

By the Committee on Criminal Justice; and 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 period of limitation for
8 bringing certain actions relating to 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.; exempting certain persons
27 working for the Department of Corrections or the
28 Department of Juvenile Justice, and persons authorized
29 pursuant to a court order, from provisions regulating

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

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59 facilities upon request; amending s. 945.48, F.S.;

60 substantially revising provisions relating to

61 emergency treatment orders and use of force and

62 providing requirements for such orders and use of

63 force; providing requirements for emergency and

64 psychotropic medications and use of force; creating s.

65 945.485, F.S.; providing legislative findings;

66 providing requirements for management of and treatment

67 for an inmate's self-injurious behaviors; requiring

68 facility wardens to consult with an inmate's treating

69 physician in certain circumstances and make certain

70 determinations; providing for petitions to compel an

71 inmate to submit to medical treatment in certain

72 circumstances; providing construction; amending s.

73 945.49, F.S.; deleting a requirement that the

74 Department of Corrections adopt certain rules in

75 cooperation with the Mental Health Program Office of

76 the Department of Children and Families; creating s.

77 945.6402, F.S.; providing definitions; providing

78 legislative findings and intent; providing

79 requirements for inmate capacity, health care advance

80 directives, and proxies; authorizing the use of force

81 on incapacitated inmates in certain circumstances;

82 providing immunity from liability for certain persons

83 in certain circumstances; amending s. 947.02, F.S.;

84 revising the manner in which the membership of the

85 Florida Commission on Offender Review is appointed;

86 repealing s. 947.021, F.S., relating to expedited

87 appointments of the Florida Commission on Offender

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88 Review; amending s. 947.12, F.S.; conforming
89 provisions to changes made by the act; amending s.
90 957.04, F.S.; revising requirements for contracting
91 for certain services; amending s. 957.09, F.S.;
92 deleting a provision relating to minority business
93 enterprises; amending s. 20.32, F.S.; conforming
94 provisions to changes made by the act; providing an
95 effective date.

96

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

98

99 Section 1. Subsection (10) of section 57.085, Florida
100 Statutes, is amended to read:

101 57.085 Deferral of prepayment of court costs and fees for
102 indigent prisoners.—

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

106 Section 2. Paragraph (b) of subsection (2) and paragraphs
107 (f) and (g) of subsection (6) of section 95.11, Florida
108 Statutes, are amended to read:

109 95.11 Limitations other than for the recovery of real
110 property.—Actions other than for recovery of real property shall
111 be commenced as follows:

112 (2) WITHIN FIVE YEARS.—

113 (b) A legal or equitable action on a contract, obligation,
114 or liability founded on a written instrument, except for an
115 action to enforce a claim against a payment bond, which shall be
116 governed by the applicable provisions of paragraph (6) (e), s.

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117 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an
118 action for a deficiency judgment governed by paragraph (6)(g)
119 ~~(6)(h)~~.

120 (6) WITHIN ONE YEAR.—

121 (f) Except for actions described in subsection (9), or a
122 petition challenging a criminal conviction, all petitions;
123 extraordinary writs; tort actions, including those under s.
124 768.28(14); or other actions which concern any condition of
125 confinement of a prisoner ~~a petition for extraordinary writ,~~
126 ~~other than a petition challenging a criminal conviction,~~ filed
127 by or on behalf of a prisoner as defined in s. 57.085. Any
128 petition, writ, or action brought under this paragraph must be
129 commenced within 1 year after the time the incident, conduct, or
130 conditions occurred or within 1 year after the time the
131 incident, conduct, or conditions were discovered, or should have
132 been discovered.

133 ~~(g) Except for actions described in subsection (9), an~~
134 ~~action brought by or on behalf of a prisoner, as defined in s.~~
135 ~~57.085, relating to the conditions of the prisoner's~~
136 ~~confinement.~~

137 Section 3. Section 760.701, Florida Statutes, is created to
138 read:

139 760.701 Lawsuits by prisoners.—

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

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146 (2) An action may not be brought by or on behalf of a
147 prisoner relating to the conditions of the prisoner's
148 confinement under 42 U.S.C. s. 1983, or any other state or
149 federal law, until such administrative remedies as are available
150 are fully exhausted.

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

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

165 (5) The time for bringing an action that concerns any
166 condition of confinement of a prisoner shall be the limitations
167 period as described in s. 95.11(6)(f).

168 Section 4. Paragraph (d) of subsection (2) of section
169 775.087, Florida Statutes, is amended, paragraph (e) is added to
170 that subsection, and paragraph (a) of that subsection is
171 republished, to read:

172 775.087 Possession or use of weapon; aggravated battery;
173 felony reclassification; minimum sentence.—

174 (2)(a)1. Any person who is convicted of a felony or an

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175 attempt to commit a felony, regardless of whether the use of a
176 weapon is an element of the felony, and the conviction was for:

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

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

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

226 3. Any person who is convicted of a felony or an attempt to
227 commit a felony listed in sub-subparagraphs 1.a.-p. or sub-
228 subparagraph 1.r., regardless of whether the use of a weapon is
229 an element of the felony, and during the course of the
230 commission of the felony such person discharged a "firearm" or
231 "destructive device" as defined in s. 790.001 and, as the result
232 of the discharge, death or great bodily harm was inflicted upon

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233 any person, the convicted person shall be sentenced to a minimum
234 term of imprisonment of not less than 25 years and not more than
235 a term of imprisonment of life in prison.

