist in the youthful offender's
 650 transition.~~

651 (3)~~(4)~~ Community partnerships shall be developed by the
 652 department to provide postrelease community resources. The
 653 department shall develop partnerships with entities that ~~which~~
 654 include, but are not limited to, state agencies ~~the Department~~
 655 ~~of Labor and Employment Security, the Department of Children and~~
 656 ~~Family Services~~, community health agencies, private agencies,
 657 and school systems.

658 (4)~~(5)~~ If supervision of the youthful offender after
 659 release from incarceration is required, this ~~and~~ may be

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660 accomplished in a residential or nonresidential program or
 661 intensive day treatment~~,~~ or through supervision by a
 662 correctional probation ~~and parole~~ officer.

663 Section 10. Subsections (1) and (5) of section 945.41,
 664 Florida Statutes, are amended to read:

665 945.41 Legislative intent of ss. 945.40-945.49.--It is the
 666 intent of the Legislature that mentally ill inmates in the
 667 custody of the Department of Corrections receive evaluation and
 668 appropriate treatment for their mental illness through a
 669 continuum of services. It is further the intent of the
 670 Legislature that:

671 (1) Inmates in the custody of the department who have
 672 mental illnesses that require hospitalization and intensive
 673 psychiatric inpatient treatment or care receive appropriate
 674 treatment or care in Department of Corrections mental health
 675 treatment facilities designated for that purpose. ~~The department~~
 676 ~~shall contract with the Department of Children and Family~~
 677 ~~Services for the provision of mental health services in any~~
 678 ~~departmental mental health treatment facility.~~ The Department of
 679 Corrections shall provide mental health services to inmates
 680 committed to it and may contract with any entities, persons, or
 681 agencies qualified to provide such services.

682 (5) The department may designate a mental health treatment
 683 facility for adult, and youthful, and female offenders or may
 684 contract with other appropriate entities, persons, or agencies
 685 for such services.

686 Section 11. Section 945.42, Florida Statutes, is amended
 687 to read:

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688 945.42 Definitions; ss. 945.40-945.49.--As used in ss.
 689 945.40-945.49, the following terms shall have the meanings
 690 ascribed to them, unless the context shall clearly indicate
 691 otherwise:

692 (1) "Court" means the circuit court.

693 (2) "Crisis stabilization care" means a level of care that
 694 is less restrictive and intense than care provided in a mental
 695 health treatment facility, that includes a broad range of
 696 evaluation and treatment services provided within a highly
 697 structured setting or locked residential setting, and that is
 698 intended for inmates who are experiencing acute emotional
 699 distress and who cannot be adequately evaluated and treated in a
 700 transitional care unit or infirmary isolation management room.
 701 Such treatment is also more intense than treatment provided in a
 702 transitional care unit and is devoted principally toward rapid
 703 stabilization of acute symptoms and conditions.

704 ~~(3)-(2)~~ "Department" means the Department of Corrections.

705 ~~(4)-(3)~~ "Director" means the Director for Mental Health
 706 Services of the Department of Corrections or his or her
 707 designee.

708 ~~(5)-(4)~~ "In immediate need of care and treatment" means
 709 that an inmate is apparently mentally ill and is not able to be
 710 appropriately cared for in the institution where he or she ~~the~~
 711 ~~inmate~~ is confined and that, but for being isolated in a more
 712 restrictive and secure housing environment, because of the
 713 apparent mental illness:

714 (a)1. The inmate is demonstrating a refusal to care for
 715 himself or herself and without immediate treatment intervention,

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716 is likely to continue to refuse to care for himself or herself,
 717 and such refusal ~~the alleged mental illness~~ poses an immediate,
 718 real, and present threat of substantial harm to his or her ~~the~~
 719 ~~inmate's~~ well-being; ~~or to the safety of others.~~

720 2. There is an immediate, real, and present threat that
 721 the inmate will inflict serious bodily harm on himself or
 722 herself or another person, as evidenced by recent behavior
 723 involving causing, attempting, or threatening such harm;

724 (b)1. The inmate has refused voluntary placement for
 725 treatment at a mental health treatment facility after sufficient
 726 and conscientious explanation and disclosure of the purpose of
 727 placement; or

728 2. The inmate is unable to determine for himself or
 729 herself whether placement is necessary; and

730 (c) All available less restrictive treatment alternatives
 731 that would offer an opportunity for improvement of the inmate's
 732 condition have been clinically determined to be inappropriate.

