

1 A bill to be entitled
2 An act relating to corrections; amending s. 384.34, F.S.;
3 revising criminal penalties pertaining to sexually
4 transmissible diseases; amending s. 775.0877, F.S.;
5 removing a provision authorizing a court to require an
6 offender convicted of criminal transmission of HIV to
7 serve a term of criminal quarantine community control;
8 amending s. 796.08, F.S., relating to criminal
9 transmission of HIV; conforming a cross-reference;
10 creating s. 800.09, F.S.; defining terms; providing that a
11 person who is detained in a state or private correctional
12 facility may not commit lewd or lascivious exhibition in
13 the presence of an employee who the detainee knows or
14 reasonably should know is an employee; providing criminal
15 penalties; amending s. 921.187, F.S.; removing a reference
16 to criminal quarantine community control to conform to
17 changes made by the act; amending s. 940.061, F.S.;
18 requiring that the Department of Corrections send to the
19 Parole Commission by electronic means a monthly list of
20 the names of inmates released from incarceration and
21 offenders terminated from supervision who may be eligible
22 for restoration of civil rights; repealing s. 944.293,
23 F.S., relating to initiation of the restoration of an
24 inmate's civil rights; amending s. 944.35, F.S.; including
25 employees of private correctional facilities within a
26 statute prohibiting employees from committing certain
27 sexual misconduct with inmates; providing criminal
28 penalties;; amending s. 944.605, F.S.; authorizing the

29 Department of Corrections to electronically submit certain
30 information to the sheriff of the county in which the
31 inmate plans to reside and to the chief of police of the
32 municipality where the inmate plans to reside; amending
33 ss. 944.804 and 944.8041, F.S.; requiring the department
34 to establish and operate certain geriatric facilities or
35 dorms at prison institutions; removing provisions
36 requiring the operation of a specified facility; amending
37 s. 945.41, F.S.; deleting a prohibition against the
38 placement of youthful offenders at certain institutions
39 for mental health treatment; amending s. 945.42, F.S.;
40 deleting references to an inmate's refusal of voluntary
41 placement for purposes of determining the inmate's need
42 for care and treatment; amending s. 945.43, F.S.;
43 clarifying that an inmate is placed in, rather than
44 admitted to, a mental health treatment facility; requiring
45 that a petition for placement be filed in the county in
46 which an inmate is located; authorizing the department to
47 transport the inmate to the location of the hearing on
48 such a placement under certain circumstances; amending s.
49 945.46, F.S.; providing procedures for the transport of
50 inmates who are mentally ill and who are scheduled to be
51 released from confinement; creating s. 946.42, F.S.;
52 authorizing the department to use inmate labor on private
53 property under certain circumstances; defining terms;
54 repealing s. 948.001(3), F.S., relating to the definition
55 of the term "criminal quarantine community control," to
56 conform to changes made by the act; amending s. 948.03,

57 F.S.; providing additional conditions of probation to be
 58 applied to a defendant; deleting certain requirements for
 59 possession of a weapon other than a firearm; requiring
 60 that a digitized photograph of an offender be part of the
 61 offender's record; authorizing the department to display
 62 such photographs on its website for a specified period;
 63 providing exceptions; amending s. 948.09, F.S.; conforming
 64 a cross-reference; amending ss. 948.101 and 948.11, F.S.;
 65 deleting provisions related to criminal quarantine
 66 community control; amending s. 951.26, F.S.; authorizing
 67 each local public safety coordinating council to develop a
 68 comprehensive local reentry plan for offenders reentering
 69 the community; providing plan requirements; providing an
 70 effective date.

71
 72 Be It Enacted by the Legislature of the State of Florida:

73
 74 Section 1. Subsection (5) of section 384.34, Florida
 75 Statutes, is amended to read:

76 384.34 Penalties.—

77 (5) Any person who violates ~~the provisions of~~ s. 384.24(2)
 78 commits a felony of the third degree, punishable as provided in
 79 s. 775.082, s. 775.083, or s. 775.084 ~~ss. 775.082, 775.083,~~
 80 ~~775.084, and 775.0877(7)~~. Any person who commits multiple
 81 violations of ~~the provisions of~~ s. 384.24(2) commits a felony of
 82 the first degree, punishable as provided in s. 775.082, s.
 83 775.083, or s. 775.084 ~~ss. 775.082, 775.083, 775.084, and~~
 84 ~~775.0877(7)~~.

