

By Senator Martin

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1                                   A bill to be entitled  
2       An act relating to health care for inmates; amending  
3       s. 945.41, F.S.; revising and providing legislative  
4       intent; providing construction; providing for  
5       individual dignity and treatment; providing for  
6       express and informed consent and emergency medical  
7       treatment; amending s. 945.42, F.S.; defining,  
8       revising, and deleting terms; amending s. 945.43,  
9       F.S.; substantially rewording provisions concerning  
10      involuntary examinations of inmates and providing  
11      requirements therefor; amending s. 945.44, F.S.;  
12      substantially rewording provisions relating to  
13      placement and treatment of an inmate in a mental  
14      health treatment facility and providing requirements  
15      therefor; repealing s. 945.45, F.S., relating to  
16      continued placement of inmates in mental health  
17      treatment facilities; amending s. 945.46, F.S.;  
18      providing requirements for filing petitions for  
19      involuntary inpatient placement for certain inmates;  
20      authorizing the court to order alternative means and  
21      venues for certain hearings; requiring, rather than  
22      authorizing, inmates to be transported to the nearest  
23      receiving facility in certain circumstances; amending  
24      s. 945.47, F.S.; specifying purposes for which an  
25      inmate's mental health treatment records may be  
26      provided to the Florida Commission on Offender Review  
27      and the Department of Children and Families;  
28      authorizing such records to be provided to certain  
29      facilities upon request; amending s. 945.48, F.S.;

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30 substantially rewording provisions relating to  
31 emergency treatment orders and use of force and  
32 providing requirements therefor; providing  
33 requirements for emergency and psychotropic  
34 medications and use of force; creating s. 945.485,  
35 F.S.; providing legislative findings; providing  
36 requirements for management and treatment for self-  
37 injurious behaviors; requiring facility wardens to  
38 consult with an inmate's treating physician in certain  
39 circumstances and make certain determinations;  
40 providing for petitions to compel an inmate to submit  
41 to medical treatment in certain circumstances;  
42 providing construction; amending s. 945.49, F.S.;  
43 deleting a requirement that the Department of  
44 Corrections adopt certain rules in cooperation with  
45 the Mental Health Program Office of the Department of  
46 Children and Families; creating s. 945.6042, F.S.;  
47 providing definitions; providing legislative findings  
48 and intent; providing requirements for inmate  
49 capacity, health care advance directives, and proxies;  
50 authorizing use of force on incapacitated inmates in  
51 certain circumstances; providing immunity from  
52 liability for certain persons in certain  
53 circumstances; providing an effective date.

54  
55 Be It Enacted by the Legislature of the State of Florida:

56  
57 Section 1. Section 945.41, Florida Statutes, is amended to  
58 read:

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59           945.41 Mental health treatment for inmates; legislative  
60 intent of ss. 945.40-945.49.—

61           (1) INTENT.—It is the intent of the Legislature that:

62           (a) ~~mentally ill~~ Inmates in the custody of the department  
63 who have a mental illness ~~of Corrections~~ receive an evaluation  
64 and appropriate treatment for their mental illness through a  
65 continuum of outpatient and inpatient mental health treatment  
66 and services.

67           (b) The department is authorized to purchase treatment  
68 materials and equipment to support inmate rehabilitation; to  
69 ameliorate disabling mental symptoms associated with impairment  
70 in behavioral functioning, sensory and motor skills, and impulse  
71 control; and to improve adaptive coping skills consistent with  
72 the department's jurisdiction as defined in s. 945.025.

73           (c) Sections 945.40-945.49 do not supplement, amend, or  
74 change the responsibilities of the Department of Children and  
75 Families pursuant to chapter 916, the Forensic Client Services  
76 Act, which governs forensic services for persons who are  
77 incompetent to proceed as defined in s. 916.106.

78           (2) INDIVIDUAL DIGNITY AND TREATMENT.—

79           (a) An inmate in the custody of the department shall be  
80 offered treatment that is suited to his or her needs as  
81 determined by health care staff and that is provided in a humane  
82 psychological environment. Such treatment shall be administered  
83 skillfully, safely, and humanely with respect for the inmate's  
84 dignity and personal integrity.

85           (b) The department shall provide mental health treatment  
86 and services to inmates and may contract with any entities,  
87 persons, or agencies qualified to provide such treatment and

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88 services.

89 (c) Inmates receiving mental health treatment and services  
90 shall be offered the opportunity to participate in the  
91 development of a written individualized treatment plan and  
92 provided a copy of such plan before its implementation. ~~It is~~  
93 further the intent of the Legislature that:

94 (d) ~~(1)~~ Inmates in the custody of the department who have  
95 mental illnesses that require hospitalization and intensive  
96 mental health ~~psychiatric~~ inpatient treatment and services or  
97 care shall be offered ~~receive~~ appropriate treatment or care in  
98 an inpatient setting ~~Department of Corrections mental health~~  
99 ~~treatment facilities~~ designated for that purpose. Inmates who  
100 have mental illnesses that require intensive hospitalization-  
101 level mental health inpatient treatment and services shall be  
102 transferred to a department mental health treatment facility  
103 designated for that purpose ~~The Department of Corrections shall~~  
104 ~~provide mental health services to inmates committed to it and~~  
105 ~~may contract with any entities, persons, or agencies qualified~~  
106 ~~to provide such services.~~

107 (e) ~~(2)~~ Mental health treatment facilities shall be secure  
108 and adequately equipped and staffed for the provision of mental  
109 health treatment and services. Inmates shall be offered the  
110 least restrictive appropriate available treatment and services  
111 based on their assessed needs and best interests and consistent  
112 with improvement of their condition for facilitation of  
113 appropriate adjustment within the correctional environment and  
114 that, to the extent possible, such services be provided in the  
115 least restrictive manner consistent with optimum improvement of  
116 the inmate's condition.

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117 (3) EXPRESS AND INFORMED CONSENT.—

118 (a) A mentally competent inmate offered mental health  
119 treatment within the department shall give his or her express  
120 and informed consent for such treatment. Before giving such  
121 consent, the following information shall be provided and  
122 explained in plain language to the inmate:

123 1. The proposed treatment.

