

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Committee on Criminal and Civil Justice

BILL: SB 1284

INTRODUCER: Senator Martin

SUBJECT: Health Care for Inmates

DATE: February 12, 2024

REVISED: 2/14/24

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wyant</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Favorable
3.	<u></u>	<u></u>	<u>FP</u>	

I. Summary:

SB 1284 revises ss. 945.40-945.49, F.S., the Corrections Mental Health Act to provide updated, clarifying, or technical language, as well as, provide substantial changes to the procedure for placement and treatment of inmates.

The bill amends s. 945.41, F.S., to revise legislative intent by clarifying technical language in regards to inmates *who have a mental illness* and provide that services received by those inmates are offered as outpatient and inpatient mental health treatment and services. The Department of Corrections (DOC) is authorized to purchase treatment materials and equipment for specified purposes and to contract with entities, persons, or agencies qualified to provide mental health treatment and services. The bill requires inmates in the custody of the DOC to be offered the opportunity to participate in the development of a written individualized treatment plan.

A mentally competent inmate must give his or her express and informed consent for mental health treatment, and any consent given for treatment may be revoked orally or in writing before or during the treatment by the inmate or a person legally authorized to make such decisions. Inmates who are incompetent to consent must receive treatment deemed necessary for their appropriate care and for the safety of the inmate or others.

The bill authorizes nonpsychiatric, emergency surgical treatment, and routine medical treatment for an inmate placed in a mental health treatment facility under certain circumstances.

The bill amends s. 945.42, F.S., to define the terms “chief,” “express and informed consent,” “gravely disabled,” “incompetent to consent to treatment,” “involuntary examination,” “likelihood of serious harm,” and “treatment,” and revises current terms.

The bill substantially rewords s. 945.43, F.S., to provide a process for involuntary examination.

The bill substantially rewords s. 945.44, F.S., to provide the criteria, hearing procedures for petitions, orders for treatment, status hearings, copies of orders, and dismissal of petitions relating to the placement and treatment of an inmate in a mental health treatment facility.

The bill repeals s. 945.45, F.S., relating to the continued placement of inmates in mental health facilities. Language related to continued placement is described in s. 945.44, F.S, under the bill.

The bill amends s. 945.46, F.S., to provide the process for involuntary placement court proceedings when an inmate continues to be mentally ill and in need of care and treatment but is scheduled for release from custody. The bill adds language to ensure a fee may not be charged for the filing of the petition.

The bill amends s. 945.47, F.S., to specify that any time that an inmate who has received mental health treatment while in the custody of the DOC becomes eligible for release, a record of the treatment may be provided to the Florida Commission on Offender Review and the Department of Children and Families for the purpose of *arranging post release aftercare placement and to prospective recipient inpatient health care or residential facilities* upon request.

The bill substantially rewords s. 945.48, F.S., to authorize the DOC to involuntarily administer psychotropic medication to an inmate on an emergency basis without following the procedure outlined in s. 945.43, F.S. The use of force is permitted when and to the extent that it reasonably appears necessary to effectuate the treatment of an inmate, to effectuate clinically necessary hygiene of an inmate, for the application of physical restraint, or pursuant to a valid court order. Such force must be in accordance with requirements described in s. 944.35, F.S.

The bill creates s. 945.485, F.S., to provide procedures for when an inmate is engaging in active or ongoing self-injurious behavior and has refused to provide express and informed consent. If an inmate is incompetent to consent, the inmate's treating physician must proceed as set forth in s. 945.6042, F.S. The bill provides proceedings for when an inmate is competent, refusing necessary surgical or medical treatment, and engaging in active or ongoing self-injurious behavior that presents a threat to the safety of the DOC staff or other inmates or the security, internal order, or discipline of the institution.

The bill amends s. 945.49, F.S., to remove the requirement for the DOC to work in cooperation with the Mental Health Program Office of the Department of Children and Families to adopt rules necessary to administer sections under the Corrections Mental Health Act.

The bill creates s. 945.6042, F.S., to provide the DOC must offer inmates the opportunity to execute an advance directive as defined in s. 765.101, F.S. The bill provides definitions for "health care facility", "incapacity," "informed consent," "inmate," "ombudsman," "proxy," and "proxy review team." The bill provides procedure relating to the capacity of an inmate. The bill creates a process for a DOC ombudsman to serve as a proxy for an inmate that has not executed an advance directive. The bill authorizes the use of force and provides immunity from liability.

