

By Senator Martin

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1 A bill to be entitled
2 An act relating to corrections; amending s. 57.085,
3 F.S.; revising provisions relating to deferral of
4 prepayment of court costs and fees for indigent
5 prisoners for actions involving challenges to prison
6 disciplinary reports; amending s. 95.11, F.S.;
7 providing for a 1-year limitation of actions period
8 for certain actions concerning the condition of
9 confinement of prisoners; creating s. 760.701, F.S.;
10 defining the term "prisoner"; requiring exhaustion of
11 administrative remedies before certain actions
12 concerning confinement of prisoners may be brought;
13 providing for dismissal of certain actions involving
14 prisoner confinement in certain circumstances;
15 requiring a showing of physical injury or the
16 commission of a certain act as a condition precedent
17 for bringing certain actions relating to prisoner
18 confinement; specifying a time limitation period for
19 bringing an action concerning any condition of
20 confinement; amending s. 775.087, F.S.; providing that
21 prison terms for certain offenses committed in
22 conjunction with another felony offense may be
23 sentenced to be served consecutively; amending ss.
24 922.10 and 922.105, F.S.; revising provisions
25 concerning methods of execution of death sentences;
26 amending s. 934.425, F.S.; defining the term
27 "confinement center"; exempting persons working for or
28 at a confinement center from provisions regulating the
29 use of tracking devices or tracking applications;

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30 amending s. 945.41, F.S.; revising legislative intent;
31 revising provisions relating to mental health
32 treatment for inmates; providing that an inmate must
33 give his or her express and informed consent to such
34 treatment; specifying information an inmate must
35 receive regarding treatment; authorizing the warden to
36 authorize certain emergency medical treatment under
37 the direction of the inmate's attending physician
38 under certain circumstances; amending s. 945.42, F.S.;
39 revising and providing definitions; amending s.
40 945.43, F.S.; revising provisions concerning
41 involuntary examinations; amending s. 945.44, F.S.;
42 revising provisions concerning placement and treatment
43 of an inmate in a mental health treatment facility;
44 repealing s. 945.45 F.S., relating to continued
45 placement of inmates in mental health treatment
46 facilities; amending s. 945.46, F.S.; providing
47 requirements for filing petitions for involuntary
48 inpatient placement for certain inmates; authorizing
49 the court to order alternative means and venues for
50 certain hearings; requiring, rather than authorizing,
51 inmates to be transported to the nearest receiving
52 facility in certain circumstances; amending s. 945.47,
53 F.S.; specifying purposes for which an inmate's mental
54 health treatment records may be provided to the
55 Florida Commission on Offender Review and the
56 Department of Children and Families; authorizing such
57 records to be provided to certain facilities upon
58 request; amending s. 945.48, F.S.; substantially

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59 rewording provisions relating to emergency treatment
60 orders and use of force and providing requirements
61 therefore; providing requirements for emergency and
62 psychotropic medications and use of force; creating s.
63 945.485, F.S.; providing legislative findings;
64 providing requirements for management and treatment
65 for an inmate's self-injurious behaviors; requiring
66 facility wardens to consult with an inmate's treating
67 physician in certain circumstances and make certain
68 determinations; providing for petitions to compel an
69 inmate to submit to medical treatment in certain
70 circumstances; providing construction; amending s.
71 945.49, F.S.; deleting a requirement that the
72 Department of Corrections adopt certain rules in
73 cooperation with the Mental Health Program Office of
74 the Department of Children and Families; creating s.
75 945.6402, F.S.; providing definitions; providing
76 legislative findings and intent; providing
77 requirements for inmate capacity, health care advance
78 directives, and proxies; authorizing the use of force
79 on incapacitated inmates in certain circumstances;
80 providing immunity from liability for certain persons
81 in certain circumstances; amending s. 947.02, F.S.;
82 changing the membership of the Florida Commission on
83 Offender Review; amending s. 947.021, F.S.; revising
84 provisions for expedited appointment of commission
85 members in certain circumstances; amending s. 947.12,
86 F.S.; conforming provisions to changes made by the
87 act; amending s. 957.04, F.S.; revising requirements

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88 for contracting for certain services; amending s.
89 957.09, F.S.; deleting a provision relating to
90 minority business enterprises; providing an effective
91 date.

92
93 Be It Enacted by the Legislature of the State of Florida:

94
95 Section 1. Subsection (10) of section 57.085, Florida
96 Statutes, is amended to read:

97 57.085 Deferral of prepayment of court costs and fees for
98 indigent prisoners.—

99 (10) With the exception of challenges to prison
100 disciplinary reports, this section does not apply to a criminal
101 proceeding or a collateral criminal proceeding.

102 Section 2. Paragraph (b) of subsection (2) and paragraphs
103 (f), (g), and (h) of subsection (6) of section 95.11, Florida
104 Statutes, are amended to read:

105 95.11 Limitations other than for the recovery of real
106 property.—Actions other than for recovery of real property shall
107 be commenced as follows:

108 (2) WITHIN FIVE YEARS.—

109 (b) A legal or equitable action on a contract, obligation,
110 or liability founded on a written instrument, except for an
111 action to enforce a claim against a payment bond, which shall be
112 governed by the applicable provisions of paragraph (6) (e), s.
113 255.05(10), s. 337.18(1), or s. 713.23(1) (e), and except for an
114 action for a deficiency judgment governed by paragraph (6) (g)
115 ~~(6) (h)~~.

116 (6) WITHIN ONE YEAR.—

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117 (f) Except for actions described in subsection (9), or a
 118 petition challenging a criminal conviction, all petitions;
 119 extraordinary writs; tort actions, including those under s.
 120 768.28(14); or other actions which concern any condition of
 121 confinement of a prisoner ~~a petition for extraordinary writ,~~
 122 ~~other than a petition challenging a criminal conviction,~~ filed
 123 by or on behalf of a prisoner as defined in s. 57.085.

124 ~~(g) Except for actions described in subsection (9), an~~
 125 ~~action brought by or on behalf of a prisoner, as defined in s.~~
 126 ~~57.085, relating to the conditions of the prisoner's~~
 127 ~~confinement.~~

128 (g) ~~(h)~~ An action to enforce a claim of a deficiency related
 129 to a note secured by a mortgage against a residential property
 130 that is a one-family to four-family dwelling unit. The
 131 limitations period shall commence on the day after the
 132 certificate is issued by the clerk of court or the day after the
 133 mortgagee accepts a deed in lieu of foreclosure.

134 Section 3. Section 760.701, Florida Statutes, is created to
 135 read:

136 760.701 Lawsuits by prisoners.—

137 (1) For the purposes of this section, the term "prisoner"
 138 means any person incarcerated or detained in any jail, prison,
 139 or other correctional facility who is accused of, convicted of,
 140 sentenced for, or adjudicated delinquent for violations of
 141 criminal law or the terms and conditions of parole, probation,
 142 pretrial release, or a diversionary program.

143 (2) An action may not be brought by or on behalf of a
 144 prisoner relating to the conditions of the prisoner's
 145 confinement under 42 U.S.C. s. 1983, or any other state or

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146 federal law, until such administrative remedies as are available
147 are fully exhausted.

148 (3) The court shall on its own motion or on the motion of a
149 party dismiss any action brought relating to the conditions of
150 the prisoner's confinement under 42 U.S.C. s. 1983, or any other
151 state or federal law, by a prisoner if the court is satisfied
152 that the action is frivolous, malicious, fails to state a claim
153 upon which relief can be granted, or seeks monetary relief from
154 a defendant who is immune from such relief. The court shall
155 review any such action pursuant to s. 57.085(6).