124 2. The purpose of the treatment.

125 3. The common risks, benefits, and side effects of the  
126 treatment and the specific dosage range for a medication, if  
127 applicable.

128 4. Alternative treatment modalities.

129 5. The approximate length of treatment.

130 6. The potential effects of stopping treatment.

131 7. How treatment will be monitored.

132 8. That any consent given for treatment may be revoked  
133 orally or in writing before or during the treatment period by  
134 the inmate or by a person legally authorized to make health care  
135 decisions on behalf of the inmate.

136 (b) Inmates who are determined to be incompetent to consent  
137 to treatment shall receive treatment deemed to be necessary for  
138 their appropriate care and for the safety of the inmate or  
139 others in accordance with the procedures established in ss.  
140 945.40-945.49.

141 (4)~~(3)~~ PAROLE.—Inmates who are transferred to any facility  
142 for the purpose of mental health treatment and services shall be  
143 given consideration for parole and be eligible for release by  
144 reason of gain-time allowances as provided in s. 944.291 and  
145 release by expiration of sentence, consistent with guidelines

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146 established for that purpose by the department.

147 (5) ~~(4)~~ YOUTHFUL OFFENDERS.—Any inmate sentenced as a  
148 youthful offender, or designated as a youthful offender by the  
149 department under chapter 958, who is transferred pursuant to  
150 this act to a mental health treatment facility shall be  
151 separated from other inmates, if necessary, as determined by the  
152 warden of the mental health treatment facility.

153 (6) ~~(5)~~ TREATMENT FACILITIES.—The department may designate  
154 mental health treatment facilities for adult, youthful, and  
155 female offenders or may contract with other appropriate  
156 entities, persons, or agencies for such services.

157 (7) EMERGENCY MEDICAL TREATMENT.—Notwithstanding any other  
158 provision of this section, when the express and informed consent  
159 of an inmate placed in a mental health treatment facility in  
160 accordance with s. 945.44 cannot be obtained or the inmate is  
161 incompetent to consent to treatment, the warden of a mental  
162 health treatment facility, or his or her designated  
163 representative, under the direction of the inmate's attending  
164 physician, may authorize nonpsychiatric, emergency surgical  
165 treatment or other routine medical treatment if such treatment  
166 is deemed lifesaving or there is a situation threatening serious  
167 bodily harm to the inmate.

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

170 945.42 Definitions; ss. 945.40-945.49.—As used in ss.  
171 945.40-945.49, the following terms shall have the meanings  
172 ascribed to them, unless the context shall clearly indicate  
173 otherwise:

174 (1) "Chief" means the Chief of Mental Health Services of

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175 the Department of Corrections or his or her designee.

176 (2)~~(1)~~ "Court" means the circuit court.

177 (3)~~(2)~~ "Crisis stabilization care" means an inpatient a  
178 level of care that is less restrictive and intensive ~~intense~~  
179 than care provided in a mental health treatment facility, that  
180 includes a broad range of evaluation and treatment and services  
181 provided within a secure and highly structured residential  
182 setting ~~or locked residential setting~~, and that is intended for  
183 inmates who are experiencing acute psychological ~~emotional~~  
184 distress and who cannot be adequately evaluated and treated in a  
185 transitional care unit or infirmary isolation management room.  
186 Such treatment and services are ~~is also~~ more intense than  
187 treatment and services provided in a transitional care unit and  
188 are ~~is~~ devoted principally toward rapid stabilization of acute  
189 symptoms and conditions.

190 (4)~~(3)~~ "Department" means the Department of Corrections.

191 (5) "Express and informed consent" means consent  
192 voluntarily given in writing, by a competent inmate, after  
193 sufficient explanation and disclosure of the subject matter  
194 involved, to enable the inmate to make a knowing and willful  
195 decision without any element of force, fraud, deceit, duress, or  
196 other form of constraint or coercion.

197 (6) "Gravely disabled" means a condition in which an  
198 inmate, as a result of a diagnosed mental illness, is:

199 (a) In danger of serious physical harm resulting from the  
200 inmate's failure to provide for his or her essential physical  
201 needs of food, clothing, hygiene, health, or safety without the  
202 assistance of others; or

203 (b) Experiencing a substantial deterioration in behavioral

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204 functioning evidenced by the inmate's unremitting decline in  
205 volitional control over his or her actions.

206 (7) "Incompetent to consent to treatment" means a state in  
207 which an inmate's judgment is so affected by mental illness that  
208 he or she lacks the capacity to make a well-reasoned, willful,  
209 and knowing decision concerning his or her medical or mental  
210 health treatment and services. The term is distinguished from  
211 the term "incompetent to proceed," as defined in s. 916.106, and  
212 only refers to an inmate's inability to provide express and  
213 informed consent for medical or mental health treatment and  
214 services.

215 ~~(4) "Director" means the Director for Mental Health~~  
216 ~~Services of the Department of Corrections or his or her~~  
217 ~~designee.~~

218 ~~(5) "In immediate need of care and treatment" means that an~~  
219 ~~inmate is apparently mentally ill and is not able to be~~  
220 ~~appropriately cared for in the institution where he or she is~~  
221 ~~confined and that, but for being isolated in a more restrictive~~  
222 ~~and secure housing environment, because of the apparent mental~~  
223 ~~illness:~~

224 ~~(a)1. The inmate is demonstrating a refusal to care for~~  
225 ~~himself or herself and without immediate treatment intervention~~  
226 ~~is likely to continue to refuse to care for himself or herself,~~  
227 ~~and such refusal poses an immediate, real, and present threat of~~  
228 ~~substantial harm to his or her well-being; or~~

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



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233 ~~(b) The inmate is unable to determine for himself or~~  
234 ~~herself whether placement is necessary; and~~

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

238 (8)~~(6)~~ "In need of care and treatment" means that an inmate  
239 has a mental illness for which inpatient services in a mental  
240 health treatment facility are necessary and ~~that, but for being~~  
241 ~~isolated in a more restrictive and secure housing environment,~~  
242 because of the mental illness:

243 (a) But for being isolated in a more restrictive and secure  
244 housing environment:

245 1. The inmate is demonstrating a refusal to care for  
246 himself or herself and without treatment is likely to continue  
247 to refuse to care for himself or herself, and such refusal poses  
248 a real and present threat of substantial harm to his or her  
249 well-being.~~;~~ ~~or~~

250 2. There is a substantial likelihood that in the near  
251 future, without treatment, the inmate will inflict serious  
252 bodily harm on himself or herself or another person, as  
253 evidenced by recent behavior causing, attempting, or threatening  
254 such harm.~~;~~

255 (b) The inmate is incompetent to consent to treatment and  
256 is unable or is refusing to provide express and informed consent  
257 to treatment.