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

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

250 Section 5. Section 922.10, Florida Statutes, is amended to
251 read:

252 922.10 Execution of death sentence; executioner.—A death
253 sentence shall be executed by electrocution, ~~or~~ lethal
254 injection, or a method not deemed unconstitutional nor cruel and
255 unusual in accordance with s. 922.105. The warden of the state
256 prison shall designate the executioner. The warrant authorizing
257 the execution shall be read to the convicted person immediately
258 before execution.

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

261 922.105 Execution of death sentence; prohibition against

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262 reduction of death sentence as a result of determination that a
263 method of execution is unconstitutional.—

264 (3) If electrocution or lethal injection is held to be
265 unconstitutional or cruel and unusual by the Florida Supreme
266 Court under the State Constitution, or held to be
267 unconstitutional or cruel and unusual by the United States
268 Supreme Court under the United States Constitution, or if the
269 United States Supreme Court declines to review any judgment
270 holding a method of execution to be unconstitutional or cruel
271 and unusual under the United States Constitution made by the
272 Florida Supreme Court or the United States Court of Appeals that
273 has jurisdiction over Florida, or if the acquisition of
274 chemicals necessary for lethal injection by the department
275 becomes impossible or impractical, all persons sentenced to
276 death for a capital crime shall be executed by a method not
277 deemed unconstitutional nor cruel and unusual ~~any constitutional~~
278 ~~method of execution~~.

279 Section 7. Present paragraphs (b) through (e) of subsection
280 (4) of section 934.425, Florida Statutes, are redesignated as
281 paragraphs (e) through (h), respectively, and new paragraphs
282 (b), (c), and (d) are added to that subsection, to read:

283 934.425 Installation or use of tracking devices or tracking
284 applications; exceptions; penalties.—

285 (4) This section does not apply to:

286 (b) A correctional officer, a correctional probation
287 officer, or any other officer or support personnel, as those
288 terms are defined in s. 943.10, of the Department of Corrections
289 who lawfully installs, places, or uses a tracking device or
290 tracking application on a person in his or her care, custody, or

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291 control and in the course and scope of his or her employment.

292 (c) A juvenile probation officer, an authorized agent or
293 designee, or delinquency program staff, as those terms are
294 defined in s. 985.03, of the Department of Juvenile Justice who
295 lawfully installs, places, or uses a tracking device or tracking
296 application on a person in his or her care, custody, or control
297 and in the course and scope of his or her employment.

298 (d) A person authorized to install, place, or use a
299 tracking device or tracking application pursuant to a court
300 order.

301 Section 8. Section 945.41, Florida Statutes, is amended to
302 read:

303 945.41 Mental health treatment for inmates; legislative
304 intent of ss. 945.40-945.49.-

305 (1) INTENT.-It is the intent of the Legislature that:

306 (a) ~~mentally ill~~ Inmates in the custody of the department
307 who have a mental illness ~~of Corrections~~ receive an evaluation
308 and appropriate treatment for their mental illness through a
309 continuum of outpatient and inpatient mental health treatment
310 and services.

311 (b) The department is authorized to purchase treatment
312 materials and equipment to support inmate rehabilitation; to
313 ameliorate disabling mental symptoms associated with impairment
314 in behavioral functioning, sensory and motor skills, and impulse
315 control; and to improve adaptive coping skills consistent with
316 the department's jurisdiction as described in s. 945.025.

317 (c) Sections 945.40-945.49 do not supplement, amend, or
318 change the responsibilities of the Department of Children and
319 Families pursuant to chapter 916, the Forensic Client Services

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320 Act, which governs forensic services for persons who are
321 incompetent to proceed as defined in s. 916.106.

322 (2) INDIVIDUAL DIGNITY AND TREATMENT.—

323 (a) An inmate in the custody of the department shall be
324 offered treatment that is suited to his or her needs as
325 determined by health care staff.

326 (b) The department shall provide mental health treatment
327 and services to inmates and may contract with any entities,
328 persons, or agencies qualified to provide such treatment and
329 services.

330 (c) Inmates receiving mental health treatment and services
331 shall be offered the opportunity to participate in the
332 development of a written individualized treatment plan and be
333 provided a copy of such plan before its implementation. ~~It is~~
334 further the intent of the Legislature that:

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

348 (e)~~(2)~~ Mental health treatment facilities shall be secure

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349 and adequately equipped and staffed for the provision of mental
350 health treatment and services. Inmates shall be offered the
351 least restrictive appropriate available treatment and services
352 based on their assessed needs and best interests and consistent
353 with improvement of their condition for facilitation of
354 appropriate adjustment within the correctional environment
355 ~~services and that, to the extent possible, such services be~~
356 ~~provided in the least restrictive manner consistent with optimum~~
357 ~~improvement of the inmate's condition.~~

358 (3) EXPRESS AND INFORMED CONSENT.-

359 (a) A mentally competent inmate offered mental health
360 treatment within the department shall give his or her express
361 and informed consent for such treatment. Before giving such
362 consent, the following information shall be provided and
363 explained in plain language to the inmate:

- 364 1. The proposed treatment.
365 2. The purpose of the treatment.
366 3. The common risks, benefits, and side effects of the
367 treatment and the specific dosage range for a medication, if
368 applicable.
369 4. Alternative treatment modalities.
370 5. The approximate length of treatment.
371 6. The potential effects of stopping treatment.
372 7. How treatment will be monitored.
373 8. That any consent given for treatment may be revoked
374 orally or in writing before or during the treatment period by
375 the inmate or by a person legally authorized to make health care
376 decisions on behalf of the inmate.

