

**By** the Appropriations Committee on Criminal and Civil Justice;  
the Committee on Criminal Justice; and Senator Martin

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A bill to be entitled

An act relating to corrections; amending s. 57.085, F.S.; revising provisions relating to deferral of prepayment of court costs and fees for indigent prisoners for actions involving challenges to prison disciplinary reports; amending s. 95.11, F.S.; providing for a 1-year period of limitation for bringing certain actions relating to the condition of confinement of prisoners; creating s. 760.701, F.S.; defining the term "prisoner"; requiring exhaustion of administrative remedies before certain actions concerning confinement of prisoners may be brought; providing for dismissal of certain actions involving prisoner confinement in certain circumstances; requiring a showing of physical injury or the commission of a certain act as a condition precedent for bringing certain actions relating to prisoner confinement; specifying a time limitation period for bringing an action concerning any condition of confinement; amending s. 775.087, F.S.; requiring a court to impose consecutive terms of imprisonment if the offender is convicted of multiple specified felony offenses; authorizing a court to impose consecutive terms of imprisonment if the offender commits certain offenses in conjunction with another felony offense; making technical changes; amending s. 934.425, F.S.; exempting certain persons working for the Department of Corrections or the Department of Juvenile Justice, and persons authorized pursuant to a court order, from

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provisions regulating the use of tracking devices or tracking applications; amending s. 945.41, F.S.; revising legislative intent; revising provisions relating to mental health treatment for inmates; requiring that an inmate give his or her express and informed consent to such treatment; specifying information an inmate must receive regarding treatment; authorizing the warden to authorize certain emergency medical treatment under the direction of the inmate's attending physician under certain circumstances; amending s. 945.42, F.S.; revising and providing definitions; amending s. 945.43, F.S.; revising provisions concerning involuntary examinations; amending s. 945.44, F.S.; revising provisions concerning involuntary placement and treatment of an inmate in a mental health treatment facility; repealing s. 945.45, F.S., relating to continued placement of inmates in mental health treatment facilities; amending s. 945.46, F.S.; providing requirements for filing petitions for involuntary inpatient placement for certain inmates; authorizing the court to order alternative means and venues for certain hearings; requiring, rather than authorizing, inmates to be transported to the nearest receiving facility in certain circumstances; amending s. 945.47, F.S.; specifying purposes for which an inmate's mental health treatment records may be provided to the Florida Commission on Offender Review and the Department of Children and Families;

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authorizing such records to be provided to certain facilities upon request; amending s. 945.48, F.S.; substantially revising provisions relating to emergency treatment orders and use of force and providing requirements for such orders and use of force; providing requirements for emergency and psychotropic medications and use of force; creating s. 945.485, F.S.; providing legislative findings; providing requirements for management of and treatment for an inmate's self-injurious behaviors; requiring facility wardens to consult with an inmate's treating physician in certain circumstances and make certain determinations; providing for petitions to compel an inmate to submit to medical treatment in certain circumstances; providing construction; amending s. 945.49, F.S.; deleting a requirement that the Department of Corrections adopt certain rules in cooperation with the Mental Health Program Office of the Department of Children and Families; creating s. 945.6402, F.S.; providing definitions; providing legislative findings and intent; providing requirements for inmate capacity, health care advance directives, and proxies; authorizing the use of force on incapacitated inmates in certain circumstances; providing immunity from liability for certain persons in certain circumstances; amending s. 947.02, F.S.; revising the manner in which the membership of the Florida Commission on Offender Review is appointed; repealing s. 947.021, F.S., relating to expedited

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appointments of the Florida Commission on Offender Review; amending s. 947.12, F.S.; conforming provisions to changes made by the act; amending s. 957.04, F.S.; revising requirements for contracting for certain services; amending s. 957.09, F.S.; deleting a provision relating to minority business enterprises; amending s. 20.32, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

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

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

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

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

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be

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governed by the applicable provisions of paragraph (6) (e), s. 255.05(10), s. 337.18(1), or s. 713.23(1) (e), and except for an action for a deficiency judgment governed by paragraph (6) (g) ~~(6) (h)~~.

(6) WITHIN ONE YEAR.—

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

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

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

760.701 Lawsuits by prisoners.—

(1) For the purposes of this section, the term "prisoner" means any person incarcerated or detained in any jail, prison, or other correctional facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation,

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pretrial release, or a diversionary program.