258 ~~(c)~~~~(b)~~ The inmate is unable to determine for himself or  
259 herself whether placement is necessary.~~;~~ ~~and~~

260 (d)~~(e)~~ All available less restrictive treatment  
261 alternatives that would offer an opportunity for improvement of

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262 the inmate's condition have been clinically determined to be  
263 inappropriate.

264 (9)~~(7)~~ "Inmate" means any person committed to the custody  
265 of the department ~~of Corrections~~.

266 (10) "Involuntary examination" means a psychiatric  
267 examination performed at a mental health treatment facility to  
268 determine whether an inmate should be placed in the mental  
269 health treatment facility for inpatient mental health treatment  
270 and services.

271 (11) "Likelihood of serious harm" means:

272 (a) A substantial risk that the inmate will inflict serious  
273 physical harm upon his or her own person, as evidenced by  
274 threats or attempts to commit suicide or the actual infliction  
275 of serious physical harm on self;

276 (b) A substantial risk that the inmate will inflict  
277 physical harm upon another person, as evidenced by behavior  
278 which has caused such harm or which places any person in  
279 reasonable fear of sustaining such harm; or

280 (c) A reasonable degree of medical certainty that the  
281 inmate will suffer serious physical or mental harm as evidenced  
282 by the inmate's recent behavior demonstrating an inability to  
283 refrain from engaging in self-harm behavior.

284 (12)~~(8)~~ "Mental health treatment facility" means any  
285 extended treatment or hospitalization-level unit within the  
286 corrections system which the Assistant Secretary for Health  
287 Services of the department specifically designates by rule to  
288 provide acute mental health ~~psychiatric~~ care and which may  
289 include involuntary treatment and therapeutic intervention in  
290 contrast to less intensive levels of care such as outpatient

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291 mental health care, transitional mental health care, or crisis  
292 stabilization care. The term does not include a forensic  
293 facility as defined in s. 916.106.

294 (13)-(9) "Mental illness" or "mentally ill" means an  
295 impairment of the mental or emotional processes that exercise  
296 conscious control of one's actions or of the ability to perceive  
297 or understand reality, which impairment substantially interferes  
298 with the person's ability to meet the ordinary demands of  
299 living. However, for the purposes of transferring an inmate to a  
300 mental health treatment facility, the term does not include a  
301 developmental disability as defined in s. 393.063, simple  
302 intoxication, or conditions manifested only by antisocial  
303 behavior or substance abuse addiction. However, an individual  
304 who is developmentally disabled may also have a mental illness.

305 (14)-(10) "Psychiatrist" means a medical practitioner  
306 licensed pursuant to chapter 458 or chapter 459 ~~who has~~  
307 ~~primarily diagnosed and treated nervous and mental disorders~~ for  
308 a period of not less than 3 years inclusive of psychiatric  
309 residency.

310 (15)-(11) "Psychological professional" means a behavioral  
311 practitioner who has an approved doctoral degree in psychology  
312 as defined in s. 490.003(3)(b) ~~s. 490.003(3)~~ and is employed by  
313 the department or who is licensed as a psychologist pursuant to  
314 chapter 490.

315 (16)-(12) "Secretary" means the Secretary of Corrections.

316 (17)-(13) "Transitional mental health care" means a level of  
317 care that is more intensive than outpatient care, but less  
318 intensive than crisis stabilization care, and is characterized  
319 by the provision of traditional mental health treatment and

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320 services ~~treatments~~ such as group and individual therapy,  
321 activity therapy, recreational therapy, and psychotropic  
322 medications in the context of a secure, structured residential  
323 setting. Transitional mental health care is indicated for an  
324 inmate ~~a person~~ with chronic or residual symptomatology who does  
325 not require crisis stabilization care or acute mental health  
326 ~~psychiatric~~ care, but whose impairment in functioning  
327 nevertheless renders him or her incapable of adjusting  
328 satisfactorily within the general inmate population.

329 (18) "Treatment" means psychotropic medications prescribed  
330 by a medical practitioner licensed pursuant to chapter 458 or  
331 chapter 459, including those laboratory tests and related  
332 medical procedures that are essential for the safe and effective  
333 administration of a psychotropic medication and psychological  
334 interventions and services such as group and individual  
335 psychotherapy, activity therapy, recreational therapy, and music  
336 therapy. The term does not include forensic services for inmate  
337 defendants who are incompetent to proceed as defined in s.  
338 916.106.

339 (19) ~~(14)~~ "Warden" means the warden of a state corrections  
340 facility or his or her designee.

341 Section 3. Section 945.43, Florida Statutes, is amended to  
342 read:

343 (Substantial rewording of section. See  
344 s. 945.43, F.S., for present text.)

345 945.43 Involuntary examination.-

346 (1) If there is reason to believe that an inmate has a  
347 mental illness and the inmate is in need of care and treatment,  
348 the inmate's treating clinician may refer the inmate to a mental

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349 health treatment facility for an involuntary examination. Upon  
350 referral, the warden of the facility where the inmate is housed  
351 shall transfer the inmate to a mental health treatment facility.

352 (2) Upon arrival to the mental health treatment facility,  
353 the inmate shall be examined by a psychiatrist and a second  
354 psychiatrist or psychological professional to determine whether  
355 the inmate is in need of care and treatment.