The bill does not have a fiscal impact on the DOC. See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Under the Corrections Mental Health Act, ss. 945.40-945.49, F.S., it is the intent of the Legislature for mentally ill inmates in the custody of the DOC to receive an evaluation and appropriate treatment for their mental illness through a continuum of services. The DOC must provide mental health services to inmates committed to the DOC and may contract with entities, persons, or agencies qualified to provide such services.¹ Mental health treatment facilities are required to be secure, adequately equipped and staffed, and provide services in the least restrictive manner consistent with optimum improvement of the inmate's condition.²

The Corrections Mental Health Act provides key terminology necessary in determining criteria is met for crisis stabilization care³ such as: defining mentally ill,⁴ an inmate in immediate need of care and treatment,⁵ in need of care and treatment,⁶ and transitional mental health care.⁷

¹ Section 945.41(1), F.S.

² Section 945.41(2), F.S.

³ "Crisis Stabilization Care" means a level of care that is less restrictive and intense than care provided in a mental health treatment facility, that includes a broad range of evaluation and treatment services provided within a highly structured setting or locked residential setting, and that is intended for inmates who are experiencing acute emotional distress and who cannot be adequately evaluated and treated in a transitional care unit and is devoted principally toward rapid stabilization of acute symptoms and conditions. Section 945.42(2), F.S.

⁴ "Mentally ill" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. However, for the purposes of transferring an inmate to a mental health treatment facility, the term does not include a developmental disability as defined in s. 393.063, F.S., simple intoxication, or conditions manifested only by antisocial behavior or substance abuse addiction. However, an individual who is developmentally disabled may also have a mental illness. Section 945.42(9), F.S.

⁵ "In immediate need of care and treatment" means that an inmate is apparently mentally ill and is not able to be appropriately cared for in the institution where he or she is confined and that, but for being isolated in a more restrictive and secure housing environment, because of the apparent mental illness: the inmate is demonstrating a refusal to care for himself or herself and without immediate treatment intervention is likely to continue to refuse to care for himself or herself, and such refusal poses an immediate, real, and present threat of substantial harm to his or her well-being; or there is an immediate, real, and present threat that the inmate will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior involving causing, attempting, or threatening such harm; the inmate is unable to determine for himself or herself whether placement is necessary; and all available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate. Section 945.42(5), F.S.

⁶ "In need of care and treatment" means that an inmate has a mental illness for which inpatient services in a mental health treatment facility are necessary and that, but for being isolated in a more restrictive and secure housing environment, because of the mental illness: the inmate is demonstrating a refusal to care for himself or herself and without treatment is likely to continue to refuse to care for himself or herself, and such refusal poses a real and present threat of substantial harm to his or her well-being; or there is a substantial likelihood that in the near future the inmate will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; The inmate is unable to determine for himself or herself whether placement is necessary; and all available less restrictive treatment alternatives that would offer an opportunity for improvement of the inmate's condition have been clinically determined to be inappropriate. Section 945.42(6), F.S.

⁷ "Transitional mental health care" means a level of care that is more intensive than outpatient care, but less intensive than crisis stabilization care, and is characterized by the provision of traditional mental health treatments such as group and individual therapy, activity therapy, recreational therapy, and psychotropic medications in the context of a structured residential setting. Transitional mental health care is indicated for a person with chronic or residual symptomatology who does not require crisis stabilization care or acute psychiatric care, but whose impairment in functioning nevertheless renders him or her incapable of adjusting satisfactorily within the general inmate population. Section 945.42(13), F.S.

The DOC is authorized to contract with appropriate entities to provide health services. The DOC is required to work in cooperation with the Mental Health Program Office of the Department of Children and Families to adopt rules necessary for administration of ss. 945.40-945.49, F.S.

Correctional officers employed by a mental health treatment facility must receive specialized training above and beyond basic certification.