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

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

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

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

Section 4. Present paragraph (e) of subsection (3) of section 775.087, Florida Statutes, is redesignated as paragraph (f), paragraph (e) is added to subsection (2) and a new paragraph (e) is added to subsection (3) of that section, and paragraphs (a) and (d) of subsection (2) and paragraphs (a) and (d) of subsection (3) of that section are amended, to read:

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175 775.087 Possession or use of weapon; aggravated battery;  
176 felony reclassification; minimum sentence.—

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

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

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Phenethylamines, or other violation of s. 893.135(1);

q. Possession of a firearm by a felon; or

r. Human trafficking,

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

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

3. Any person who is convicted of a felony or an attempt to commit a felony listed in sub-subparagraphs 1.a.-p. or sub-subparagraph 1.r., regardless of whether the use of a weapon is



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an element of the felony, and during the course of the commission of the felony such person discharged a "firearm" or "destructive device" as those terms are defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

(d) It is the intent of the Legislature that offenders who actually possess, carry, display, use, threaten to use, or attempt to use firearms or destructive devices be punished to the fullest extent of the law. The court shall impose, ~~and the~~ minimum term ~~terms~~ of imprisonment required under paragraph (a) ~~imposed pursuant to this subsection shall be imposed~~ for each qualifying felony offense ~~count~~ for which the person is convicted. If the offender is convicted of multiple felony offenses for which paragraph (a) requires the imposition of a minimum term of imprisonment, the court must ~~shall~~ impose any such terms ~~term~~ of imprisonment ~~provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense.~~

(e) If an offender commits a felony listed in subparagraph (a)1. in conjunction with any other felony offense not listed in subparagraph (a)1., the court may impose any term of imprisonment provided for in paragraph (a) consecutively to any other term of imprisonment imposed for any other felony offense not listed in subparagraph (a)1.

(3)(a)1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a

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firearm is an element of the felony, and the conviction was for:

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated battery;
- g. Kidnapping;
- h. Escape;
- i. Sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking;
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1); or
- r. Human trafficking,

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and during the commission of the offense, such person possessed a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 15 years.

2. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph 1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box magazine or a "machine gun" as defined in s. 790.001 shall be sentenced to a minimum term of imprisonment of 20 years.

3. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph 1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box magazine or a "machine gun" as defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

(d) It is the intent of the Legislature that offenders who possess, carry, display, use, threaten to use, or attempt to use a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun as defined in s. 790.001 be punished to the fullest extent of the law. The court shall impose, and the minimum term ~~terms~~ of imprisonment required under paragraph (a) ~~imposed pursuant to this subsection shall be imposed~~ for

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each qualifying felony offense ~~count~~ for which the person is convicted. If the offender is convicted of multiple felony offenses for which paragraph (a) requires the imposition of a minimum term of imprisonment, the court must ~~shall~~ impose any such terms ~~term~~ of imprisonment ~~provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense.~~

(e) If an offender commits a felony listed in subparagraph (a)1. in conjunction with any other felony offense not listed in subparagraph (a)1., the court may impose any term of imprisonment provided for in paragraph (a) consecutively to any other term of imprisonment imposed for any other felony offense not listed in subparagraph (a)1.

Section 5. Present paragraphs (b) through (e) of subsection (4) of section 934.425, Florida Statutes, are redesignated as paragraphs (f) through (i), respectively, and new paragraphs (b) through (e) are added to that subsection, to read:

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

(4) This section does not apply to:

(b) A law enforcement officer as defined in s. 943.10, or any local, state, federal, or military law enforcement agency, who lawfully installs, places, or uses a tracking device or application on another person while acting in the course or scope of his or her employment.

(c) A correctional officer, a correctional probation officer, or any other officer or support personnel, as those terms are defined in s. 943.10, of the Department of Corrections who lawfully installs, places, or uses a tracking device or

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tracking application on a person in his or her care, custody, or control and in the course and scope of his or her employment.

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

(e) A person authorized to install, place, or use a tracking device or tracking application pursuant to a court order.

Section 6. Section 945.41, Florida Statutes, is amended to read:

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

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

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

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

(c) Sections 945.40-945.49 do not supplement, amend, or change the responsibilities of the Department of Children and

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Families pursuant to chapter 916, the Forensic Client Services Act, which governs forensic services for persons who are incompetent to proceed as defined in s. 916.106.

(2) INDIVIDUAL DIGNITY AND TREATMENT.—

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

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

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

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

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407       ~~(e)(2)~~ Mental health treatment facilities shall be secure  
408 and adequately equipped and staffed for the provision of mental  
409 health treatment and services. Inmates shall be offered the  
410 least restrictive appropriate available treatment and services  
411 based on their assessed needs and best interests and consistent  
412 with improvement of their condition for facilitation of  
413 appropriate adjustment within the correctional environment  
414 ~~services and that, to the extent possible, such services be~~  
415 ~~provided in the least restrictive manner consistent with optimum~~  
416 ~~improvement of the inmate's condition.~~

417       (3) EXPRESS AND INFORMED CONSENT.—

418       (a) A mentally competent inmate offered mental health  
419 treatment within the department shall give his or her express  
420 and informed consent for such treatment. Before giving such  
421 consent, the following information shall be provided and  
422 explained in plain language to the inmate:

- 423           1. The proposed treatment.
- 424           2. The purpose of the treatment.
- 425           3. The common risks, benefits, and side effects of the  
426 treatment and the specific dosage range for a medication, if  
427 applicable.
- 428           4. Alternative treatment modalities.
- 429           5. The approximate length of treatment.
- 430           6. The potential effects of stopping treatment.
- 431           7. How treatment will be monitored.
- 432           8. That any consent given for treatment may be revoked  
433 orally or in writing before or during the treatment period by  
434 the inmate or by a person legally authorized to make health care  
435 decisions on behalf of the inmate.