356 (3) If, after the examination, the inmate is determined to  
357 be in need of care and treatment, the psychiatrist shall propose  
358 a recommended course of treatment that is essential to the care  
359 of the inmate and the warden shall initiate proceedings for  
360 placement of the inmate in the mental health treatment facility  
361 and for involuntary treatment of the inmate as specified in s.  
362 945.44. If the inmate is not in need of care and treatment, he  
363 or she shall be transferred out of the mental health treatment  
364 facility and provided with appropriate mental health services.

365 (4) The involuntary examination and initiation of court  
366 proceedings for the placement and applicable involuntary  
367 treatment of the inmate in the mental health treatment facility  
368 shall be completed within 10 calendar days after arrival.

369 (5) The inmate may remain in the mental health treatment  
370 facility pending a hearing after the timely filing of a petition  
371 as described in s. 945.44. Pending a hearing, necessary  
372 emergency treatment may be provided in the mental health  
373 treatment facility upon the written order of a physician as  
374 provided in s. 945.48.

375 Section 4. Section 945.44, Florida Statutes, is amended to  
376 read:

377 (Substantial rewording of section. See

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378 s. 945.44, F.S., for present text.)

379 945.44 Placement and treatment of an inmate in a mental  
380 health treatment facility.-

381 (1) CRITERIA.-An inmate may be placed in a mental health  
382 treatment facility if he or she is mentally ill and is in need  
383 of care and treatment. Involuntary mental health treatment that  
384 is deemed to be essential for the appropriate care of the inmate  
385 and the safety of the inmate or others may be provided at the  
386 mental health treatment facility if the inmate is either gravely  
387 disabled or presents a likelihood of serious harm.

388 (2) HEARING PROCEDURES FOR PETITIONS FOR PLACEMENT AND  
389 TREATMENT.-

390 (a) An inmate may be placed and involuntarily treated in a  
391 mental health treatment facility after notice and hearing upon  
392 the recommendation of the warden of the facility where the  
393 inmate is confined. The warden of the institution where the  
394 mental health treatment facility is located shall petition the  
395 circuit court serving the county for an order authorizing the  
396 placement and treatment of the inmate. The petition must be  
397 supported by the expert opinion of at least one of the inmate's  
398 treating psychiatrists.

399 (b) The inmate shall be provided with a copy of the  
400 petition along with the proposed treatment, the basis for the  
401 proposed treatment, the names of the examining experts, and the  
402 date, time, and location of the hearing. After considering the  
403 public safety and security concerns presented by transporting  
404 the inmate or in conducting onsite hearings, the court may order  
405 that the hearing be conducted by electronic means or in person  
406 at the facility or at another location designated by the court.

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407 If the hearing is ordered by the court to be conducted at a  
408 location other than the facility, the department is authorized  
409 to transport the inmate to the location of the hearing.

410 (c) The inmate may have an attorney represent him or her at  
411 the hearing, and, if the inmate is indigent, the court shall  
412 appoint the office of the public defender or private counsel  
413 pursuant to s. 27.40(1) to represent the inmate at the hearing.  
414 An attorney representing the inmate shall have access to the  
415 inmate and any records, including medical or mental health  
416 records, which are relevant to the representation of the inmate.

417 (d) The hearing on the petition for involuntary placement  
418 and treatment shall be held as expeditiously as possible after  
419 the petition is filed, but no later than 14 calendar days after  
420 filing. The court may appoint a general or special magistrate to  
421 preside. The inmate may testify or not, as he or she chooses,  
422 may cross-examine witnesses testifying on behalf of the  
423 facility, and may present his or her own witnesses.

424 (e) The court may waive the presence of the inmate at the  
425 hearing if the waiver is consistent with the best interests of  
426 the inmate and the inmate's counsel does not object. One of the  
427 inmate's physicians whose opinion supported the petition shall  
428 appear as a witness at the hearing.

429 (f) If the court finds by clear and convincing evidence  
430 that the inmate is mentally ill and in need of care and  
431 treatment, the court shall order that he or she be placed in the  
432 mental health treatment facility for a period not to exceed 6  
433 months.

434 (g) On the issue of whether the court should authorize  
435 treatment for which an inmate is unable or has refused to

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436 provide express and informed consent, the court shall determine  
437 by clear and convincing evidence whether:

438 1. The inmate is mentally ill.

439 2. The treatment is essential to the care of the inmate.

440 3. The treatment is not experimental and does not present  
441 an unreasonable risk of serious, hazardous, or irreversible side  
442 effects.

443 4. The inmate is gravely disabled or poses a likelihood of  
444 serious harm.

445 5. The inmate is incompetent to consent to treatment.

446 (h) The court must consider at least all of the following:

447 1. The inmate's expressed preference regarding treatment,  
448 if the inmate is able to express a preference.

449 2. The probability of adverse side effects.

450 3. The prognosis for the inmate without treatment.

451 4. The prognosis for the inmate with treatment.

452 (3) ORDERS FOR TREATMENT.—If the court finds by clear and  
453 convincing evidence that the inmate is mentally ill and that the  
454 inmate meets the criteria in subsection (2), the court shall  
455 order that the inmate be involuntarily treated for a period not  
456 to exceed 6 months, concurrent with an order for placement in  
457 the mental health treatment facility.

458 (4) STATUS HEARINGS AND CONTINUING JURISDICTION.—An order  
459 authorizing involuntary placement and treatment shall allow such  
460 placement and treatment for a period not to exceed 6 months  
461 following the date of the order. Unless the court is notified in  
462 writing that the inmate has been discharged from the mental  
463 health treatment facility because he or she is no longer in need  
464 of care and treatment, has been transferred to another



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465 institution of the department, or has been released from the  
466 department's custody, the warden shall, before the expiration of  
467 the initial order, file a notice with the court to set a status  
468 hearing for an order authorizing the continuation of placement  
469 and treatment for another period not to exceed 6 months. This  
470 procedure shall be repeated until the inmate is no longer in  
471 need of care and treatment. Placement and treatment may be  
472 continued pending a hearing after the timely filing of any  
473 petition.

474 (5) COPIES OF ORDERS.—The court shall provide a copy of its  
475 order authorizing placement and treatment along with all  
476 supporting documentation relating to the inmate's condition to  
477 the warden of the mental health treatment facility.