An inmate receiving mental health treatment shall be subject to the same standards applied to other inmates in the department, including, but not limited to, consideration for parole, release by reason of gain-time allowances, and release by expiration of sentence.⁸

Procedure for Placement

If an inmate is deemed mentally ill and in need of care and treatment, he or she may be placed in a mental health treatment facility after notice and hearing, and upon recommendation of the warden. The procedure for placement in a mental health treatment facility is as follows:⁹

- The warden files a petition with the court in the county where the inmate is housed. The petition must include the warden's recommendation supported by the expert opinion of a psychiatrist and the second opinion of a psychiatrist or psychological professional.
- A copy of the petition must be served to the inmate, accompanied by a written notice that an inmate may apply to have an attorney appointed if the inmate cannot afford one. The attorney must have access to the inmate and any records that are relevant to the representation of the inmate.
- The hearing must be held in the same county and one of the inmate's physicians at the facility must appear as a witness at the hearing.
- If the inmate is found mentally ill and in need of care, the court must order the inmate be placed in a mental health treatment facility or, if the inmate is at a mental health treatment facility, that he or she be retained there. The court must authorize the facility to retain the inmate for up to six months. If continued placement is necessary, the warden shall apply to the Division of Administrative Hearings, for an order authorizing continued placement.

The current procedure for a hearing on the placement of an inmate in a mental health treatment facility provides:¹⁰

- The court must serve notice on the warden of the facility where the inmate is confined and serve the allegedly mentally ill inmate. The notice must specify the date, time, and place of the hearing; the basis for the allegation of mental illness; and the names of the examining experts. The hearing shall be held within 5 days, and the court may appoint a general or special magistrate to preside. One of the experts whose opinion supported the petition for placement must be present at the hearing.
- If, at the hearing, the court finds that the inmate is mentally ill and in need of care and treatment, the court must order that he or she be placed in a mental health treatment facility. The court must provide a copy of the order and all supporting documentation relating to the

⁸ Section 945.49, F.S.

⁹ Section 945.43(2), F.S.

¹⁰ Section 945.43(3), F.S.

inmate's condition to the warden of the treatment facility. If the court finds that the inmate is not mentally ill, the petition for placement is dismissed.

The court may waive the presence of the inmate at the hearing if it is in the best interests of the inmate and the inmate's counsel does not object. The department may transport the inmate to the location of the hearing if it is not conducted at the facility or electronically.¹¹ The warden of an institution in which a mental health treatment facility is located may refuse to place any inmate in that treatment facility who is not accompanied by adequate court orders and documentation, as required in these sections.¹²

Procedure for Emergency Placement

An inmate may be placed in a mental health treatment facility on an emergency basis if he or she is mentally ill and in immediate need of care and treatment. If such care and treatment cannot be provided at the institution where the inmate is confined, he or she may be placed immediately in a mental health treatment facility accompanied by the recommendation of the warden of the institution where the inmate is confined. The recommendation must state the need for the emergency placement and include a written opinion of a physician verifying the need. Upon placement, the inmate shall be evaluated, if the inmate is determined to be in need of treatment or care, the warden initiates proceedings for placement.¹³

Procedure for Continued Placement

An inmate may be retained in a mental health treatment facility if he or she is mentally ill and continues to be in need of care and treatment. The procedure for continued placement is as follows:

- Prior to expiration of the period in which the inmate is being housed in a mental health treatment facility, the warden must file a petition with the Division of Administrative Hearings accompanied by a statement from the inmate's physician justifying the petition and providing a summary of the inmate's treatment and the individualized plan for the inmate.¹⁴
- Notification is mailed to the inmate, along with a waiver-of-hearing form and the completed petition, requesting the inmate's signature. The waiver-of-hearing form shall require express and informed consent and shall state the inmate is entitled to be represented by an attorney.¹⁵
- The hearing is an administrative hearing and conducted in accordance with ch. 120, F.S.,¹⁶ except that an order entered by the administrative law judge is final and subject to judicial review. An administrative law judge shall be assigned by the Division of Administrative Hearings.¹⁷

¹¹ Section 945.43(3)(a), F.S.

¹² Section 945.43(4), F.S.

¹³ Section 945.44, F.S.

¹⁴ Section 945.45(2)(a), F.S.

¹⁵ If the inmate does not sign the petition, or if the inmate does not sign a waiver within 15 days, the administrative law judge must notice a hearing with regard to the inmate involved in accordance with ss. 120.569 and 120.57(1), F.S.

Section 945.45(2)(b), F.S.

¹⁶ Chapter 120, F.S., provides procedure for all administrative hearings.