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436 (b) Inmates who are determined to be incompetent to consent  
437 to treatment shall receive treatment deemed to be necessary for  
438 their appropriate care and for the safety of the inmate or  
439 others in accordance with the procedures established in ss.  
440 945.40-945.49.

441 (4)~~(3)~~ PAROLE.—Inmates who are transferred to any facility  
442 for the purpose of mental health treatment and services shall be  
443 given consideration for parole and be eligible for release by  
444 reason of gain-time allowances as provided in s. 944.291 and  
445 release by expiration of sentence, consistent with guidelines  
446 established for that purpose by the department.

447 (5)~~(4)~~ YOUTHFUL OFFENDERS.—Any inmate sentenced as a  
448 youthful offender, or designated as a youthful offender by the  
449 department under chapter 958, who is transferred pursuant to  
450 this act to a mental health treatment facility shall be  
451 separated from other inmates, if necessary, as determined by the  
452 warden of the mental health treatment facility.

453 (6)~~(5)~~ TREATMENT FACILITIES.—The department may designate  
454 mental health treatment facilities for adult, youthful, and  
455 female offenders or may contract with other appropriate  
456 entities, persons, or agencies for such services.

457 (7) EMERGENCY MEDICAL TREATMENT.—Notwithstanding any other  
458 provision of this section, when the express and informed consent  
459 of an inmate placed in a mental health treatment facility in  
460 accordance with s. 945.44 cannot be obtained or the inmate is  
461 incompetent to consent to treatment, the warden of a mental  
462 health treatment facility, or his or her designated  
463 representative, under the direction of the inmate's attending  
464 physician, may authorize nonpsychiatric, emergency surgical



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treatment or other routine medical treatment if such treatment is deemed lifesaving or there is a situation threatening serious bodily harm to the inmate.

Section 7. Section 945.42, Florida Statutes, is amended to read:

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

(1) "Court" means the circuit court.

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

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

(4) "Express and informed consent" means consent voluntarily given in writing by a competent inmate, after sufficient explanation and disclosure of the subject matter involved, to enable the inmate to make a knowing and willful decision without any element of force, fraud, deceit, duress, or

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494 other form of constraint or coercion.

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

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

501 (b) Experiencing a substantial deterioration in behavioral  
502 functioning evidenced by the inmate's unrelenting decline in  
503 volitional control over his or her actions.

504 (6) "Incompetent to consent to treatment" means a state in  
505 which an inmate's judgment is so affected by mental illness that  
506 he or she lacks the capacity to make a well-reasoned, willful,  
507 and knowing decision concerning his or her medical or mental  
508 health treatment and services. The term is distinguished from  
509 the term incompetent to proceed, as defined in s. 916.106, and  
510 refers only to an inmate's inability to provide express and  
511 informed consent for medical or mental health treatment and  
512 services.

513 ~~(4) "Director" means the Director for Mental Health~~  
514 ~~Services of the Department of Corrections or his or her~~  
515 ~~designee.~~

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

522 ~~(a)1. The inmate is demonstrating a refusal to care for~~

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~~himself or herself and without immediate treatment intervention  
is likely to continue to refuse to care for himself or herself,  
and such refusal poses an immediate, real, and present threat of  
substantial harm to his or her well-being; or~~

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

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

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

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

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

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

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

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552       (b) The inmate is incompetent to consent to treatment and  
553 is unable or is refusing to provide express and informed consent  
554 to treatment.

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

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

561       (8)~~(7)~~ "Inmate" means any person committed to the custody  
562 of the Department of Corrections.

563       (9) "Involuntary examination" means a psychiatric  
564 examination performed at a mental health treatment facility to  
565 determine whether an inmate should be placed in the mental  
566 health treatment facility for inpatient mental health treatment  
567 and services.

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

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

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

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

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581       ~~(11)(9)~~ "Mental health treatment facility" means any  
582 extended treatment or hospitalization-level unit within the  
583 corrections system which the Assistant Secretary for Health  
584 Services of the department specifically designates by rule to  
585 provide acute mental health ~~psychiatric~~ care and which may  
586 include involuntary treatment and therapeutic intervention in  
587 contrast to less intensive levels of care such as outpatient  
588 mental health care, transitional mental health care, or crisis  
589 stabilization care. The term does not include a forensic  
590 facility as defined in s. 916.106.