478 (6) DISMISSAL OF PETITIONS.—If the court finds that  
479 criteria for placement and treatment are not satisfied, it shall  
480 dismiss the petition and the inmate shall be transferred out of  
481 the mental health treatment facility and provided with  
482 appropriate mental health services.

483 Section 5. Section 945.45, Florida Statutes, is repealed.

484 Section 6. Present subsection (3) of section 945.46,  
485 Florida Statutes, is redesignated as subsection (5) and amended,  
486 and a new subsection (3) and subsection (4) are added to that  
487 section, to read:

488 945.46 Initiation of involuntary placement proceedings with  
489 respect to a mentally ill inmate scheduled for release.—

490 (3) The warden shall file petitions for involuntary  
491 inpatient placement for inmates scheduled to be released in the  
492 court in the county where the inmate is located. Upon filing,  
493 the clerk of the court shall provide copies to the Department of

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494 Children and Families, the inmate, and the state attorney and  
495 public defender of the judicial circuit in which the inmate is  
496 located. A fee may not be charged for the filing of a petition  
497 under chapter 394. Within 1 court working day after the filing  
498 of a petition for involuntary inpatient placement, the court  
499 shall appoint the public defender to represent the inmate who is  
500 the subject of the petition, unless the inmate is otherwise  
501 represented by counsel. The clerk of the court shall immediately  
502 notify the public defender of such appointment. Any attorney  
503 representing the inmate shall have access to the inmate,  
504 witnesses, and records relevant to the presentation of the  
505 patient's case and shall represent the interests of the inmate,  
506 regardless of the source of payment to the attorney. The state  
507 attorney for the circuit in which the inmate is located shall  
508 represent the state, rather than the petitioning warden, as the  
509 real party in interest in the proceeding. The remainder of the  
510 proceedings shall be governed by chapter 394.

511 (4) After considering the public safety and security  
512 concerns presented by transporting a mentally ill inmate to  
513 court, the court may order that the hearing be conducted by  
514 electronic means, at the facility in person, or at another  
515 location designated by the court. If the hearing is ordered by  
516 the court to be conducted at a location other than the facility,  
517 the department is authorized to transport the inmate to the  
518 location of the hearing.

519 (5)~~(3)~~ The department may transport an individual who is  
520 being released from its custody to a receiving or mental health  
521 treatment facility for involuntary examination or placement.  
522 Such transport shall be made to a facility that is specified by

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523 the Department of Children and Families as able to meet the  
524 specific needs of the individual. If the Department of Children  
525 and Families does not specify a facility, transport shall ~~may~~ be  
526 made to the nearest receiving facility.

527 Section 7. Section 945.47, Florida Statutes, is amended to  
528 read:

529 945.47 Discharge of inmate from mental health treatment.—

530 (1) An inmate who has been placed in a mental health  
531 treatment facility ~~transferred~~ for the purpose of mental health  
532 treatment shall be discharged from treatment by the warden under  
533 the following conditions:

534 (a) If the inmate is no longer in need of care and  
535 treatment, as defined in s. 945.42, he or she may be transferred  
536 out of the mental health treatment facility and provided with  
537 appropriate mental health services; or

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

543 (2) At any time that an inmate who has received mental  
544 health treatment while in the custody of the department becomes  
545 eligible for release under supervision or upon end of sentence,  
546 a record of the inmate's mental health treatment may be provided  
547 to the Florida Commission on Offender Review and ~~to~~ the  
548 Department of Children and Families to arrange postrelease  
549 aftercare placement and to prospective recipient inpatient  
550 health care or residential facilities upon request. The record  
551 shall include, at a minimum, a summary of the inmate's

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552 diagnosis, length of stay in treatment, clinical history,  
553 prognosis, prescribed medication, treatment plan, and  
554 recommendations for aftercare services.

555 Section 8. Section 945.48, Florida Statutes, is amended to  
556 read:

557 (Substantial rewording of section. See  
558 s. 945.48, F.S., for present text.)

559 945.48 Emergency treatment orders and use of force.—

560 (1) EMERGENCY MEDICATION.—The department is authorized to  
561 involuntarily administer psychotropic medication to an inmate on  
562 an emergency basis without following the procedure outlined in  
563 s. 945.43 only as specified in this section. An emergency  
564 treatment order for psychotropic medication may be provided to  
565 the inmate upon the written order of a physician licensed  
566 pursuant to chapter 458 or chapter 459 in an emergency not  
567 exceeding 72 hours, excluding weekends and legal holidays. An  
568 emergency exists when an inmate with a mental illness presents  
569 an immediate threat of:

570 (a) Bodily harm to self or others; or

571 (b) Extreme deterioration in behavioral functioning  
572 secondary to the mental illness.

573 (2) PSYCHOTROPIC MEDICATION.—Psychotropic medication may be  
574 administered only when the medication constitutes an appropriate  
575 treatment for a mental illness and its symptoms and alternative  
576 treatments are not available or indicated, or would not be  
577 effective. If after the 72-hour period the inmate has not given  
578 express and informed consent to the medication initially  
579 refused, the inmate's treating physician shall refer the inmate  
580 to a mental health treatment facility for an involuntary

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581 examination in accordance with the procedures described in s.  
582 945.43. Upon such referral, the warden shall, within 48 hours,  
583 excluding weekends and legal holidays, transfer the inmate to a  
584 mental health treatment facility. Upon transfer of the inmate  
585 for an involuntary examination, the emergency treatment order  
586 may be continued upon the written order of a physician as long  
587 as the physician has determined that the emergency continues to  
588 present a danger to the safety of the inmate or others and the  
589 criteria described in this subsection are satisfied. If  
590 psychotropic medication is still recommended after the  
591 emergency, it may only be administered after following the  
592 procedures outlined in s. 945.44.

593 (3) USE OF FORCE.—An employee or agent of the department is  
594 authorized to apply physical force upon an inmate when and to  
595 the extent that it reasonably appears necessary to effectuate  
596 the treatment of an inmate as described in this section, for the  
597 application of psychiatric restraint, to effectuate clinically  
598 necessary hygiene, or pursuant to a valid court order issued  
599 under s. 945.44 or s. 945.485. The requirements of s. 944.35  
600 shall be followed when using force to effectuate such treatment,  
601 apply such restraint, or effectuate such hygiene.