377 (b) Inmates who are determined to be incompetent to consent

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378 to treatment shall receive treatment deemed to be necessary for
379 their appropriate care and for the safety of the inmate or
380 others in accordance with the procedures established in ss.
381 945.40-945.49.

382 (4) ~~(3)~~ PAROLE.—Inmates who are transferred to any facility
383 for the purpose of mental health treatment and services shall be
384 given consideration for parole and be eligible for release by
385 reason of gain-time allowances as provided in s. 944.291 and
386 release by expiration of sentence, consistent with guidelines
387 established for that purpose by the department.

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

394 (6) ~~(5)~~ TREATMENT FACILITIES.—The department may designate
395 mental health treatment facilities for adult, youthful, and
396 female offenders or may contract with other appropriate
397 entities, persons, or agencies for such services.

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

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407 is deemed lifesaving or there is a situation threatening serious
408 bodily harm to the inmate.

409 Section 9. Section 945.42, Florida Statutes, is amended to
410 read:

411 945.42 Definitions; ss. 945.40-945.49.—As used in ss.
412 945.40-945.49, the following terms shall have the meanings
413 ascribed to them, unless the context shall clearly indicate
414 otherwise:

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

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

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

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

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

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

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

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

454 ~~(4) "Director" means the Director for Mental Health~~
455 ~~Services of the Department of Corrections or his or her~~
456 ~~designee.~~

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

463 ~~(a)1. The inmate is demonstrating a refusal to care for~~
464 ~~himself or herself and without immediate treatment intervention~~

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465 ~~is likely to continue to refuse to care for himself or herself,~~
 466 ~~and such refusal poses an immediate, real, and present threat of~~
 467 ~~substantial harm to his or her well-being; or~~

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

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

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

477 ~~(7)-(6)~~ "In need of care and treatment" means that an inmate
 478 has a mental illness for which inpatient services in a mental
 479 health treatment facility are necessary and ~~that, but for being~~
 480 ~~isolated in a more restrictive and secure housing environment,~~
 481 because of the mental illness:

482 (a) But for being isolated in a more restrictive and secure
 483 housing environment:

484 1. The inmate is demonstrating a refusal to care for
 485 himself or herself and without treatment is likely to continue
 486 to refuse to care for himself or herself, and such refusal poses
 487 a real and present threat of substantial harm to his or her
 488 well-being; or

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

493 (b) The inmate is incompetent to consent to treatment and

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494 is unable or is refusing to provide express and informed consent
495 to treatment.

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

498 (d)~~(e)~~ All available less restrictive treatment
499 alternatives that would offer an opportunity for improvement of
500 the inmate's condition have been clinically determined to be
501 inappropriate.

502 (8)~~(7)~~ "Inmate" means any person committed to the custody
503 of the Department of Corrections.

504 (9) "Involuntary examination" means a psychiatric
505 examination performed at a mental health treatment facility to
506 determine whether an inmate should be placed in the mental
507 health treatment facility for inpatient mental health treatment
508 and services.

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

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

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

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

522 (11)~~(8)~~ "Mental health treatment facility" means any

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523 extended treatment or hospitalization-level unit within the
524 corrections system which the Assistant Secretary for Health
525 Services of the department specifically designates by rule to
526 provide acute mental health ~~psychiatric~~ care and which may
527 include involuntary treatment and therapeutic intervention in
528 contrast to less intensive levels of care such as outpatient
529 mental health care, transitional mental health care, or crisis
530 stabilization care. The term does not include a forensic
531 facility as defined in s. 916.106.

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

543 (13) ~~(10)~~ "Psychiatrist" means a medical practitioner
544 licensed pursuant to chapter 458 or chapter 459 who has
545 primarily diagnosed and treated nervous and mental disorders for
546 a period of not less than 3 years inclusive of psychiatric
547 residency.

548 (14) ~~(11)~~ "Psychological professional" means a behavioral
549 practitioner who has an approved doctoral degree in psychology
550 as defined in s. 490.003(3)(b) ~~s. 490.003(3)~~ and is employed by
551 the department or who is licensed as a psychologist pursuant to

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552 chapter 490.

553 ~~(15)-(12)~~ "Secretary" means the Secretary of Corrections.

554 ~~(16)-(13)~~ "Transitional mental health care" means a level of
555 care that is more intensive than outpatient care, but less
556 intensive than crisis stabilization care, and is characterized
557 by the provision of traditional mental health treatment and
558 services, ~~treatments~~ such as group and individual therapy,
559 activity therapy, recreational therapy, and psychotropic
560 medications in the context of a secure, structured residential
561 setting. Transitional mental health care is indicated for an
562 inmate ~~a person~~ with chronic or residual symptomatology who does
563 not require crisis stabilization care or acute mental health
564 ~~psychiatric~~ care, but whose impairment in functioning
565 nevertheless renders him or her incapable of adjusting
566 satisfactorily within the general inmate population.

567 (17) "Treatment" means psychotropic medications prescribed
568 by a medical practitioner licensed pursuant to chapter 458 or
569 chapter 459, including those laboratory tests and related
570 medical procedures that are essential for the safe and effective
571 administration of a psychotropic medication and psychological
572 interventions and services, such as group and individual
573 psychotherapy, activity therapy, recreational therapy, and music
574 therapy. The term does not include forensic services for inmate
575 defendants who are incompetent to proceed as defined in s.
576 916.106.