591       ~~(12)(9)~~ "Mental illness" or "mentally ill" means an  
592 impairment of the mental or emotional processes that exercise  
593 conscious control of one's actions or of the ability to perceive  
594 or understand reality, which impairment substantially interferes  
595 with the person's ability to meet the ordinary demands of  
596 living. However, for the purposes of transferring an inmate to a  
597 mental health treatment facility, the term does not include a  
598 developmental disability as defined in s. 393.063, simple  
599 intoxication, or conditions manifested only by antisocial  
600 behavior or substance abuse addiction. However, an individual  
601 who is developmentally disabled may also have a mental illness.

602       ~~(13)(10)~~ "Psychiatrist" means a medical practitioner  
603 licensed pursuant to chapter 458 or chapter 459 who has  
604 primarily diagnosed and treated nervous and mental disorders for  
605 a period of not less than 3 years inclusive of psychiatric  
606 residency.

607       ~~(14)(11)~~ "Psychological professional" means a behavioral  
608 practitioner who has an approved doctoral degree in psychology  
609 as defined in s. 490.003(3)(b) ~~s. 490.003(3)~~ and is employed by

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the department or who is licensed as a psychologist pursuant to chapter 490.

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

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

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

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

Section 8. Section 945.43, Florida Statutes, is amended to

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639 read:

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

642 945.43 Involuntary examination.—

643 (1) If there is reason to believe that an inmate has a  
644 mental illness and the inmate is in need of care and treatment,  
645 the inmate's treating clinician may refer the inmate to a mental  
646 health treatment facility for an involuntary examination. Upon  
647 referral, the warden of the facility where the inmate is housed  
648 shall transfer the inmate to a mental health treatment facility.

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

653 (3) If, after the examination, the inmate is determined to  
654 be in need of care and treatment, the psychiatrist shall propose  
655 a recommended course of treatment that is essential to the care  
656 of the inmate, and the warden shall initiate proceedings for  
657 placement of the inmate in the mental health treatment facility  
658 and for involuntary treatment of the inmate as specified in s.  
659 945.44. If the inmate is not in need of care and treatment, he  
660 or she shall be transferred out of the mental health treatment  
661 facility and provided with appropriate mental health services.

662 (4) The involuntary examination and initiation of court  
663 proceedings for the placement and applicable involuntary  
664 treatment of the inmate in the mental health treatment facility  
665 shall be completed within 10 calendar days after arrival.

666 (5) The inmate may remain in the mental health treatment  
667 facility pending a hearing after the timely filing of a petition

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as described in s. 945.44. Pending a hearing, necessary emergency treatment may be provided in the mental health treatment facility upon the written order of a physician as provided in s. 945.48.

Section 9. Section 945.44, Florida Statutes, is amended to read:

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

945.44 Placement and treatment of an inmate in a mental health treatment facility.—

(1) CRITERIA FOR INVOLUNTARY PLACEMENT OR TREATMENT.—

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

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

1. The inmate is mentally ill;

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

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

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

5. The inmate is incompetent to consent to treatment.

(2) HEARING PROCEDURES FOR PETITIONS FOR PLACEMENT AND TREATMENT.—

(a) An inmate may be placed and involuntarily treated in a mental health treatment facility after notice and hearing upon



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

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

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

(d) The hearing on the petition for involuntary placement  
and treatment shall be held as expeditiously as possible after  
the petition is filed, but no later than 14 calendar days after  
filing. The court may appoint a general or special magistrate to

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726 preside over the hearing. The inmate may testify or not, as he  
727 or she chooses, may cross-examine witnesses testifying on behalf  
728 of the facility, and may present his or her own witnesses.

729 (e) The court may waive the presence of the inmate at the  
730 hearing if the waiver is consistent with the best interests of  
731 the inmate and the inmate's counsel does not object. One of the  
732 inmate's physicians whose opinion supported the petition shall  
733 appear as a witness at the hearing.

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

735 (a) If the court finds by clear and convincing evidence  
736 that the inmate meets the criteria specified in paragraph  
737 (1)(a), the court must order that the inmate be involuntarily  
738 placed in the mental health treatment facility for a period not  
739 to exceed 6 months.

740 (b) If the court finds by clear and convincing evidence  
741 that the inmate meets the criteria specified in paragraph  
742 (1)(b), the court may order that the inmate be involuntarily  
743 treated for a period not to exceed 6 months, concurrent with an  
744 order for placement in the mental health treatment facility. In  
745 determining whether to order involuntary treatment under this  
746 paragraph, the court must consider the inmate's expressed  
747 preference regarding treatment, if the inmate is able to express  
748 a preference; the probability of adverse side effects; the  
749 prognosis for the inmate without treatment; the prognosis for  
750 the inmate with treatment; and any other factors the court deems  
751 relevant.