733 (6)-(5) "In need of care and treatment" means that an
 734 inmate has a mental illness for which inpatient services in a
 735 mental health treatment facility are necessary and that, but for
 736 being isolated in a more restrictive and secure housing
 737 environment, because of the ~~which~~ mental illness;

738 (a)1. The inmate is demonstrating a refusal to care for
 739 himself or herself and without treatment is likely to continue
 740 to refuse to care for himself or herself, and such refusal poses
 741 a real and present threat of substantial harm to his or her ~~the~~
 742 ~~inmate's~~ well-being; ~~or to the safety of others.~~

743 2. There is a substantial likelihood that in the near

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744 future the inmate will inflict serious bodily harm on himself or
 745 herself or another person, as evidenced by recent behavior
 746 causing, attempting, or threatening such harm;

747 (b)1. The inmate has refused voluntary placement for
 748 treatment at a mental health treatment facility after sufficient
 749 and conscientious explanation and disclosure of the purpose of
 750 placement; or

751 2. The inmate is unable to determine for himself or
 752 herself whether placement is necessary; and

753 (c) All available less restrictive treatment alternatives
 754 that would offer an opportunity for improvement of the inmate's
 755 condition have been clinically determined to be inappropriate.

756 (7)-(6) "Inmate" means any person committed to the custody
 757 of the Department of Corrections.

758 (8)-(7) "Mental health treatment facility" means the
 759 Corrections Mental Health Institution and any extended treatment
 760 or hospitalization-level unit within the corrections system
 761 which other institution that the Assistant Secretary for Health
 762 Services of the department specifically designates by rule to
 763 provide acute psychiatric care and which may include involuntary
 764 treatment and therapeutic intervention at the hospital level, in
 765 contrast to less intensive levels of care such as outpatient
 766 mental health care, transitional mental health care, or crisis
 767 stabilization care.

768 (9)-(8) "Mentally ill" means an impairment of the mental or
 769 emotional processes, of the ability to exercise conscious
 770 control of one's actions, or of the ability to perceive or
 771 understand reality ~~or to understand~~, which impairment

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772 substantially interferes with a person's ability to meet the
 773 ordinary demands of living, regardless of etiology, except that,
 774 for the purposes of transfer of an inmate to a mental health
 775 treatment facility, the term does not include retardation or
 776 developmental disability as defined in chapter 393, simple
 777 intoxication, or conditions manifested only by antisocial
 778 behavior or substance abuse ~~drug~~ addiction. However, an
 779 individual who is mentally retarded or developmentally disabled
 780 may also have a mental illness.

781 (10)-(9) "Psychiatrist" means a medical practitioner
 782 licensed pursuant to chapter 458 or chapter 459 who has
 783 primarily diagnosed and treated nervous and mental disorders for
 784 a period of not less than 3 years inclusive of psychiatric
 785 residency.

786 (11)-(10) "Psychological professional" "~~Psychologist~~" means
 787 a behavioral practitioner who has an approved doctoral degree in
 788 psychology as defined in s. 490.003(3)(b) and is employed by the
 789 department that is primarily clinical in nature from a
 790 university or professional graduate school that is state-
 791 authorized or accredited by an accrediting agency approved by
 792 the United States Department of Education and who is
 793 professionally certified by the appropriate professional
 794 psychology association or who is licensed as a psychologist
 795 pursuant to chapter 490.

796 (12)-(11) "Secretary" means the Secretary of Corrections.

797 (13)-(12) "Transitional mental health care" means a level
 798 of care that is more intensive than outpatient care, but less
 799 intensive than crisis stabilization care, and is characterized

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800 by the provision of traditional mental health treatments such as
 801 group and individual therapy, activity therapy, recreational
 802 therapy, and psychotropic medications ~~chemotherapy~~, in the
 803 context of a structured residential setting. Transitional mental
 804 health care is indicated for a person with chronic or residual
 805 symptomatology who does not require crisis stabilization care or
 806 acute psychiatric care ~~at the hospital level~~, but whose
 807 impairment ~~impairments~~ in functioning nevertheless renders
 808 ~~render~~ him or her incapable of adjusting satisfactorily within
 809 the general inmate population, ~~even with the assistance of~~
 810 ~~outpatient care~~.

811 ~~(14)~~ ~~(13)~~ "Warden" means the warden of a state corrections
 812 facility or his or her designee.