156 (4) An action may not be brought in state court by or on
157 behalf of a prisoner relating to the conditions of the
158 prisoner's confinement under 42 U.S.C. s. 1983, or any state
159 tort action, for mental or emotional injury suffered while in
160 custody without a prior showing of physical injury or the
161 commission of a sexual act as defined in 18 U.S.C. s. 2246(2).

162 (5) The time for bringing an action which concerns any
163 condition of confinement of a prisoner shall be the limitations
164 period as described in s. 95.11(6)(f).

165 Section 4. Paragraph (d) of subsection (2) of section
166 775.087, Florida Statutes, is amended, paragraph (e) is added to
167 that subsection, and paragraph (a) of that subsection is
168 republished, to read:

169 775.087 Possession or use of weapon; aggravated battery;
170 felony reclassification; minimum sentence.—

171 (2)(a)1. Any person who is convicted of a felony or an
172 attempt to commit a felony, regardless of whether the use of a
173 weapon is an element of the felony, and the conviction was for:

174 a. Murder;

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- 175 b. Sexual battery;
- 176 c. Robbery;
- 177 d. Burglary;
- 178 e. Arson;
- 179 f. Aggravated battery;
- 180 g. Kidnapping;
- 181 h. Escape;
- 182 i. Aircraft piracy;
- 183 j. Aggravated child abuse;
- 184 k. Aggravated abuse of an elderly person or disabled adult;
- 185 l. Unlawful throwing, placing, or discharging of a
- 186 destructive device or bomb;
- 187 m. Carjacking;
- 188 n. Home-invasion robbery;
- 189 o. Aggravated stalking;
- 190 p. Trafficking in cannabis, trafficking in cocaine, capital
- 191 importation of cocaine, trafficking in illegal drugs, capital
- 192 importation of illegal drugs, trafficking in phencyclidine,
- 193 capital importation of phencyclidine, trafficking in
- 194 methaqualone, capital importation of methaqualone, trafficking
- 195 in amphetamine, capital importation of amphetamine, trafficking
- 196 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
- 197 (GHB), trafficking in 1,4-Butanediol, trafficking in
- 198 Phenethylamines, or other violation of s. 893.135(1);
- 199 q. Possession of a firearm by a felon; or
- 200 r. Human trafficking

201

202 and during the commission of the offense, such person actually

203 possessed a "firearm" or "destructive device" as those terms are

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204 defined in s. 790.001, shall be sentenced to a minimum term of
205 imprisonment of 10 years, except that a person who is convicted
206 for possession of a firearm by a felon or burglary of a
207 conveyance shall be sentenced to a minimum term of imprisonment
208 of 3 years if such person possessed a "firearm" or "destructive
209 device" during the commission of the offense. However, if an
210 offender who is convicted of the offense of possession of a
211 firearm by a felon has a previous conviction of committing or
212 attempting to commit a felony listed in s. 775.084(1)(b)1. and
213 actually possessed a firearm or destructive device during the
214 commission of the prior felony, the offender shall be sentenced
215 to a minimum term of imprisonment of 10 years.

216 2. Any person who is convicted of a felony or an attempt to
217 commit a felony listed in sub-subparagraphs 1.a.-p. or sub-
218 subparagraph 1.r., regardless of whether the use of a weapon is
219 an element of the felony, and during the course of the
220 commission of the felony such person discharged a "firearm" or
221 "destructive device" as defined in s. 790.001 shall be sentenced
222 to a minimum term of imprisonment of 20 years.

223 3. Any person who is convicted of a felony or an attempt to
224 commit a felony listed in sub-subparagraphs 1.a.-p. or sub-
225 subparagraph 1.r., regardless of whether the use of a weapon is
226 an element of the felony, and during the course of the
227 commission of the felony such person discharged a "firearm" or
228 "destructive device" as defined in s. 790.001 and, as the result
229 of the discharge, death or great bodily harm was inflicted upon
230 any person, the convicted person shall be sentenced to a minimum
231 term of imprisonment of not less than 25 years and not more than
232 a term of imprisonment of life in prison.

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233 (d) It is the intent of the Legislature that offenders who
234 actually possess, carry, display, use, threaten to use, or
235 attempt to use firearms or destructive devices be punished to
236 the fullest extent of the law, and the minimum terms of
237 imprisonment imposed pursuant to this subsection shall be
238 imposed for each qualifying felony count for which the person is
239 convicted. The court shall impose any term of imprisonment
240 provided for in this subsection consecutively ~~to any other term~~
241 ~~of imprisonment imposed for any other felony offense.~~

242 (e) If a conviction enumerated in subparagraph (a)1. is
243 committed in conjunction with any other felony offense, the
244 court may impose any term of imprisonment provided for in this
245 subsection consecutively to any other term of imprisonment
246 imposed for any other felony offense.

247 Section 5. Section 922.10, Florida Statutes, is amended to
248 read:

249 922.10 Execution of death sentence; executioner.—A death
250 sentence shall be executed by electrocution, ~~or~~ lethal
251 injection, or a method not deemed unconstitutional in accordance
252 with s. 922.105. The warden of the state prison shall designate
253 the executioner. The warrant authorizing the execution shall be
254 read to the convicted person immediately before execution.

255 Section 6. Subsection (3) of section 922.105, Florida
256 Statutes, is amended to read:

257 922.105 Execution of death sentence; prohibition against
258 reduction of death sentence as a result of determination that a
259 method of execution is unconstitutional.—

260 (3) If electrocution or lethal injection is held to be
261 unconstitutional by the Florida Supreme Court under the State

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262 Constitution, or held to be unconstitutional by the United
263 States Supreme Court under the United States Constitution, or if
264 the United States Supreme Court declines to review any judgment
265 holding a method of execution to be unconstitutional under the
266 United States Constitution made by the Florida Supreme Court or
267 the United States Court of Appeals that has jurisdiction over
268 Florida, or if the acquisition of chemicals necessary for lethal
269 injection becomes impossible or impractical, all persons
270 sentenced to death for a capital crime shall be executed by a
271 method not deemed unconstitutional ~~any constitutional method of~~
272 ~~execution.~~

273 Section 7. Present paragraphs (b) through (d) of subsection
274 (1) of section 934.425, Florida Statutes, are redesignated as
275 paragraphs (c) through (e), respectively, a new paragraph (b) is
276 added to that subsection, present paragraphs (b) through (e) of
277 subsection (4) are redesignated as paragraphs (c) through (f),
278 respectively, and a new paragraph (b) is added to that
279 subsection, to read:

280 934.425 Installation or use of tracking devices or tracking
281 applications; exceptions; penalties.—

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

283 (b) “Confinement center” means a jail, center, facility, or
284 institution designed to house a person or confine a person’s
285 movements in accordance with chapter 394, chapter 908, chapter
286 941, chapter 944, chapter 945, chapter 950, chapter 951, chapter
287 957, chapter 958, chapter 984, or chapter 985.

288 (4) This section does not apply to:

289 (b) A person who while working for or at a confinement
290 center installs, places, or uses a tracking device or tracking

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291 application on a person within their care, custody, or control
292 as part of his or her employment.

293 Section 8. Section 945.41, Florida Statutes, is amended to
294 read:

295 945.41 Mental health treatment for inmates; legislative
296 intent of ss. 945.40-945.49.—

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

298 (a) ~~mentally ill~~ Inmates in the custody of the department
299 who have a mental illness ~~of Corrections~~ receive an evaluation
300 and appropriate treatment for their mental illness through a
301 continuum of ~~outpatient and inpatient mental health treatment~~
302 and services.