577 ~~(18)-(14)~~ "Warden" means the warden of a state corrections
578 facility or his or her designee.

579 Section 10. Section 945.43, Florida Statutes, is amended to
580 read:

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581 (Substantial rewording of section. See
582 s. 945.43, F.S., for present text.)
583 945.43 Involuntary examination.—

584 (1) If there is reason to believe that an inmate has a
585 mental illness and the inmate is in need of care and treatment,
586 the inmate's treating clinician may refer the inmate to a mental
587 health treatment facility for an involuntary examination. Upon
588 referral, the warden of the facility where the inmate is housed
589 shall transfer the inmate to a mental health treatment facility.

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

594 (3) If, after the examination, the inmate is determined to
595 be in need of care and treatment, the psychiatrist shall propose
596 a recommended course of treatment that is essential to the care
597 of the inmate, and the warden shall initiate proceedings for
598 placement of the inmate in the mental health treatment facility
599 and for involuntary treatment of the inmate as specified in s.
600 945.44. If the inmate is not in need of care and treatment, he
601 or she shall be transferred out of the mental health treatment
602 facility and provided with appropriate mental health services.

603 (4) The involuntary examination and initiation of court
604 proceedings for the placement and applicable involuntary
605 treatment of the inmate in the mental health treatment facility
606 shall be completed within 10 calendar days after arrival.

607 (5) The inmate may remain in the mental health treatment
608 facility pending a hearing after the timely filing of a petition
609 as described in s. 945.44. Pending a hearing, necessary

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610 emergency treatment may be provided in the mental health
611 treatment facility upon the written order of a physician as
612 provided in s. 945.48.

613 Section 11. Section 945.44, Florida Statutes, is amended to
614 read:

615 (Substantial rewording of section. See
616 s. 945.44, F.S., for present text.)

617 945.44 Placement and treatment of an inmate in a mental
618 health treatment facility.-

619 (1) CRITERIA FOR INVOLUNTARY PLACEMENT OR TREATMENT.-

620 (a) An inmate may be placed in a mental health treatment
621 facility if he or she is mentally ill and is in need of care and
622 treatment.

623 (b) An inmate may receive involuntary treatment for which
624 the inmate is unable or has refused to provide express and
625 informed consent, if all of the following apply:

626 1. The inmate is mentally ill;

627 2. The treatment is essential to the care of the inmate;

628 3. The treatment is not experimental and does not present
629 an unreasonable risk of serious, hazardous, or irreversible side
630 effects;

631 4. The inmate is gravely disabled or poses a likelihood of
632 serious harm; and

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

634 (2) HEARING PROCEDURES FOR PETITIONS FOR PLACEMENT AND
635 TREATMENT.-

636 (a) An inmate may be placed and involuntarily treated in a
637 mental health treatment facility after notice and hearing upon
638 the recommendation of the warden of the facility where the

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639 inmate is confined. The warden of the institution where the
640 mental health treatment facility is located shall petition the
641 circuit court serving the county for an order authorizing the
642 placement and treatment of the inmate. The petition must be
643 supported by the expert opinion of at least one of the inmate's
644 treating psychiatrists.

645 (b) The inmate shall be provided with a copy of the
646 petition along with the proposed treatment, the basis for the
647 proposed treatment, the names of the examining experts, and the
648 date, time, and location of the hearing. After considering the
649 public safety and security concerns presented by transporting
650 the inmate or in conducting onsite hearings, the court may order
651 that the hearing be conducted by electronic means or in person
652 at the facility or at another location designated by the court.
653 If the hearing is ordered by the court to be conducted at a
654 location other than the facility, the department is authorized
655 to transport the inmate to the location of the hearing.

656 (c) The inmate may have an attorney represent him or her at
657 the hearing, and, if the inmate is indigent, the court shall
658 appoint the office of the public defender or private counsel
659 pursuant to s. 27.40(1) to represent the inmate at the hearing.
660 An attorney representing the inmate shall have access to the
661 inmate and any records, including medical or mental health
662 records, which are relevant to the representation of the inmate.

663 (d) The hearing on the petition for involuntary placement
664 and treatment shall be held as expeditiously as possible after
665 the petition is filed, but no later than 14 calendar days after
666 filing. The court may appoint a general or special magistrate to
667 preside over the hearing. The inmate may testify or not, as he

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668 or she chooses, may cross-examine witnesses testifying on behalf
669 of the facility, and may present his or her own witnesses.

670 (e) The court may waive the presence of the inmate at the
671 hearing if the waiver is consistent with the best interests of
672 the inmate and the inmate's counsel does not object. One of the
673 inmate's physicians whose opinion supported the petition shall
674 appear as a witness at the hearing.

675 (3) ORDERS FOR INVOLUNTARY PLACEMENT AND TREATMENT.—

676 (a) If the court finds by clear and convincing evidence
677 that the inmate meets the criteria specified in paragraph
678 (1) (a), the court must order that the inmate be involuntarily
679 placed in the mental health treatment facility for a period not
680 to exceed 6 months.

681 (b) If the court finds by clear and convincing evidence
682 that the inmate meets the criteria specified in paragraph
683 (1) (b), the court may order that the inmate be involuntarily
684 treated for a period not to exceed 6 months, concurrent with an
685 order for placement in the mental health treatment facility. In
686 determining whether to order involuntary treatment under this
687 paragraph, the court must consider the inmate's expressed
688 preference regarding treatment; whether the inmate is able to
689 express a preference; the probability of adverse side effects;
690 the prognosis for the inmate without treatment; the prognosis
691 for the inmate with treatment; and any other factors the court
692 deems relevant.