813 Section 12. Section 945.43, Florida Statutes, is amended
 814 to read:

815 945.43 Admission of inmate to mental health treatment
 816 facility.--

817 (1) CRITERIA.--An inmate may be admitted to a mental
 818 health treatment facility if he or she is mentally ill and is in
 819 need of care and treatment, as defined in s. 945.42.

820 (2) PROCEDURE FOR PLACEMENT IN ADMISSION TO A MENTAL
 821 HEALTH TREATMENT FACILITY.--

822 (a) An inmate may be admitted to a mental health treatment
 823 facility after notice and hearing, upon the recommendation of
 824 the warden of the facility where the inmate is confined ~~and of~~
 825 ~~the director~~. The recommendation shall be entered on a petition
 826 ~~certificate~~ and must be supported by the expert opinion of a
 827 psychiatrist and the second opinion of a psychiatrist or

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828 psychological professional ~~psychologist~~. The petition
 829 ~~certificate~~ shall be filed with the court in the county where
 830 the inmate is located ~~and shall serve as a petition for a~~
 831 ~~hearing regarding placement.~~

832 (b) A copy of the petition ~~certificate~~ shall also be filed
 833 ~~with the department, and copies~~ shall be served on the inmate
 834 ~~and the inmate's representatives,~~ accompanied by:

835 1. ~~A written notice, in plain and simple language, that~~
 836 ~~the inmate or the inmate's representative may apply at any time~~
 837 ~~for a hearing on the issue of the inmate's need for treatment if~~
 838 ~~he or she has previously waived such a hearing.~~

839 2. ~~A petition for such hearing, which requires only the~~
 840 ~~signature of the inmate or the inmate's representative for~~
 841 ~~completion.~~

842 3. ~~A written notice that the petition may be filed with~~
 843 ~~the court in the county in which the inmate is hospitalized at~~
 844 ~~the time and stating the name and address of the judge of such~~
 845 ~~court.~~

846 4. ~~a written notice that the inmate or the inmate's~~
 847 ~~representative may apply immediately to the court to have an~~
 848 ~~attorney appointed if the inmate cannot afford one.~~

849 (c) The petition for placement may be filed in the county
 850 in which the inmate is located ~~being treated at any time within~~
 851 ~~6 months of the date of the certificate.~~ The hearing shall be
 852 held in the same county, and one of the inmate's physicians at
 853 the facility where the inmate is located shall appear as a
 854 witness at the hearing.

855 (d) An attorney representing the inmate shall have access

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856 to the inmate and any records, including medical or mental
 857 health records, which are relevant to the representation of the
 858 inmate.

859 (e) If the court finds that the inmate is mentally ill and
 860 in need of care and treatment, as defined in s. 945.42, the
 861 court ~~it~~ shall order that he or she be placed in ~~admitted to~~ a
 862 mental health treatment facility or, if the inmate is at a
 863 mental health treatment facility, that he or she be retained
 864 there. ~~However, the inmate may be immediately transferred to and~~
 865 ~~admitted at a mental health treatment facility by executing a~~
 866 ~~waiver of the hearing by express and informed consent, without~~
 867 ~~awaiting the court order.~~ The court shall authorize the mental
 868 health treatment facility to retain the inmate for up to 6
 869 months. If, at the end of that time, continued placement
 870 ~~treatment~~ is necessary, the warden shall apply to the Division
 871 of Administrative Hearings in accordance with s. 945.45 ~~court~~
 872 for an order authorizing continued placement.

873 (3) PROCEDURE FOR HEARING ON PLACEMENT ~~TRANSFER~~ OF AN
 874 INMATE IN A ~~FOR~~ MENTAL HEALTH TREATMENT FACILITY. ~~--If the inmate~~
 875 ~~does not waive a hearing or if the inmate or the inmate's~~
 876 ~~representative files a petition for a hearing after having~~
 877 ~~waived it,~~

878 (a) The court shall serve notice on the warden of the
 879 facility where the inmate is confined, ~~the director,~~ and the
 880 allegedly mentally ill inmate. The notice must ~~shall~~ specify the
 881 date, time, and place of the hearing; the basis for the
 882 allegation of mental illness; and the names of the examining
 883 experts. The hearing shall be held within 5 days, and the court

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884 may appoint a general or special magistrate to preside. The
 885 court may waive the presence of the inmate at the hearing if
 886 such waiver is consistent with the best interests of the inmate
 887 and the inmate's counsel does not object. The hearing may be as
 888 informal as is consistent with orderly procedure. One of the
 889 experts whose opinion supported the petition for placement
 890 ~~recommendation~~ shall be present at the hearing for information
 891 purposes.