¹⁷ Section 945.45(3)(a), F.S.

- If the administrative law judge finds the inmate no longer meets the criteria for placement, the inmate will be transferred out of the mental health treatment facility.¹⁸
- If the inmate waives the hearing or if the administrative law judge finds the inmate is in need of continued placement, the administrative law judge will order continued placement for a period not to exceed one year. This procedure shall be repeated prior to the expiration of each additional one year period.¹⁹

The administrative law judge may appoint a private pro bono attorney in the circuit in which the treatment facility is located to represent the inmate.²⁰ The presence of the inmate at the hearing may be waived if such waiver is consistent with the best interest of the inmate and the inmate's counsel does not object.²¹

Involuntary Placement with Respect to Scheduled Release

If an inmate who is receiving mental health treatment is scheduled for release through expiration of sentence or any other means, but continues to be mentally ill and in need of care and treatment, the warden is authorized to initiate procedures for involuntary placement 60 days prior to release.²² Additionally, the warden may initiate procedures for involuntary examination for any inmate who has a mental illness and meets the criteria under s. 394.463(1), F.S.^{23,24}

The department may transport an individual who is being released from its custody to a receiving or treatment facility for involuntary examination or placement. Transport must be made to a facility specified by the Department of Children and Families, or the nearest receiving facility if not specified.²⁵

Discharge of an Inmate from Mental Health Treatment

An inmate must be discharged from mental health treatment under the following conditions:²⁶

- The inmate is no longer in need of care and treatment, he or she may be transferred out of the mental health treatment facility and provided with appropriate mental health services; or
- If the inmate's sentence expires during his or her treatment, but he or she is no longer in need of care as an inpatient, the inmate may be released with a recommendation for outpatient treatment.

¹⁸ Section 945.45(3)(d), F.S.

¹⁹ Section 945.45(3)(e), F.S.

²⁰ Section 945.45(3)(b), F.S.

²¹ Section 945.45(3)(c), F.S.

²² Section 945.46(1), F.S.

²³ The Florida Mental Health Act finds a person may be ordered for involuntary inpatient placement for treatment if he or she has a mental illness and because of that illness has either refused voluntary placement or is unable to determine whether inpatient placement is necessary and is incapable for surviving alone or with the help of willing friends or family and is likely to suffer from neglect, refuse to take care of themselves, or there is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others.

²⁴ Section 945.46(2), F.S.

²⁵ Section 945.46(3), F.S.

²⁶ Section 945.47(1), F.S.

At any time that an inmate who has received mental health treatment becomes eligible for release under supervision or upon end of sentence, a record of the inmate's mental health treatment may be provided to the Florida Commission on Offender Review and to the Department of Children and Families upon request.²⁷

Involuntary Treatment

An inmate in a mental health treatment facility has the right to receive treatment that is suited to his or her needs and that is provided in a humane psychological environment. Such treatment must be administered skillfully, safely, and humanely with respect for the inmate's dignity and personal integrity. An inmate must be asked to give his or her express and informed written consent for such treatment.²⁸

If an inmate has refused to give express and informed consent for treatment, the warden of the mental health treatment facility must petition the circuit court serving the county in which the facility is located for an order authorizing the treatment of the inmate. The inmate must be provided a copy of the petition along with the proposed treatment, basis for treatment, names of examining experts, and the date, time, and location of the hearing.²⁹

The hearing on the petition for involuntary treatment must be held within five days after the petition is filed. The inmate may have an attorney represent him or her, or if indigent, the court must appoint the office of the public defender. The inmate may testify or not, may cross-examine witnesses testifying on behalf of the facility, and may present his or her own witnesses. The inmate's presence may be waived. One of the inmate's physicians whose opinion supported the petition shall appear as a witness.³⁰

The court must determine by *clear and convincing evidence* whether the inmate is mentally ill, whether such treatment is essential to the care of the inmate, and whether the treatment is experimental or presents an unreasonable risk of serious, hazardous, or irreversible side effects. The court must consider at least the following:³¹

- The inmate's expressed preference regarding treatment;
- The probability of adverse side effects;
- The prognosis for the inmate without treatment; and
- The prognosis for the inmate with treatment.

An order authorizing involuntary treatment authorizes treatment for a period not to exceed 90 days following the date of the order. If the inmate is still in need of treatment, the warden must petition the court for an order authorizing the continuation of treatment for another 90-day

²⁷ Section 945.47(2), F.S.