752 (4) STATUS HEARINGS AND CONTINUING JURISDICTION.—An order  
753 authorizing involuntary placement and treatment must allow such  
754 placement and treatment for a period not to exceed 6 months

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

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

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

Section 10. Section 945.45, Florida Statutes, is repealed.

Section 11. Present subsection (3) of section 945.46, Florida Statutes, is renumbered as subsection (5) and amended, and a new subsection (3) and subsection (4) are added to that section, to read:

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

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784       (3) The warden shall file, in the court in the county where  
785 the inmate is located, petitions for involuntary inpatient  
786 placement for inmates scheduled to be released. Upon filing, the  
787 clerk of the court shall provide copies to the Department of  
788 Children and Families, the inmate, and the state attorney and  
789 public defender of the judicial circuit in which the inmate is  
790 located. A fee may not be charged for the filing of a petition  
791 under chapter 394. Within 1 court working day after the filing  
792 of a petition for involuntary inpatient placement, the court  
793 shall appoint the public defender to represent the inmate who is  
794 the subject of the petition, unless the inmate is otherwise  
795 represented by counsel. The clerk of the court shall immediately  
796 notify the public defender of such appointment. Any attorney  
797 representing the inmate shall have access to the inmate,  
798 witnesses, and records relevant to the presentation of the  
799 patient's case and shall represent the interests of the inmate,  
800 regardless of the source of payment to the attorney. The state  
801 attorney for the circuit in which the inmate is located shall  
802 represent the state, rather than the petitioning warden, as the  
803 real party in interest in the proceeding. The remainder of the  
804 proceedings shall be governed by chapter 394.

805       (4) After considering the public safety and security  
806 concerns presented by transporting a mentally ill inmate or in  
807 conducting an onsite hearing, the court may order that the  
808 hearing be conducted by electronic means, at the facility in  
809 person, or at another location designated by the court. If the  
810 hearing is ordered by the court to be conducted at a location  
811 other than the facility, the department is authorized to  
812 transport the inmate to the location of the hearing.

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813        (5)~~(3)~~ The department may transport an individual who is  
814 being released from its custody to a receiving or mental health  
815 treatment facility for involuntary examination or placement.  
816 Such transport shall be made to a facility that is specified by  
817 the Department of Children and Families as able to meet the  
818 specific needs of the individual. If the Department of Children  
819 and Families does not specify a facility, transport shall ~~may~~ be  
820 made to the nearest receiving facility.

821        Section 12. Section 945.47, Florida Statutes, is amended to  
822 read:

823        945.47 Discharge of inmate from mental health treatment.—

824        (1) An inmate who has been placed in a mental health  
825 treatment facility ~~transferred~~ for the purpose of mental health  
826 treatment shall be discharged from treatment by the warden under  
827 the following conditions:

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

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

837        (2) At any time that an inmate who has received mental  
838 health treatment while in the custody of the department becomes  
839 eligible for release under supervision or upon end of sentence,  
840 a record of the inmate's mental health treatment may be provided  
841 to the Florida Commission on Offender Review, and ~~and~~ to the

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Department of Children and Families to arrange postrelease  
aftercare placement, and to prospective recipient inpatient  
health care or residential facilities upon request. The record  
shall include, at a minimum, a summary of the inmate's  
diagnosis, length of stay in treatment, clinical history,  
prognosis, prescribed medication, treatment plan, and  
recommendations for aftercare services.

Section 13. Section 945.48, Florida Statutes, is amended to  
read:

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

945.48 Emergency treatment orders and use of force.—

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

(a) Bodily harm to self or others; or

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

(2) PSYCHOTROPIC MEDICATION.—Psychotropic medication may be  
administered only when the medication constitutes an appropriate  
treatment for a mental illness and its symptoms and alternative  
treatments are not available or indicated, or would not be

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effective. If after the 72-hour period the inmate has not given express and informed consent to the medication initially refused, the inmate's treating physician shall refer the inmate to a mental health treatment facility for an involuntary examination in accordance with the procedures described in s. 945.43. Upon such referral, the warden shall, within 48 hours, excluding weekends and legal holidays, transfer the inmate to a mental health treatment facility. Upon transfer of the inmate for an involuntary examination, the emergency treatment order may be continued upon the written order of a physician as long as the physician has determined that the emergency continues to present a danger to the safety of the inmate or others and the criteria described in this subsection are satisfied. If psychotropic medication is still recommended after the emergency, it may only be administered after following the procedures outlined in s. 945.44.