303 (b) The department is authorized to purchase treatment
304 materials and equipment to support inmate rehabilitation; to
305 ameliorate disabling mental symptoms associated with impairment
306 in behavioral functioning, sensory and motor skills, and impulse
307 control; and to improve adaptive coping skills consistent with
308 the department's jurisdiction as described in s. 945.025.

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

314 (2) INDIVIDUAL DIGNITY AND TREATMENT.—

315 (a) An inmate in the custody of the department shall be
316 offered treatment that is suited to his or her needs as
317 determined by health care staff and that is provided in a humane
318 psychological environment. Such treatment shall be administered
319 skillfully, safely, and humanely with respect for the inmate's

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320 dignity and personal integrity.

321 (b) The department shall provide mental health treatment
322 and services to inmates and may contract with any entities,
323 persons, or agencies qualified to provide such treatment and
324 services.

325 (c) Inmates receiving mental health treatment and services
326 shall be offered the opportunity to participate in the
327 development of a written individualized treatment plan and be
328 provided a copy of such plan before its implementation. ~~It is~~
329 ~~further the intent of the Legislature that:~~

330 (d) ~~(1)~~ Inmates in the custody of the department who have
331 mental illnesses that require ~~hospitalization and~~ intensive
332 mental health ~~psychiatric~~ inpatient treatment and services or
333 care shall be offered ~~receive~~ appropriate treatment or care in
334 an inpatient setting ~~Department of Corrections mental health~~
335 ~~treatment facilities~~ designated for that purpose. Inmates who
336 have mental illnesses that require intensive hospitalization-
337 level mental health inpatient treatment and services shall be
338 transferred to a department mental health treatment facility
339 designated for that purpose ~~The Department of Corrections shall~~
340 ~~provide mental health services to inmates committed to it and~~
341 ~~may contract with any entities, persons, or agencies qualified~~
342 ~~to provide such services.~~

343 (e) ~~(2)~~ Mental health treatment facilities shall be secure
344 and adequately equipped and staffed for the provision of mental
345 health treatment and services. Inmates shall be offered the
346 least restrictive appropriate available treatment and services
347 based on their assessed needs and best interests and consistent
348 with improvement of their condition for facilitation of

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349 appropriate adjustment within the correctional environment
350 ~~services and that, to the extent possible, such services be~~
351 ~~provided in the least restrictive manner consistent with optimum~~
352 ~~improvement of the inmate's condition.~~

353 (3) EXPRESS AND INFORMED CONSENT.-

354 (a) A mentally competent inmate offered mental health
355 treatment within the department shall give his or her express
356 and informed consent for such treatment. Before giving such
357 consent, the following information shall be provided and
358 explained in plain language to the inmate:

359 1. The proposed treatment.

360 2. The purpose of the treatment.

361 3. The common risks, benefits, and side effects of the
362 treatment and the specific dosage range for a medication, if
363 applicable.

364 4. Alternative treatment modalities.

365 5. The approximate length of treatment.

366 6. The potential effects of stopping treatment.

367 7. How treatment will be monitored.

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

372 (b) Inmates who are determined to be incompetent to consent
373 to treatment shall receive treatment deemed to be necessary for
374 their appropriate care and for the safety of the inmate or
375 others in accordance with the procedures established in ss.
376 945.40-945.49.

377 (4)-(3) PAROLE.-Inmates who are transferred to any facility

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378 for the purpose of mental health treatment and services shall be
379 given consideration for parole and be eligible for release by
380 reason of gain-time allowances as provided in s. 944.291 and
381 release by expiration of sentence, consistent with guidelines
382 established for that purpose by the department.

383 (5)~~(4)~~ YOUTHFUL OFFENDERS.—Any inmate sentenced as a
384 youthful offender, or designated as a youthful offender by the
385 department under chapter 958, who is transferred pursuant to
386 this act to a mental health treatment facility shall be
387 separated from other inmates, if necessary, as determined by the
388 warden of the mental health treatment facility.

389 (6)~~(5)~~ TREATMENT FACILITIES.—The department may designate
390 mental health treatment facilities for adult, youthful, and
391 female offenders or may contract with other appropriate
392 entities, persons, or agencies for such services.

393 (7) EMERGENCY MEDICAL TREATMENT.—Notwithstanding any other
394 provision of this section, when the express and informed consent
395 of an inmate placed in a mental health treatment facility in
396 accordance with s. 945.44 cannot be obtained or the inmate is
397 incompetent to consent to treatment, the warden of a mental
398 health treatment facility, or his or her designated
399 representative, under the direction of the inmate's attending
400 physician, may authorize nonpsychiatric, emergency surgical
401 treatment or other routine medical treatment if such treatment
402 is deemed lifesaving or there is a situation threatening serious
403 bodily harm to the inmate.

404 Section 9. Section 945.42, Florida Statutes, is amended to
405 read:

406 945.42 Definitions; ss. 945.40-945.49.—As used in ss.

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407 945.40-945.49, the following terms shall have the meanings
408 ascribed to them, unless the context shall clearly indicate
409 otherwise:

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

411 (2) "Crisis stabilization care" means an inpatient ~~a~~ level
412 of care that is less restrictive and intensive ~~intense~~ than care
413 provided in a mental health treatment facility, that includes a
414 broad range of evaluation and treatment and services provided
415 within a secure and highly structured residential setting ~~or~~
416 ~~locked residential setting~~, and that is intended for inmates who
417 are experiencing acute psychological ~~emotional~~ distress and who
418 cannot be adequately evaluated and treated in a transitional
419 care unit or infirmary isolation management room. Such treatment
420 and services are ~~is also~~ more intense than treatment and
421 services provided in a transitional care unit and are ~~is~~ devoted
422 principally toward rapid stabilization of acute symptoms and
423 conditions.

424 (3) "Department" means the Department of Corrections.

425 (4) "Express and informed consent" means consent
426 voluntarily given in writing, by a competent inmate, after
427 sufficient explanation and disclosure of the subject matter
428 involved, to enable the inmate to make a knowing and willful
429 decision without any element of force, fraud, deceit, duress, or
430 other form of constraint or coercion.

431 (5) "Gravely disabled" means a condition in which an
432 inmate, as a result of a diagnosed mental illness, is:

433 (a) In danger of serious physical harm resulting from the
434 inmate's failure to provide for his or her essential physical
435 needs of food, clothing, hygiene, health, or safety without the

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436 assistance of others; or

437 (b) Experiencing a substantial deterioration in behavioral
438 functioning evidenced by the inmate's unremitting decline in
439 volitional control over his or her actions.

440 (6) "Incompetent to consent to treatment" means a state in
441 which an inmate's judgment is so affected by mental illness that
442 he or she lacks the capacity to make a well-reasoned, willful,
443 and knowing decision concerning his or her medical or mental
444 health treatment and services. The term is distinguished from
445 the term "incompetent to proceed," as defined in s. 916.106, and
446 only refers to an inmate's inability to provide express and
447 informed consent for medical or mental health treatment and
448 services.