85 Section 2. Section 775.0877, Florida Statutes, is amended
 86 to read:

87 775.0877 Criminal transmission of HIV; procedures;
 88 penalties.—

89 (1) In any case in which a person has been convicted of or
 90 has pled nolo contendere or guilty to, regardless of whether
 91 adjudication is withheld, any of the following offenses, or the
 92 attempt thereof, which offense or attempted offense involves the
 93 transmission of body fluids from one person to another:

94 (a) Section 794.011, relating to sexual battery;τ

95 (b) Section 826.04, relating to incest;τ

96 (c) Section 800.04(1), (2), and (3), relating to lewd,
 97 lascivious, or indecent assault or act upon any person less than
 98 16 years of age;τ

99 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
 100 relating to assault;τ

101 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
 102 relating to aggravated assault;τ

103 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
 104 relating to battery;τ

105 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
 106 relating to aggravated battery;τ

107 (h) Section 827.03(1), relating to child abuse;τ

108 (i) Section 827.03(2), relating to aggravated child
 109 abuse;τ

110 (j) Section 825.102(1), relating to abuse of an elderly
 111 person or disabled adult;τ

112 (k) Section 825.102(2), relating to aggravated abuse of an

113 elderly person or disabled adult;;~~τ~~
 114 (l) Section 827.071, relating to sexual performance by
 115 person less than 18 years of age;;~~τ~~
 116 (m) Sections 796.03, 796.07, and 796.08, relating to
 117 prostitution;;~~τ~~ or
 118 (n) Section 381.0041(11)(b), relating to donation of
 119 blood, plasma, organs, skin, or other human tissue,
 120
 121 the court shall order the offender to undergo HIV testing, to be
 122 performed under the direction of the Department of Health in
 123 accordance with s. 381.004, unless the offender has undergone
 124 HIV testing voluntarily or pursuant to procedures established in
 125 s. 381.004(3)(h)6. or s. 951.27, or any other applicable law or
 126 rule providing for HIV testing of criminal offenders or inmates,
 127 subsequent to her or his arrest for an offense enumerated in
 128 paragraphs (a)-(n) for which she or he was convicted or to which
 129 she or he pled nolo contendere or guilty. The results of an HIV
 130 test performed on an offender pursuant to this subsection are
 131 not admissible in any criminal proceeding arising out of the
 132 alleged offense.
 133 (2) The results of the HIV test must be disclosed under
 134 the direction of the Department of Health, to the offender who
 135 has been convicted of or pled nolo contendere or guilty to an
 136 offense specified in subsection (1), the public health agency of
 137 the county in which the conviction occurred and, if different,
 138 the county of residence of the offender, and, upon request
 139 pursuant to s. 960.003, to the victim or the victim's legal
 140 guardian, or the parent or legal guardian of the victim if the

141 victim is a minor.

142 (3) An offender who has undergone HIV testing pursuant to
143 subsection (1), and to whom positive test results have been
144 disclosed pursuant to subsection (2), who commits a second or
145 subsequent offense enumerated in paragraphs (1)(a)-(n), commits
146 criminal transmission of HIV, a felony of the third degree,
147 punishable as provided in s. 775.082, s. 775.083, or s. 775.084
148 ~~subsection (7)~~. A person may be convicted and sentenced
149 separately for a violation of this subsection and for the
150 underlying crime enumerated in paragraphs (1)(a)-(n).

151 (4) An offender may challenge the positive results of an
152 HIV test performed pursuant to this section and may introduce
153 results of a backup test performed at her or his own expense.

154 (5) Nothing in this section requires that an HIV infection
155 have occurred in order for an offender to have committed
156 criminal transmission of HIV.

157 (6) For an alleged violation of any offense enumerated in
158 paragraphs (1)(a)-(n) for which the consent of the victim may be
159 raised as a defense in a criminal prosecution, it is an
160 affirmative defense to a charge of violating this section that
161 the person exposed knew that the offender was infected with HIV,
162 knew that the action being taken could result in transmission of
163 the HIV infection, and consented to the action voluntarily with
164 that knowledge.

165 ~~(7) In addition to any other penalty provided by law for~~
166 ~~an offense enumerated in paragraphs (1)(a)-(n), the court may~~
167 ~~require an offender convicted of criminal transmission of HIV to~~
168 ~~serve a term of criminal quarantine community control, as~~

CS/CS/HB 1005

2010

169 ~~described in s. 948.001.~~

170 Section 3. Subsection (5) of section 796.08, Florida
171 Statutes, is amended to read:

172 796.08 Screening for HIV and sexually transmissible
173 diseases; providing penalties.—

174 (5) A person who:

175 (a) Commits or offers to commit prostitution; or

176 (b) Procures another for prostitution by engaging in
177 sexual activity in a manner likely to transmit the human
178 immunodeficiency virus,

179

180 and who, prior to the commission of such crime, had tested
181 positive for human immunodeficiency virus and knew or had been
182 informed that he or she had tested positive for human
183 immunodeficiency virus and could possibly communicate such
184 disease to another person through sexual activity commits
185 criminal transmission of HIV, a felony of the third degree,
186 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
187 ~~or s. 775.0877(7)~~. A person may be convicted and sentenced
188 separately for a violation of this subsection and for the
189 underlying crime of prostitution or procurement of prostitution.