602 Section 9. Section 945.485, Florida Statutes, is created to  
603 read:

604 945.485 Management and treatment for self-injurious  
605 behaviors.—

606 (1) The Legislature finds that nonsuicidal self-injurious  
607 behaviors in correctional institutions, or acts intended to  
608 cause bodily harm but not death, have increased in the  
609 correctional environment. Self-injurious behavior may include

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610 nonsuicidal self-injury or self-mutilation, such as cutting,  
611 reopening wounds, and ingesting or inserting foreign objects or  
612 dangerous instruments into the body. These behaviors pose a  
613 significant threat to inmates, staff, and, in many cases, the  
614 safe and secure operation of the correctional institution. In  
615 addition, self-injurious behaviors, coupled with repeated  
616 refusals to provide express and informed consent for medical  
617 treatment and care, are a significant challenge for correctional  
618 medical and mental health professionals, resulting in higher  
619 costs for medical services, and may result in inadvertent  
620 mortality in the incarcerated population.

621 (2) In accordance with s. 945.6042, the Legislature finds  
622 that an inmate retains the fundamental right of self-  
623 determination regarding decisions pertaining to his or her own  
624 health, including the right to choose or refuse medical  
625 treatment or life-saving medical procedures. However, the  
626 inmate's right to privacy and decisionmaking regarding medical  
627 treatment may be outweighed by compelling state interests.

628 (3) When an inmate is engaging in active or ongoing self-  
629 injurious behavior and has refused to provide express and  
630 informed consent for treatment related to the self-injurious  
631 behavior, the warden of the facility where the inmate is housed  
632 shall consult with the inmate's treating physician regarding the  
633 inmate's medical and mental health status, current medical and  
634 mental health treatment needs, and competency to provide express  
635 and informed consent for treatment. The warden shall also  
636 determine whether the inmate's self-injurious behavior presents  
637 a danger to the safety of department staff or other inmates or  
638 the security, internal order, or discipline of the institution.

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639       (a) If the inmate's treating physician determines that the  
640 inmate has a mental illness and is incompetent to consent to  
641 treatment, the physician shall proceed in accordance with s.  
642 945.6042 for any necessary surgical or medical services. If the  
643 inmate is in need of care and treatment as defined in s. 945.42,  
644 the inmate shall be referred to a mental health treatment  
645 facility for an involuntary examination in accordance with s.  
646 945.44.

647       (b) If the inmate is competent, refusing necessary surgical  
648 or medical treatment, and engaging in active or ongoing self-  
649 injurious behavior that presents a threat to the safety of  
650 department staff or other inmates or the security, internal  
651 order, or discipline of the institution, the warden shall follow  
652 the procedure set forth in subsection (4).

653       (4) (a) The warden, or his or her designated representative,  
654 shall, on behalf of the state, petition the circuit court of the  
655 county in which the inmate is residing or the county in which  
656 the inmate is hospitalized for an order compelling the inmate to  
657 submit to emergency surgical intervention or other medical  
658 services to the extent necessary to remedy the threat to the  
659 safety of staff or other inmates or the security, internal  
660 order, or discipline of the institution. The petition must be  
661 supported by the expert opinion of at least one of the inmate's  
662 treating physicians and may be supported by other staff as  
663 necessary.

664       (b) The inmate shall be provided with a copy of the  
665 petition along with the proposed intervention, the basis for the  
666 proposed intervention, the names of the testifying experts and  
667 witnesses, and the date, time, and location of the hearing.

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668 After considering the medical status of the inmate, public  
669 safety, and security concerns presented by transporting the  
670 inmate, the court may order that the hearing be conducted by  
671 electronic means or in person at the institution or at another  
672 location designated by the court. If the hearing is ordered by  
673 the court to be conducted at a location other than the  
674 institution, the department is authorized to transport the  
675 inmate to the location of the hearing.

676 (c) The inmate may have an attorney represent him or her at  
677 the hearing, and, if the inmate is indigent, the court shall  
678 appoint the office of the public defender or private counsel  
679 pursuant to s. 27.40(1) to represent the inmate at the hearing.  
680 An attorney representing the inmate shall have access to the  
681 inmate and any records, including medical or mental health  
682 records, which are relevant to the representation of the inmate.

683 (d) The hearing on the petition shall be held as  
684 expeditiously as possible after the petition is filed, but no  
685 later than 5 calendar days after filing. The court may appoint a  
686 general or special magistrate to preside. The inmate may testify  
687 or not, as he or she chooses, may cross-examine witnesses  
688 testifying on behalf of the institution, and may present his or  
689 her own witnesses.

690 (e) The court may waive the presence of the inmate at the  
691 hearing if the waiver is consistent with the best interests of  
692 the inmate and the inmate's counsel does not object.

693 (f) The court shall determine whether the warden has  
694 established, by clear and convincing evidence, a compelling  
695 state interest sufficient to outweigh the inmate's right to  
696 refuse treatment. The court shall consider all of the following:



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- 697       1. Preservation of the life of the inmate.
- 698       2. Prevention of suicide.
- 699       3. Protection of innocent third parties.
- 700       4. Maintenance of the ethical integrity of the medical
- 701 profession.
- 702       5. Preservation of the security, internal order, or
- 703 discipline of the institution.
- 704       6. Rehabilitation of the inmate.
- 705       7. Any other compelling state interest.

706       (g) If the court determines that there are compelling state  
 707 interests sufficient to override the inmate's right to refuse  
 708 treatment, the court shall enter an order authorizing emergency  
 709 surgical intervention or other medical services, narrowly  
 710 tailored and in the least intrusive manner possible, only as  
 711 necessary to remedy the threat to the safety of third parties or  
 712 the security, internal order, or discipline of the institution.  
 713 Emergency surgical intervention or other medical services  
 714 authorized by the court may be carried out at the institution or  
 715 at a licensed hospital, as applicable.