449 ~~(4) "Director" means the Director for Mental Health~~
450 ~~Services of the Department of Corrections or his or her~~
451 ~~designee.~~

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

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

463 ~~2. There is an immediate, real, and present threat that the~~
464 ~~inmate will inflict serious bodily harm on himself or herself or~~

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465 another person, ~~as evidenced by recent behavior involving~~
 466 ~~causing, attempting, or threatening such harm;~~

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

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

472 (7)~~(6)~~ "In need of care and treatment" means that an inmate
 473 has a mental illness for which inpatient services in a mental
 474 health treatment facility are necessary and ~~that, but for being~~
 475 ~~isolated in a more restrictive and secure housing environment,~~
 476 because of the mental illness:

477 (a) But for being isolated in a more restrictive and secure
 478 housing environment:

479 1. The inmate is demonstrating a refusal to care for
 480 himself or herself and without treatment is likely to continue
 481 to refuse to care for himself or herself, and such refusal poses
 482 a real and present threat of substantial harm to his or her
 483 well-being. ~~† or~~

484 2. There is a substantial likelihood that in the near
 485 future the inmate will inflict serious bodily harm on himself or
 486 herself or another person, as evidenced by recent behavior
 487 causing, attempting, or threatening such harm. ~~†~~

488 (b) The inmate is incompetent to consent to treatment and
 489 is unable or is refusing to provide express and informed consent
 490 to treatment.

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

493 (d)~~(e)~~ All available less restrictive treatment

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494 alternatives that would offer an opportunity for improvement of
495 the inmate's condition have been clinically determined to be
496 inappropriate.

497 (8)~~(7)~~ "Inmate" means any person committed to the custody
498 of the Department of Corrections.

499 (9) "Involuntary examination" means a psychiatric
500 examination performed at a mental health treatment facility to
501 determine whether an inmate should be placed in the mental
502 health treatment facility for inpatient mental health treatment
503 and services.

504 (10) "Likelihood of serious harm" means:

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

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

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

517 (11)~~(8)~~ "Mental health treatment facility" means any
518 extended treatment or hospitalization-level unit within the
519 corrections system which the Assistant Secretary for Health
520 Services of the department specifically designates by rule to
521 provide acute mental health ~~psychiatric~~ care and which may
522 include involuntary treatment and therapeutic intervention in

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523 contrast to less intensive levels of care such as outpatient
524 mental health care, transitional mental health care, or crisis
525 stabilization care. The term does not include a forensic
526 facility as defined in s. 916.106.

527 (12)~~(9)~~ "Mental illness" or "mentally ill" means an
528 impairment of the mental or emotional processes that exercise
529 conscious control of one's actions or of the ability to perceive
530 or understand reality, which impairment substantially interferes
531 with the person's ability to meet the ordinary demands of
532 living. However, for the purposes of transferring an inmate to a
533 mental health treatment facility, the term does not include a
534 developmental disability as defined in s. 393.063, simple
535 intoxication, or conditions manifested only by antisocial
536 behavior or substance abuse addiction. However, an individual
537 who is developmentally disabled may also have a mental illness.

538 (13)~~(10)~~ "Psychiatrist" means a medical practitioner
539 licensed pursuant to chapter 458 or chapter 459 who has
540 primarily diagnosed and treated nervous and mental disorders for
541 a period of not less than 3 years inclusive of psychiatric
542 residency.

543 (14)~~(11)~~ "Psychological professional" means a behavioral
544 practitioner who has an approved doctoral degree in psychology
545 as defined in s. 490.003(3)(b) ~~s. 490.003(3)~~ and is employed by
546 the department or who is licensed as a psychologist pursuant to
547 chapter 490.

548 (15)~~(12)~~ "Secretary" means the Secretary of Corrections.

549 (16)~~(13)~~ "Transitional mental health care" means a level of
550 care that is more intensive than outpatient care, but less
551 intensive than crisis stabilization care, and is characterized

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552 by the provision of traditional mental health treatment and
 553 services ~~treatments~~ such as group and individual therapy,
 554 activity therapy, recreational therapy, and psychotropic
 555 medications in the context of a secure, structured residential
 556 setting. Transitional mental health care is indicated for an
 557 inmate ~~a person~~ with chronic or residual symptomatology who does
 558 not require crisis stabilization care or acute mental health
 559 ~~psychiatric~~ care, but whose impairment in functioning
 560 nevertheless renders him or her incapable of adjusting
 561 satisfactorily within the general inmate population.

562 (17) "Treatment" means psychotropic medications prescribed
 563 by a medical practitioner licensed pursuant to chapter 458 or
 564 chapter 459, including those laboratory tests and related
 565 medical procedures that are essential for the safe and effective
 566 administration of a psychotropic medication and psychological
 567 interventions and services, such as group and individual
 568 psychotherapy, activity therapy, recreational therapy, and music
 569 therapy. The term does not include forensic services for inmate
 570 defendants who are incompetent to proceed as defined in s.
 571 916.106.

572 (18) ~~(14)~~ "Warden" means the warden of a state corrections
 573 facility or his or her designee.

574 Section 10. Section 13. Section 945.43, Florida Statutes,
 575 is amended to read:

576 (Substantial rewording of section. See
 577 s. 945.43, F.S., for present text.)
 578 945.43 Involuntary examination.-

579 (1) If there is reason to believe that an inmate has a
 580 mental illness and the inmate is in need of care and treatment,

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581 the inmate's treating clinician may refer the inmate to a mental
582 health treatment facility for an involuntary examination. Upon
583 referral, the warden of the facility where the inmate is housed
584 shall transfer the inmate to a mental health treatment facility.

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

589 (3) If, after the examination, the inmate is determined to
590 be in need of care and treatment, the psychiatrist shall propose
591 a recommended course of treatment that is essential to the care
592 of the inmate, and the warden shall initiate proceedings for
593 placement of the inmate in the mental health treatment facility
594 and for involuntary treatment of the inmate as specified in s.
595 945.44. If the inmate is not in need of care and treatment, he
596 or she shall be transferred out of the mental health treatment
597 facility and provided with appropriate mental health services.

598 (4) The involuntary examination and initiation of court
599 proceedings for the placement and applicable involuntary
600 treatment of the inmate in the mental health treatment facility
601 shall be completed within 10 calendar days after arrival.

602 (5) The inmate may remain in the mental health treatment
603 facility pending a hearing after the timely filing of a petition
604 as described in s. 945.44. Pending a hearing, necessary
605 emergency treatment may be provided in the mental health
606 treatment facility upon the written order of a physician as
607 provided in s. 945.48.

608 Section 11. Section 945.44, Florida Statutes, is amended to
609 read:

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610 (Substantial rewording of section. See
611 s. 945.44, F.S., for present text.)
612 945.44 Placement and treatment of an inmate in a mental
613 health treatment facility.-

614 (1) CRITERIA.-An inmate may be placed in a mental health
615 treatment facility if he or she is mentally ill and is in need
616 of care and treatment. Involuntary mental health treatment that
617 is deemed to be essential for the appropriate care of the inmate
618 and the safety of the inmate or others may be provided at the
619 mental health treatment facility if the inmate is either gravely
620 disabled or presents a likelihood of serious harm.

621 (2) HEARING PROCEDURES FOR PETITIONS FOR PLACEMENT AND
622 TREATMENT.-

623 (a) An inmate may be placed and involuntarily treated in a
624 mental health treatment facility after notice and hearing upon
625 the recommendation of the warden of the facility where the
626 inmate is confined. The warden of the institution where the
627 mental health treatment facility is located shall petition the
628 circuit court serving the county for an order authorizing the
629 placement and treatment of the inmate. The petition must be
630 supported by the expert opinion of at least one of the inmate's
631 treating psychiatrists.

632 (b) The inmate shall be provided with a copy of the
633 petition along with the proposed treatment, the basis for the
634 proposed treatment, the names of the examining experts, and the
635 date, time, and location of the hearing. After considering the
636 public safety and security concerns presented by transporting
637 the inmate or in conducting onsite hearings, the court may order
638 that the hearing be conducted by electronic means or in person

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639 at the facility or at another location designated by the court.
640 If the hearing is ordered by the court to be conducted at a
641 location other than the facility, the department is authorized
642 to transport the inmate to the location of the hearing.