693 (4) STATUS HEARINGS AND CONTINUING JURISDICTION.—An order
694 authorizing involuntary placement and treatment must allow such
695 placement and treatment for a period not to exceed 6 months
696 following the date of the order. Unless the court is notified in

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

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

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

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

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

723 945.46 Initiation of involuntary placement proceedings with
724 respect to a mentally ill inmate scheduled for release.—

725 (3) The warden shall file, in the court in the county where

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

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

754 (5)~~(3)~~ The department may transport an individual who is

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755 being released from its custody to a receiving or mental health
756 treatment facility for involuntary examination or placement.
757 Such transport shall be made to a facility that is specified by
758 the Department of Children and Families as able to meet the
759 specific needs of the individual. If the Department of Children
760 and Families does not specify a facility, transport shall ~~may~~ be
761 made to the nearest receiving facility.

762 Section 14. Section 945.47, Florida Statutes, is amended to
763 read:

764 945.47 Discharge of inmate from mental health treatment.—

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

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

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

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

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784 aftercare placement, and to prospective recipient inpatient
785 health care or residential facilities upon request. The record
786 shall include, at a minimum, a summary of the inmate's
787 diagnosis, length of stay in treatment, clinical history,
788 prognosis, prescribed medication, treatment plan, and
789 recommendations for aftercare services.

790 Section 15. Section 945.48, Florida Statutes, is amended to
791 read:

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

794 945.48 Emergency treatment orders and use of force.—

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

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

806 (b) Extreme deterioration in behavioral functioning
807 secondary to the mental illness.

808 (2) PSYCHOTROPIC MEDICATION.—Psychotropic medication may be
809 administered only when the medication constitutes an appropriate
810 treatment for a mental illness and its symptoms and alternative
811 treatments are not available or indicated, or would not be
812 effective. If after the 72-hour period the inmate has not given

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

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

837 Section 16. Section 945.485, Florida Statutes, is created
838 to read:

839 945.485 Management and treatment for self-injurious
840 behaviors.—

841 (1) The Legislature finds that nonsuicidal self-injurious

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842 behaviors in correctional institutions, or acts intended to
843 cause bodily harm but not death, have increased in the
844 correctional environment. Self-injurious behavior may include
845 nonsuicidal self-injury or self-mutilation, such as cutting,
846 reopening wounds, and ingesting or inserting foreign objects or
847 dangerous instruments into the body. These behaviors pose a
848 significant threat to inmates, staff, and, in many cases, the
849 safe and secure operation of the correctional institution. In
850 addition, self-injurious behaviors, coupled with the inmate's
851 repeated refusals to provide express and informed consent for
852 medical treatment and care, are a significant challenge for
853 correctional medical and mental health professionals, resulting
854 in higher costs for medical services, and may result in
855 inadvertent mortality in the incarcerated population.

856 (2) In accordance with s. 945.6402, the Legislature finds
857 that an inmate retains the fundamental right of self-
858 determination regarding decisions pertaining to his or her own
859 health, including the right to choose or refuse medical
860 treatment or life-saving medical procedures. However, the
861 inmate's right to privacy and decisionmaking regarding medical
862 treatment may be outweighed by compelling state interests.

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

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871 determine whether the inmate's self-injurious behavior presents
872 a danger to the safety of department staff or other inmates or
873 the security, internal order, or discipline of the institution.

874 (a) If the inmate's treating physician determines that the
875 inmate has a mental illness and is incompetent to consent to
876 treatment, the physician shall proceed in accordance with s.
877 945.6402 for any necessary surgical or medical services. If the
878 inmate is in need of care and treatment as defined in s. 945.42,
879 the inmate shall be referred to a mental health treatment
880 facility for an involuntary examination in accordance with s.
881 945.44.

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

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

899 (b) The inmate shall be provided with a copy of the

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

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

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

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

928 (f) The court shall determine whether the warden has

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929 established, by clear and convincing evidence, a compelling
930 state interest sufficient to outweigh the inmate's right to
931 refuse treatment. The court shall consider all of the following:

932 1. Preservation of the life of the inmate.

933 2. Prevention of suicide.

934 3. Protection of innocent third parties.

935 4. Maintenance of the ethical integrity of the medical
936 profession.

937 5. Preservation of the security, internal order, or
938 discipline of the institution.

939 6. Rehabilitation of the inmate.

940 7. Any other compelling state interest.

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

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

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

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958 945.49 Operation and administration.—

959 (2) ~~RULES.—The department, in cooperation with the Mental~~
960 ~~Health Program Office of the Department of Children and~~
961 ~~Families,~~ shall adopt rules necessary for administration of ss.
962 945.40-945.49 in accordance with chapter 120.

963 Section 18. Section 945.6402, Florida Statutes, is created
964 to read:

965 945.6402 Inmate health care advance directives.—

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

969 (a) "Health care facility" has the same meaning as in s.
970 765.101 and includes any correctional institution or facility
971 where health care is provided.

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

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

983 (d) "Inmate" means any person committed to the custody of
984 the department.

985 (e) "Ombudsman" means an individual designated and
986 specifically trained by the department to identify conditions

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987 that may pose a threat to the rights, health, safety, and
988 welfare of inmates in a health care facility and who may be
989 appointed to serve as a proxy for an inmate who is physically or
990 mentally unable to communicate a willful and knowing health care
991 decision.