²⁸ The "right to express and informed consent" as listed in s. 945.48, F.S., means to consent voluntarily given in writing after conscientious and sufficient explanation and disclosure of the purpose of the proposed treatment; common side effects of the treatment, if any; the expected duration of the treatment; and the alternative treatment available. The explanation shall enable the inmate to make a knowing and willful decision without any element of fraud, deceit, or duress or any other form of constraint or coercion. Section 945.48(2), F.S.

²⁹ Section 945.48(3), F.S.

³⁰ Section 945.48(4)(a), F.S.

³¹ Section 945.48(4)(b), F.S.

period. This process is repeated until the inmate provides express and informed consent or is no longer in need of treatment.³²

Emergency Treatment

In an emergency situation in which there is immediate danger to the health and safety of an inmate or other inmates, emergency treatment may be provided at a mental health treatment facility upon the written order of a physician for a period not to exceed 48 hours.

If, after the 48-hour period, the inmate has not given express and informed consent to the treatment initially refused, the warden must petition the circuit court within 48 hours, excluding weekends and legal holidays, for an order authorizing the continued treatment of the inmate.

In the interim, treatment may be continued upon the written order of a physician who has determined that the emergency situation continues to present a danger to the safety of the inmate or others. If an inmate must be isolated for mental health purposes, that decision must be reviewed within 72 hours by a different psychological professional or a physician other than the one making the original placement.³³

Additionally, when the consent of an inmate cannot be obtained, the warden of a mental health treatment facility, or his or her designated representative, with the concurrence of the inmate's attending physician, may authorize emergency surgical or nonpsychiatric medical treatment if deemed lifesaving or there is a situation threatening serious bodily harm to the inmate.³⁴

Health Care Advance Directives

Health care advance directives as defined in ch. 765, F.S., do not directly address inmates in custody of the DOC.

III. Effect of Proposed Changes:

The bill revises ss. 945.40-945.49, F.S., the Corrections Mental Health Act to provide updated, clarifying, or technical language, as well as, provide substantial changes to the procedure for placement and treatment of inmates.

The bill amends s. 945.41, F.S., to revise legislative intent by clarifying technical language in regards to inmates *who have a mental illness* and provide that services received by those inmates are offered as outpatient and inpatient mental health treatment and services. The DOC is authorized to purchase treatment materials and equipment, and contract with entities, persons, or agencies qualified to provide mental health treatment and services to support inmate rehabilitation.

Inmates in the custody of the DOC must be offered the opportunity to participate in the development of a written individualized treatment plan. The bill requires that inmates who have mental illnesses that require intensive mental health inpatient treatment or services be offered an

³² Section 945.48(4)(c), F.S.

³³ Section 945.48(5), F.S.

³⁴ Section 945.48(6), F.S.

inpatient setting designated for that purpose, and inmates who require intensive hospitalization to be transferred to a DOC mental health treatment facility. Inmates must be offered the least restrictive appropriate available treatment and services based on their assessed needs and best interests.

A mentally competent inmate must give his or her express and informed consent³⁵ for mental health treatment. The bill requires that before such consent is given, details of treatment must be explained in plain language to the inmate and that any consent given for treatment may be revoked orally or in writing before or during the treatment by the inmate or a person legally authorized to make those health care decisions. Inmates who are incompetent to consent must receive treatment deemed necessary for their appropriate care and for the safety of the inmate or others. The bill authorizes nonpsychiatric, emergency surgical treatment or routine medical treatment for an inmate placed in a mental health treatment facility when the express and informed consent cannot be obtained or the inmate is incompetent to consent to treatment if such treatment is deemed lifesaving or there is a situation threatening serious bodily harm to the inmate.

The bill amends s. 945.42, F.S., to define the terms “chief,”³⁶ “express and informed consent,”³⁷ “gravely disabled,”³⁸ “incompetent to consent to treatment,”³⁹ “involuntary examination,”⁴⁰ “likelihood of serious harm,”⁴¹ and treatment,⁴² and removes the definition and procedure for inmates that are “in immediate need of care and treatment.”