892 (b) If, at the hearing, the court finds that the inmate is
 893 mentally ill and in need of care and treatment, as defined in s.
 894 945.42, the court ~~it~~ shall order that he or she be placed in
 895 ~~transferred to~~ a mental health treatment facility ~~and provided~~
 896 ~~appropriate treatment~~. The court shall provide a copy of its
 897 order authorizing placement transfer and all supporting
 898 documentation relating to the inmate's condition to the warden
 899 of the treatment facility. If the court finds that the inmate is
 900 not mentally ill, it shall dismiss the petition for placement
 901 ~~transfer~~.

902 (4) ~~REFUSAL OF PLACEMENT ADMISSION; WHEN REFUSAL~~
 903 ~~ALLOWED~~.--The warden of an institution in which a mental health
 904 treatment facility is located may refuse to place ~~admit~~ any
 905 inmate in that treatment facility who is not accompanied by
 906 adequate court orders and documentation, as required in ss.
 907 945.40-945.49.

908 Section 13. Section 945.44, Florida Statutes, is amended
 909 to read:

910 945.44 Emergency placement ~~admission~~ of inmate in a ~~to~~
 911 mental health treatment facility.--

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912 (1) CRITERIA.--An inmate may be placed in a mental health
 913 treatment facility on an emergency basis if he or she is
 914 mentally ill and in immediate need of care and treatment, as
 915 defined in s. 945.42.

916 (2) PROCEDURE FOR EMERGENCY PLACEMENT ADMISSION.--An
 917 inmate who is mentally ill and in immediate need of care and
 918 treatment that ~~which~~ cannot be provided at the institution where
 919 he or she is confined may be placed in ~~admitted to~~ a mental
 920 health treatment facility on an emergency basis. The inmate may
 921 be placed ~~transferred~~ immediately in a mental health treatment
 922 ~~to the~~ facility and shall be accompanied by the recommendation
 923 of the warden of the institution where the inmate is confined,
 924 which recommendation must ~~shall~~ state the need for the emergency
 925 placement transfer and ~~shall~~ include a written opinion of a
 926 physician verifying the need for the emergency placement
 927 ~~transfer~~. Upon the emergency placement ~~the admission~~ of the
 928 inmate in ~~to~~ the facility, the inmate shall be evaluated; if he
 929 or she is determined to be in need of treatment or care, the
 930 warden shall initiate proceedings for placement of the inmate,
 931 as described in s. 945.43(2).

932 Section 14. Section 945.45, Florida Statutes, is amended
 933 to read:

934 945.45 ~~Procedure for~~ Continued placement of inmates in
 935 mental health treatment facilities.--

936 (1) CRITERIA.--An inmate may be retained in a mental
 937 health treatment facility if he or she is mentally ill and
 938 continues to be in need of care and treatment, as defined in s.
 939 945.42.

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940 (2) ~~(1)~~ PROCEDURE.--

941 (a) ~~If continued placement of an inmate is necessary,~~ The

942 warden shall, prior to the expiration of the period during which

943 the treatment facility is authorized to retain the inmate, file

944 a petition with the Division of Administrative Hearings for

945 ~~request~~ an order authorizing continued placement. The petition

946 must ~~This request shall~~ be accompanied by a statement from the

947 inmate's physician justifying the petition request and providing

948 a brief summary of the inmate's treatment during the time he or

949 she has been placed. In addition, the warden shall submit an

950 individualized plan for the inmate for whom he or she is

951 requesting continued placement. The inmate may remain in a

952 mental health treatment facility pending a hearing after the

953 timely filing of the petition.

954 (b) Notification of this request for retention shall be

955 mailed to the inmate, ~~and the inmate's representative~~ along with

956 a waiver-of-hearing form and the completed petition, requesting

957 the inmate's ~~only a signature and a waiver of hearing form.~~ The

958 waiver-of-hearing form shall require express and informed

959 consent and shall state that the inmate is entitled to an

960 administrative ~~a~~ hearing under the law; that the inmate is

961 entitled to be represented by an attorney at the hearing and

962 that, if the inmate cannot afford an attorney, one will be

963 appointed; and that, if it is shown at the hearing that the

964 inmate does not meet the criteria for continued placement, he or

965 she will be transferred out of the mental health treatment

966 facility ~~to another facility of the department.~~ If the inmate ~~or~~

967 ~~the inmate's representative~~ does not sign the petition, or if

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

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968 | the inmate does not sign a waiver within 15 days, the
 969 | administrative law judge shall notice a hearing with regard to
 970 | the inmate involved in accordance with ss. 120.569 and
 971 | 120.57(1).