643 (c) The inmate may have an attorney represent him or her at
644 the hearing, and, if the inmate is indigent, the court shall
645 appoint the office of the public defender or private counsel
646 pursuant to s. 27.40(1) to represent the inmate at the hearing.
647 An attorney representing the inmate shall have access to the
648 inmate and any records, including medical or mental health
649 records, which are relevant to the representation of the inmate.

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

657 (e) The court may waive the presence of the inmate at the
658 hearing if the waiver is consistent with the best interests of
659 the inmate and the inmate's counsel does not object. One of the
660 inmate's physicians whose opinion supported the petition shall
661 appear as a witness at the hearing.

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

667 (g) On the issue of whether the court should authorize

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668 treatment for which an inmate is unable or has refused to
669 provide express and informed consent, the court shall determine
670 by clear and convincing evidence whether:

671 1. The inmate is mentally ill.
672 2. The treatment is essential to the care of the inmate.
673 3. The treatment is not experimental and does not present
674 an unreasonable risk of serious, hazardous, or irreversible side
675 effects.

676 4. The inmate is gravely disabled or poses a likelihood of
677 serious harm.

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

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

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

682 2. The probability of adverse side effects.

683 3. The prognosis for the inmate without treatment.

684 4. The prognosis for the inmate with treatment.

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

691 (4) STATUS HEARINGS AND CONTINUING JURISDICTION.—An order
692 authorizing involuntary placement and treatment must allow such
693 placement and treatment for a period not to exceed 6 months
694 following the date of the order. Unless the court is notified in
695 writing that the inmate has been discharged from the mental
696 health treatment facility because he or she is no longer in need

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697 of care and treatment, has been transferred to another
698 institution of the department, or has been released from the
699 department's custody, the warden shall, before the expiration of
700 the initial order, file a notice with the court to set a status
701 hearing for an order authorizing the continuation of placement
702 and treatment for another period not to exceed 6 months. This
703 procedure shall be repeated until the inmate is no longer in
704 need of care and treatment. Placement and treatment may be
705 continued pending a hearing after the timely filing of any
706 petition.

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

711 (6) DISMISSAL OF PETITIONS.—If the court finds that
712 criteria for placement and treatment are not satisfied, it shall
713 dismiss the petition and the inmate shall be transferred out of
714 the mental health treatment facility and provided with
715 appropriate mental health services.

716 Section 12. Section 945.45, Florida Statutes, is repealed.

717 Section 13. Present subsection (3) of section 945.46,
718 Florida Statutes, is renumbered as subsection (5) and amended,
719 and new subsections (3) and (4) are added to that section, to
720 read:

721 945.46 Initiation of involuntary placement proceedings with
722 respect to a mentally ill inmate scheduled for release.—

723 (3) The warden shall file, in the court in the county where
724 the inmate is located, petitions for involuntary inpatient
725 placement for inmates scheduled to be released. Upon filing, the

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726 clerk of the court shall provide copies to the Department of
727 Children and Families, the inmate, and the state attorney and
728 public defender of the judicial circuit in which the inmate is
729 located. A fee may not be charged for the filing of a petition
730 under chapter 394. Within 1 court working day after the filing
731 of a petition for involuntary inpatient placement, the court
732 shall appoint the public defender to represent the inmate who is
733 the subject of the petition, unless the inmate is otherwise
734 represented by counsel. The clerk of the court shall immediately
735 notify the public defender of such appointment. Any attorney
736 representing the inmate shall have access to the inmate,
737 witnesses, and records relevant to the presentation of the
738 patient's case and shall represent the interests of the inmate,
739 regardless of the source of payment to the attorney. The state
740 attorney for the circuit in which the inmate is located shall
741 represent the state, rather than the petitioning warden, as the
742 real party in interest in the proceeding. The remainder of the
743 proceedings shall be governed by chapter 394.

744 (4) After considering the public safety and security
745 concerns presented by transporting a mentally ill inmate or in
746 conducting an onsite hearing, the court may order that the
747 hearing be conducted by electronic means, at the facility in
748 person, or at another location designated by the court. If the
749 hearing is ordered by the court to be conducted at a location
750 other than the facility, the department is authorized to
751 transport the inmate to the location of the hearing.

752 (5)~~(3)~~ The department may transport an individual who is
753 being released from its custody to a receiving or mental health
754 treatment facility for involuntary examination or placement.

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755 Such transport shall be made to a facility that is specified by
756 the Department of Children and Families as able to meet the
757 specific needs of the individual. If the Department of Children
758 and Families does not specify a facility, transport shall ~~may~~ be
759 made to the nearest receiving facility.

760 Section 14. Section 945.47, Florida Statutes, is amended to
761 read:

762 945.47 Discharge of inmate from mental health treatment.—

763 (1) An inmate who has been placed in a mental health
764 treatment facility ~~transferred~~ for the purpose of mental health
765 treatment shall be discharged from treatment by the warden under
766 the following conditions:

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

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

776 (2) At any time that an inmate who has received mental
777 health treatment while in the custody of the department becomes
778 eligible for release under supervision or upon end of sentence,
779 a record of the inmate's mental health treatment may be provided
780 to the Florida Commission on Offender Review and to the
781 Department of Children and Families to arrange postrelease
782 aftercare placement and to prospective recipient inpatient
783 health care or residential facilities upon request. The record

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784 shall include, at a minimum, a summary of the inmate's
785 diagnosis, length of stay in treatment, clinical history,
786 prognosis, prescribed medication, treatment plan, and
787 recommendations for aftercare services.

788 Section 15. Section 18. Section 945.48, Florida Statutes,
789 is amended to read:

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

792 945.48 Emergency treatment orders and use of force.—

793 (1) EMERGENCY MEDICATION.—The department is authorized to
794 involuntarily administer psychotropic medication to an inmate on
795 an emergency basis without following the procedure outlined in
796 s. 945.43 only as specified in this section. An emergency
797 treatment order for psychotropic medication may be provided to
798 the inmate upon the written order of a physician licensed
799 pursuant to chapter 458 or chapter 459 in an emergency not
800 exceeding 72 hours, excluding weekends and legal holidays. An
801 emergency exists when an inmate with a mental illness presents
802 an immediate threat of:

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

804 (b) Extreme deterioration in behavioral functioning
805 secondary to the mental illness.

806 (2) PSYCHOTROPIC MEDICATION.—Psychotropic medication may be
807 administered only when the medication constitutes an appropriate
808 treatment for a mental illness and its symptoms and alternative
809 treatments are not available or indicated, or would not be
810 effective. If after the 72-hour period the inmate has not given
811 express and informed consent to the medication initially
812 refused, the inmate's treating physician shall refer the inmate

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813 to a mental health treatment facility for an involuntary
814 examination in accordance with the procedures described in s.
815 945.43. Upon such referral, the warden shall, within 48 hours,
816 excluding weekends and legal holidays, transfer the inmate to a
817 mental health treatment facility. Upon transfer of the inmate
818 for an involuntary examination, the emergency treatment order
819 may be continued upon the written order of a physician as long
820 as the physician has determined that the emergency continues to
821 present a danger to the safety of the inmate or others and the
822 criteria described in this subsection are satisfied. If
823 psychotropic medication is still recommended after the
824 emergency, it may only be administered after following the
825 procedures outlined in s. 945.44.

826 (3) USE OF FORCE.—An employee or agent of the department is
827 authorized to apply physical force upon an inmate when and to
828 the extent that it reasonably appears necessary to effectuate
829 the treatment of an inmate as described in this section, for the
830 application of psychiatric restraint, to effectuate clinically
831 necessary hygiene, or pursuant to a valid court order issued
832 under s. 945.44 or s. 945.485. The requirements of s. 944.35
833 shall be followed when using force to effectuate such treatment,
834 apply such restraint, or effectuate such hygiene.