716       (5) This section does not repeal by implication any  
 717 provision of s. 766.103, the Florida Medical Consent Law, or s.  
 718 768.13, the Good Samaritan Act. For all purposes, the Florida  
 719 Medical Consent Law and the Good Samaritan Act shall be  
 720 considered an alternative to this section.

721       Section 10. Subsection (2) of section 945.49, Florida  
 722 Statutes, is amended to read:

723       945.49 Operation and administration.—

724       (2) RULES.—~~The department, in cooperation with the Mental~~  
 725 ~~Health Program Office of the Department of Children and~~

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726 ~~Families~~, shall adopt rules necessary for administration of ss.  
727 945.40-945.49 in accordance with chapter 120.

728 Section 11. Section 945.6042, Florida Statutes, is created  
729 to read:

730 945.6042 Inmate health care advance directives.-

731 (1) DEFINITIONS.-The terms used in this section have the  
732 same meanings as in s. 765.101 unless otherwise specified in  
733 this section. For purposes of this section, the term:

734 (a) "Health care facility" has the same meaning as in s.  
735 765.101 and includes any correctional institution or facility  
736 where health care is provided.

737 (b) "Incapacity" or "incompetent" means an inmate is  
738 physically or mentally unable to communicate a willful and  
739 knowing health care decision.

740 (c) "Informed consent" means consent voluntarily given by  
741 an inmate after a sufficient explanation and disclosure of the  
742 subject matter involved to enable the inmate to have a general  
743 understanding of the treatment or procedure and the medically  
744 acceptable alternatives, including the substantial risks and  
745 hazards inherent in the proposed treatment or procedures, and to  
746 make a knowing health care decision without coercion or undue  
747 influence.

748 (d) "Inmate" means any person committed to the custody of  
749 the department.

750 (e) "Ombudsman" means an individual designated and  
751 specifically trained by the department to identify conditions  
752 that may pose a threat to the rights, health, safety, and  
753 welfare of inmates in a health care facility and who may be  
754 appointed to serve as a proxy for an inmate who is physically or

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755 mentally unable to communicate a willful and knowing health care  
756 decision.

757 (f) "Proxy" means a competent adult who has not been  
758 expressly designated to make health care decisions for a  
759 particular incapacitated inmate, but who, nevertheless, is  
760 authorized pursuant to s. 765.401 and as specified in this  
761 section to make health care decisions for such inmate.

762 (g) "Proxy review team" means a team of at least five  
763 members, appointed by the Assistant Secretary for Health  
764 Services. The team shall be composed of, at a minimum, one  
765 physician licensed pursuant to chapter 458 or chapter 459, one  
766 psychologist licensed pursuant to chapter 490, one nurse  
767 licensed pursuant to chapter 464, and one department chaplain.

768 (2) LEGISLATIVE FINDINGS AND INTENT.-

769 (a) In accordance with chapter 765, the Legislature finds  
770 that an inmate retains the fundamental right of self-  
771 determination regarding decisions pertaining to his or her own  
772 health, including the right to choose or refuse medical  
773 treatment. In accordance with chapter 765, this right is subject  
774 to certain institutional interests including the protection of  
775 human life, the preservation of ethical standards in the medical  
776 profession, and, for inmates committed to the custody of the  
777 department, the security and good order of the institutional  
778 setting.

779 (b) To ensure that such right is not lost or diminished by  
780 virtue of later physical or mental incapacity, the Legislature  
781 intends that the procedures specified in chapter 765, and as  
782 modified in this section for the institutional health care  
783 setting, apply to incarcerated inmates. These procedures should

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784 be less expensive and less restrictive than guardianship and  
785 allow an inmate to plan for incapacity by executing a document  
786 or orally designating another person to direct the course of his  
787 or her health care or receive his or her health information, or  
788 both, upon his or her incapacity. These procedures permit a  
789 previously incapacitated inmate to exercise his or her full  
790 right to make health care decisions as soon as the capacity to  
791 make such decisions has been regained.

792 (c) In order to ensure that the rights and intentions of an  
793 inmate are respected when the inmate is not able to participate  
794 actively in decisions concerning himself or herself, and to  
795 encourage communication among such inmate, his or her family,  
796 and his or her treating physicians, the Legislature declares  
797 that the laws of this state recognize the right of a competent  
798 incarcerated adult to make an advance directive instructing his  
799 or her physicians to provide, withhold, or withdraw life-  
800 prolonging procedures or to designate another person to make the  
801 health care decision for him or her in the event that such  
802 incarcerated person should become incapacitated and unable to  
803 personally direct his or her health care. It is further the  
804 intent of the Legislature that the department provide the  
805 opportunity for inmates to make advance directives as specified  
806 in this section.

807 (d) The Legislature further recognizes that incarcerated  
808 inmates may not avail themselves of the opportunity to make an  
809 advance directive or, because of incarceration, may not have a  
810 surrogate, as defined in s. 765.101, willing, able, or  
811 reasonably available to make health care decisions on his or her  
812 behalf. Additionally, because of incarceration, the individuals

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813 designated in s. 765.401 who are eligible to serve as an  
814 appointed proxy may not be reasonably available, willing, or  
815 competent to make health care decisions for the inmate in the  
816 event of incapacity. Thus, it is the intent of the Legislature  
817 that the department have an efficient process that is less  
818 expensive and less restrictive than guardianship for the  
819 appointment of a proxy to allow for the expedient delivery of  
820 necessary health care to an incarcerated inmate.

821 (e) This section does not supersede the process for inmate  
822 involuntary mental health treatment in ss. 945.40-945.49.

823 (3) CAPACITY OF INMATE; PROCEDURE.—

824 (a) An inmate is presumed to be capable of making health  
825 care decisions for himself or herself unless he or she is  
826 determined to be incapacitated. When an inmate has  
827 decisionmaking capacity, the inmate's wishes are controlling.  
828 Each physician or health care provider must clearly communicate  
829 the treatment plan and any change to the treatment plan before  
830 implementation of the plan or any change to the plan. Incapacity  
831 may not be inferred from an inmate's involuntary hospitalization  
832 for mental illness or from his or her intellectual disability.