972 | (3) PROCEDURE FOR HEARING.--

973 | (a) The hearing on a petition for the continued placement
 974 | of an inmate in a mental health treatment facility is an
 975 | administrative hearing and shall be conducted in accordance with
 976 | ss. 120.569 and 120.57(1), except that an order entered by the
 977 | administrative law judge is final and subject to judicial review
 978 | in accordance with s. 120.68. An administrative law judge shall
 979 | be assigned by the Division of Administrative Hearings to
 980 | conduct hearings for continued placement.

981 | (b) The administrative law judge may appoint a private pro
 982 | bono attorney in the circuit in which the treatment facility is
 983 | located to represent the inmate.

984 | (c) The administrative law judge may waive the presence of
 985 | the inmate at the hearing if such waiver is consistent with the
 986 | best interests of the inmate and the inmate's counsel does not
 987 | object.

988 | (d) ~~(2)~~ If, at a hearing pursuant to ss. 945.40-945.49, the
 989 | administrative law judge finds that the inmate no longer meets
 990 | the criteria for placement treatment, he or she shall order that
 991 | the inmate be transferred out of the mental health treatment
 992 | facility ~~to another facility of the department.~~

993 | (e) ~~(3)~~ If the inmate waives the hearing or if the
 994 | administrative law judge finds that the inmate is in need of
 995 | continued placement treatment, the administrative law judge

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996 shall enter an order authorizing such continued placement
 997 ~~treatment~~ for a period not to exceed 1 year. The same procedure
 998 shall be repeated prior to the expiration of each additional 1-
 999 year period that the inmate is retained in the mental health
 1000 treatment facility.

1001 ~~(4) Hearings on requests for orders authorizing continued~~
 1002 ~~placement filed in accordance with this section shall be~~
 1003 ~~conducted in accordance with the provisions of ss. 120.569 and~~
 1004 ~~120.57(1), except that any order entered by the administrative~~
 1005 ~~law judge shall be final and subject to judicial review in~~
 1006 ~~accordance with s. 120.68.~~

1007 Section 15. Section 945.46, Florida Statutes, is amended
 1008 to read:

1009 945.46 Initiation of involuntary placement proceedings
 1010 with respect to a mentally ill inmate scheduled for release.--

1011 (1) If an inmate who is receiving mental health treatment
 1012 in the department is scheduled for release through expiration of
 1013 sentence or any other means, but continues to be mentally ill
 1014 and in need of care and treatment, as defined in s. 945.42, the
 1015 warden is authorized to initiate procedures for involuntary
 1016 placement pursuant to ~~the provisions of~~ s. 394.467, 60 days
 1017 prior to such release.

1018 (2) In addition, the warden may initiate procedures for
 1019 involuntary examination pursuant to s. 394.463 for any inmate
 1020 who has a mental illness and meets the criteria of s.
 1021 394.463 (1).

1022 Section 16. Section 945.47, Florida Statutes, is amended
 1023 to read:

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1024 945.47 Discharge of inmate from mental health treatment.--

1025 (1) An inmate who has been transferred for the purpose of
 1026 mental health treatment shall be discharged from treatment by
 1027 the warden under the following conditions:

1028 (a) If the inmate is no longer in need of care and
 1029 treatment, as defined in s. 945.42, he or she may be transferred
 1030 out of the mental health treatment facility and provided with
 1031 appropriate mental health services ~~to another institution in the~~
 1032 ~~department; or~~

1033 ~~(b) If the inmate continues to be mentally ill, but is not~~
 1034 ~~in need of care and treatment as an inpatient, he or she may be~~
 1035 ~~transferred to another institution in the department and~~
 1036 ~~provided appropriate outpatient and aftercare services;~~

1037 (b)(e) If the inmate's sentence expires during his or her
 1038 treatment, but he or she is no longer in need of care and
 1039 treatment as an inpatient, the inmate may be released with a
 1040 recommendation for outpatient treatment, pursuant to the
 1041 provisions of ss. 945.40-945.49. ~~or~~