835 Section 16. Section 945.485, Florida Statutes, is created
836 to read:

837 945.485 Management and treatment for self-injurious
838 behaviors.—

839 (1) The Legislature finds that nonsuicidal self-injurious
840 behaviors in correctional institutions, or acts intended to
841 cause bodily harm but not death, have increased in the

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842 correctional environment. Self-injurious behavior may include
843 nonsuicidal self-injury or self-mutilation, such as cutting,
844 reopening wounds, and ingesting or inserting foreign objects or
845 dangerous instruments into the body. These behaviors pose a
846 significant threat to inmates, staff, and, in many cases, the
847 safe and secure operation of the correctional institution. In
848 addition, self-injurious behaviors, coupled with the inmate's
849 repeated refusals to provide express and informed consent for
850 medical treatment and care, are a significant challenge for
851 correctional medical and mental health professionals, resulting
852 in higher costs for medical services, and may result in
853 inadvertent mortality in the incarcerated population.

854 (2) In accordance with s. 945.6042, the Legislature finds
855 that an inmate retains the fundamental right of self-
856 determination regarding decisions pertaining to his or her own
857 health, including the right to choose or refuse medical
858 treatment or life-saving medical procedures. However, the
859 inmate's right to privacy and decisionmaking regarding medical
860 treatment may be outweighed by compelling state interests.

861 (3) When an inmate is engaging in active or ongoing self-
862 injurious behavior and has refused to provide express and
863 informed consent for treatment related to the self-injurious
864 behavior, the warden of the facility where the inmate is housed
865 shall consult with the inmate's treating physician regarding the
866 inmate's medical and mental health status, current medical and
867 mental health treatment needs, and competency to provide express
868 and informed consent for treatment. The warden shall also
869 determine whether the inmate's self-injurious behavior presents
870 a danger to the safety of department staff or other inmates or

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871 the security, internal order, or discipline of the institution.

872 (a) If the inmate's treating physician determines that the
873 inmate has a mental illness and is incompetent to consent to
874 treatment, the physician shall proceed in accordance with s.
875 945.6042 for any necessary surgical or medical services. If the
876 inmate is in need of care and treatment as defined in s. 945.42,
877 the inmate shall be referred to a mental health treatment
878 facility for an involuntary examination in accordance with s.
879 945.44.

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

886 (4) (a) The warden, or his or her designated representative,
887 shall, on behalf of the state, petition the circuit court of the
888 county in which the inmate is residing or the county in which
889 the inmate is hospitalized for an order compelling the inmate to
890 submit to emergency surgical intervention or other medical
891 services to the extent necessary to remedy the threat to the
892 safety of staff or other inmates or the security, internal
893 order, or discipline of the institution. The petition must be
894 supported by the expert opinion of at least one of the inmate's
895 treating physicians and may be supported by other staff as
896 necessary.

897 (b) The inmate shall be provided with a copy of the
898 petition along with the proposed intervention, the basis for the
899 proposed intervention, the names of the testifying experts and

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900 witnesses, and the date, time, and location of the hearing.
901 After considering the medical status of the inmate, public
902 safety, and security concerns presented by transporting the
903 inmate, the court may order that the hearing be conducted by
904 electronic means or in person at the institution or at another
905 location designated by the court. If the hearing is ordered by
906 the court to be conducted at a location other than the
907 institution, the department is authorized to transport the
908 inmate to the location of the hearing.

909 (c) The inmate may have an attorney represent him or her at
910 the hearing, and, if the inmate is indigent, the court shall
911 appoint the office of the public defender or private counsel
912 pursuant to s. 27.40(1) to represent the inmate at the hearing.
913 An attorney representing the inmate shall have access to the
914 inmate and any records, including medical or mental health
915 records, which are relevant to the representation of the inmate.

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

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

926 (f) The court shall determine whether the warden has
927 established, by clear and convincing evidence, a compelling
928 state interest sufficient to outweigh the inmate's right to

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929 refuse treatment. The court shall consider all of the following:

930 1. Preservation of the life of the inmate.

931 2. Prevention of suicide.

932 3. Protection of innocent third parties.

933 4. Maintenance of the ethical integrity of the medical
934 profession.

935 5. Preservation of the security, internal order, or
936 discipline of the institution.

937 6. Rehabilitation of the inmate.

938 7. Any other compelling state interest.

939 (g) If the court determines that there are compelling state
940 interests sufficient to override the inmate's right to refuse
941 treatment, the court shall enter an order authorizing emergency
942 surgical intervention or other medical services, narrowly
943 tailored and in the least intrusive manner possible, only as
944 necessary to remedy the threat to the safety of third parties or
945 the security, internal order, or discipline of the institution.
946 Emergency surgical intervention or other medical services
947 authorized by the court may be carried out at the institution or
948 at a licensed hospital, as applicable.

949 (5) This section does not repeal by implication any
950 provision of s. 766.103, the Florida Medical Consent Law, or s.
951 768.13, the Good Samaritan Act. For all purposes, the Florida
952 Medical Consent Law and the Good Samaritan Act shall be
953 considered alternatives to this section.

954 Section 17. Subsection (2) of section 945.49, Florida
955 Statutes, is amended to read:

956 945.49 Operation and administration.—

957 (2) RULES.—~~The department, in cooperation with the Mental~~

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958 ~~Health Program Office of the Department of Children and~~
959 ~~Families,~~ shall adopt rules necessary for administration of ss.
960 945.40-945.49 in accordance with chapter 120.

961 Section 18. Section 945.6402, Florida Statutes, is created
962 to read:

963 945.6402 Inmate health care advance directives.-

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

967 (a) "Health care facility" has the same meaning as in s.
968 765.101 and includes any correctional institution or facility
969 where health care is provided.

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

973 (c) "Informed consent" means consent voluntarily given by
974 an inmate after a sufficient explanation and disclosure of the
975 subject matter involved to enable the inmate to have a general
976 understanding of the treatment or procedure and the medically
977 acceptable alternatives, including the substantial risks and
978 hazards inherent in the proposed treatment or procedures, and to
979 make a knowing health care decision without coercion or undue
980 influence.

981 (d) "Inmate" means any person committed to the custody of
982 the department.

983 (e) "Ombudsman" means an individual designated and
984 specifically trained by the department to identify conditions
985 that may pose a threat to the rights, health, safety, and
986 welfare of inmates in a health care facility and who may be

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987 appointed to serve as a proxy for an inmate who is physically or
988 mentally unable to communicate a willful and knowing health care
989 decision.

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

995 (g) "Proxy review team" means a team of at least five
996 members, appointed by the Assistant Secretary for Health
997 Services. The team shall be composed of, at a minimum, one
998 physician licensed pursuant to chapter 458 or chapter 459, one
999 psychologist licensed pursuant to chapter 490, one nurse
1000 licensed pursuant to chapter 464, and one department chaplain.

1001 (2) LEGISLATIVE FINDINGS AND INTENT.-

1002 (a) In accordance with chapter 765, the Legislature finds
1003 that an inmate retains the fundamental right of self-
1004 determination regarding decisions pertaining to his or her own
1005 health, including the right to choose or refuse medical
1006 treatment. In accordance with chapter 765, this right is subject
1007 to certain institutional interests, including the protection of
1008 human life, the preservation of ethical standards in the medical
1009 profession, and, for inmates committed to the custody of the
1010 department, the security and good order of the institutional
1011 setting.