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

997 (g) "Proxy review team" means a team of at least five
998 members, appointed by the Assistant Secretary for Health
999 Services. The team shall be composed of, at a minimum, one
1000 physician licensed pursuant to chapter 458 or chapter 459, one
1001 psychologist licensed pursuant to chapter 490, one nurse
1002 licensed pursuant to chapter 464, and one department chaplain.

1003 (2) LEGISLATIVE FINDINGS AND INTENT.-

1004 (a) In accordance with chapter 765, the Legislature finds
1005 that an inmate retains the fundamental right of self-
1006 determination regarding decisions pertaining to his or her own
1007 health, including the right to choose or refuse medical
1008 treatment. In accordance with chapter 765, this right is subject
1009 to certain institutional interests, including the protection of
1010 human life, the preservation of ethical standards in the medical
1011 profession, and, for inmates committed to the custody of the
1012 department, the security and good order of the institutional
1013 setting.

1014 (b) To ensure that such right is not lost or diminished by
1015 virtue of later physical or mental incapacity, the Legislature

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1016 intends that the procedures specified in chapter 765, and as
1017 modified in this section for the institutional health care
1018 setting, apply to incarcerated inmates. These procedures should
1019 be less expensive and less restrictive than guardianship and
1020 allow an inmate to plan for incapacity by executing a document
1021 or orally designating another person to direct the course of his
1022 or her health care or receive his or her health information, or
1023 both, upon his or her incapacity. These procedures permit a
1024 previously incapacitated inmate to exercise his or her full
1025 right to make health care decisions as soon as the capacity to
1026 make such decisions has been regained.

1027 (c) In order to ensure that the rights and intentions of an
1028 inmate are respected when the inmate is not able to participate
1029 actively in decisions concerning himself or herself, and to
1030 encourage communication between the inmate, his or her family,
1031 and his or her treating physicians, the Legislature declares
1032 that the laws of this state recognize the right of a competent
1033 incarcerated adult to make an advance directive instructing his
1034 or her physicians to provide, withhold, or withdraw life-
1035 prolonging procedures or to designate another person to make the
1036 health care decision for him or her in the event that such
1037 incarcerated person should become incapacitated and unable to
1038 personally direct his or her health care. It is further the
1039 intent of the Legislature that the department provide the
1040 opportunity for inmates to make advance directives as specified
1041 in this section.

1042 (d) The Legislature further recognizes that incarcerated
1043 inmates may not avail themselves of the opportunity to make an
1044 advance directive or, because of incarceration, may not have a

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1045 surrogate, as defined in s. 765.101, willing, able, or
1046 reasonably available to make health care decisions on their
1047 behalf. Additionally, because of incarceration, the individuals
1048 designated in s. 765.401 who are eligible to serve as an
1049 appointed proxy may not be reasonably available, willing, or
1050 competent to make health care decisions for the inmate in the
1051 event of incapacity. Thus, it is the intent of the Legislature
1052 that the department have an efficient process that is less
1053 expensive and less restrictive than guardianship for the
1054 appointment of a proxy to allow for the expedient delivery of
1055 necessary health care to an incarcerated inmate.

1056 (e) This section does not supersede the process for inmate
1057 involuntary mental health treatment specified in ss. 945.40-
1058 945.49.

1059 (3) CAPACITY OF INMATE; PROCEDURE.-

1060 (a) An inmate is presumed to be capable of making health
1061 care decisions for himself or herself unless he or she is
1062 determined to be incapacitated. When an inmate has
1063 decisionmaking capacity, the inmate's wishes are controlling.
1064 Each physician or health care provider must clearly communicate
1065 the treatment plan and any change to the treatment plan before
1066 implementation of the plan or any change to the plan. Incapacity
1067 may not be inferred from an inmate's involuntary hospitalization
1068 for mental illness or from his or her intellectual disability.

1069 (b) If an inmate's capacity to make health care decisions
1070 for himself or herself or provide informed consent is in
1071 question, the inmate's treating physician at the health care
1072 facility where the inmate is located shall evaluate the inmate's
1073 capacity and, if the evaluating physician concludes that the

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1074 inmate lacks capacity, enter that evaluation in the inmate's
1075 medical record. If the evaluating physician has a question as to
1076 whether the inmate lacks capacity, another physician shall also
1077 evaluate the inmate's capacity, and if the second physician
1078 finds that the inmate lacks the capacity to make health care
1079 decisions for himself or herself or provide informed consent,
1080 both physicians' evaluations shall be entered in the inmate's
1081 medical record.

1082 (c) If the inmate is found to be incapacitated and has
1083 designated a health care surrogate in accordance with chapter
1084 765, the institution's or facility's health care staff shall
1085 notify the surrogate and proceed as specified in chapter 765. If
1086 the incapacitated inmate has not designated a health care
1087 surrogate, the health care facility shall appoint a proxy to
1088 make health care decisions for the inmate as specified in this
1089 section.

1090 (d) A determination made pursuant to this section that an
1091 inmate lacks the capacity to make health care decisions for
1092 himself or herself may not be construed as a finding that an
1093 inmate lacks capacity for any other purpose.

1094 (4) HEALTH CARE ADVANCE DIRECTIVE; PROCEDURE.-

1095 (a) In accordance with chapter 765, the department shall
1096 offer inmates the opportunity to execute an advance directive as
1097 defined in s. 765.101.