1042 ~~(d) If the inmate's sentence expires and he or she~~
 1043 ~~continues to be mentally ill and in need of care and treatment,~~
 1044 ~~the warden shall initiate proceedings for involuntary placement,~~
 1045 ~~pursuant to s. 394.467.~~

1046 ~~(2) An inmate who is involuntarily placed pursuant to s.~~
 1047 ~~394.467 at the expiration of his or her sentence may be placed,~~
 1048 ~~by order of the court, in a facility designated by the~~
 1049 ~~Department of Children and Family Services as a secure,~~
 1050 ~~nonforensic, civil facility. Such a placement shall be~~
 1051 ~~conditioned upon a finding by the court of clear and convincing~~

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1052 ~~evidence that the inmate is manifestly dangerous to himself or~~
 1053 ~~herself or others. The need for such placement shall be reviewed~~
 1054 ~~by facility staff every 90 days. At any time that a patient is~~
 1055 ~~considered for transfer to a nonsecure, civil unit, the court~~
 1056 ~~which entered the order for involuntary placement shall be~~
 1057 ~~notified.~~

1058 (2)~~(3)~~ At any time that an inmate who has received mental
 1059 health treatment while in the custody of the department becomes
 1060 eligible for release under supervision or upon end of sentence
 1061 ~~on parole~~, a ~~complete~~ record of the inmate's mental health
 1062 treatment ~~may shall~~ be provided to the Parole Commission and to
 1063 the Department of Children and Family Services upon request. The
 1064 record shall include, at a minimum ~~least~~, a summary of the
 1065 inmate's diagnosis, length of stay in treatment, clinical
 1066 history, prognosis, prescribed medication, ~~and~~ treatment plan,
 1067 and recommendations for aftercare services. ~~In the event that~~
 1068 ~~the inmate is released on parole, the record shall be provided~~
 1069 ~~to the parole officer who shall assist the inmate in applying~~
 1070 ~~for services from a professional or an agency in the community.~~
 1071 ~~The application for treatment and continuation of treatment by~~
 1072 ~~the inmate may be made a condition of parole, as provided in s.~~
 1073 ~~947.19(1); and a failure to participate in prescribed treatment~~
 1074 ~~may be a basis for initiation of parole violation hearings.~~

1075 Section 17. Section 945.48, Florida Statutes, is amended
 1076 to read:

1077 945.48 Rights of inmates ~~inmate~~ provided mental health
 1078 treatment; procedure for involuntary treatment.--

1079 (1) RIGHT TO QUALITY TREATMENT.--An inmate in a mental

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1080 health treatment facility has the right to receive treatment
 1081 that ~~which~~ is suited to his or her needs and that ~~which~~ is
 1082 provided in a humane psychological environment. Such treatment
 1083 shall be administered skillfully, safely, and humanely with
 1084 respect for the inmate's dignity and personal integrity.

1085 (2) RIGHT TO EXPRESS AND INFORMED CONSENT.--Any inmate
 1086 provided psychiatric treatment within the department shall be
 1087 asked to give his or her express and informed written consent
 1088 for such treatment. "Express and informed written consent" or
 1089 "consent" means consent voluntarily given in writing after a
 1090 conscientious and sufficient explanation and disclosure of the
 1091 purpose of the proposed treatment; the common side effects of
 1092 the treatment, if any; the expected duration of the treatment;
 1093 and the alternative treatment available. The explanation shall
 1094 enable the inmate to make a knowing and willful decision without
 1095 any element of fraud, deceit, or duress or any other form of
 1096 constraint or coercion.

1097 (3) PROCEDURE FOR INVOLUNTARY TREATMENT OF
 1098 INMATES.--Involuntary mental health treatment of an inmate who
 1099 refuses treatment that is deemed to be necessary for the
 1100 appropriate care of the inmate and the safety of the inmate or
 1101 others may be provided at a mental health treatment facility. ~~an~~
 1102 ~~institution authorized to do so by the Assistant Secretary for~~
 1103 ~~Health Services under the following circumstances:~~

1104 (a) ~~In an emergency situation in which there is immediate~~
 1105 ~~danger to the health and safety of the inmate or other inmates,~~
 1106 ~~such treatment may be provided upon the written order of a~~
 1107 ~~physician for a period not to exceed 48 hours, excluding~~