³⁵ The following is required to be explained in plain language: the proposed treatment, purpose of the treatment, the common risks, benefits, and side effects of treatment and specific dosage of medication if applicable, alternative treatment modalities, the approximate length of treatment, the potential effects of stopping treatment, and how treatment will be monitored.

³⁶ “Chief” means the Chief of Mental Health Services of the Department of Corrections or his or her designee.

³⁷ “Express and informed consent” means consent voluntarily given in writing, by a competent inmate, after sufficient explanation and disclosure of the subject matter involved, to enable the inmate to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

³⁸ “Gravely disabled” means a condition in which an inmate, as a result of a diagnosed mental illness is either in danger of serious physical harm resulting from the inmates failure to provide for his or her essential physical needs of food, clothing, hygiene, health, or safety without the assistance of others, or experiencing a substantial deterioration in behavioral functioning evidenced by the inmate’s unremitting decline in volitional control over his or her actions.

³⁹ “Incompetent to consent to treatment” means a state in which an inmate’s judgement is so affected by mental illness that he or she lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment and services. The term only refers to an inmate’s inability to provide express and informed consent for medical and mental health treatment and services.

⁴⁰ “Involuntary examination” means a psychiatric examination performed at a mental health treatment facility to determine whether an inmate should be placed in the mental health treatment facility for inpatient mental health treatment and services.

⁴¹ “Likelihood of serious harm” means the following: a substantial risk that the inmate will inflict serious physical harm upon his or her own person, as evidenced by threats or attempts to commit suicide or the actual infliction of serious physical harm on self; a substantial risk that the inmate will inflict physical harm upon another person, as evidenced by behavior which has caused such harm or which places any person in reasonable fear of sustaining such harm; or a reasonable degree of medical certainty that the inmate will suffer serious physical or mental harm as evidenced by the inmate’s recent behavior demonstrating an inability to refrain from engaging in self-harm behavior.

⁴² “Treatment” means psychotropic medication prescribed by a medical practitioner licensed pursuant to ch. 458 or 459, F.S., including those laboratory tests and related medical procedures that are essential for the safe and effective administration of psychotropic medication and psychological interventions and services such as group and individual psychotherapy, activity therapy, recreational therapy, and music therapy.

Involuntary Examination

The bill substantially rewords s. 945.43, F.S., to provide a process for involuntary examination. An inmate's treating clinician may refer the inmate to a mental health facility for an involuntary examination if there is reason to believe the inmate has a mental illness and is in need of care and treatment. Upon arrival, the inmate must be examined by a psychiatrist and a second psychiatrist or psychological professional to determine whether the inmate is in need of care and treatment. If there is a need for treatment, the psychiatrist will propose a recommended course of treatment and the warden will initiate proceedings for placement and for involuntary treatment as specified in s. 945.44, F.S.

If the inmate is not in need of care and treatment, the inmate must be transferred out of the mental health treatment facility and provided with appropriate mental health services.

The involuntary exam and initiation of court proceedings must be completed within 10 calendar days after arrival.

The inmate may remain in the mental health treatment facility pending a hearing after the timely filing of a petition as described in s. 945.44, F.S. Pending such, necessary treatment may be provided as described in s. 945.44, F.S.

Placement and Treatment of an Inmate in a Mental Health Treatment Facility

The bill substantially rewords s. 945.44, F.S., to provide the criteria, hearing procedures for petitions, orders for treatment, status hearings, copies of orders, and dismissal of petitions relating to the placement and treatment of an inmate in a mental health treatment facility.

This bill authorizes the DOC to place an inmate in a mental health treatment facility if he or she is mentally ill and is in need of care and treatment. An inmate may receive involuntary mental health treatment that is deemed to be essential for the appropriate care and safety of the inmate or others if the inmate is either gravely disabled or presents a likelihood of serious harm.

An inmate may be placed and involuntarily treated in a mental health treatment facility after notice and hearing. The procedure for petitions for placement and treatment is as follows:

- The warden must petition the court for an order authorizing the placement and treatment. Such petition must be supported by the expert opinion of at least one of the inmate's treating psychiatrists.
- The inmate must be provided with a copy of the petition, and other specified information.
- A hearing may be conducted electronically, in person at the facility, or at another location designated by the court after considering public safety and security concerns. Such hearing must be held as expeditiously as possible after the petition is filed, but no later than 14 calendar days after filing.
- The inmate is entitled to have an attorney and the court may appointment the public defender or private counsel to represent an indigent inmate.