190 Section 4. Section 800.09, Florida Statutes, is created to
191 read:

192 800.09 Lewd or lascivious exhibition in the presence of an
193 employee.—

194 (1) As used in this section, the term:

195 (a) "Employee" means any person employed by or performing
196 contractual services for a public or private entity operating a

197 facility or any person employed by or performing contractual
 198 services for the corporation operating the prison industry
 199 enhancement programs or the correctional work programs under
 200 part II of chapter 946. The term also includes any person who is
 201 a parole examiner with the Parole Commission.

202 (b) "Facility" means a state correctional institution as
 203 defined in s. 944.02 or a private correctional facility as
 204 defined in s. 944.710.

205 (2) (a) A person who is detained in a facility may not:

206 1. Intentionally masturbate;

207 2. Intentionally expose the genitals in a lewd or
 208 lascivious manner; or

209 3. Intentionally commit any other sexual act that does not
 210 involve actual physical or sexual contact with the victim,
 211 including, but not limited to, sadomasochistic abuse, sexual
 212 bestiality, or the simulation of any act involving sexual
 213 activity,

214
 215 in the presence of a person he or she knows or reasonably should
 216 know is an employee.

217 (b) A person who violates paragraph (a) commits lewd or
 218 lascivious exhibition in the presence of an employee, a felony
 219 of the third degree, punishable as provided in s. 775.082, s.
 220 775.083, or s. 775.084.

221 Section 5. Subsections (2) and (3) of section 921.187,
 222 Florida Statutes, are amended to read:

223 921.187 Disposition and sentencing; alternatives;
 224 restitution.-

225 ~~(2) In addition to any other penalty provided by law for~~
 226 ~~an offense enumerated in s. 775.0877(1)(a)-(n), if the offender~~
 227 ~~is convicted of criminal transmission of HIV pursuant to s.~~
 228 ~~775.0877, the court may sentence the offender to criminal~~
 229 ~~quarantine community control as described in s. 948.001.~~

230 (2)~~(3)~~ The court shall require an offender to make
 231 restitution under s. 775.089~~7~~, unless the court finds clear and
 232 compelling reasons not to order such restitution. If the court
 233 does not order restitution, or orders restitution of only a
 234 portion of the damages, as provided in s. 775.089, the court
 235 shall state the reasons on the record in detail. An order
 236 requiring an offender to make restitution to a victim under s.
 237 775.089 does not remove or diminish the requirement that the
 238 court order payment to the Crimes Compensation Trust Fund under
 239 chapter 960.

240 Section 6. Section 940.061, Florida Statutes, is amended
 241 to read:

242 940.061 Informing persons about executive clemency and
 243 restoration of civil rights.—The Department of Corrections shall
 244 inform and educate inmates and offenders on community
 245 supervision about the restoration of civil rights. Each month
 246 the Department of Corrections shall send to the Parole
 247 Commission by electronic means a list of the names of inmates
 248 who have been released from incarceration and offenders who have
 249 been terminated from supervision who may be eligible and assist
 250 ~~eligible inmates and offenders on community supervision with the~~
 251 ~~completion of the application for the restoration of civil~~
 252 ~~rights.~~

253 Section 7. Section 944.293, Florida Statutes, is repealed.

254 Section 8. Paragraph (b) of subsection (3) of section
255 944.35, Florida Statutes, is amended to read:

256 944.35 Authorized use of force; malicious battery and
257 sexual misconduct prohibited; reporting required; penalties.—

258 (3)

259 (b)1. As used in this paragraph, the term "sexual
260 misconduct" means the oral, anal, or vaginal penetration by, or
261 union with, the sexual organ of another or the anal or vaginal
262 penetration of another by any other object, but does not include
263 an act done for a bona fide medical purpose or an internal
264 search conducted in the lawful performance of the employee's
265 duty.

266 2. Any employee of the department or a private
267 correctional facility as defined in s. 944.710 who engages in
268 sexual misconduct with an inmate or an offender supervised by
269 the department in the community, without committing the crime of
270 sexual battery, commits a felony of the third degree, punishable
271 as provided in s. 775.082, s. 775.083, or s. 775.084.

272 3. The consent of the inmate or offender supervised by the
273 department in the community to any act of sexual misconduct may
274 not be raised as a defense to a prosecution under this
275 paragraph.

276 4. This paragraph does not apply to any employee of the
277 department or any employee of a private correctional facility
278 who is legally married to an inmate or an offender supervised by
279 the department in the community, nor does it apply to any
280 employee who has no knowledge, and would have no reason to

281 believe, that the person with whom the employee has engaged in
 282 sexual misconduct is an inmate or an offender under community
 283 supervision of the department.