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1108 ~~weekends and legal holidays. If, after the 48 hour period, the~~
 1109 ~~inmate has not given express and informed consent to the~~
 1110 ~~treatment initially refused, the warden shall, within 48 hours,~~
 1111 ~~excluding weekends and legal holidays, petition the circuit~~
 1112 ~~court serving the county in which the facility is located for an~~
 1113 ~~order authorizing the continued treatment of the inmate. In the~~
 1114 ~~interim, treatment may be continued upon the written order of a~~
 1115 ~~physician who has determined that the emergency situation~~
 1116 ~~continues to present a danger to the safety of the inmate or~~
 1117 ~~others. If an inmate must be isolated for mental health~~
 1118 ~~purposes, that decision must be reviewed within 72 hours by~~
 1119 ~~medical staff different from that making the original placement.~~

1120 ~~(b)~~ In a situation other than an emergency situation, The
 1121 warden of the institution containing the mental health treatment
 1122 facility shall petition the circuit court serving the county in
 1123 which the mental health treatment facility is located for an
 1124 order authorizing the treatment of the inmate. The inmate shall
 1125 be provided with a copy of the petition along with the proposed
 1126 treatment, the basis for the proposed treatment, the names of
 1127 the examining experts, and the date, time, and location of the
 1128 hearing. The inmate may have an attorney represent him or her at
 1129 the hearing and, if the inmate is indigent, the court shall
 1130 appoint the office of the public defender or private counsel
 1131 pursuant to s. 27.40(1) to represent the inmate at the hearing.
 1132 An attorney representing the inmate shall have access to the
 1133 inmate and any records, including medical or mental health
 1134 records, which are relevant to the representation of the inmate.
 1135 ~~The order shall allow such treatment for a period not to exceed~~

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1136 ~~90 days from the date of the order. Unless the court is notified~~
1137 ~~in writing that the inmate has provided express and informed~~
1138 ~~consent in writing, that the inmate has been transferred to~~
1139 ~~another institution of the department, or that the inmate is no~~
1140 ~~longer in need of treatment, the warden shall, prior to the~~
1141 ~~expiration of the initial 90 day order, petition the court for~~
1142 ~~an order authorizing the continuation of treatment for another~~
1143 ~~90 day period. This procedure shall be repeated until the inmate~~
1144 ~~provides consent or is no longer in need of treatment. Treatment~~
1145 ~~may be continued pending a hearing after the filing of any~~
1146 ~~petition.~~

1147 (4) PROCEDURE FOR THE HEARING ON INVOLUNTARY TREATMENT OF
1148 AN INMATE.--

1149 (a) The hearing on the petition for involuntary treatment
1150 shall be held within 5 days after the petition is filed and the
1151 court may appoint a general or special magistrate to preside.
1152 The inmate may testify or not, as he or she chooses, may cross-
1153 examine witnesses testifying on behalf of the facility, and may
1154 present his or her own witnesses. However, the court may waive
1155 the presence of the inmate at the hearing if such waiver is
1156 consistent with the best interests of the inmate and the
1157 inmate's counsel does not object. One of the inmate's physicians
1158 whose opinion supported the petition shall appear as a witness
1159 at the hearing.

1160 (b)-(e) At the hearing on the issue of whether the court
1161 should authorize treatment for which an inmate has refused to
1162 give express and informed consent, the court shall determine by
1163 clear and convincing evidence whether the inmate is mentally ill

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1164 as defined in this chapter; whether such treatment is essential
 1165 to the care of the inmate; and whether the treatment is
 1166 experimental or presents an unreasonable risk of serious,
 1167 hazardous, or irreversible side effects. In arriving at the
 1168 substitute judgment decision, the court must consider at least
 1169 the following:

- 1170 1. The inmate's expressed preference regarding treatment;
- 1171 2. The probability of adverse side effects;
- 1172 3. The prognosis for the inmate without treatment; and
- 1173 4. The prognosis for the inmate with treatment.