1012 (b) To ensure that such right is not lost or diminished by
1013 virtue of later physical or mental incapacity, the Legislature
1014 intends that the procedures specified in chapter 765, and as
1015 modified in this section for the institutional health care

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1016 setting, apply to incarcerated inmates. These procedures should
1017 be less expensive and less restrictive than guardianship and
1018 allow an inmate to plan for incapacity by executing a document
1019 or orally designating another person to direct the course of his
1020 or her health care or receive his or her health information, or
1021 both, upon his or her incapacity. These procedures permit a
1022 previously incapacitated inmate to exercise his or her full
1023 right to make health care decisions as soon as the capacity to
1024 make such decisions has been regained.

1025 (c) In order to ensure that the rights and intentions of an
1026 inmate are respected when the inmate is not able to participate
1027 actively in decisions concerning himself or herself, and to
1028 encourage communication among such inmate, his or her family,
1029 and his or her treating physicians, the Legislature declares
1030 that the laws of this state recognize the right of a competent
1031 incarcerated adult to make an advance directive instructing his
1032 or her physicians to provide, withhold, or withdraw life-
1033 prolonging procedures or to designate another person to make the
1034 health care decision for him or her in the event that such
1035 incarcerated person should become incapacitated and unable to
1036 personally direct his or her health care. It is further the
1037 intent of the Legislature that the department provide the
1038 opportunity for inmates to make advance directives as specified
1039 in this section.

1040 (d) The Legislature further recognizes that incarcerated
1041 inmates may not avail themselves of the opportunity to make an
1042 advance directive or, because of incarceration, may not have a
1043 surrogate, as defined in s. 765.101, willing, able, or
1044 reasonably available to make health care decisions on their

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1045 behalf. Additionally, because of incarceration, the individuals
1046 designated in s. 765.401 who are eligible to serve as an
1047 appointed proxy may not be reasonably available, willing, or
1048 competent to make health care decisions for the inmate in the
1049 event of incapacity. Thus, it is the intent of the Legislature
1050 that the department have an efficient process that is less
1051 expensive and less restrictive than guardianship for the
1052 appointment of a proxy to allow for the expedient delivery of
1053 necessary health care to an incarcerated inmate.

1054 (e) This section does not supersede the process for inmate
1055 involuntary mental health treatment in ss. 945.40-945.49.

1056 (3) CAPACITY OF INMATE; PROCEDURE.—

1057 (a) An inmate is presumed to be capable of making health
1058 care decisions for himself or herself unless he or she is
1059 determined to be incapacitated. When an inmate has
1060 decisionmaking capacity, the inmate's wishes are controlling.
1061 Each physician or health care provider must clearly communicate
1062 the treatment plan and any change to the treatment plan before
1063 implementation of the plan or any change to the plan. Incapacity
1064 may not be inferred from an inmate's involuntary hospitalization
1065 for mental illness or from his or her intellectual disability.

1066 (b) If an inmate's capacity to make health care decisions
1067 for himself or herself or provide informed consent is in
1068 question, the inmate's treating physician at the health care
1069 facility where the inmate is located shall evaluate the inmate's
1070 capacity and, if the evaluating physician concludes that the
1071 inmate lacks capacity, enter that evaluation in the inmate's
1072 medical record. If the evaluating physician has a question as to
1073 whether the inmate lacks capacity, another physician shall also

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1074 evaluate the inmate's capacity, and if the second physician
1075 finds that the inmate lacks the capacity to make health care
1076 decisions for himself or herself or provide informed consent,
1077 both physicians' evaluations shall be entered in the inmate's
1078 medical record.

1079 (c) If the inmate is found to be incapacitated and has
1080 designated a health care surrogate in accordance with chapter
1081 765, the institution's or facility's health care staff shall
1082 notify the surrogate and proceed as specified in chapter 765. If
1083 the incapacitated inmate has not designated a health care
1084 surrogate, the health care facility shall appoint a proxy to
1085 make health care decisions for the inmate as specified in this
1086 section.

1087 (d) A determination made pursuant to this section that an
1088 inmate lacks the capacity to make health care decisions for
1089 himself or herself may not be construed as a finding that an
1090 inmate lacks capacity for any other purpose.

1091 (4) HEALTH CARE ADVANCE DIRECTIVE; PROCEDURE.—

1092 (a) In accordance with chapter 765, the department shall
1093 offer inmates the opportunity to execute an advance directive as
1094 defined in s. 765.101.

1095 (b) The department shall provide to each inmate written
1096 information concerning advance directives and necessary forms to
1097 allow inmates to execute an advance directive. The department
1098 and its health care providers shall document in the inmate's
1099 medical records whether the inmate has executed an advance
1100 directive. Neither the department nor its health care providers
1101 may require an inmate to execute an advance directive using the
1102 department's forms. The inmate's advance directive shall travel

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1103 with the inmate within the department as part of the inmate's
1104 medical record.

1105 (c) An advance directive may be amended or revoked at any
1106 time by a competent inmate by means of:

1107 1. A signed, dated writing of intent to amend or revoke;

1108 2. The physical cancellation or destruction of the advance
1109 directive by the inmate or by another person in the inmate's
1110 presence and at the inmate's direction;

1111 3. An oral expression of intent to amend or revoke; or

1112 4. A subsequently executed advance directive that is
1113 materially different from a previously executed advance
1114 directive.

1115 (5) PROXY.—

1116 (a) If an incapacitated inmate has not executed an advance
1117 directive, or designated a health care surrogate in accordance
1118 with the procedures specified in chapter 765 or the designated
1119 health care surrogate is no longer available to make health care
1120 decisions, health care decisions may be made for the inmate by
1121 any of the individuals specified in the priority order provided
1122 in s. 765.401(1)(a)-(g) as proxy. Documentation of the efforts
1123 to locate a proxy from the classes specified in s.
1124 765.401(1)(a)-(g) shall be recorded in the inmate's medical
1125 file.

1126 (b) If there are no individuals as specified in s.
1127 765.401(1)(a)-(g) available, willing, or competent to act on
1128 behalf of the inmate, and the inmate is housed in a correctional
1129 institution or facility where health care is provided in a
1130 nonhospital setting, the warden of the institution where the
1131 inmate is housed, or the warden's designee, shall consult with

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1132 the Assistant Secretary for Health Services or his or her
1133 designee, who shall appoint a department ombudsman to serve as
1134 the proxy. This appointment terminates when the inmate regains
1135 capacity or is no longer incarcerated in the custody of the
1136 department. In accordance with chapter 765 and as provided in
1137 this section, decisions to withhold or withdraw life-prolonging
1138 procedures will be reviewed by the department's proxy review
1139 team for compliance with chapter 765 and the requirements of
1140 this section.

1141 (c) The ombudsman appointed to serve as the proxy is
1142 authorized to request the assistance of the treating physician
1143 and, upon request, a second physician not involved in the
1144 inmate's care to assist the proxy in evaluating the inmate's
1145 treatment.

1146 (d) In accordance with chapter 765, any health care
1147 decision made by any appointed proxy under this section must be
1148 based on the proxy's informed consent and on the decision that
1149 the proxy reasonably believes the inmate would have made under
1150 the circumstances. If there is no indication of what decision
1151 the inmate would have made, the proxy may consider the inmate's
1152 best interest in deciding that proposed treatments are to be
1153 withheld or that treatments currently in effect are to be
1154 withdrawn.