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

Section 14. Section 945.485, Florida Statutes, is created to read:

945.485 Management and treatment for self-injurious behaviors.—

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900       (1) The Legislature finds that nonsuicidal self-injurious  
901 behaviors in correctional institutions, or acts intended to  
902 cause bodily harm but not death, have increased in the  
903 correctional environment. Self-injurious behavior may include  
904 nonsuicidal self-injury or self-mutilation, such as cutting,  
905 reopening wounds, and ingesting or inserting foreign objects or  
906 dangerous instruments into the body. These behaviors pose a  
907 significant threat to inmates, staff, and, in many cases, the  
908 safe and secure operation of the correctional institution. In  
909 addition, self-injurious behaviors, coupled with the inmate's  
910 repeated refusals to provide express and informed consent for  
911 medical treatment and care, are a significant challenge for  
912 correctional medical and mental health professionals, resulting  
913 in higher costs for medical services, and may result in  
914 inadvertent mortality in the incarcerated population.

915       (2) In accordance with s. 945.6402, the Legislature finds  
916 that an inmate retains the fundamental right of self-  
917 determination regarding decisions pertaining to his or her own  
918 health, including the right to choose or refuse medical  
919 treatment or life-saving medical procedures. However, the  
920 inmate's right to privacy and decisionmaking regarding medical  
921 treatment may be outweighed by compelling state interests.

922       (3) When an inmate is engaging in active or ongoing self-  
923 injurious behavior and has refused to provide express and  
924 informed consent for treatment related to the self-injurious  
925 behavior, the warden of the facility where the inmate is housed  
926 shall consult with the inmate's treating physician regarding the  
927 inmate's medical and mental health status, current medical and  
928 mental health treatment needs, and competency to provide express



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and informed consent for treatment. The warden shall also determine whether the inmate's self-injurious behavior presents a danger to the safety of department staff or other inmates or the security, internal order, or discipline of the institution.

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

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

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

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958       (b) The inmate shall be provided with a copy of the  
959 petition along with the proposed intervention, the basis for the  
960 proposed intervention, the names of the testifying experts and  
961 witnesses, and the date, time, and location of the hearing.  
962 After considering the medical status of the inmate, public  
963 safety, and security concerns presented by transporting the  
964 inmate, the court may order that the hearing be conducted by  
965 electronic means or in person at the institution or at another  
966 location designated by the court. If the hearing is ordered by  
967 the court to be conducted at a location other than the  
968 institution, the department is authorized to transport the  
969 inmate to the location of the hearing.

970       (c) The inmate may have an attorney represent him or her at  
971 the hearing, and, if the inmate is indigent, the court shall  
972 appoint the office of the public defender or private counsel  
973 pursuant to s. 27.40(1) to represent the inmate at the hearing.  
974 An attorney representing the inmate shall have access to the  
975 inmate and any records, including medical or mental health  
976 records, which are relevant to the representation of the inmate.

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

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

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

1. Preservation of the life of the inmate.
2. Prevention of suicide.
3. Protection of innocent third parties.
4. Maintenance of the ethical integrity of the medical profession.
5. Preservation of the security, internal order, or discipline of the institution.
6. Rehabilitation of the inmate.
7. Any other compelling state interest.

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

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

Section 15. Subsection (2) of section 945.49, Florida

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Statutes, is amended to read:

945.49 Operation and administration.—

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

Section 16. Section 945.6402, Florida Statutes, is created to read:

945.6402 Inmate health care advance directives.—

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

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

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

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

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

(e) "Ombudsman" means an individual designated and

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

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

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

(2) LEGISLATIVE FINDINGS AND INTENT.-

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

(b) To ensure that such right is not lost or diminished by

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1074 virtue of later physical or mental incapacity, the Legislature  
1075 intends that the procedures specified in chapter 765, and as  
1076 modified in this section for the institutional health care  
1077 setting, apply to incarcerated inmates. These procedures should  
1078 be less expensive and less restrictive than guardianship and  
1079 allow an inmate to plan for incapacity by executing a document  
1080 or orally designating another person to direct the course of his  
1081 or her health care or receive his or her health information, or  
1082 both, upon his or her incapacity. These procedures permit a  
1083 previously incapacitated inmate to exercise his or her full  
1084 right to make health care decisions as soon as the capacity to  
1085 make such decisions has been regained.

1086 (c) In order to ensure that the rights and intentions of an  
1087 inmate are respected when the inmate is not able to participate  
1088 actively in decisions concerning himself or herself, and to  
1089 encourage communication between the inmate, his or her family,  
1090 and his or her treating physicians, the Legislature declares  
1091 that the laws of this state recognize the right of a competent  
1092 incarcerated adult to make an advance directive instructing his  
1093 or her physicians to provide, withhold, or withdraw life-  
1094 prolonging procedures or to designate another person to make the  
1095 health care decision for him or her in the event that such  
1096 incarcerated person should become incapacitated and unable to  
1097 personally direct his or her health care. It is further the  
1098 intent of the Legislature that the department provide the  
1099 opportunity for inmates to make advance directives as specified  
1100 in this section.