284 Section 9. Subsection (3) of section 944.605, Florida
 285 Statutes, is amended to read:

286 944.605 Inmate release; notification.—

287 (3) (a) If an inmate is to be released after having served
 288 one or more sentences for a conviction of robbery, sexual
 289 battery, home-invasion robbery, or carjacking, or an inmate to
 290 be released has a prior conviction for robbery, sexual battery,
 291 home-invasion robbery, or carjacking or similar offense, in this
 292 state or in another jurisdiction, and if such prior conviction
 293 information is contained in department records, the department
 294 shall release to the sheriff of the county in which the inmate
 295 plans to reside, and, if the inmate plans to reside within a
 296 municipality, to the chief of police of that municipality, the
 297 following information, which must include, but need not be
 298 limited to:

- 299 1. ~~(a)~~ Name .~~†~~
- 300 2. ~~(b)~~ Social security number .~~†~~
- 301 3. ~~(c)~~ Date of birth .~~†~~
- 302 4. ~~(d)~~ Race .~~†~~
- 303 5. ~~(e)~~ Sex .~~†~~
- 304 6. ~~(f)~~ Height .~~†~~
- 305 7. ~~(g)~~ Weight .~~†~~
- 306 8. ~~(h)~~ Hair and eye color .~~†~~
- 307 9. ~~(i)~~ Tattoos or other identifying marks .~~†~~
- 308 10. ~~(j)~~ Fingerprints .~~†~~ and

309 11.~~(*)~~ A digitized photograph as provided in subsection
 310 (2).

311
 312 The department shall release the information specified in this
 313 paragraph ~~subsection~~ within 6 months prior to the discharge of
 314 the inmate from the custody of the department.

315 (b) The department may electronically submit the
 316 information listed in paragraph (a) to the sheriff of the county
 317 in which the inmate plans to reside, and, if the inmate plans to
 318 reside within a municipality, to the chief of police of that
 319 municipality.

320 Section 10. Section 944.804, Florida Statutes, is amended
 321 to read:

322 944.804 Elderly offenders correctional facilities program
 323 of 2000.—

324 (1) The Legislature finds that the number and percentage
 325 of elderly offenders in the Florida prison system are ~~is~~
 326 increasing and will continue to increase for the foreseeable
 327 future. The current cost to incarcerate elderly offenders is
 328 approximately three times the cost of incarceration of younger
 329 inmates. Alternatives to the current approaches to housing,
 330 programming, and treating the medical needs of elderly
 331 offenders, which may reduce the overall costs associated with
 332 this segment of the prison population, must be explored and
 333 implemented.

334 (2) The department shall establish and operate ~~a~~ geriatric
 335 facilities or geriatric dorms within a facility ~~at the site~~
 336 ~~known as River Junction Correctional Institution, which shall be~~

337 ~~an institution specifically~~ for generally healthy elderly
338 offenders who can perform general work appropriate for their
339 physical and mental condition. ~~Prior to reopening the facility,~~
340 ~~the department shall make modifications to the facility which~~
341 ~~will ensure its compliance with the Americans with Disabilities~~
342 ~~Act and decrease the likelihood of falls, accidental injury, and~~
343 ~~other conditions known to be particularly hazardous to the~~
344 ~~elderly.~~

345 (a) In order to decrease long-term medical costs to the
346 state, a preventive fitness/wellness program and diet
347 specifically designed to maintain the mental and physical health
348 of elderly offenders shall be developed and implemented. In
349 developing the program, the department shall give consideration
350 to preventive medical care for the elderly which shall include,
351 but not be limited to, maintenance of bone density, all aspects
352 of cardiovascular health, lung capacity, mental alertness, and
353 orientation. Existing policies and procedures shall be
354 reexamined and altered to encourage offenders to adopt a more
355 healthy lifestyle and maximize their level of functioning. The
356 program components shall be modified as data and experience are
357 received that ~~which~~ measure the relative success of the program
358 components previously implemented.

359 (b) Consideration must be given to redirecting resources
360 as a method of offsetting increased medical costs. Elderly
361 offenders are not likely to reenter society as a part of the
362 workforce, and programming resources would be better spent in
363 activities to keep the elderly offenders healthy, alert, and
364 oriented. Limited or restricted programming or activities for

CS/CS/HB 1005

2010

365 elderly offenders will increase the daily cost of institutional
366 and health care, and programming opportunities adequate to
367 reduce the cost of care will be provided. Programming shall
368 include, but not be limited to, recreation, education, and
369 counseling that ~~which~~ is needs-specific to elderly offenders.
370 Institutional staff shall be specifically trained to effectively
371 supervise elderly offenders and to detect physical or mental
372 changes that ~~which~~ warrant medical attention before more serious
373 problems develop.

374 (3) The department shall adopt rules that specify which
375 elderly offenders shall be eligible to be housed at the
376 geriatric correctional facilities or dorms ~~River Junction~~
377 ~~Correctional Institution~~.