The bill provides that the court must find by clear and convincing evidence that the inmate is mentally ill and in need of care and treatment in order to place the inmate in a mental health

treatment facility. The bill provides the court must make additional specified findings to administer treatment.

The bill authorizes status hearings and the continuation of placement until an inmate is no longer in need of care and treatment. The bill authorizes the court to dismiss the petition and transfer the inmate out of the mental health treatment facility if the criteria for placement and treatment are not satisfied.

The bill repeals s. 945.45, F.S., relating to the continued placement of inmates in mental health facilities. Language pertaining to continued placement is described in s. 945.44, F.S., under the bill.

Initiation of Involuntary Placement Proceedings with Inmates Scheduled for Release

The bill amends s. 945.46, F.S., to provide the process for involuntary placement when an inmate continues to be mentally ill and in need of care and treatment but is scheduled for release.

The warden must file a petition for involuntary inpatient placement for inmates scheduled to be released in the court in the county where the inmate is located. Upon filing, the clerk must provide copies of the petition to the Department of Children and Families, the inmate, the state attorney and the public defender. The bill adds language to ensure a fee may not be charged for the filing of the petition.

The bill requires within one court working day after the filing of the petition for a public defender to be appointed, unless the inmate is otherwise represented. The state attorney for the circuit in which the inmate is located will represent the state in these proceedings rather than the warden. The bill provides the proceedings are governed by ch. 394, F.S.

The court may order that the hearing be conducted by electronic means, at the facility in person, or at another location.

Discharge of an Inmate from Mental Health Treatment

The bill substantially rewords s. 945.47, F.S., to specify that at any time an inmate who has received mental health treatment while in the custody of the DOC becomes eligible for release, a record of the treatment may be provided to the Florida Commission on Offender Review and the Department of Children and Families *for the purpose of arranging post release aftercare placement and to prospective recipient inpatient health care or residential facilities* upon request.

Emergency Treatment Orders and Use of Force

The bill amends s. 945.48, F.S., to authorize the DOC to involuntarily administer psychotropic medication to an inmate on an emergency basis without following the procedure outlined in s. 945.43, F.S. Psychotropic medication may be administered only when the medication constitutes an appropriate treatment for a mental illness and its symptoms and alternative treatments are not available or indicated, or would not be effective.

An emergency exists when the inmate with a mental illness presents an immediate threat of:

- Bodily harm to self or others; or
- Extreme deterioration in behavior functioning secondary to the mental illness.

The bill authorizes the administration of psychotropic medication not to exceed 72 hours, after which the treating physician must refer the inmate for an involuntary examination in accordance with s. 945.43 and s. 945.44, F.S. The warden must transfer the inmate to a mental health treatment facility within 48 hours, excluding weekends and legal holidays.

The DOC may use force when and to the extent that it reasonably appears necessary to effectuate the treatment, effectuate clinically necessary hygiene of an inmate, for the application of physical restraint, or pursuant to a valid court order.

Management and Treatment of Self-Injurious Behaviors

The bill creates s. 945.485, F.S., to provide procedures for when an inmate is engaging in active or ongoing self-injurious behavior and has refused to provide express and informed consent.

If an inmate is determined incompetent to consent to treatment, the inmate's treating physician is required to proceed as set forth in s. 945.6042, F.S. The bill provides proceedings for when an inmate is competent, refusing necessary surgical or medical treatment, and engaging in active or ongoing self-injurious behavior that presents a threat to the safety of the DOC staff or other inmates or the security, internal order, or discipline of the institution.

The warden must petition the court for an order compelling the inmate to submit to intervention to the extent necessary to remedy the threat. An inmate must be provided with a copy of the petition and other specified information. The inmate is entitled to representation and the court may appoint the public defender or private counsel to represent the inmate. The hearing must be held as expeditiously as possible, but no later than five calendar days after filing.

The bill provides considerations for the court and requires the court to determine whether the warden has established by clear and convincing evidence that the state interest is sufficient to outweigh the inmate's right to refuse treatment.

Inmate Health Care Advance Directives

The bill creates s. 945.6042, F.S., to provide the DOC must offer inmates an opportunity to sign an advance health care directive. The bill provides definitions for "health care facility,"⁴³

⁴³ "Health care facility" has the same meaning as in s. 765.101, F.S., and includes any correctional institution or facility where health care is provided.