1101 (d) The Legislature further recognizes that incarcerated  
1102 inmates may not avail themselves of the opportunity to make an

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1103 advance directive or, because of incarceration, may not have a  
1104 surrogate, as defined in s. 765.101, willing, able, or  
1105 reasonably available to make health care decisions on their  
1106 behalf. Additionally, because of incarceration, the individuals  
1107 designated in s. 765.401 who are eligible to serve as an  
1108 appointed proxy may not be reasonably available, willing, or  
1109 competent to make health care decisions for the inmate in the  
1110 event of incapacity. Thus, it is the intent of the Legislature  
1111 that the department have an efficient process that is less  
1112 expensive and less restrictive than guardianship for the  
1113 appointment of a proxy to allow for the expedient delivery of  
1114 necessary health care to an incarcerated inmate.

1115 (e) This section does not supersede the process for inmate  
1116 involuntary mental health treatment specified in ss. 945.40-  
1117 945.49.

1118 (3) CAPACITY OF INMATE; PROCEDURE.—

1119 (a) An inmate is presumed to be capable of making health  
1120 care decisions for himself or herself unless he or she is  
1121 determined to be incapacitated. When an inmate has  
1122 decisionmaking capacity, the inmate's wishes are controlling.  
1123 Each physician or health care provider must clearly communicate  
1124 the treatment plan and any change to the treatment plan before  
1125 implementation of the plan or any change to the plan. Incapacity  
1126 may not be inferred from an inmate's involuntary hospitalization  
1127 for mental illness or from his or her intellectual disability.

1128 (b) If an inmate's capacity to make health care decisions  
1129 for himself or herself or provide informed consent is in  
1130 question, the inmate's treating physician at the health care  
1131 facility where the inmate is located shall evaluate the inmate's

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

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

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

(4) HEALTH CARE ADVANCE DIRECTIVE; PROCEDURE.—

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

(b) The department shall provide to each inmate written information concerning advance directives and necessary forms to allow inmates to execute an advance directive. The department and its health care providers shall document in the inmate's



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1161 medical records whether the inmate has executed an advance  
1162 directive. Neither the department nor its health care providers  
1163 may require an inmate to execute an advance directive using the  
1164 department's forms. The inmate's advance directive shall travel  
1165 with the inmate within the department as part of the inmate's  
1166 medical record.

1167 (c) An advance directive may be amended or revoked at any  
1168 time by a competent inmate by means of:

- 1169 1. A signed, dated writing of intent to amend or revoke;  
1170 2. The physical cancellation or destruction of the advance  
1171 directive by the inmate or by another person in the inmate's  
1172 presence and at the inmate's direction;  
1173 3. An oral expression of intent to amend or revoke; or  
1174 4. A subsequently executed advance directive that is  
1175 materially different from a previously executed advance  
1176 directive.

1177 (5) PROXY.—

1178 (a) If an incapacitated inmate has not executed an advance  
1179 directive or designated a health care surrogate in accordance  
1180 with the procedures specified in chapter 765, or the designated  
1181 health care surrogate is no longer available to make health care  
1182 decisions, health care decisions may be made for the inmate by  
1183 any of the individuals specified in the priority order provided  
1184 in s. 765.401(1)(a)-(g) as proxy. Documentation of the efforts  
1185 to locate a proxy from the classes specified in s.  
1186 765.401(1)(a)-(g) shall be recorded in the inmate's medical  
1187 file.

1188 (b) If there are no individuals as specified in s.  
1189 765.401(1)(a)-(g) available, willing, or competent to act on

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1190 behalf of the inmate, and the inmate is housed in a correctional  
1191 institution or facility where health care is provided in a  
1192 nonhospital setting, the warden of the institution where the  
1193 inmate is housed, or the warden's designee, shall consult with  
1194 the Assistant Secretary for Health Services or his or her  
1195 designee, who shall appoint a department ombudsman to serve as  
1196 the proxy. This appointment terminates when the inmate regains  
1197 capacity or is no longer incarcerated in the custody of the  
1198 department. In accordance with chapter 765 and as provided in  
1199 this section, decisions to withhold or withdraw life-prolonging  
1200 procedures will be reviewed by the department's proxy review  
1201 team for compliance with chapter 765 and the requirements of  
1202 this section.

1203 (c) The ombudsman appointed to serve as the proxy is  
1204 authorized to request the assistance of the treating physician  
1205 and, upon request, a second physician not involved in the  
1206 inmate's care to assist the proxy in evaluating the inmate's  
1207 treatment.

1208 (d) In accordance with chapter 765, any health care  
1209 decision made by any appointed proxy under this section must be  
1210 based on the proxy's informed consent and on the decision that  
1211 the proxy reasonably believes the inmate would have made under  
1212 the circumstances. If there is no indication of what decision  
1213 the inmate would have made, the proxy may consider the inmate's  
1214 best interest in deciding that proposed treatments are to be  
1215 withheld or that treatments currently in effect are to be  
1216 withdrawn.

1217 (e) Before exercising the incapacitated inmate's rights to  
1218 select or decline health care, the proxy must comply with ss.