833 (b) If an inmate's capacity to make health care decisions  
834 for himself or herself or provide informed consent is in  
835 question, the inmate's treating physician at the health care  
836 facility where the inmate is located shall evaluate the inmate's  
837 capacity and, if the evaluating physician concludes that the  
838 inmate lacks capacity, enter that evaluation in the inmate's  
839 medical record. If the evaluating physician has a question as to  
840 whether the inmate lacks capacity, another physician shall also  
841 evaluate the inmate's capacity, and if the second physician

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842 finds that the inmate lacks the capacity to make health care  
843 decisions for himself or herself or provide informed consent,  
844 both physicians' evaluations shall be entered in the inmate's  
845 medical record.

846 (c) If the inmate is found to be incapacitated and has  
847 designated a health care surrogate in accordance with chapter  
848 765, the institution's or facility's health care staff shall  
849 notify the surrogate and proceed as specified in chapter 765. If  
850 the incapacitated inmate has not designated a health care  
851 surrogate, the health care facility shall appoint a proxy to  
852 make health care decisions for the inmate as specified in this  
853 section.

854 (d) A determination made pursuant to this section that an  
855 inmate lacks the capacity to make health care decisions for  
856 himself or herself may not be construed as a finding that an  
857 inmate lacks capacity for any other purpose.

858 (4) HEALTH CARE ADVANCE DIRECTIVE; PROCEDURE.—

859 (a) In accordance with chapter 765, the department shall  
860 offer inmates the opportunity to execute an advance directive as  
861 defined in s. 765.101.

862 (b) The department shall provide to each inmate written  
863 information concerning advance directives and necessary forms to  
864 allow inmates to execute an advance directive. The department  
865 and its health care providers shall document in the inmate's  
866 medical records whether the inmate has executed an advance  
867 directive. Neither the department nor its health care providers  
868 may require an inmate to execute an advance directive using the  
869 department's forms. The inmate's advance directive shall travel  
870 with the inmate within the department as part of the inmate's

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871 medical record.

872 (c) An advance directive may be amended or revoked at any  
873 time by a competent inmate by means of:

874 1. A signed, dated writing of intent to amend or revoke;

875 2. The physical cancellation or destruction of the advance  
876 directive by the inmate or by another person in the inmate's  
877 presence and at the inmate's direction;

878 3. An oral expression of intent to amend or revoke; or

879 4. A subsequently executed advance directive that is

880 materially different from a previously executed advance  
881 directive.

882 (5) PROXY.—

883 (a) If an incapacitated inmate has not executed an advance  
884 directive, or designated a health care surrogate in accordance  
885 with the procedures specified in chapter 765 or the designated  
886 health care surrogate is no longer available to make health care  
887 decisions, health care decisions may be made for the inmate by  
888 any of the individuals specified in the priority order provided  
889 in s. 765.401(1)(a)-(g) as proxy. Documentation of the efforts  
890 to locate a proxy from the classes specified in s.

891 765.401(1)(a)-(g) shall be recorded in the inmate's medical  
892 file.

893 (b) If there are no individuals as specified in s.  
894 765.401(1)(a)-(g) available, willing, or competent to act on  
895 behalf of the inmate, and the inmate is housed in a correctional  
896 institution or facility where health care is provided in a  
897 nonhospital setting, the warden of the institution where the  
898 inmate is housed, or the warden's designee, shall consult with  
899 the Assistant Secretary for Health Services or his or her

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900 designee who shall appoint a department ombudsman to serve as  
901 the proxy. This appointment terminates when the inmate regains  
902 capacity or is no longer incarcerated in the custody of the  
903 department. In accordance with chapter 765 and as provided in  
904 this section, decisions to withhold or withdraw life-prolonging  
905 procedures will be reviewed by the department's proxy review  
906 team for compliance with chapter 765 and the requirements of  
907 this section.

908 (c) The ombudsman appointed to serve as the proxy is  
909 authorized to request the assistance of the treating physician  
910 and, upon request, a second physician not involved in the  
911 inmate's care to assist the proxy in evaluating the inmate's  
912 treatment.

913 (d) In accordance with chapter 765, any health care  
914 decision made by any appointed proxy under this section must be  
915 based on the proxy's informed consent and on the decision that  
916 the proxy reasonably believes the inmate would have made under  
917 the circumstances. If there is no indication of what decision  
918 the inmate would have made, the proxy may consider the inmate's  
919 best interest in deciding that proposed treatments are to be  
920 withheld or that treatments currently in effect are to be  
921 withdrawn.

922 (e) Before exercising the incapacitated inmate's rights to  
923 select or decline health care, the proxy must comply with ss.  
924 765.205 and 765.305, except that any proxy's decision to  
925 withhold or withdraw life-prolonging procedures must be  
926 supported by clear and convincing evidence that the decision  
927 would have been the one the inmate would have made had he or she  
928 been competent or, if there is no indication of what decision



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929 the inmate would have made, that the decision is in the inmate's  
930 best interest.

931 (f) Notwithstanding s. 456.057 and pursuant to s. 945.10  
932 and 45 C.F.R. part 164, subpart E, relevant protected health  
933 information and mental health and medical records of an  
934 incapacitated inmate may be disclosed to a proxy appointed to  
935 make health care decisions for an inmate.

936 (6) USE OF FORCE.—In addition to s. 944.35(1), an employee  
937 of the department may apply reasonable physical force upon an  
938 incapacitated inmate to administer medical treatment only by or  
939 under the clinical supervision of a physician or his or her  
940 designee and only to carry out a health care decision made in  
941 accordance with this section and chapter 765.

942 (7) IMMUNITY FROM LIABILITY.—A department health care  
943 provider, ombudsman, or other employee who acts under the  
944 direction of a health care provider as authorized in this  
945 section or chapter 765 is not subject to criminal prosecution or  
946 civil liability and may not be deemed to have engaged in  
947 unprofessional conduct as a result of carrying out a health care  
948 decision made in accordance with this section or chapter 765 on  
949 an inmate's behalf.

950 Section 12. This act shall take effect July 1, 2024.