1098 (b) The department shall provide to each inmate written
1099 information concerning advance directives and necessary forms to
1100 allow inmates to execute an advance directive. The department
1101 and its health care providers shall document in the inmate's
1102 medical records whether the inmate has executed an advance

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1103 directive. Neither the department nor its health care providers
1104 may require an inmate to execute an advance directive using the
1105 department's forms. The inmate's advance directive shall travel
1106 with the inmate within the department as part of the inmate's
1107 medical record.

1108 (c) An advance directive may be amended or revoked at any
1109 time by a competent inmate by means of:

- 1110 1. A signed, dated writing of intent to amend or revoke;
1111 2. The physical cancellation or destruction of the advance
1112 directive by the inmate or by another person in the inmate's
1113 presence and at the inmate's direction;
1114 3. An oral expression of intent to amend or revoke; or
1115 4. A subsequently executed advance directive that is
1116 materially different from a previously executed advance
1117 directive.

1118 (5) PROXY.—

1119 (a) If an incapacitated inmate has not executed an advance
1120 directive or designated a health care surrogate in accordance
1121 with the procedures specified in chapter 765, or the designated
1122 health care surrogate is no longer available to make health care
1123 decisions, health care decisions may be made for the inmate by
1124 any of the individuals specified in the priority order provided
1125 in s. 765.401(1)(a)-(g) as proxy. Documentation of the efforts
1126 to locate a proxy from the classes specified in s.
1127 765.401(1)(a)-(g) shall be recorded in the inmate's medical
1128 file.

1129 (b) If there are no individuals as specified in s.
1130 765.401(1)(a)-(g) available, willing, or competent to act on
1131 behalf of the inmate, and the inmate is housed in a correctional

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1132 institution or facility where health care is provided in a
1133 nonhospital setting, the warden of the institution where the
1134 inmate is housed, or the warden's designee, shall consult with
1135 the Assistant Secretary for Health Services or his or her
1136 designee, who shall appoint a department ombudsman to serve as
1137 the proxy. This appointment terminates when the inmate regains
1138 capacity or is no longer incarcerated in the custody of the
1139 department. In accordance with chapter 765 and as provided in
1140 this section, decisions to withhold or withdraw life-prolonging
1141 procedures will be reviewed by the department's proxy review
1142 team for compliance with chapter 765 and the requirements of
1143 this section.

1144 (c) The ombudsman appointed to serve as the proxy is
1145 authorized to request the assistance of the treating physician
1146 and, upon request, a second physician not involved in the
1147 inmate's care to assist the proxy in evaluating the inmate's
1148 treatment.

1149 (d) In accordance with chapter 765, any health care
1150 decision made by any appointed proxy under this section must be
1151 based on the proxy's informed consent and on the decision that
1152 the proxy reasonably believes the inmate would have made under
1153 the circumstances. If there is no indication of what decision
1154 the inmate would have made, the proxy may consider the inmate's
1155 best interest in deciding that proposed treatments are to be
1156 withheld or that treatments currently in effect are to be
1157 withdrawn.

1158 (e) Before exercising the incapacitated inmate's rights to
1159 select or decline health care, the proxy must comply with ss.
1160 765.205 and 765.305, except that any proxy's decision to

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1161 withhold or withdraw life-prolonging procedures must be
1162 supported by clear and convincing evidence that the decision
1163 would have been the one the inmate would have made had he or she
1164 been competent or, if there is no indication of what decision
1165 the inmate would have made, that the decision is in the inmate's
1166 best interest.

1167 (f) Notwithstanding s. 456.057 and pursuant to s. 945.10
1168 and 45 C.F.R. part 164, subpart E, relevant protected health
1169 information and mental health and medical records of an
1170 incapacitated inmate may be disclosed to a proxy appointed to
1171 make health care decisions for an inmate.

1172 (6) USE OF FORCE.—In addition to s. 944.35(1), an employee
1173 of the department may apply reasonable physical force upon an
1174 incapacitated inmate to administer medical treatment only by or
1175 under the clinical supervision of a physician or his or her
1176 designee and only to carry out a health care decision made in
1177 accordance with this section and chapter 765.

1178 (7) IMMUNITY FROM LIABILITY.—A department health care
1179 provider, ombudsman, or other employee who acts under the
1180 direction of a health care provider as authorized in this
1181 section or chapter 765 is not subject to criminal prosecution or
1182 civil liability and may not be deemed to have engaged in
1183 unprofessional conduct as a result of carrying out a health care
1184 decision made in accordance with this section or chapter 765 on
1185 an inmate's behalf.

1186 Section 19. Section 947.02, Florida Statutes, is amended to
1187 read:

1188 947.02 Florida Commission on Offender Review; members,
1189 appointment.—

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1190 (1) ~~Except as provided in s. 947.021,~~ The members of the
1191 ~~Florida commission on Offender Review~~ shall be directly
1192 appointed by the Governor and Cabinet ~~from a list of eligible~~
1193 ~~applicants submitted by a parole qualifications committee.~~ The
1194 appointments of members of the commission shall be certified to
1195 the Senate by the Governor and Cabinet for confirmation, ~~and the~~
1196 ~~membership of the commission shall include representation from~~
1197 ~~minority persons as defined in s. 288.703.~~