378 (4) While developing the criteria for eligibility, the
379 department shall use the information in existing offender
380 databases to determine the number of offenders who would be
381 eligible. The Legislature directs the department to consider a
382 broad range of elderly offenders for the department's geriatric
383 facilities or dorms ~~River Junction Correctional Institution~~ who
384 have good disciplinary records and a medical grade that will
385 permit them to perform meaningful work activities, including
386 participation in an appropriate correctional work program
387 (PRIDE) facility, if available.

388 (5) The department shall also submit a study based on
389 existing offenders that ~~which~~ projects the number of existing
390 offenders who will qualify under the rules. An appendix to the
391 study shall identify the specific offenders who qualify.

392 Section 11. Section 944.8041, Florida Statutes, is amended

393 to read:

394 944.8041 Elderly offenders; annual review.—For the purpose
 395 of providing information to the Legislature on elderly offenders
 396 within the correctional system, the department and the
 397 Correctional Medical Authority shall each submit annually a
 398 report on the status and treatment of elderly offenders in the
 399 state-administered and private state correctional systems and,
 400 ~~as well as such information on~~ the department's geriatric
 401 facilities and dorms ~~River Junction Correctional Institution~~. In
 402 order to adequately prepare the reports, the department and the
 403 Department of Management Services shall grant access to the
 404 Correctional Medical Authority that ~~which~~ includes access to the
 405 facilities, offenders, and any information the agencies require
 406 to complete their reports. The review shall also include an
 407 examination of promising geriatric policies, practices, and
 408 programs currently implemented in other correctional systems
 409 within the United States. The reports, with specific findings
 410 and recommendations for implementation, shall be submitted to
 411 the President of the Senate and the Speaker of the House of
 412 Representatives on or before December 31 of each year.

413 Section 12. Subsections (4) and (5) of section 945.41,
 414 Florida Statutes, are amended to read:

415 945.41 Legislative intent of ss. 945.40-945.49.—It is the
 416 intent of the Legislature that mentally ill inmates in the
 417 custody of the Department of Corrections receive evaluation and
 418 appropriate treatment for their mental illness through a
 419 continuum of services. It is further the intent of the
 420 Legislature that:

CS/CS/HB 1005

2010

421 (4) Any inmate sentenced as a youthful offender, or
422 designated as a youthful offender by the department under
423 ~~pursuant to~~ chapter 958, who is transferred pursuant to this act
424 to a mental health treatment facility be separated from other
425 inmates, if necessary, as determined by the warden of the
426 treatment facility. ~~In no case shall any youthful offender be~~
427 ~~placed at the Florida State Prison or the Union Correctional~~
428 ~~Institution for mental health treatment.~~

429 (5) The department may designate a mental health treatment
430 facilities ~~facility~~ for adult, youthful, and female offenders or
431 may contract with other appropriate entities, persons, or
432 agencies for such services.

433 Section 13. Subsections (5) and (6) of section 945.42,
434 Florida Statutes, are amended to read:

435 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
436 945.40-945.49, the following terms shall have the meanings
437 ascribed to them, unless the context shall clearly indicate
438 otherwise:

439 (5) "In immediate need of care and treatment" means that
440 an inmate is apparently mentally ill and is not able to be
441 appropriately cared for in the institution where he or she is
442 confined and that, but for being isolated in a more restrictive
443 and secure housing environment, because of the apparent mental
444 illness:

445 (a)1. The inmate is demonstrating a refusal to care for
446 himself or herself and without immediate treatment intervention
447 is likely to continue to refuse to care for himself or herself,
448 and such refusal poses an immediate, real, and present threat of

449 substantial harm to his or her well-being; or

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

454 ~~(b)1. The inmate has refused voluntary placement for~~
 455 ~~treatment at a mental health treatment facility after sufficient~~
 456 ~~and conscientious explanation and disclosure of the purpose of~~
 457 ~~placement; or~~

458 ~~2.~~ The inmate is unable to determine for himself or
 459 herself whether placement is necessary; and

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

463 (6) "In need of care and treatment" means that an inmate
 464 has a mental illness for which inpatient services in a mental
 465 health treatment facility are necessary and that, but for being
 466 isolated in a more restrictive and secure housing environment,
 467 because of the mental illness:

468 (a)1. The inmate is demonstrating a refusal to care for
 469 himself or herself and without treatment is likely to continue
 470 to refuse to care for himself or herself, and such refusal poses
 471 a real and present threat of substantial harm to his or her
 472 well-being; or

473 2. There is a substantial likelihood that in the near
 474 future the inmate will inflict serious bodily harm on himself or
 475 herself or another person, as evidenced by recent behavior
 476 causing, attempting, or threatening such harm;

477 (b) ~~1. The inmate has refused voluntary placement for~~
 478 ~~treatment at a mental health treatment facility after sufficient~~
 479 ~~and conscientious explanation and disclosure of the purpose of~~
 480 ~~placement; or~~

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

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

486 Section 14. Section 945.43, Florida Statutes, is amended
 487 to read:

488 945.43 Placement ~~Admission~~ of inmate in a ~~to~~ mental health
 489 treatment facility.—

490 (1) CRITERIA.—An inmate may be placed in ~~admitted to~~ a
 491 mental health treatment facility if he or she is mentally ill
 492 and is in need of care and treatment, as defined in s. 945.42.