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1219 765.205 and 765.305, except that any proxy's decision to  
1220 withhold or withdraw life-prolonging procedures must be  
1221 supported by clear and convincing evidence that the decision  
1222 would have been the one the inmate would have made had he or she  
1223 been competent or, if there is no indication of what decision  
1224 the inmate would have made, that the decision is in the inmate's  
1225 best interest.

1226 (f) Notwithstanding s. 456.057 and pursuant to s. 945.10  
1227 and 45 C.F.R. part 164, subpart E, relevant protected health  
1228 information and mental health and medical records of an  
1229 incapacitated inmate may be disclosed to a proxy appointed to  
1230 make health care decisions for an inmate.

1231 (6) USE OF FORCE.—In addition to s. 944.35(1), an employee  
1232 of the department may apply reasonable physical force upon an  
1233 incapacitated inmate to administer medical treatment only by or  
1234 under the clinical supervision of a physician or his or her  
1235 designee and only to carry out a health care decision made in  
1236 accordance with this section and chapter 765.

1237 (7) IMMUNITY FROM LIABILITY.—A department health care  
1238 provider, ombudsman, or other employee who acts under the  
1239 direction of a health care provider as authorized in this  
1240 section or chapter 765 is not subject to criminal prosecution or  
1241 civil liability and may not be deemed to have engaged in  
1242 unprofessional conduct as a result of carrying out a health care  
1243 decision made in accordance with this section or chapter 765 on  
1244 an inmate's behalf.

1245 Section 17. Section 947.02, Florida Statutes, is amended to  
1246 read:

1247 947.02 Florida Commission on Offender Review; members,

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1248 appointment.—

1249 (1) ~~Except as provided in s. 947.021, The members of the~~  
1250 ~~Florida commission on Offender Review shall be directly~~  
1251 ~~appointed by the Governor and Cabinet from a list of eligible~~  
1252 ~~applicants submitted by a parole qualifications committee. The~~  
1253 ~~appointments of members of the commission shall be certified to~~  
1254 ~~the Senate by the Governor and Cabinet for confirmation, and the~~  
1255 ~~membership of the commission shall include representation from~~  
1256 ~~minority persons as defined in s. 288.703.~~

1257 (2) If the Legislature decreases the membership of the  
1258 commission, all commission member terms of office shall expire  
1259 and new members of the commission must be appointed in  
1260 accordance with subsection (1). Members appointed to the  
1261 commission may be selected from incumbents ~~A parole~~  
1262 ~~qualifications committee shall consist of five persons who are~~  
1263 ~~appointed by the Governor and Cabinet. One member shall be~~  
1264 ~~designated as chair by the Governor and Cabinet. The committee~~  
1265 ~~shall provide for statewide advertisement and the receiving of~~  
1266 ~~applications for any position or positions on the commission and~~  
1267 ~~shall devise a plan for the determination of the qualifications~~  
1268 ~~of the applicants by investigations and comprehensive~~  
1269 ~~evaluations, including, but not limited to, investigation and~~  
1270 ~~evaluation of the character, habits, and philosophy of each~~  
1271 ~~applicant. Each parole qualifications committee shall exist for~~  
1272 ~~2 years. If additional vacancies on the commission occur during~~  
1273 ~~this 2-year period, the committee may advertise and accept~~  
1274 ~~additional applications; however, all previously submitted~~  
1275 ~~applications shall be considered along with the new applications~~  
1276 ~~according to the previously established plan for the evaluation~~

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of the qualifications of applicants.

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

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

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

Section 18. Section 947.021, Florida Statutes, is repealed.

Section 19. Subsection (2) of section 947.12, Florida

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Statutes, is amended to read:

947.12 Members, employees, expenses.—

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

Section 20. Paragraph (g) of subsection (1) and subsection (5) of section 957.04, Florida Statutes, are amended to read:

957.04 Contract requirements.—

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

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

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

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1335 ~~chapter.~~

1336 Section 21. Subsection (3) of section 957.09, Florida  
1337 Statutes, is amended to read:

1338 957.09 Applicability of chapter to other provisions of  
1339 law.—

1340 ~~(3) The provisions of law governing the participation of~~  
1341 ~~minority business enterprises are applicable to this chapter.~~

1342 Section 22. Subsection (2) of section 20.32, Florida  
1343 Statutes, is amended to read:

1344 20.32 Florida Commission on Offender Review.—

1345 (2) All powers, duties, and functions relating to the  
1346 appointment of the Florida Commission on Offender Review as  
1347 provided in s. 947.02 ~~or s. 947.021~~ shall be exercised and  
1348 performed by the Governor and Cabinet. ~~Except as provided in s.~~  
1349 ~~947.021,~~ Each appointment shall be made from among the first  
1350 three eligible persons on the list of the persons eligible for  
1351 said position.

1352 Section 23. This act shall take effect July 1, 2025.