“incapacity,”⁴⁴ “informed consent,”⁴⁵ “inmate,”⁴⁶ ombudsman⁴⁷, proxy⁴⁸, and proxy review team.⁴⁹

The bill provides procedure relating to the capacity of an inmate. An inmate’s treating physician must evaluate the inmate’s capacity and enter the evaluation in the inmate’s medical record if the inmate lacks capacity. A second opinion is required if the evaluating physician has a question as to whether the inmate lacks capacity and both evaluations must be entered in the medical record. Incapacity cannot be inferred from an inmate’s involuntary hospitalization for mental illness or from his or her intellectual disability.

If the inmate is found to be incapacitated and has a designated health care surrogate in accordance with ch. 765, F.S., the surrogate must be notified. If the inmate has not designated a health care surrogate, the facility must appoint a proxy to make health care decisions.

The bill requires the DOC to provide each inmate written information concerning advance directives and necessary forms to execute an advance directive, and document such in the inmate’s medical records. An advance directive may be amended or revoked at any time by a competent inmate through various means such as written and spoken communication.

If the inmate has not designated a health care surrogate, health care decisions may be made for the inmate by any individuals specified in the priority order provided in s. 765.401(1)(a)-(g), F.S.,⁵⁰ as a proxy. If there are no individuals available, willing, or competent, the warden must notify the Assistant Secretary for Health Services or designee to appoint a DOC ombudsman to serve as a proxy until the inmate regains capacity or is no longer incarcerated in the custody of the DOC. The proxy must make any health care decision based on informed consent and that the proxy reasonable believes the inmate would have made that decision. If there is no indication of what decision the inmate would make, the proxy may consider the inmate’s best interests.

⁴⁴ “Incapacity” or “Incompetent” means an inmate is physically or mentally unable to communicate a willful and knowing health care decision.

⁴⁵ “Informed consent” means consent voluntarily given by an inmate after a sufficient explanation and disclosure of the subject matter involved to enable the inmate to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the proposed treatment or procedures, and to make a knowing health care decision without coercion or undue influence.

⁴⁶ “Inmate” means any person committed to the custody of the DOC.

⁴⁷ “Ombudsman” means an individual designated and specifically trained by the department to identify conditions that may pose a threat to the rights, health, safety, and welfare of inmates in a health care facility and who may be appointed to serve as a proxy for an inmate who is physically or mentally unable to communicate a willful and knowing health care decision.

⁴⁸ “Proxy” means a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated inmate, but who, nevertheless, is authorized pursuant to s. 765.401, F.S., to make health care decisions for such inmate.

⁴⁹ “Proxy review team” means a team of at least five members, appointed by the Assistant Secretary for Health Services. The team is composed of, at a minimum, one physician licensed pursuant to ch. 458 or ch. 459, F.S., one psychologist licensed pursuant to ch. 490, F.S., one nurse licensed pursuant to ch. 464, F.S., and one department chaplain.

⁵⁰ A judicially appointed guardian; spouse; adult child of the patient or a majority of adult children; a parent; the adult sibling or a majority of the adult siblings; an adult relative who has exhibited special care and concern and has maintained regular contact and is familiar with the patients activities, health, and religious or moral beliefs; or a close friend is authorized under this section to make health care decisions.

The bill authorizes the use of force to administer medical treatment only by or under the clinical supervision of a physician or his or her designee and provides immunity from liability for a DOC health care provider, ombudsman, or other employees who act under the direction of a health care provider.

The bill amends s. 945.49, F.S., to remove the requirement for the DOC to work in cooperation with the Mental Health Program Office of the Department of Children and Families to adopt rules necessary to administer sections under the Corrections Mental Health Act.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

While this bill may have a workload impact on the Department of Corrections due to an increase in mental health services and treatment as well as transporting inmates to

facilities to meet those needs, the department reports that it will not have a fiscal impact to the agency.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 945.41, 945.42, 945.43, 945.44, 945.46, 945.47, 945.48, and 945.49.

This bill creates the following sections of the Florida Statutes: 945.485 and 945.6042.

This bill repeals section 945.45 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁵¹ Department of Corrections, *2024 Agency Legislative Bill Analysis, SB 1284*, January 19, 2024.