493 (2) PROCEDURE FOR PLACEMENT IN A MENTAL HEALTH TREATMENT
 494 FACILITY.—

495 (a) An inmate may be placed in ~~admitted to~~ a mental health
 496 treatment facility after notice and hearing, upon the
 497 recommendation of the warden of the facility where the inmate is
 498 confined. The recommendation shall be entered on a petition and
 499 must be supported by the expert opinion of a psychiatrist and
 500 the second opinion of a psychiatrist or psychological
 501 professional. The petition shall be filed with the court in the
 502 county where the inmate is located.

503 (b) A copy of the petition shall be served on the inmate,
 504 accompanied by a written notice that the inmate may apply

CS/CS/HB 1005

2010

505 immediately to the court to have an attorney appointed if the
506 inmate cannot afford one.

507 (c) The petition for placement shall ~~may~~ be filed in the
508 county in which the inmate is located. The hearing shall be held
509 in the same county, and one of the inmate's physicians at the
510 facility where the inmate is located shall appear as a witness
511 at the hearing.

512 (d) An attorney representing the inmate shall have access
513 to the inmate and any records, including medical or mental
514 health records, that ~~which~~ are relevant to the representation of
515 the inmate.

516 (e) If the court finds that the inmate is mentally ill and
517 in need of care and treatment, as defined in s. 945.42, the
518 court shall order that he or she be placed in a mental health
519 treatment facility or, if the inmate is at a mental health
520 treatment facility, that he or she be retained there. The court
521 shall authorize the mental health treatment facility to retain
522 the inmate for up to 6 months. If, at the end of that time,
523 continued placement is necessary, the warden shall apply to the
524 Division of Administrative Hearings in accordance with s. 945.45
525 for an order authorizing continued placement.

526 (3) PROCEDURE FOR HEARING ON PLACEMENT OF AN INMATE IN A
527 MENTAL HEALTH TREATMENT FACILITY.—

528 (a) The court shall serve notice on the warden of the
529 facility where the inmate is confined and the allegedly mentally
530 ill inmate. The notice must specify the date, time, and place of
531 the hearing; the basis for the allegation of mental illness; and
532 the names of the examining experts. The hearing shall be held

533 within 5 days, and the court may appoint a general or special
534 magistrate to preside. The court may waive the presence of the
535 inmate at the hearing if the ~~such~~ waiver is consistent with the
536 best interests of the inmate and the inmate's counsel does not
537 object. The department may transport the inmate to the location
538 of the hearing if the hearing is not conducted at the facility
539 or by electronic means. The hearing may be as informal as is
540 consistent with orderly procedure. One of the experts whose
541 opinion supported the petition for placement shall be present at
542 the hearing for information purposes.

543 (b) If, at the hearing, the court finds that the inmate is
544 mentally ill and in need of care and treatment, as defined in s.
545 945.42, the court shall order that he or she be placed in a
546 mental health treatment facility. The court shall provide a copy
547 of its order authorizing placement and all supporting
548 documentation relating to the inmate's condition to the warden
549 of the treatment facility. If the court finds that the inmate is
550 not mentally ill, it shall dismiss the petition for placement.

551 (4) REFUSAL OF PLACEMENT.—The warden of an institution in
552 which a mental health treatment facility is located may refuse
553 to place any inmate in that treatment facility who is not
554 accompanied by adequate court orders and documentation, as
555 required in ss. 945.40-945.49.

556 Section 15. Section 945.46, Florida Statutes, is amended
557 to read:

558 945.46 Initiation of involuntary placement proceedings
559 with respect to a mentally ill inmate scheduled for release.—

560 (1) If an inmate who is receiving mental health treatment

561 in the department is scheduled for release through expiration of
 562 sentence or any other means, but continues to be mentally ill
 563 and in need of care and treatment, as defined in s. 945.42, the
 564 warden is authorized to initiate procedures for involuntary
 565 placement pursuant to s. 394.467, 60 days prior to such release.

566 (2) In addition, the warden may initiate procedures for
 567 involuntary examination pursuant to s. 394.463 for any inmate
 568 who has a mental illness and meets the criteria of s.
 569 394.463(1).

570 (3) The department may transport an individual who is
 571 being released from its custody to a receiving or treatment
 572 facility for involuntary examination or placement. Such
 573 transport shall be made to a facility that is specified by the
 574 Department of Children and Family Services as able to meet the
 575 specific needs of the individual. If the Department of Children
 576 and Family Services does not specify a facility, transport may
 577 be made to the nearest receiving facility.