1198 (2) If the Legislature decreases the membership of the
1199 commission, all commission member terms of office shall expire
1200 and new members of the commission must be appointed in
1201 accordance with subsection (1). Members appointed to the
1202 commission may be selected from incumbents ~~A parole~~
1203 ~~qualifications committee shall consist of five persons who are~~
1204 ~~appointed by the Governor and Cabinet. One member shall be~~
1205 ~~designated as chair by the Governor and Cabinet. The committee~~
1206 ~~shall provide for statewide advertisement and the receiving of~~
1207 ~~applications for any position or positions on the commission and~~
1208 ~~shall devise a plan for the determination of the qualifications~~
1209 ~~of the applicants by investigations and comprehensive~~
1210 ~~evaluations, including, but not limited to, investigation and~~
1211 ~~evaluation of the character, habits, and philosophy of each~~
1212 ~~applicant. Each parole qualifications committee shall exist for~~
1213 ~~2 years. If additional vacancies on the commission occur during~~
1214 ~~this 2-year period, the committee may advertise and accept~~
1215 ~~additional applications; however, all previously submitted~~
1216 ~~applications shall be considered along with the new applications~~
1217 ~~according to the previously established plan for the evaluation~~
1218 ~~of the qualifications of applicants.~~

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1219 ~~(3) Within 90 days before an anticipated vacancy by~~
1220 ~~expiration of term pursuant to s. 947.03 or upon any other~~
1221 ~~vacancy, the Governor and Cabinet shall appoint a parole~~
1222 ~~qualifications committee if one has not been appointed during~~
1223 ~~the previous 2 years. The committee shall consider applications~~
1224 ~~for the commission seat, including the application of an~~
1225 ~~incumbent commissioner if he or she applies, according to~~
1226 ~~subsection (2). The committee shall submit a list of three~~
1227 ~~eligible applicants, which may include the incumbent if the~~
1228 ~~committee so decides, without recommendation, to the Governor~~
1229 ~~and Cabinet for appointment to the commission. In the case of an~~
1230 ~~unexpired term, the appointment must be for the remainder of the~~
1231 ~~unexpired term and until a successor is appointed and qualified.~~
1232 ~~If more than one seat is vacant, the committee shall submit a~~
1233 ~~list of eligible applicants, without recommendation, containing~~
1234 ~~a number of names equal to three times the number of vacant~~
1235 ~~seats; however, the names submitted may not be distinguished by~~
1236 ~~seat, and each submitted applicant shall be considered eligible~~
1237 ~~for each vacancy.~~

1238 ~~(4) Upon receiving a list of eligible persons from the~~
1239 ~~parole qualifications committee, the Governor and Cabinet may~~
1240 ~~reject the list. If the list is rejected, the committee shall~~
1241 ~~reinitiate the application and examination procedure according~~
1242 ~~to subsection (2).~~

1243 ~~(5) Section 120.525 and chapters 119 and 286 apply to all~~
1244 ~~activities and proceedings of a parole qualifications committee.~~

1245 Section 20. Section 947.021, Florida Statutes, is repealed.

1246 Section 21. Subsection (2) of section 947.12, Florida
1247 Statutes, is amended to read:

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1248 947.12 Members, employees, expenses.—

1249 ~~(2) The members of the examining board created in s. 947.02~~
1250 ~~shall each be paid per diem and travel expenses pursuant to s.~~
1251 ~~112.061 when traveling in the performance of their duties.~~

1252 Section 22. Paragraph (g) of subsection (1) and subsection
1253 (5) of section 957.04, Florida Statutes, are amended to read:

1254 957.04 Contract requirements.—

1255 (1) A contract entered into under this chapter for the
1256 operation of contractor-operated correctional facilities shall
1257 maximize the cost savings of such facilities and:

1258 (g) Require the contractor to be responsible for a range of
1259 dental, medical, and psychological services; diet; education;
1260 and work programs at least equal to those provided by the
1261 department in comparable facilities. The work and education
1262 programs must be designed to reduce recidivism, and include
1263 opportunities to participate in such work programs as authorized
1264 pursuant to s. 946.523. However, with respect to the dental,
1265 medical, psychological, and dietary services, the department is
1266 authorized to exclude any or all of these services from a
1267 contract for private correctional services entered into under
1268 this chapter and retain responsibility for the delivery of those
1269 services, if the department finds it to be in the best interests
1270 of the state.

1271 ~~(5) Each contract entered into by the department must~~
1272 ~~include substantial minority participation unless demonstrated~~
1273 ~~by evidence, after a good faith effort, as impractical and must~~
1274 ~~also include any other requirements the department considers~~
1275 ~~necessary and appropriate for carrying out the purposes of this~~
1276 ~~chapter.~~

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1277 Section 23. Subsection (3) of section 957.09, Florida
1278 Statutes, is amended to read:

1279 957.09 Applicability of chapter to other provisions of
1280 law.—

1281 ~~(3) The provisions of law governing the participation of~~
1282 ~~minority business enterprises are applicable to this chapter.~~

1283 Section 24. Subsection (2) of section 20.32, Florida
1284 Statutes, is amended to read:

1285 20.32 Florida Commission on Offender Review.—

1286 (2) All powers, duties, and functions relating to the
1287 appointment of the Florida Commission on Offender Review as
1288 provided in s. 947.02 ~~or s. 947.021~~ shall be exercised and
1289 performed by the Governor and Cabinet. ~~Except as provided in s.~~
1290 ~~947.021,~~ Each appointment shall be made from among the first
1291 three eligible persons on the list of the persons eligible for
1292 said position.

1293 Section 25. This act shall take effect July 1, 2025.