1174
 1175 ~~The inmate and the inmate's representative shall be provided~~
 1176 ~~with a copy of the petition and the date, time, and location of~~
 1177 ~~the hearing. The inmate may have an attorney represent him or~~
 1178 ~~her at the hearing, and, if the inmate is indigent, the court~~
 1179 ~~shall appoint the office of the public defender to represent him~~
 1180 ~~or her at the hearing. The inmate may testify or not, as he or~~
 1181 ~~she chooses, may cross examine witnesses testifying on behalf of~~
 1182 ~~the facility, and may present his or her own witnesses.~~

1183 (c) An order authorizing involuntary treatment shall allow
 1184 such treatment for a period not to exceed 90 days following the
 1185 date of the order. Unless the court is notified in writing that
 1186 the inmate has provided express and informed consent in writing,
 1187 that the inmate has been transferred to another institution of
 1188 the department, or that the inmate is no longer in need of
 1189 treatment, the warden shall, prior to the expiration of the
 1190 initial 90-day order, petition the court for an order
 1191 authorizing the continuation of treatment for another 90-day

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1192 period. This procedure shall be repeated until the inmate
 1193 provides express and informed consent or is no longer in need of
 1194 treatment. Treatment may be continued pending a hearing after
 1195 the timely filing of any petition.

1196 (5) PROCEDURE FOR EMERGENCY TREATMENT.--In an emergency
 1197 situation in which there is immediate danger to the health and
 1198 safety of an inmate or other inmates, emergency treatment may be
 1199 provided at a mental health treatment facility upon the written
 1200 order of a physician for a period not to exceed 48 hours,
 1201 excluding weekends and legal holidays. If, after the 48-hour
 1202 period, the inmate has not given express and informed consent to
 1203 the treatment initially refused, the warden shall, within 48
 1204 hours, excluding weekends and legal holidays, petition the
 1205 circuit court, in accordance with the procedures described in
 1206 this section, for an order authorizing the continued treatment
 1207 of the inmate. In the interim, treatment may be continued upon
 1208 the written order of a physician who has determined that the
 1209 emergency situation continues to present a danger to the safety
 1210 of the inmate or others. If an inmate must be isolated for
 1211 mental health purposes, that decision must be reviewed within 72
 1212 hours by a different psychological professional or a physician
 1213 other than the one making the original placement.

1214 (6)-(d) EMERGENCY TREATMENT.--In addition to the other
 1215 above provisions of this section for mental health treatment,
 1216 when the ~~consent~~ ~~permission~~ of the inmate cannot be obtained,
 1217 the warden of a mental health treatment facility, or his or her
 1218 designated representative, with the concurrence of the inmate's
 1219 attending physician, may authorize emergency surgical or

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1220 nonpsychiatric medical treatment if such treatment is deemed
 1221 lifesaving or there is a situation threatening serious bodily
 1222 harm to the inmate.

1223 ~~(3) STATUS OF INMATE. An inmate receiving mental health~~
 1224 ~~treatment shall be subject to the same standards applied to~~
 1225 ~~other inmates in the department, including, but not limited to,~~
 1226 ~~consideration for parole, release by reason of gain time~~
 1227 ~~allowances as provided for in s. 944.291, and release by~~
 1228 ~~expiration of sentence.~~

1229 Section 18. Section 945.49, Florida Statutes, is amended
 1230 to read:

1231 945.49 Operation and administration.--

1232 (1) ADMINISTRATION.--The department is authorized to
 1233 contract with the appropriate entities, agencies, persons, and
 1234 local governing bodies to provide mental health services
 1235 pursuant to ss. 945.40-945.49.

1236 (2) RULES.--The department, in cooperation with the Mental
 1237 Health Program Office of the Department of Children and Family
 1238 Services, shall adopt rules necessary for administration of ss.
 1239 945.40-945.49 in accordance with chapter 120.

1240 (3) ORIENTATION AND TRAINING.--Correctional officers
 1241 employed by a mental health treatment facility shall receive
 1242 specialized training above and beyond that required for basic
 1243 certification pursuant to chapter 943. ~~Such training shall be in~~
 1244 ~~accordance with requirements of the Criminal Justice Standards~~
 1245 ~~and Training Commission.~~

1246 (4) STATUS OF INMATE.--An inmate receiving mental health
 1247 treatment shall be subject to the same standards applied to

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1248 | other inmates in the department, including, but not limited to,
 1249 | consideration for parole, release by reason of gain-time
 1250 | allowances as provided for in s. 944.291, and release by
 1251 | expiration of sentence. ~~ADMINISTRATIVE LAW JUDGES. One or more~~
 1252 | ~~administrative law judges shall be assigned by the Division of~~
 1253 | ~~Administrative Hearings to conduct hearings for continued~~
 1254 | ~~placement.~~

1255 | Section 19. This act shall take effect October 1, 2008.