578 Section 16. Section 946.42, Florida Statutes, is created
 579 to read:

580 946.42 Use of inmates on private property.-

581 (1) The department may allow inmates who meet the criteria
 582 provided in s. 946.40 to enter onto private property to perform
 583 public works or for the following purposes:

584 (a) To accept and collect donations for the use and
 585 benefit of the department.

586 (b) To assist federal, state, local, and private agencies
 587 before, during, and after emergencies or disasters.

588 (2) As used in this section, the term:

589 (a) "Disaster" means any natural, technological, or civil
 590 emergency that causes damage of sufficient severity and
 591 magnitude to result in a declaration of a state of emergency by
 592 a county, the Governor, or the President of the United States.

593 (b) "Donations" means gifts of tangible personal property
 594 and includes equipment, fixtures, construction materials, food
 595 items, and other tangible personal property of a consumable or
 596 nonconsumable nature.

597 (c) "Emergency" means any occurrence or threat of an
 598 occurrence, whether natural, technological, or manmade, in war
 599 or in peace, that results or may result in substantial injury or
 600 harm to the population or substantial damage to or loss of
 601 property.

602 Section 17. Subsection (3) of section 948.001, Florida
 603 Statutes, is repealed.

604 Section 18. Subsection (1) of section 948.03, Florida
 605 Statutes, is amended to read:

606 948.03 Terms and conditions of probation.—

607 (1) The court shall determine the terms and conditions of
 608 probation. Conditions specified in this section do not require
 609 oral pronouncement at the time of sentencing and may be
 610 considered standard conditions of probation. These conditions
 611 may include among them the following, that the probationer or
 612 offender in community control shall:

613 (a) Report to the probation and parole supervisors as
 614 directed.

615 (b) Permit such supervisors to visit him or her at his or
 616 her home or elsewhere.

617 (c) Work faithfully at suitable employment insofar as may
618 be possible.

619 (d) Remain within a specified place.

620 (e) Live without violating any law. A conviction in a
621 court of law is not necessary for such a violation of law to
622 constitute a violation of probation, community control, or any
623 other form of court-ordered supervision.

624 (f)~~(e)~~ Make reparation or restitution to the aggrieved
625 party for the damage or loss caused by his or her offense in an
626 amount to be determined by the court. The court shall make such
627 reparation or restitution a condition of probation, unless it
628 determines that clear and compelling reasons exist to the
629 contrary. If the court does not order restitution, or orders
630 restitution of only a portion of the damages, as provided in s.
631 775.089, it shall state on the record in detail the reasons
632 therefor.

633 (g)~~(f)~~ Effective July 1, 1994, and applicable for offenses
634 committed on or after that date, make payment of the debt due
635 and owing to a county or municipal detention facility under s.
636 951.032 for medical care, treatment, hospitalization, or
637 transportation received by the felony probationer while in that
638 detention facility. The court, in determining whether to order
639 such repayment and the amount of the ~~such~~ repayment, shall
640 consider the amount of the debt, whether there was any fault of
641 the institution for the medical expenses incurred, the financial
642 resources of the felony probationer, the present and potential
643 future financial needs and earning ability of the probationer,
644 and dependents, and other appropriate factors.

645 (h)~~(g)~~ Support his or her legal dependents to the best of
 646 his or her ability.

647 (i)~~(h)~~ Make payment of the debt due and owing to the state
 648 under s. 960.17, subject to modification based on change of
 649 circumstances.

650 (j)~~(i)~~ Pay any application fee assessed under s.
 651 27.52(1)(b) and attorney's fees and costs assessed under s.
 652 938.29, subject to modification based on change of
 653 circumstances.

654 (k)~~(j)~~ Not associate with persons engaged in criminal
 655 activities.

656 (1)~~(k)~~1. Submit to random testing as directed by the
 657 correctional probation officer or the professional staff of the
 658 treatment center where he or she is receiving treatment to
 659 determine the presence or use of alcohol or controlled
 660 substances.

661 2. If the offense was a controlled substance violation and
 662 the period of probation immediately follows a period of
 663 incarceration in the state correction system, the conditions
 664 shall include a requirement that the offender submit to random
 665 substance abuse testing intermittently throughout the term of
 666 supervision, upon the direction of the correctional probation
 667 officer as defined in s. 943.10(3).

668 (m)~~(l)~~ Be prohibited from possessing, carrying, or owning
 669 any:

670 1. ~~Firearm unless authorized by the court and consented to~~
 671 ~~by the probation officer.~~

672 2. Weapon without first procuring the consent of the

CS/CS/HB 1005

2010

673 correctional probation officer.

674 (n)~~(m)~~ Be prohibited from using intoxicants to excess or
675 possessing any drugs or narcotics unless prescribed by a
676 physician. The probationer or community controllee shall not
677 knowingly visit places where intoxicants, drugs, or other
678 dangerous substances are unlawfully sold, dispensed, or used.