1155 (e) Before exercising the incapacitated inmate's rights to
1156 select or decline health care, the proxy must comply with ss.
1157 765.205 and 765.305, except that any proxy's decision to
1158 withhold or withdraw life-prolonging procedures must be
1159 supported by clear and convincing evidence that the decision
1160 would have been the one the inmate would have made had he or she

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1161 been competent or, if there is no indication of what decision
1162 the inmate would have made, that the decision is in the inmate's
1163 best interest.

1164 (f) Notwithstanding s. 456.057 and pursuant to s. 945.10
1165 and 45 C.F.R. part 164, subpart E, relevant protected health
1166 information and mental health and medical records of an
1167 incapacitated inmate may be disclosed to a proxy appointed to
1168 make health care decisions for an inmate.

1169 (6) USE OF FORCE.—In addition to s. 944.35(1), an employee
1170 of the department may apply reasonable physical force upon an
1171 incapacitated inmate to administer medical treatment only by or
1172 under the clinical supervision of a physician or his or her
1173 designee and only to carry out a health care decision made in
1174 accordance with this section and chapter 765.

1175 (7) IMMUNITY FROM LIABILITY.—A department health care
1176 provider, ombudsman, or other employee who acts under the
1177 direction of a health care provider as authorized in this
1178 section or chapter 765 is not subject to criminal prosecution or
1179 civil liability and may not be deemed to have engaged in
1180 unprofessional conduct as a result of carrying out a health care
1181 decision made in accordance with this section or chapter 765 on
1182 an inmate's behalf.

1183 Section 19. Section 947.02, Florida Statutes, is amended to
1184 read:

1185 947.02 Florida Commission on Offender Review; members,
1186 appointment.—

1187 ~~(1)~~ Except as provided in s. 947.021, the members of the
1188 Florida Commission on Offender Review shall be directly
1189 appointed by the Governor and Cabinet ~~from a list of eligible~~

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1190 ~~applicants submitted by a parole qualifications committee. The~~
1191 ~~appointments of members of the commission shall be certified to~~
1192 ~~the Senate by the Governor and Cabinet for confirmation, and the~~
1193 ~~membership of the commission shall include representation from~~
1194 ~~minority persons as defined in s. 288.703.~~

1195 ~~(2) A parole qualifications committee shall consist of five~~
1196 ~~persons who are appointed by the Governor and Cabinet. One~~
1197 ~~member shall be designated as chair by the Governor and Cabinet.~~
1198 ~~The committee shall provide for statewide advertisement and the~~
1199 ~~receiving of applications for any position or positions on the~~
1200 ~~commission and shall devise a plan for the determination of the~~
1201 ~~qualifications of the applicants by investigations and~~
1202 ~~comprehensive evaluations, including, but not limited to,~~
1203 ~~investigation and evaluation of the character, habits, and~~
1204 ~~philosophy of each applicant. Each parole qualifications~~
1205 ~~committee shall exist for 2 years. If additional vacancies on~~
1206 ~~the commission occur during this 2-year period, the committee~~
1207 ~~may advertise and accept additional applications; however, all~~
1208 ~~previously submitted applications shall be considered along with~~
1209 ~~the new applications according to the previously established~~
1210 ~~plan for the evaluation of the qualifications of applicants.~~

1211 ~~(3) Within 90 days before an anticipated vacancy by~~
1212 ~~expiration of term pursuant to s. 947.03 or upon any other~~
1213 ~~vacancy, the Governor and Cabinet shall appoint a parole~~
1214 ~~qualifications committee if one has not been appointed during~~
1215 ~~the previous 2 years. The committee shall consider applications~~
1216 ~~for the commission seat, including the application of an~~
1217 ~~incumbent commissioner if he or she applies, according to~~
1218 ~~subsection (2). The committee shall submit a list of three~~

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1219 ~~eligible applicants, which may include the incumbent if the~~
1220 ~~committee so decides, without recommendation, to the Governor~~
1221 ~~and Cabinet for appointment to the commission. In the case of an~~
1222 ~~unexpired term, the appointment must be for the remainder of the~~
1223 ~~unexpired term and until a successor is appointed and qualified.~~
1224 ~~If more than one seat is vacant, the committee shall submit a~~
1225 ~~list of eligible applicants, without recommendation, containing~~
1226 ~~a number of names equal to three times the number of vacant~~
1227 ~~seats; however, the names submitted may not be distinguished by~~
1228 ~~seat, and each submitted applicant shall be considered eligible~~
1229 ~~for each vacancy.~~

1230 ~~(4) Upon receiving a list of eligible persons from the~~
1231 ~~parole qualifications committee, the Governor and Cabinet may~~
1232 ~~reject the list. If the list is rejected, the committee shall~~
1233 ~~reinitiate the application and examination procedure according~~
1234 ~~to subsection (2).~~

1235 ~~(5) Section 120.525 and chapters 119 and 286 apply to all~~
1236 ~~activities and proceedings of a parole qualifications committee.~~

1237 Section 20. Section 947.021, Florida Statutes, is amended
1238 to read:

1239 947.021 Florida Commission on Offender Review; expedited
1240 appointments.—Whenever the Legislature decreases the membership
1241 of the commission, all terms of office shall expire,
1242 notwithstanding any law to the contrary. Under such
1243 circumstances, the Governor and Cabinet shall expedite the
1244 appointment of commissioners. Pursuant to ~~Notwithstanding the~~
1245 ~~parole qualifications committee procedure in s. 947.02~~, members
1246 shall be directly appointed by the Governor and Cabinet. Members
1247 appointed to the commission may be selected from incumbents.

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1248 Members shall be certified to the Senate by the Governor and
1249 Cabinet for confirmation, ~~and the membership of the commission~~
1250 ~~shall include representation from minority persons as defined in~~
1251 ~~s. 288.703.~~

1252 Section 21. Subsection (2) of section 947.12, Florida
1253 Statutes, is amended to read:

1254 947.12 Members, employees, expenses.—

1255 ~~(2) The members of the examining board created in s. 947.02~~
1256 ~~shall each be paid per diem and travel expenses pursuant to s.~~
1257 ~~112.061 when traveling in the performance of their duties.~~

1258 Section 22. Paragraph (g) of subsection (1) and subsection
1259 (5) of section 957.04, Florida Statutes, are amended to read:

1260 957.04 Contract requirements.—

1261 (1) A contract entered into under this chapter for the
1262 operation of contractor-operated correctional facilities shall
1263 maximize the cost savings of such facilities and:

1264 (g) Require the contractor to be responsible for a range of
1265 dental, medical, and psychological services; diet; education;
1266 and work programs at least equal to those provided by the
1267 department in comparable facilities. The work and education
1268 programs must be designed to reduce recidivism, and include
1269 opportunities to participate in such work programs as authorized
1270 pursuant to s. 946.523. However, with respect to the dental,
1271 medical, psychological, and dietary services, the department is
1272 authorized to exclude any or all of these services from a
1273 contract for private correctional services entered into under
1274 this chapter and retain responsibility for the delivery of those
1275 services, whenever the department finds it to be in the best
1276 interests of the state.

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1277 ~~(5) Each contract entered into by the department must~~
1278 ~~include substantial minority participation unless demonstrated~~
1279 ~~by evidence, after a good faith effort, as impractical and must~~
1280 ~~also include any other requirements the department considers~~
1281 ~~necessary and appropriate for carrying out the purposes of this~~
1282 ~~chapter.~~

1283 Section 23. Subsection (3) of section 957.09, Florida
1284 Statutes, is amended to read:

1285 957.09 Applicability of chapter to other provisions of
1286 law.—

1287 ~~(3) The provisions of law governing the participation of~~
1288 ~~minority business enterprises are applicable to this chapter.~~

1289 Section 24. This act shall take effect July 1, 2025.