679 (o)~~(n)~~ Submit to the drawing of blood or other biological
680 specimens as prescribed in ss. 943.325 and 948.014, and
681 reimburse the appropriate agency for the costs of drawing and
682 transmitting the blood or other biological specimens to the
683 Department of Law Enforcement.

684 (p) Submit to the taking of a digitized photograph by the
685 department as a part of the offender's records. This photograph
686 may be displayed on the department's public website while the
687 offender is under court-ordered supervision. However, this
688 paragraph does not apply to an offender who is on pretrial
689 intervention supervision or an offender whose identity is exempt
690 from disclosure due to an exemption from the requirements of s.
691 119.07.

692 Section 19. Subsection (7) of section 948.09, Florida
693 Statutes, is amended to read:

694 948.09 Payment for cost of supervision and
695 rehabilitation.—

696 (7) The department shall establish a payment plan for all
697 costs ordered by the courts for collection by the department and
698 a priority order for payments, except that victim restitution
699 payments authorized under s. 948.03(1) (f)~~(e)~~ take precedence
700 over all other court-ordered payments. The department is not

CS/CS/HB 1005

2010

701 required to disburse cumulative amounts of less than \$10 to
 702 individual payees established on this payment plan.

703 Section 20. Section 948.101, Florida Statutes, is amended
 704 to read:

705 948.101 Terms and conditions of community control ~~and~~
 706 ~~criminal quarantine community control.~~

707 (1) The court shall determine the terms and conditions of
 708 community control. Conditions specified in this subsection do
 709 not require oral pronouncement at the time of sentencing and may
 710 be considered standard conditions of community control.

711 ~~(a)~~ The court shall require intensive supervision and
 712 surveillance for an offender placed into community control,
 713 which may include, but is not limited to:

714 (a)1. Specified contact with the parole and probation
 715 officer.

716 (b)2. Confinement to an agreed-upon residence during hours
 717 away from employment and public service activities.

718 (c)3. Mandatory public service.

719 (d)4. Supervision by the Department of Corrections by
 720 means of an electronic monitoring device or system.

721 (e)5. The standard conditions of probation set forth in s.
 722 948.03.

723 ~~(b) For an offender placed on criminal quarantine
 724 community control, the court shall require:~~

725 ~~1. Electronic monitoring 24 hours per day.~~

726 ~~2. Confinement to a designated residence during designated
 727 hours.~~

728 (2) The enumeration of specific kinds of terms and

729 conditions does not prevent the court from adding ~~thereto~~ any
730 other terms or conditions that the court considers proper.
731 However, the sentencing court may only impose a condition of
732 supervision allowing an offender convicted of s. 794.011, s.
733 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145 to reside in
734 another state if the order stipulates that it is contingent upon
735 the approval of the receiving state interstate compact
736 authority. The court may rescind or modify at any time the terms
737 and conditions theretofore imposed by it upon the offender in
738 community control. However, if the court withholds adjudication
739 of guilt or imposes a period of incarceration as a condition of
740 community control, the period may not exceed 364 days, and
741 incarceration shall be restricted to a county facility, a
742 probation and restitution center under the jurisdiction of the
743 Department of Corrections, a probation program drug punishment
744 phase I secure residential treatment institution, or a community
745 residential facility owned or operated by any entity providing
746 such services.

747 ~~(3) The court may place a defendant who is being sentenced~~
748 ~~for criminal transmission of HIV in violation of s. 775.0877 on~~
749 ~~criminal quarantine community control. The Department of~~
750 ~~Corrections shall develop and administer a criminal quarantine~~
751 ~~community control program emphasizing intensive supervision with~~
752 ~~24-hour-per-day electronic monitoring. Criminal quarantine~~
753 ~~community control status must include surveillance and may~~
754 ~~include other measures normally associated with community~~
755 ~~control, except that specific conditions necessary to monitor~~
756 ~~this population may be ordered.~~

757 Section 21. Subsection (1) of section 948.11, Florida
 758 Statutes, is amended to read:

759 948.11 Electronic monitoring devices.—

760 (1)~~(a)~~ The Department of Corrections may, at its
 761 discretion, electronically monitor an offender sentenced to
 762 community control.

763 ~~(b) The Department of Corrections shall electronically~~
 764 ~~monitor an offender sentenced to criminal quarantine community~~
 765 ~~control 24 hours per day.~~

766 Section 22. Subsection (4) of section 951.26, Florida
 767 Statutes, is renumbered as subsection (5), and a new subsection
 768 (4) is added to that section to read:

769 951.26 Public safety coordinating councils.—

770 (4) The council may also develop a comprehensive local
 771 reentry plan that is designed to assist offenders released from
 772 incarceration to successfully reenter the community. The plan
 773 should cover at least a 5-year period. In developing the plan,
 774 the council shall coordinate with public safety officials and
 775 local community organizations who can provide offenders with
 776 reentry services, such as assistance with housing, health care,
 777 education, substance abuse treatment, and employment.

778 Section 23. This act shall take effect July 1, 2010.